

IN THE COURT OF COMMON PLEAS OF CARBON COUNTY, PENNSYLVANIA

CIVIL ACTION - LAW

SUSAN GREENFIELD,	:	
Plaintiff	:	
	:	
vs.	:	No. 07-3600
	:	
JAMES C. GREENFIELD,	:	
Defendant	:	
	:	
Allen I. Tullar, Esquire		Counsel for Plaintiff
Barry C. Shabbick, Esquire		Counsel for Defendant

Nanovic, P.J. - August 31, 2011

MEMORANDUM OPINION

Susan Greenfield, ("Wife") and James C. Greenfield ("Husband") married on June 16, 1990 and, in or about October 2007, separated. Why, is not important. Their differences are irreconcilable and each has established new relationships.<sup>1</sup> In dispute is the equitable distribution of property and Wife's claim for alimony.

PROCEDURAL AND FACTUAL BACKGROUND

Husband is a primary care physician. He is forty-five years old and in good health. Wife is a registered nurse. She is forty-four years old and also in good health.

Husband graduated from the Philadelphia College of Osteopathic Medicine the year following the parties' marriage.

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<sup>1</sup> Both parties have executed affidavits of consent and are in agreement to the entry of a no-fault divorce pursuant to Section 3301(c) of the Divorce Code, 23 Pa.C.S.A. §3301(c).

He completed his residency in Philadelphia in 1994 and, that same year, began his career as a doctor in Michigan. There, through a program for medically underserved rural areas, the State of Michigan paid Husband's outstanding medical education loans of approximately \$60,000.00 to \$70,000.00.

Wife received her Bachelor of Nursing Degree in 1994. For the next eight years she was a full-time homemaker busy raising three children, the first of whom was born in 1994. The next two children were born in 1996 and in 1998. The parties' youngest child, their fourth, was born on April 2, 2007.

In July of 2002, the parties moved to Carbon County and purchased a four bedroom home. Husband had secured employment with a local hospital and was in charge of a family care center. That same year, Wife began employment, part-time, in a school cafeteria. In 2004, after taking a nursing refresher course, Wife began part-time employment as a nurse with her current employer.

Husband is currently engaged in the general practice of medicine. He receives a salary of approximately \$156,000.00 per year. Husband's employment includes health and retirement benefits. Wife is employed as a registered nurse in an OB-GYN practice. She works part-time, an average of thirty hours per week at \$22.50 per hour. Unfortunately, full-time employment is not available through Wife's current employer; nor does she

receive any health or retirement benefits. Nevertheless, because Wife is capable of full-time employment and has chosen not to seek a full-time position elsewhere, by agreement, she was assessed a net monthly income of \$1,310.00 in separate support proceedings. (Husband's Exhibit 29, Order dated July 11, 2008).<sup>2</sup>

Husband's father died on July 18, 2000. Husband was the sole beneficiary of his father's estate whose gross value was approximately a million dollars. Of this amount, \$141,436.00 was used to purchase and improve the marital home. An additional \$29,995.00 was used to purchase an adjacent unimproved lot. The home has a current fair market value of \$280,000.00 and is encumbered by a purchase money mortgage with an unpaid principal balance of \$73,383.79 and a home equity loan bearing an unpaid principal balance of \$45,500.85.

In addition to the marital home and adjacent lot, other property acquired during the marriage included retirement benefits, timeshares, and motor vehicles which are mentioned briefly below. On October 26, 2007, after seventeen years of marriage, Wife began these divorce proceedings.

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<sup>2</sup> In the support proceedings, Husband's net monthly income was set at \$7,660.06. The order awards Wife total monthly support in the amount of \$2,751.00: \$1,360.00 attributable to spousal support and \$1,391.00 for child support. Throughout most of these divorce proceedings, the parties have had a 50/50 custodial arrangement with respect to their four children. Pursuant to the support order, the amount for spousal support terminated on December 23, 2009.

Hearings before the Master were held on February 9, 2009, and August 18, 2009. An initial report was issued by the Master on March 23, 2010, to which both parties filed exceptions. On the same date as her exceptions, Wife also filed a request for reconsideration due to the Master's failure to rule on her claim for alimony. By Orders dated April 9, 2010, both parties' exceptions were denied, without prejudice, and the matter was remanded to the Master for reconsideration to address Wife's claim for alimony and its effect on equitable distribution, and with leave granted to the parties to present further testimony if deemed necessary. Neither party elected to submit additional evidence or to otherwise supplement the record with more current information.

