

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

CAROL C. SNYDER

Appellee

v.

JOHN H. SNYDER

Appellant

IN THE SUPERIOR COURT OF
PENNSYLVANIA

No. 1578 MDA 2013

Appeal from the Decree August 8, 2013
In the Court of Common Pleas of Columbia County
Civil Division at No(s): 831 OF 2010

BEFORE: DONOHUE, J., ALLEN, J., and MUNDY, J.

MEMORANDUM BY MUNDY, J.:

FILED APRIL 11, 2014

Appellant, John H. Snyder (Husband), appeals from the August 8, 2013 decree granting in part and denying in part his exceptions to the master's report, and determining the final economic and divorce claims in this divorce case initiated by Appellee, Carol C. Snyder (Wife). After careful review, we affirm.

Wife commenced the instant action on May 12, 2010, by filing a complaint in divorce, which included additional counts for equitable distribution of marital property and alimony.¹ The matter proceeded to a hearing before a master on May 22, 2012. The master issued a report and

¹ The complaint also included a count for custody, which is not implicated in this appeal.

recommendation on February 27, 2013. The master determined the date of separation to be May 12, 2010, the date of the filing of the complaint. The master further valued the total net marital estate at \$650,446.13, recommending a division of 60 percent to Wife and 40 percent to Husband. The master also recommended that Husband pay Wife \$2,918.62 per month in alimony for 60 months.

Husband filed timely exceptions to the master's report on March 19, 2013. Therein, Husband challenged, *inter alia*, the master's determination of the date of separation, the master's valuation of the marital residence, and the duration and amount of master's recommended alimony award. Following argument on Husband's exceptions, the trial court issued an order on August 8, 2013, granting the exceptions in part and denying them in part.² Specifically, the trial court reduced the alimony award to \$2,171.90 per month for 54 months. The trial court determined that a certain vehicle assigned to Husband by the master was not marital property and adjusted the total net marital estate to \$645,736.13 and modified the division of property accordingly. In all other respects, the trial court denied Husband's

² Columbia County has certified that it adheres to the hearing procedures prescribed by Pa.R.C.P. 1920.55-2. **See** Pa.R.C.P. 1920.55-1 note.

exceptions and adopted the master's report. Husband filed a timely notice of appeal on August 30, 2013.³

On appeal, Husband raises the following issues for our review.

- A. Whether the trial court erred in holding that []Husband had not overcome the presumption that the parties had not separated until [Wife] filed her divorce complaint on May 19, 2010 [sic] ...[?]
- B. Whether the trial court erred in ordering Husband[] to pay the sum of \$2,170.90 per month for the sum of fifty-four (54) months based in part on the finding that William Walker, who was accepted as a vocational expert, was superficial and unrealistic[?]
- C. Whether the trial court erred in valuing the parties home at \$265,000.00 when the expert called by both Husband and Wife opined that the property was worth \$225,000.00 after [] Wife[] ripped out the kitchen to the property based on a supposition unsupported by the evidence that tearing out the kitchen had to increase the value of the property[?]
- D. Whether the trial court erred in distributing funds including retirement funds of Husband[] when the parties separated in 2005 when said funds will not vest until some point in the future[?]

Husband's Brief at 1-3.⁴

³ The trial court and Husband have complied with Pa.R.A.P. 1925. The trial court referenced its August 8, 2013 memorandum opinion as containing the reasons for its rulings.

⁴ On January 23, 2014, Wife filed a motion to dismiss Husband's appeal for non-compliance of Husband's reproduced record with Pa.R.A.P. 2154. As a
(Footnote Continued Next Page)

We recognize the following general considerations guiding our review of these issues.

Our standard of review in assessing the propriety of a marital property distribution is whether the trial court abused its discretion by a misapplication of the law or failure to follow proper legal procedure. An abuse of discretion is not found lightly, but only upon a showing of clear and convincing evidence. Moreover, it is within the province of the trial court to weigh the evidence and decide credibility and this Court will not reverse those determinations so long as they are supported by the evidence.

