

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

KATHLEEN J. SHIELDS

Appellee

v.

CLAUDE A.L. SHIELDS

Appellant

IN THE SUPERIOR COURT OF
PENNSYLVANIA

No. 1558 MDA 2013

Appeal from the Order Entered August 20, 2013
In the Court of Common Pleas of Schuylkill County
Civil Division at No(s): S-1178-06

BEFORE: GANTMAN, P.J., DONOHUE, J., and STABILE, J.

MEMORANDUM BY GANTMAN, P.J.:

FILED JULY 03, 2014

Appellant, Claude A.L. Shields ("Husband"), appeals from the order entered in the Schuylkill County Court of Common Pleas, directing the equitable distribution of the parties' marital property, following bifurcated divorce proceedings. We affirm.

In a prior appeal, this Court set forth the relevant facts and most of the procedural history of this case as follows:

Husband and Kathleen Shields ("Wife") were married on May 26, 2002. This is the second marriage for both parties. The parties resided in Husband's home located at 1947 Mahantongo Street, Pottsville, Schuylkill County, Pennsylvania ("Residence") during the marriage. The parties separated in 2006.² On June 2, 2006, Wife filed a complaint in divorce raising the issue of equitable distribution. On June 11, 2008, the court granted the divorce and Husband's request for bifurcation. On [July] 25, 2008, a master was appointed to hear the unresolved equitable distribution issues. The master filed his report

on July 7, 2009 and both parties filed multiple exceptions thereto.

² The parties disagree on the date of separation. Husband avers it was in January or February 2006, and Wife testified it was on May 18, 2006. The master in his July 7, 2009 report concluded for equitable distribution purposes the separation occurred in February 2006. Because neither party filed exceptions to this conclusion, we are bound by it.

After a hearing, the trial court issued an order and opinion dated October 16, 2009. ... The court specifically accepted the master's determination that Wife was [more] credible as to the issue of marital debt. As a result, the court remanded to the master the issue of Husband's share of the \$20,000 credit card debt.

As to Husband's ten exceptions, the court denied and dismissed all but one, which was remanded to the master for further testimony.

On June 16, 2010, the master held a hearing on the issues remanded pursuant to the October 16, 2009 order of court. After hearing testimony, the master issued a supplemental report filed on July 7, 2010. Both Husband and Wife again filed numerous exceptions. On September 15, 2010, the trial court issued an order granting two of Wife's three exceptions and denying all seven of Husband's exceptions.

Shields v. Shields, No. 1655 MDA 2010, unpublished memorandum at 2-4 (Pa.Super. filed October 3, 2011) (one footnote omitted). On October 7, 2010, Husband timely appealed from the September 15, 2010 order. On October 3, 2011, this Court affirmed in part and remanded with instructions as follows:

[T]he trial court held: "We further disagree with [Husband's] contention that the increase in value of any

non-marital property is to be offset by a decrease in value of [Husband's] other non-marital property." (Trial Court Opinion, filed October 16, 2009, at 5). The court did not explain its reasoning. In its September 15, 2010 opinion, the court again denied and dismissed this same issue without explanation as one of the "arguments that were previously reviewed and rejected for lack of evidence or waived as untimely." (Trial Court Opinion, filed September 15, 2010, at 2). We, therefore, reverse the finding of the trial court as to this issue and remand for a determination as to the actual amount of increases and decreases in the values of all of Husband's pre-marital and post-marital property. Once decided the trial court shall apply [23 Pa.C.S.A. §] 3501(a.1).

* * *

Our review of [Husband's] inventory indicates unresolved factual issues, which must be addressed on remand. ...

At the time of the marriage, Husband owned four properties in addition to the Residence. In his inventory, Husband listed for each the values as of the date of the marriage, and the value as of February 2006. The inventory shows the February 2006 value of all but one property as zero. Three of the four properties were sold during the marriage. However, the inventory fails to list any information as to the sale price, or monies received by Husband at settlement. As the sales all occurred during the marriage, Wife may be entitled to a share in any increase in the value of the property between the dates of marriage and sale.