An Amended Master's Report was filed on September 16, 2010. Therein, the Master recommended a 60/40 division of marital assets favoring Wife and denial of Wife's claim for alimony. Both parties have filed exceptions to this report which are now before us for decision.<sup>3</sup> At issue are challenges to the valuation and distribution of the marital estate and the denial of Wife's claim for alimony.

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<sup>3</sup> This having been said, we also recognize that "the court of common pleas is entitled to deviate from the recommendation of the master regardless of whether an issue was raised by the parties in exceptions." Trembach v. Trembach, 615 A.2d 33, 35 (Pa.Super. 1992).

## DISCUSSION

### Allocating Fair Rental Value, Debt Payments and Expenses Related to the Marital Residence

Following the parties' separation, Wife continued to reside in the marital residence. This was agreed to by Husband - who at first moved to a rental property and later purchased a second home with money from his father's estate - and confirmed by Court Order dated February 1, 2008, granting Wife exclusive use and possession of the marital home during the pendency of this action. Husband has not resided in the marital home since the parties' separation.

Beginning on March 1, 2008, Husband agreed to pay the amount owed on a home equity loan on the marital residence. This agreement was reached during the course of support proceedings when Wife informed Husband she was unable to afford the monthly payments. In consideration of Husband paying the home equity loan, the parties further agreed that Husband's payments would be taken into account at the time Wife's claim for equitable distribution was decided rather than to be factored in the computation of a support amount.

Husband has paid \$700.00 per month towards the home equity loan - an amount totaling \$13,300.00 since March 1, 2008, through September of 2009 (Husband's Exhibit 31) - and also paid \$6,416.20 toward the 2008 real estate taxes on the marital home

and adjacent lot. (Husband's Exhibit 32). Husband excepts to the Master's failure to give him any credit for these payments and failure to attribute a fair rental value to Wife's use of the marital home. Wife paid the monthly amounts owed on the primary mortgage - \$619.30 - and the premium for homeowners' insurance.

Wife received a guideline support order and Husband, as agreed, received no credit against his support obligation for the home equity loan payments he made. "The guidelines assume that the spouse occupying the marital residence will be solely responsible for the mortgage payments, real estate taxes, and homeowners' insurance." Pa.R.C.P. 1910.16-6(e). Under these guidelines, while "the term 'mortgage' shall include first mortgages, real estate taxes and homeowners' insurance," it does not necessarily include "any subsequent mortgages, home equity loans and any other obligations incurred during the marriage which are secured by the marital residence." *Id.*

Intertwined with Husband's request that a fair rental value be assessed for Wife's use of the marital home are Wife's payments of the principal mortgage, real estate taxes and homeowners' insurance. In deciding whether to award rental credit, the Superior Court in Trembach v. Trembach, stated:

First, the general rule is that the dispossessed party is entitled to a credit for the fair rental value of jointly held marital property against a

party in possession of that property, provided there are no equitable defenses to the credit. Second, the rental credit is based upon, and therefore limited by, the extent of the dispossessed party's interest in the property. Generally, in regard to the marital home, the parties' have an equal one-half interest in the marital property. It follows, therefore, that in cases involving the marital home that the dispossessed party will be entitled to a credit for one-half of the fair rental value of the marital home. Third, the rental value is limited to the period of time during which a party is dispossessed and the other party is in actual or constructive possession of the property. Fourth, the party in possession is entitled to a credit against the rental value for payments made to maintain the property on behalf of the dispossessed spouse. Generally, in regard to the former marital residence, payments made on behalf of the dispossessed spouse will be one-half of the expenses including debt service on the property. This is so because equity places a presumption upon the dispossessed spouse of responsibility for expenses to the extent of her/his ownership interest which is generally one-half. Finally, we note that whether the rental credit is due and the amount thereof is within the sound discretion of the court of common pleas.

