

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

JOHN T. STREMEL

Appellant

v.

SHERRI STREMEL

Appellee

IN THE SUPERIOR COURT OF
PENNSYLVANIA

No. 2010 WDA 2011

Appeal from the Decree December 22, 2011
In the Court of Common Pleas of Allegheny County
Family Court at No(s): FD 07-9218-002

BEFORE: PANELLA, J., ALLEN, J., and STRASSBURGER, J.*

MEMORANDUM BY PANELLA, J.

Filed: March 4, 2013

Appellant, John T. Stremel (Husband), appeals from the final decree in divorce and equitable distribution order entered on December 22, 2011, in the Court of Common Pleas of Allegheny County. After careful review, we affirm.

Husband and Appellee, Sherri Stremel (Wife) married on September 9, 1983. Four children were born of the marriage, all of whom are emancipated. Husband is employed by the U.S. State Department and by 1990 the parties began living in Taipei, China in connection with Husband's employment. The parties separated in September 2005 when Husband took an assignment in Afghanistan and advised Wife that the marriage was over.

* Retired Senior Judge assigned to the Superior Court.

Wife returned to the United States in June 2006 and Husband filed a complaint in divorce in December 2007.

An evidentiary hearing was held before a Special Master on October 18, 2010, at which evidence and testimony was presented in support of the parties' respective claims for equitable distribution of marital property and counsel fees and expenses and Wife's claim for alimony. The Master also received evidence on Husband's claim for counsel fees. On November 5, 2010, the Master submitted her Report and Recommendation after which Husband filed exceptions thereto. The trial court granted Husband's exceptions in part on September 19, 2011. Specifically, the trial court granted Husband's exceptions in regard to Wife's alimony award and reduced Wife's alimony award from \$3,500.00 per month for three years to \$2,350.00 per month for two years. The trial court dismissed Husband's remaining exceptions. This appeal followed.

On appeal, Husband raises the following issues for our review:

- I. Did the trial court err and/or abuse its discretion in calculating and awarding alimony to appellee where appellee failed to prepare and attach a budget or current expense statement to her pre-trial statement in accordance with the [t]rial court's pre-trial order of court and where appellee further failed to present any testimony regarding her "reasonable needs" either in her pre-trial statement or at the time of trial and the Trial Court failed to properly apply the law as set forth in the PA Divorce Code?
- II. Did the trial court err and/or abuse its discretion in calculating the marital portion of husband's pension with the federal employees retirement system and awarding

appellee a portion of appellant's benefits acquired prior to the parties' date of marriage?

- III. Did the trial court err and/or abuse its discretion in awarding appellee attorney fees where appellee failed to prepare and attach exhibits setting forth the amount of fees to be charged, the basis for the charge, and a detailed explanation of the time expended to her pre-trial statement in accordance with the trial court's pre-trial order of court.
- IV. Did the trial court err and/or abuse its discretion in distributing the marital estate 60% to appellee and 40% to appellant where the trial court failed to consider husband's contributions of an inheritance from his mother, appellant's contributions to the preservation of the value of the former marital residence and appellee's depreciation of it, and appellee's receipt of an advance on equitable distribution in the amount of \$24,000.00?
- V. Did the trial court err and/or abuse its discretion in failing to allow husband's counsel to cross-examine appellee with a multi-list agreement signed by appellee contradicting appellee's testimony at trial regarding the fair market value of the former marital residence as it relates to appellee's dissipation of a marital asset?

Husband's Brief, at ix.

In a divorce matter, an award of alimony, the equitable distribution of marital property, and the decision to award counsel fees are within the sound discretion of the trial court, and these decisions will not be disturbed on appeal absent an abuse of that discretion. *See Smith v. Smith*, 749 A.2d 921, 924 (Pa. Super. 2000).

After a thorough review of the record in this matter, we find the result reached by the Honorable Michael F. Marmo to be fair, just, and perfectly within the court's discretion considering the many facets of this case.

Accordingly, we adopt the trial court's opinion in this case and affirm on that basis. **See** Trial Court Opinion and Order, 4/10/12.

Decree affirmed. Jurisdiction relinquished.

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA
FAMILY DIVISION

John T. Stremel,

Plaintiff,

v.

Sherri Stremel,

Defendant.

