

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

NORMA W. EDKIN

IN THE SUPERIOR COURT OF
PENNSYLVANIA

Appellee

v.

WILLIAM EDKIN

Appellant

No. 1561 MDA 2012

Appeal from the Decree Entered August 10, 2012
In the Court of Common Pleas of Lancaster County
Civil Division at No(s): CI-01-00057

NORMA W. EDKIN

IN THE SUPERIOR COURT OF
PENNSYLVANIA

Appellee

v.

WILLIAM EDKIN

Appellant

No. 2017 MDA 2012

Appeal from the Order Entered October 16, 2012
In the Court of Common Pleas of Lancaster County
Civil Division at No(s): CI-01-00057

BEFORE: PANELLA, J., MUNDY, J., and PLATT, J.*

MEMORANDUM BY MUNDY, J.:

FILED DECEMBER 23, 2013

In these consolidated appeals, Appellant, William Edkin (Husband), appeals from the trial court's final divorce decree entered August 10, 2012 and the trial court's subsequent October 16, 2012 supersedeas order. In the

* Retired Senior Judge assigned to the Superior Court.

former appeal, Husband challenges numerous aspects of the trial court's equitable distribution, alimony, and other economic awards. In the latter appeal, Husband challenges the trial court's valuation of security required under Pennsylvania Rule of Appellate Procedure 1731(b). After careful review, we vacate in part and affirm in part the trial court's August 10, 2012 equitable distribution decree and remand for a recalculation in accordance with this memorandum. We further affirm the trial court's October 16, 2012 supersedeas order.

The trial court summarized the procedural history of this protracted divorce case as follows.

[Wife] filed a Divorce Complaint on January 2, 2001, raising claims for equitable distribution, alimony, alimony pendente lite, counsel fees, costs and expenses. On September 25, 2001, Wife filed a petition requesting interim counsel fees, costs and expenses. At a divorce hearing on November 9, 2007, Wife withdrew her claim for alimony. Subsequently, Wife filed a petition to reinstate her claim for alimony on August 3, 2009. Hearings were held before Divorce Master Scott E. Albert on September 5, 2002, February 20, 2003, April 3, 2003, August 15, 2003, January 22, 2004, January 23, 2004, February 22, 2007, July 12, 2007, October 3, 2007, November 9, 2007, November 16, 2007, October 23, 2008 and January 16, 2009. The Master's Report was filed March 26, 2010. Husband filed timely Exceptions on April 14, 2010. Wife filed no Exceptions and requested that Husband's Exceptions be dismissed.^[1]

¹ The Court of Common Pleas of Lancaster County has certified its divorce proceedings are conducted in accordance with Pa.R.C.P. 1920.55-2.

Argument Court was held on October 19, 2010, before the Honorable Christopher A. Hackman and the Honorable Jeffrey J. Reich.

By agreement of the parties, an Interim Distribution was granted on April 15, 2011, which disbursed \$25,000.00 to Wife, \$25,000[.00] to her divorce attorney and \$25,000.00 to her criminal defense attorney.

On October 19, 2011, oral argument was held in Judge Reich's chambers regarding the valuation of Husband's share in Pet Emergency Treatment Services. Based upon the agreement of counsel, the record was supplemented by counsel's respective letter briefs.

The Court issued its Memorandum Opinion and Order on June 29, 2012. Thereafter, a divorce was granted on August 10, 2012. Counsel for Husband filed a timely Notice of Appeal on August 28, 2012.

Trial Court Opinion, 10/25/12, at 1-2.

On August 30, 2012, Husband filed an application for supersedeas pursuant to Pennsylvania Rule of Appellate Procedure 1731(b). By order filed on October 16, 2012, the trial court granted Husband's application for supersedeas conditioned upon filing with the Lancaster County Prothonotary security for \$765,000.00 within 30 days of the date of the order. On November 15, 2012, Husband filed a motion for reconsideration of the trial court's October 16, 2012 order, seeking additional time to obtain the

security required.² That same day, Husband filed a notice of appeal from the trial court's October 16, 2012 supersedeas order. On December 14, 2012, this Court partially granted Husband's application for relief, consolidating Husband's appeals.³

On appeal, Husband raises the following eighteen issues.

