

Lebanon County Legal Journal

The official legal periodical for Lebanon County
containing the decisions rendered in the 52nd Judicial District

Vol. 55

Lebanon, Pennsylvania, January 10, 2018

No. 24

Public Notices

**DECEDENTS' ESTATES
FICTITIOUS NAME REGISTRATION
NOTICE OF COMPLAINT IN EQUITY**

Opinion

Laura Silsbee v. Christopher Silsbee No. 2015-20331

Published every Wednesday. Advertisements must be sent to
LCBA, 547 South 10th Street, Lebanon PA 17042
or emailed to lebcobar@verizon.net
by 11 a.m. of preceding Monday.

Lebanon County Legal Journal, per bound volume.....\$95.00
Advance Sheets, per year\$97.75
Single copy, advance sheets\$4.00

717-273-3113; www.lebanoncountylegaljournal.org

Owned and published by the Lebanon County Bar Association

**Paul W. Kilgore, Esq., Chair
Stephanie Axarlis, Esq., Editor
Jennifer Wentzel, Esq., Editor**

DECEDENTS' ESTATES

NOTICE IS HEREBY GIVEN that Letters Testamentary or of Administration have been granted in the following estates. All persons indebted to the said estate are required to make payment, and those having claims or demands to present the same without delay to the administrators or executors named.

FIRST PUBLICATION

ESTATE OF JOANNE A. HONEYCHURCH, late of Cornwall, Lebanon County, Pennsylvania, deceased. Letters Testamentary have been granted to the undersigned Executrix.

Karen L. Markey, Executrix
Ginger S. Goudie, Executrix
4 Faye Road
Middletown, PA 17057

ESTATE OF JOHN L. PEACHEY, late of the Township of Millcreek, County of Lebanon, and Commonwealth of Pennsylvania, deceased. Letters of Administration have been granted to the undersigned Administrator.

David J. Peachey, Administrator
165 Chapel Road
Newmanstown, PA 17073

Kenneth C. Sandoe, Esquire
Steiner & Sandoe, Attorneys

ESTATE OF BARBARA A. SPOTTS, late of the City of Lebanon, Lebanon County, Pennsylvania, deceased. Letters Testamentary have been granted to the undersigned Executor.

Everett McMullen, Executor
Kevin M. Richards, Esquire
P.O. Box 1140
Lebanon, PA 17042-1140

ESTATE OF GORDON JOSEPH STOLL, SR., a/k/a Gordon Joseph Stoll, late of Lebanon, Lebanon County, PA, deceased. Letters Testamentary have been granted to the undersigned Executrix.

Elaine G. Stoll, Executrix
c/o Patrick Reb, Esq.
547 South Tenth Street
Lebanon PA 17042
717-274-6620

ESTATE OF DALE G. TOBIAS, late of Bethel Township, Lebanon County, PA, deceased. Letters Testamentary have been granted to the undersigned Executor.

Fred Keeney, Executor
c/o Zimmerman Law Office
466 Jonestown Road
Jonestown PA 17038

John M. Zimmerman, Esq.
Attorney for the Estate

ESTATE OF HELENE D. WITTERS, late of the Township of North Lebanon, County of Lebanon and Commonwealth of Pennsylvania, deceased. Letters Testamentary have been granted to the undersigned Executors.

Roberta L. Paver, Executor
1131 Cedar Crest Drive
Lebanon, PA 17046

Eric S. Witters, Executor
205 W. Franklin Avenue
Myerstown, PA 17067

Kenneth C. Sandoe, Esquire
Steiner & Sandoe, Attorneys

SECOND PUBLICATION

ESTATE OF VERNA E. KEGERREIS, late of Richland Borough, Lebanon County, Pennsylvania, deceased. Letters Testamentary have been granted to the undersigned Executrix.

Nancy M. Kegerreis, Executrix
Kevin M. Richards, Esquire
P.O. Box 1140
Lebanon, PA 17042-1140

ESTATE OF JEFFREYA. KEITER, late of the County of Lebanon, PA, deceased. Letters Testamentary have been granted to the undersigned Executrix.

Mary E. Collins, Executrix
214 Lancaster Ave.
P.O. Box 418
Mt. Gretna, PA 17064

Paul W. Kilgore, Esquire
Spitler, Kilgore & Enck, PC
522 South 8th Street
Lebanon, PA 17042
Attorney

ESTATE OF CHARLES F. KERN, JR., a/k/a Charles Frank Kern, Jr., deceased, late of North Annville Township, Lebanon County, Pennsylvania. Letters Testamentary have been granted to the undersigned Executor.

Tierney Heverling, Executrix
Kevin M. Richards, Esquire
P.O. Box 1140
Lebanon, PA 17042-1140

ESTATE OF MARTIN D. MADISON, a/k/a Martin Daniel Madison, deceased, late of City of Lebanon, Lebanon County, Pennsylvania, have been granted to the undersigned Executor.

Margaret G. Beatty, Executrix
Kevin M. Richards, Esquire
P.O. Box 1140
Lebanon, PA 17042-1140

ESTATE OF EDITH M. MARTIN, late of the Township of Heidelberg, County of Lebanon and Commonwealth of Pennsylvania, deceased. Letters Testamentary have been granted to the undersigned Executors.

Elmer M. Martin, Jr.
1222 Schaeffer Road
Lebanon, PA 17042

Larry M. Martin
1010 Old Line Road
Manheim, PA 17545

Kenneth C. Sandoe, Esquire
Steiner & Sandoe, Attorneys

ESTATE OF ELEANOR B. MCDONALD, late of the County of Lebanon, PA, deceased. Letters Testamentary have been granted to the undersigned Executor.

Jeffrey S. McDonald, Executor
212 Noland Street
Falls Church, VA 22046

Paul W. Kilgore, Esquire
Spitler, Kilgore & Enck, PC
522 South 8th Street
Lebanon, PA 17042
Attorney

ESTATE OF NAOMI S. PEACE, late of the Borough of Myerstown, County of Lebanon and Commonwealth of Pennsylvania, deceased. Letters Testamentary have been granted to the undersigned Executor.

Michael J. Peace, Executor
71 Bennett Street
Bethel, PA 19507
William H. Sturm, Jr., Esquire
Steiner & Sandoe, Attorneys

ESTATE OF REBA G. SCOTT, late of Palmyra Borough, Lebanon County, Pennsylvania, deceased. Letters Testamentary have been granted to the undersigned Executor.

Jason J. Scott, Executor
Kevin M. Richards, Esquire
P.O. Box 1140
Lebanon, PA 17042-1140

ESTATE OF WILLIAM HENRY SHERMAN a/k/a William Sherman, deceased, late of Lebanon City, Lebanon County, Pennsylvania. Letters Testamentary have been granted to the undersigned Executor.

Brian L. Sherman, Executor
1528 Poplar Street
Lebanon, PA 17042

Timothy J. Huber, Esquire
Buzgon Davis Law Offices
P.O. Box 49
525 South Eighth Street
Lebanon, PA 17042

ESTATE OF ROLAND B. SMITH, SR., late of Jackson Township, Lebanon County, PA, deceased. Letters Testamentary in the above estate having been granted to the undersigned, all persons indebted to the estate are requested to make payment, and those having claims to present the same, without delay, to:

Roland B. Smith, Jr., Co-Executor
911 Rose Street
Reading, PA 19601

Kenneth W. Smith, Co-Executor
112 Hickory Lane
Leesport, PA 19533

or to the attorney:

William R. Blumer, Esquire
Leisawitz Heller Abramowitch Phillips,
P.C.
2755 Century Boulevard
Wyomissing, PA 19610

ESTATE OF ROBERT L. YORDY, late of Swatara Township, Lebanon County, Pennsylvania, deceased. Letters of Administration have been granted to the undersigned Executrixes.

Arlene J. Boltz and
Susan K. Boltz, Executrixes
c/o Jon F. Arnold, Esquire
410 Chestnut Street
Lebanon, PA 17042

THIRD PUBLICATION

ESTATE OF SUZANNE D. BOYER, late of the City of Lebanon, Lebanon County, PA. Letters Testamentary have been granted to the undersigned Executor.

Jeffrey M. Boyer, Executor
c/o Reilly Wolfson Law Office
1601 Cornwall Road
Lebanon, PA 17042

FICTITIOUS NAME REGISTRATION

NOTICE IS HEREBY GIVEN, pursuant to the provisions of Section 311 of Act 1982-295 (54 Pa. C.S. 311) and its amendments, that on December 14, 2017, Rick L. and Monica L. Clay, 801 Holly Lane, Lebanon, PA 17042 filed in the Office of the Secretary of the Commonwealth of Pennsylvania, at Harrisburg, Pennsylvania, an application for the conduct of a business in Lebanon County, Pennsylvania, under the assumed or fictitious name of RMRR Properties with its principal place of business at 203 Walnut Street (P.O. Box 88), Lebanon, PA 17042.