No.: FD-07-009218-001

Superior Court No. 2010 WDA 2011

OPINION

Judge Michael F. Marmo

April 10, 2012

Plaintiff John T. Stremel ("Husband") appeals from this Court's September 19, 2011 Order, as clarified by this Court's September 21, 2011 Order, which resolved the economic issues between Husband and Sherri Stremel ("Wife").

The parties were married on September 9, 1983 and are the parents of four adult children. In February, 1988, Husband became employed with the U.S. State Department and by 1990 the parties began living outside of the United States in connection with Husband's employment. Although the parties disputed their date of separation, the Court concluded the date of separation was September 8, 2005, which was the date Husband took an assignment in Afghanistan and advised Wife the marriage was over. Husband returned to the marital residence in Taipei, China and lived with Wife from February, 2006 to June, 2006, but the parties had no sexual relations since September 8, 2005 and they did not function as an intact family. Wife returned to the United States in June, 2006 and Husband filed for divorce here in December, 2007.

An evidentiary hearing was held before Special Master, Patricia Miller on October 18, 2010, at which time this Court received evidence and testimony in support of the parties'

respective claims for equitable distribution of marital property and counsel fees and expenses and Wife's claim for alimony. In addition, Master Miller received evidence on Husband's claim for counsel fees pursuant to his motion for sanctions and petition to compel compliance, which had been preserved to equitable distribution by this Court's orders dated October 14, 2009. On November 5, 2010, Master Miller submitted her Report and Recommendation, to which Husband filed timely exceptions to this Court.

In his exceptions, Husband claimed the Master erred and/or abused her discretion as follows: (i) in awarding alimony to Wife where no budget, no current expense statement, nor any testimony regarding "reasonable needs" was presented by Wife in her Pre-Trial Statement or at the time of trial, (ii) in awarding Wife alimony and utilizing a calculation comparison pursuant to the Pennsylvania Supreme Court guidelines for APL, (iii) in failing to allow Husband's counsel to cross-examine Wife with a Multi-List Agreement signed by Wife contradicting Wife's testimony at trial regarding the fair market value of the former marital residence and as it related to Wife's dissipation of a marital asset, (iv) in recommending that Wife should receive a counsel fee award, (v) in finding that the marital value of the parties' joint checking account would be the value at the time of the parties' physical separation, June, 2006, and failing to attribute to Wife an advance on equitable distribution in the amount of \$24,000, (vi) in calculating the marital portion of Husband's pension with the Federal Employees Retirement System, (vii) in failing to consider Husband's substantial contributions towards the preservation of the value in the former marital residence and Wife's failure to maintain the marital home and her depreciation of it, (viii) in not awarding Husband with a credit for non-marital funds received by him through an inheritance from his mother and in finding the "obligation" agreed upon by the parties to provide Kiely with \$10,000 in her Franklin Templeton Account was paid from joint funds in 2003, and (ix) in distributing the marital estate 60% to Wife and 40% to Husband.

In his brief and at the time of oral argument, Husband essentially consolidated his arguments into four (4) main categories: (a) alimony, (b) equitable distribution, (c) evidentiary matters, and (d) counsel fees. By Order of Court dated September 19, 2011, this Court granted Husband's exceptions in part. Specifically, this Court granted Husband's exceptions in regards to Wife's alimony award and reduced Wife's alimony award from \$3,500 per month for three (3)

years to \$2,350 per month for two (2) years. Husband's remaining exceptions were dismissed. Husband filed a Notice of Appeal to the Superior Court of Pennsylvania on December 28, 2011.

Husband's first contention is that the Court erred in awarding Wife alimony for a variety of reasons. Husband argues there was no evidence of a budget, a current expense statement, or any testimony regarding "reasonable needs" presented by Wife. Husband also argues the Court erred in utilizing a calculation comparison pursuant to the Pennsylvania Supreme Court guidelines for APL.

At the time of trial, Husband was 50 years old and still employed by the U.S. State Department. His current job title was "Management Officer" and he had been in China since June, 2007. Husband receives a base salary, a hardship allowance, a language incentive allowance, a service needs differential allowance and a cost of living adjustment. His 2009 compensation (including allowances) totaled \$142,440. He testified at trial that his 2010 base salary was \$125,235, the hardship allowance was 24%, the language incentive was 5%, and the special needs differential was 15% for a total of 45%. The Master concluded his current (2010) salary with incentives was \$196,091 consisting of the base salary plus \$60,856 in incentives.