- I. Did the [trial c]ourt err in valuing 3498 Marietta Avenue, Lancaster, Pennsylvania at \$618,000.00?
- II. Did the [trial c]ourt err in awarding [W]ife the total current value in the Vanguard Windsor IRA and the Edward Jones - Lord Abbett affiliated fund class A?
- III. Did the [trial c]ourt err in its valuation of [H]usband's interest in Pet Emergency Services, Inc. and Pet Emergency Treatment Services, Inc. (P.E.T.S.)?
- IV. Did the [trial c]ourt err in finding that the "excess cash" in [H]usband's veterinary practice was a marital asset?
- V. Did the [trial c]ourt err in making an adjustment for [H]usband's exclusive use of real property assets?
- VI. Did the [trial c]ourt err in not assessing [W]ife with a share of the expenses paid by [H]usband to maintain the property located in Ocean City, Maryland?

² The trial court issued a rule to show cause returnable in seven days, but no further action or order on Husband's motion to reconsider is evident from the certified record.

³ A third related appeal at 2025 MDA 2012 was not consolidated, but was ordered to be listed consecutively to these consolidated appeals.

- VII. Did the [trial c]ourt err in finding that the sum of \$23,000.00 retained by [H]usband was marital property?
- VIII. Did the [trial c]ourt err in finding that the rental account was marital property?
- IX. Did the [trial c]ourt err in not reducing the value of the veterinary practice by the cost to sell the same?
- X. Did the [trial c]ourt err in finding that [W]ife was not guilty of marital misconduct?
- XI. Did the [trial c]ourt err in awarding alimony to [W]ife?
- XII. Did the [trial c]ourt err in awarding counsel fees, costs and expenses to [W]ife?
- XIII. Did the [trial c]ourt err in finding that [W]ife did not squander (dissipate) marital assets?
- XIV. Did the [trial c]ourt err in ignoring the obvious bias of the master in favor of [W]ife demonstrating its own preference for [W]ife?
- XV. Did the [trial c]ourt err in awarding 60% of the marital estate to [W]ife and 40% of the same to [H]usband?
- XVI. Did the [trial c]ourt err in its order dated October [1]6, 2012 which dealt with [H]usband's Applications for Supersedeas pursuant to Pennsylvania [R]ule of [A]ppellate [Procedure] 1731(b)?
- XVII. Did the [trial c]ourt err in concluding in its Opinion Sur appeal filed October 25, 2012 that [H]usband had waived [sic] because they were not raised by [H]usband in his exceptions to the Master's report?

XVIII. Did the [trial c]ourt err with regard to certain of its findings of fact and its failure to correlate the same to its awards of distribution of marital property, alimony and counsel fees and costs to [W]ife?

Husband's Brief at 3-4.

Before addressing the merits of Husband's claims, we address the trial court's assertion that several of Husband's issues on appeal are waived for Husband's failure to raise them in his exceptions to the master's report or for failing to adequately brief and argue them in support of Husband's exceptions. Trial Court Opinion, 10/25/12, at 4-5. Those issues include numbers II, V, XI, and XII, which correspond to paragraphs 33, 31, 21, and 22 of Husband's Rule 1925(b) concise statement, respectively. Husband responds to the trial court's assertions of waiver in issue XVII in his brief. Husband's Brief at 61-63.

With respect to issues II and V in Husband's brief, the trial court states that Husband failed to present the issues in his exceptions to the master's report. Trial Court Opinion, 10/25/12, at 16, 18. Husband does not address how he raised issue II in his exceptions to the master's report, and our review of Husband's exceptions discloses no mention of the Vanguard accounts or the alleged failure by the master to account for any change in value prior to distribution. Accordingly, we agree with the trial court that issue II is waived. ***See Nagle v. Nagle***, 799 A.2d 812, 821 (Pa. Super. 2002) (noting issues not included in exceptions to master's report are

waived on appeal), *appeal denied*, 820 A.2d 162 (Pa. 2003). Husband claims he raised his challenge in issue V, concerning the master's adjustment in Wife's favor in light of Husband's exclusive use of real estate assets, in paragraph 61 of his exceptions. Husband's Brief at 63. Our review of the record leads us to conclude that the issue Husband presents in paragraph 61 of his exceptions to the master's report and paragraph 31 in his Rule 1925(b) statement, albeit differently phrased, each address the same contention that it was error to credit Wife with a portion of the rental value of said properties under the facts of the case. Consequently, we do not deem issue V waived on appeal.

