

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

JANET C. CHIAO,	:	NO. 04 – 20,982
Petitioner	:	
	:	
vs.	:	CIVIL ACTION - LAW
	:	IN DIVORCE
JOHN T. CHIAO,	:	
Respondent	:	Exceptions

OPINION AND ORDER

Before the Court are Respondent’s exceptions, filed November 14, 2006, to the Master’s Report issued October 25, 2006. Argument on the exceptions was heard January 17, 2007.

As the parties had settled their property issues, the only issue addressed by the Master was that of alimony. The Master recommended that Defendant pay to Plaintiff permanent alimony of \$5620.89 per month. This recommendation was based on the Master’s determination that Plaintiff has a monthly earning capacity as an office manager, of \$1588.20, and Defendant has a monthly earning capacity as a dentist, of \$15615.42. In his exceptions,¹ Defendant contends the Master erred in her determination of the parties’ earning capacities, her consideration of Defendant’s potential inheritance, her determination of the extent of Plaintiff’s contribution to Defendant’s earning capacity, and her award of permanent alimony (focusing on the duration). These will be addressed seriatim.

With respect to Plaintiff’s earning capacity, Defendant had urged for the assessment of an earning capacity as a registered nurse, based on Plaintiff’s education and her employment at the time of marriage. The Master determined, however, that Plaintiff was no longer able to work in that field, considering the length of time she had not worked as a nurse, and the fact that she would not be able to re-train and gain sufficient experience to place her back at that

¹ Although there are 56 numbered paragraphs in Defendant’s exceptions, the Court has gleaned from them the four issues raised.

earning capacity before she reached retirement age.² The Court finds no error in this determination, and believes the earning capacity assessed is realistic and fair.

With respect to Defendant's earning capacity, Defendant had urged the Master to consider only his income (if any) from retirement, based on the fact that he planned to close his dental practice shortly after the hearing in May 2006. The Master found, however, that Defendant's retirement was not in good faith, but, rather, was undertaken primarily out of malice or ill-will towards Plaintiff. The issue is largely one of credibility, and after review of the record, the Court will honor the Master's determination in that regard.

With respect to the Master's consideration of Defendant's potential inheritance, the Court notes the Master stated: "It is reasonable to expect that Husband will inherit a substantial sum upon the demise of his parents sometime in the foreseeable future." While consideration of any potential inheritance which at the time of hearing is but a possibility is improper, *See Gruver v. Gruver*, 539 A.2d 395 (Pa. Super. 1988), the Court does not believe this factor weighed heavily enough in the decision to affect the outcome.

With respect to Plaintiff's contribution to Defendant's earning capacity, a review of the record supports the Master's finding that Plaintiff made a substantial contribution to Defendant's earning capacity by following Defendant to his job opportunities, by serving as the primary caretaker of the parties' children and the primary homemaker, and by working in Defendant's practice on an as-needed basis as it was developing. It is clear that Plaintiff's efforts allowed Defendant to focus on his own career, to the detriment of further developing Plaintiff's career. This factor was therefore properly considered in Plaintiff's favor.

Finally, with respect to the duration of the alimony award, the Court does agree with Defendant that permanent alimony in the recommended amount is not called for in this case. While the current circumstances support the award,³ once Plaintiff reaches the age of 59 ½, she will have the full award of equitable distribution upon which to rely, and economic justice may be achieved without the full alimony award. Therefore, the Court will direct a reduction to

² Plaintiff is 57 years of age.

³ Many of the assets awarded to Plaintiff in equitable distribution may not be drawn on without penalty.

\$2600 per month,⁴ effective September 1, 2008. Further, of course, the award is modifiable upon a showing of changed circumstances by either party.

ORDER

AND NOW, this 2nd day of February, 2007, for the foregoing reasons, it is hereby Ordered and Directed that, effective this date, Defendant shall pay to Plaintiff alimony of \$5600 per month, and effective September 1, 2008, that amount shall be reduced to \$2600 per month. These amounts are modifiable upon a showing of changed circumstances by either party.

BY THE COURT,

Dudley N. Anderson, Judge

cc: Family Court
Janice Yaw, Esq.
Tiffani Kase, Esq.
Gary Weber, Esq.
Hon. Dudley Anderson

⁴ The Court estimates that Plaintiff's assets could provide her with a monthly income of approximately \$3000.