Frederick S. Wolfson, Esquire
Reilly Wolfson
1601 Cornwall Road
Lebanon, PA 17042

NOTICE IS HEREBY GIVEN, pursuant to the provisions of Section 311 of the Act of 1982-295 (54 Pa.C.S. 311) and its amendments, of the filing in the Office of the Secretary of the Commonwealth at Harrisburg, Pennsylvania, on January 2, 2018, of the fictitious name registration of Lebanon Valley Logistics.

The name and address of the entity owning or interested in said business is: Lebanon Valley Cold Storage and Distribution Center, LLC, 10673 S Lee Hwy, McDonald, TN 37353.

The name, style or designation under which said business is being or will be conducted is: Lebanon Valley Logistics.

The location of its principal place of business is: 2750 Hanford Drive, Lebanon, PA 17046.

The character of the business to be carried on or conducted is: Non-Hazardous Goods Transportation.

NOTICE OF COMPLAINT IN EQUITY

IN THE COURT OF COMMON PLEAS OF LEBANON COUNTY, PENNSYLVANIA
CIVIL ACTION – EQUITY; No. 2017-01386

TOWNSHIP OF NORTH ANNVILLE,
Plaintiff

v.

ELIAS SOLUTIONS, LLC; DEBORAH M. SHIFFLETT; KATHY ROGERS and RANDY ROGERS;
MATTHEW D. HIEMSTRA and JACQUELYN A. HIEMSTRA; TODD M. LIPPI; PATRICIA BAZEOS and PANAGIOTIS BAZEOS; and ZACHARY R. ALGER, Defendants

TAKE NOTICE, that Township of North Annville (“Plaintiff”), has filed a Complaint in Equity against Elias Solutions, LLC; Deborah M. Shifflett; Kathy Rogers and Randy Rogers; Matthew D. Hiemstra and Jacquelyn A. Hiemstra; Todd M. Lippi; Patricia Bazeos and Panagiotis Bazeos, and Zachary R. Alger (“Defendants”). Plaintiff seeks to enforce North Annville Township Ordinance No. 2-2012, which requires land owners to have their on-lot disposal systems (“OLDS”) pumped every three years and pay a thirty-dollar (\$30.00) fee each time the OLDS is pumped. Defendants failed to comply with the Ordinance after multiple notices and requests to do so. Plaintiff requests that the Court Order Defendants to have their OLDS’ pumped or order Defendants to allow Plaintiff

license to enter Defendants' properties to pump the OLDS' at Defendants' expense, and to pay reasonable attorney's fees and costs.

NOTICE TO DEFEND

TO: DEBORAH M. SHIFFLETT
and
PATRICIA BAZEOS and PANAGIOTIS
BAZEOS

You have been sued in court. If you wish to defend against the claims set forth in the complaint, you must take action within twenty (20) days of this publication, by entering a written appearance personally, or by attorney, and filing in writing with the Court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so, the case may proceed without you, and a judgment may be entered against you by the Court without further notice of any money

claimed in the Complaint or for any other claim or relief requested by the Plaintiff. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER, GO TO OR TELEPHONE THE OFFICE STATED BELOW. THIS OFFICE CAN PROVIDE YOU WITH INFORMATION ABOUT HIRING A LAWYER. IF YOU CANNOT AFFORD TO HIRE A LAWYER, THIS OFFICE MAY BE ABLE TO PROVIDE YOU WITH INFORMATION ABOUT AGENCIES THAT MAY OFFER LEGAL SERVICES TO ELIGIBLE PERSONS AT A REDUCED FEE OR NO FEE.

MIDPENN LEGAL SERVICES
513 Chestnut Street
Lebanon, Pa 17042
Telephone: (717) 274-2834

LAURA F. SILSBEE V. CHRISTOPHER J. SILSBEE NO. 2015-20331

Civil Action-Family Law-Divorce-Equitable Distribution-Post Secondary Educational Expenses-Agreement for Support-Nonmarital Property-Counsel Fees-Pets

The parties filed Exceptions to the Order of Court adopting the Report and Recommendation of the Special Master in Divorce. Defendant Christopher J. Silsbee (“Husband”) asserted that the Special Master erred or abused her discretion by directing him to pay post secondary educational expenses for the parties’ adult daughter, awarding Plaintiff Laura F. Silsbee (“Wife”) sixty percent (60%) and Husband forty percent (40%) of the marital estate, finding the value of vehicles purchased during the marriage and used by the parties’ adult daughters to be nonmarital property, directing Husband to pay a portion of Wife’s counsel fees and awarding wife possession of the parties’ dogs.

1. In reviewing a master’s report, the court must give fullest consideration to the credibility findings of the master, who was present to observe the demeanor of the witnesses and to hear their testimony.
2. However, a master’s report is advisory, and the court is not bound by its conclusions.
3. The court has broad discretion in fashioning an award of equitable distribution, and the court need not distribute assets equally among the parties. The court must 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.
4. There is no legal duty in Pennsylvania for a parent to provide post-secondary educational support to a child.
5. A party contractually may assume a duty to support his or her child’s post-secondary education.
6. Where only an oral agreement exists in the absence of written evidence, the court must interpret the oral agreement with reference to the circumstances under which the parties contracted and the objects to be accomplished. The court must look to the surrounding circumstances and the course of dealing of the parties to ascertain the intention of the parties.
7. The Special Master committed no error of law or abuse of discretion in directing Husband to pay post secondary educational expenses of the parties’ daughter when the record established that the parties had an oral agreement prior to separation to pay post second educational expenses of their daughter, the parties’ paid for the post secondary

LAURA F. SILSBEE V. CHRISTOPHER J. SILSBEE NO. 2015-20331

educational expenses of their older daughter and Husband testified that he provided support to their daughter following the parties' separation.

8. The Special Master's distribution of forty percent (40%) of the marital estate to Husband was supported by the great disparity in comparative earning capacities and benefits of the parties with Husband having extensive experience in his chosen field and Wife having minimal skills and work experience, the use of Wife's inheritance from her parents to acquire the land for the marital residence and to construct the marital residence with a modest mortgage and Wife's contribution to the marriage serving as a homemaker.

9. Title 23 Pa.C.S. § 3501(a)(2) provides that martial property does not include property excluded by valid agreement of the parties entered into before, during or after the marriage.

10. The Special Master appropriately excluded the value of vehicles from the marital estate where representations in a letter to Wife's counsel from Husband's counsel indicated that Husband accepted Wife's offer that vehicles used by the parties' adult daughters be excluded from the marital estate.

11. Counsel fees are awarded only upon a showing of actual need.

12. The purpose of an award of counsel fees in a divorce action is to enable the dependent spouse to maintain the action without being placed at a financial disadvantage.

13. A party to an action may be awarded counsel fees when another party engages in dilatory, obdurate or vexatious conduct during the pendency of the matter.

14. In light of the fact that Husband retained and dismissed several attorneys during the proceedings, responded in a delayed manner to requests for information requested as part of the proceedings and exhibited a difficult attitude and demeanor at the hearing as observed by the Special Master, the Special Master committed no error of law or abuse of discretion by directing Husband to pay a portion of Wife's counsel fees.

15. Since Wife was the primary caretaker of the parties' dogs during the marriage, took the dogs to veterinarian appointments and registered the dogs' documentation, the Special Master committed no error of law or abuse of discretion by granting Wife possession of the dogs.

L.C.C.C.P. No. 2015-20331, Opinion by Samuel A. Kline, Judge, May 30, 2017.

LAURA F. SILSBEE V. CHRISTOPHER J. SILSBEE NO. 2015-20331

**IN THE COURT OF COMMON PLEAS OF LEBANON COUNTY,
PENNSYLVANIA**

CIVIL DIVISION No. 2015-20331

LAURA F. SILSBEE, Plaintiff,

v.

CHRISTOPHER J. SILSBEE, Defendant

ORDER

AND NOW, to wit, this 30th day of May, 2017, upon a careful consideration of the Special Master's Report, the parties' exceptions thereto, the parties' briefs and the relevant transcripts, Defendant's exceptions are hereby **DENIED** in part and **GRANTED** in part, Plaintiff's Counter-Exceptions are **GRANTED** and the recommendations of the Special Master are **AFFIRMED** to the extent of and consistent with the attached Opinion. The Court further orders the following:

- a) The parties are divorced from the bonds of matrimony pursuant to § 3301(c) of the Divorce Code.
- b) The credit owed by the Defendant to the Plaintiff shall be reduced by an amount of \$117.05.
- c) Defendant shall distribute to Plaintiff an amount of \$37,542.94 representing the amount liquidated from accounts and set aside as separate and shall be in addition to the distribution of the marital assets.
- d) The personal property of the parties' children shall be specifically reserved and the Defendant shall provide access for the children to retrieve their respective property as needed.
- e) The parties' shall agree upon a date and time whereupon a constable, the cost of whom shall be divided between the parties, shall be present at the marital home, and at which time and place the parties shall provide for the orderly transfer of all personal property as set forth in the Special Master's Report, including the firearms specified in the attached Opinion.
- f) The parties must provide each other with a list of the personal property being claimed

LAURA F. SILSBEE V. CHRISTOPHER J. SILSBEE NO. 2015-20331

according to the Special Master's Report thirty (30) days prior to the date and time of transfer.

g) Any disputed items shall first be resolved through examination of the Special Master's Report. Thereafter, any disputed property will be sold and the proceeds divided according to the Special Master's recommendations.

h) All jointly owned photographs shall be provided to the Plaintiff by the Defendant within thirty (30) days of this Order and the Plaintiff is allowed one hundred eighty (180) days within which to copy or scan such photographs and return to the Defendant.

i) The Plaintiff may retain any and all photographs that exclusively contain members of Plaintiff's family that are not blood relatives of the Defendant.