615 A.2d 33, 37 (Pa.Super. 1992) (citations omitted).<sup>4</sup>

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<sup>4</sup> In Butler v. Butler, the Superior Court discussed the manner in which a credit for the fair market rental value of the marital residence should be applied. Therein, the Court stated:

The fair market rental value of the marital residence cannot be considered a marital asset subject to equitable distribution as it represents revenues that were foregone by the marital estate due to the wife's residence in the property after the parties separated. Therefore, the fair market rental value of the marital home was improperly deemed a marital asset by the trial court, thereby artificially inflating the value of the marital estate. As the wife's share of these foregone potential revenues, which would have been part of the aggregate marital estate, were consumed during her tenure in the marital home; she is not entitled to receive any portion of these foregone revenues. Accordingly, the proper methodology for granting the husband a credit for his share of the foregone fair market rental

Here, while Wife's occupancy of the marital home clearly had value, neither party ascribed a dollar figure to that value nor was that value compared to the expenses Wife assumed under the support guidelines for payment of the primary mortgage, real estate taxes and homeowners' insurance. Twilla v. Twilla, 664 A.2d 1020, 1027 (Pa.Super. 1995) (finding waiver where spouse claiming entitlement to one-half of the rental value of the marital residence presents insufficient evidence of what this value is); Gaydos v. Gaydos, 693 A.2d 1368, 1377 (Pa.Super. 1997) (upholding deductions from rental value awards for the non-possessing spouse's share of expenses related to preserving the marital residence (i.e., mortgage, insurance, taxes, maintenance)). Absent evidence to the contrary, we find payment of the household expenses assumed by the guidelines offsets any rental credit to which Husband might otherwise be entitled.

In accordance with the foregoing, because Wife was obligated under the guidelines to pay the 2008 real estate taxes paid by Husband, we believe it appropriate to give Husband full credit for this payment. We also believe it appropriate to allocate Husband's post-separation payments of the home equity loan in the same proportion as the equitable distribution award.

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value of the marital residence is to deduct his share of the foregone revenues from the wife's ultimate distribution of the marital estate. 621 A.2d 659, 668-69 (Pa.Super. 1993), *reversed on other grounds*, 663 A.2d 148, 152 n.6 (Pa. 1995).



Duff v. Duff, 507 A.2d 371 (Pa. 1986) (between divorcing parties, debts which accrue to them jointly prior to separation are marital debts subject to equitable distribution). This follows from the relative income of the parties and Husband's superior financial position to make payments from which both parties benefit.

Accounting for the Pre-Separation Use of Non-Marital Assets to Purchase and Improve Marital Assets, and to Pay Marital Debt

Husband's next set of exceptions centers on the reasons for and their effect on equitable distribution of using non-marital assets - namely Husband's inheritance - to purchase property titled in both names and in paying marital debt prior to the parties' separation. Specifically, Husband argues that the lot adjacent to the marital home was purchased by him for investment purposes with money from his father's estate with the intent of maintaining this investment as an asset of the estate. According to Husband, it was titled in both parties' names on the advice of his attorney in order to shield it from creditors in the event of personal liability attaching from his professional practice. Husband also claims that he used money from his father's estate to help purchase and improve the marital home, and to pay outstanding amounts owed on the purchase of and annual maintenance for two timeshares owned by him and his wife.

The adjacent lot was purchased in 2003 for \$29,995.00 with money Husband received from his father's estate and was titled in his and his wife's name. In doing so, Husband converted a non-marital asset to a marital asset. Brown v. Brown, 507 A.2d 1223 (Pa.Super. 1986) (property acquired prior to marriage that is transferred into property in joint names during marriage becomes marital property unless contrary intent is shown, according to Sutliff, *infra*, by a preponderance of the evidence). That Husband did this to shield the property from future creditors is of no moment. Husband cannot have it both ways. He cannot say that for purposes of divorce the property was his alone because he intended it so, yet for purposes of execution it is owned by the entirety and therefore exempt from execution on a judgment entered solely against him. Sutliff v. Sutliff, 543 A.2d 534, 539 n.1 (Pa. 1988).

The same reasoning applies to Husband's use of non-marital assets to purchase and improve the marital home, and to pay down debt incurred in the financing of the two timeshares. As to both, the effect was to transform a non-marital asset into a marital one.<sup>5</sup> Nevertheless, the use of non-marital assets to

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<sup>5</sup> Both timeshares were acquired prior to separation and are therefore marital property. Teodorski v. Teodorski, 857 A.2d 194, 197 (Pa.Super. 2004) ("Only property acquired 'prior to the date of final separation' is marital property and therefore subject to equitable distribution. 23 Pa.C.S.A. §§3501-02."). In Butler v. Butler, the Court further stated:

Our courts distinguish the date for identifying marital property from the date by which to place a value on marital assets for equitable

acquire, improve and preserve marital assets is relevant to the equitable distribution of marital property. 23 Pa.C.S.A. §3502(a)(7).

