

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

CARIE A. CHOATE,
Plaintiff

v.

WARREN J. CHOATE, II,
Defendant

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NO. 02-20,967
CIVIL ACTION – DIVORCE

OPINION AND ORDER

Before this Honorable Court, is the Plaintiff’s July 11, 2006 Exceptions filed to the Master’s July 7, 2006 Equitable Distribution Report, and the Defendant’s July 24, 2006 Exceptions filed to that same Report. The Court will address the parties’ Exceptions seriatim.

Plaintiff’s Exceptions

The Plaintiff’s first exception challenges the amount and duration of alimony the Master awarded the Plaintiff. At the September 15, 2006 hearing before this Court, Plaintiff’s counsel argued that the Master utilized the state support guidelines to determine the proper alimony in this matter rather than the seventeen (17) factors that 23 Pa.C.S. § 3701 directs the Master to consider when calculating alimony; the Court disagrees. It is abundantly clear from the Master’s July 7, 2006 Equitable Distribution Report that the Master considered the seventeen (17) factors enumerated in 23 Pa.C.S. § 3701 (*see*, pages 17-20 of the Master’s July 7, 2006 Report). It is equally clear that the Master considered the state support guidelines, but this does not render the Master’s decision regarding alimony defective. In the situation where alimony and support will issue, the Master must necessarily consider both obligations when fashioning her award; to do otherwise would be unrealistic and would lead to absurd results; therefore, the Court will not disturb the Master’s report with respect to her alimony calculations.

The Plaintiff's second exception challenges the Master's assessment of the Defendant's income. Plaintiff's counsel contends that because the Defendant's income fluctuated a fair amount in the past three (3) years that the Master should have assigned him an earning capacity as opposed to utilizing his actual income to calculate equitable distribution and support obligations. Although the Defendant's income did fluctuate in the past three years, the Master's assessment was almost exactly an average of the figures for said three years; the Court therefore finds this to be a reasonable calculation and will not adjust the Master's assessment.

Next, the Plaintiff challenges the Master's assignment of specific personal property¹ to the Plaintiff; specifically, she contends that the Master's decision to award the Plaintiff several items, which she does not desire to maintain but the Defendant does wish to maintain, is illogical; the Court agrees. Although the Plaintiff could, in theory, sell these items, the cost to do so in light of the fact that the Defendant wishes to retain said items is not the most equitable means of distributing said property.

Lastly², the Plaintiff contends the Master erred when she directed that the marital residence to be sold. The Court recognizes the Plaintiff's desire to retain the marital residence; unfortunately, the Plaintiff offered no reason, other than sentiment, to reverse the Master's directive that the residence be sold. Accordingly, the Court is bound to affirm the Master's directive.

Defendant's Exceptions

The Defendant's first exception challenges the Master's award of attorney's fees to the Plaintiff. The American Rules directs that parties involved in litigation, absent an applicable

¹ The items at issue are a 1990 Yamaha Super Jet, a 1993 Yamaha Super Jet, a 1989 Honda Trans Alp motor cycle, a 2000 Aluma Craft Boat, and a Jet ski trailer.

² The Plaintiff did initially file five exceptions to the Master's report; however, Plaintiff's counsel withdrew her fifth exception at the September 15, 2006 hearing on this matter.

statutory fee shifting or contract provision to the contrary, are responsible for their own attorneys' fees; neither the Master, nor Plaintiff's counsel have highlighted any such provision and/or rationale to support the Master's directive on the subject.

The Defendant next claims that the Master's valuation of the 2002 Chevrolet pick-up truck was incorrect. The Master, because the Defendant submitted his valuation for said vehicle late, utilized the Plaintiff's valuation which was not for said vehicle (specifically, it was for the incorrect year). The Court finds the Master's decision to knowingly utilize an incorrect valuation not appropriate.

ORDER

AND NOW, this _____ day of November 2006, the Court hereby **ORDERS** and

DIRECTS as follows:

1. The Court hereby **DENIES** the Plaintiff's first, second, and fourth exceptions; accordingly, the Master's Report related to said exceptions is hereby **AFFIRMED**;
2. The Court hereby **GRANTS** the Plaintiff's third exception; accordingly, the matter is **REMANDED** to the Family Court to more clearly explain this decision³;
3. The Court hereby **GRANTS** both of the Defendant's exceptions; accordingly, the matter is **REMANDED** to the Family Court to more fully explain and/or vacate the award of attorney's fees to the Plaintiff and to correctly value the 2002 Chevrolet pick-up truck.

By the Court,

Nancy L. Butts, Judge

xc: Janice R. Yaw, Esq.
Richard J. Callahan, Esq.
Family Court
Hon. Nancy L. Butts
Gary L. Weber, Esq. (Lycoming Reporter)
Laura R. Burd, Esq. (Law Clerk)

³ The Court recommends that the Master award the items at issue to the Defendant and that distribution be adjusted accordingly.