Wife was also 50 years old at the time of trial. She had obtained an associate's degree in teaching from Community College of Allegheny County in May, 2010. She testified that she wanted to attend California University to hopefully obtain a bachelor's degree by December, 2012 and ultimately teach special needs children. At or prior to the time of trial, she was working as a crossing guard ten hours per week and as a delivery driver for Rite Aid for approximately 23 hours per week. Her income was \$17,795 in 2008 and \$16,047 in 2009.

There had never been a support order in this case and the parties continued to file a joint tax return after separation. Husband testified it was a condition of his employment with the U.S. State Department that he provide maintenance for his spouse as long as they were married. Thus, when Wife returned to Pittsburgh in June, 2006, Husband paid shelter expenses in the form of a mortgage (approximately \$1,150) on her residence and other shelter expenses totaling approximately \$2,500 per month. Husband also gave Wife \$1,000 per month for her personal expenses until July, 2007. By the time of trial, Husband was only paying shelter expenses to Wife of approximately \$2,500 per month.

An award of alimony is issued with the purpose of effectuating economic justice between the parties. See 23 Pa.C.S. §3102(a)(6). This Court determined Wife's eligibility for alimony by evaluating the facts in light of the factors set forth in 23 Pa.C.S.A. §3701(b). Those which the Court found most determinative in this case were: (1) the relative earnings and earning capacities of the parties; (3) the sources of income of both parties; (5) the duration of the marriage; (6) the contribution by one party to the education, training or increased earning power of the other party, (8) the standard of living of the parties established during the marriage, (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, (12) the contribution of a spouse as homemaker, (13) the relative needs of the parties; (16) whether the party seeking alimony lacks sufficient property, including, but not limited to, property distributed through equitable distribution, to provide for the party's reasonable needs; and (17) whether the party seeking alimony is incapable of self-support through appropriate employment.

In this case, the factors set forth above relating to awarding alimony fall squarely on Wife' side. The parties were married for nearly twenty-two years, and there is a substantial disparity in the current earnings and earning capacities of the parties. Husband's earnings with incentives for 2009 were \$196,091 and Wife's earned income for 2009 was \$16,074. Although the parties are the same age, Husband is well established in his career with the U.S. State Department and earning more than ten times what Wife is earning at two part time jobs. Although she did work periodically, Wife was a homemaker during most of the marriage and moved outside of the United States in furtherance of Husband's career. The parties are the parents of four adult children (although Husband is only the biological father of two of them) raised primarily by Wife while Husband was advancing his career. Wife is not capable of finding full time employment without additional education or training. Wife has only recently acquired an associate's degree in teaching from CCAC and still requires additional schooling in order to earn a bachelor's degree to eventually reach her goal of teaching special needs children. During the marriage the parties lived extravagant overseas lifestyles and traveled extensively.

Husband argues there was no evidence of a budget, a current expense statement, or any testimony regarding "reasonable needs" presented by Wife, but that is simply not true. There is

ample evidence in the record of Wife's shelter expenses, for which Husband has been paying \$2,500 per month. Additionally, Husband was until recently paying Wife an additional \$1,000 per month for her personal expenses, plus the mortgage on the marital residence. It was reasonable for this Court to conclude that Wife would be unable to support herself while completing her degree and searching for a full time teaching position. This Court's award of \$2,350 per month for twenty-four (24) months was reasonable in amount and duration to allow Wife to meet her reasonable needs and to find full time employment. Husband has the clear ability to pay this amount.

While Husband is correct that Wife failed to fully comply with this Court's pre-trial order and to provide a current expenses statement, these failures resulted in the Court awarding a lesser alimony award than what likely would have awarded had all of this information been provided. Although Wife's expenses have historically been more than the monthly alimony award, the Court found Wife's reasonable needs would be met by an alimony payment of \$2,350 per month for 24 months, in part because of the other assets awarded Wife in equitable distribution. See Thomson v. Thomson, 519 A.2d 483, 486 (Pa. Super. 1986) (courts often view equitable distribution and alimony as related entities, and the amount of property given to a spouse in equitable distribution will sometimes effect the amount and duration of alimony.)

Husband also argues the Court erred in utilizing a calculation comparison pursuant to the guidelines for APL. This is a false characterization of the Master's report and this Court's conclusions on this matter. Although the Master did refer to the Pennsylvania Supreme Court Guidelines and the "40% Rule" in her report, she clearly did not use this as the basis for awarding alimony to Wife. The Court's alimony award in this case is fair, reasonable and modest in light of the lifestyle and standard of living the parties enjoyed during their marriage. The Court's decision in this regard should be affirmed.