We do agree, however, that the most recent date of valuation of the adjacent lot - January 29, 2009 (Wife's Exhibit 4) - is more appropriate to use for the valuation date than its purchase price in 2003 for \$29,995.00. Sutliff, 543 A.2d at 536 ("It is implicit. . . in the statutory provisions governing equitable distribution that a valuation date reasonably proximate to the date of distribution must, in the usual case, be utilized."). Moreover, the only evidence presented of the current value of this property was that presented by Wife's real estate expert. See Gaydos, 693 A.2d at 1377 (observing that although a factfinder need not accept the uncontradicted opinion of a valuation expert, if he does not do so, the factfinder should offer some explanation of the basis on which he sets value where that value varies from the only value given in

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distribution. See Adelstein v. Adelstein, 381 Pa.Super. 221, 553 A.2d 436 (1989); Sergi v. Sergi, 351 Pa.Super. 588, 506 A.2d 928, 930-31 (1986). The Divorce Code mandates [that] our courts examine the parties' property as of the date of final separation in order to identify which assets are marital property. See 23 Pa.C.S.A. § 3501. In the same vein, this Court has stated that the "[e]xistence and nature of marital property are determined as of the date of separation." Adelstein, supra, 381 Pa.Super. at 225, 553 A.2d at 438. Although marital property is identified at the date of separation, the value of the property is determined at the date of distribution. Adelstein, supra; Sutliff v. Sutliff, 518 Pa. 378, 543 A.2d 534 (1988).

621 A.2d at 664.

evidence). Accordingly, in making equitable distribution we value this property at \$48,500.00.

Propriety of a 40/60 Division of Marital Assets

Husband's final exception, to which Wife has also excepted, concerns the percentage division of marital assets by the Master between Husband and Wife. Section 3502(a) of the Divorce Code sets forth thirteen factors to be considered when making a decree of equitable distribution. 23 Pa.C.S.A. §3502(a). This list is non-exclusive. Nor is there any defined mathematic weight assigned each factor. Ultimately, the test is one of economic fairness between the parties. Smith v. Smith, 653 A.2d 1259, 1264 (Pa.Super. 1995). Moreover, in distributing marital assets, the Court has "the authority to divide the award as the equities presented in the particular case may require." Teodoraski v. Teodoraski, 857 A.2d 194, 199 (Pa.Super. 2004) (quoting Anzalone v. Anzalone, 885 A.2d 773, 785 (Pa.Super. 2003)).

Here, as analyzed by the Master, many of the factors are outcome neutral, neither benefitting nor harming either party.<sup>6</sup> What stands out are the relative incomes and earning

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<sup>6</sup> In addition to Husband's pre-marital debt already discussed, at the time of marriage Wife owed approximately \$20,000.00 in school loans. This debt was paid during the marriage by monies both parties earned. In addition, Wife began a graduate women's health nurse practitioner program at the University of Pennsylvania in 2004 which she attended one day a week for two semesters. Wife claims that the cost of this program was paid through two loans she obtained, one, a PHEAA loan co-signed by Husband. The other, Wife claims,

capacities of both, the extent of Husband's use of non-marital assets to benefit marital assets, and the substantial inheritance of Husband which has retained its status as a non-marital asset.<sup>7</sup>

The total value of the marital estate is \$399,945.87.<sup>8</sup> Husband's contribution to this estate from non-marital assets - \$171,431.00 - represents approximately 43 percent of the aggregate net value of the marital estate.<sup>9</sup> That Husband has

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was paid off by her mother, for which she owes her mother \$8,700.00. Wife did not complete the program. Because the Master determined that the amount and terms of these loans were vague and not documented, they were not considered further by the Master. Wife has not excepted to this finding.

