

IN THE COURT OF COMMON PLEAS OF DAUPHIN COUNTY, PENNSYLVANIA

CHRISTINE A. AMOS : No. 2012-CV-6454-DV
PLAINTIFF :
vs. :
: ACTION IN DIVORCE
MATTHEW P. AMOS : CIVIL ACTION – LAW
DEFENDANT :

BEFORE: Cindy S. Conley, Divorce Master

APPEARANCES:

Diane G. Radcliff, Esquire
Attorney for Plaintiff

Matthew P. Amos
Self-Represented Defendant

DAUPHIN COUNTY
FEBRUARY 31 2015
4:16:30 PM '15

REPORT AND RECOMMENDATION OF THE MASTER

RELEVANT PROCEDURAL BACKGROUND

Plaintiff-Wife, Christine A. Amos, filed a Complaint in Divorce¹ on July 30, 2012 raising claims for no-fault and fault divorce, equitable distribution, alimony pendente lite, alimony, counsel fees, costs and expenses. Wife caused the Defendant-Husband, Matthew P. Amos, to be served with a copy of the Complaint on August 29, 2012 by personal service. Proof of Service was filed on September 10, 2012.

On February 3, 2015, the Court directed the undersigned to address the outstanding discovery issues in this matter. The master held two discovery conferences; one on February 17, 2015 and one on April 30, 2015. Except as indicated below, Husband represented himself in the master's proceedings.

¹ On January 26, 2015, Husband commenced his own Dauphin County Divorce Action docketed at number 2015-CV-00512-DV. On March 19, 2015, the Honorable William Tully entered an Order directing that Husband's divorce action would not be entertained given the already pending divorce action.

On June 19, 2015, the Court appointed the undersigned as master, at the request of Wife, to hear the issues of divorce, equitable distribution, alimony, alimony pendente lite, counsel fees, costs and expenses. A preliminary conference was scheduled to occur on June 24, 2015. Approximately fifteen minutes prior to the time scheduled for the commencement of the preliminary conference, Wife's attorney advised the master that she had been called to attend an arbitration hearing and that the arbitration panel was not agreeable to continuing the arbitration until after the preliminary conference. Wife's attorney did not expect the arbitration hearing to take long. Accordingly, the master advised Husband when he appeared for the preliminary conference, that the preliminary conference would commence when Wife's attorney was finished with the arbitration hearing. Husband advised the master that since the preliminary conference was scheduled to commence at 9:00 a.m. and it was not going to start at that time, he was leaving. Husband also advised the master that "when Dauphin County gets its act together", it should contact him. Accordingly, the preliminary conference did not occur. When Wife's attorney appeared following the arbitration hearing, the master advised her of what had transpired with Husband. The master advised Wife's attorney that she was simply going to schedule a date for filing of Pretrial Statements and for a Settlement Conference.

The settlement conference was held on August 5, 2015. The parties entered into numerous stipulations as set forth in the master's Settlement Conference Memorandum and Hearing Notice filed on August 7, 2015. However, the parties were unable to enter into an overall agreement so a hearing was scheduled to occur on November 16 and 17, 2015. In October of 2015, Husband retained an attorney to represent him in this proceeding. Accordingly, by stipulation of the parties dated October 30, 2015, and to enable Husband's new attorney to

become acquainted with the case, the hearing was rescheduled to occur on January 25 and 26, 2016.

The October 30, 2015 Stipulation was incorporated into an order of Court dated and filed December 11, 2015 and it provided for an agreed bifurcation of the divorce action. Accordingly, the parties were divorced by decree filed on December 14, 2015.

The hearing was held on January 25 and 26, 2016. However, by that time, Husband's counsel had withdrawn his appearance and Husband was once again representing himself. Both parties appeared at the hearing and testified under oath. At the conclusion of the hearing, the master directed both parties to file their proposed Findings of Fact, Conclusions of Law and Proposed Distribution ("Proposed Findings") within forty-five days of the date the official transcript of the hearing was filed. The official transcript was filed on February 12, 2016. Both parties filed their Proposed Findings in a timely fashion and the record closed on March 28, 2016. In the preparation of this report and recommendation, the undersigned considered the stipulations of the parties, the evidence of record, the witnesses' credibility, the post-hearing submissions and the applicable law.

FINDINGS OF FACT

Names, residences, ages, and health

1. The Plaintiff is Christine A. Amos ("Wife"), an adult individual presently residing at 2503 Hoffer Street, Harrisburg, Pennsylvania. T. 1/25/2016 p. 55.
2. Wife was born in 1961 and was fifty-four years of age at the time of the hearing. T. 1/25/2016 p. 62.
3. Wife had two hip replacement surgeries in 2014, but was in good health at the time of the

hearing. T. 1/25/2016 p. 63.

4. The Defendant is Matthew P. Amos (“Husband”), an adult individual presently residing at 3215 Lewisberry Road, York Haven, Pennsylvania. T. 1/25/2016 p. 55.
5. Husband was born in 1959 and was fifty-six years of age at the time of the hearing. T. 1/25/2016 p. 63.
6. Husband suffers from chronic high blood pressure, has undergone hernia repair surgery and has been diagnosed as bipolar. Id.

Marriage, children, separation, and divorce

7. The parties were married on March 9, 1991 in Harrisburg, Pennsylvania. T. 1/25/2016 p. 56.
8. This was the first marriage for both parties.
9. The parties are the parents of two children: CA born in 1995 and BA born in 1998. At the time of the hearing, BA was the only remaining minor child of the parties. T. 1/25/2016 pp. 50 – 61. However, BA graduated from High School shortly after the hearing and there are no remaining minor children of the parties.
10. The parties separated on May 5, 2012. Id.
11. The length of the intact marriage was just a little over twenty-one years.
12. Wife filed the Divorce Complaint on July 30, 2012.
13. Husband was served with a copy of the Complaint by personal service on August 29, 2012.
14. Proof of Service was filed on September 10, 2012.
15. A divorce decree was entered divorcing these parties on December 14, 2015.

Education, employment, income, benefits, retirement, and support

16. Wife obtained an Associate’s Degree in Liberal Arts/Social Sciences from Harrisburg Area

Community College prior to the parties' Marriage. T. 1/25/2016 p. 64.

17. At the time of the parties' marriage, Wife was employed by the Commonwealth of Pennsylvania, Department of Education Engineers as a personnel analyst. T. 1/25/2016 p. 66.
18. Wife took maternity leave when CA was born in 1995. During her maternity leave, Wife decided she wanted to stay home with her daughter and terminated her employment with the Commonwealth of Pennsylvania. Id.
19. Wife stayed home with CA for a short period of time and then began to assist Husband and his associate in their business for up to six hours a day. Id.
20. After BA was born, Husband and his associate hired someone to take Wife's place. Thereafter, Wife would only assist Husband at his office from time-to-time as needed. T. 1/25/2016 p. 67.
21. In addition, from the time BA was born until the date the parties separated, Wife earned extra "spending money" by home party jewelry sales and calligraphy. T. 1/25/2016 pp. 68, 174 -- 175.
22. After the parties' separated, Wife was employed briefly as a pharmacist's assistant at a Weis Market. T. 1/25/2016 p. 177.
23. In November of 2012, Wife obtained full-time employment with the Central Pennsylvania Food Bank as a fund development associate. T. 1/25/2016 p. 72.
24. At the time of the hearing, Wife continued to be employed by the Central Pennsylvania Food Bank. Id.
25. At the time of the hearing, Wife's sources of income were her employment, support, interest and dividends. T. 1/25/2016 p. 69.

26. Wife's net monthly income from employment, dividends and interest is \$2,414.13. May 6, 2016 Support Order.²
27. Wife also receives employment benefits of health insurance and participation in an employer sponsored retirement plan. T. 1/25/2016 pp. 73 – 74.
28. Commencing in 2013 and continuing through the hearing date, Husband has been obligated pursuant to a support order, to pay Wife child and spousal support. T. 1/25/2016 pp. 79 – 82.
29. Husband has failed to comply with the support order and has been repeatedly held in contempt. Id.
30. In May of 2016, the support order was modified to terminate Husband's child support obligation as both of the parties' children are now emancipated. May 6, 2016 Support Order.
31. Moreover, the May 6, 2016 Support Order converted spousal support to alimony pendente lite given the parties' divorce. Id.
32. The May 6, 2016 Support Order directs Husband to pay Wife the sum of \$4,103 per month in current support and \$400 a month toward arrears. Id.
33. As of May 6, 2016, the outstanding arrears due to Wife were \$68,913.80. Id.
34. At her Social Security Retirement age of sixty-seven years, Wife anticipates Social Security Retirement benefits of \$1,377 per month. P-4.
35. In addition, Wife anticipates retirement benefits from her PSERS retirement plan, her employer sponsored plan and her private retirement plans.
36. Wife will have reasonable monthly expenses of \$3,398.67 after equitable distribution occurs.

² In accordance with P.A.R.E. 201, the master takes judicial notice of the May 6, 2016 Support Order and Summary of Trier of Fact docketed to PACSES Case Number 249113710 between these parties.

37. Husband obtained a Bachelor's Degree in Psychology from Hillsdale College in Michigan prior to the parties' marriage. T. 1/25/2016 pp. 64 – 65.
38. Husband has been self-employed as a Financial Advisor since 1985. T. 1/25/2016 pp. 68 -- 69.
39. Husband's sources of income include his self-employment income, interest and dividends. May 6, 2016 Support Order.
40. Husband's net monthly income is \$12,671.62. Id.
41. Husband receives no employment benefits.
42. Husband anticipates Social Security Retirement benefits at his full retirement age. Husband also anticipates retirement benefits from his private retirement plans.
43. Husband has net monthly expenses of \$7,999.83. Husband deducts many of these expenses on his Federal Income Tax Return under the guise of business expenses. T. 1/26/2016 pp. 150 – 157.

Marital assets and claims

44. The parties' marital estate consists of the following items [Note: Stipulated items are notated with an asterisk *):
- ▶ **3215 Lewisberry Road, York Haven, Pennsylvania.** After deducting estimated costs of sale and outstanding indebtedness, the equity value of this property is \$499,239.
 - ▶ **1999 Ford F-250 Truck.*** The value of this truck is \$2,025.
 - ▶ **2008 BMW 335.*** After consideration of the date of separation debt owed on this vehicle, the equity value of this vehicle is \$0.
 - ▶ **2008 BMW X5.*** The value of this vehicle is \$5,230.

- ▶ **2004 Kubota Tractor.** The value of this tractor is \$11,532.
- ▶ **Husband's U.S. Savings Bonds.*** The marital value of the U.S. Savings Bonds is \$1,774.
- ▶ **Charles Schwab Account #428.*** This account was utilized in its entirety after separation to satisfy joint marital debt.
- ▶ **AgChoice Farm Credit Equity Stock.*** This stock has a value of \$6,540.
- ▶ **Ag Choice C Stock Refund Check.** This check was issued after separation to the parties in the amount of \$1,000. D-59.
- ▶ **AgChoice Patronage Refund Check.** This check was issued after separation to the parties in the amount of \$580. D-60.
- ▶ **PSECU Account #1163.*** This account was utilized in its entirety after separation to satisfy joint marital debt.
- ▶ **Wife's PSECU Account #0163.*** This account had a date of separation balance of \$112.
- ▶ **Husband's Metro Bank Account #3069.*** This account had a date of separation balance of \$7,518.
- ▶ **Black Forest Tree Rance Metro Account #1106.*** This account was utilized in its entirety after separation to satisfy joint marital debt.
- ▶ **Charles Schwab Account #973 – Matthew P. Amos Revocable Trust.** The marital portion/value of this account is \$81,067.
- ▶ **Husband's Royal Arcanum Life Insurance Policy #7141.** The marital value of this policy is \$857.
- ▶ **Husband's Royal Arcanum Life Insurance Policy #7142.** The marital value of this policy is \$1,199.
- ▶ **Wife's Royal Arcanum Life Insurance Policy #4301.** The marital value of this policy is \$3,079.

