

**IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY,  
PENNSYLVANIA**

<b>RL</b>		:	
	<b>Plaintiff</b>	:	
		:	<b>NO. 10-20,079</b>
<b>vs.</b>		:	
		:	
<b>RL</b>		:	
	<b>Defendant</b>	:	

**DATED:        *SEPTEMBER 13, 2011***

**OPINION AND ORDER**

Before this Court are Wife's Exceptions filed on March 22, 2011 to the Family Court Order of March 10, 2011, as well as Husband's Cross-Exceptions filed on March 29, 2011 to the Family Court Order of March 10, 2011. Argument on the Exceptions was heard on July 14, 2011.

The issues before the Master at the Equitable Distribution Hearing held on December 8, 2010 were the percentage of the marital estate to be awarded to each party; whether alimony should be awarded and, if so, in what amount; and whether the marital portion of Husband's military pension may be distributed as it has been used as part of Husband's income in determining alimony pendente lite.

In the Order of March 10, 2011, the Master determined that in regards to the division of the marital estate the allocation is 60% to Wife and 40% to Husband. The Master further determined that the marital portion of the military pension was to be distributed through QDRO. As for the Survivorship Benefit of the military pension, Husband was to either pay Wife a one time payment of \$12,333.00, on or before June 1,

2011, or Husband's counsel was to prepare a QDRO providing for the Survivorship Benefit. The current survivorship benefit is to remain in effect permanently.

In regards to Alimony, Husband was ordered to pay Wife alimony in the amount of \$743.48 per month. Alimony is ordered to end on September 1, 2011.

Wife filed the following Exceptions on March 22, 2011:

1. The Master erred in the amount and duration of alimony.
2. The Master erred in not ordering Husband to pay Wife the amount of the Ordered pension until such time as the Qualified Domestic Relations Order was approved and Wife began receiving her checks directly.
3. The Master erred in allowing Husband to determine if Wife would receive the survivorship benefit during the marriage.

Husband filed the following Cross-Exceptions on March 29, 2011:

1. The Master erred in that her decision as to alimony and equitable distribution of the marital estate constituted an error of law, abuse of discretion and/or was against the weight of the evidence of record, and failed to render economic justice in accordance with the Divorce Code in that:
  - a. The Master erred and failed in awarding alimony to Wife as Husband, since the date of final separation in August 2007, has paid Wife spousal support and/or APL for over three years in an eight year marriage, in the amount of approximately \$50,000, including almost \$20,000 in APL alone since on or about January 2010, and failed to

credit Husband for APL payments since the date of the Master's hearing on December 8, 2010.

- b. The Master erred and failed to deny Wife entitlement to Husband's military pension benefits and survivor benefits, as said military pension benefits, which have been in "pay status" since December 2003, have been included as part of Husband's income in the child support and APL calculation for the past three years and cannot now be considered as an asset in equitable distribution.
- c. If entitled to Husband's military pension and survivor benefits, the Master erred and failed in awarding Wife sixty percent of the marital value thereof as the marital portion of said pension was only accumulated over a very brief period of time of approximately four and one half years and Wife should receive thirty percent, and the survivor benefit should not be paid until Husband's death.
- d. The Master erred and failed in determining Wife's earning capacity at just over minimum wage as Wife has a Bachelors Degree from Penn State and has vast work experience in the health care field and has earning capacity in excess of \$40,000.
- e. The Master erred and failed in determining Wife's earning capacity at just over minimum wage as Wife has intentionally not worked a full-time job and Wife has not made any significant effort to secure full-

time employment or medical coverage for over three years since the parties' date of final separation.

- f. The Master erred and failed in determining that Husband is to make a cash distribution from Husband's Thrift Savings Plan ("TSP") instead of determining that any distribution from Husband to Wife is to be by Qualified Domestic Relations Order ("QDRO"), including but not limited to, any distribution from the TSP.
- g. The Master erred and failed in using the gross amount as the marital value of the parties' account of approximately \$7,200 as Husband paid taxes on said account as it was a mutual fund that was liquidated, not a bank checking account.
- h. The Master erred and failed in determining that Wife is entitled to any cash award as there are no cash assets or liquid assets in the marital estate and any monetary award to Wife should be paid to Wife by QDRO,
- i. The Master erred and failed in determining that the assets of the marital estate should be divided on a "60-40" allocation in favor of Wife as said allocation should have been on a "50-50" basis, except as otherwise stated herein as to Husband's military pension and survivor benefits.