<sup>7</sup> Only the increase in value of non-marital property which occurs prior to separation is a marital asset. Litmans v. Litmans, 673 A.2d 382, 393-94 (Pa.Super. 1996). Although the Master determined that this increase in value for real estate which Husband inherited from his father was \$81,000.00, because this amount was more than offset by a \$117,000.00 loss on investment accounts which Husband also inherited, none of the change in value of this inherited property was subject to equitable distribution. See 23 Pa.C.S.A. §3501(a.1).

<sup>8</sup> Contrary to Husband's exception, the Master did not err in not assigning a value of \$15,000.00 for household furnishings and goods in his computation of the value of the marital assets. At the time of hearing, Husband readily admitted that the \$15,000.00 figure which he placed on these items was speculative and that included in this figure was the value of items owned by Wife prior to marriage. (N.T. 8/18/09, pp. 171-172). Since this was the only evidence presented on this issue, neither party sustained its burden of proving value, and this personal property, as well as that removed from the marital home by Husband, should remain as distributed by the parties. See Smith v. Smith, 653 A.2d 1259, 1267 (Pa.Super. 1995), *appeal denied*, 663 A.2d 693 (Pa. 1995) (stating if one party disagrees with the other party's valuation, it is his burden to provide the court with an alternative valuation).

<sup>9</sup> This percentage is admittedly a rough estimate since it is unlikely that some of Husband's contributions have retained their original value (e.g., household appliances purchased for \$3,899.00; the children's playset purchased for \$5,000.00; an outdoor shed purchased for \$8,000.00; and \$4,500.00 paid to pave the driveway) and also likely that some have increased in value (e.g., \$20,450.00 used as a down payment on the marital home). In addition, some of these monies spent by Husband did not accrue directly to the value of the marital estate (e.g., closing costs of \$39,587.00; the payment of a \$60,000.00 bridge loan). The \$171,431.00 figure represents \$141,436.00 paid by Husband from his inheritance estate for the purchase and

done so is a factor to be considered in his favor in dividing marital assets. Lee v. Lee, 978 A.2d 380, 384-85 (Pa.Super. 2009). On the other hand, Husband's non-marital assets - his separate inheritance - to which Wife has no claim, is significant relative to the value of marital assets: more than double this value.<sup>10</sup> Wife has no comparable separate resource from which to draw. This factor, as well as the marked disparity in the parties' incomes - Husband's net monthly income is almost six times Wife's - argues for a greater division of marital assets to Wife.

The Master recommended a 60/40 division of marital assets in favor of Wife. We believe a more equitable division is 65/35 in Wife's favor. This is the first marriage for both parties, and it is one of long duration. While it is true that Husband, who worked continuously during the parties' life together, was the primary means of financial support during the marriage, it is also true that Wife's contributions as a homemaker, spouse and mother cemented the family relationship. In their own way, these contributions to the marriage equally balance that made by Husband. What sets the parties apart is

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improvements to the marital home and \$29,995.00 for the purchase of the adjacent lot.

<sup>10</sup> The most current value of Husband's non-marital assets is \$910,540.90. This consists of real estate in Wayne County, Pennsylvania with an appraised value as of March 12, 2009 of \$463,000.00, a PNC bank account with a balance of \$77,639.39, and two Raymond James accounts with values of \$237,614.84 and \$159,286.87 respectively.

their post-divorce financial circumstances which is to Husband's decided economic advantage. This difference requires an unequal division of marital assets.

The marital assets, their values, and the division of these assets between the parties as determined in our equitable distribution order is set forth in Appendix A to this opinion.<sup>11</sup>

#### Request for Alimony

Wife claims error because the Master failed to award post-divorce alimony.<sup>12</sup> On this issue, the Master stated:

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<sup>11</sup> In anticipation that Wife will likely need to sell or refinance the marital home and adjacent lot in the near future, we also find that the Master correctly reduced the value of both properties by 3.5 percent representing the cost of sale (i.e., one-half of a six percent realtor's commission and a one percent transfer tax). See 23 Pa.C.S.A. §3502(a)(10.2). While we agree with Husband's contention that the potential tax implications to both parties are to be *considered* in the equitable division of marital assets regardless of whether the tax ramifications will be direct and immediate as a result of the divorce or equitable distribution of property, or can reasonably be predicted to occur at some future date, the precise language of Section 3502(a)(10.1) of the Divorce Code does not require that a fixed tax liability be computed and *applied* when equitably dividing the marital estate. Here, the expenses which the Master credited to Wife are relatively fixed transactional expenses, rather than, as with Husband's retirement and pension benefits, projected penalties for early withdrawal, which may or may not occur, and an income tax liability which will vary depending on factors such as Husband's gross income, tax bracket and tax rates at the time of withdrawal. Under the circumstances, we are convinced that the deductions made by the Master are fair and just. See Balicki v. Balicki, 4 A.3d 654, 663-64 (Pa.Super. 2010).