▶ **Husband's Royal Arcanum Life Insurance Policy #3714.** The marital value of this policy is \$388.

▶ **Wife's SERS Plan.*** The marital value of this plan is \$74,652.

▶ **Husband's Charles Schwab 401(k) Plan.*** The marital value of this plan is \$54,411.

▶ **Husband's Jackson National Individual Retirement Account ("IRA").** The marital value of this plan is \$163,594.

▶ **Wife's Charles Schwab 401(k) Plan.*** The marital value of this plan is \$61,638.

▶ **Husband's Charles Schwab 529 Plan #2278-02.** This plan has a marital value of \$56,382.

▶ **Husband's Charles Schwab 529 Plan #2278-01.** This plan has a marital value of \$74,715.

▶ **Household Goods and Furnishings.*** The parties have distributed their household goods and other furnishings to their mutual satisfaction and without the need for further set-off.

▶ **Wife's Jewelry.*** Wife's jewelry has a marital value of \$33,817.

▶ **Husband's Jewelry.*** Husband's jewelry has a marital value of \$18,993.

45. At the time of separation, the parties owed the following federal tax and unsecured debt:

▶ **2009 Federal Tax Debt.*** The parties owed \$32,423, which Husband satisfied since separation.

▶ **S&F Accounting.*** The parties owed a total of \$25,327 of which Husband paid \$21,518 and Wife paid \$3,809.

▶ **Michael Farnan Esquire.*** The parties owed a total of \$3,500, which Husband satisfied since separation.

▶ **Husband's Bank of America Visa #3619.*** The parties owed a total of \$29, which Husband satisfied since separation.

▶ **Wife's PSECU Visa #0163.*** The parties owed a total of \$10,901, which Wife satisfied since separation.

▶ **Wife's J.C. Penney #3541.*** The parties owed a total of \$171, which Wife satisfied since

separation.

▶ **Wife's Discover Card #9729.*** The parties owed a total of \$3,692, which Wife satisfied since separation.

▶ **Wife's Pay Pal Account.*** The parties owed a total of \$149, which Wife satisfied since separation.

▶ **BMW Loan on BMW Retained by Wife.** Husband is entitled to credit in equitable distribution for paying off this loan in the amount of \$21,670 for the BMW retained by Wife.

46. Wife has a separate, non-marital estate consisting of the following:

▶ Vanguard Money Market Account - \$13,134.89;

▶ Vanguard Roth IRA - \$6,825;

▶ Central PA Food Bank Retirement Plan - \$2,845.81 and

▶ 2503 Hoffer Street, Harrisburg, PA - \$136,000.

47. Husband has a separate, non-marital estate consisting of the following:

▶ Non-marital portion of U.S. Savings Bonds - \$800;

▶ Non-marital value of Charles Schwab #973-Matthew P. Amos Revocable Trust - \$174,881.60; and

▶ Non-marital portion of his Royal Arcanum Policies - \$7,004.64; and

▶ Various Business Interests – Value unknown.

Other Factors

48. Husband entered the marriage owning 2503 Hoffer Street, a car and an investment account.

49. Wife entered the marriage with nothing of pecuniary value.

50. During the marriage, and by agreement of the parties, Husband was the primary wage earner and Wife was the primary caretaker and homemaker.

51. During the marriage, the parties had a very nice standard of living. They drove nice cars and

went on nice vacations. Husband and Wife each acquired jewelry. They traveled to Germany, Switzerland, Portugal, Italy, Austria, Denmark, Thailand, Malaysia, Australia, New Zealand, Cook Islands, Mexico, Belize, St. Barts, St. Martin, Turkey, Greece, Canada and France.

52. Since separation, Wife's standard of living has declined. Husband's standard of living does not appear to be affected.

53. During the marriage, both parties contributed "sweat equity" to their real properties.

54. Husband's obdurate and vexatious conduct throughout these proceedings caused Wife to incur substantially more in attorney's fees than would have been incurred but for Husband's behavior.

DISCUSSION WITH RESPECT TO LEGAL AND FACTUAL ISSUES

Credibility of the Parties. Wife was a credible witness. For the most part, her testimony was forthright, honest and without obvious rancor. For instance, she did not hesitate to admit that she believed that Husband had been, to the best of his ability, a good husband and father during their marriage. T. 1/25/2016 p. 189. Wife readily admitted she is now in a relationship with another man. Moreover, Wife valiantly attempted to honestly and without emotion answer Husband's often times confusing and/or irrelevant questions³ during cross-examination.

Husband's direct examination consisted, for the most part, of Husband introducing his exhibits and describing his understanding of what each exhibit represented. The limited nature of Husband's direct examination made it difficult for the master to assess his credibility at that stage of his testimony. However, on cross-examination, Husband proved to be a less than

³ Husband, representing himself, began his cross-examination of Wife with the following "question" "and then comes marriage. Roberta Kaplan Chapter 4, 'be brave and do the right thing.'" T. 1/25/2016 p. 149. His cross-examination of Wife also included the inquiry "Are you a beautiful woman." T. 1/25/2016 p. 175.

reliable witness. In a clear effort to thwart Wife's attorney from obtaining any meaningful information from him, Husband's testimony was often times evasive. N.T. 1/26/2016 pp. 153 – 156. Moreover, Husband's credibility was further diminished when he adamantly argued that invoices to Excitement Video, to World Cup Ski & Cycle for bicycle repairs, to Dick's Sporting Goods for a jacket and to Tuff Gong Trading for a pair of socks were legitimate and deductible office expenses for his financial advisor business. Id. pp. 166 – 169; Plaintiff's Exhibits #36, 37, 38, and 39.

Credibility of Expert Witnesses.

Mark W. Heckman, Certified General Appraiser. Mr. Heckman testified as an expert in regard to the value of 3215 Lewisberry Road, York Haven, Pennsylvania. Mr. Heckman was a credible witness. He answered questions by both Wife's attorney and Husband openly, honestly and without an apparent bias. For instance, when being cross-examined by Husband, Mr. Heckman readily admitted that he did not measure the square footage of the subject property but rather depended upon the York County assessment records.

Victor C. Piro, Certified Residential Appraiser. Like Mr. Heckman, Mr. Piro testified as an expert in regard to the value of 3215 Lewisberry Road, York Haven, Pennsylvania. Like Mr. Heckman, Mr. Piro was a credible witness and answered questions of both Wife's attorney and Husband openly, honestly and without apparent bias. Mr. Piro readily admitted that his 2014 appraisal contained numerous errors that he could not identify at the hearing.

John S. Stoner, CPA, CVA. Mr. Stoner testified as an expert regarding his calculation of Husband's income available for support, the increase in value during the marriage of Husband's premarital revocable trust and the estimated tax effect of the sale of 3215 Lewisberry

Road, York Haven, Pennsylvania. As with the other experts, Mr. Stoner was a credible witness.

Parties' Incomes. Both parties presented evidence of their gross annual incomes at the hearing.

However, after the hearing, on May 6, 2016, the Court entered a support order that established Wife to have a monthly net income of \$2,414.13 and Husband to have a monthly net income of \$12,671.72. Neither Husband nor Wife appealed this order and therefore, the parties' net monthly incomes have been conclusively established by the Court.

Parties' Reasonable Expenses.

Wife's Reasonable Monthly Expenses. Based on her Revised Income and Expense Statement (P-1), and her testimony, the master has determined that Wife's reasonable monthly expenses will be \$3,398.67 after the divorce decree is entered. The analysis of Wife's Revised Expense Statement follows:

| <u>Expense</u> | <u>Amount Claimed</u> | <u>Amount Accepted</u> | <u>Explanation of Difference between amount claimed and amount accepted</u> |
|---------------------------------------|------------------------------|-------------------------------|--|
| Mortgage | \$0 | \$0 | N/A |
| Real Estate Tax County/TWP Tax | \$103.42 | \$103.42 | N/A |
| Real Estate Tax -School Tax | \$200.67 | \$200.67 | N/A |
| Homeowner's Insurance | \$57 | \$57 | N/A |
| Maintenance and Repairs | \$100 | \$100 | N/A |
| Electric | \$150 | \$150 | N/A |
| Oil | \$258 | \$258 | N/A |
| Water | \$34 | \$34 | N/A |
| Security System | \$25 | \$25 | N/A |
| Cell Phone | \$225 | \$225 | N/A |
| Cable/Phone/Internet | \$165 | \$165 | N/A |
| Per Capita Tax | \$30 | \$30 | N/A |
| Estimated Additional Income Taxes | \$700 | \$0 | Wife notes that the additional tax will be due on the spousal support when it is paid. The tax due on the spousal support will be paid out of the spousal support and does not represent an additional expense. |
| Automobile Insurance | \$399 | \$200 | Since a portion of this cost is attributable to BA, and Wife has no legal obligation to support BA, the master only includes half of this expense as attributable to Wife. |
| Life Insurance | \$42 | \$42 | N/A |
| Medical, Dental & Vision Insurance | \$314.04 | \$0 | Medical insurance coverage for Wife is provided to her by her employer at no cost. However, Wife pays to cover her two emancipated children. Since she has no legal obligation to do so, the master will not include this as a reasonable expense. |
| Health Savings Account | \$54.17 | \$0 | Since this account is utilized to pay unreimbursed medical expenses and unreimbursed medical expenses are considered below, the master has not included this as a reasonable expense. To do so would be to double |