The conditions of this Order, including those provisions and recommendations set forth in the Special Master's Report as affirmed herein, shall be effected within thirty (30) days of the date of this Order unless otherwise specified.

BY THE COURT:

SAMUEL A. KLINE, J.

APPEARANCES:

MICHAEL S. BECHTOLD, ESQ.

JOHN J. FERRY, JR., ESQ.

OPINION, KLINE, J., MAY 25, 2017

Before the Court is Defendant's Exceptions and the Plaintiff's Counter-Exceptions to the Special Master's Report.

FACTS AND PROCEDURAL HISTORY

Plaintiff, Wife, and Defendant, Husband, were married on June 6, 1991 and separated on April 14, 2015. This was the second marriage for Plaintiff and the first marriage for Defendant. During the marriage, the parties had two children together—both of whom were adults at the time of the separation. Plaintiff filed a Complaint in Divorce under Section 3301(c) of the Divorce Code on April 24, 2015 with this Court. Subsequently, Plaintiff

LAURA F. SILSBEE V. CHRISTOPHER J. SILSBEE NO. 2015-20331

filed a Petition raising claims pursuant to the Divorce Code, which included equitable distribution, alimony pendent lite, counsel fees, cost and expenses and permanent alimony on September 25, 2015.

A Special Master's hearing was held on November 17, 2015 regarding alimony pendant lite ("APL") with the Special Master's Report on APL filed with the Court on December 16, 2015. Upon no exceptions being filed to the report and Interim Order issued on December 17, 2015, the Order became Final. A Special Master's hearing was thereafter held on March 10, 2016 and March 31, 2016 and the Special Master issued a report and recommendations on October 19, 2016.

At the time of the Special Master's hearing, Plaintiff was 51 and employed full-time at Hollywood Casino as a cage cashier, with seasonal work through Pine Valley Foods and some part-time work cleaning houses. Plaintiff is a high school graduate with very limited online post-secondary study. During the marriage and by agreement between the parties, Plaintiff stayed home as primary caretaker of the children. When the children started school, Plaintiff began intermittent part-time work. Plaintiff is currently paid an hourly rate of \$11.54 plus shared tips through Hollywood Casino and receives approximately \$250.00 per month from her cleaning jobs. Plaintiff also earns roughly \$1,300.00 in commission from Pine Valley Foods. The Special Master concluded that Plaintiff's annual income was \$33,487.32. Per the APL Order, Plaintiff was receiving \$921.20 per month from the Defendant. Upon retirement, Plaintiff is expected to receive \$839.00 per month in Social Security benefits.

Defendant was 53 at the time of the Special Master's hearing and was employed by Lugalia Mechanical, Inc. Defendant had worked as a pipefitter for thirty years, mostly through Local Union 520. Defendant receives benefits through the union, including health and welfare and a pension totaling \$22.57 per hour. Defendant's gross income for 2015 was \$61,243.00; however, late in the year, he was laid off. The Special Master found that Defendant's monthly gross income for 2016, according to documentation provided through July of that year, was \$3,059.51, equating to \$36,714.12 annually. In the years 2007 through 2014, Defendant earned between \$50,938.00 and \$86,327.00 per year. At retirement, Defendant is eligible for a monthly Social Security benefit in the amount of \$2,165.00.

The Special Master's report was thorough and provided clear and complete analysis of the factors affecting equitable distribution upon the facts and circumstances of this matter. The major asset of the marriage is the marital home, which was assessed for tax purposes

LAURA F. SILSBEE V. CHRISTOPHER J. SILSBEE NO. 2015-20331

at \$357,164.00.¹ The Special Master took into consideration the parties' valuation and accepted Plaintiff's appraisal value received of \$362,000.00. The mortgage payoff amount on September 2, 2016 was \$11,547.48; therefore, the Special Master determined the net value of the marital home at \$350,452.52. With the marital home, personal property, bank accounts, pensions, annuities, guns, vehicles and other items included, the Special Master found that the value of all marital assets was \$1,063,463.77. The Special Master also found that Defendant had \$980,023.01 of the marital assets in his possession while Plaintiff possessed \$83,440.76 of the marital assets. After careful and through review of the relevant factors set forth in Section 3502(a) of the Divorce Code, the Special Master recommended that the division of marital property be 60% in favor of Plaintiff and 40% to Defendant with adjustments for credits.²

Defendant filed timely exceptions to the Special Master's Report and Recommendations consisting of the nineteen exceptions. Plaintiff timely filed Counter-Exceptions to the Special Master's Report on January 23, 2017 consisting of five exceptions. This matter is thus before this Court for consideration.

DISCUSSION

In reviewing a master's report, we must give fullest consideration to the credibility findings of the master, who was present to observe the demeanor of witnesses and hear their testimony. *Schuback v. Schuback*, 603 A.2d 194, 196 (Pa.Super. 1992). A master's report should not be lightly disregarded. *Pasternak v. Pasternak*, 204 A.2d 290, 291 (Pa.Super. 1964). However, a master's report is only advisory, and we are not bound by its conclusions. *Id.* Essentially, we must consider all the evidence *de novo*. *Id.*

Distribution Scheme

In fashioning an award in equitable distribution, the trial court has broad discretion and need not distribute assets equally among the parties. *Dalrymple v. Kilishek*, 920 A.2d 1275, 1280 (Pa.Super. 2007). The Court must "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." *Schenk v. Schenk*, 880 A.2d 633, 639 (Pa.Super. 2005) (citation omitted).

¹ Plaintiff's appraiser valued the home at \$362,000.00. Defendant valued the home at \$304,000.00, but provided no documentation to support this valuation

² Special Master awarded \$638,078.26 to Plaintiff and \$425,385.51 to Defendant.

Equitable distribution is governed by Section 3502 of the Divorce Code; 23 Pa. C.S. §3502, which requires that marital property be divided between divorcing spouses “without regard to marital misconduct in such percentages and in such a manner as the court deems just after considering all relevant factors.” 23 Pa. C.S. § 3502. The relevant factors used in determining equitable distribution of marital property are the following as set forth by the Legislature:

- (1) The length of the marriage.
- (2) Any prior marriage of either party.
- (3) The age, health, station, amount and sources of income, vocational skills, employability, estate, liabilities and needs of each of the parties.
- (4) The contribution by one party to the education, training or increased earning power of the other party.
- (5) The opportunity of each party for future acquisitions of capital assets and income.
- (6) The sources of income of both parties, including, but not limited to, medical, retirement, insurance or other benefits.
- (7) The contribution or dissipation of each party in the acquisition, preservation, depreciation or appreciation of the marital property, including the contribution of a party as homemaker.
- (8) The value of the property set apart to each party.
- (9) The standard of living of the parties established during the marriage.
- (10) The economic circumstances of each party at the time the division of property is to become effective.
 - (10.1) The Federal, State and local tax ramifications associated with each asset to be divided, distributed or assigned, which ramifications need not be immediate and certain.
 - (10.2) The expense of sale, transfer or liquidation associated with a particular asset, which expense need not be immediate and certain.
- (11) Whether the party will be serving as the custodian of any dependent minor children.

23 Pa. C.S. § 3502(a).

We note that in determining equitable distribution, the Superior Court has set forth that:

[T]here is no simple formula by which to divide marital property. The method of distribution derives from the facts of the individual case. The list of factors [in the Code] serves as a guideline for consideration, although the list is neither exhaustive nor specific as to the weight to be given the various factors. Thus, the court has flexibility of method and concomitantly assumes responsibility in rendering its decisions.

Isralsky v. Isralsky, 824 A.2d 1178, 1191 (Pa.Super. 2003) (quoting *Fonzi v. Fonzi*, 633 A.2d 634 (Pa.Super. 1988)). Furthermore,

[w]eight is to be accorded the various factors as the court finds appropriate and the property to be distributed in such proportions as the court deems just. The court is not restricted by needing to overcome a presumption in favor of equal distribution. It is free to award the property in any proportion justifiable by its application of the relevant factors.

