

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

RICHARD A. WINDER, Plaintiff	: NO. 07 - 21,359
	:
vs.	: CIVIL ACTION - LAW
	: IN DIVORCE
	:
MARY-JO E. WINDER, Defendant	: Exceptions

OPINION AND ORDER

Before the court are Plaintiff's exceptions to the Master's Report issued April 17, 2012. Argument was heard July 2, 2012.

The parties were married on August 18, 1991 and separated in September 2007. Although they both filed affidavits of consent, no decree was entered. Defendant died in August 2011, and as consents had been filed, the matter proceeded to address the claims for equitable distribution and attorney's fees. The Master recommended the marital estate be divided 53% to Defendant and 47% to Plaintiff's estate, that the items of personal property about which there was a dispute be auctioned and the proceeds divided evenly, and that the credit card judgment be assumed by Plaintiff and the student loan debt be assumed by Defendant's estate. In his exceptions, Plaintiff raises seven issues, each of which will be addressed in turn.

First, Plaintiff contends the Master erred in finding that the student loan must be repaid without documentation that it remains due and payable, as he believes the debt was forgiven. Actually, the Master did not find that the student loan must be repaid. At page 10 of the report, the Master notes that "[t]he loan was in forbearance status, presumably due to Wife's illness", and also that "it is very likely the loan will be discharged upon presentation of Wife's death certificate, or alternatively, because her estate cannot pay the loan". The Master noted the balance due but did not credit Wife's estate with that amount. The court sees no error in the Master's conclusions in this regard.

Next, Plaintiff contends the Master erred in assessing his truck with a value of \$3400 in light of his testimony that because of its condition it had only scrap value. The parties stipulated that in fair condition, the truck would have a value of \$3400. N.T., July 13, 2011, at

p. 74. While Plaintiff did testify that “scrap’s \$200”, Id. at p.71, he also stated that it was four-wheel drive and would make a good farm truck. Id. Further, he testified that “the frame’s rusted and they won’t inspect it”, Id. at p.70, but when questioned further, stated that “I just got it inspected three months ago, I had to have the frame all welded up, and the guy said next year you got to get - I mean it’s – it’s rusted, so I got it inspected, but that’s about it.” Id. at p.71. In light of this equivocal testimony, the court finds no error in using the stipulated value.

Next, Plaintiff contends the Master erred in failing to account for the Volvo, contending Defendant sold it after separation. According to Plaintiff’s testimony, however, the vehicle had been at the Lock Haven vehicle auction for the past four years, he had signed the title and if it sold, the proceeds were to be split three ways, one-third to Defendant and one-third to each of the parties’ children. Id. at p.149. The court fails to see how the Master could have erred in failing to address this issue in light of this testimony.

Next, Plaintiff contends the Master erred in failing to account for a generator and a pistol, arguing that Defendant sold these items after separation. Although it is not clear to which pistol Plaintiff is referring (as the testimony addressed several pistols), there is nothing in the evidence to support a finding that any pistol was sold or disposed of by Defendant after separation. With respect to the generator, although Plaintiff testified that he had a receipt “from the guy that she sold it to”, Id. at p.131, that receipt was never introduced into evidence and therefore the Master had nothing on which to base a value. Accordingly, the court finds no error in the Master’s failing to include either of these items in her accounting of assets.

Next, Plaintiff contends the Master erred in not requiring Defendant to produce several mirrors and a jelly cupboard for the auction. In her report, the Master noted that “[w]ith regard to items Husband believes Wife has, he was only able to establish, to the satisfaction of the Master, that Wife has jewelry.” Master’s Report, p. 8. A review of the transcript supports this conclusion. Plaintiff’s testimony regarding the personal property believed to be in Wife’s possession was very confusing, and the court was unable to discern any particular testimony addressing these items. The Master therefore had no basis on which to require Defendant to produce the items for auction.

Next, Plaintiff contends the Master erred in not requiring Defendant to reimburse the children's bank accounts, arguing that she removed monies from those accounts. The Master noted, at page 5 of her report, that although "Husband has alleged that Wife withdrew money from the accounts near the time of separation or after separation", the only evidence introduced on the matter was a document which showed a withdrawal "a full year prior to the parties' separation". This conclusion is supported by the evidence, as Plaintiff's counsel stated that "we could not get [documentation showing the alleged higher balance prior to separation]". *Id.* at p.66. Without evidence on the matter, the court fails to see any error in the Master's disregard of Plaintiff's contention.

Finally, Plaintiff contends the Master erred in not requiring Defendant to contribute to the credit card judgment. The court agrees with this contention. The Master assigned the debt to Plaintiff because "Wife's estate was presented to be insolvent, and Husband will ultimately be held responsible for the debt." Report at p. 9-10. While the responsibility to pay the debt may properly be assigned to Plaintiff for those reasons, Plaintiff should nevertheless have been given credit for assuming such. There is nothing in the evidence which would dictate otherwise. Therefore, the debt will be assessed 53% to Defendant, and Plaintiff will be given credit for \$5,522.63.

ORDER

AND NOW, this 3rd day of July 2012, for the foregoing reasons, the Report of the Master is hereby adopted, with the modification noted above, and it is hereby ordered and directed as follows:

1. Each party shall be responsible for his or her own counsel fees and costs.
2. Plaintiff is awarded the marital residence and all debt associated therewith.
3. The PSECU account in the name of Ariana M. Winder, No. 0193XXXXXX, is awarded to Ariana M. Winder. The PSECU account in the name of Kristiana E. Winder, No. 0165XXXXXX, is awarded to Kristiana E. Winder.
4. An auction shall be held by Scott Yonkin. Plaintiff and Defendant's executor shall cooperate fully with Mr. Yonkin in establishing the date and time of the auction, and with any other requirements necessary for the auction to proceed.

5. The following items from Plaintiff's Exhibit 16 shall be produced by Plaintiff for the auction within thirty days of this date: 3, 4, 6, 7, 8, 13, 17, 34, 35, 36, 44, 52, 87, 100, 101, 105, 107, 118, 119, 124, 126, 127, 139, 144, 146, 147, 150, 151, 157, and 161. Husband shall search for items 152 and 156 and produce them if he can find them. Unless Patrick Blair agrees they need not be produced, the following items are also to be produced (from the possession of the parties' children): ½ of 89, 90 and 125 (minus the mirror).
6. The following items from Plaintiff's Exhibit 15 shall be produced by Defendant's Personal Representative for the auction within thirty days of this date: 28, 29, 30, 31, 32, 33, 41, 45, 54, 55, 56, 57, 58, 59, 71, 72, 79, 80, 91, 92, 93, 94, 95, 96, 97, 98, 99, 109, 110, 111, 114, 115, and 131.
7. After paying all expenses, the proceeds of the auction shall be divided 50% to Plaintiff and 50% to Defendant's estate. The sum of \$5,429.61¹ shall be paid from Defendant's share to Plaintiff. Any amount not paid shall be a claim on the estate.
8. Plaintiff shall be solely responsible for the credit card judgment and shall indemnify Defendant's estate and hold it harmless from that debt.
9. Defendant's estate shall be solely responsible for the student loan debt and shall indemnify Plaintiff and hold him harmless from that debt.
10. Plaintiff is awarded his AVCO pension, his life insurance policy, his truck and the \$4,690.00 he previously received from an auction of property.

BY THE COURT,

Dudley N. Anderson, Judge

cc: Lori Rexroth, Esq.
Marc Drier, Esq.
Family Court

¹ This sum represents the \$5,522.63 Defendant owes Plaintiff, less the \$93.02 Plaintiff owes Defendant.