

[J-32-2003]
IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT

NANCY B. MAHER,	:	No. 185 MAP 2002
	:	
Appellee	:	Appeal from the Order of the Superior
	:	Court, entered August 29, 2001, at No.
v.	:	344 EDA 2001, vacating and remanding
	:	the Order of the Court of Common Pleas
	:	of Northampton County, entered
	:	December 7, 2000, at No. DR-183797
JOSEPH P. MAHER,	:	
	:	
Appellant	:	SUBMITTED: April 10, 2003
	:	

CONCURRING AND DISSENTING OPINION

MADAME JUSTICE NEWMAN

Decided: November 20, 2003

I agree with the majority that the trial court committed an error of law when it determined that the inheritance of Appellee was income available for support. As well, I agree that, given the facts of this case, the trial court erred by including in Appellant's support obligation a portion of the premium for Appellee's health insurance coverage. However, I write separately to respectfully note my disagreement with the position of the majority, which states that a trial court may never require an individual to provide health care coverage for a former spouse.

Authority for such an award may be found in Section 3323(f) of the Divorce Code, 23 Pa.C.S. § 3323(f), which provides:

Equity power and jurisdiction of the court. In all matrimonial causes, the court shall have full equity power and jurisdiction and may issue injunctions or other orders which are necessary to protect the interests of the parties or to effectuate the purpose of this part and may grant such other

relief or remedy as equity and justice require against either party or against any third person over whom the court has jurisdiction and who is involved or concerned with the disposition of the cause.

It is my belief that the equity powers provided in Section 3323(f) are broad enough to allow a trial court to order one ex-spouse to provide health insurance coverage for the other when justice so requires. For example, in a situation where an ex-spouse suffers from a serious illness, a trial court may determine that it is appropriate for the other spouse to continue to provide health insurance. Depending on the severity of the illness, it may be that health insurance is of greater importance to the ill spouse than is the receipt of alimony. Accordingly, I would rely upon the sound discretion of our trial courts to direct payment of health insurance based upon individual circumstances.¹

Mr. Justice Nigro joins this concurring and dissenting opinion.

¹ I recognize that Section 3503 of the Divorce Code, 23 Pa.C.S. § 3503, provides for termination of property rights that “are dependent upon the marital relation” when the court grants a divorce decree. However, because a spouse does not have a property right in the other spouse’s ability to obtain health insurance coverage, Section 3503 does not apply in this matter.