* * *

We therefore remand for the trial court to determine the value of each of the properties listed in Husband's inventory as of the time of sale, calculate the correct total for the increase and decrease in the value of certain of Husband's non-marital assets and apply them to Section 3501(a.1).

* * *

Wife had several credit cards in her name during the time of the marriage. The master found Wife's testimony as to the debt to be credible and made...findings of fact that at the date of the marriage Wife had a credit card balance of \$28,121 and at the time of separation it was \$48,194.

While we cannot set aside findings of credibility, the problem herein lies with the date used for determination of the credit card debt. The master found the date of separation to be as of February 2006. This finding was not changed by the trial court or challenged by the parties. All evidence submitted as to the credit card debt was for balances on or about June 2006.

We remand for the trial court to determine the amount of marital credit card debt as of February 2006, the date of separation.

Id. at 5-8, 10.

Upon remand, the trial court in turn sent the matter back to the master for a hearing on these issues, which was held on April 24, 2013. Prior to the hearing, Husband had the Residence appraised at \$140,000.00. The Residence was part of Husband's pre-marital property. On May 6, 2013, the master issued a supplemental report and recommendation for final distribution directing, *inter alia*, Husband to pay Wife \$1,358.74 to cover half of the marital credit card debt. The master also determined that the value of the Residence had decreased from \$225,000.00 to \$140,000.00, which completely offset the increase in value of Husband's other non-marital assets.

Both Husband and Wife filed exceptions. The trial court issued an order on August 20, 2013, granting Wife's exception pertaining to the

diminished value of the Residence, and denying all of Husband's exceptions. The court ordered that Wife receive: (1) \$1,260.75, representing one-half of the marital portion of the total increase in value of Husband's non-marital real estate investments sold during the marriage; (2) \$1,358.74 toward the marital credit card debt; (3) one-half of the marital portion of Husband's county and state pensions; and (4) \$9,500.00, representing the \$10,000.00 increase in equity of the Residence less \$500.00 offset for marital property Wife removed from the Residence. On August 29, 2013, Husband filed a timely notice of appeal. The court ordered Husband to file a concise statement of errors complained of on appeal pursuant to Pa.R.A.P. 1925(b); Husband timely complied.

Husband raises the following issues for our review:

1. WHETHER THE TRIAL COURT ERRED IN FAILING TO APPLY 23 PA.C.S.A. § 3501(A.1) TO REDUCE ANY INCREASE IN THE VALUE OF [HUSBAND'S] NON-MARITAL PROPERTY BY ANY DECREASE IN THE VALUE OF NON-MARITAL PROPERTY OF [HUSBAND].

(A) WHETHER THE TRIAL COURT SPECIFICALLY ERRED IN FAILING TO APPLY 23 PA.C.S.A. § 3501(A.1) TO REDUCE ANY INCREASE IN THE VALUE OF [HUSBAND'S] NON-MARITAL PROPERTY BY THE DECREASE IN [HUSBAND'S] REAL ESTATE PARTNERSHIP INTEREST.

(B) WHETHER THE TRIAL COURT SPECIFICALLY ERRED IN FAILING TO APPLY 23 PA.C.S.A. § 3501(A.1) TO REDUCE ANY INCREASE IN THE VALUE OF [HUSBAND'S] NON-MARITAL PROPERTY BY THE DECREASE IN [HUSBAND'S] LAW PRACTICE.

(C) WHETHER THE TRIAL COURT SPECIFICALLY ERRED IN FAILING TO APPLY 23 PA.C.S.A. § 3501(A.1) TO REDUCE ANY INCREASE IN THE VALUE OF [HUSBAND'S] NON-MARITAL PROPERTY BY THE DECREASE IN [HUSBAND'S] SCHUYLKILL CREDIT UNION ACCOUNT.