**WIFE'S EXCEPTION 1., HUSBAND'S EXCEPTION 1.a.**

Both Husband's Exception 1.a. and Wife's Exception 1. deal with the issue of Alimony. Husband argues the Master erred in awarding Wife any Alimony and further that the Master failed to credit Husband for APL payments from the date of the Master's Hearing on December 8, 2010. Wife argued that the Master erred in the duration of the Alimony and should have granted Alimony for a longer period of time. In reviewing the Master's Report, it is clear the Master conducted a thorough analysis of the Alimony factors in reaching a determination that Wife should receive Alimony in the amount of \$743.48 per month until September 1, 2011. The Master clearly intended for Wife to receive Alimony for a period of nine months at a reduced rate from the Alimony Pendente Lite that she was receiving. As the Court cannot find that the Master erred, the Master's ruling is affirmed and Wife shall receive Alimony for a period of nine months in the amount of \$743.48.

Husband argues that even if the Master's Alimony award is upheld, Husband should be credited for the amount of support he overpaid from December 8, 2010, as the Master's recommendation for Alimony was less than Alimony Pendente Lite. The law is clear that Alimony Pendente Lite continues if an appeal is pending on matters of equitable distribution. APL continues throughout the appeal process and any remand until a final order has been entered. *Haetjens v. Haetjens*, 860 A.2d 1056, 1062 (Pa. Super. 2004). Wife is clearly entitled to Alimony Pendente Lite at the current ordered amount until such time as a final order has been entered and thereafter shall receive nine months of Alimony in the amount of \$743.48 per month as ordered by the Master.

Therefore, Wife's Exception 1 and Husband's Exception 1.a. are denied.

**WIFE'S EXCEPTION 2.**

Wife argues that the Master erred in not ordering Husband to pay Wife the amount of the ordered pension until such time as a Qualified Domestic Relations Order was approved and Wife began receiving her checks directly.

The Master ordered that Wife was to receive 60% of the marital portion of Husband's military pension which was to be distributed through a Qualified Domestic Relations Order. The Master's decision, however, is silent as to what occurs until such time as the Qualified Domestic Relations Order is put into place. Clearly, based upon the Master's determination, upon the date that a final order in equitable distribution is entered, the marital portion of the military pension is no longer considered income to Husband, but is an asset to be divided between the parties. Wife correctly anticipates that there will be a gap in time between the time that the final order in equitable distribution is entered and the Qualified Domestic Relations Order is put in place so that Wife receives her 60% of the marital portion of the pension directly from the military. In light of this, the Master's Order shall be amended to include that upon the entry of a final divorce decree, the marital portion of the military pension is no longer income to Husband, but is an asset to be divided between the parties. Until such time as a Qualified Domestic Relations Order is put into pay status and Wife receives her 60% of the marital portion of the military pension from the military, Husband shall pay to Wife directly her 60% of the marital portion.

Wife's Exception 2 is granted.

**WIFE'S EXCEPTION 3.**

Wife argues that the Master erred in allowing Husband to determine if Wife would receive the Survivorship Benefit as the parties had agreed and elected the Survivorship Benefit during the marriage. At the time of the hearing on equitable distribution, the parties entered into stipulations regarding various assets prior to the commencement of the hearing. Pursuant to the stipulation concerning the Survivorship Benefit, Wife's counsel dictated the following: "the parties have already elected a Survivorship Benefit for the military pension. If Husband agrees that she stays on the Survivorship Benefit, which we are requesting that she does, that Survivorship Benefit is worth \$20,555.00 and that is based on a Survivorship which will pay her \$376.05 per month." N.T. December 8, 2010, p. 2. In her decision, the Master provided Husband with an option to either make a lump sum payment to Wife of 60% of the present value of the Survivorship Benefit of \$12,333.00 or prepare a Qualified Domestic Relations Order providing that the current Survivorship Benefit remain in effect permanently. The Court cannot find that the Master abused her discretion in providing Husband this option. Therefore, the Master's determination regarding the Survivorship Benefit is affirmed. Husband shall, within ninety days of the entry of a final order in equitable distribution, pay to Wife the present value of the Survivorship Benefit of \$12,333.00 or prepare a Qualified Domestic Relations Order providing that the current Survivorship Benefit remain in effect permanently.