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| | | | count this expense. |
| Legal Shield/Theft ID Insurance | \$19.08 | \$19.08 | N/A |
| Auto Payments - Lease | \$22 | \$22 | N/A |
| Fuel | \$160 | \$80 | This expense includes BA's fuel expense. BA is now emancipated and Wife has no legal obligation to pay this fuel expense. Accordingly, the master apportioned this expense equally between Wife and BA and only includes Wife's share as her reasonable expense. |
| Automobile Maintenance and Repair | \$25 | \$12.50 | This expense includes BA's maintenance and repair expense. BA is now emancipated and Wife has no legal obligation to pay this expense. Accordingly, the master apportioned this expense equally between Wife and BA and only includes Wife's share as her reasonable expense. |
| License and Registration | \$10 | \$5 | This expense includes BA's license and registration expense. BA is now emancipated and Wife has no legal obligation to pay this expense. Accordingly, the master apportioned this expense equally between Wife and BA and only includes Wife's share as her reasonable expense. |
| Doctor | \$40 | \$40 | N/A |
| Dental | \$25 | \$25 | N/A |
| Optical | \$20 | \$20 | N/A |
| Medication | \$20 | \$20 | N/A |
| Counseling and Therapy | \$30 | \$0 | This expense is solely for CA who is emancipated. Wife has no legal obligation to pay this expense so the master will not include it as a reasonable expense for Wife. |
| PSECU Visa | \$167 | \$0 | The master has excluded this as a reasonable expense as this card is utilized to charge the other expenses that have already been included. |
| Discover | \$280 | \$0 | The master has excluded this as a reasonable expense as this card is utilized to charge the other expenses that have already been included. |
| PSECU Personal Line of Credit | \$100 | \$0 | The master has excluded this as a reasonable expense as this loan is utilized to pay the other expenses that have already been included. |
| Trinity High School Tuition | \$552.08 | \$0 | As of June of 2016, Wife no longer has this expense. |
| Child's School Lunches | \$10 | \$0 | As of June of 2016, Wife no longer has this expense. |
| Books/Fees and Supplies | \$25 | \$0 | As of June of 2016, Wife no longer has this expense. |
| Clothing | \$412 | \$412 | N/A |
| Food | \$825 | \$400 | Given that Wife also asserts expenses for work lunches and dining out, \$825 per month for food is excessive. \$400 is reasonable and appropriate. |
| Work Lunches | \$50 | \$50 | N/A |
| Dining Out | \$80 | \$80 | N/A |
| Other Household Goods | \$425 | \$0 | Given that this expenses relates to CA's college apartment, the master has not included it as a reasonable expense for Wife. |
| Hairdresser | \$80 | \$80 | N/A |
| Household Help | \$30 | \$30 | N/A |
| Newspapers, Books, Etc. | \$13 | \$13 | N/A |
| Entertainment | \$50 | \$50 | N/A |
| Vacations | \$200 | \$200 | N/A |
| Gifts | \$200 | \$200 | N/A |
| Vet and Pet Expenses | \$50 | \$50 | N/A |
| Legal Fees | \$1,500 | \$0 | As soon as the divorce proceedings are finalized, Wife will not be incurring any further legal fees. Moreover, Wife has submitted a claim for attorney's fees and costs that is dealt with separately in this report. |
| Accounting Fees | \$250 | \$0 | Wife incurred these fees in the IRS Audit that is now concluded so this will not be a recurring expense. |
| Appraisal Fees | \$168.75 | \$0 | Wife incurred these fees for the appraisals obtained for the equitable distribution hearing. This will not be a recurring expense. |
| TOTAL | \$8,696.21 | \$3,398.67 | |

Husband's Reasonable Monthly Expenses. Based on Husband's Expense Statement

(D-1), and his testimony, the master has determined that Husband's reasonable monthly expenses, before consideration of any alimony obligation will be \$7,999.83 after the divorce decree is entered. The analysis of Husband's Expense Statement follows:

| <u>Expense</u> | <u>Amount Claimed</u> | <u>Amount Accepted</u> | <u>Explanation of Difference between amount claimed and amount accepted</u> |
|--------------------------|-----------------------|------------------------|---|
| Mortgage | \$4,500 | \$4,500 | At the hearing, Husband testified that he deducts 90% of this expense as a business expense. However, these deductions were added back into Husband's taxable income in the calculation of his support obligation. Accordingly, the master views the entire mortgage expense as a personal expense of Husband's. |
| Maintenance | \$4,332.83 | \$500 | The maintenance expense asserted by Husband is exorbitant. There was no testimony that justifies this expense and the evidence suggests that the majority of this expense is actually continued construction costs of Husband's residence. Once construction is completed, this will not be a reoccurring expense. The master has included \$500 per month as reasonable maintenance for Husband's residence. |
| Utilities | \$52.95 | \$0 | The master did not include this figure as there was no testimony identifying to which utility this figure applies. |
| Electric | \$164.95 | \$164.95 | N/A |
| Gas | \$130.07 | \$130.07 | N/A |
| Telephone/Cable/Internet | \$9.06 | \$9.06 | N/A |
| Cell Phone | \$217.16 | \$217.16 | N/A |
| Water | \$25 | \$25 | N/A |
| Sewer | \$29.17 | \$29.17 | N/A |
| Lunch | \$240 | \$0 | Husband's business pays for and deducts these lunches, P-37. |
| Real Estate Taxes | \$169.12 | \$169.12 | N/A |
| Local Income Tax | \$69.08 | \$0 | Husband's income taxes were already taken into consideration in calculating his net monthly income. |
| Homeowners Insurance | \$255 | \$255 | N/A |
| Automobile Insurance | \$223.33 | \$223.33 | N/A |
| Life Insurance | \$12.91 | \$12.91 | N/A |
| Health Insurance | \$426.94 | \$426.94 | N/A |
| Automobile Fuel/Repairs | \$329.53 | \$329.83 | N/A |
| Doctor | \$76.29 | \$76.29 | N/A |
| Dentist | \$29.67 | \$29.67 | N/A |
| Medicine | \$212 | \$212 | N/A |
| Parochial School | \$537.50 | \$0 | As of June of 2016, Husband no longer has this expense. |
| Clothing | \$216.66 | \$216.66 | N/A |
| Food | \$200 | \$200 | N/A |
| Barber | \$45 | \$45 | N/A |
| Memberships | \$113 | \$113 | N/A |
| Margin Loans | \$579.93 | \$0 | These funds are borrowed by Husband against an asset owned by Husband and is not a true liability. N.T. 1/26/2016 p. 156. Accordingly, the master has not considered it a reasonable expense of Husband. |
| Hired Labor | \$351.66 | \$0 | There was no testimony that justifies this expense and the evidence suggests that the majority of this expense is actually continued construction costs of Husband's residence. Once construction is completed, this will not be a reoccurring expense. |
| Sch-24-A | \$403.95 | \$0 | There was no testimony that justifies this substantial expense and therefore the master will not include it as a reasonable expense. |
| Pet Expense | \$40 | \$40 | N/A |
| Pay TV | \$8 | \$8 | N/A |
| Gifts | \$66.67 | \$66.67 | N/A |
| Legal Fees | \$3,695.75 | \$0 | There was no testimony that justifies this expense and the master believes that the majority of this expense is as a result of the divorce action and the IRS audit. Once the divorce action is concluded, Husband should not be incurring attorney's fees. The IRS audit is now complete and the |

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| | | | attorney's fees related to it will not be reoccurring. |
| Child Support | \$1,642 | \$0 | As of June of 2016, Husband no longer has this expense. |
| Alimony Payments | \$586 | \$0 | Husband is paying alimony pendente lite that will terminate when all of the economic issues have been resolved. |
| Sch. C 24-b | \$584.50 | \$0 | There was no testimony that justifies this substantial expense and therefore the master will not include it as a reasonable expense. |
| Core Business Expenses | \$1,809.17 | \$0 | These are business and not personal expenses. |
| Core Repairs and Maintenance | \$1,522 | \$0 | There was no testimony that justifies this expense and this is a business and not a personal expense. Therefore, the master will not include it as a reasonable expense. |
| Office Supplies | \$156 | \$0 | These are business and not personal expenses. |
| TOTAL | \$24,062.85 | \$7,999.83 | |

Real Estate Issues.

2503 Hoffer Street, Harrisburg, Pennsylvania. Husband acquired this property in 1987, prior to the parties' marriage. After the parties were married, Husband transferred ownership of this property to the Matthew P. Amos Revocable Trust, also owned by him prior to marriage. Accordingly, at the time the parties' separated, this property represented Husband's separate non-marital property and only the increase in value, if any, would have been subject to equitable distribution. 23 PA. C.S.A. §§3501(a) and (a.1). The parties are in agreement that at the date of marriage the value of the property was \$70,000 and the date of separation value and current value is \$136,000 so the increase in value during the marriage is \$66,000. The parties resided in the property from their date of marriage through their separation date. Husband vacated the residence in November of 2012 and Wife and the parties' children continued to reside at this residence. At the date of hearing, Wife remained residing at this residence with the parties' then minor son.

By deed dated December 10, 2012, Husband transferred all of his interest in this property to Wife. Wife became aware of the transfer when she received a copy of the filed deed and only the deed in the mail. N.T. 1/25/2016 pp. 96 - 97. There was no accompanying note from Husband indicating that he considered the transfer as any kind of advance in equitable

distribution or that he did not intend the transfer to be a gift. Id. Wife had not requested that he transfer title of the property to her at any time. Id.

It is Wife's position that Husband gifted her this property (both his separate portion and the marital increase) and that it is not subject to equitable distribution. It is Husband's position that he transferred the property to Wife in light of Judge Curcillo's November 13, 2012 Order and because he no longer wished to be the landlord of this property. N.T. 1/25/2016 pp. 217 - 219. Basically, because Judge Curcillo's November 13, 2012 Order granted Wife exclusive possession of Hoffer Street and evicted Husband from Hoffer Street, Husband no longer wanted to be financially responsible for this property and he transferred it to Wife. Thereafter, Wife paid all expenses related to the property.

Gifts between spouses during their marriage are unquestionably marital property. 23 Pa. C.S.A. §3501(a)(3). However, in this case, Husband transferred his interest in Hoffer Street to Wife after the parties' separation, but before the divorce decree was entered. Property acquired after final separation, but before the divorce decree is entered is excluded from marital property unless it is acquired in exchange for marital assets. Id. (a)(4). Wife clearly acquired this property after separation and given that it was Husband's premarital separate property, she did not receive it in exchange for marital assets.

Although Husband does not clearly articulate his argument in his post-hearing submissions, the master believes the crux of his argument is that he did not intend to gift this property to Wife rather he transferred the property to her so that he would not be financially responsible for it. Two elements must be present to establish an inter vivos gift. They are "(1) an intention to make an immediate gift and (2) such actual or constructive delivery to the donee

as will divest the donor of dominion and control of the subject matter of the gift.” *Ashley v. Ashley*, 393 A.2d 637, 639 (Pa. 1978).

It is clear that Wife has satisfied the second element that must be present to establish an inter vivos gift. Husband executed a deed transferring all of his interest, without reservation, of Hoffer Street to Wife. Husband filed the deed of record at the Dauphin County Recorder of Deeds Office and mailed a copy of the filed deed to Wife. Thereafter, Wife assumed all responsibilities associated with the property. By his actions, Husband no longer had any dominion or control over Hoffer Street.

In determining that the first element is also present, the master looks to the case of *Lowry v. Lowry*, 544 A.2d 972 (Pa.Super. 1988). *Lowry* was decided prior to the enactment of the 1988 amendments to the Pennsylvania Divorce Code when gifts from one spouse to the other were excluded from marital property. Nevertheless, *Lowry* provides guidance as to what establishes donative intent. In *Lowry*, Mr. Lowry transferred his interest in a piece of real property to Mrs. Lowry during their marriage in order to “shield the property from a former spouse.” 544 A.2d at p. 976. When the parties’ separated, Mr. Lowry argued that the transfer of this property to Wife did not constitute a gift because there was no donative intent. *Id.* In finding that Mr. Lowry had made a gift to Mr. Lowry, the Superior Court stated;

A gift may be given to anyone. The law is cold in its definition, it does not ask a reason for the giving, only an intention, delivery and acceptance of the thing are required . . . The question ought not to be what is the subject or the purpose of the gift, but rather whether was it intended as a gift, delivered and accepted.

The fact that husband states that his only intent in deeding the property to wife was to prevent his former spouse from taking the property does not undermine our conclusion. As the Brown court concluded, the fact that there is some financial gain to be had by the gifting spouse as a result of

the gift, like a reduction in taxes, does not negate donative intent, but rather positively suggests it. This is because the financial goal will only be attained if the gift is effected. The desire to achieve the financial goal is the source of the donative intent.

544 A.2d 977 (citations omitted). In the case presently before the master, Husband's goal was to abdicate all financial responsibility for Hoffer Street and place those responsibilities squarely on Wife. The only way to accomplish this goal was to gift his entire ownership interest in the property to Wife. Accordingly, his donative intent has been established. Moreover, since he gifted his separate property to Wife after separation, the property became Wife's separate property.

