

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

PAMELA LYNN PHILLIPS,

Appellee

v.

LAWRENCE PHILLIPS,

Appellant

IN THE SUPERIOR COURT OF
PENNSYLVANIA

No. 1025 EDA 2012

Appeal from the Order Entered March 12, 2012
In the Court of Common Pleas of Chester County
Civil Division at No(s): 2002-00654

BEFORE: BOWES, OTT, and STRASSBURGER,* JJ.

MEMORANDUM BY BOWES, J.:

FILED OCTOBER 25, 2013

Lawrence Phillips ("Husband") appeals the order¹ directing him to pay Pamela Phillips ("Wife") \$109,094.87 plus interest and to provide Wife complete copies of his tax returns from 2006, 2007, 2008, and 2009.² We affirm in part, reverse in part, and remand.

* Retired Senior Judge assigned to the Superior Court.

¹ Although the order is dated March 8, 2012, the trial court did not enter the order with proper notice to the parties until March 12, 2012. We revised the caption accordingly.

² The order also directed Wife to pay Husband \$9,401 and relinquish title to cemetery plots to Husband. As it appears from the parties' briefs that Wife has returned the title and that Husband eventually provided the tax documentation, albeit belatedly, we do not address those aspects of the order. As discussed in the body of this memorandum, however, we do consider Husband's persistent non-compliance with the demand to produce
(Footnote Continued Next Page)

Husband and Wife married on August 18, 1984, and while the precise date of separation is disputed, Wife filed a complaint for divorce on January 22, 2002. The divorce complaint included, *inter alia*, claims for equitable distribution, spousal support, and custody of the parties' then-nine-year-old daughter. Husband ultimately was awarded primary physical custody of the child.

Over the next eight years, the parties engaged in contentious litigation regarding the equitable distribution of the sizeable marital estate the couple amassed while Husband was employed as a Senior Vice President of Human Resources of Citigroup, Inc. ("Citigroup").³ Both parties have been obdurate and vexatious, and each has delayed the resolution of this matter. The record is replete with petitions for special relief, motions to compel, and countervailing contempt petitions. On March 15, 2006, Husband and Wife entered a stipulation to distribute several marital assets. As it relates to the issues underlying this appeal, the parties agreed to share equally the proceeds of: (1) a General Electric ("G.E.") deferred incentive compensation benefit that grossed approximately \$52,470 per year for years 2006-2009; (2) a Citigroup qualified monthly pension payment of approximately

(Footnote Continued) _____

the tax records and the detrimental effect his stubbornness had on the parties' ability to divide the marital estate.

³ While the marital estate totaled approximately twenty million dollars, the current dispute concerns the division of roughly \$300,000.

\$448.13; (3) a Citigroup non-qualified monthly pension payment of an estimated \$14,090.22; and (4) Husband's net monthly Social Security benefits totaling \$1,200.⁴ In addition, Husband was responsible for maintaining Wife's medical insurance through Citigroup.

As of the date of the 2006 order, the relevant benefits were in pay status. The parties did not draft any domestic relation orders to manage these distributions. Instead, Husband was required to pay the allotted sums to Wife directly within seven business days of receiving the benefits. Trial Court Order, 3/15/06, at 3.

Despite ongoing disputes over the next several years, Husband and Wife divided the bulk of the remaining marital assets through additional court orders or stipulations. Those assets included extensive real estate as well as investment accounts and cash distributions from investment and bank accounts. As of July 2009, Wife's portion of the then-divided marital estate was valued at \$6,130,776 and Husband received \$4,561,740 of the marital assets. **See** Master's Report and Recommendation, 7/30/09, at Exhibit J-1.

On June 2, 2009, Wife filed a petition for contempt against Husband for his failure to comply with the March 15, 2006 order. Specifically, Wife alleged that Husband failed to pay her the fifty percent share of his G.E.

⁴ The parties agreed that when Wife's social security benefit attained pay status, it would offset her share of Husband's social security benefit.

deferred incentive compensation benefit for 2009, or forward one-half of his monthly social security and Citigroup defined benefit pension payments for May 2009. In addition, Wife alleged that Husband had been continually late in forwarding the required payments to her under the order. In his response, Husband explained that he withheld the payments partially due to Wife's failure to pay her share of the child support and due to Wife's failure to release a freeze that she had placed on marital accounts. The matter was consolidated with a pending hearing to resolve the remaining equitable distribution.