<sup>12</sup> Wife also contends that by the time of the Master's Amended Report the valuation evidence was stale and should have been supplemented with updated figures. As to this issue, although given the opportunity to present additional testimony at the time the case was remanded to the Master for reconsideration, Wife failed to do so. Nor has Wife requested an evidentiary hearing before the Court or alleged any significant change in the parties' circumstances since the master's hearing. Further, notwithstanding the inevitable fluctuation in the value of assets over time, for finality to exist, the record must close at some point in time.

In this case, approximately fifteen months elapsed between the date of the last hearing before the Master and the date Wife's exceptions to the Amended Master's Report were filed. While additional time has again passed since the filing of these exceptions, given that the market risk in owning real estate would likely affect both parties similarly (i.e., Wife with respect to the

The relative needs of [Wife] were not quantified. There was no income and expense statement filed on behalf of [Wife]; there was no itemization of living expenses that would indicate an inability to meet her needs on present income. There was no testimony as to the specific needs of [Wife]. However, the Master does note that [Wife] had expensive elective cosmetic surgery.<sup>13</sup>

Although [Husband] clearly had income in excess of [Wife's], [Wife] has an earning capacity at \$22.50 per hour that renders her capable of self support. [Wife's] direct testimony is direct and unambiguous; she was not seeking to obtain other employment or better employment but was focused on maintaining her existing employment because she enjoyed the work and the job.

Further, the Master notes that the award of equitable distribution provides a greater share of the marital estate to [Wife]. In addition to the greater share of value, the character of the assets comprising the award must be considered: [Wife's] award included assets that were easily convertible to cash. The award of the residence, the separate residential building lot are not

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marital home and adjacent lot, and Husband with respect to the real estate he inherited from his father located in Wayne County, Pennsylvania); that the current volatility in the stock market would likely decrease the value of the non-marital investment accounts Husband inherited from his father (a pre-separation loss in the value of these assets was noted by the Master in his report); that the values Wife seeks to update center on Husband's non-marital assets, to which Wife, at best, would be entitled to claim as a marital asset the increase in value prior to the date of separation - values already of record; and that the overall delay which has occurred since the most recent Master's hearing is approximately two years, rather than a more extensive period; the benefit of finality, contrasted with the minimum likelihood of any appreciable difference in the outcome, counsels against re-opening the record. Cf. McNaughton v. McNaughton, 603 A.2d 646 (Pa.Super. 1992) (finding a four-year delay between the master's hearing and the trial court's decision on equitable distribution required a remand and reevaluation); Solomon v. Solomon, 611 A.2d 686, 692-93 (Pa. 1992) (noting wife's failure to attempt to update the values of marital assets during the pendency of the matter before the trial court and that any potential benefits from revaluing marital assets would be outweighed by the benefits of concluding the matter, supported the exercise of discretion by the Superior Court in refusing to remand the case to the trial court for determination of revised valuations of marital assets).

<sup>13</sup> At the time of hearing, Wife testified to having breast augmentation surgery for which she borrowed \$10,000.00.



subject to penalty or income tax upon liquidation. [Husband's] award consisted of tax deferred assets that could only be liquidated at a tax and penalty to [Husband]. Based upon the totality of the circumstances the Master concludes that [Wife] has sufficient assets to provide for her reasonable needs and she is capable of self-support through appropriate employment.

Master's Amended Report, pp. 15-16.

An award of alimony is a secondary remedy under the Divorce Code. It is not intended as a substitute for or a supplement to equitable distribution when the division of marital assets between the parties will itself effectuate economic justice. If this does not occur, an award of alimony may be appropriate. Teodorski, 857 A.2d at 200.

In Teodorski, the Court stated:

"[T]he 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, "[a]limony 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."

857 A.2d at 200. "An award of alimony should be made to either party only if the trial court finds that it is necessary to provide the receiving spouse with sufficient income to obtain

the necessities of life." Balicki v. Balicki, 4 A.3d 654, 659 (Pa.Super. 2010).