Morschhauser v. Morschhauser, 516 A.2d 10, 16 (Pa.Super. 1986).

Defendant's Exceptions

In briefing his exceptions, Defendant consolidated some of the exceptions according to similarity or as best addressed by a review of the economic distribution factors. This Court will likewise address Defendant's exceptions in the same manner.

A. The Special Master erred and/or abused his discretion by ordering Defendant to pay post secondary expenses for the parties' adult daughter.

Defendant correctly argues in his brief that under Pennsylvania law there is no legal duty for a parent to provide post-secondary educational support to a child. *Blue v. Blue*, 616 A.2d 628 (Pa. 1992). The Pennsylvania Supreme Court's ruling was based, in part, on the fact that our General Assembly, though active in domestic matters, has not promulgated such an obligation onto the parents of our Commonwealth. *Id.* at 632. Our Supreme Court likewise struck down 23 Pa.C.S. § 4327(a) (Act 62 of 1993), which had been enacted in response to the *Blue* decision, as unconstitutional in *Curtis v. Kline*, 666 A.2d 265 (Pa. 1995).³

³ The Supreme Court found that Act 62 of 1993 classified the children of separated, divorced or unmarried parents differently from those of intact families and that the Act selectively empowered those classified from non-intact families to compel help from unwilling parents through the authority of the Commonwealth.

LAURA F. SILSBEE V. CHRISTOPHER J. SILSBEE NO. 2015-20331

Defendant further acknowledges in his brief that our courts have recognized that “[i]t is well established that a party may contractually assume a duty to support his or her child’s post-secondary education.” *Reif v. Reif*, 626 A.2d 169, 173 (Pa.Super. 1993). However, Defendant argues that there has never been a written agreement under which the parties consented to provide for the parties’ younger daughter, Mikayla’s post-secondary educational expenses and asserts accurately that no written agreement had been entered in to evidence. Furthermore, Defendant argues that no details regarding the terms or provisions of any agreement have been provided. Defendant instead characterizes Plaintiff’s current payments for Mikayla’s education as a voluntary gift and an improper expenditure for purposes of equitable distribution.

Plaintiff argues in her brief that an oral agreement existed between the parties by which both parties would contribute to the post-secondary expenses of Mikayla. Plaintiff further asserts that the parties discussed paying for Mikayla’s education during the marriage and that the course of dealing between the parties, specifically in that the parties paid for the educational expenses of their elder daughter during the marriage, would provide support to the fact that such an oral agreement exists and must be enforced.

Where only an oral agreement exists, in the absence of any written evidence, we must interpret the oral agreement “with reference to the circumstances under which the parties contract and in the light of the objects to be accomplished” *McCormack v. Jermyn*, 40 A.2d 477, 480 (Pa. 1945) (citation omitted). The Court “must look to the surrounding circumstances and the course of dealing between the parties to ascertain the intention of the parties.” *Westinghouse Elec. Co. v. Murphy, Inc.*, 228 A.2d 656, 659 (Pa. 1967).

Our Superior Court addressed an issue that was comparable, but distinguished from the instant matter in *Mackay v. Mackay*, 984 A.2d 529 (Pa.Super. 2009). In *Mackay*, the Mother was the primary provider for the household, while the Father stayed at home as the primary caregiver. At several times during the marriage, the parties had conversations during which it was set forth that the Father would have to return to work and the Mother continue to work so that the parties could pool their resources in order to afford any contribution to the children’s educational expenses. The Mother asserted that the parties had agreed to contribute the children’s college expenses and that such was an enforceable agreement obliging the Father to contribute after the marriage had dissolved. However, the trial court found, and the Superior Court upheld, that the discussions were merely an ongoing conversation between the parties about pooling income in order to afford both living expenses and saving for college. The Superior Court found that “these expressions

LAURA F. SILSBEE V. CHRISTOPHER J. SILSBEE NO. 2015-20331

of the couple's intentions regarding household finances do not constitute a binding oral contract." *Id.* at 536.

The matter *sub judice*, however, is distinguishable in some key factors. Plaintiff testified that the parties had decided to help the children out with their expenses for school. The parties paid for their eldest daughter, Samantha's education at the University of Pittsburgh. Defendant testified that he continued to provide support in the way of books, rent and other expenses to Samantha even after the separation. Defendant further testified that he had already undertaken to begin paying for Makayla's education while she was briefly attending Shippensburg University.

The Special Master found that an agreement prior to separation to pay for Mikayla's education did exist and recommended to the Court that the Plaintiff was entitled to a continuing credit of half of Mikayla's education expenses until graduation. Based on the parties' testimony and the attendant circumstances, we find that the Special Master could surmise that the parties did enter into an oral agreement by which they would jointly provide for their daughters' education expenses. Therefore, we uphold the Special Master's recommendations and deny Defendant's Exception "A."

B. The Special Master erred and/or abused his discretion by ordering Defendant to pay \$325,000.00 to Plaintiff, an amount that essentially gives all the equity in the marital home to Plaintiff, leaving Defendant with no home and no liquid non-taxable assets he can use to purchase a home.

C. The Special Master erred and/or abused his discretion by giving an inappropriately high amount of weight to findings regarding inheritances received by the parties during the marriage.

D. The Special Master erred and/or abused his discretion by awarding marital property on a 60% - 40% basis.

E. The Special Master erred and/or abused his discretion by assigning an income potential to Defendant that far exceeds his recent actual earnings.

Defendant argues that the Special Master has erred in the above exceptions through erroneous determinations under the factors related to achieving a just division of property. Therefore, we review the Special Master's consideration of the Section 3502(a) factors.

(1) The length of the marriage.

LAURA F. SILSBEE V. CHRISTOPHER J. SILSBEE NO. 2015-20331

The parties were married for nearly twenty-four years. Defendant does not dispute the weight given this factor and we agree with the Special Master that this factor is neutral.

(2) Prior marriage of Either Party.

The Special Master found that this marriage was the first for Defendant and the second for Plaintiff. However, given the longevity of the marriage between the parties, the Special Master did not consider this factor.

Defendant states that Plaintiff's previous marriage produced a child and that Defendant provided support for this child throughout the marriage. Thus, Defendant asserts that this factor would favor Defendant.

We first remark that this Court believes support of a stepchild, during marriage to that child's parent, is an inappropriate consideration under this factor. If Defendant chose to support the Plaintiff's child from her first marriage, then such is a gratuitous role that Defendant assumed as part of the relationship with Plaintiff. We believe that in choosing to commit to a marriage, where there has been no effort to hide or deceive, both parties find each other as they are, and any role assumed, whether rising to the level of *in loco parentis* or not, is assumed with full knowledge and assent.

Notwithstanding the above, our examination of the record found no mention, either in Defendant's or Plaintiff's testimony, or in the evidence presented, that Defendant provided substantial support for Plaintiff's child from her first marriage. In fact, the record only mentions Plaintiff's daughter from her first marriage briefly in Plaintiff's own testimony.

We agree with the Special Master's recommendation that this factor does not weigh in either party's favor.

(3) The age, health, station, amount and sources of income, vocational skills, employability, estate, liabilities, and needs of each of the parties.

Defendant argues in his exceptions that this factor should have been regarded as neutral. In support of this assertion, Defendant points to Plaintiff's full-time employment, several entrepreneurial pursuits and makes unfounded allegations that Plaintiff is receiving support from her supposed paramour.

Defendant was 52 and the Plaintiff was 50 at the time of the hearing. Both parties are in relatively good health and both graduated from high school. Defendant received formal training through an apprenticeship and periodic training and certification throughout his

LAURA F. SILSBEE V. CHRISTOPHER J. SILSBEE NO. 2015-20331

30-year career as a pipefitter. Plaintiff received some brief formal schooling through an online college, but did not graduate and testified that she did not receive college credit for the courses taken.

The only marital liability that exists, according to our reading of the record, is the mortgage on the marital property, which as of the date of the Special Master's Report, the payoff amount was \$11,547.48. The Special Master deducted the payoff amount for the mortgage from the value of the property.

The Special Master found that there was great disparity in the comparative earning capacity of the two parties. Defendant has extensive experience in his chosen field and, despite having been partially laid off, still earned significantly more than Plaintiff. Meanwhile, Plaintiff has minimal skills and her current position is the first full-time job that Plaintiff has had since the marriage. Plaintiff's several "entrepreneurial pursuits" yield an income of about \$358.00 per month.

Furthermore, despite Defendant's repeated attempts to suggest that the Plaintiff is romantically involved with her landlord, and that the landlord supports the Plaintiff in some way, the record reflects a different interpretation. Additionally, this allegation might somehow be relevant in reference to alimony, but in terms of the equitable distribution of marital property⁴, aside from the entanglement of property with a paramour, such an allegation is not given consideration.⁵

We therefore agree with the Special Master, according to our review of the record, that this factor favors Plaintiff.