On July 6, 2009, the parties executed a final agreement (the "Agreement") designed to resolve all of the outstanding equitable distribution claims between the parties and to distribute the remaining marital assets totaling approximately \$9,053,266.37. That comprehensive agreement, which was recited on the record during the master's hearing and memorialized in the divorce master's July 30, 2009 report and recommendation, was incorporated, but not merged, into the divorce decree entered on August 10, 2009. To the extent there was tension between the terms of the Agreement and any of the parties' prior stipulations, the Agreement controlled.

Pursuant to the Agreement, Wife received a portion of Husband's Conservest investment account, and two additional retirement accounts that belong to Husband: a Citigroup Savings Incentive 401(k), and a G.E. Savings and Security account. **See** Masters Report and Recommendation,

7/30/09, at Exhibit J-2. In addition, Wife retained her Conservest account and her bank account with Malvern Federal. ***Id.*** In sum, under the Agreement, Wife received additional assets valued at \$5,276,533.18 and a credit of \$109,094.87 to offset her tax liability owed to Husband on some of the marital assets. ***Id.*** The precise amount of her tax liability was to be calculated based upon a tax reconciliation using Husband's tax returns for the years 2006 to 2009. ***See*** Masters Report and Recommendation, 7/30/09, at 7-8.

As it relates to the pension plans, the parties agreed that Richard Lawson, Esquire, would prepare all of the necessary qualified domestic relations orders ("QDRO") and domestic relations orders ("DRO") in order to effectuate the division of Husband's retirement plans. The agreement not only specified the Citigroup Savings Incentive 401(k) and the G.E. Savings and Security Plan outlined in Exhibit J-2, but it also identified the two Citigroup defined benefit pension plans discussed in the March 15, 2006 order, whose payments are at issue herein, *i.e.*, the Citigroup qualified monthly pension and the Citigroup non-qualified monthly pension. ***Id.*** at 4. In addition, Attorney Lawson was appointed the escrow agent for the receipt and distribution of the Citigroup pension benefits paid under the QDRO and DRO.

In relation to Wife's petition for contempt of the March 15, 2006 order, Husband was directed to pay Wife, subject to the reconciliation of Wife's tax liability, a total of \$56,546 for her share of the G.E. deferred incentive

compensation benefit for 2009, fifty percent of the two Citigroup pension payments for May, June, and July 2009, one-half of Husband's monthly social security benefits for that three-month period, and Wife's counsel fees totaling \$2,500. The parties agreed to resolve their dispute regarding Wife's nonpayment of child support within sixty days. The comprehensive agreement, which was utterly silent as to any spousal support obligations, terminated Husband's responsibility for Wife's health insurance coverage as of July 8, 2009. Thereafter, on July 23, 2009, in order to effectuate the equitable distribution, the trial court dissolved the freeze order permanently.

On October 6, 2009, the trial court entered the proposed QDRO and DRO and the parties submitted the draft orders to Citigroup. Both of the orders assigned Wife an amount equal to "**Fifty Percent (50%)** of [Husband's] monthly vested accrued benefit[s] under the [respective] Plan[s]." **See** QDRO, 10/6/09, at 3 (emphasis in original); DRO, 10/6/09, at 3 (emphasis in original). Wife had no rights to any benefits under the plans that were not specifically assigned by the orders. QDRO, 10/6/09, at 3; DRO, 10/6/09, at 3. Likewise, the QDRO directed that if either party was inadvertently paid a benefit under the plan that was properly payable to the other party, they were required to reimburse the other party immediately. QDRO, 10/6/09, at 5-6. Similarly, the DRO required the party to return the inadvertent payments to the plan administrator for corrective action. DRO, 10/6/09, at 6. Neither domestic relations order referred to the creation or disposition of an alternate payee account.