Yuhas v. Yuhas, 79 A.3d 700, 704 (Pa. Super. 2013) (*en banc*) (citations omitted). “Our scope of review requires us to measure the circumstances of the case against the objective of effectuating economic justice between the parties in discerning whether the trial court misapplied the law or failed to follow proper legal procedure.” ***Gates v. Gates***, 933 A.2d 102, 105 (Pa. Super. 2007) (citation omitted), *appeal denied*, 980 A.2d 608 (Pa. 2009). “In determining the propriety of an equitable distribution award, courts must consider the distribution scheme as a whole.” ***Beise v. Beise***, 979 A.2d 892, 895 (Pa. Super. 2009) (citation omitted).

Husband’s first issue challenges the finding by the trial court that the date of the parties’ separation was May 12, 2010. Husband’s Brief at 21. This Court has recognized that the date of separation is an important “line of

(Footnote Continued) _____
supplemental reproduced record has been filed, our review has not been hampered. In the absence of any prejudice to Wife, the motion is denied.

demarcation in a divorce proceeding.”⁵ ***S.M.C. v. W.P.C.***, 44 A.3d 1181, 1187 n.3 (Pa. Super. 2012). Instantly, Husband contends the trial court abused its discretion in not finding the evidence presented before the master established a separation date in August 2005, thereby resulting in an erroneous inclusion of portions of Husband’s pension plan and retirement funds, as marital property. Husband’s Brief at 27-28.

The Divorce Code provides the following definition of “separate and apart.”

Definitions

...

⁵ For example, the date of separation is a critical determination for the following sections of the Divorce Code.

See 23 Pa.C.S.A. § 3301(d)(1) (date of separation is the date the two-year clock begins to run for a no-fault divorce on the ground of irretrievable breakdown); 23 Pa.C.S.A. § 3501(a)(4), § 3505(b)(1)(i) (date of separation is the date upon which the composition of the marital estate is determined); 23 Pa.C.S.A. § 3505(b)(2)(ii) (date of separation is one of the dates used to determine the value of marital property); 23 Pa.C.S.A. § 3501(a.1) (date of separation is one of the dates set by the legislature to determine the increase in value of nonmarital property for equitable distribution); 23 Pa.C.S.A. § 3701(b)(14) (precluding courts from considering post-separation conduct, other than abuse of one spouse by the other, when determining whether to grant alimony).

S.M.C. v. W.P.C., 44 A.3d 1181, 1187 n.3 (Pa. Super. 2012).

"Separate and apart." Cessation of cohabitation, whether living in the same residence or not. In the event a complaint in divorce is filed and served, it shall be presumed that the parties commenced to live separate and apart not later than the date that the complaint was served.

23 Pa.C.S.A. § 3103.

In light of this definition, our Court has noted that the filing of a divorce complaint sets the date the parties commence living separate and apart "unless an earlier date can be substantiated through the presentation of evidence confirming an earlier date." **McCoy v. McCoy**, 888 A.2d 906, 912 (Pa. Super. 2005). We held that this presumption effectively creates a burden of production on the party alleging an earlier date of separation. **Id.**

Instantly, at the hearing before the master, Wife maintained the date of separation was the date she filed the divorce complaint and Husband claimed a date of separation of August 2005. Husband, therefore, bore the burden of proving by the preponderance of the evidence that the parties ceased cohabitation on the earlier date. **Id.**; 23 Pa.C.S.A. § 3103. Testimony on the issue was given at the May 22, 2012 master's hearing by Wife, Husband, and the parties' eldest adult son, Charles Snyder. In determining whether Husband met this burden, we acknowledge the following principles.