With respect to issues XI and XII in Husband's brief, the trial court states that Husband failed to adequately brief or argue the issues in support of his exceptions and that said issues waived as a result. Trial Court Opinion, 10/25/12, at 8. Husband in turn cites to the portions of his brief where he addresses these issues. Husband's Brief at 62. Based on our review of the record, we conclude Husband sufficiently addressed the issues in his brief to preserve them on appeal. ***See Hicks v. Kubit***, 758 A.2d 202 (Pa. Super. 2000) (holding issues preserved for appeal where they are included in exceptions and 1925(b) even if not fully briefed before trial court).

With respect to waiver, we additionally note that Husband's issue VIII, addressing the master's finding that a certain rental account was marital

property, was not raised in Husband's 1925(b) statement. Hence, we deem the issue waived. "Any issues not raised in a Rule 1925(b) statement will be deemed waived." **Commonwealth v. Hill**, 16 A.3d 484, 494 (Pa. 2011).

We next proceed to address the merits of Husband's preserved issues. Husband's issues I, III-VII, IX, and XIII-XV challenge various aspects of the trial court's equitable distribution award.

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, 2013 WL 5783117, 3 (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).

We opt to alter the order of Husband's issues for ease of discussion. Husband's issues IV and VII challenge the inclusion of certain sums as marital property. "[T]he determination of whether an asset is a marital asset is a matter with the sound discretion of the divorce court." **Nagle**,

supra at 818. “An abuse of discretion is not lightly found, as it requires clear and convincing evidence that the trial court misapplied the law or failed to follow proper legal procedures.” ***Sabad v. Fessenden***, 825 A.2d 682, 686 (Pa. Super. 2003) (citation omitted), *appeal denied*, 836 A.2d 122 (Pa. 2003).

In issue IV, Husband challenges the master’s determination, as adopted by the trial court over Husband’s exception, that “excess cash” retained in Husband’s veterinary business, Hempfield Animal Hospital (HAH), is marital property.⁴ Husband’s Brief at 30-31. During the equitable distribution hearing before the master, the parties each retained an expert to value HAH. The parties ultimately entered a stipulation as to the net value of HAH subject to equitable distribution with a caveat concerning the excess cash retained in the business. Master’s Report, 3/26/10, at 4. The parties did agree that the value of the excess cash was \$133,703.00, but not whether the funds were properly valued as part of the business or whether they were marital property. ***Id.*** Husband maintains that the master erred by including these funds as marital property because the funds represented retained post-separation income that was not drawn from the business but was used to establish Husband’s support and alimony pendent lite obligations through the period the funds accumulated. Husband’s Brief at

⁴ HAH is an S corporation with Husband as sole shareholder.

32-33. "To allow this finding to stand would constitute 'double dipping', a practice frowned upon by our appellate courts." ***Id.*** at 33. The trial court, approving the master's findings, responds as follows.

As the [Wife's expert] witness testified, "the cash is sitting in the business, if it were sitting in Merrill Lynch in a non-business account, I wouldn't have added it to the value" (of [HAH]). The Master found this approach to be correct and included the excess cash as marital property.

Trial Court Opinion, 10/25/12, at 13.⁵

We conclude the master conflated the question of whether the "excess cash" was properly included in the valuation of HAH with the question of whether those funds were marital property. In doing so, the master reached an erroneous conclusion as to the latter question. The master accepted as credible the testimony of wife's expert witness, who testified as a business "valuator." The expert testified, "[t]he excess cash is in the business, so I don't know what else to do other than include it in the total [value of HAH]." Master's Report, 3/26/10, at 39, *quoting* N.T., 10/3/07, at 135. The expert admitted that if the sums had been withdrawn and placed in a non-business

⁵ Wife and the trial court suggest the stipulation precludes any challenge to the master's resolution of the characterization of the "excess cash." "Further, the parties stipulated that the Master would determine how to treat the excess cash. Husband cannot complain now that the Master determined the excess cash to be marital property." Trial Court Opinion, 10/25/12, at 13-14. We disagree. The stipulation plainly excluded the issue of whether the excess cash was marital property from any agreement of the parties other than the dollar value of the asset. The parties did not agree that the master's decision on this issue would be binding and unreviewable.

