

**IN THE COURT OF COMMON PLEAS OF NORTHAMPTON COUNTY, PENNSYLVANIA
CIVIL DIVISION - LAW**

VIRGINIA M. LAMARCA,)	NO. C-48-CV-2008-3054
)	
Plaintiff,)	
)	
v.)	
)	
CHARLES J. LAMARCA,)	
)	
Defendant.)	

OPINION

Statement of Facts and Procedural History

Plaintiff, Virginia M. LaMarca (hereinafter referred to as “Wife”) and Defendant, Charles J. LaMarca (hereinafter referred to as “Husband”), filed Exceptions to the Master’s Report and Recommendations filed on September 23, 2010, in their divorce action.

The parties were married on April 6, 1974. Wife was born on June 8, 1953, and Husband was born on December 30, 1948. Wife filed a Complaint in divorce on March 28, 2008; this is the date of separation. The parties both resided at 280 Fringe Lane, Easton, PA, when the divorce complaint was filed. The parties have three children, all of whom were adults at the time the divorce complaint was filed.

The matter was referred to a Special Master, Steven N. Goudsouzian, Esq., for a hearing to determine the equitable distribution of the marital estate. The Master received testimony from both parties at two separate hearings on April 21, 2010, and June 21, 2010. After the hearings, the Master filed a Report and Recommendations on September 23, 2010. The Master’s Findings and Recommendations, in pertinent part, include the following:

Competing Claims of Bad Faith and/or Bad Acts

Both parties assert that each other was guilty of bad faith and/or bad acts which should have been considered by the Master when allocating the marital assets in equitable distribution. The Master's Findings discussed Wife's testimony regarding Husband's physical abuse. Although the Master found some of the allegations credible, the Master did not credit all her testimony regarding abuse. He also determined that Wife could not support all of her allegations that Husband intended to conceal assets from Wife by hidden bank transfers. The Master accepted portions of Husband's testimony that there were legitimate purposes for some funds withdrawn after separation, but the Master also found Husband appeared to be hiding significant assets and that Husband's financial transactions made it difficult to determine how the withdrawn funds were used. Overall, the Master specifically found that "both parties acted in bad faith prior to and after the filing of the divorce Complaint." (Master's Report, p. 18).

Parties' Incomes

Husband has a Master's degree and was employed as a teacher in New Jersey until he retired in June 2007 at the age of 58. Husband also ran a seasonal lawn-mowing business until April 2008. Currently, Husband receives a gross monthly pension benefit of \$4,732.39 which commenced January 1, 2010. Husband also is considered disabled by the Social Security Administration and received a gross monthly benefit of \$2,311.00 retroactive to May 28, 2008. At the time of the hearing, Husband's yearly gross income was approximately \$84,520.00

Wife holds a high school diploma and has worked as a packer for a moving company since 1998. Wife earned \$30,000.00 in 2009 and at the time of the Master's hearing was earning \$18.00 per hour.

Husband's Pension

Addressing Husband's pension, the Master accepted the valuation of the pension submitted by Husband and, after subtracting the value of the survivor annuity that benefitted Wife, the Master calculated the monthly amount of the pension subject to equitable distribution to be \$3,418.97. After finding that none of the parties credibly testified why either should be entitled to a larger share of the pension, the Master awarded each party a 50% share of the marital portion of the pension. He also determined that each party was responsible for paying taxes on the amount of the pension received.

Healthcare Benefits

When determining the equitable distribution of the entire marital estate, the Master noted that Husband would receive health care for life through his former employment, but Wife would be required to purchase health care and the cost of Cobra benefits was \$563.71 per month for the next three years.

Financial Assets

The bulk of the marital estate is comprised of financial assets.

The parties' real estate had been sold prior to the Master's hearing. The proceeds remained in an escrow account. Each party received a pre-award distribution of \$60,000.00. There remained \$162,712.89 in the escrow account. The Master awarded \$130,000 from the escrow account to Wife and the remaining \$32,712.89 to Husband. In making his distribution, the Master noted that overall the award provides Wife with "approximately 53% of the marital estate once all of the adjustments have been made." (Master's Report, p. 21). The Master stated he considered the fact that Wife improperly used/retained/destroyed Husband's personal property

of unknown value. He also noted that Husband stood to receive an inheritance from his mother of one half an interest in a residence valued between \$150,000 and \$170,000.

The Master then tackled the issue of determining what financial assets each party held at the date of separation. The Master found Husband liquidated two separate bank accounts prior to the date of separation and kept \$12,000. Additionally, the Master found Husband wrote six checks to himself for no adequately explained purpose in the amount of \$20,500. The Master concluded that the Husband could not adequately account for thousands of dollars that were withdrawn from marital accounts close to the date of separation. However, the Master also found Wife did not offer any credible instances to support her other allegations that Husband wrongfully diverted marital monies. As a result, the Master deemed the unaccounted for \$32,500 as a marital asset attributable to Husband.