(D) WHETHER THE TRIAL COURT SPECIFICALLY ERRED IN FAILING TO APPLY 23 PA.C.S.A. § 3501(A.1) TO REDUCE ANY INCREASE IN THE VALUE OF [HUSBAND'S] NON-MARITAL PROPERTY BY THE DECREASE IN [HUSBAND'S] U.S. SAVINGS BONDS.

(E) WHETHER THE TRIAL COURT SPECIFICALLY ERRED IN FAILING TO APPLY 23 PA.C.S.A. § 3501(A.1) TO REDUCE ANY INCREASE IN THE VALUE OF [HUSBAND'S] NON-MARITAL PROPERTY BY THE DECREASE IN [HUSBAND'S] STOCK ASSETS.

(F) WHETHER THE TRIAL COURT SPECIFICALLY ERRED IN FAILING TO APPLY 23 PA.C.S.A. § 3501(A.1) TO REDUCE ANY INCREASE IN THE VALUE OF [HUSBAND'S] NON-MARITAL PROPERTY BY THE DECREASE IN [HUSBAND'S] DEFERRED COMPENSATION.

(G) WHETHER THE TRIAL COURT SPECIFICALLY ERRED IN FAILING TO APPLY 23 PA.C.S.A. § 3501(A.1) TO REDUCE ANY INCREASE IN THE VALUE OF [HUSBAND'S] NON-MARITAL PROPERTY BY THE DECREASE IN [HUSBAND'S] NOTES PAYABLE.

(H) WHETHER THE TRIAL COURT SPECIFICALLY ERRED IN FINDING THAT THE CREDIT CARD DEBT CLAIMED BY WIFE WAS MARITAL.

2. WHETHER THE TRIAL COURT ERRED IN FAILING TO RECUSE ITSELF FROM THE CASE, IT BEING THE POLICY OF THE INDIVIDUAL COURT MEMBER TO RECUSE IN ANY CASE INVOLVING A MEMBER OF THE SMALL SCHUYLKILL COUNTY BAR AND THE TRIAL COURT'S PROFESSIONAL AND POLITICAL ANIMOSITY TOWARDS [HUSBAND].

3. WHETHER THE TRIAL COURT ERRED IN ITS APPLICATION OF *RES JUDICATA* AS TO THE VALUE OF...HUSBAND'S PRE-MARITAL PROPERTY.

(Husband's Brief at 7-8).

In his first and third issues combined, Husband claims a number of his non-marital assets decreased in value over the course of the marriage. These assets include Husband's real estate partnership interest, law practice, Schuylkill Credit Union account, U.S. savings bonds, stocks, deferred compensation accounts, note payable, and the Residence. With respect to the Residence, Husband argues the trial court should have accepted the result of a certified appraisal conducted at the time nearest to the date of the master's hearing on remand. Husband asserts the trial court should have offset the aggregate diminution in value of all of these assets against any increase in value of Husband's other non-marital property. According to Husband, this offset would result in a net decrease that would substantially reduce any distribution to Wife. Husband concludes the court erred by failing to perform this offset and by incorporating the increase in value of certain of Husband's non-marital assets into the equitable distribution order. We disagree.

We review equitable distribution matters as follows:

Our standard of review in assessing the propriety of a marital property distribution is whether the trial court abused its discretion by a misapplication of the law or failure to follow proper legal procedure. An abuse of discretion is not found lightly, but only upon a showing of clear and convincing evidence. When reviewing an award

of equitable distribution, we measure the circumstances of the case against the objective of effectuating economic justice between the parties and achieving a just determination of their property rights.