This Court has defined "cohabitation" as "the mutual assumption of those rights and duties attendant to the relationship of husband and wife." **Britton v. Britton**, 582 A.2d 1335, 1337 (Pa. Super. 1990) (internal

quotation marks and citations omitted). Additionally, a cessation of cohabitation must include an element of intent to cease the marital relationship. In the context of the now two-year separation required to obtain a unilateral no-fault divorce under Section 201(d), our Supreme Court held that “[p]hysical separation alone does not satisfy the separate and apart requirement[.]” ***Sinha v. Sinha***, 526 A.2d 765, 767 (Pa. 1987). “There must be an independent intent on the part of one of the parties to dissolve the marital union []. This intent must be clearly manifested and communicated to the other spouse.” ***Id.*** This Court has found ***Sinha’s*** recognition of an intent requirement in the definition of “separate and apart” “instructive” and applicable to a determination of the date of separation for other purposes under the Code. ***McCoy, supra***, at 911. “[T]he gravamen of the phrase “separate and apart” becomes the existence of separate lives not separate roofs.” ***Teodorski v. Teodorski***, 857 A.2d 194, 197-198 (Pa. Super. 2004), *quoting* ***Wellner v. Wellner***, 699 A.2d 1278, 1281 (Pa. Super 1997) (citations omitted).

Instantly, the trial court found that Husband failed to “overcome the presumption that the separation date was the date of filing of the [c]omplaint.” Trial Court Opinion, 8/8/13, at 1-2.⁶ In support of its conclusion, the trial court cited, as credible, Wife’s testimony that “the

⁶ The trial court opinion does not contain pagination, therefore, we have assigned each page a corresponding number in the order they appear.

parties went on vacations, celebrated holidays, socialized and had family meals together.” **Id.** at 1. Based on our close review of the record and the applicable law, we conclude the record supports the trial court’s conclusions.

Accepting the trial court’s credibility determinations, Wife’s testimony establishes that although husband slept in a living space above the garage beginning in 2006, he exercised free access to the house for daily activities. N.T., 5/22/12, at 82. Additionally, Wife testified that the parties socialized together and vacationed together until the filing of the divorce complaint. **Id.** 83-84. The master emphasized the fact that the parties maintained their joint checking account after 2005, into which they continued to deposit both of their incomes. Master’s Report, 2/27/13, at 11-12;⁷ **see** N.T., 5/22/12, at 153-155.

Giving deference to the trial court’s credibility determinations, we conclude that the trial court’s factual findings and legal conclusions relative to the parties’ date of separation are supported by the record and we discern no abuse of discretion in its determination that the date of separation in this case is the date of the filing of the divorce complaint. **See McCoy, supra** (holding where parties, prior to the filing of a divorce complaint, presented themselves publicly as a married couple through socializing, vacations, etc.,

⁷ The Master’s Report does not contain pagination. We have assigned page numbers in the order they appear in the report commencing with page one immediately following the cover page.

a cessation of cohabitation has not been established). Accordingly, we determine Husband's first issue is meritless.

Husband's second issue faults both the duration and amount of the trial court's alimony award. Husband's Brief at 28. As noted above, the trial court did grant Husband's exceptions in part relative to the alimony award recommended by the master. The trial court's reduction of the amount of alimony was based on a change of the amount of the alimony *pendent lite* (APL) award entered after the master's hearing but before the issuance of the master's report. Trial Court Opinion, 8/8/13, at 2. A reduction in the duration of the alimony award was granted to reflect the passage of time and payment of APL from the filing of the master's report and the trial court's August 8, 2013 order disposing of Husband's exceptions. ***Id.*** The trial court rejected Husband's arguments for further reductions in amount and duration. ***Id.*** at 3.

Our standard of review of these issues is as follows.

The role of an appellate court in reviewing alimony orders is limited; we review only to determine whether there has been an error of law or abuse of discretion by the trial court. Absent an abuse of discretion or insufficient evidence to sustain the support order, this Court will not interfere with the broad discretion afforded the trial court.