In determining whether alimony is necessary, and in determining the nature, amount, duration and manner of payment of alimony, the court must consider numerous factors including the parties' earnings and earning capacities, income sources, mental and physical conditions, contributions to the earning power of the other, educations, standard of living during the marriage, the contribution of a spouse as homemaker and the duration of the marriage.

Teodorski, 857 A.2d at 200 (quoting Anderson v. Anderson, 822 A.2d 824, 830-31 (Pa.Super. 2003)). "Necessity is the only requirement in determining the propriety of an alimony award and that necessity is judged by numerous considerations only some of which have to do with the rehabilitation of the recipient spouse." Zullo v. Zullo, 576 A.2d 1070, 1075 n.3 (Pa.Super. 1990), *aff'd*, 613 A.2d 544 (Pa. 1992).

Here, the parties did not have an extravagant lifestyle. They have four children which itself is an expense and for which Wife receives child support of \$1,391.00 per month. While Husband makes a good living, he is not wealthy. At times the parties had difficulty making ends meet and, to some extent, the parties lived beyond their means. They were able to do so because of Husband's inheritance. Neither party, however, presented evidence of extraordinary expenses or needs.

In her brief in support of her exceptions, Wife readily admitted that her separate income supports her needs. (Wife Brief, p.9). Wife has a net monthly earning capacity of \$1,310.00 and receives \$1,391.00 monthly in child support payments. When we consider these circumstances, together with the assets Wife is to receive in equitable distribution, we conclude, as did the Master, that Wife has sufficient assets to provide for her reasonable needs and she is capable of self-support through appropriate employment.

#### CONCLUSION

Based upon the foregoing analysis we find no abuse of discretion and we accept the Master's recommendation in: (1) denying a fair rental credit to Husband for Wife's use of the marital home; (2) determining that the Husband's pre-separation use of non-marital assets from his inheritance to purchase, improve, maintain and preserve property held by the entireties was a gift to the marriage; (3) denying placing a value of \$15,000.00 on the household furnishings and goods retained by Wife and not assigning this amount to Wife for purpose of equitable distribution; (4) reducing the value of the marital home and adjacent lot by the estimated transactional expenses for the sale or refinancing of these properties; and (5) denying Wife's claim for post-divorce alimony. We further find that the

lot adjacent to the marital home should be valued at the most recent value given, that Husband is entitled to full credit for the 2008 real estate taxes paid by him on the marital home and adjacent lot, that a fairer division of martial assets and marital debt is 65/35 in Wife's favor, and that the period of delay between the Master's hearings and this decision does not warrant further hearing to revalue either marital or non-marital assets.

BY THE COURT:

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P.J.

SUMMARY OF MARITAL ESTATE AND  
SCHEME OF DISTRIBUTION ORDERED

	ASSET		VALUE FOR EQUITABLE DISTRIBUTION	ASSET DISTRIBUTION	
1	Marital Residence			WIFE	HUSBAND
		FMV	\$280,000.00		
		Mortgage*	\$ 73,382.79		
		Home Equity*	\$ 45,500.85		
		Sale Costs (3.5%)	\$ 9,800.00	\$151,316.36	
2	Vacant Lot				
		FMV	\$ 48,500.00		
		Sale Costs (3.5%)	\$ 1,697.50	\$ 46,802.50	
3	Pension (H)	Shuerer Hosp Value	\$ 72,934.84	\$ 72,934.84	\$ 72,934.84
4	Pension (H)	St. Luke's Hosp Value	\$ 32,767.00	\$ 32,767.00	\$ 32,767.00
5	NW Ins (H)		\$ 15,589.89		\$ 15,589.89
6	NW Ins (H)		\$ 7,901.50		\$ 7,901.50
7	NW Ins (H)		\$ 9,995.24		\$ 9,995.24
8	IRA (W)		\$ 15,640.27	\$ 15,640.27	
9	R. James (W)		\$ 1,725.26	\$ 1,725.26	
10	Team One C.U.		\$ 222.15		\$ 222.15
11	Phil FCU		\$ 7,383.62		
			\$ 664.92	\$ 8,048.54	\$ 8,048.54
12	PNC (H)		\$ 6,658.43		\$ 6,658.43
13	NW Ins-Amanda		\$ 1,136.69		\$ 1,136.69
14	NW Ins-Timothy		\$ 1,415.20		\$ 1,415.20
15	NW Ins-Matthew		\$ 921.00		\$ 921.00
16	2002 Chrysler Town & Country Van		\$ 2,535.00	\$ 2,535.00	
17	2002 VW Jetta		\$ 4,225.00		\$ 4,225.00
18	Disney Time Share		\$ 9,116.00	\$ 9,116.00	\$ 9,116.00
19	FantaSea Flagship Time Share		\$ 9,995.00	\$ 9,995.00	\$ 9,995.00
20	Utility Trailer		\$ 1,000.00		\$ 1,000.00
21	Healthy Solutions		\$0.00		\$0.00
22	Healthy Initiatives, Inc.		\$0.00		\$0.00
	TOTAL		\$399,945.87	\$218,019.39**	\$181,926.48