On April 21, 2010, Husband filed a petition for special relief, contempt and enforcement alleging, *inter alia*, that Wife failed to comply with the tax reconciliation. Wife responded that her accountant prepared the necessary tax analysis but could not complete it without Husband's IRS Form 1099 ("Form 1099") for the applicable years, which she alleged Husband failed to provide. On May 17, 2011, Husband filed a supplemental petition seeking \$145,808.14 in pension overpayments that he erroneously continued to provide to Wife pursuant to the March 15, 2006 order, even though she began receiving her portion of the Citigroup pension benefits directly from Citigroup pursuant to the QDRO and DRO on January 2010 and April 2010, respectively, retroactive to September 2008.⁵ In addition, Husband asserted that Wife failed to satisfy her obligation to reimburse him for one-half of their daughter's uninsured medical and tutoring expenses.

⁵ Husband's request for \$145,808.14 represented the aggregate net sum that he believed due to him for the overpayments, including interest. However, Husband's computation of that amount is confusing insofar as it also includes several figures that are unrelated to the overpayment. For example, Husband reduced the alleged gross overpayment of \$179,688.29 to account for the overdue payments he owed to Wife for her share of his social security benefits and for one-half of the annual G.E. deferred payment that he failed to pay to Wife. In his subsequent motion for reconsideration and appellate brief, Husband alleged that the net overpayment totaled \$134,287.31 and \$145,925.31, respectively; however, those figures also include unrelated credits and obligations, some of which continue to be disputed. Likewise, Husband's calculation of the gross amount of the alleged overpayment increased without explanation from \$179,688.29 in his petition for special relief to \$180,821.31 in the petition for reconsideration and appellate brief.

Wife responded that she notified Husband via email on April 15, 2010, that the Citigroup pension payments had commenced pursuant to the QDRO and DRO. She continued that she refunded the amounts that she calculated Husband sent erroneously, albeit with adjustments for additional payments that she believed were either currently due or soon would mature. In addition, on June 8, 2011, Wife filed a countervailing petition for special relief, contempt and enforcement requesting the entire \$109,094.87 credit against her tax liability that she was entitled to pursuant to Exhibit J-2 of the Agreement. That petition reasserted Wife's complaint that her accountant could not complete the tax reconciliation and therefore determine Wife's tax liability without Husband's Form 1099s for the tax years at issue. In essence, Wife posited that since her tax liability owed to Husband could not be computed without Husband's documentation, she was entitled to the benefit of the entire credit until the tax documents were produced and the reconciliation was completed.

The trial court consolidated the unresolved petitions, and the parties agreed to submit the issues on briefs with supporting memoranda, documentation, and affidavits. Upon consideration of those documents, on March 12, 2012, the trial court entered the above-referenced order wherein it granted in part both Husband's and Wife's petitions for special relief. Specifically, it awarded Wife the entire \$109,094.87 credit in cash plus interest from August 10, 2009, and it directed Husband to provide Wife his tax returns and Form 1099s for the years 2006–2009. As it relates to

Husband's petition, the trial court ordered Wife to pay Husband \$9,401 for her share of their child's unreimbursed medical and tutoring expenses, and directed Wife to relinquish title to Husband's cemetery plots.

Husband's timely appeal followed on April 9, 2012.⁶ Initially, the trial court did not direct Husband to file a concise statement of errors complained of on appeal pursuant to Pa.R.A.P. 1925(b), and it failed to draft a Rule 1925(a) opinion. Thus, on October 3, 2012, this Court entered an order remanding the record for the preparation of a Rule 1925(a) opinion. After directing Husband to file a Rule 1925(b) statement, the trial court entered its opinion on November 25, 2012. When the record was returned to this Court, we issued a new briefing schedule and reassigned the case to the current panel. The matter is now ready for review.

Husband presents four questions for our examination:

- I. Whether the court erred as a matter of law when it failed to enforce and properly interpret the parties' property settlement agreement.
- II. Alternatively, whether the court abused its discretion in failing to find that Wife was unjustly enriched by receiving nearly 75% of Husband's gross pension benefits between September 2008 and August 2010.

⁶ The trial court denied Husband's request for reconsideration. As a motion for reconsideration in a domestic relations case does not extend the thirty-day appeal period unless reconsideration is granted, Husband had until April 11, 2012 to file his notice of appeal. **See** Pa.R.C.P. 1930.2(b).