Smith v. Smith, 904 A.2d 15, 18 (Pa.Super. 2006) (internal citations and quotation marks omitted). “[A] master’s report and recommendation, although only advisory, is to be given the fullest consideration, particularly on the question of credibility of witnesses, because the master has the opportunity to observe and assess the behavior and demeanor of the parties.” **Childress v. Bogosian**, 12 A.3d 448, 455-56 (Pa.Super. 2011) (quoting **Moran v. Moran**, 839 A.2d 1091, 1095 (Pa.Super. 2003)). “[T]he trial court can accept all, some or none of the submitted testimony in determining the value of marital property.” **Isralsky v. Isralsky**, 824 A.2d 1178, 1185 (Pa.Super. 2003).

The Divorce Code defines “marital property” as follows:

§ 3501. Definitions

(a) General Rule.—As used in this chapter, “marital property” means all property acquired by either party during the marriage and the increase in value of any nonmarital property acquired pursuant to paragraphs (1) and (3) as measured and determined under subsection (a.1). However, marital property does not include:

- (1) Property acquired prior to marriage or property acquired in exchange for property acquired prior to the marriage.

* * *

(a.1) Measuring and determining the increase in value of nonmarital property.—The increase in value of

any nonmarital property acquired pursuant to subsection (a)(1) and (3) shall be measured from the date of marriage or later acquisition date to either the date of final separation or the date as close to the hearing on equitable distribution as possible, whichever date results in a lesser increase. Any decrease in value of the nonmarital property of a party shall be offset against any increase in value of the nonmarital property of that party. However, a decrease in value of the nonmarital property of a party shall not be offset against any increase in value of the nonmarital property of the other party or against any other marital property subject to equitable division.

23 Pa.C.S.A. § 3501(a); (a.1). When a court endeavors to divide marital property equitably, it must take into consideration the factors delineated in Section 3502(a) of the Divorce Code. ***Drake v. Drake***, 555 Pa. 481, 725 A.2d 717 (1999); 23 Pa.C.S.A. § 3502(a) (stating factors which are relevant to equitable division of marital property include: length of marriage; any prior marriage of either party; age, health, station, amount and sources of income, vocational skills, employability, estate, liabilities and needs of each party; contribution by one party to education, training or increased earning power of other party; opportunity for each party for future acquisitions of capital assets and income; sources of income of both parties, including, but not limited to, medical, retirement, insurance or other benefits; contribution or dissipation of each party in acquisition, preservation, depreciation or appreciation of marital property, including contribution of party as homemaker; value of property set apart to each party; standard of living parties established during marriage; economic circumstances of each party

at time division of property is to become effective; and whether party will be serving as custodian of any dependent minor children).

The weight to be given to these statutory factors depends on the facts of each case and is within the court's discretion. We will not reweigh them. We look at the distribution as a whole, in light of a trial court's overall application of the factors.... In addition we note...the trial court has the authority to divide the award as the equities presented in the particular case may require.

Busse v. Busse, 921 A.2d 1248, 1260 (Pa.Super. 2007), *appeal denied*, 594 Pa. 693, 934 A.2d 1275 (2007) (internal citations and quotation marks omitted).

Additionally, "[w]here a case is remanded for a specific and limited purpose, 'issues not encompassed within the remand order' may not be decided on remand." **Ridley Park United Methodist Church v. Zoning Hearing Bd. Ridley Park Borough**, 920 A.2d 953, 961 (Pa.Cmwlt. 2007) (citing **In re Independent School District Consisting of the Borough of Wheatland**, 912 A.2d 903, 908 (Pa.Cmwlt. 2006)).

Instantly, the master made the following findings with respect to the changes in value of Husband's non-marital property:

[Husband's] Exhibit 1 accurately reflects the proceeds that were received by [Husband] for the sale of 502 West Market Street, 611 West Market Street and 620 West Market Street. Further, in the Master's opinion, [Husband] correctly calculated the marital portion. For 502 West Market Street [Husband] received proceeds of \$4,691.40. The property was purchased in 1999 and sold in 2003 only one year into the marriage. As such, he correctly calculated that the increase during the marriage was \$586.42.

For 611 West Market Street, that property was purchased in 1996 and sold in 2004. [Husband] calculated that two of the eight year increase in value would be marital. [Husband] received \$7,283.00 and as such, the increase during the marriage was \$1,820.75.