Husband argues the Court erred in failing to allow Husband's counsel to cross-examine Wife with a Multi-List Agreement signed by Wife contradicting Wife's testimony at trial regarding the fair market value of the former marital residence. At trial, Husband attempted to introduce Exhibit 14, which was a Multi-List Agreement executed by Wife indicating a value of \$79,900 for the marital residence. Wife objected to the admission of the exhibit on the basis that

it was part of a global settlement agreement, and such objection was properly sustained by the Master. Husband claims he should have been able to use the document to impeach Wife and to support his argument against Wife's claim for counsel fees. Husband's argument is without merit. It is unclear exactly why Husband believes the document would have supported his argument against Wife's claim for counsel fees as it is really irrelevant to the issue. More importantly, Husband's attempt to introduce the documents is in clear violation of Pennsylvania Rule of Evidence 408 which precludes the admissibility of conduct or statements made in settlement or compromise negotiations.

Husband is apparently arguing he was aggrieved because he was unable to impeach Wife with respect to the value of the marital home. The law is clear on the issue of lay opinion testimony as to the value of marital assets in that the Master was free to accept all, none, or portions of the testimony regarding the value of property. See Verholek v. Verholek, 741 A.2d 792, 796 (Pa. Super. 1999). In this case, the Court did not accept either party's lay opinion as to the value of the property, so Husband could not have been aggrieved in this regard.

Husband next argues the Court erred in awarding counsel fees to Wife. The Court has discretion under §3702 of the Divorce Code to award reasonable counsel fees and expenses to Wife. See 23 Pa.C.S. §3702. The record reveals that Wife's counsel fees and court costs were \$7,299 of which \$4,299 remained outstanding at the time of trial. Husband also sought counsel fees of \$320 for what he alleged was obdurate and vexatious conduct on the part of Wife in connection with his October, 2009 motion for sanctions and petition to compel compliance. Given the disparity in the parties' incomes during the pendency of the litigation, the Court awarded Wife \$3,979 in counsel fees (after deducting Husband's counsel fee claim) so that Wife could move forward without that debt. This is not an excessive award of counsel fees and the Court did not abuse its discretion in entering such an award. See Verdile v. Verdile, 536 A.2d 1364, 1369 (Pa. Super. 1988) (finding that a \$3,000 award of counsel fees was reasonable where wife had incurred in excess of \$5,000 in counsel fees).

Husband raises multiple issues concerning the Court's equitable distribution award. First, Husband argues the Court erred in finding that the marital value of the parties' joint checking account would be the value at the time of the parties' physical separation, June, 2006,

and failing to attribute to Wife an advance on equitable distribution in the amount of \$24,000. The parties had a joint federal credit union savings and checking account during the marriage. It is Husband's position that the Court should look to the balance on September 8, 2005 and charge as an advance to Wife all or part of the withdrawals she made from the account after this date. Husband testified at the hearing that Wife's withdrawals totaled almost \$38,000 and that \$24,000 of said withdrawals should be treated as an advance.

Although Husband argues that he testified clearly about the activity in the parties' joint account, the details of how he arrived at the \$24,000 figure are unclear. The record reveals that the account had significant and substantial activity after September, 2005 and that both parties had equal access to the account. It is unclear whether any of these funds were withdrawn for Husband's personal use. It is also unclear to what extent the funds deposited into this account were intended to be Husband's payment of family support as required by his employer. Additionally, the record reveals that some of the withdrawals were for marital property expenses (e.g., \$6,500 for carpeting in the marital residence in Pittsburgh). Finally, it does not appear Husband ever objected to Wife's use of these funds or that Wife was intentionally dissipating the funds in this account. Given the uncertainty over the use and intentions regarding these funds, the Court properly denied Husband's request to treat the \$24,000 as an advance to Wife.

