

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

DEBRA GULLIVER,	:	NO. 05-21,382
Plaintiff	:	
	:	CIVIL ACTION - LAW
vs.	:	
	:	
RAYMOND GULLIVER,	:	
Defendant	:	Exceptions

OPINION AND ORDER

Before the Court are cross-exceptions to the Master's Report in Equitable Distribution, filed by Defendant on September 27, 2006, and by Plaintiff on September 29, 2006. Argument on the exceptions was heard November 3, 2006.

In his exceptions, Defendant contends the Master erred in awarding Plaintiff 60% of the marital estate and in requiring a cash payment rather than a rollover from his 401(k). In her exceptions, Plaintiff contends the Master erred in failing to require security for the payment plan recommended in her report, in failing to require at least a portion of the cash payment be made in a lump sum, in failing to award alimony, in failing to award counsel fees, and in requiring her to contribute to the costs. These will be addressed seriatim.

Initially, the Court notes that the Master erred in her calculation of the total marital estate, by including as assets "credit" for certain marital debts paid by Defendant. By deducting these two debts from the assets, the estate is valued at \$54,394, 60% of which is \$32,636, resulting in a payment from Defendant to Plaintiff of \$18,335.

With respect to the 60/40 distribution, the Court believes the Master fairly addressed the factors involved. While indeed it was a short marriage, and both parties left the marriage in the same employment which they held at the time of the marriage, several circumstances weigh in favor of the larger share of the estate being awarded to Plaintiff. First, while Defendant did not suffer a loss to his separate estate, Plaintiff contributed \$7,500 of her separate assets to the marital estate. Second, Defendant is in a better financial situation, earning significantly more than Plaintiff and having a much larger retirement fund. Defendant also has the advantage of owning his own home, with equity on which to rely in the event of unexpected expenses. The

Court will therefore not disturb the Master's recommendation in this regard, with the exception of the actual amount due to effectuate the 60/40 split, as explained above.

The Court does agree with Defendant, however, that a rollover from his 401(k) is appropriate. The estate is cash-poor and there is nothing to indicate that a rollover would be inequitable. The Court will therefore require Defendant to pay in cash only \$7,500 (over a five year period at 7% interest)¹, and rollover from his 401(k) the remainder.

With respect to Plaintiff's request for a lump sum payment, as stated above, in order to make such a payment Defendant would have to go further into debt. Such does not appear to be equitable, considering that Defendant is receiving only 40% of the marital estate. With respect to some type of lien to secure the payment plan, considering the amount of principal, the Court believes the contempt powers of the Court should be sufficient. Were the Court to place a lien on Defendant's home, his use of the equity would be further restricted, thus detracting from one of the factors which weighed in favor of granting Plaintiff the lion's share of the estate.

Alimony is not appropriate as the Court believes economic justice has been achieved through the distribution of marital property. Moreover, Plaintiff continues employment and is in relatively the same financial situation as she was at the time of the marriage.

An award of counsel fees is not appropriate as Plaintiff has been receiving alimony pendente lite of approximately \$450 per month for over a year, as well as having had her health insurance provided by Defendant. The Court thus agrees with the Master's determination that both parties should pay their own counsel fees.

Finally, with respect to the costs, once the marital estate is distributed and economic justice (i.e., equalizing the parties' situations) has been achieved, sharing the costs equally is appropriate. Since Defendant paid \$845 for appraisals, Plaintiff should contribute \$422.50. Defendant also put down a \$375 deposit when he moved for appointment of a Master, and \$87.50 of this will be applied to cover the cost of the transcript.² Plaintiff should therefore contribute \$43.75. Finally, Plaintiff will be paying \$85 when she files for the final decree, and

¹ Plaintiff will therefore recoup the \$7,500 she put into the marital estate.

² The remainder will be refunded.

Defendant should contribute \$42.50. The net effect of these transactions is that the rollover from Defendant's 401(k) to Plaintiff's 401(k) should be in the amount of \$10,412.25.

ORDER

AND NOW, this 9th day of November 2006, for the foregoing reasons, Defendant's exceptions are hereby granted in part and denied in part; Plaintiff's exceptions are hereby denied. Plaintiff shall praecipe for a final decree and pay the \$85.00 filing fee, within ten (10) days of the date of this Order.

Effective with the entry of the divorce decree, Plaintiff is hereby awarded the following:

2001 Ford Escape
Personal property already distributed
Fidelity 401(k)

and Defendant is hereby awarded the following:

Increase in value of marital residence
2004 Ford F-250 truck
Personal property already distributed
Springs Window 401(k)
PALCO checking account.

The parties shall execute whatever documents are necessary to effectuate this distribution (including a quitclaim deed to the residence), within sixty (60) days of the date of this Order. Defendant shall deliver to Plaintiff the items listed on page 4 of the Master's report, if he has not already done so, within ten (10) days of the date of this Order.

Defendant shall pay to Plaintiff the sum of \$7,500.00, by making monthly payments of \$148.51, in accordance with the amortization schedule attached to this Order, the first payment due December 1, 2006, and each payment thereafter due the first of each month thereafter, until paid in full.

Within sixty (60) days of the date of this Order, Defendant shall cause to be rolled from his 401(k) to Plaintiff's 401(k) the sum of \$10,412.25.

The Prothonotary is requested to apply \$87.50 of the \$375 deposit to the transcript costs in this matter, and to refund to Defendant the remaining \$287.50.

BY THE COURT,

Dudley N. Anderson, Judge

cc: Prothonotary
Family Court
Janice Yaw, Esq.
Joy McCoy, Esq.
Gary Weber, Esq.
Hon. Dudley Anderson