For 620 West Market Street, that property was purchased in 1994 and sold in 2003. [Husband] received \$22,693.51. The marital portion (representing one year of marriage), was \$2,521.50 for a total increase in these three properties of \$4,928.67.¹ However, [Husband] also presented evidence that another non-marital asset, namely, the [Residence] at 1947 Mahantongo Street has declined in value from \$225,000.00 at the time of marriage to \$140,000.00 as of the date of the hearing. There is clear direction from the Superior Court that all of the "non-marital" assets were to be valued, including [Husband's] home. Further, the Divorce Act is clear that it is to be valued as close to the date of separation or a hearing on equitable distribution, whichever results in a lesser increase. In light of the remand from the Superior Court, the Master will consider the hearing on equitable distribution as effective April 24, 2013, and as such, accepts the decrease in v[a]lue of 1947 Mahantongo Street of \$85,000.00. This decrease more than offsets the increase for the other parcels of real estate.

¹ [Husband] also calculated on [Husband's] Exhibit 1 that all of these assets had a negative value because they were sold during the course of the marriage. [Husband] testified that he did not "pocket" the money and it actually went back into the partnership which decreased in value. However, his position that...selling these assets equals to an automatic decrease in the overall value of the partnership is not persuasive for purposes of equitable distribution.

In addition, this decrease would also serve to offset the increase in another non-marital asset which did increase in value, namely, [Husband's] county pension. That pension existed prior to marriage and increased \$30,000.00 during the course of the marriage. The decrease in the value of the home would also offset that.

* * *

Mr. Fred Boote was called as an expert on behalf of [Husband]. However, Mr. Boote's report is to be given little weight. Mr. Boote testified that he simply regurgitated figures that were provided to him by [Husband]. Mr. Boote was involved as the accountant for Ace Beer Distributors, Inc. and so he testified with some personal knowledge about that particular asset. However, beyond his personal knowledge of Ace Beer Distributors, Mr. Boote was simply repeating information that had been provided to him by [Husband].

(Supplemental Master's Report, filed May 6, 2013, at 4-6). With respect to Wife's claim that the master erred in accepting Husband's new appraisal of the Residence on remand, the trial court stated:

[Wife] asserts that the Superior Court noted in its October 3, 2011 Opinion that the Master found the [Residence] to have a date of marriage value of \$225,000 as well as a separation value of \$225,000. With this finding, the Superior Court concluded, in affirming the trial court's decision, that [W]ife is entitled to a share of \$20,000 of equity. [Wife] further asserts that [Husband] argued that there was **no** increase in value of the [Residence] from the date of marriage to the date of separation; that [Husband] **never** took the position that the [Residence] decreased in value. We agree.

The purpose of the remand was to address the unresolved factual issues. It is clear from the Superior Court's Opinion that the inventory showed four properties in addition to the [R]esidence and that three of the four properties were sold during the marriage. However, the inventory failed to contain any information as to the sale price or monies received by Husband at settlement. The Superior Court remanded the matter to determine the value of each of the properties listed in Husband's inventory as of the time of sale[,] calculate the correct total as to the increase and decrease in the value of certain (not all) of Husband's non-marital assets and apply them to Section 3501(a.1). We,

therefore, find that the Master erred in considering evidence pertaining to the value of the [Residence]. We find the value of this property had previously been determined and it is binding on the parties.

(Trial Court Opinion, filed August 20, 2013, at 3-4) (emphasis in original).