Wife's Exception 3 is denied.

**HUSBAND'S EXCEPTION 1.b.**

Husband argues that the Master erred in failing to deny Wife entitlement to Husband's military pension benefits and survivor benefits as the benefits are in pay status and have been included as part of Husband's income in the child support and APL calculation for the past three years and cannot now be considered as an asset for equitable distribution.

On pages 9-11 of the Master's Report and Recommendation in regard to equitable distribution, the Master conducted a thorough analysis of whether or not the marital portion of the military pension can be considered a marital asset or included in the parties' income. The Court finds that the Master's determination is consistent with Pennsylvania Law and, therefore, Husband's Exception 1.b. is denied.

**HUSBAND'S EXCEPTION 1.c.**

Husband argues that if Wife is entitled to a portion of Husband's military pension, the Master erred in awarding Wife 60% of the marital value as the pension was accumulated over a very brief period of time. In her determination, the Master awarded to Wife 60% of the marital portion of Husband's military pension. There is no factual basis to award Wife a different percentage of the marital portion of the pension than the Master has awarded to her of the entire marital estate. By awarding to Wife 60% of only the marital portion, the Master has taken into account the fact that only a small portion of the pension was acquired during the marriage. As the Master indicated in her decision, the marital portion of the pension is only 18.96% of the entire pension and Wife was granted 60% of this percentage.

Husband's Exception 1.c. is denied.

**HUSBAND'S EXCEPTION 1.d. AND 1.e.**

Husband argues that the Master erred in assessing Wife an earning capacity just over minimum wage.

The Master found Wife to have a monthly net earning capacity of \$1,210.00. The Court does not find that the Master erred in her determination of Wife's monthly net earning capacity. The Master assessed Wife with an earning capacity despite the fact that she only was electing to continue to work part-time to maintain a flexible schedule for the children. Wife has a Bachelor's Degree, she was last employed on a full-time basis around the time of the parties' marriage in 1999. Throughout the parties' marriage, Wife remained home to take care of the children which also allowed the parties to move from location to location to further Husband's career. In light of these facts, the Court believes the Master's determination concerning Wife's net earning capacity is reasonable.

Husband's Exceptions 1.d. and 1.e. are denied.

**HUSBAND'S EXCEPTION 1.e.**

Husband argues that the Master erred in determining that Husband is to make a cash distribution from his Thrift Savings Plan instead of determining that a distribution from the Thrift Savings Plan to Wife should be a Qualified Domestic Relations Order.

Both Husband and Wife agree that the distribution to Wife from the Thrift Savings Plan shall be accomplished through a Qualified Domestic Relations Order.

Within sixty (60) days of entry of a final divorce decree, Husband's counsel shall prepare

a Qualified Domestic Relations Order to effectuate the transfer from the Thrift Savings Plan as ordered by the Master.

Husband's Exception 1.e. is granted.

**HUSBAND'S EXCEPTION 1.g.**

Husband argues that the Master erred in failing to use the gross amount to determine the marital value of the parties' checking account. At the commencement of the hearing, both counsel placed on record various stipulations in regard to marital assets. Concerning the checking account, the following stipulation was placed on the record: "There is also a checking account of Husband's \$7,201.00 and a savings account of \$836.00." N.T. December 8, 2010, p. 3. As it is clear that a stipulation was reached as to the value to be assigned to the checking account to be distributed between the parties, the Court cannot find that the Master erred failing to utilize a gross amount. Further, it does not appear as if there was any testimony presented through the hearing as to what the gross value of the account would be for the Master to even consider.

Husband's Exception 1.g. is denied.

**HUSBAND'S EXCEPTION 1.h.**

Husband argues the Master erred in ordering Wife any cash award as there are no cash assets or liquid assets in the marital estate. Husband argues that any monetary award to Wife should be paid through a Qualified Domestic Relations Order.