3215 Lewisberry Road, York Haven, Pennsylvania. The parties acquired this property during their marriage as a future homestead. The parties purchased the property with the intent to construct a home and as a tree farm. N.T. 1/25/2016 pp. 102. During the marriage, the parties planted thousands of trees on this property. Until the parties physically separated, the property was used by the parties and their children for recreational purposes. *Id.* In addition, Husband would, from time to time, stay at this property periodically while the home and other buildings were being constructed. *Id.* After separation, Husband began residing at this property on a full-time basis. *Id.* At the time of separation, the 80.62 acre property consisted of a 2,846 square foot home in the process of construction, a pole barn containing a bedroom, full bath, spa room with fireplace, and garage/work area, and an in-ground pool. Both parties acknowledge that this property is a marital asset, but disagree on the fair market value of the property.

Each party obtained fair market value appraisals of this property and each of their appraisers testified at the hearing. Wife's appraiser, Mr. Heckman, opined that as of April 17, 2015, the fair market value of the property is \$1,010,000. (P-9). Husband's appraiser, Mr. Piro, opined that as of the date of the parties' separation, the fair market value of the property was \$710,000 and \$800,000 as of October 29, 2014. With a minor adjustment taken into consideration, the master has determined that Mr.

Heckman's appraisal is more credible and accurate than Mr. Piro's appraisals. However, before addressing the merits and issues with the parties' respective appraisals, Husband's objection to Mr. Heckman's appraisal being admitted into evidence, which the master overruled, must be discussed.

On February 20, 2015, the master filed a Discovery Conference Memorandum as a result of the February 17, 2015 Discovery Conference. At page 3, the Memorandum directed both parties to obtain and exchange fair market value appraisals of the Lewisberry Road property "upon receipt of same but in no event no later than the discovery deadline set forth in this Memorandum." Page 10 of the Memorandum indicated that discovery should be completed on or before April 20, 2015. The Discovery Conference Memorandum was served on both parties with a *Per Curiam* Discovery Order. The Discovery Order directed both parties to comply with the discovery requests contained in the Discovery Conference Memorandum. The master held a Second Discovery Conference on April 30, 2015. The Second Discovery Conference Memorandum filed on May 5, 2015 noted, on page 3, that both parties had obtained appraisals of the Lewisberry Road property. The Memorandum further noted that Mr. Piro, Husband's expert, had appraised the property at \$800,000. Wife's attorney noted at the Second Discovery Conference that "she just received Mr. Heckman's appraisal of the property, but that she has not had an opportunity to print it out and provide Mr. Amos with a copy of the appraisal." The Memorandum then noted that "Husband's position is that since the appraisal was not provided to him by the prior discovery deadline, it is inadmissible," an objection Husband raised repeatedly at the January 2016 hearing and in his post-hearing submission. By the conclusion of the April 30, 2015 Second Discovery Conference it was clear that both parties had been unable to exchange all of the information directed by the February 17, 2015 Discovery Conference Memorandum and a new discovery deadline of May 22, 2015 was set.

A Settlement Conference was held on August 5, 2015. The parties were unable to resolve all of their issues. Accordingly, the master filed a Settlement Conference Memorandum and Hearing Notice on August 7, 2015. A review of the Settlement Conference Memorandum evidences that the parties were able to enter into numerous stipulations regarding various assets and debts and that there were still a few outstanding discovery items. For instance, in regard to Husband's Royal Arcanum Life Insurance policies, Husband asserted at the Settlement Conference that "he is still awaiting information from the insurance company before he will be able to advance his position." Nevertheless, a master's hearing was scheduled to occur on November 16 and 17, 2015 and dates were established for the exchange of final witness and exhibit lists and any objections thereto.

Because Husband had newly retained counsel, the November 2015 master's hearing was, by stipulation of the parties, rescheduled to occur on January 25, and 26, 2016. The Notice of Rescheduled Hearing filed on November 2, 2015 provided in part as follows:

Documents to be offered in evidence must be exchanged with the opposing party on or before **JANUARY 11, 2016**. If no demand for the presence of a witness is made within seven (7) days of the receipt of the document, then the document as exchanged will be received in evidence in the place of the witness. Any party may issue a subpoena to compel the presence of any expert or other witness.

Final witness lists must also be exchanged with opposing party on or before, **JANUARY 11, 2016**. With respect to witnesses, the list **MUST** include the witness' name, address, telephone number and a concise summary of the anticipated testimony. **FAILURE TO COMPLY WITH THIS DIRECTIVE MAY RESULT IN THE MASTER EXCLUDING THE WITNESS.**

Any objections to the other party's witness/exhibit lists shall be made in writing within seven (7) days of receipt of said list with an extra copy of the objection(s) delivered to the master.

The parties exchanged final witness and exhibit lists in a timely fashion through their attorneys. Both

parties filed objections (titles as "Responses") to the other party's witness/exhibit lists. Husband's Response to Plaintiff's Exhibits/Witnesses provided, as follows:

In accordance with the Directive set forth in the Divorce Master's Notice of Rescheduled Hearing, dated November 2, 2015, defendant responds as follows:

1. Defendant demands the presence of witness, Mark Heckman.
2. Defendant will not stipulate to and therefore, will not agree to have the following exhibits received in evidence in place of the witness:

... 9 ...

Notably Husband's objections to Wife's Exhibits/Witnesses were prepared by Husband's then counsel and did not object to Mr. Heckman's real estate appraisal as being untimely. Accordingly, although Husband attempted to make that objection at the hearing when he was again representing himself, it must fail because he waived the issue by not raising the objection in his Response to Wife's Exhibits/Witnesses. Even if Husband had not waived that objection, the master would have overruled it.

Although Husband received Mr. Heckman's appraisal after the initial April 20, 2015 discovery deadline, it was provided to him prior to the May 22, 2015 extended discovery deadline. Moreover, Husband had received a copy of Mr. Heckman's appraisal prior to the undersigned being appointed to address economic issues and prior to either party filing their inventories and pretrial statements in accordance with 1920.33(b). Husband had ample opportunity to prepare a rebuttal of Mr. Heckman's appraisal.

At the hearing, Husband also objected to the entry of Mr. Heckman's appraisal because "... he is using transaction values near the Maryland border that occurred years ago before the whole adjustment in real estate values ... and in addition to that, my sweat equity and capital contribution since point of separation are not representative in that appraisal" N.T. 1/25/2016 p. 206. As the master noted at the hearing, these objections, if borne out by the testimony, would go to the weight given the

appraisal but did not prohibit the admission of the appraisal.

Husband presented appraisals of the property as of the date of the parties' separation in 2012 and as of October of 2014. Wife presented an appraisal as of April of 2015. In most cases, marital property is valued at the date closest to distribution. *Sutliff v. Sutliff*, 543 A.2d 534 (1988). However, if it effectuates economic justice, another date can be used. *Naddeo v. Naddeo*, 626 A.2d 608 (Pa.Super. 1986). Husband implies that this property should be valued as of date of separation because he made improvements to the property between the date of separation and the date of the 2014 and 2015 appraisals. However, neither the appraisals themselves nor the testimony support Husband's contentions. A review of the April 2015 appraisal of Mr. Heckman and the May 2012 and October 2014 appraisals of Mr. Piro reveal that the property was in essentially the same condition and the same stage of construction. P-9, D-91 and D-92. Moreover, during his direct examination, Mr. Piro after noting that he had inspected the property in 2013 and 2014 testified as follows:

Q. Did you see significant improvements in the overall quality of the residential structure, the ongoing maintenance of the outbuildings, and the general state of the property?

A. Well, general state of the property, I think, was - - is still well maintained. However, the dwelling was not complete and not in 2013, not in 2014, not inhabitable, according to all the codes. Well, not all the codes, but most of the codes. . .

N.T., 1/26/2016 p. 85. Clearly Husband's own expert was unable to describe any improvements made to the property from 2013 (the year after separation) to 2014. Husband provided typed lists of expenses that he alleges were spent on "repairs and maintenance" for this property. D-85, D-86, D-87, and D-88. Defendant's Exhibit #85, which is notated as representing 2012 (the year of separation) expenses consists of a list of unidentified figures that purportedly total \$63,094. D-85. In 2013, the figures are identified as being paid to businesses, some of which are obviously home improvement stores but others

that are not related to repairs and maintenance such as to "The Left Bank" (a restaurant in York, Pennsylvania) and to Gander Mountain (a sporting goods store). D-86. By 2014, Husband was providing an explanation of the reason for each expense such as "Infrastructure Repairs/Maint" or "Outbuildings Repairs/Maint". D-88. Since Husband was residing on the property and deriving the benefit of living there, Husband was responsible for the expenses of maintaining the property. Husband failed to supply the invoices supporting his figures and failed to provide any testimony as to the improvements made on the property since separation, the exact cost of those improvements and how those improvements impacted on the value of the property. Accordingly, it is impossible to determine what effect, if any, Husband's post-separation contributions to this property had on the value of the property. Therefore, equity demands that this property be valued at the date closest to distribution.

At the hearing, Mr. Piro's testimony revealed that his 2014 appraisal had many errors in it. On cross-examination, Mr. Piro testified as follows:

Q. Now with regard to -- you said there was equal weight given to comp No. 2 and --

A. And 5.

Q. And 5. But the adjustments that you made on comp No. 2 was \$466,000, and the adjustment that you made on comp No. 1 was 180 -- 180,600. Do you agree with that?

A. I'm not sure that I agree because I believe I had a technical problem. Imagine that with a computer. And I'm not sure that those numbers are correct. I'd have to go back over them again.

Q. Well, do you agree that they add up to the amount that is on this report?

A. I don't think so because I have redlined this and if I redlined it, then there was something wrong. Let me ask you what you have. On comp No. 1, do you have \$814,000 as an adjusted sales price?

Q. No, I have 765.

A. Okay. That's - - yeah. And on No. 2, 938,800?

Q. I have 883,900.

A. Okay. So there was a problem. I had a technical problem there, and I went back and made some changes. So they're not correct. Those numbers are not correct.

Q. So this whole report is not correct?

A. The numbers are not correct. The adjusted sales price is not correct. I had a little glitch in the mathematics. I don't know why.

Q. All right. So since you're saying there was a glitch in your mathematics for comparable No. 1 - -

A. Not my mathematics.

Q. On the program's mathematics. I'm sorry, I didn't mean to sound disparaging. On comparable No.1, is it just the total that's off, or are the entries off?

A. The entries - that's what I would have to go back over. I'm not sure. If I have \$814,000, then that means the adjustment would be 125; is that right?

Q. I'm asking you.

A. So I'd have to go back over that, and I'm sure I did, and that's why I redlined it.

Q. But you don't know what the actual - - to change that, whether that 125 is accurately set forth on - -

A. On the net adjustments? You're talking about the net adjustments?

Q. Not the net but the - - each individual line item.

A. Oh, the line items?

Q. Are those correct, and it's just a mistotal?

A. I can't answer that. I'd have to go back through, and I'm sure I did go back through it and maybe didn't print it back out again.

...

Q. Okay. Now, one last issue. With regard to acreage, do you agree that for certain ones of the acreage that you made a much lower adjustment per acre? And I'll give you comparable No.1. Is it true that you made a \$4,552 per acre adjustment because it had lower acreage?

A. Yes, I would agree with that.

Q. And for comparable No. 2, the adjustment per acre was \$2,415?

A. Right.

Q. And for comparable No. 3, the adjustment was \$4,724 per acre?

A. Right.

Q. And when you jump to comparable No. 3, which had more acreage than the subject property, the per acre adjustment was \$17,407 per acre.