account, he would not include that sum in the value of the business. ***Id.***, *citing* N.T., 10/3/07, at 135, 138. However, the master also acknowledged Husband's income was determined not by "what he takes out, but the difference between what the business brings in and what business expenses he incurs." ***Id.*** at 40, *citing* N.T., 10/3/07, at 92. It is undisputed that Husband paid child support and APL through the post-separation period during which the "excess cash" accumulated, and that the amount of support and APL was based on Husband's income, which included his income from HAH. It is also undisputed that the "excess cash" accumulated due to diminished draws taken by Husband prior to the valuation. ***Id.*** at 9-10. Nevertheless, the master found that, since HAH was a marital asset and the "excess cash" was in an HAH account, the excess cash must be included as marital property. ***Id.*** at 40.

As noted, we conclude the master conflated the issues. Whether the cash account should be included as part of the valuation of HAH as a business is not dispositive of the distinct question of whether the cash account is marital property. Wife's expert never expressed a view on the latter question. The master's finding that all assets included in the valuation of HAH must perforce be marital property was error and a separate analysis of whether the asset is includable as marital property is required regardless of whether the asset is held within the sole proprietorship or outside the sole proprietorship.

In determining income for support purposes,[] it is axiomatic that the trial court may not include income that constitutes marital property under 23 [Pa.C.S.A.] § 3501, as such an action would foreclose the equitable distribution of those assets. We have explained that “money included in an individual’s income for the purpose of calculating support payments may not also be labeled as a marital asset subject to equitable distribution.” **Miller v. Miller**, 783 A.2d 832, 835 (Pa. Super. 2001) (quoting **Rohrer v. Rohrer**, 715 A.2d 463, 465 (Pa. Super. 1998)).

... “[W]e do not condone ‘double dipping’, i.e., using the same revenue as a source for ‘support’ and ‘equitable distribution.’” **Rohrer**, 715 A.2d at 466 (citation omitted).

Berry v. Berry, 898 A.2d 1100, 1104 (Pa. Super. 2006).

In light of the foregoing, we determine the master erred by including, as marital property, the “excess cash” that accumulated in Husband’s sole proprietorship from his post-separation income, when that same income served as a basis for Husband’s support and APL obligations. Accordingly, we conclude the trial court abused its discretion when it failed to sustain Husband’s exception to the master’s report on this ground.

In issue VII, Husband challenges the master’s designation of \$23,000.00 in cash, kept in a shoebox at HAH prior to separation, as marital property. Husband complains the master ignored his testimony that he spent the money to pay marital bills, exhausting the cash prior to separation. Husband’s Brief at 37. Husband avers the master’s finding is inconsistent with his treatment of other assets used by Wife to pay for

expenses and is “a demonstration of his bias in favor of Wife.” ***Id.*** The trial court determined the record supported the master’s finding, which was grounded on the master’s assessment of credibility. Trial Court Opinion, 10/25/12, at 14. We agree. As noted above, it is for the finder of fact to assess credibility, and we will not disturb such findings if there is support for them in the record. ***See Yuhas, supra.***

In his issues I, III, V, VI, and IX, Husband challenges the master’s valuation of various marital assets. “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 v. Smith***, 904 A.2d 15, 21-22 (Pa. Super. 2006).

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. Where the evidence offered by one party is uncontradicted, the court may adopt this value even though the resulting valuation would have been different if more accurate and complete evidence had been presented. A trial court does not abuse its discretion in adopting the only valuation submitted by the parties. 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).

In his issue I, Husband challenges the master's valuation of the parties' real estate at 3498 Marietta Avenue, Lancaster, Pennsylvania, where HAH is located. Husband essentially raises a weight of evidence claim, suggesting the court erred in accepting the credibility of Wife's expert appraiser over the competing valuations presented for the court's consideration. Husband's Brief at 23-27. The trial court noted, "[t]he finder of fact determines what weight to give to an expert's testimony." Trial Court Opinion, 10/25/12, at 13, citing **Rigler v. Treen**, 660 A.2d 111, 116 (1995). Accordingly, the trial court deferred to the credibility determinations of the master and, finding support in the record, denied Husband's exception. Again, we decline to reweigh the evidence and discern no abuse of discretion by the trial court in accepting the master's valuation of this asset.