After the divorce complaint was filed, in spite of an order forbidding parties from liquidating potential marital assets until the equitable distribution was completed, Husband liquidated his entire MFS IRA which had a value of \$32,500.05. The IRA was determined to be a marital asset attributable to Husband. Husband argued that the value of his IRA should be reduced by \$6,392.05 because he incurred taxes when he closed out the account. The Master disagreed and attributed the entire amount to Husband because he withdrew the money from the IRA unilaterally, in violation of the freeze Order, and it was equitable not to hold Wife financially accountable for the taxes incurred by Husband's unilateral decision.

At the time of separation, the parties owned a Commerce Bank account with a date of separation balance of \$10,937.43. Wife closed the account and took those funds. The Master rejected Wife's testimony that the assets in this bank account were an inheritance and non-

marital in nature. The Master ruled that the funds were commingled with marital funds over time and used for household expenses. These funds were attributed to Wife.

In achieving an equitable distribution, the Master equitably also distributed other marital assets by assigning each party a 50% share of the asset. These included Husband's Midland National Deferred Annuity valued at \$64,000, Husband's two 403(B) retirement accounts with a total value of \$167,078.24, and Husband's LSW Annuity valued at \$10,313.54.

The Master also credited Husband with \$10,159.17 for paying Wife's expenses while she had exclusive use and possession of the marital residence after filing of the Divorce Complaint and \$5,613.00 for a payment on a Capital One credit card debt used by Wife. The Master rejected Wife's testimony that the credit card debt was for Husband's hair transplant.

The Master also credited monies paid by Husband to Wife after separation. Apparently, Husband paid \$15,000.00 to Wife as part of the equitable distribution process. The Master directed that the cash payment should be subtracted from Husband's arrearage accrued under Wife's spousal support/APL Order entered by the Domestic Relations Section.

The Exceptions Filed by the Parties

Husband filed five exceptions to the Report and Recommendations on October 6, 2010, through his counsel, Robert M. Davidson, Esq. Wife then filed twenty-one exceptions to the report through her counsel, Thomas L. Lightner, Esq., on October 26, 2010. The matter was set for the December 6, 2010, Argument List, and counsel for both parties filed briefs and presented argument.

Legal Standard

In an action for divorce, the report and recommendations of a master are advisory in nature, but they are entitled to great weight. Taper v. Taper, 939 A.2d 969, 973-4 (Pa. Super. 2007); Tagnani v. Tagnani, 654 A.2d 1136, 1138 (Pa. Super. 1995). The trial court must independently review the report and recommendations of the master to determine whether they are appropriate. Kohl v. Kohl, 564 A.2d 222, 224 (Pa. Super. 1989). However, on matters of witness credibility the master's findings are to be given particular consideration. Taper, 939 A.2d at 973-974. After reviewing the master's report and recommendations, the trial court may accept the report and act upon it or disregard it, in whole or in part, according to the trial court's own judgment. Morschhauser v. Morschhauser, 516 A.2d 10 (Pa. Super. 1986). The trial court may only consider the evidence received by the master if no new hearing is held before the trial court. Cunningham v. Cunningham, 548 A.2d 611, 613-4 (Pa. Super. 1988).

Discussion

After reviewing the record and the Master's Report and Recommendations, we agree with the Master's Recommended Order based upon his overall findings. The transcript reveals that both parties were particularly difficult during their testimony and focused on personally attacking the other side instead of providing substantial evidence for their claims. Based on this behavior, there were limited amounts of credible evidence presented during the hearings.¹ The

¹ In fact, both counsel admitted at argument this was a contentious divorce. There were at least two occasions when the hearings before the Master had to stop because the parties were not behaving appropriately.

most equitable result in this case would be to leave both parties in substantially similar economic positions. With these thoughts in mind, we consider both parties' exceptions.

I. Husband's Exceptions

Husband filed five exceptions to the Master's Report. He claimed the Master erred by: 1) awarding 53% of the marital assets to Wife and incorrectly calculating Wife's award, 2) failing to consider that Wife received most personal property and furniture from marital home and did not assign it any value, 3) awarding 80% of liquid assets to Wife and remaining assets to Husband subject to taxation, 4) incorrectly calculating the amount Wife should receive from the escrow account, and 5) not giving credit for taxes paid on Husband's MFS IRA account. We deny all of Husband's exceptions to the Master's Report.

Husband claims the Master's award of 53% of the marital estate was in error. Husband argues that Wife should receive only 50% of the marital estate. Husband further asserts that his calculation of the recommended equitable distribution award results in an award of 56% of the marital estate to the wife.