A. **Yeah. It's not making sense, is it?**

Q. And the adjustment for comparable No.5, again was an \$8,000 per-acre adjustment. And comparable No. 6, do you agree, there was a \$14,676 per-acre adjustment?

A. Right. And, therefore the redline.

N.T. 1/26/2016 pp. 105 – 107; 113 -114 (emphasis added). Joanne Ross Wilder, in section 22.4 of her treatise "Pennsylvania Family Law Practice and Procedure" (7th Ed 2008) which is Volume 17 of West's Pennsylvania Practice Series, provides the following guidance:

The court must use its discretion and may average disparate appraisals, reject evidence offered by both parties in favor of its own valuation method, or accept the valuation evidence presented by one party and reject that of the other, depending upon its determination of the credibility of the experts . . .

Although Mr. Piro was a credible witness in that he readily admitted that his report contained significant

errors, his report, because of those errors, is not reliable for the most part. Accordingly, with one exception, the master rejects Mr. Piro's report and accepts Mr. Heckman's report in valuing this property. Although Mr. Piro and Husband expressed disagreements with the comparable properties chosen by Mr. Heckman and his adjustments, neither pointed out any mathematical errors and Mr. Heckman in his testimony and his report was able to adequately explain his choice of comparable properties and his adjustments.⁴ On direct examination, even Mr. Piro confirmed that Mr. Heckman is a well-qualified expert in their mutual field. N.T. 1/26/2016 p. 87.

Mr. Heckman's appraisal and his testimony opines that the fair market value of this property is \$1,010,000 based in part on the residence having 3,308 square feet of living area. Mr. Heckman explained in the Addendum to his report that he arrived at the living area figure by assuming that the York County assessment record of its square footage was accurate. Mr. Heckman further explained that when he inspected the property, he was unable to inspect level two of the property because there was no staircase leading to the second floor. Mr. Piro, on the other hand, was provided access to the second floor during his inspection and he measured the square footage and found it to be 2,846 square feet. N.T. 1/26/2016 p. 116; D-91. Mr. Heckman testified that in his opinion, if Mr. Piro's calculation of the square footage of the property was correct, the value of this property would be \$23,000 less than that indicated by his report. N.T. 1/25/2016 p. 47.

Accordingly, the evidence supports a finding that the fair market value of this property is \$987,000 (\$1,010,000 - \$23,000).

The parties stipulated that in 2003, Husband borrowed \$100,000 from his mother, Patricia Helm

⁴ For instance, in the Addendum to his report, Mr. Heckman notes that he had to extend search parameters in order to find sales similar to the subject property because of the uniqueness of the subject property.

that was used for improvements and expenses at this property. Over the years, Husband paid interest only on this loan so at the date of separation and presently, the entire \$100,000 remains due and owing and represents a decrease in equity value of this property.

On the date of separation, this property was also subject to a mortgage owed to AgChoice Farm Credit in the amount of \$315,745.16 and a second M&T mortgage in the amount of \$45,859.83. D-61 and D-62. Wife in her proposed findings (at page 23) states that Husband took a \$6,300 advance on the M&T line of credit after separation that he should be credited with receiving. However, Wife has failed to provide any documentary evidence in support of that finding and in fact, at hearing, testified that she was not aware of any documents that have been exchanged indicating any withdrawals by Husband against the HELOC prior to the refinancing that occurred in 2013. N.T. 1/25/2016 p.103. In any event, it is undisputed that in July of 2013, Husband refinanced both the AgChoice and the M&T mortgage and HELOC into a single line of credit with Metro Bank. D-63. At the time of the refinance, the total due on both the AgChoice mortgage and the M&T HELOC was \$344,751.62. *Id.* To accomplish the refinance, Husband borrowed a total of \$350,000 and at hearing, Wife indicated that the funds over and above those necessary to satisfy the mortgage and HELOC may have been used for closing costs on the refinance. N.T. 1/25/2016 p. 104. As of July 21, 2015, the principal balance owed on the Metro Bank loan was \$318,670.64. P-35. As of December 21, 2015, the principal balance owed on the Metro Bank loan had increased to \$344,761.62 because Husband had withdrawn \$26,090.98 that he used, in part, to pay the parties' joint Federal Tax liability. Accordingly, in calculating the equity available for equitable distribution of this property, the master will utilize a principal mortgage balance of \$318,670.84. Husband has been provided credit for paying the joint Federal Tax liability. To also reduce the equity in this property by the \$26,090.98 withdrawn by Husband after separation would essentially give Husband

credit for paying the tax liability twice. Accordingly, before consideration of any tax consequences of sale or expenses of sale, which are addressed below, the master calculates the net equity in the property as follows:

\$987,000 (Fair Market Value as determined above)
- 100,000 (Balance due on Patricia Helm Note)
- 318,671 (Marital balance due on Metro Bank Loan rounded to the nearest dollar)
\$568,329 (Equity available for distribution before consideration of tax/sale expenses)

The Pennsylvania Divorce Code directs the court, in equitably distributing the marital property, to consider Federal, State and local tax ramifications and the estimated costs of sale of each asset whether or not such ramifications and costs are immediate and certain. 23 Pa. C.S.A. §3502(a)(10.1) and (10.2). In *Balicki v. Balicki*, 4 A.3d 654, 664 (Pa.Super. 2010), the Pennsylvania Superior Court interpreted this section of the statute and stated “. . . the statute requires us only to consider the tax ramifications and expense of sale along with other listed factors, but the Divorce Code does not make a deduction for them mandatory.”

Husband introduced a report by his expert, Mr. Stoner,⁵ opining the Federal and State taxes due would, depending upon the sales price of the property, range from \$93,726 to \$133,718. D-108. Although this property now constitutes Husband's primary residence, he also conducts a thus far, unprofitable business on this property. Accordingly, he deducts ninety percent of all of the expenses of this property as business expenses and depreciates the capitalized improvements to the property, thus lowering the basis of the property and increasing the taxes due at the time of sale of the property. D-108. It is clear that Husband benefits greatly from deducting ninety percent of the expenses related to this property since he is basically deducting a good portion of his personal living expenses. Mr. Stoner

⁵ The master notes that Husband did not identify Mr. Stoner or his reports in his Pretrial Statement as required by Pa.R.C.P. 1920.33(b), but rather disclosed their existence at the witness/exhibit exchange a few weeks before hearing.

acknowledged on cross-examination that the tax benefits in deducting these so-called business expenses related to the property are being netted against the profits from his financial services. N.T. 1/26/2016 p. 39.

The support order issued by the Dauphin County Domestic Relations Office and of which the master takes judicial notice, make it clear that the Court did not find these deductions to be legitimate business deductions, regardless of whether or not the Internal Revenue Service allowed them. Accordingly, in calculating Husband's income available for support, the Domestic Relations Office did not use these business expenses as a deduction to Husband's income or as a tax deduction in calculating his tax liability. Accordingly, by deducting the expenses related to ninety percent of this property, Husband is subsidizing his living expenses through paying lower taxes. As indicated above, because Husband has chosen to operate in this manner, if and when this property is sold, the Federal and State taxes due, as a result, will be higher than had Husband simply considered this entire property as his residence. Therefore, it is not equitable to deduct the anticipated tax consequences of sale of this property from the value of this property available for equitable distribution.

Mr. Heckman's testimony revealed that the commission on the sale of this property would be between five and six percent of the sale price. N.T. 1/25/2016 p. 53. Mr. Stoner's testimony revealed that the transfer tax due upon sale of the property would be a total of two percent and that usually the buyer pays one percent and the seller pays one percent. N.T. 1/26/2016 p. 35. Accordingly, if Husband sold the property, the costs of sale would be a total of seven percent (six percent commission plus one percent transfer tax) of the sale price which should be equal to the fair market value of the property as calculated above at \$987,000 or \$69,090 ($\$987,000 \times 7\%$). Given that this is the largest marital asset in the parties' marital estate, and that Husband is retaining it in equitable distribution, whereas Wife will

receive a cash payment that is not subject to costs of sale in liquidation, as an offset, it is equitable to deduct the estimated costs of sale in determining the equity available for distribution. Therefore, the calculation of the net equity available for equitable distribution after consideration of the debts associated with the property and the estimated costs of sale is as follows:

\$987,000 (Fair Market Value as determined above)
- 100,000 (Balance due on Patricia Helm note)
- 318,671 (Marital balance due on Metro Bank loan rounded to the nearest dollar)
- 69,090 (Estimated costs of sale)
\$499,239 (Equity available for distribution)

2004 Kubota Tractor. Both parties indicate that the Kubota tractor has a value of \$11,532 in their post-hearing submissions. Wife asserts that this tractor is marital and Husband asserts that it is his non-marital property. The parties purchased the Kubota tractor in May of 2004 in whole or in part by taking a loan from Kubota Credit in the amount of \$31,826.50. D-7. The term of the loan was thirty-six months, at 0% interest, and required monthly payments of \$884.07. Id. In October of 2006, a payment was made to Kubota Credit in the amount of \$8,000.81 and on November 30, 2006 Kubota Credit noted that the loan was paid in full. D-10 and D-9. Husband argues that he sold his premarital 1987 Porsche and applied those proceeds to this loan, thus making the Kubota his separate, non-marital asset. However, Husband fails to consider that from May of 2004 through September of 2006, the parties made monthly payments toward this debt of \$884.07 per month (by the master's calculation the parties' made payments of over \$22,000). No evidence was presented to indicate that these payments were made from Husband's separate estate and therefore, they are presumed to be marital. 23 Pa.C.S.A. §3501(b). Wife in her post-hearing submission, makes a reasoned argument that Husband failed to prove that the source of the \$8,001.81 payment was the sale of Husband's premarital Porsche. Even if Husband had proven it by clear and convincing evidence, the result was the comingling of marital and non-marital assets.

“[O]nce non-marital property is combined and co-mingled with marital property, it loses its identity as non-marital property and takes on the status of marital property.” *Verholek v. Verholek*, 741 A.2d 792, 797 (Pa.Super. 1999). Accordingly, the Kubota tractor is a marital asset subject to equitable distribution.

Increase in Value of Matthew P. Amos Revocable Trust (Charles Schwab Account #973). At the date of marriage, Husband owned the Matthew P. Amos Revocable Trust which was represented by the Charles Schwab Account #973. According to his own expert, Mr. Stoner, based on the documentation provided to him, at the date of marriage, this account had a value of \$29,025.61; during the marriage, this account received stock gifts transferred to this account of \$145,855.99; and at date of separation, this account had a value of \$255,948.60. N.T. 1/26/2016 pp. 27 – 29 and D-107. Accordingly, the marital increase in value from the date of marriage to the date of separation of this asset is \$81,067.⁶ Husband argues against his own expert’s testimony that the non-marital value of this account should be increased because the value of Gillette company stocks were not included and because a margin loan was not deducted from the final value of this account. As Wife points out in her post-hearing submission, Mr. Stoner quite correctly did not deduct the margin loan from the final value of this account because it was a loan from the trust to Husband and thus, only a paper transaction that does not reduce the value of the account. Mr. Stoner testified that his report is an accurate summary of what he was able to identify, based on the documentation provided to him, as the non-marital and marital portions of this account. N.T. 1/26/2016 pp. 28 – 29; D-107. Therefore, the marital value of this asset is \$81,067.⁷

⁶ The master is aware that in determining the increase in value of non-marital property it is to be measured from the date of marriage to date of separation or date as close to hearing as possible, whichever date results in a lesser increase. 23 Pa.C.S.A. §3501(a.1). Given that Husband provided only the date of marriage to date of separation calculation, the master presumes this calculation results in the lesser increase.

