

**[J-148-2006]**  
**IN THE SUPREME COURT OF PENNSYLVANIA**  
**MIDDLE DISTRICT**

F. ANDREW SMITH,	:	No. 62 MAP 2006
	:	
Appellee	:	Order of the Superior Court entered
	:	August 4, 2005 at No. 1321 MDA 2004
	:	which Reversed and Remanded the Order
v.	:	of the Court of Common Pleas of Adams
	:	County, Civil Division, entered July 21,
	:	2004 at No. 95-S-038.
THERESE A. SMITH, NOW THERESE A.	:	
BOULDING,	:	881 A.2d 855 (Pa. Super. 2005)
	:	
Appellant	:	ARGUED: December 4, 2006

**DISSENTING OPINION**

**MR. JUSTICE EAKIN**

**DECIDED: December 27, 2007**

I must differ from my learned colleagues' conclusion that, except for the 1.5% increase in payroll deductions after July 1, 2001, the increased benefits did not arise from husband's postseparation contributions. In fact, without husband's continued employment efforts from the time of separation in 1995 until the enactment of Act 2001-9 in 2001, the opportunity to elect Class AA status would not have been available, and the pension's value could not have increased. Husband's continued employment resulted in his being able to elect this status, which triggered the increase in value; that is, the increase necessarily resulted from husband's actions, nearly six and a half years of continued employment after separation.

Husband's efforts may not have been heroic or entrepreneurial, but they were his efforts alone. Whether this was a windfall to him or not, windfalls after the fact are still

after the fact. If the nature of this case causes us to craft a rule that depends on the quantity or quality of his efforts, vis à vis the amount of the unanticipated increased benefit, there will be no closure in any case. The parties separated in January, 1995. The pension was divided by order of July, 1998. The legislative change was effective in July, 2001, and husband retired in July, 2002, seven and a half years after separation.

While a portion of a pension earned during coverture is appropriately awarded, there comes a point where finality must attach and litigation over “marital property” ends. We are now twelve and a half years postseparation. Opportunities afforded to and contributions made by either party after the relevant date for valuing marital assets should not change the basic scheme of distribution of property made as part of the divorce. As I find the entire enhancement of the pension was the result of husband’s postseparation effort, it should not change the mathematics agreed to by the parties when they divided this pension.