We accept the court's analysis. In this Court's prior decision, filed October 3, 2011, this Court affirmed the trial court's award to Wife of one-half of the \$20,000 increase in equity of the Residence and remanded for a determination of the changes in value of Husband's other non-marital property. ***See Shields, supra***. This Court specifically stated the trial court must address "unresolved factual issues" concerning the value of the real properties Husband sold during the marriage. The Residence was not among the properties at issue on remand. Moreover, Husband did not challenge the finding that the Residence had a time-of-separation value of \$225,000 at any point prior to the remand. Viewed in its proper context, this Court's remand directed the trial court to determine the values of only those non-marital assets of Husband which were not previously assigned values. Therefore, the trial court properly complied with this Court's instructions and excluded Husband's new challenge to the value of the Residence. ***See id.; Ridley Park United Methodist Church, supra***.

As to Husband's other non-marital assets, the court stated:

[W]e find that the Master did not fail to properly apply 23 Pa.C.S.A. § 3501(a.1) by failing to offset the decrease in value of the non-marital property as set forth in [Husband's] Exhibit 1 and the report of the C.P.A., Fred J. Boote. The Master explained that he did not find Mr. Boote

credible and therefore his report was given little weight. We find the Master's rejection of this testimony reasonable since he found Mr. Boote was simply repeating information given to him by [Husband].

(Trial Court Opinion, filed August 20, 2013, at 5-6). We agree. Husband's evidence of the reduction in value of various pre-marital possessions consisted mainly of his own self-serving testimony and asset inventory. To the extent Husband provided supporting documentation, the documents did not show the actual value of the corresponding assets at both the time of marriage and the time of separation or sale of the asset during the marriage. For example, some of Husband's tax returns report profits from his former law practice. Nevertheless, the certified record is devoid of evidence of the value of the law practice at the time of marriage, aside from the testimony of Husband and his accountant, Mr. Boote, who simply reported information he obtained from Husband. The record similarly lacks documentation showing the relevant changes in value of Husband's other enumerated assets. The trial court was free to reject the testimony of Husband and Mr. Boote concerning the alleged reduction in value of these assets. **See *Isralsky, supra***. The master accepted Husband's evidence, including settlement sheets, of the increase in value of Husband's other real estate investments. The record supports the master's calculations of the increase in value of these properties from the time of marriage to the times of sale. Although Husband asserts he held these properties in a partnership that decreased in value during the marriage, the only record evidence in support

of that assertion is Husband's testimony and the report and testimony of Mr. Boote, which the trial court was not obligated to accept. Likewise, Husband failed to present any competent supporting evidence, other than his own testimony, that cash proceeds from the sales of any of these assets went toward marital household expenses. In light of the foregoing, we see no reason to disturb the court's equitable distribution order on the grounds alleged.¹ ***See Childress, supra; Smith, supra; Isralsky, supra.***

In sub-issue 1(h), Husband claims Wife's credit card debt was not marital. Husband asserts Wife failed to present any evidence of her credit card expenditures during the marriage. Husband concludes the trial court abused its discretion by finding the existence of a marital credit card debt.

Here, the trial court stated:

[Husband's] [e]xception as to the claim the credit card debt was not marital is not at issue on remand. The purpose of the remand was to determine the amount of **marital** credit card debt as of the parties' separation in February, 2006. It appears that [Wife] provided this information to the best of her ability. At the hearing on April 24, 2013, [Wife] submitted a summary of the credit card balances as of February, 2006. The Master

¹ We note that the court's award to Wife of \$1,260.75, representing one-half of the increase in value of Husband's interest in real estate sold during the marriage, is inconsistent with the master's calculation that Husband's interest increased by \$4,928.67. One-half of 4,928.67 is 2,464.34. The court does not explain how it arrived at a different number. Nevertheless, the court's lower figure actually inures to the benefit of Husband, who is the only party appealing the court's order. Therefore, the unexplained inconsistency of this portion of the award with the master's report does not provide separate grounds for reversal.

determined that the credit card debt at the time of the marriage was \$28,000. At the time of separation it increased to \$30,717.48. Therefore, the marital credit card debt increased by \$2,717.48. [Husband] is responsible for one-half (1/2) of that amount. [Husband] argues that the charges included a trip to Key West and if deducted would result in a decrease in credit card debt. [Wife] testified credibly and it was previously determined that some of the credit card debt was incurred for household expenses during the marriage. [Husband's] argument is not supported by credible evidence.