(4) Contribution of one party to the education, training or increased earning power of the other party.

The Special Master found that neither party contributed to the education, training or increased earning power of the other party.

Defendant has asserted that because Plaintiff returned to school to pursue a college

⁴ See Smith v. Smith, 900 A.2d 15 (Pa.Super. 2006)(where the Court found that Husband's and paramour's trucking businesses were separate entities for valuation purposes.)

⁵ This Court notes that we could find no decision from which to yield foundation for the claim of the Defendant that alleged support from a paramour could be considered in regards to equitable distribution. In Stackhouse v. Zaretsky, 900 A.2d 383 (Pa.Super. 2006), the Superior Court found that the Wife held a position within her paramour's company, but failed to mention any weight given to this fact other than the employability of the parties.

LAURA F. SILSBEE V. CHRISTOPHER J. SILSBEE NO. 2015-20331

education, she may carry those credits toward seeking a degree in the future, and thus, this factor favors Defendant.

We disagree with both the Special Master and Defendant on this factor. Plaintiff testified that she attended an online university for about a year, but that she didn't finish enough for college credit. We do not have enough detail of Plaintiff's course of studies or attainment to determine whether it is true, but we are aware that whether college credit can be applied to a new program or a different educational institution is not certain.

Defendant testified that he spent five years in the pipefitter apprenticeship program after high school, which would likely predate the marriage. Defendant further noted that he has attended additional formal training in pipefitting and in other HVAC-related areas during the course of the marriage. Plaintiff testified that Defendant would attend training and gain certification in order to increase his value to current and future employers.

Given the testimony provided, we find that this factor skews slightly in favor of Plaintiff. While each party contributed to the educational opportunities of the other, Defendant certainly increased his earning capacity through the additional schooling, training and certification he attained during the marriage, while Plaintiff is unlikely to utilize the minimal schooling received.

(5) The opportunity of each party for future acquisitions of capital assets and income.

The Special Master found that this factor weighed significantly in favor of Plaintiff as Defendant's greater earning capacity would allow for the future acquisition of capital assets.

Defendant alleges that this factor weighs, at best, slightly in favor of the Plaintiff. Defendant cites to Plaintiff's younger age and his own under- or unemployment of the past year as key to this assessment.

It is noted that the disparity in age between Plaintiff and Defendant is about two years, which is hardly significant enough of a difference to effect consequential change on the future potential of capital asset and income acquisition.

We agree with the Special Master and adopt his recommendation that based on the parties' significant gap in earning capability, Defendant, despite his current situation, is better situated to take advantage of any opportunity for future acquisition of capital assets and income.

LAURA F. SILSBEE V. CHRISTOPHER J. SILSBEE NO. 2015-20331

(6) The sources of income of both parties, including, but not limited to, medical, retirement, insurance and other benefits.

The Special Master considered the disparity in earning capacity between the parties already discussed, along with the benefits afforded each party. Defendant has benefits including health insurance, an annuity and a pension that are provided through the union. Meanwhile, Plaintiff has no such benefits provided to her. In fact, Plaintiff will need to obtain medical insurance at a cost to her.

Defendant argues that this factor should weigh neutral, again putting forward the unfounded argument that Plaintiff receives the benefit of sharing living expenses with someone. Plaintiff testified as to her living expenses during the Special Master's Hearing and the record demonstrates that the determinations of the Special Master reflect that testimony.

While the Special Master merely discussed this factor without a conclusion, we find that this factor weighs heavily toward Plaintiff.

(7) The contribution or dissipation of each party in the acquisition, preservation, depreciation or appreciation of the marital property, including the contribution of a party as a homemaker.

The Special Master gave great weight to this factor. The record indicates that Plaintiff received significant inheritances from her parents, which were then used to acquire the land below and fund the construction of the marital residence, which allowed the parties to own and occupy with a modest mortgage compared to the value of the home. Plaintiff's inheritances were further used to improve on the marital property and to afford modest luxuries to the family during the marriage.

Defendant contends that his income was used to provide for the bulk of the family's living expenses, as well as for the acquisition of much of the marital property. Thus, he asserts that he contributed the bulk of the income and Plaintiff contributed the bulk of the assets.

We agree that Defendant's income provided for the living expenses of the household during the marriage. However, it is also noted that the Plaintiff contributed significantly to the marriage as a homemaker. She testified that throughout the childhood years of the children, the Plaintiff took on several different part-time jobs, but that she devoted much time to child-rearing. As such, we agree with the Special Master that this factor weighs heavily in favor of the Plaintiff.

(8) The value of the property set apart to each party.

The Special Master notes that both parties will have significant property as a result of the equitable distribution.

Defendant argues that, despite the Special Master's findings, the Plaintiff will receive a windfall payout as a result of the recommendations.

We disagree with the reasoning of the Special Master and Defendant. Our Supreme Court stated that the factors set forth in the Divorce Code focus on the present needs of the parties and that each should be considered in the context of the circumstances at the time the division of property is to become effective. *Sutliff v. Sutliff*, 543 A.2d 534, 536 (Pa. 1988). Our reading of this indicates that the value of the property set apart for each party should include those items of non-marital property assigned. *Id.* Taking this into account, we look to the value of the property set apart to each party as non-marital.

The Special Master's Report provides a list of the non-marital property assigned to each party. Plaintiff's non-marital property includes the skid loader, a Gibson freezer and some carnival glass to Plaintiff. Defendant has a pre-marital portion of his annuity, two guns and personal property belonging to his mother's estate. The skid loader was assessed at a value of \$6,000.00 and the Gibson freezer and antique carnival glass was valued at \$175.00 together. The value of the two non-marital guns is \$325.00 and Defendant's annuity portion is valued at \$4,629.14. Defendant's property inherited from his mother is valued at \$810.00. The difference between the two parties' retained property is *de minimus* and we distinguish no clear advantage to either Plaintiff or Defendant as a result. We therefore find that this factor does not favor either party.

(9) The standard of living of the parties established during the marriage.

The Special Master found that the parties enjoyed a middle class standard of living. In substance, we find that no disagreement exists as to this factor.

(10) The economic circumstances of each party at the time the division of property is to become effective.

While the Special Master did not specifically address this factor apart from the subsections, Defendant argues in conjecture about possible effects of the equitable distribution. However, he states that this factor does not favor either party and we agree.

(10.1) The Federal, State and local tax ramifications associated with each asset to

LAURA F. SILSBEE V. CHRISTOPHER J. SILSBEE NO. 2015-20331

be divided, distributed or assigned, which ramifications need not be immediate and certain; and (10.2) The expense of sale, transfer, or liquidation associated with a particular asset, which expense need not be immediate and certain.

The Special Master determined that there was no testimony regarding these two factor subsections from which to draw a conclusion affecting the equitable distribution in this matter. Defendant acknowledges that this factor, and the subsections thereto, do not particularly favor either party; however, Defendant expresses that the tax implications should be considered in valuing the assets. Specifically, Defendant notes that if the sale of the marital home is necessary, then a commission is likely to attach and tax implications would be realized from such a sale. Defendant then asserts that if he decides to keep the home, then he will incur costs of refinancing, including obtaining a mortgage.

In his report, the Special Master specifically addressed the contingent sale of the marital home. As part of his analysis and recommendations, the Special Master noted that “[a]fter the sale, the parties are to make an adjustment as to the total marital assets and the amount each [is] to receive on a sixty percent (60%) – forty percent (40%) division of the marital assets.” (Spec. Mstr.’s Rept. 38).

We are not persuaded that Defendant would incur undue costs in either situation — whether selling the home or attempting to refinance to remain in possession of the property. The expenses related to the sale of the marital home are not *required* to be used to calculate the equity in the home. See *Fuhr v. Fuhr*, 4 Pa.D.&C. 5th 372, 383 (C.P. Monroe, January 24, 2008). As stated above, the Special Master specifically afforded an adjustment as to values in conjunction with the sale of the home, and the costs associated with such sale. As to Defendant’s costs in refinancing, this would be a personal consideration that may affect his decision, but not one that should produce any effect upon the equitable distribution. Defendant provided no testimony that he was in the process of obtaining a mortgage, nor did he express interest in purchasing the house during the hearing. In just the same way, either party would incur such costs in moving forward to procure habitation, and to allow for such costs of one party to burden upon the value of the divided assets of both, would not serve to effectuate economic justice.

(11) Whether the parties will be serving as a custodian of any dependent children.

The parties’ children are adults and therefore, this factor is not considered.