Smith v. Smith, 904 A.2d 15, 20 (Pa. Super. 2006) (citation omitted).

We previously have explained that 'the purpose of alimony is not to reward one party and to punish the other, but rather to ensure that the reasonable needs of the person who is unable to support himself

or herself through appropriate employment, are met.’ Alimony ‘is based upon reasonable needs in accordance with the lifestyle and standard of living established by the parties during the marriage, as well as the payor’s ability to pay.’ Moreover, ‘alimony following a divorce is a *secondary remedy* and is available only where economic justice and the reasonable needs of the parties cannot be achieved by way of an equitable distribution award and development of an appropriate employable skill.’

Gates, supra, at 106, quoting **Teodorski, supra** at 200 (emphasis in original). “The Divorce Code dictates that in determining the nature, amount, duration and manner of payment of alimony, the court must consider all relevant factors, including those statutorily prescribed for at 23 Pa.C.S.A. § 3701, Alimony, (b) Relevant Factors (1)-(17).” **Smith, supra** (internal quotation marks and citation omitted).

Instantly, Husband does not contend the trial court failed to consider all the Section 3701 factors. Rather, he contends the trial court erred in disregarding the testimony of his expert witness, William Walker, about Wife’s income potential. Husband’s Brief at 29.

The [trial c]ourt disregarded William Walker’s testimony with a simple statement that “testimony of William Walker is given little weight and credibility due to the superficial and unrealistic foundation used and the conclusions reached by him[.]” [Husband] believes that this vague and sweeping disregarding of the testimony of an expert amounted to an abuse of discretion.

Id. at 28.

"Both a master and a trial court have discretion to accept or reject an expert's testimony." ***Childress v. Bogosian***, 12 A.3d 448, 456 (Pa. Super. 2011) (citation omitted). This court cannot upset a trial court's decision based on a challenge to its credibility determinations where there is support for the decision in the record. ***Yuhas, supra***.

Instantly, the trial court explained its alimony award as follows.

The testimony of William Walker is given little weight and credibility due to the superficial and unrealistic foundation used and conclusions reached by him. Given the hugely disparate incomes of the parties and the other factors articulated by the Master in his Recommendations and Report, alimony in the amount of \$2,171.90/month is reasonable and appropriate

Trial Court Opinion, 8/8/13, at 2.

The factors emphasized by the master include the following.

In considering the various factors under § 3701 of the Divorce Code pertaining to alimony, the most significant factor are the relative earnings and earnings capacity of the parties, and the fact that the great earnings disparity between the parties leaves Husband in a better position to achieve a good standard of living following the marriage and acquire capital assets in the future. Also of great significance is the fact that Wife took approximately 15 years out of the workforce to remain at home as the primary homemaker and caretaker of the parties' minor children. While this enabled Husband to pursue his career, it has created a significant impairment of Wife's earnings and earning capacity.

Master's Report, 2/27/13, at 14-15.

We conclude the findings of the trial court are supported by the record and perceive no abuse of discretion in its alimony award. Accordingly, we discern no merit to Husband's challenge to the trial court's alimony award.

In his third issue, Husband challenges the trial court's valuation of the parties' marital residence, which was granted to him in the trial court's equitable distribution of the marital property. Husband's Brief at 32. "The Divorce Code does not specify a particular method of valuing assets. The trial court must exercise discretion and rely on the estimates, inventories, records of purchase prices, and appraisals submitted by both parties."

Smith, supra at 21-22.

In determining the value of marital property, the court is free to accept all, part or none of the evidence as to the true and correct value of the property. ... Absent a specific guideline in the divorce code, the trial courts are given discretion to choose the date of valuation of marital property which best provides for "economic justice" between parties.

Baker v. Baker, 861 A.2d 298, 302 (Pa. Super. 2004) (internal quotation marks and citations omitted), *appeal denied*, 918 A.2d 741 (Pa. 2007).

