

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

TONIA KUHNS,	:	NO. 11 – 01,124
Plaintiff	:	
	:	CIVIL ACTION - LAW
vs.	:	
	:	
ERIC THOMPSON,	:	
Defendant	:	Partition

OPINION AND ORDER

Before the court are Plaintiff's exceptions to the Master's Report and Recommendation in Partition, filed March 7, 2012. Argument on the exceptions was heard April 12, 2012.

The parties jointly own, as tenants in common, property located at 1868 Log Run Road in Williamsport. From the date of purchase in November 2007 until Defendant moved out in August 2010, the parties and Plaintiff's minor daughter lived in the residence on the property. Plaintiff moved for partition of the property in July 2011 and Joseph Musto, Esquire, was appointed Master to determine the fair market value of the property and, based on the contributions of each party, the sum to be paid by Plaintiff to Defendant.¹ After a hearing on October 26, 2011, and consideration of documentation submitted thereafter, the Master issued a report in which he recommended Plaintiff pay \$24,285 to Defendant based on his conclusions that the equity in the property to be divided was \$28,380 and Defendant contributed 85.8% of the funds which produced that equity, and also providing for reimbursement of part of payments made by Defendant toward the mortgage after he left the residence. In her exceptions, Plaintiff contends the Master erred in finding that all of the increase in value of Plaintiff's separate account were attributable to Defendant, in finding that Plaintiff could not support herself financially without contribution from Defendant, in failing to include Plaintiff's tax refunds when calculating her income, in concluding that Plaintiff contributed to only 14.2% of the mortgage and other expenses, in failing to award her a credit for her contribution to the down payment, closing costs and improvements, in calculating his credits

¹ The Master was informed that Plaintiff wished to retain the property and buy Defendant out; both parties agreed the property was incapable of physical division.

for mortgage payments made after separation, and in setting a dollar amount for the payment rather than a percentage since a sale of the property would require the payment of realtor fees and transfer taxes. As many of these issues are related and as the court disagrees with the Master's findings and conclusions, rather than address each exception separately, the court will address the entire matter as a whole, the final result of which will address each exception.

According to the testimony of the parties and the documentation presented, at the time the parties began residing together,² Plaintiff had a separate bank account with Wyrope Williamsport Federal Credit Union. Sometime prior to the purchase of the home on Log Run Road they opened a joint checking account with First National Bank. Plaintiff works as a teacher's aide and her wages were directly deposited into that joint account. Defendant works as a plumber/steam fitter for Local 520 and each week, he gave Plaintiff his paycheck, which she then cashed; part of the cash was returned to Defendant for travel expenses and the rest was either spent, deposited into the joint checking account or deposited into the Wyrope account. All living expenses for both parties and Plaintiff's child, including the mortgage payment (which includes taxes and insurance) were paid out of the joint account.³ Plaintiff received child support which was directly deposited into the Wyrope account. Plaintiff's tax refunds were directly deposited into the Wyrope account.

Plaintiff paid the \$1000 down payment, the \$10,721 balance due at closing, as well as several other "improvement costs", from the Wyrope account. The Master denied her request for reimbursement of these amounts on the basis of his finding that Plaintiff could not have paid even basic living expenses for herself and her child on her income let alone saved \$11,101 (which he found to be the increase in balance of her Wyrope account from October 1, 2006, through August 31, 2010), and therefore she must have been able to save that \$11,101 because everything else was paid from Defendant's income. After calculating the parties' respective incomes,⁴ he determined that Plaintiff contributed 14.2% and Defendant contributed 85.8% of the funds used to purchase, improve and maintain the property as well as make the mortgage

² The parties began residing together in 2006 and lived on Poplar Street until they purchased the home on Log Run Road.

³ Plaintiff's car payment was directly deducted from her Wyrope account, however.

⁴ The Master determined Plaintiff to have an annual income of \$12,780 and Defendant to have an annual income of \$77,011.

payments. In effect, the Master determined that by contributing to the increase in value of the Wyrope account, Defendant contributed to the down payment which had come from that account. He therefore allocated the equity in the property 14.2% to Plaintiff, 85.8% to Defendant. He did not provide for reimbursement to Plaintiff of the down payment and closing costs. Finally, based on testimony that Defendant had paid half the mortgage payments from September 2010 through May 2011, he provided for reimbursement of the amount of those payments which went towards reducing the principal balance of the loan. He did not award rental value as he found Defendant to have voluntarily left the residence.

Initially, the court wishes to note the confusing manner in which the parties kept their finances; it is a credit to the master that he was able to make any sense at all out of the documentation provided. There were several errors, however, which make the Master's recommendation contrary to the facts and thus an error of law. First, he did indeed fail to include Plaintiff's income tax refunds in her income when determining the contributions each party made to the expenses. Plaintiff received in 2010 (the year chosen by the Master as a "fair and representative" picture of her situation) \$5,378 in federal and state tax refunds. This is no small amount since her income from employment and child support that year was \$11,123. Thus, it might be possible for Plaintiff to meet the needs of herself and her daughter on her income alone, which the court calculates at \$16,501 (\$6,363 wages, \$4,760 child support and \$5,378 refunds) and the Master's conclusion to the contrary was indeed in error.