\*The unpaid principal amount on this debt shall be paid by Wife.

\*\*Husband is entitled to be reimbursed from Wife 35 percent of the payments made by him since March 1, 2008 towards the home equity loan. For the period between March 1, 2008 and September 2009, this amount totals \$4,655.00 (i.e., 35 percent of \$13,300.00). Also to be added to this amount is \$6,416.20 attributable to Husband's payment of the 2008 real estate taxes on the marital home and adjacent lot.

**APPENDIX "A"**

IN THE COURT OF COMMON PLEAS OF CARBON COUNTY, PENNSYLVANIA  
CIVIL ACTION - LAW

SUSAN GREENFIELD, :  
Plaintiff :  
vs. : No. 07-3600  
JAMES C. GREENFIELD, :  
Defendant :

Allen I. Tullar, Esquire Counsel for Plaintiff  
Barry C. Shabbick, Esquire Counsel for Defendant

DECREE

AND NOW, this 31st day of August, 2011, Susan Greenfield, Plaintiff and James C. Greenfield, Defendant are divorced from the bonds of matrimony.

The Court enters the following Order with respect to economic claims made:

a. Equitable Distribution

I. Plaintiff is awarded the following assets:

1. Residence situate at 705 Mill Run Road, Lehigh, Pennsylvania and adjacent lot, subject to the existing mortgage and home equity loan. Plaintiff shall pay said obligations as they come due and she shall indemnify and hold Defendant harmless on the account thereof, including all reasonable counsel fees incurred by Defendant resulting from the breach of this obligation by Plaintiff. Plaintiff shall obtain the release of Defendant from the mortgage and home equity loan secured by the property by refinance, release or sale of the property within 120 days from the date of this Decree.

2. Plaintiff's IRA-Raymond James #77594199

3. Plaintiff's Raymond James Account #82110173

4. 2002 Chrysler van

5. The balance due Plaintiff of \$41,945.43<sup>14</sup> shall

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<sup>14</sup> This figure represents the difference between 65 percent of the total value of marital assets for equitable distribution (i.e., \$399,945.87) and the value of those assets identified in Appendix "A" of our Memorandum Opinion of this same date to be distributed to Wife.

be offset by an amount equal to \$6,416.20 for Defendant's payment of the 2008 real estate taxes on the marital home and adjacent lot and 35 percent of those monies paid by Defendant since March 1, 2008, for the home equity loan. Defendant shall substantiate the sum(s) paid within thirty days of the date of this Decree. If the offset does not exceed the sum due Plaintiff, Defendant shall remit the sum due within ninety days of the date that Defendant tenders to Plaintiff proof of payment(s). If the offset due Defendant is in excess of the sum due to Plaintiff, then the Plaintiff shall remit to the Defendant the sum due to Defendant within ninety days of the date she receives the substantiation of claimed offset.

II. Defendant is awarded all assets identified in Appendix A of our Memorandum Opinion of this same date not specifically herein reserved to Plaintiff.

Each party shall, within ten days of the demand to do so, execute all documents necessary to implement the distribution herein ordered and/or deliver property awarded to the other party.

b. Contribution to counsel fees and costs

Plaintiff's claim for contribution to counsel fees and costs is denied.

c. Alimony

Plaintiff's claim for alimony is denied.

d. Record costs/stenographic fees

Record costs and stenographic fees are allocated as previously ordered.

BY THE COURT:

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P.J.