⁷ The master also is aware that increases in value of non-marital assets are to be offset by decreases in value of non-marital assets. 23 Pa.C.S.A.

Royal Arcanum Life Insurance Policies. At the time of separation, Husband owned several Royal Arcanum Life Insurance policies. Based on the values asserted in the parties' post-hearing submissions, it is clear that there are no disputes as to the marital value of Husband's policies. Wife owned one Royal Arcanum Life Insurance policy at the time of separation and Wife asserts the marital value of the policy is \$2,559 while Husband asserts the marital value is \$3,078.83. The difference in the parties' values is dependent upon the characterization of the \$520 loan against this policy as a marital or non-marital obligation. Wife testified at the hearing that after separation, she was unable to make the premium payment on the policy and thus borrowed \$520 from the policy to pay the premium. N.T. 1/25/2016 p. 114. Husband argues, and the master agrees, that the \$520 loan is a post-separation obligation of Wife and should not be deducted from the marital portion of the policy. Accordingly, Wife's policy has a marital value of \$3,079.

Husband's Jackson National IRA. As of January 11, 2016, this IRA had a value of \$131,094. D-58. However, after separation on April 3, 2013, Husband withdrew \$65,000 from this account. P-13. Even though on June 24, 2013, Husband re-deposited \$32,500 into this account, \$32,500 of the original \$65,000 withdrawal remains unaccounted for and must be added back into the value of this IRA. Accordingly, this IRA has a value of \$163,954.

Husband's Charles Schwab 529 Plans #2278-02 and 2278-01. During the marriage, the parties established two 529 tuition assistance accounts with Charles Schwab. Although the intent of the accounts were to assist the parties' two children with their college educations, the accounts were, at all times, titled to Husband and under his sole control. After separation, Husband moved money into and out of both of these accounts and Husband has failed to account for all of these funds. Accordingly, the

§3501(a.1). No evidence was presented as to the decrease in value of Husband's non-marital assets so no offset was calculated.

master adopts Wife's calculation of the marital value of these accounts (found on pages 27 and 28 of Plaintiff's Proposed Findings of Fact and Conclusions of Law filed on March 28, 2016). Account #2278-02 has a marital value of \$56,382 and account #2278-01 has a marital value of \$74,715.

BMW Loan on BMW Retained by Wife. Husband is entitled to a credit in equitable distribution for paying off this loan in the amount of \$21,670 for the BMW retained by Wife. At the time of separation, the balance owed against this vehicle was about \$27,256.86. From date of separation in May of 2012 until the first support order was entered in October 20, 2014, but retroactive until July 24, 2013, Husband made monthly payments toward this debt in lieu of support for which he is not entitled to credit in equitable distribution. However, on May 24, 2013, Husband paid off this loan in full in the amount of \$21,570 for which he is entitled to credit.

American Express Gold #0600. In their post hearing submissions, the parties are in agreement that at date of separation, the balance owed on this card was \$1,017. However, the parties are not in agreement as to whether or not it is a personal debt or a business debt. The card is titled to Husband's business PFA, Inc., and apparently used for business purposes. Husband is receiving the business in equitable distribution without considering its value. Since this debt would offset the value of the business, it is not a personal debt of the parties and Husband will not receive credit for it in equitable distribution.

Additional Credits Requested by Husband. Husband requests that he be provided additional credits in equitable distribution for post-separation payments toward the real estate taxes and maintenance and repairs of the Lewisberry Road property. Given that this is Husband's primary residence and that Husband derived the sole benefit of this property since separation, he is not entitled to credit for those expenditures. Husband also requests a credit of \$509 for premium payments toward Wife's Royal Arcanum Life Insurance policy after separation. However, Husband made those payments in lieu of

support at a time when there was no support order entered against Husband. Accordingly, he is not entitled to credit in that regard either. All other credits requested by Husband have been adequately addressed in other parts of this report.

DISCUSSION AND CONCLUSIONS OF LAW FOR EQUITABLE DISTRIBUTION

Equitable distribution factors. “[T]here is no simple formula by which to divide marital property. The method of distribution derives from the facts of the individual case. The list of factors of [section 3502(a)] serves as a guideline for consideration, although the list is neither exhaustive nor specific as to the weight to be given the various factors.” *Smith v. Smith*, 653 A.2d 1259, 1264, 439 Pa.Super. 283, 294 (1995). The master applied the eleven equitable distribution factors listed in Section 3502(a) of the Divorce Code to this case as follows.

1. **The length of the marriage.** The length of the parties’ intact marriage was a little more than of twenty-one years. This factor is more appropriately considered in the alimony discussion and does not favor a larger distribution to either party.

2. **Any prior marriage of either party.** This was the first marriage for both parties. This factor does not favor a larger distribution to either party.

3. **The age, health, station, amount and sources of income, vocational skills, employability, estate, liabilities and needs of each of the parties.** The parties are only two years apart in age. Wife has had two hip replacements, but at the time of hearing was in good health. Husband suffers from chronic high blood pressure, has had hernia repair surgery and has been diagnosed with bipolar disorder. However, there was no testimony that either party’s health impacted negatively on his/her ability to work.

Both parties are appropriately employed given their educations and vocational skills.

Wife has net monthly income from employment and investments of \$2,414.13 and after the divorce will have reasonable monthly expenses of \$3,398.67, a shortfall of \$984.54 per month. Husband has net monthly income from his self-employment and investments of \$12,671.62 approximately five times Wife's monthly income.⁸ After the divorce, Husband will have reasonable monthly expenses of \$7,999.83. Accordingly, Husband will have discretionary income of \$4,671.79. The liabilities of the parties are taken into consideration, for the most part, in the valuation of the marital assets, the attorney's fees discussion and the determination of the parties' reasonable expenses.

Given Husband's far superior income and discretionary income, and Wife's monthly shortfall, this factor favors a greater distribution to Wife.

4. **The contribution by one party to the education, training or increased earning power of the other party.** There was no evidence that either party contributed to the education or training of the other party. This factor does not favor a greater distribution to either party. Wife's contribution to Husband's increased earning capacity through her role as homemaker will be addressed in factor 7 below.

5. **The opportunity of each party for future acquisitions of capital assets and income.** Given Husband's substantially higher income and discretionary income, Husband will have a greater opportunity to acquire capital assets and income. Wife's income does not even permit her to meet her reasonable needs and, unless she scrimps on her monthly expenses, Wife will not be able to acquire capital assets in the future. This factor favors a larger distribution to Wife.

⁸ The master notes that Husband asserts that his monthly net income is \$8,660 which is over three and a half times Wife's net income. D-106.

6. **The sources of income of both parties, including, but not limited to, medical, retirement, insurance or other benefits.** According to the May 6, 2016 Support Order in this case, Wife has dividend income of about \$1,414 per year and Husband has dividend income of about \$12,142 per year. Wife receives medical insurance at no cost through her employer. Husband pays for his health insurance through his employer. Wife's employer provides an employer sponsored contributory retirement plan. Husband contributes to his retirement benefits from his employment income. Given Husband's greater dividend income, this factor favors a greater distribution to Wife.

7. **The contribution or dissipation of each party in the acquisition, preservation, depreciation or appreciation of the marital property, including the contribution of a party as homemaker.** Husband owned a vehicle, his trust assets and his home at the time of the parties' marriage. N.T. 1/25/2016 p. 83. While Husband asserts that he sold the Porsche and contributed the funds to the payoff of the Kubota tractor, he retained his trust assets and his home in his separate name during the marriage. However, after the parties' separated, Husband gifted his premarital home to Wife, an asset valued at \$136,000. Wife did not bring any assets with her to the marriage. Id.

Both parties contributed their considerable efforts to their marriage. Husband was, at all times, the primary breadwinner. Husband also took care of most of the outside chores. While Wife admitted that Husband was the best father he could be, there was no evidence that Husband helped out with the inside chores or the caretaking of the parties' children. Wife worked full-time until the birth of the parties' first child. Thereafter, Wife was the primary caretaker of the parties' children and a full-time homemaker with everything that entails. When the children's

schedules permitted, Wife helped out at Husband's office and earned spending money through home sales and calligraphy. Wife also engaged in limited entertaining for Husband's business. Husband's efforts allowed Wife to stay home with their children and still enjoy a nice lifestyle. Wife's efforts allowed Husband to put forth his best efforts at work knowing that his children and his home were in Wife's capable hands. Wife spent countless hours planting trees on the property on Lewisberry Road and Husband designed the home and put his "sweat equity" into the construction of the home. Without Husband and Wife's joint efforts, the marital estate would not be as substantial as it is. However, there is one major distinction between Husband's contributions and Wife's contributions. Husband's contributions allowed him to attain a substantial level of earnings and garner work experience while accruing Social Security benefits that will benefit him for the remainder of his life. Wife's contributions resulted in extended absences from the work force while not accruing Social Security benefits. Wife will never reach the level of earnings of Husband.

This factor favors a larger distribution to Wife.

8. **The value of the property set apart to each party.** Wife's separate estate has an approximate value of \$158,807 of which \$136,000 was gifted by Husband to Wife after separation. Husband's separate estate, without counting the value of his business interests which were not valued in this proceeding, has an approximate value of \$182,686. Had Husband not gifted the Hoffer Street Property to Wife after separation, Husband's separate estate would have an additional \$70,000 of value. Although Husband's separate estate is greater than Wife's, it is offset by the fact that Wife's separate estate is mostly due to Husband's post-separation gift. Accordingly, this factor does not favor a larger distribution to Wife.

9. **The standard of living of the parties established during the marriage.** The standard of living established by the parties during the marriage was very nice. The parties drove nice cars, each acquired expensive jewelry and they traveled extensively to foreign countries. Based on their respective incomes, Husband should be able to sustain this standard of living after the divorce while Wife will not be able to sustain this standard of living after the divorce. This factor favors a larger distribution to Wife.

10. **The economic circumstances of each party at the time the division of property is to become effective.** The master has adequately addressed each party's economic circumstances in the foregoing factors.

10.1. **The Federal, State and local tax ramifications associated with each asset to be divided, distributed or assigned, which ramifications need not be immediate and certain.** The master considered, but declined to deduct the estimated tax ramifications of the sale of the Lewisberry Road property. No other evidence was presented regarding any other tax ramifications. The master is generally aware that retirement accounts are subject to tax and in some cases, penalty when withdrawn. Accordingly, the master considered the potential tax in her method of distribution, but this factor does not favor a larger distribution to either party.

10.2. **The expenses of sale, transfer or liquidation associated with a particular asset, which expense need not be immediate and certain.** The master deducted the estimated costs of sale from the equity available for distribution in the Lewisberry Road property. The costs of transfer of assets, such as retirement accounts, have been addressed in the recommendation. This factor does not favor a larger distribution to either party.

11. **Whether the party will be serving as the custodian of any dependent minor**

children. While Wife was the custodian of the parties' two minor children at separation, both of the children are now emancipated. The financial effect to Wife was ameliorated to some extent through the child support order. In June of 2016, the parties' youngest child became emancipated. Accordingly, neither party will be serving as the custodian of a dependent minor child and this factor does not favor a larger distribution to either party.

Summary. None of the factors favor a larger distribution to Husband. Five of the factors favor a larger distribution to Wife. The remaining factors are more appropriately considered in the alimony discussion, do not favor a larger distribution to either party or were considered in the method of distribution rather than the percentage distribution. Given Husband's substantial income, he will be able to recover financially from this divorce in a very short period of time. Wife, on the other hand, will be struggling to meet her living expenses from her income. However, Wife is better able to meet those expenses given Husband's post-separation gift of Hoffer Street.