Evaluation of Equitable Distribution

LAURA F. SILSBEE V. CHRISTOPHER J. SILSBEE NO. 2015-20331

An equitable distribution of marital assets must not presume that a 50/50 split is the starting point for such a determination. *Anderson v. Anderson*, 2003 822 A.2d 824, 828 (Pa.Super. 2003). In reviewing the record and the factors above, we have considered the distribution scheme as a whole and we agree with the substantive recommendations of the Special Master. *Biese v. Biese*, 979 A.2d 892 (Pa.Super. 2009). The Special Master implemented equitable distribution of the marital property as 60% to Plaintiff and 40% to Defendant based on the Section 3502(a) factors. Defendant's argument that the payment recommended of \$325,000.00 to Plaintiff would leave him with no home and no liquid assets from which to purchase a home is unavailing. The Special Master found that Defendant was in possession of \$980,023.01 of the marital assets and that Plaintiff possessed \$83,440.76 of the marital assets. The fact that a major portion of the marital assets is provided in the equity of the marital home is not cause to abandon our objective of effecting economic justice between the parties and the just determination of the parties' property rights. Defendant's Exceptions "B," "E," "O," and "S" and therefore denied.

C. The Special Master erred and/or abused his discretion by finding that several of the vehicles purchased during the marriage are non-marital property.

K. The Special Master erred and/or abused his discretion by awarding certain items to Plaintiff due to unauthorized representations made by Defendant's prior attorney during settlement negotiations.

Defendant argues that one of his prior attorneys exceeded her authorization by agreeing to a proposal from Plaintiff regarding the exclusion from the marital estate of several vehicles that the parties' children were in possession of and using. Defendant relies upon our Supreme Court's decision in *Reutzel v. Douglas*, wherein the Court stated that "[t]he law in this jurisdiction is clear and well-settled that an attorney must have express authority in order to bind a client to a settlement agreement." 870 A.2d 787, 789-790 (Pa. 2005). The Court in *Reutzel* further states that "such express authority can only exist where the principal specifically grants the agent the authority to perform a certain task on the principal's behalf." *Id.* at 790.

We note that *Reutzel* involved a medical malpractice action in which plaintiffs' attorney initially reached out to defendants' respective counsel regarding a settlement amount, clearly indicating that he did not have client consent. *Id.* at 788. Defense counsel then accepted the settlement amount. *Id.* Thereafter, plaintiffs' counsel attempted to reopen negotiations saying that he would need more money to settle the matter. *Id.* Defense attorneys then sought enforcement of the settlement agreement. *Id.* The trial court granted the petition and

LAURA F. SILSBEE V. CHRISTOPHER J. SILSBEE NO. 2015-20331

the Superior Court affirmed that decision. *Id.* at 788-789. The Supreme Court reversed the lower courts' decision based on the principles set forth above and on the circumstances of that case, including the lack of fraud alleged against plaintiff's attorney, the fact that the settlement had not been finalized and the fact that the case was still active. *Id.* at 793.

The circumstances in the matter at hand are distinguished from that in *Reutzel*. The agreement in question was memorialized by Defendant's earlier attorney in a letter dated July 22, 2015, that was sent to Plaintiff's counsel and to Defendant by e-mail. The letter was also entered into evidence during the Special Master's Hearing as Exhibit 23. The relevant portion of the letter states as follows:

As it relates to your client's proposal regarding the vehicles, Mr. Silsbee is fine with giving the Mazda and the Firebird to Mikayla, and excluding those in the marital estate. Regarding the Jeep, I advised you last week that it could be sold; however, I have since been told that Samantha is interested in keeping the Jeep, so Chris is fine with having that transferred to Samantha, and will agree that that can be excluded from the marital estate.

(Ex. 23).

23 PA.C.S. § 3501(a)(2) provides that "marital property" does not include "[p]roperty excluded by valid agreement of the parties entered into before, during or after the marriage." The plain language of the letter specifies that Defendant was accepting terms offered through attorney communication regarding, *inter alia*, various items to be excluded from the marital property. The letter clearly indicates that the attorney was acting on the express grant of authority from her client in the acceptance of those terms. Furthermore, even though Defendant testified that he told previous counsel that this was not agreeable to him, he had ample time within which to express his disagreement with the terms, either directly to Plaintiff's attorney, or through subsequent counsel upon engagement. However, this was not the case. Defendant failed to produce any documentation that would indicate dispute of this agreement. Additionally, Plaintiff testified that Defendant gave her the original titles to the vehicles in question when the parties' youngest daughter traded in two of the vehicles, which we find would indicate his approval of the terms expressed. Notes of Testimony of 3/10/2016 Hearing at 128 (3/10/16 N.T. ____).

We therefore find that the parties had agreed to exclude certain vehicles from the marital estate and grant such vehicles to their daughters, as detailed in the Special Master's Report and Defendant's Exceptions "C" and "K" are denied.

LAURA F. SILSBEE V. CHRISTOPHER J. SILSBEE NO. 2015-20331

D. The Special Master erred and/or abused his discretion by finding that the skid loader is Wife's non-marital property.

In Defendant's prior attorney's letter, referenced above, she states that "I spoke with my client regarding the skid loader, and he concurs that your client received it from her father, making it a non-marital asset. Please keep in mind that my client is not interested in keeping the skid loader, so your client can keep it." (Ex. 23). Having found that this earlier communication represented an agreement between the parties and the express grant of authority by Defendant, we find that by such terms, the skid loader should therefore be excluded from the marital estate as well.

F. The Special Master erred and/or abused his discretion by disregarding evidence that Plaintiff earns significant income from cleaning houses.

Defendant claims that the Special Master didn't consider the full amount of income that Plaintiff earns through cleaning houses in the determination of equitable distribution. The main thrust of Defendant's argument seems to be that the Plaintiff testified to \$300 to \$400 per month earnings from cleaning houses at the APL hearing and that documentary evidence entered places her income around \$1380.00 per month.

Plaintiff testified that she had cleaned houses for up to nine clients in the past, but some of her clients had received anonymous notes shortly after the parties' separation, causing her client list to diminish to three clients.

Based on our review of the record, we believe that the Special Master did not err or abuse his discretion in his recommendations. In performing services, such as cleaning houses, the pool of clients is often built on a more personal relationship and the individual's ability to foster those relationships. When these business relationships are disturbed by a malicious third party, such as the case here, it can be difficult and the process to rehabilitate those relationships, if at all. Consequently, we agree with the Special Master that the correct amount of income to consider for Plaintiff's cleaning clients are those for whom she is currently cleaning. Defendant's Exception "F" is denied.

G. The Special Master erred and/or abused his discretion by disregarding evidence that Plaintiff receives significant contributions to her household expenses from her paramour.

Defendant argues that the Plaintiff's expenses are actually significantly lower than claimed, based on testimony that she had not paid the amounts claimed to her landlord, who Defendant

LAURA F. SILSBEE V. CHRISTOPHER J. SILSBEE NO. 2015-20331

again claims is the Plaintiff's paramour.

We have already addressed part of this issue above. We are not convinced, nor do we find it relevant, that Plaintiff's landlord is also her purported paramour. Notwithstanding any such claim, the Plaintiff testified that she hasn't been able to pay the rent and utility payments due, but that her landlord was aware of the ongoing proceedings and was willing to accept the due payments upon settlement and equitable distribution of the marital estate. Plaintiff presented a signed copy of the lease detailing and supporting the monthly expenses to which Plaintiff testified and that Defendant is contending,

We find that the record supports the Plaintiff's claim of monthly expenses and that the Special Master did not err or abuse his discretion in considering the amounts presented and rejecting any claim that an alleged paramour was assisting with Plaintiff's living expenses. Defendant's Exception "G" is therefore denied.

H. The Special Master erred and/or abused his discretion by ordering Defendant to pay a portion of Plaintiff's attorney fees.

Plaintiff sought reimbursement of counsel fees and expenses in the amount of \$21,183.47 to be totally paid by Defendant. The Special Master took several factors into consideration including Defendant's ability to pay, the necessity of such in favor of Plaintiff, the separate assets of Plaintiff and the considerable amount of time and effort expended by Plaintiff and her attorney in handling the divorce proceedings. In his report, the Special Master granted Plaintiff's request in part awarding \$8,000.00 in counsel fees to be paid by Defendant.

Defendant contends that the award of counsel fees in this matter is improper. Citing to the Superior Court decision in *Teodorski v. Teodorski*, 857 A.2d 194 (Pa.Super 2004) wherein the Court gave certain guidance as to the award of counsel fees in a divorce proceeding, enumerating several factors including "the payor's ability to pay, the requesting party's financial resources, the value of the services rendered, and the property received in equitable distribution," Defendant disputes that the Special Master instead relied upon factors of his own devise including the extent of litigation and Defendant's demeanor and attitude.