Husband's issue III challenges the trial court's valuation of his interest in Pet Emergency Treatment Services, Inc. (P.E.T.S.).⁶ Husband's Brief at 29. As noted above, after the hearing on Husband's exceptions, the issue of the value of Husband's shares in P.E.T.S. was deferred for further argument and briefing by the parties. In his supplemental letter brief, Husband argued that the value of his shares should be determined in accordance with the pertinent shareholder buy-out agreements discounted for uncompensated services, proposing a figure of \$5,000.00. Husband's Letter Brief, 5/12/13,

⁶ P.E.T.S. is a subchapter S corporation. Following the example of the master and the trial court, the references to P.E.T.S. herein includes the related organizations of P.E.T.S. Imaging, and Pets Emergency Services.

at 1-2. Wife argued the shareholder agreements were merely aids in valuation but that the cash flow analysis performed by her expert reflected a more realistic assessment of worth, proposing a \$25,000.00 value. Wife's Letter Brief, 5/12/13, at 1-3. Both parties cite **Butler v. Butler**, 663 A.2d 148, (Pa. 1995), wherein our Supreme Court explained the significance of partnership or shareholder buy/sell agreements when a trial court is determining the value of a business for equitable distribution purposes. Husband's Brief at 30; Wife's Brief at 10. The Butler Court explained as follows.

[T]here can be no single formula for valuing a business interest of a spouse for purposes of equitable distribution that will apply in all circumstances. However, we can set forth certain guiding principles. ... [G]enerally the monetary worth of a [business] will consist of the total value of the [] capital accounts, accounts receivable, the value of work in progress, any appreciation in true value, together with good will, should there be any, with the total amount thereof being reduced by the amount of accounts payable as well as any other liabilities not reflected upon the partnership books. ... [H]owever, [] the above factors will bear no meaning or relevance in ascertaining the present day monetary worth for purposes of equitable distribution unless it is also determined that the books of the firm are well kept and that the value of the [shareholders'] interests are periodically reviewed. ...

Given these parameters, it becomes apparent that a buy/sell agreement will *not* always be beneficial for purposes of ascertaining a spouse's present interest in the business. The reason for this is clear: while certain buy/sell agreements [] will, indeed, be sufficiently comprehensive and provide a clear

formula for purposes of valuing a spouse's business interest, others may not be so comprehensive or may not reflect the current situation. Where, however, such an agreement is in effect, it should be considered by the court in the first instance in an effort to determine whether a value which represents the present day monetary worth of the business interest can be ascertained from the provisions therein. If it is determined that the terms of the buy/sell agreement can be employed to ascertain a present day monetary value, any such value determined under those terms is only a presumptive value, which can then be attacked by either party as not reflective of the actual present day value. ... In other words, a buy/sell agreement should be considered in the first instance simply because such agreements may, indeed, provide a formula of sorts which includes accounts receivable, capital accounts, accounts payable and so forth which, of course, apply numbers reflecting the current financial structure of the business. In sum, then, while buy/sell agreements may be a factor which aids the courts in ascertaining the present worth of a spouse's business interest, such are not necessarily determinative of that issue.

Butler, supra at 154-155 (footnote and citations omitted, emphasis in original).

Instantly, the trial court considered the P.E.T.S. buy/sell agreements but determined the value presented by Wife's expert reflected a more accurate measure of the present worth of the business. Trial Court Opinion, 10/25/12, at 11. Based on the record and the foregoing authority, we discern no abuse of discretion in the trial court's determination that Husband's interest in P.E.T.S. is \$25,000.00 as opposed to the offering price as calculated under the buy/sell agreements.

In his issue V, Husband complains the trial court erred in determining a fair rental value of marital property in husband's exclusive possession as a marital asset. Husband's Brief at 34. Again, Husband makes a largely factual challenge claiming the trial court failed to credit his evidence that he expended efforts to maintain the value of the property. We reiterate that such credibility determinations are within the discretion of the trial court and we will not disturb them on appeal. ***See Yuhas, supra.***