RECOMMENDATION FOR EQUITABLE DISTRIBUTION

Based on the foregoing factors, the master recommends that Wife receive fifty-five percent of the marital assets and that Husband receive forty-five percent of the marital assets.

This can be accomplished by distributing the marital assets and debts as follows:

| # | ASSET/DEBT | VALUE | TO WIFE | TO HUSBAND |
|---|-----------------------|--------------------------------|---------|------------------------------------|
| 1 | 3215 Lewisberry Rd | \$499,239 | \$0 | \$499,239 |
| 2 | 1999 Ford F-250 Truck | \$2,025 | \$0 | \$2,025 |
| 3 | 2008 BMW 335 | \$0 (after debt is considered) | N/A | Husband to receive At \$0 value |
| 4 | 2008 BMW X5 | \$5,230 | \$5,230 | \$0 |
| 5 | 2004 Kubota | \$11,532 | \$0 | \$11,532 |

| | | | | |
|----|---|-----------|-----------|----------|
| | Tractor | | | |
| 6 | Increase in U.S. Savings Bonds | \$1,774 | \$0 | \$1,774 |
| 7 | AgChoice Farm Credit Equity Stock | \$6,540 | \$0 | \$6,540 |
| 8 | AgChoice Stock Refund Check | \$1,000 | \$0 | \$1,000 |
| 9 | AgChoice Patronage Refund Check | \$580 | \$0 | \$580 |
| 10 | PSECU Account #0163 | \$112 | \$112 | \$0 |
| 11 | Metro Bank Account #3069 | \$7,518 | \$0 | \$7,518 |
| 12 | Charles Schwab Account #973 - Increase only | \$81,067 | \$0 | \$81,067 |
| 13 | Royal Arcanum Life Insurance Policy #7141 | \$857 | \$0 | \$857 |
| 14 | Royal Arcanum Life Insurance Policy #7142 | \$1,199 | \$0 | \$1,199 |
| 15 | Royal Arcanum Life Insurance Policy #4302 | \$3,079 | \$3,079 | \$0 |
| 16 | Royal Arcanum Life Insurance Policy #3714 | \$388 | \$0 | \$388 |
| 17 | SERS Plan | \$74,652 | \$74,652 | \$0 |
| 18 | Husband's Charles Schwab 401(k) Plan | \$54,411 | \$0 | \$54,411 |
| 19 | Jackson National IRA | \$163,594 | \$100,000 | \$63,594 |
| 20 | Wife's Charles Schwab 401(k) Plan | \$61,638 | \$61,638 | \$0 |
| 21 | Charles Schwab 529 Plan #2278-02 | \$56,382 | \$0 | \$56,382 |

| | | | | |
|----|----------------------------------|--------------------|------------------|------------------|
| 22 | Charles Schwab 529 Plan #2278-01 | \$74,715 | \$0 | \$74,715 |
| 23 | Jewelry | \$52,810 | \$33,817 | \$18,993 |
| 26 | 2009 Federal Tax Liability | (\$32,423) | \$0 | (\$32,423) |
| 27 | S&F Accounting | (\$25,327) | (\$3,809) | (\$21,518) |
| 28 | Michael Farnan, Esquire | (\$3,500) | \$0 | (\$3,500) |
| 29 | Bank of America VISA #3619 | (\$29) | \$0 | (\$29) |
| 30 | PSECU VISA #0163 | (\$10,901) | (\$10,901) | \$0 |
| 31 | J.C. Penney #3541 | (\$171) | (\$171) | \$0 |
| 32 | Discover Card #9729 | (\$3,692) | (\$3,692) | \$0 |
| 33 | PayPal Account | (\$149) | (\$149) | \$0 |
| 34 | BMW Loan | (\$21,570) | \$0 | (\$21,570) |
| | Subtotal | \$1,062,580 | \$259,806 | \$802,774 |
| | Payment Due Wife from Husband | | \$324,613 | (\$324,613) |
| | Total | \$1,062,580 | \$584,419 | \$478,161 |
| | Percentage | 100% | 55% | 45% |

In order to effectuate the above distribution, Wife should receive the amount of \$100,000 from Husband's Jackson Individual Retirement Account via a tax neutral rollover within sixty days of the entry of an un-appealable Court Order for equitable distribution. Wife should be responsible for the preparation, submission and effectuation of the Qualified Domestic Relations Order (QDRO) directing the rollover. Husband should reimburse Wife for one-half of the cost of QDRO preparation within forty-eight hours of being presented with a copy of the invoice.

Husband should pay Wife the sum of \$324,613 via a certified check payable to Wife

within ninety days of the entry of an un-appealable Court Order for equitable distribution. Any portion left unpaid at the conclusion of those ninety days should bear interest at the annually adjusted legal rate as specified in Pa.R.C.P. Number 238(a)(3). Damages for Delay in Actions for Bodily Injury, Death, or Property Damage.

Each party should be directed to execute any and all other documents necessary to effect the above distribution, within ten (10) days after the Court's Order for equitable distribution becomes final and unappealable.

DISCUSSION AND CONCLUSIONS OF LAW FOR ALIMONY AND ALIMONY PENDENTE LITE

The Pennsylvania Superior Court has, on several occasions, stated that the purpose and intent of an alimony award is as follows:

We previously have explained that 'the purpose of alimony is not to reward one party and to punish the other, but rather to ensure that the reasonable needs of the person who is unable to support himself or herself through appropriate employment, are met.' Alimony 'is based upon reasonable needs in accordance with the lifestyle and standard of living established by the parties during the marriage, as well as the payor's ability to pay.' Moreover, 'alimony following a divorce is a *secondary remedy* and is available only where economic justice and the reasonable needs of the parties cannot be achieved by way of an equitable distribution award and development of an appropriate employable skill.' *Teodorski v. Teodorski*, 2004 PA Super 313, 857 A.2d 194,200 (2004), quoting *Moran v. Moran*, 2003 PA Super 455, 839 A.2d 1091, 1096 (PA. Super. 2003)

Gates v. Gates, 933 A.2d 102, 106 (Pa. Super. 2007). Moreover, Section 3701(b) of the Divorce Code sets forth seventeen factors that must be considered in making a recommendation for alimony. The following discussion indicates how those factors influenced the master's recommendation for alimony in this case.

- 1. The relative earnings and earnings capacities of the parties.**
- 2. The ages and the physical, mental and emotional conditions of the parties.** The

parties are fairly close in age. Although both parties have health issues, none prohibit them from working. Currently, Husband's net monthly income is \$12,671.62 and Wife's net monthly income is \$2,414.13. Accordingly, Husband's net monthly income is over five times that of Wife.

This factor favors an award of alimony to Wife.

3. The sources of income for both parties including, but not limited to, medical retirement, insurance or other benefits. According to the Summary of Trier of Fact that supplements the May 6, 2016 Support Order in this case, Husband has average annual dividend income of \$12,142 and Wife has average dividend income of \$1,414. Wife receives health insurance at no cost to her through her employer. According to his Expense Statement (D-1), Husband pays \$426 per month for medical insurance. The fact that Husband pays substantially more than Wife for health insurance offsets his greater dividend income. This factor does not favor alimony to Wife.

4. The expectancies and inheritances of the parties. All of the parties' parents are alive. Wife has one sibling with whom she would share an inheritance. Husband is an only child and has no siblings with whom he would share an inheritance. However, given that there is no guarantee that the parties' parents will leave their estate to their children or that there will even be substantial estates to be inherited, this factor does not impact on the alimony determination.

5. The duration of the marriage. The parties were married for a little over twenty-one years. This factor would impact on the length of the alimony award, but not whether or not alimony is warranted.

6. The contribution of one party to the education, training or increased earning

power of the other party. Neither party contributed to the education or training of the other party during the marriage. Any contributions to earning power have been considered in other factors. This factor does not favor alimony to Wife.

7. The extent to which the earning power, expenses or financial obligations of a party will be affected by reason of serving as the custodian of a minor child. Effective May 12, 2016, neither party is serving as the custodian of a minor child. This factor does not favor alimony to Wife.

8. The standard of living established during the marriage. The parties enjoyed a very nice standard of living during their marriage. They traveled all over the world, drove nice cars and acquired expensive jewelry. Husband should be able to maintain this standard of living given his income and separate resources. Wife may not be able to match the marital standard of living but once equitable distribution occurs, Wife should be able to have a comfortable standard of living. This factor does not favor an alimony award to Wife.

9. The relative education of the parties and the time necessary to acquire sufficient education or training to enable the party seeking alimony to find appropriate employment. Both parties are appropriately employed and need no further education or training. This factor does not favor an alimony award to Wife.

10. The relative assets and liabilities of the parties. Husband has a separate estate valued at about \$182,686 and Wife has a separate estate valued at about \$158,805. The marital debts have been considered and offset against marital assets in equitable distribution. Wife has incurred substantial attorney's fees in this case, but they will be addressed in the Attorney Fee portion of this report. Wife lives in a home that is not subject to a mortgage and Husband's

home is subject to a substantial mortgage and he might have to obtain another mortgage to satisfy his equitable distribution obligations.

Accordingly, this factor does not favor an alimony award to Wife.

11. The property brought to the marriage by either party. In addition to the separate property that Husband leaves the marriage with, Husband brought the Hoffer Street Property to the marriage. At the time of the marriage, the Hoffer Street property was valued at \$70,000. Shortly after separation, Husband gifted this property to Wife.

This factor does not favor alimony to Wife.

12. The contribution of a spouse as homemaker. Wife's contribution to the marriage as a homemaker and primary caretaker was just as valuable as Husband's contribution as the primary wage earner. Unfortunately, Wife's job did not provide the experience, level of income and Social Security accruals which Husband's did. This factor favors alimony to Wife.

13. The relative needs of the parties. Wife net monthly earnings of \$2,414.13 per month and reasonable monthly expenses of \$3,398.67. Wife's reasonable expenses exceed her earnings by \$984.54 per month. Husband has monthly earnings of \$12,671.62 per month and reasonable monthly expenses of \$7,999.83. Accordingly, before consideration of any support obligation, Husband has discretionary income of \$4,671.79 per month. Wife is in need of alimony and Husband is able to pay alimony. This factor favors alimony to Wife.

14. The marital misconduct of the parties during the marriage. Alimony is not punitive in nature. There was no credible evidence of any marital misconduct on either party's part that affected either party's financial needs or his or her ability to meet those needs.

Therefore, this factor does not impact on the alimony determination.

15. The Federal, State, and local tax ramifications of the alimony award. The alimony will be deductible on Husband's Federal Income Tax return and Wife will include the alimony as income on her Federal Income Tax return. This factor does not impact on whether or not alimony is appropriate but it would be considered in determining the amount of the alimony award.

16. Whether the party seeking alimony lacks sufficient property, including, but not limited to, property distributed in equitable distribution, to provide for the party's reasonable needs. If the master's recommendation is affirmed, Wife will be receiving net marital assets of over half a million dollars, \$324,613 of which is via a cash payment. Wife will be able to meet all of her reasonable monthly expenses if she invests these funds and earns just four percent per year average rate of return.

This factor does not favor alimony to Wife.

17. Whether the party seeking alimony incapable of self-support. With the earnings on her equitable distribution award along with her income from employment, Wife should be able to pay her reasonable expenses. This factor does not favor alimony to Wife.