The Court does not find that the Master erred in awarding Wife a cash payment in the amount of \$12,763.39. The division of the pension and Thrift Savings Plan were accomplished through Qualified Domestic Relations Orders which avoided any tax

impact on either party. The remaining assets that each party received which resulted in the cash payment owed from Husband to Wife are assets such as bank accounts and vehicles. The Master is clearly within her discretion to award the cash payment to Wife. Husband shall make a cash payment to Wife within six months of the entry of a final order in equitable distribution in the amount of \$12,763.39. Husband's Exception 1.h. is denied.

**HUSBAND'S EXCEPTION 1.i.**

Husband argues the Master erred in failing to distribute the marital estate on a 50/50 basis rather than a 60/40 basis as ordered by the Master.

On pages 13-20 of the Master's Report, the Master discusses each of the factors in equitable distribution. Thereafter on pages 20-24 of her report, the Master conducted a detailed discussion analysis as to the distribution of the marital estate. The Court finds that the Master appropriately considered each factor and provided detailed record and analysis of her findings. The Court cannot find that the Master erred in her determination of a 60/40 split of the marital estate.

Husband's Exception 1.i. is denied.

**ORDER**

AND NOW, this 13<sup>th</sup> day of **September, 2011**, upon consideration of the Plaintiff's Exceptions and Defendant's Cross-Exceptions to the Master's Report regarding Equitable Distribution, Alimony, Counsel Fees and Costs, it is ORDERED and DIRECTED as follows:

**TO WIFE:**

1.	2000 Ford Windstar	\$ 4,025.00
2.	Marital portion of Thrift Savings Plan through a Qualified Domestic Relations Order rollover	28,030.53
3.	Marital savings account	836.00
	TOTAL	\$32,891.53
	Cash Payment to be made within six months of the date of the entry of a divorce decree	\$12,763.39
	<b>TOTAL DISTRIBUTION TO WIFE – 60% OF MARITAL ESTATE</b>	<b>\$45,654.92</b>

**TO HUSBAND:**

1.	2000 Mercedes	\$12,175.00
2.	Marital checking account	7,201.00
3.	Marital portion of Husband's FERS Pension	23,824.00
	TOTAL	\$43,200.00
	Cash Payment to Wife within six months of the date of the entry of a divorce decree	(12,763.39)
	<b>TOTAL DISTRIBUTION TO HUSBAND – 40% OF MARITAL ESTATE</b>	<b>\$30,436.61</b>

The marital portion of the military pension shall be distributed by Qualified Domestic Relations Order. The Qualified Domestic Relations Order shall be prepared by Wife's attorney and finalized within six months of the date of the entry of a final divorce decree. Sixty percent (60%) of the marital portion of the pension is awarded to Wife, to

be paid as sixty percent (60%) of the marital portion of each monthly military pension payment. Forty percent (40%) of the marital portion of the military pension is awarded to Husband as well as the total non-marital portion of the pension.

The Survivorship Benefit of the military pension shall be distributed in one of two ways at the discretion of Husband. Either Husband shall make a lump sum payment to Wife of sixty percent (60%) of the present value of the Survivorship Benefit or \$12,333.00 within six months of the date of the entry of the final divorce decree, or a Qualified Domestic Relations Order shall be prepared by Husband's attorney within six months of the date of the entry of the final divorce decree providing that the current Survivorship Benefit shall remain in effect permanently.

Within sixty (60) days of entry of a final divorce decree, Husband's counsel shall prepare a Qualified Domestic Relations Order to effectuate the transfer from the Thrift Savings Plan as ordered by the Master.

Husband shall pay to Wife Alimony in the amount of \$743.48 monthly for a period of nine (9) months commencing the date that a final divorce decree is entered between the parties.

Upon the entry of a final divorce decree, the marital portion of the military pension is no longer income to Husband, but is an asset to be divided between the parties. Until such time as a Qualified Domestic Relations Order is put into pay status and Wife receives her 60% of the marital portion of the military pension from the military, Husband shall pay to Wife directly her 60% of the marital portion.

Wife's request for counsel fees and costs is denied.

Both parties shall file all appropriate paperwork necessary to finalize the Divorce immediately.

By the Court,

Joy Reynolds McCoy, Judge