In his issue VI, Husband faults the master and the trial court for not deducting a proportional share of repair and up-keep costs expended by husband from Wife's share of the proceeds from the sale of the parties' Ocean City condominium. Husband's Brief at 36. The trial court noted that Husband reported these costs as tax deductions on his tax returns, which deductions "lowered Husband's income available for support and thereby lessened his obligation to Wife in child support and APL orders." Trial Court Opinion, 10/25/12, at 15. In line with our earlier discussion of the excess cash in Husband's veterinary practice, having credited Husband with these expenses in the parties' support case, the trial court did not err or abuse its discretion in declining to credit husband again for the purposes of equitable distribution. ***Berry, supra.***

In his issue IX, Husband challenges the master's failure to "deduct the costs of sale" from the value attributed to HAH. Husband's Brief at 39. However, as noted earlier, the parties entered a stipulation before the

master, stating the value of HAH to be \$275,000.00. As noted by the master, “[t]his is the total net value for the practice to be used for equitable distribution purposes.” Master’s Report, 3/26/10, at 4. The only HAH valuation issue reserved for the master was whether the “excess cash” was marital property as discussed above. N.T., 11/9/07, at 6. Accordingly, we agree with the trial court that by so stipulating, Husband is “foreclosed from reopening the issue.” Trial Court Opinion, 10/25/12, at 14.

Husband’s issues XIII, XIV and XV challenge the trial court’s acceptance of the master’s findings relative to the court’s equitable assessments and ultimate distribution of the marital estate. Husband’s Brief at 51-58. Specifically, in issue XIII, Husband claims the trial court “erred in not considering [] dissipation of marital funds by Wife in the scheme of equitable distribution.” **Id.** at 55. In issue XIV, Husband alleges the trial court erred in not determining that the master’s findings reflected bias in favor of Wife. **Id.** at 58. In addition, in issue XV, Husband argues that under all the circumstances and equities in the case, the master and the trial court erred in awarding Wife 60% of the marital estate. **Id.**

In each argument, Husband fundamentally challenges the factual findings made by the master and the trial court’s acceptance of those findings. **Id.** at 51-58. Husband recites evidence he deems favorable to his alternative version of various facts and factors and urges this court to adopt them. **Id.** Significantly, he does not allege the master or the trial court

failed to consider any of the factors prescribed by 23 Pa.C.S.A. § 3502(a). Where, however, as is the case here, we find support in the record for the trial court's factual determinations, we will not disturb them on appeal. "Essentially, the focus of Husband's entire argument appears to be an attack on the credibility determinations made by both the master and the trial court. This Court cannot overturn the findings made below on such a basis, most importantly, because they are supported by record evidence." ***Childress v. Bogosian***, 12 A.3d 448, 457 (Pa. Super. 2011).

With respect to allegations of a master's abuse of discretion by demonstrating bias for or against a party, we have stated the following.

The master's report and recommendations are advisory only; the trial court is required to make an independent review of the report and recommendations to determine whether they are appropriate. This being the case, any possible bias on the part of the master would be reviewed by the trial court and corrected since the trial court was responsible for making the final Order.

Kohl v. Kohl, 564 A.2d 222, 224 (Pa. Super. 1989) (citation omitted), *affirmed by* 575 A.2d 463 (Pa. 1991). Instantly the trial court found that "Husband has failed to prove bias in this matter, and, consequently, has failed to establish any basis for the appellate court to find that an abuse of discretion has occurred." Trial Court Opinion, 10/25/12, at 20. We agree.

With respect to the trial court's ultimate distribution scheme, we have previously remarked as follows.

[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). We discern no abuse of discretion in the trial court's assessment of the various factors and equitable considerations in support of its distribution scheme for the marital property in this case.

We next address Husband's issues X, XI, and XII, which challenge aspects of the trial court's alimony award and award for attorney fees and costs. 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 v. Gates, 933 A.2d 102, 106 (Pa. Super. 2007), *appeal denied*, 980 A.2d 608 (Pa. 2009), *quoting Teodorski v. Teodorski*, 857 A.2d 194, 200 (Pa. Super. 2004) (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).

Similar principles apply to our review of an award of attorney fees and costs.

We will reverse a determination of counsel fees and costs only for an abuse of discretion. The purpose of an award of counsel fees is to promote fair administration of justice by enabling the dependent spouse to maintain or defend the divorce action without being placed at a financial disadvantage; the parties must be "on par" with one another.

Counsel fees are awarded based on the facts of each case after a review of all the relevant factors. These factors include 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.