At the May 22, 2012 hearing before the master, Wife submitted an appraisal report of the marital residence prepared by real estate appraiser Ronald Kile on January 28, 2011, valuing the property at \$265,000.00. N.T., 5/22/12, at 10, 153, Wife's Exhibit No. 16. Husband submitted an appraisal report by the same appraiser performed on September 28, 2011,

valuing the property at \$225,000.00. ***Id.*** at 12, 233, Husband's Exhibit No. 7.

Between January and September 2011, Wife, with acquiescence of Husband, commenced a kitchen renovation project at the residence, motivated in part by their expectation she would receive the property in equitable distribution.⁸ ***Id.*** at 89. The project progressed only to the demolition stage when Wife ended her involvement in the renovation after Husband expressed his desire to take over the project and his wish to keep the residence after the divorce.⁹ ***Id.*** at 94-95. Husband took over the completion of the renovation after the reappraisal of the property. ***Id.*** at 2011. Kile testified that the difference between the valuations in his January and September appraisal reports was due to the kitchen's state of demolition. ***Id.*** at 12.

Under these circumstances, the trial court determined "that Wife's actions were partially induced by Husband, and that her demolition of the kitchen was, in fact, of value, since it was the first step in remodeling a kitchen in need of remodeling." Trial Court Opinion, 8/8/13, at 3. Husband argues that the trial court determined the demolition had "value" without any factual basis and contrary to the appraiser's assertion that the premises

⁸ Husband disputes that he agreed to the scope of the renovations actually undertaken. N.T., 5/22/12, at 206.

⁹ Husband maintains that it was Wife who changed her mind about keeping the house. N.T., 5/22/12, at 208.

in the state of demolition in September 2011 was \$40,000.00 less than the previous appraisal. Husband's Brief at 33.

Husband mischaracterizes the trial court's ruling. The trial court did not dispute the valuation in Kile's second appraisal. Rather the trial court recognized the mutual responsibility of the parties in commencing the renovation, and that the renovation was a work in progress at the time of the second appraisal that would ultimately enhance the value of the residence. Under these circumstances, we conclude it was well within the trial court's discretion to adopt January 2011 as the date of valuation best providing economic justice between the parties with respect to this asset. ***See Baker, supra***. Accordingly, Husband can be afforded no relief on this issue.

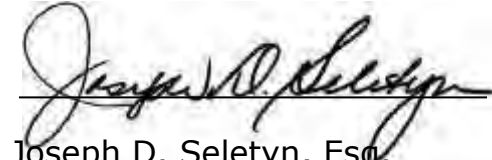
Husband's final issue is an extension of his first. Based on the trial court's determination of the parties' date of separation, Husband asserts the inclusion of the portions of his retirement assets acquired after 2005 as marital property was improper. Based on our disposition of that issue above, we disagree. Having determined the trial court's finding that the date of the filing of the divorce complaint establishes the date of separation is correct, we conclude its assessment and inclusion of Husband's retirement assets acquired before that date is also correct.¹⁰

¹⁰ Husband also claims that the trial court erred in including unvested retirement benefits as marital property, and that the trial court erred in
(Footnote Continued Next Page)

Having concluded Husband's issues are without merit or waived, we affirm the trial court's August 8, 2013 decree.

Decree affirmed. Motion to dismiss denied.

Judgment Entered.

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

Joseph D. Seletyn, Esq.
Prothonotary

Date: 4/11/2014

(Footnote Continued) _____

considering Husband's assets for both support and equitable distribution purposes. Husband's Brief at 34. However, Husband provides no development of these claims in his appellate brief and offers no citations to the record or pertinent authority. These issues are consequently waived. "When issues are not properly raised and developed in briefs, when briefs are wholly inadequate to present specific issues for review, a court will not consider the merits thereof." **Butler v. Iles**, 474 A.2d 943, 944 (Pa. Super. 2000) (citations omitted).