Second, Husband argues the Court erred in calculating the marital portion of Husband's pension with the Federal Employees Retirement System. Husband's main contention is that the Court erred in finding that Husband purchased his military time, a portion of which extended to Husband's time in the military prior to the marriage, and that by doing so he converted the premarital years into marital years. Husband argues the Court's decision in this regard extends additional benefits to Wife not acquired during the marriage. Husband's arguments are without merit. Husband's testimony is clear that he contributed nothing to the years in question while serving in the military prior to the marriage, and no benefit accrued to him during that time. Husband only purchased the credit for his time in the military, and thus accrued these benefits, while the parties were married and with the use of marital funds. Purchased military time relating to defined benefit pensions is presumed to be marital property absent a showing that the property was acquired in a manner described in 23 Pa.C.S.A. §3501(a). See King v. King, 481

A.2d 913, 917 (Pa. Super. 1984) (concluding that purchased military time was marital property regardless of whether the military time was served prior to or during the parties' marriage). This is true regardless of whether the military time was served during the marriage. In this case, the Court properly concluded that Husband's entire 6.5 years of military service (only 2 years of which were served during the marriage) was indeed marital property.

Third, Husband argues the Court erred in failing to consider Husband's substantial contributions towards the preservation of the value in the marital residence and Wife's failure to maintain the marital home and her depreciation of it. However, it is not clear from the record what "substantial contributions" Husband alleges to have made to preserve the value of the marital residence. The Court is aware that Husband continued to make payments towards the mortgage after the separation date in conjunction with his employer-mandated family support obligation. Husband testified that he arranged for some repairs and maintenance work on the house, but nothing "substantial" is evident from the record, and Wife also made some repairs. There is also no credible evidence in the record that Wife's use and maintenance of the residence has lessened the value of the property. Furthermore, the Court has provided Husband with the opportunity to make repairs necessary to get the property ready for sale at the best possible price and for Husband to receive a dollar-for-dollar reimbursement from the net proceeds of sale.

Fourth, Husband argues the Court erred in not awarding Husband with a credit for non-marital funds received by him through an inheritance from his mother and in finding that the agreement by the parties to provide their daughter, Kiely, with \$10,000 was paid from joint funds in 2003. Husband argues he should have been returned the full \$42,000 he received as an inheritance from his mother. However, Husband testified that he commingled the inherited funds within the parties' joint bank account in May, 2005 and that the funds were used by him and his family from May, 2005 through September, 2005, the date of separation. Husband's argument that his inheritance retained its status as non-marital property after it was commingled in the parties' joint account during the marriage is without merit. See Madden v. Madden, 486 A.2d 401, 404 (Pa. Super. 1985). Furthermore, the Court acknowledged the contribution of Husband's inheritance in its ultimate equitable distribution award. The Court viewed the payment of \$10,000 to the parties' daughter, Kiely, similarly. Even though Husband claims such

payment was made out of the inheritance he received from his mother, the payment was made out of the parties' joint account in 2003. As such, this Court properly concluded such payment was made with marital funds.

Finally, Husband argues the Court erred in distributing the marital estate 60% to Wife and 40% to Husband. When fashioning equitable distribution awards, the trial court must consider the facts of the individual case, in addition to the factors set forth in §3502 the Divorce Code. See Gaydos v. Gaydos, 693 A.2d 1368, 1376 (Pa. Super. 1997). Upon careful review of the factors set forth in §3502(a) of the Divorce Code, this Court concluded that an equitable distribution award skewed in favor of Wife was appropriate. The length of the parties' marriage, almost 22 years, was considerable. As stated previously, Husband has a much greater opportunity to acquire assets and income in the future since he remains employed with the U.S. State Department earning significantly more than Wife. Wife has made long term contributions to the home as a mother and housewife. Wife worked periodically throughout the marriage, but moved frequently in furtherance of Husband's career, thus foregoing opportunities to secure more permanent employment where she may have been entitled to retirement and other benefits. The standard of living established during the parties' marriage was extravagant in comparison to Wife's present situation. The weight assigned to each of these factors is at the discretion of the trial court. See Gaydos, 693 A.2d at 1376. As the Court considered the relevant factors, and its decision is supported by the record, the Court did not abuse its discretion in awarding Wife more than 50% of the marital estate. See Isralsky v. Isralsky, 824 A.2d 1178, 1192 (Pa. Super. 2003) (upholding an award of 60% of the marital estate to Wife upon appropriate consideration of the factors set forth in Section 3502(a)).

This Court's decision should not be disturbed as it effectuates economic justice between parties and insures a fair and just determination and settlement of their property rights. See 23 Pa.C.S.A. 3102(a)(6). For the reasons set forth above, this court's Order of September 19, 2011, as clarified on September 21, 2011, should be affirmed.

BY THE COURT:

10

Appendix 10