Counsel fees are awarded only upon a showing of need. In most cases, each party's financial considerations will ultimately dictate whether an

award of counsel fees is appropriate. Also pertinent to our review is that, in determining whether the court has abused its discretion, we do not usurp the court's duty as fact finder.

Busse v. Busse, 921 A.2d 1248, 1258 (Pa. Super. 2007) (internal quotation marks and citations omitted).

Instantly, the trial court determined the master properly considered the statutory factors included in 23 Pa.C.S.A. § 3701 and concluded that alimony award in favor of Wife was warranted. Trial Court Opinion, 6/29/12, at 13-14. The trial court, however, in view of the "substantial assets that Wife will receive," modified downward the amount of alimony recommended by the master.⁷ ***Id.*** at 14. Similarly, the trial court revised downward the master's recommended award for attorney fees and costs.⁸ ***Id.*** at 15.

In his issue X, Husband challenges the master's finding that Wife's alleged marital misconduct was either not established or condoned. Husband's Brief at 43. In his issue XI, Husband alleges the circumstances of the case, especially Wife's share of the marital property, Wife's income

⁷ The master recommended an alimony award in favor of Wife of \$3,000.00 per month until she attains the age of 62 and \$2,000.00 per month thereafter. Master's Report, 3/26/10, at 66. The trial court ultimately ordered alimony in the amount of \$2,000.00 per month until Wife attains the age of 62 and \$1,000.00 per month thereafter. Trial Court Opinion, 6/29/12, at 14.

⁸ The master recommended an award of attorney fees to Wife of \$75,000.00 plus \$10,000.00 toward costs. Master's Report, 3/26/10, at 69. The trial court ultimately ordered Husband to pay \$50,000.00 toward Wife's attorney fees and \$10,000.00 in costs. Trial Court Opinion, 6/29/12, at 15.

potential, and Wife's financial needs, do not justify any alimony award. ***Id.*** at 48-49. In his issue XII, Husband asserts the trial court erred in awarding attorney fees and costs when Wife was responsible for excess litigation and delays, and Wife received ample APL payments throughout the litigation. ***Id.*** at 50-51.

In all of these arguments, Husband essentially recounts the portions of testimony and evidence he feels the trial court should have credited to reach a different conclusion and that its failure to do so was error. It is clear, however that the trial court considered all the evidence expounded by Husband but relied on the credibility determinations of the master. As noted repeatedly in this memorandum, we will not disturb the credibility determinations of the trial court and, where its conclusions find support in the record, we will not disturb them on appeal. ***See Yuhas, supra.***

The trial court's opinion makes clear that it made the awards after considering all the relevant factors, including Husband's ability to pay, the disparate income potential of the parties, and the financial resources available to the parties. Trial Court Opinion, 6/29/12, at 13-15. It then adjusted the master's recommendations to better achieve economic justice between the parties in light of those factors. ***Id.*** Accordingly, under the facts of this case, we do not conclude that the trial court abused its

discretion and thus, given our standard of review, we must affirm the award of alimony and counsel fees.⁹

Husband's final issue, number XVI, pertains to his appeal from the trial court's October 16, 2012 order granting Husband's application for supersedeas pursuant to Pennsylvania Rule of Appellate Procedure 1713. Husband's Brief at 59. Specifically, Husband contends the trial court abused its discretion by requiring excessive security, and in concluding that it could not accept real estate as security. *Id.* at 60. The pertinent Rule provides as follows.

Rule 1731. Automatic Supersedeas for Orders for the Payment of Money

(a) General rule. Except as provided by subdivision (b), an appeal from an order involving solely the payment of money shall, unless otherwise ordered pursuant to this chapter, operate as a supersedeas upon the filing with the clerk of the lower court of appropriate security in the amount of 120% of the amount found due by the lower court and remaining unpaid. Where the amount is payable over a period of time, the amount found due for the purposes of this rule shall be the aggregate amount payable within 18 months after entry of the order.

(b) Domestic relations matters. An appeal from an order of child support, spousal support, alimony,

⁹ Husband's issue XVIII reiterates his dismay at many of the trial court's factual findings and alleges the trial court failed to "correlate" those factual findings with its equitable distribution, alimony and attorney fee awards. Husband's Brief at 64. This argument fails for the same reason most of Husband's arguments have failed. It is not for this Court to second-guess the credibility and weight determinations of a trial court when its conclusions find some support in the record. *See Yuhas, supra.*

alimony pendente lite, equitable distribution or counsel fees and costs shall operate as a supersedeas only upon application to and order of the trial court and the filing of security as required by subdivision (a). The amount and terms of security shall be within the discretion of the trial court.