Here, the Master considered the eleven factors found in the Divorce Code when it determined the equitable distribution of a marital estate. See 23 Pa. C.S.A. §3502(a).

We also note that case law directs that it is not permissible for the court to consider an equal division of the marital estate as the starting point for an equitable distribution analysis. See Morschhauser v. Morschhauser, 516 A.2d 10 (Pa. Super. 1986)

At the outset, we dismiss Husband's complaint that the award should have been an even split between the parties. It is contrary to established law that the Master use a 50/50 split as a default standard in determining the equitable distribution. The Master clearly stated the reasons

to support his decision to award the Wife a slightly larger percentage of the marital estate. When considering Husband's argument that the Master erroneously awarded Wife 56% of the marital estate instead of 53%, we reviewed the figures Husband used to calculate the marital estate. We note that Husband failed to include the taxes paid by Husband when Husband withdrew the proceeds of his IRA account as part of the equitable distribution calculation. The Master clearly held Husband responsible for the penalties incurred when Husband violated the freeze order and liquidated the IRA account. We agree with the Master's decision to hold Husband solely responsible for these taxes and therefore find the Master did not make an error in his calculations.

We will dismiss the remaining exceptions raised by Husband in a summary fashion as we find that the Master's equitable distribution took into account the factors discussed in 23 Pa. C.S.A. §3502(a). Specifically, the Master found Husband acted in bad faith by embarking on a series of financial transactions that appeared designed to hide assets from the divorce proceedings. While Wife could not prove Husband knew that divorce was imminent when undertaking these transactions, threats of divorce had been made several times during the course of the marriage. The Master determined over \$30,000 remained unaccounted after Husband's financial transactions.

Specifically addressing Husband's exception that the Master awarded more of the liquid assets to Wife, we find this award is supported by the factual record developed during the two hearings before the Master. In awarding Wife the bulk of the liquid assets, the Master reasoned that Husband improperly and in bad faith liquidated his IRA account despite a court order prohibiting such action; that Husband will receive a significant and stable monthly income

stream from his pension and Social Security; and, that Husband historically controlled the non-liquidated marital assets. Further, Wife is at present more financially vulnerable than Husband, therefore an award of over 80% of the liquid assets stabilizes her financial position and equalizes the parties in accordance with the purpose of equitable distribution. Given these factors the award of over 80% of the escrow account to wife is reasonable and justified.

Therefore we deny all of Husband's exceptions to the Master's Report and Recommendations.

II. Wife's Exceptions

Wife filed twenty-one exceptions to the Master's Report and Recommendations. Many of the exceptions went towards credibility determinations that allegedly adversely impacted Wife. Like Husband, Wife argued the Master improperly calculated the amount of money due Wife. In addition, she argued the Master: failed to consider the difference in the parties' Social Security benefits, failed to consider the difference in the parties' health care costs, failed to properly calculate the amount of money Husband withdrew from bank accounts, erred by finding the Commerce Bank account to be a marital asset, erred by giving credit to Husband for payments made against Wife's credit card debt and marital home expenses, erred by giving Husband double credit for a \$15,000 payment in equitable distribution, and erred by not awarding Wife permanent alimony. After reviewing the record, we deny all of Wife's exceptions and adopt the Master's Report and Recommendations.

We take particular note of Wife's third exception which notes the Master's Report failed to mention Husband's receipt of Social Security benefits. We acknowledge that while social security benefits cannot be subject to equitable distribution under federal law, they can be

considered when considering the relative economic position of the parties when making the equitable distribution. See 23 Pa. C.S.A. 3501(a)(6); Cohenour v. Cohenour, 696 A.2d 201, 204 (Pa. Super. 1997). The transcript shows the Master heard testimony that the Husband received social security disability payments of approximately \$27,500 per year, and the Wife, while not working at the time of the Master's hearing, was still an employee of the moving company and earned approximately \$30,000 in the previous year according to her tax return. While the Master's Report did not specifically mention these sources of income, the record suggests that wife's yearly employment income and Husband's Social Security benefit are approximately equal. The only other monthly income source for the parties was the Husband's pension, and the Master split the marital portion of the pension in half. Therefore we deny this exception because it is clear that the Master considered the important and relevant factors in making this distribution.

The remaining exceptions regarding calculation errors are similarly dismissed. The Master outlined his equitable award by listing each asset from the marital estate and stating his distribution of that particular asset. At the end of this list, the Master estimated that Wife received 53% of the marital assets while Husband received 47% once all the credits were taken into account. Both parties seem to miss the purpose of the percentage breakdown. The Master calculated the percentages after he discussed and distributed each asset based on the totality of the circumstances. It is apparent that the Master did not distribute the marital assets from a 53%-47% starting point but rather, after making his recommended distribution, he tallied the percentages as a final consideration to confirm that the global award was equitable.