It is true that "[c]ounsel fees are awarded only upon a showing of actual need." *Harasym v. Harasym*, 496, 614 A.2d 742, 747 (Pa.Super. 1992). However, this does not supersede "[t]he purpose of such an award [which] is to enable the dependent spouse to maintain the action without being placed at a financial disadvantage." *Id.* at 747. In *Verholek v. Verholek*, 741 A.2d 792 (Pa.Super. 1999), the Superior Court, referring to 42 Pa.C.S. § 2503(7), recognized that "a party to an action may be awarded counsel fees when another

LAURA F. SILSBEE V. CHRISTOPHER J. SILSBEE NO. 2015-20331

party engages in dilatory, obdurate, or vexatious conduct during the pendency of a matter.” *Id.* at 799; see also *Dalrymple v. Kilishek*, 920 A.2d 1275 (Pa.Super. 2007) (finding that the Husband’s uncooperative, obstructionist behavior resulted in a significant increase in the Wife’s costs).

We further refer to the Superior Court’s decision in *Busse v. Busse*, 921 A.2d 1248 (Pa. Super. 2007). In *Busse*, the special master found that the husband had prolonged the already extensive litigation in the divorce matter as he had not been forthcoming with information requested. *Id.* at 1258. The special master therefore recommended that the husband pay \$25,000.00 in counsel fees to the wife. *Id.* The wife filed an exception and the trial court granted such exception awarding to wife “an additional \$25,000 for counsel fees based upon husband’s ability to pay, the parties’ respective financial resources, the vast differences in their earning capacities, husband’s conduct which resulted in greatly protracted litigation, and the value of the legal services rendered.” *Id.* After reviewing the trial court’s consideration of the *Teodorski* factors, the Superior Court stated that “[a]lthough wife received 50% of the substantial marital property, the court noted that husband’s actions resulted in the protracted litigation and thus justice dictated that he pay a substantial portion of wife’s legal fees rather than wife paying from her share of the distribution of marital property.” *Id.* at 1259.

The record demonstrates that Defendant has retained and then dismissed several attorneys during these proceedings and at one point even acted *pro se*. While certainly this factor alone is not dispositive as to the award of counsel fees, it should be noted that counsel changes do often involve delays and significant effort on the part of the other party to adjust. However, this is not the sole factor in this determination for in the absence of dilatory, obdurate or vexatious conduct, then the award of fees would be inappropriate. We again note that the Special Master was in the best position to assess the credibility of the parties through direct observation of the behavior, demeanor and attitudes of the parties during the hearings and testimony and we accept the Special Master’s conclusion that Defendant’s “demeanor and attitude at the Special Master verifies the difficulty [Plaintiff] experienced in attempting to resolve the issues.” (Sp. Mstr.’s Report, 46). The record reflects such a finding as well. Defendant himself testified about numerous requests regarding the dogs, bank and credit card information, along with delays in property appraisal attempts.

Consequently, we agree with the Special Master’s recommendation to award attorney’s fees in the amount of \$8,000.00. Defendant’s Exception “H” is denied.

I. The Special Master erred and/or abused his discretion by accepting

LAURA F. SILSBEE V. CHRISTOPHER J. SILSBEE NO. 2015-20331

Plaintiff’s valuations of non-appraised property while rejecting Defendant’s valuations of non-appraised marital property.

J. The Special Master erred and/or abused his discretion by failing to assign any value to various items of marital property.

Defendant argues that the Special Master erred in regards to valuation of personal property in two ways—the rejection of his introduced valuations and in the failure to assign value to certain items of marital property.

We note that the Superior Court has stated:

The Divorce Code does not include a specific method of valuing assets. We have previously held that the court must exercise its discretion, relying upon the estimates and inventories submitted by both parties, the records of purchase prices, and appraisals. *Gee v. Gee*, 314 Pa.Super. 31, 460 A.2d 358 (1983). In determining the value of marital property, the court is free to accept all of the testimony, portions of the testimony, or none of the testimony regarding the true and correct value of the property. See *Semasek v. Semasek*, 509 Pa. 282, 502 A.2d 109 (1985); *Gee v. Gee*, *supra*.

Aletto v. Aletto, 537 A.2d 1383, 1389 (Pa.Super. 1988).

The Special Master observed that Defendant provided “best-guess” valuations based on retail prices obtained through Amazon. Upon our review of the record, Defendant expressed that he went through Amazon or other retailers to get his valuation, but that he was “not really sure ... of prices.” (3/10/16 N.T. 185). The exhibits presented, with few exception, provided no documentation of the prices, and no account for any depreciation in the value of the items afforded their condition. Furthermore, while the Court may entertain the estimates presented by the parties, or even records of purchase prices, we are provided neither for the items referenced. We therefore agree with the Special Master and deny Defendant’s Exceptions “I” and “J.”

L. The Special Master erred and/or abused his discretion by ordering Defendant to pay a credit for [Plaintiff’s] Dish Network equipment despite proof that he returned the equipment.

Plaintiff testified that upon her leaving the marital home, Defendant subsequently cancelled the Dish Network subscription. Thereafter, the Plaintiff received multiple phone calls and emails regarding the return of the Dish Network equipment that was still at the marital

LAURA F. SILSBEE V. CHRISTOPHER J. SILSBEE NO. 2015-20331

home. Plaintiff further testified that multiple requests were made for Defendant to return the equipment and that UPS had actually attempted delivery of pre-paid return boxes for the equipment, but were refused by Defendant. As a consequence of the non-remittance of the equipment, the Plaintiff incurred a charge of \$681.75. The Special Master recommended a credit for this amount be given to the Plaintiff in the equitable distribution.

Defendant argues that he should not have to pay the credit in the amount of \$681.75 for the Dish Network equipment that the Plaintiff's alleged was never returned. In support of his contention, Defendant offered an email with a handwritten alphanumeric string that he claimed was a UPS tracking number for the package going to the Plaintiff's post-separation residence. Defendant's brief then states that he provided a Federal Express tracking number proving that the equipment had been returned.

In reviewing the record and the exhibits provided, we agree with the Special Master in ordering credit to the Plaintiff for the Dish Network equipment. We find nothing in the record to support Defendant's argument that he returned the equipment, either in his testimony or in the exhibit produced.

N. The Special Master erred and/or abused his discretion by disregarding Plaintiff's forgery and theft of Defendant's inheritance check.

Defendant accused the Plaintiff of forgery and theft of the Defendant's inheritance from his mother's estate. Specifically, Defendant purports that the Plaintiff forged his signature on the back of a check in the amount of \$16,378.70, which was then deposited in to an account under Plaintiff's exclusive control.⁶

Plaintiff testified that the check, which was deposited into the account on May 8, 2014, was used toward family expenses, including paying for their daughter's vehicle. Plaintiff further testified that Defendant had full knowledge that the check was deposited into the account prior to the parties' separation.

The Special Master afforded credibility to Plaintiff's testimony that the money was deposited into her account, but was used for family expenses. We find the same and accordingly deny Defendant's Exception "N."

P. The Special Master erred and/or abused his discretion by finding that [Defendant] removed \$16,000.00 from the gun safe.

⁶ We note that Defendant lodged a complaint with law enforcement and charges were initially brought against Plaintiff; however, those charges were later withdrawn at the preliminary hearing.

LAURA F. SILSBEE V. CHRISTOPHER J. SILSBEE NO. 2015-20331

Plaintiff testified that the parties owned a gun safe in which valuables were kept during the marriage. Included in the valuables kept in the safe were amounts of cash and several pieces of old coins and currency from Plaintiff's father's estate that the family often drew upon as needed. Both parties testified that the money from the safe missing and each accused the other of taking the money. Plaintiff alleged that Defendant took the money while he resided at the marital home and then deposited the money into a bank account opened in their daughter, Mikayla's name. Meanwhile, Defendant alleged that Plaintiff took the money at some point when she was at the house collecting personal property.

Defendant testified to the following at the hearing:

Q. Okay. Well, my question to you merely was do you recall that there was cash that was maintained in that safe?

A. Yes. Yes.

Q. Do you have any idea of the amount of the cash that was in the safe?

A. No, sir.

Q. Would you agree that it was multiple thousands of dollars of cash that was in that safe?

A. I don't know. I don't know.

Q. Okay. Do you remember the form or the manner in which that cash was kept? In other words, was it in an envelope? Was it just rolled up in a rubber band or how was it?

A. I think it was in little bank envelopes that you receive.

Q. Okay. Little cash envelopes?

A. Um-hum. Yes.

Q. And was there multiple envelopes that were in there and various amounts of cash?

A. Yes, I would say, and then it was also open cash. There was no envelope there if I remember correctly.

Notes of Testimony of 3/31/2016 Hearing at 260 (3/31/2016 N.T. __).

Mikayla herself provided an affidavit, entered as Exhibit 144, in which she stated that

LAURA F. SILSBEE V. CHRISTOPHER J. SILSBEE NO. 2015-20331

Defendant had asked her to open a bank account and gave her several envelopes with Plaintiff's handwriting on them containing cash to deposit in said account. (Ex. 144 ¶¶ 9-10). Mikayla further stated that Defendant subsequently provided several employment paychecks to deposit that amounted to several thousand dollars. (Ex. 144 ¶¶ 9, 12). Finally, Mikayla declared that upon her leaving the marital residence, Defendant requested that she close out the account and provide the funds to him. (Ex. 144 ¶¶ 13-14) The account balance at final withdraw and closing was \$18,648.48. (Ex. 144 ¶ 14).