Pa.R.A.P. 1731. In construing the Rule, this Court has noted as follows.

[For] the grant of a supersedeas of a domestic relations order, the filing of security is mandatory not optional or discretionary. While the trial court clearly has discretion as to the amount and terms of the security pursuant to subsection (b), the security must, nonetheless, be filed as required by 1731(a) in order to effectuate the supersedeas.

Cruse v. Cruse, 737 A.2d 771, 774 (Pa. Super. 1999), *appeal denied*, 753 A.2d 818 (Pa. 2000).

Instantly, the trial court determined the amount due to Wife under its decree as \$965,000.00, calculated as follows.

This estimation is based upon the equitable distribution award of \$625,846.00, plus the approximate present \$158,000.00 value of the future alimony payments (assuming that Wife lives to the age of 85), plus the award of \$35,000.00 in attorney's fees and costs, plus approximately \$90,000[.00] representing 60% of the rental value for HAH (before adjustment for mortgage carrying costs expended), plus \$54,000.00 for the IRAs also awarded to Wife, with some allowance for fees and costs in the event that a contested process of liquidation becomes necessary.

Trial Court Order, 10/16/12, at 2 n.1. The trial court then directed Husband to provide \$765,000.00 security with the prothonotary within 30 days.

Rule 1731(b) clearly leaves to the discretion of the trial court the determination of the amount and the terms for any required security. We discern no abuse of that discretion in the trial court's determinations in this case. The amount of the required security bears a reasonable relationship to Husband's obligations under the decree and Wife's exposure in this case. Neither do we discern any abuse of discretion in the trial court's declining to accept forms of security not recognized as "appropriate security" under Pa.R.A.P. 1734, particularly real estate. "The [trial c]ourt does not believe that [it] should impose upon Wife the burden of suffering, or of managing, the risks associated with security in any other form than what the Rule establishes as "appropriate." Trial Court Opinion, 12/27/12, at 3.

Husband's allegation of error with respect to the trial court's requirement that the security be filed within 30 days of the supersedeas order is misplaced. The trial court's order, to the extent it conflicted with Pa.R.A.P. 1735, inured to the benefit of Husband.

In providing that security must be filed in order for an appeal to operate as a supersedeas, the Rules also establish time limitations for the filing of that security. Rule 1735(a) provides:

The filing of appropriate security in the amount required by or pursuant to this chapter within 30 days from the entry of the order appealed from shall stay any execution theretofore ordered. The filing of such appropriate security after the 30 day period shall stay only executions or distributions thereafter issued or ordered.

Sun Oil Co. of Pennsylvania v. Banghart, 388 A.2d 304, 305 (Pa. 1978).

Thus, it is not clear the trial court had authority to extend the time for filing the security beyond 30 days following the date of the decree, at least as to distributions due from that date and prior to the filing of the required security. Thus, we discern no prejudice to Husband by the time provisions contained in the trial court's October 16, 2012 order.

In light of the foregoing, we conclude the trial court's August 10, 2012 final decree, including the equitable distribution, alimony, and attorney fee and cost awards, are supported by the record and evidence no abuse of discretion with the exception of the inclusion of the "excess cash" in HAH as marital property. We further conclude that the trial court did not abuse its discretion in fashioning the security required to be filed to effect a supersedeas in this case. Accordingly, we vacate the August 10, 2012 decree in part and remand for adjustment of the equitable distribution order, eliminating the \$133,703.00 excess cash included in the valuation of HAH from the designation of marital property. In all other aspects, the trial courts August 10, 2012 decree and October 16, 2012 order are affirmed.

Decree vacated in part and affirmed in part. Order affirmed. Case remanded with instructions. Jurisdiction relinquished.

Judgment Entered.

A handwritten signature in black ink, appearing to read "Joseph D. Seletyn". The signature is fluid and cursive, with a large initial "J" and a long, sweeping underline.

Joseph D. Seletyn, Esq.
Prothonotary

Date: 12/23/2013