We also find the Master correctly calculated the amount awarded to Wife and agree with his equitable distribution of each asset. While the Master at times used estimates to make the equitable distribution award, we find he accurately calculated the amount each party should receive based on the totality of the circumstances of the parties. He gave each party 50% of the following assets: Midland National Deferred Annuity, combined 403(b) accounts and the LSW account. He also gave each party 50% of the marital portion of the pension after the survivor benefit, which benefitted Wife, was removed from the calculation. Husband was given the entire MFS IRA account valued with taxes included, he was charged with \$32,500 of cash withdrawals that remained unaccounted, and he was given the Scottrade account. This amounted to approximately \$66,000. Wife only received the Commerce bank account of approximately \$10,000. We note that the Master also considered the amount of cash Husband withdrew in bad faith from the couple's bank accounts, the cancelled checks written by Husband to himself and the Master credited Wife's testimony regarding the \$6,000 Husband kept after he closed out a Bank of America account and opened a certificate of deposit.² The Master did not credit any other testimony from Wife regarding other amounts allegedly kept by Husband.

The award to Wife of the bulk of the escrow account was reasonable. The award also contemplates the cash withdrawals and MFS IRA account, which were liquid assets removed from the marital estate by husband and therefore not available for equitable distribution. As a result of the unequal financial positions of the parties with regard to the pre-adjudication

² We also find that the Master correctly determined the amount of money Husband was charged with for withdrawing from the joint Bank of America account prior to the date of separation.

disbursement of marital assets, the Master awarded Wife \$130,000 and Husband approximately \$32,713 of the remaining liquid assets, to be distributed from the escrow account. Finally, we find that the cash award also considered, and helps to equalize, the disparity between the parties with regard to health insurance.

We next address the Master's decision not to award alimony. Alimony may be awarded only if the court finds it is necessary. 23 Pa. C.S.A. § 3701; Hodge v. Hodge, 520 A.2d 15, 18 (Pa. 1986). The Master opted not to provide Wife with alimony as his award will permit the parties to enjoy a relatively similar lifestyle. The Master considered Husband's disability benefits and Wife's earning capacity to be commensurate. Further, the Master equally divided the marital pension so that each can maintain a comfortable and similar standard of living. In addition, Wife received 53% of the remaining marital estate. Thus, we agree with the Master's decision not to award permanent alimony because it is not necessary in this case.

We will not individually address the remaining exceptions because each is a similar attack on the Master's credibility findings. We find the Master had sufficient evidence to find that portions of the parties' testimony were credible and other portions lacked credibility. His determinations are based on common sense and supported by the record. The Master's credibility findings were a proper exercise of his discretion.

Interestingly, while the Wife complains that the Master failed to give more weight to Husband's allegedly nefarious financial transactions regarding the Bank of America account, Wife fails to explain why she cashed out her Commerce Bank account three weeks prior to her filing for divorce and kept the proceeds in her name. We agree with the Master that it is clear both parties acted in bad faith immediately prior to and during these divorce proceedings with

regard to the marital assets. Because of this bad faith, and the fact that both parties were essentially receiving similar monthly income streams from the pension, employment, and disability benefits, the Master generally split the marital estate evenly.

The Master properly considered the relevant statutory factors in making his equitable distribution and achieved a fair and rational equitable distribution award. Therefore we deny all of Wife's exceptions to the Master's Report and Recommendations.

As a result, we adopt the Report and Recommendations prepared by the Master and enter the following order adopting the Master's Recommendations as the final equitable distribution order:

**IN THE COURT OF COMMON PLEAS OF NORTHAMPTON COUNTY, PENNSYLVANIA
CIVIL DIVISION - LAW**

VIRGINIA M. LAMARCA,)	NO. C-48-CV-2008-3054
)	
Plaintiff,)	
)	
v.)	
)	
CHARLES J. LAMARCA,)	
)	
Defendant.)	

ORDER OF COURT

AND NOW, this 2nd day of June, 2011, upon consideration of the exceptions to the Master's Report and Recommendations filed by both parties, and briefs and argument submitted thereto, it is **ORDERED** that all exceptions to the Report and Recommendations are **DENIED**.

It is hereby **ORDERED AND DECREED** that Virginia M. LaMarca, Plaintiff, and Charles J. LaMarca, Defendant, are divorced from the bonds of matrimony.

The Master's Report has been filed as an Order of Court and it shall be incorporated, but not merged, into the Divorce Decree.

The Court retains jurisdiction of any claims raised by the parties to this action for which a final Order has not yet been entered.

BY THE COURT:

STEPHEN G. BARATTA, J.