Nevertheless, the court finds that Plaintiff *did not* support herself, based on the increase in value of her Wyrope account. In October 2006, that account had a balance of \$10,559. In August 2010, the balance was \$21,661. Since Plaintiff used \$11,721 to pay the down payment and balance due at closing in November 2007, this represents an increase of \$22,822.⁵ Averaged over the 47 month period considered, Plaintiff saved \$485 per month. When this amount is subtracted from her monthly net income of \$1,375 (\$16501 divided by 12 months), Plaintiff is left with only \$890 per month. This amount is indeed insufficient for Plaintiff to have supported herself and her daughter and still made contributions toward the house. Thus, the court finds, based on this conclusion, that Defendant carried the entire expense of the house

- mortgage payments and improvements both - regardless of where the payments for those expenses were actually drawn.⁶

The court's finding that Defendant carried the expense of the house obviates the need to analyze the Master's percentage findings. The deposits and withdrawals made into and out of both the checking and the Wyrope accounts make such an analysis an effort in futility in any event. Further, the Master erred in his calculations as he used as Defendant's "average net annual income" the average of the *gross* incomes he earned in the four-year period considered, which gross incomes do not represent the amounts available for expenses as they do not consider taxes or travel expenses. Therefore, the court has taken a different approach.

At the time of purchase, Plaintiff invested \$11,721 in the property but thereafter, made no further contributions, choosing instead to contribute to her separate savings account. Defendant invested nothing at the time of purchase but thereafter, made all the payments toward principal, interest, taxes and insurance, as well as paid for the improvements and maintenance. Both parties should receive a return on their investment as the value of the property has increased. The Master found the current fair market value to be \$120,000 and this figure has not been excepted to. The parties purchased the property for \$100,100, and thus the property increased in value 20%. To provide Plaintiff with a 20% return, she should receive \$14,065. Defendant is entitled to the remainder of the equity, calculated as follows: from the value of \$120,000 is subtracted the balance of the mortgage at the time of separation (August 2010), or \$92,573, for equity of \$27,427. Deducting Plaintiff's share of \$14,065 leaves \$13,362 for Defendant.

With respect to post-separation credits, although the Master determined Defendant should not receive fair rental value because he had left the residence, such is a proper consideration in equitable distribution but not in partition. Defendant *is* entitled to fair rental value because Plaintiff received the entire benefit of living in the residence after Defendant left.

⁵ While the master calculated an increase of \$11,101, he did not consider the 11,721 that went toward the home's purchase.

⁶ Plaintiff's protestation that she must have been contributing to the mortgage because she has continued to support herself and her daughter without Defendant's help lacks support in the record. There is no evidence of the current balance of the Wyrope account; the court suspects that account has been drawn down to meet Plaintiff's living expenses.

As of that date, September 2010, Plaintiff should have paid the entire mortgage payment as she was receiving the full value of the property. Since Defendant paid half the mortgage payments from September 2010 through May 2011, he is entitled to a return of those payments. The fair rental value of the property is considered offset by the mortgage payment, however, and thus Defendant should not receive any credit above and beyond a return of his payments. It should be noted that by using the mortgage balance at separation, Plaintiff has benefited from the reduction in principal due to the principal portion of the payments returned to Defendant.

The documentation indicates the mortgage payments were \$740.30 for September and October 2010, \$729.80 for November 2010 through April 2011, and \$709.60 for May 2011, for a total of \$6,570. As Defendant paid half of this amount, he is entitled to be reimbursed in the amount of \$3,285. Added to the equity payment of \$13,362 provides a total payment of \$16,647.

In the event Plaintiff decides she does not wish to retain the property, and it is instead sold, Plaintiff's return on investment and Defendant's equity payment should be calculated by using the sale price rather than the fair market value of \$120,000, and by adding to the mortgage balance at separation any realtor's commission, transfer tax, and document fees.

ORDER

AND NOW, this 17th day of April 2012, for the foregoing reasons, partition of the property located at 1868 Log Run Road, Williamsport, Pennsylvania shall be made by Plaintiff's payment to Defendant of the sum of \$16,647. Plaintiff shall have Defendant's name removed from the mortgage and Defendant shall sign a deed to transfer the property to Plaintiff at such time as payment is made. Should this payment not be made within ninety days of this date, Plaintiff instead choosing to sell the property, Defendant shall cooperate with the sale, and the proceeds shall be divided as provided for herein.

BY THE COURT,

cc: Melissa Clark, Esq.
Patricia Bowman, Esq.
Gary Weber, Esq.
Hon. Dudley Anderson

Dudley N. Anderson, Judge