

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

JEFFREY J. DICKSON

Appellant

v.

LINDA D. DICKSON

Appellee

IN THE SUPERIOR COURT
OF PENNSYLVANIA

No. 1878 MDA 2017

Appeal from the Order Entered November 6, 2017
In the Court of Common Pleas of Mifflin County
Civil Division at No.: CP-44-CV-987-2014

BEFORE: STABILE, MURRAY, and MUSMANNO, JJ.

MEMORANDUM BY STABILE, J.:

FILED OCTOBER 10, 2018

Appellant Jeffery J. Dickson ("Husband") appeals from the November 6, 2017 order of the Court of Common Pleas of Mifflin County ("trial court"), which directed him to pay his wife Linda D. Dickson ("Wife") monthly alimony of \$1,786.43 for a minimum of five years. Upon review, we affirm.

The facts and procedural history of this case are undisputed¹ Briefly, Husband filed a complaint in divorce under 23 Pa.C.S.A. § 3301(c) or (d) on July 28, 2014 seeking equitable distribution of marital property. On January 29, 2015, Wife filed a "Petition for Related Claims," requesting equitable distribution of marital property, alimony, alimony *pendente lite*, counsel fees,

¹ Unless otherwise noted, these facts are taken from the Trial Court Opinion, 11/8/17, at 1-8.

costs and expenses. Eventually, the trial court conducted hearings on the issue of equitable distribution, following which the court ordered Husband to pay Wife \$320,265.65 from his Pennsylvania State Employees Retirement.² Trial Court Order, 11/6/17. The trial court also directed "Husband shall [] pay monthly alimony to Wife in the amount of \$1,786.43, for a minimum of five years (60 months) or when Husband retires from the Department of Corrections, whichever is later." **Id.** Husband timely appealed to this Court. The trial court directed Husband to file a Pa.R.A.P. 1925(b) statement of errors complained of on appeal. Husband complied, raising four assertions of error. In response, the trial court issued a Pa.R.A.P. 1925(a) opinion, wherein it adopted its November 6, 2017 opinion.

On appeal,³ Husband presents a single issue for our review:

[I.] Did the trial court abuse its discretion and/or commit an error of law in awarding alimony to Wife "for a minimum of five years (60 months) or when Husband retires from the Department of

² The trial court divided the marital assets 55/45 in Wife's favor.

³ It is settled that:

[o]ur standard of review regarding questions pertaining to the award of alimony is whether the trial court abused its discretion. 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, 857 A.2d 194, 200 (Pa. Super. 2004) (internal citations and quotations omitted; emphasis in original).

Corrections, whichever is later” by failing to properly take into consideration the portion of Husband’s [PSERS] plan awarded to Wife and the income disparity that would result if Husband retired within the five year period following the divorce?

Husband’s Brief at 4.

Husband’s issue can be divided into two arguments. First, Husband challenges the five-year minimum duration of the alimony award. Second, Husband argues that the trial court’s award of alimony would prevent him from retiring prior to the expiration of the minimum five-year period set forth in the November 6, 2017 order, because he would be unable to pay Wife \$1,786.43 in alimony upon retirement.

We first address the challenge to the duration of the alimony award. As stated, we review alimony awards for abuse of discretion. ***Middleton v. Middleton***, 812 A.2d 1241, 1247 (Pa. Super. 2002). The alimony statute in the Divorce Code provides: “Where a divorce decree has been entered, the court may allow alimony, as it deems reasonable, to either party only if it finds that alimony is necessary.” 23 Pa.C.S.A. § 3701(a). The alimony statute lists seventeen factors that the court must consider in “determining whether alimony is necessary and in determining the nature, amount, duration and manner of payment of alimony.” 23 Pa.C.S.A. § 3701(b). Specifically, Section 3701(b) provides:

- (1) The relative earnings and earning capacities of the parties.
- (2) The ages and the physical, mental and emotional conditions of the parties.
- (3) The sources of income of both parties, including, but not limited to, medical, retirement, insurance or other benefits.

- (4) The expectancies and inheritances of the 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.
- (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.
- (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.
- (10) The relative assets and liabilities of the parties.
- (11) The property brought to the marriage by either party.
- (12) The contribution of a spouse as homemaker.
- (13) The relative needs of the parties.
- (14) The marital misconduct of either of the parties during the marriage. The marital misconduct of either of the parties from the date of final separation shall not be considered by the court in its determinations relative to alimony, except that the court shall consider the abuse of one party by the other party. As used in this paragraph, "abuse" shall have the meaning given to it under section 6102 (relating to definitions).
- (15) The Federal, State and local tax ramifications of the alimony award.
- (16) Whether the party seeking alimony lacks sufficient property, including, but not limited to, property distributed under Chapter 35 (relating to property rights), to provide for the party's reasonable needs.
- (17) Whether the party seeking alimony is incapable of self-support through appropriate employment.