Based on the testimony provided at the hearing, and the affidavit of the parties' daughter, we find agree with the Special Master in finding that Defendant took the money from the gun safe and deposited the money into the account opened by Mikayla. While the amount afforded by the Special Master as derived from Defendant's paychecks (\$2,000.00) may seem arbitrary to the Defendant, we note that he had ample time within which to provide supporting documentation as to the specific amounts deposited, but failed to do so. Therefore, we find that the Special Master gave appropriate consideration as to the amount withdrawn from the account that would be excluded as post-separation property of Defendant and that which could be considered marital property. Defendant's Exception "P" is denied.

Q. The Special Master erred and/or abused his discretion by awarding the dogs to Plaintiff despite he repeated failure to take the dogs when she removed other animals and property.

On January 5, 2017, Plaintiff filed a Petition for Special Relief seeking immediate possession of the two dogs that the parties owned. This Court, by order dated February 7, 2017, granted Plaintiff's special relief and ordered that the dogs be transported to the Plaintiff within 48 hours.

The Special Master found that the Plaintiff was the primary caretaker of the dogs during the marriage and thus recommended award of the dogs to the Plaintiff.

Defendant bases his exception to the Special Master's recommendations on the fact that since the separation, the dogs have remained in the marital home and that he obtained licenses and veterinarian care for the dogs. Claiming that the Plaintiff's inaction in retrieving the dogs during visits to the marital home after separation is clear evidence that she intended to abandon her claim to the dogs.

During testimony, the Plaintiff testified that she was the primary caretaker of the dogs during the marriage, including taking them to veterinarian visits and registering their documents.

LAURA F. SILSBEE V. CHRISTOPHER J. SILSBEE NO. 2015-20331

Furthermore, evidence was presented and entered into the record indicating that Plaintiff had been taking the dogs to veterinarian visits at least since 2004 and up until the separation.

Accordingly, we find that Plaintiff was the primary caretaker of the dogs during the marriage and should retain ownership and possession of the dogs hereafter. Defendant's Exception "Q" is thusly denied.

R. The Special Master erred and/or abused his discretion by failing to award Defendant a credit for expenses he incurred in preserving the marital assets, including the cost to repair the lock cut by Plaintiff's paramour.

Defendant claims that the Special Master erred in failing to award to him a credit for certain expenses that Defendant claimed in preserving the marital home, but which the Special Master found to be normal expenses associated with the home. The amounts claimed by Defendant include expenses related to septic tank service, pool maintenance, security camera installation and lock repair charges.

We agree with the Special Master that expenses as to the septic tank service and pool maintenance are normal maintenance expenses for which no credit should be given. Further, the installation of the security cameras is not an expense aimed at preserving the marital asset as much as it would be for the personal safety of Defendant. Finally, the expenses related to lock repair in the amount of \$234.10. Plaintiff testified that she returned to the marital home with a friend who, on her behalf, cut the dead-bolt lock to the house. Therefore, we find that Defendant should be given a credit in the amount of \$117.05 representing half of the expense for repair in preserving the marital asset. Defendant's Exception "R" is thus denied in part and granted in part.

Plaintiff's Counter-Exceptions

Having disposed of Defendant's Exceptions, we now turn to Plaintiff's Counter-Exceptions. Plaintiff filed five counter-exceptions as follows and we address them accordingly.

1. The Special Master erred and/or abused his discretion in recommending that [Plaintiff] retain five marital guns with a value of \$3,575.00 when said guns remained in [Defendant's] possession and no recommendation to transfer the guns to Plaintiff were provided.

Plaintiff contends that the Special Master erred in assessing that five of the marital guns, including the Ruger Bearcat .22 LR revolver, the Springfield M-1 Garand .30-06 rifle, the Henry Golden Boy Series .22 LR rifle, the LC Smith 12 gauge shotgun and the Remington

LAURA F. SILSBEE V. CHRISTOPHER J. SILSBEE NO. 2015-20331

Model 700 7mm rifle were in possession of Plaintiff when, in fact, said firearms were still in possession of Defendant. Defendant does not dispute this fact and contends that he has tried to arrange for the transfer of the guns, but has not received cooperation from Plaintiff. We grant Plaintiff's Counter-Exception "1" and order that the transfer of the firearms be effected at the same time as other personal property outlined below.

2. The Special Master erred and/or abused his discretion in recommending that assets in Plaintiff's possession included \$37,542.94, representing half of the Jonestown Bank & Trust ("JBT") Account, when Defendant testified that he retained the entire account and no recommendation to transfer the \$37,542.94 to Plaintiff was provided.

The Special Master asserted that the funds from the JBT account were split and that half of the funds were already in Plaintiff's possession. Plaintiff contends that the funds were not distributed to her and that the Special Master erred in his assertion.

Defendant, in his Answer to the Counter-Exceptions, does not dispute that the funds are still in his possession, but instead argues that the funds should not be awarded to Plaintiff for the reasons set forth in his Exceptions.

We agree with Plaintiff that the Special Master made an erroneous assertion in assigning half of the funds as in Plaintiff's possession. Defendant testified that he closed the JBT accounts and split the money. Defendant further explicitly testified:

Q. And that 37,542, where did that come from?

A. That's the Jonestown money bank split in half.

Q. Okay. Where did the other half go?

A. There should be another account with this, with Northwest that it was in.

Q. Okay. This one that's shown in Exhibit 84, the 7971, is that the account that you used for your personal checking after the separation?

A. Yes, that one there, yes. Then I opened a separate one for [Plaintiff]. I think there was, I don't know, 43,000 in it maybe.

(3/10/16 N.T. 205).

Clearly, Defendant acknowledged that an account had been opened and the funds from the JBT accounts were placed into the new account and that those funds were reserved to

LAURA F. SILSBEE V. CHRISTOPHER J. SILSBEE NO. 2015-20331

Plaintiff. We grant Plaintiff's Counter-Exception "2" and hereby order that the funds in the amount of \$37,542.94 be distributed to the Plaintiff in accordance with the Order herewith.

3. The Special Master erred and/or abused his discretion in failing to reference the family photos in Defendant's possession and/or not providing Plaintiff an opportunity to scan or copy said photos.

4. The Special Master erred and/or abused his discretion in failing to reference the personal property not on the appraisal list that Defendant' previously agreed to provide to Plaintiff, but which was never provided and was not included in the recommendation to be provided to Plaintiff.

5. The Special Master erred and/or abused his discretion in failing to reference the children's personal effects in husband's possession and not recommending that said personal effects be provided to children.

Plaintiff contends that the Special Master failed to provide for the transfer of certain items of personal property referenced both in the record and in part, in the special Master's Report. The Special Master specifically provided that Defendant's in-possession assessment be reduced by \$625.00 coordinate with those items listed on page 9 of the Special Master's Report, which the Special Master awarded to Plaintiff.

The Special Master did not specifically make recommendations as to the exchange of personal property in his report. In this much of Plaintiff's relevant counter-exceptions, we agree. We therefore order that any such personal property awarded to either party, or their children, should be transferred in the following manner:

a) The personal property of the parties' children shall be specifically reserved and Defendant shall provide access for the children to retrieve their respective property as needed.

b) The parties' shall agree upon a date and time whereupon a constable shall be present at the marital home, and at which time and place, the parties shall provide for the orderly transfer of all personal property as set forth in the Special Master's Report.

c) The parties must provide each other with a list of the personal property being claimed according to the Special Master's Report thirty (30) days prior to the date and time of transfer.

LAURA F. SILSBEE V. CHRISTOPHER J. SILSBEE NO. 2015-20331

- d) Any disputed items shall first be resolved through examination of the Special Master's Report. Thereafter, any disputed property will be sold and the proceeds divided according to the Special Master's recommendations.
- e) All jointly owned photographs shall be provided to Plaintiff by Defendant within thirty (30) days of this Order and Plaintiff is allowed one hundred eighty (180) days within which to copy or scan such photographs and return to Defendant.
- f) Plaintiff may retain any and all photographs that exclusively contain members of Plaintiff's family that are not blood relatives of Defendant.

This Court notes that this matter has been highly contentious and encourages the parties to comply with the Order herewith in a civil, cordial and organized manner so that further litigation is not necessary. For all the foregoing reasons, we deny in part and grant in part Defendant's Exceptions, we grant Plaintiff's Counter-Exceptions, and we affirm the recommendations of the Special Master with the exceptions granted hereto and a Final Decree in divorce shall be entered herewith. We will enter an Order consistent with the foregoing.