(Trial Court Opinion, filed August 20, 2013, at 6) (emphasis in original). We agree. This Court, in its prior decision, affirmed the trial court's initial finding that Wife's credit card debt was marital and remanded only for the trial court to determine the amount of the debt as of the correct date of separation. **See *Shields, supra***. Accordingly, the issue of whether the credit card debt was "marital" was not properly before the court on remand; and we cannot consider that aspect of it on appeal. **See *Ridley Park United Methodist Church, supra***.

In his second issue, Husband contends the trial court harbored "political and professional animosity" toward Husband. (Husband's Brief at 23). Husband previously served as the Schuylkill County District Attorney. He alleges the trial judge was previously a member of the same law firm as the Chief Public Defender. Husband further asserts he vigorously supported two assistant district attorneys appointed by Husband in their judicial campaigns against the judge and another attorney at the judge's former firm. Husband also alleges that as a criminal defense attorney, "Husband

has filed a number of Superior Court appeals alleging error by the Trial Court, The Honorable Charles Miller.” (Husband’s Brief at 22). Husband claims the judge has recused himself in all previous cases involving members of the Schuylkill County Bar. Husband concludes Judge Miller erred by failing to recuse himself from the present case. We cannot agree.

If a party questions the impartiality of a judge, the appropriate recourse is a motion for recusal. **Commonwealth v. Druce**, 577 Pa. 581, 588-89, 848 A.2d 104, 108 (2004). Additionally:

The proper practice on a plea of prejudice is to address an application by petition to the judge before whom the proceedings are being tried. He may determine the question in the first instance, and ordinarily his disposition of it will not be disturbed unless there is an abuse of discretion.

Due consideration should be given by him to the fact that the administration of justice should be beyond the appearance of unfairness. ... If the judge feels that he can hear and dispose of the case fairly and without prejudice, his decision will be final unless there is an abuse of discretion.

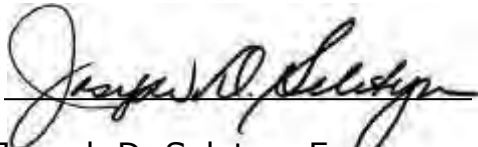
Reilly by Reilly v. Southeastern Pennsylvania Transp. Authority, 507 Pa. 204, 220-21, 489 A.2d 1291, 1299 (1985) (citing **In re Crawford’s Estate**, 307 Pa. 102, 160 A. 585 (1932)). Further, a “party seeking recusal or disqualification [is required] to raise the objection at the earliest possible moment, or that party will suffer the consequence of being time barred.” **In re Lokuta**, 608 Pa. 223, 241, 11 A.3d 427, 437 (2011), *cert. denied*, ___ U.S. ___, 132 S. Ct. 242, 181 L.Ed.2d 138 (2011). “This Court presumes

judges of this Commonwealth are 'honorable, fair and competent,' and when confronted with a recusal demand, have the ability to determine whether they can rule impartially and without prejudice." **Druce, supra** at 589, 848 A.2d at 108 (citing **Commonwealth v. White**, 557 Pa. 408, 426, 734 A.2d 374, 384 (1999)).

In the instant case, Husband failed to raise the issue of the trial judge's alleged impartiality or bias at any time during the underlying prior proceedings. Husband further failed to file a motion for recusal, failed to raise the issue at the earliest possible opportunity, and provided no reason for not raising the issue sooner than this appeal. Husband's failure to do so constitutes waiver of his recusal issue. **See In re Lokuta, supra**. Based upon the foregoing, we affirm.

Order affirmed.

Judgment Entered.

A handwritten signature in black ink, appearing to read "Joseph D. Seletyn", written over a horizontal line.

Joseph D. Seletyn, Esq.
Prothonotary

Date: 7/3/2014