23 Pa.C.S.A. § 3701(b). Moreover, Section 3701(c) of the Divorce Code provides that the trial court "in ordering alimony shall determine the duration

of the order, which may be for a definite or an indefinite period of time which is reasonable under the circumstances.” 23 Pa.C.S.A. § 3701(c).

Instantly, Husband does not challenge any particular Section 3701(b) factors underlying the alimony award. Rather, he simply argues that the trial court abused its discretion in imposing an award of alimony for a minimum period of five years. The trial court here, however, considered the Section 3701(b) factors in explaining its award for alimony, and in so doing, the trial court stated:

[A]n award of alimony is appropriate in this case. The [trial court] does not believe that Husband would be placed in a position of financial hardship if he were ordered to pay monthly alimony based on his current employment situation. While the health of both parties is poor, Wife has retired and is limited economically. She will turn 65 this November. Her only source of income, if alimony were denied, would be her Social Security in the amount of \$885. Furthermore, Husband has intentionally made his employment status unclear to this [c]ourt. Husband testified that his standard of living has decreased since separation, however, Husband has continued to vacation and is able to share living expenses with his girlfriend. Wife also testified that her standard of living has decreased since separation. Wife testified that she can barely afford her bills and that if she did not have a reserve of money in her bank account, she would not be able to meet her financial obligations.

Fault is also a consideration of the [c]ourt in this matter. Testimony provided that for six months prior to separation, there were a series of phone calls and texts from Husband’s phone to two particular numbers. The phone calls were to Husband’s current girlfriend Raquel Woods, with whom he currently resides. Husband’s testimony that he had no knowledge of the number he called and texted over 200 times over the course of five months is incredible. Wife’s request for alimony is granted in the amount of \$1,786.43.

Wife shall receive an award of alimony every month for a minimum of five years (60) months or when Husband retires from the Department of corrections, whichever is later. By way of example, if Husband retires in seven (7) years, Husband will owe Wife alimony for seven (7) years. If Husband retires in fifteen (15) years, he will owe Wife alimony for fifteen (15) years. On the other hand, if Husband retires in a year, he will still owe her

four (4) additional years of alimony. The [trial court] believes this is equitable, as Wife cannot realize any money from Husband's retirement until he retires.

Trial Court Opinion, 11/6/17, at 9-10. Given the foregoing explanation based on the trial court's thorough consideration of the Section 3701(b) factors, we cannot conclude that the court abused its discretion in ordering Husband to pay alimony to Wife for a minimum period of five years. Accordingly, the duration of the alimony award is reasonable under the circumstances of this case.

We next address Husband's contention that the trial court's order effectively prevents him from retiring within five years of the date of the order at issue, because he would be unable to pay Wife \$1,786.43 in alimony upon retirement. In other words, Husband asks us to entertain a hypothetical contingency that may or may not arise when he decides to retire at some point in the future.⁴ Husband does not challenge the award of alimony as it stands currently. **See** Husband's Brief at 15 ("Husband does not take issue with the alimony award insofar as it requires him to pay alimony until he retires from the Department of Corrections, the trial court's directive that Husband must pay alimony even if he retires from the Department of Corrections is manifestly unreasonable.").

As the trial court and Wife correctly point out, if "Husband were to retire at some time in the future, and his income would not justify the current

⁴ It is beyond dispute that Husband currently works for the Pennsylvania Department of Corrections. Trial Court Opinion, 1/3/18.

amount in alimony, he is free to seek relief.” Wife’s Brief at 6; **see** Trial Court Opinion, 1/3/18 (“[A]n original award of alimony need not take into account all contingencies that may befall the parties, because the [trial court] has the continuing power to modify its award as circumstances require.”). Section 3701(e) of the Divorce Code provides that a party may petition the trial court for, *inter alia*, modification or termination of an alimony award based upon changed circumstances of a substantial and continuing nature. **See** 23 Pa.C.S.A. § 3701(e) (alimony is modifiable upon a change in circumstances). Based on the foregoing, we conclude that Husband is not entitled to relief. Accordingly, we affirm the trial court’s November 6, 2017 order.

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: 10/10/2018