Summary. Although Husband's employment earnings are greater than Wife's employment earnings, and probably always will be, Wife's employment and her equitable distribution award should be sufficient for Wife to meet her own needs without alimony from Husband. One of the reasons this is so, is because of Husband's gift to Wife of his premarital residence which is a significant factor in the master's determination not to recommend an award of alimony to Wife.

RECOMMENDATION FOR ALIMONY AND ALIMONY PENDENTE LITE

Wife is currently receiving alimony pendente lite through the Dauphin County Domestic

Relations Office. Alimony pendente lite continues until all economic claims are resolved. Therefore, the master need not make a recommendation for alimony pendente lite. See Pa.R.C.P. No. 1920.31(d).

Moreover, based on the foregoing, the master recommends that Wife's request for alimony be denied.

DISCUSSION FOR COUNSEL FEES, COSTS, AND EXPENSES

Wife raised a claim for counsel fees, costs, and expenses under Section 3702 of the Divorce Code, which authorizes an award of reasonable counsel fees and expenses in appropriate cases. In determining the appropriateness of an award of counsel fees, it is necessary to review all relevant factors. "These factors include the payor's ability to pay, the requesting party's financial resources, the value of services rendered, and the property received in equitable distribution." *Busse v. Busse*, 921 A.2d 1248, 1258 (Pa.Super. 2007) (citations omitted). Accordingly, "[i]n most cases, each party's financial considerations will ultimately dictate whether an award of counsel fees is appropriate." *Id.* "In addition, "[c]ounsel fees are awarded only upon a showing of actual need." *Harasym v. Harasym*, 614 A.2d 742, 747 (Pa.Super. 1992).

As Wife points out in her post-hearing submission, the hourly rate charged by her attorney, while similar to attorneys in the area, is less than that charged by all three of the attorneys Husband retained in this matter. Accordingly, Wife's attorney's hourly rate is reasonable. Moreover, a review of Wife's attorney's fees exhibit reveals that the fees charged by Wife's attorney equaled the value of the services rendered by Wife's attorney, especially considering that Husband's behavior toward Wife's attorney, both in court and through the

numerous pleadings filed by Husband, was often insulting, demeaning and unprofessional. The following exchanges illustrates the master's point:

Ms. Radcliff (Wife's Attorney): Is the purpose of this exhibit the same thing? To show the effort you made with regard to Construction?

The Defendant (Husband): Yes, and you would have been given all of these exhibits under the Smigel - -

Ms. Radcliff: I've never seen these.

The Defendant: Yes, you have, honey. Honey Bun.

The Master: First of all, let's refrain from calling people "honey, babe, sweetheart."

Ms. Radcliff: Are we marking the first set?

.....

The Master: The Exhibit No. 5 of Wife's Exhibit No. 5 is the 10/20/13 amended support order.

The Defendant: I do not stipulated to that at all. I felt that my 14th Amendment, constitutional amendment was jeopardized, and Ms. Radcliff assisted in the perpetration of that heinous crime.

Ms. Radcliff: Excuse me one moment. If you continue to accuse me of crimes, lying, or other things, I'm going to warn you, as I have done so before, that you're opening yourself up to a defamation suit. I've been trying to be very lenient and understanding with you, but I am not going to tolerate it.

The Defendant: The truth is painful; isn't it Diane.

N.T. 1/25/2016 pp. 159 – 160; 204 – 205.

Nevertheless, with the above being said, the master believes that Wife is certainly able to pay the attorney's fees she has incurred with the funds she will receive in equitable distribution.

However, 42 Pa.C.S.A. §2503(6) also authorizes an award of counsel fees for dilatory,

obdurate, or vexatious conduct during the pendency of the case. The record in this case clearly evidences that Husband has engaged in obdurate and vexatious conduct throughout these proceedings.

As of the writing of this Report and Recommendation, the docket in this case contains over 250 entries. Suffice it to say, that after Wife filed her divorce complaint, Husband,⁹ representing himself, inundated the Court with Petitions, Motions and Praecipes, many nonsensical and without basis in law. For instance on February 6, 2015, Husband filed a document he titled "Involuntary Non-Compliance Praecipe" paragraph 1 of which stated "*To be, or not to be? That is the Question.*" Opening phrase of a soliloquy from Shakespeare's Hamlet." Husband, in the Involuntary Non-Compliance Praecipe, goes on to indicate that quote from Hamlet in some way provides guidance as to how two court orders are to be interpreted. In another pleading filed on February 25, 2015 that Husband titled a "Petition to have Plaintiff's Fraudulent Commissions and Omissions Made a Part of the Record," Husband, in a long and rambling statement, refuted the claims raised by Wife in her divorce complaint. In his prayer for relief, Husband requested, among other things, that the Court should impose punishment "for the marginal professional and reckless behavior of Plaintiff's attorney . . . , which has been nothing but a narcissistic career pursuit on behalf of the 'FEMINSISTIC-INDUSTRIAL-COMPLEX.'" Moreover, Husband filed two appeals to the Superior Court in this action that, after petition by Wife, were quashed as interlocutory.

Husband's filings became so onerous that by Order dated November 5, 2014, the Court

⁹ For the most part, Husband was unrepresented during this proceeding. From time-to-time, Husband would retain counsel for a short period of time.

issued an Order that provided, in part as follows: “. . . following a status conference and in an attempt to alleviate the voluminous and vexatious documents provided to Plaintiff and her counsel, **IT IS HEREBY ORDERED THAT** Defendant Matthew P. Amos is **PROHIBITED** from filing any further motions or petitions with the Prothonotary unless provided leave of Court.” Unfortunately, this Order did not dissuade Husband from continuing his vexatious conduct.

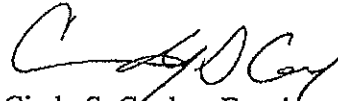
Wife was forced to compel compliance with discovery requests through Court filings. Then when Husband was directed not only to comply with the discovery requests but also reimburse Wife for attorney’s fees and costs, Wife was forced to file a contempt petition in order to collect the court ordered attorney’s fees.

Wife’s attorney’s fee exhibit evidences that, after deducting the \$7,060 in attorney’s fees Husband ultimately paid, Wife incurred through December 31, 2015, \$39,923.11 in attorney’s fees and costs in the divorce proceeding. Moreover, Wife estimated that she would incur an additional \$7,000 in attorney’s fees through the end of the case for a total of \$46,923. Of this Wife requests reimbursement of \$15,000. However, given the extreme conduct of Husband in this matter, an award of attorney’s fees to Wife in the amount of \$25,000 is more appropriate.

RECOMMENDATION FOR COUNSEL FEES, COSTS, AND EXPENSES

For the reasons set forth above, the master recommends an award in favor of Wife of counsel fees, costs, and expenses in the amount of \$25,000. Husband should pay that sum to Wife within thirty days after the Court's Order for equitable distribution becomes final and unappealable. Any portion left unpaid should bear 6% legal interest per annum.

Respectfully submitted



Cindy S. Conley, Esquire
Divorce Master

DATE: 30 September 2016

IN THE COURT OF COMMON PLEAS OF DAUPHIN COUNTY, PENNSYLVANIA

Plaintiff
vs.

Defendant

: No. _____
:
: ACTION IN DIVORCE
:
: CIVIL ACTION - LAW

PRELIMINARY CONFERENCE PREPARATION SHEET

The master will be requesting the following information at the Preliminary Conference.

Parties

Plaintiff. Name:

Address:

Counsel: _____, Esquire

Year of Birth:

Employment: as _____ . Paid: _____ . Date Hired: _____ . Benefits:

Education:

Number of marriage:

Health:

Defendant. Name:

Address:

Counsel: _____, Esquire

Year of Birth:

Employment: as _____ . Paid: _____ . Date Hired: _____ . Benefits:

Education:

Number of marriage:

Health:

Children of this marriage: first name and year born.

Support:

Custody:

Basic Dates and Pleadings:

Date of Marriage (DOM):

Place of Marriage:

Date of Separation (DOS):

Date Complaint Filed:

Method of Service:
Proof of service filed:
Other pleadings:

Divorce Status.

| | | |
|--------------------------------------|--------|---------------|
| Plaintiff's Consent filed: | dated: | Waiver filed: |
| Defendant's Consent filed: | dated: | Waiver filed: |
| Plaintiff's 3301(d) Affidavit filed: | | |
| Defendant's Counter-Affidavit filed: | | |
| Date of Bifurcation Order: | | |
| Date of Divorce Decree: | | |

Assets/Discovery Requests:

1. Real estate.
2. Vehicles.
3. Stocks, bonds, securities, options.
4. Certificates of Deposit
5. Checking accounts, cash.
6. Savings accounts, money market and savings certificates.
7. Contents of safe deposit boxes
8. Trusts
9. Life insurance policies
10. Annuities
11. Gifts
12. Inheritances
13. Patents, copyrights, inventions, royalties
14. Personal property outside the home
15. Business

16. Employment termination benefits
17. Profit sharing plans
18. Pension plans (Defined Benefit).
19. Retirement plans, IRAs, 401(k)s, etc. (Defined Contribution).
20. Disability payments
21. Litigation claims
22. Military/VA benefits
23. Education benefits
24. Debts due from third parties
25. Household furnishings and other personalty.
26. Other

Discovery requests regarding income.

- a. Current income information:
- b. Complete tax returns plus year-end pay stub, W-2s, K-1s, 1098s, 1099s etc.
- c. CURRENT Social Security Earnings History and Estimated Benefits Statements.

Miscellaneous discovery requests:

MEMORANDUM

TO: DAUPHIN COUNTY FAMILY LAW SECTION

FROM: CINDY S. CONLEY, DIVORCE MASTER

RE: AMENDMENTS TO PENNSYLVANIA RULES OF CIVIL PROCEDURE

The Supreme Court of Pennsylvania has amended the following procedural rules relating to divorce:

1920.17 – Discontinuance. Withdrawal of Complaint.

1920.31 – Joinder of Related Claims. Child and Spousal Support. Alimony. Alimony. Alimony Pendente Lite. Counsel Fees. Expenses.

1920.33 – Joinder of Related Claims. Distribution of Property. Enforcement.

1920.42 – Affidavit and Decree under §3301(c) or §3301(d)(1) of the Divorce Code. Notice of Intention to Request Entry of Divorce Decree in §3301(c) and §3301(d)(1)(i) Divorces. Counter-affidavit.

1920.54 – Hearing by Master. Report. Related Claims.

1920.55-2 – Master's Report. Notice. Exceptions. Final Decree.

1920.71 – Form of Notice.

1920.72 – Form of Complaint. Affidavit under §3301(c) or §3301(d) of the Divorce Code. Counter-affidavit. Waiver of Notice of Intention to Request Decree under §3301(c) and §3301(d).

1920.75 – Form of Inventory.

THESE AMENDMENTS ARE EFFECTIVE JULY 1, 2015.

In accordance with the amendments to 1920.31, a party may not file a motion to appoint the master regarding alimony, alimony pendente lite, counsel fees, costs and expenses until at least 30 days following the filing of that party's tax returns, Income Statement and Expense Statement. The opposing party must file his/her tax return, Income Statement and Expense Statement 20 days thereafter or be subject to sanctions.

In accordance with the amendments to 1920.33, a party may not file a motion to appoint the master regarding equitable distribution until at least 30 days following the filing of that party's inventory. The opposing party must file his/her inventory 20 days thereafter or be subject to sanctions.

However, if the master is being appointed to address discovery, interim relief or post-divorce issues, aside from modification of alimony (such as enforcement of agreements or orders), the 1920.31 and/or 1920.33 documents do not need to be filed in advance of the motion to appoint the master.

Please also note that the Inventory form has been changed somewhat.