III. Alternatively, whether the court abused its discretion in not accepting counsels' agreement that the most Husband owed Wife was \$34,896.00.

IV. Alternatively, whether the court abused its discretion in failing to specifically address in its order, Husband's claim for reimbursement of overpayments made to Wife.

Husband's brief at 4.

The issues presented in Husband's statement of questions presented are easily reduced to two complaints: (1) the trial court erred in awarding Wife the entire \$109,094.87 tax credit when the contemplated tax reconciliation was never completed; and (2) Wife received double payments for the two Citigroup defined benefit pensions during the relevant period after Citigroup accepted the proposed QDRO and DRO retroactive to 2008 and commenced direct payments to her during January 2010 and April 2010, respectively, while Husband continued to forward Wife one-half of his allotted monthly pension benefits pursuant to the Agreement.

We review the trial court's order disposing of Husband's and Wife's countervailing petitions for contempt and enforcement of the Agreement for an abuse of discretion. The following legal principles are relevant to our review:

The determination of marital property rights through prenuptial, postnuptial and settlement agreements has long been permitted, and even encouraged. Both prenuptial and post-nuptial agreements are contracts and are governed by contract law. Moreover, a court's order upholding the agreement in divorce proceedings is subject to an abuse of discretion or error of law standard of review. 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.
We will not usurp the trial court's factfinding function.

Paroly v. Paroly, 876 A.2d 1061, 1063 (Pa.Super. 2005) (citations omitted).

At the outset, we confront Husband's challenge to the portion of the trial court's order awarding Wife the entire \$109,094.87, plus interest when the Agreement set forth that the amount was a credit against Wife's tax liability owed to Husband. The crux of this argument is that the trial court committed an abuse of discretion in failing to apply the terms of the Agreement and reduce the amount by Wife's tax liability. Husband acknowledges that the contemplated tax reconciliation never occurred, but asserts that Wife is responsible for portions of the delay. He highlights that Wife refused to provide relevant documentation and fired her accountant immediately before the deadline to submit his report to the trial court. Husband argues that Wife terminated her accountant because she was unhappy with his calculations revealing that her tax liability as discussed in the Agreement was approximately \$74,198.87 and that she was entitled to only \$34,896 of the \$109,094.87 credit.

In addition, Husband asserts that the court erred in finding that he failed to provide the documentation required to determine Wife's tax liability. Husband asserts that he eventually supplied all the documentation that Wife's accountant needed to complete the tax analysis. He continues that the parties agreed to have their respective accountants work collectively, however, when the collaboration yielded figures that Wife did not like, she

fired her accountant and failed to submit any calculations to the trial court. Thus, he submits that the trial court abused its discretion in disregarding his undisputed tax analysis and directing him to pay Wife \$109,094.87 plus interest, despite evidence that Wife does, in fact, owe a significant tax liability.

Wife counters that the trial court order did not relieve her of the obligation to remunerate Husband for her share of the tax liability for 2006-2009 or alleviate the need for an accountant to complete the contemplated tax reconciliation for those years. Wife stressed that she repeatedly conceded a yet-to-be-determined debt to Husband once the reconciliation was completed and merely protested Husband's control over the \$109,094.87 credit while he continued to delay the reconciliation by refusing to provide the required documentation. In support of her argument that Husband's obstinacy caused the delay, Wife relies upon correspondence among her counsel, Husband's counsel, and the accountant retained to complete the reconciliation. Collectively, the correspondence reveals: 1) on June 7, 2010, the accountant informed Wife's counsel that he could not prepare a precise reconciliation without the relevant Form 1099s; 2) Husband's counsel promptly confirmed that the Form 1099s would be produced; 3) having not received the required documents, on September 9, 2010, Wife's counsel reminded Husband's counsel of the outstanding request for the Form 1099s; and 4) as of May 23, 2011, Husband still had not transmitted the required documentation to the accountant. **See** Affidavit of

Pamela L. Phillips, 11/18/11, Exhibit L. Thereafter, Wife filed the June 2011 petition for special relief requesting the \$109,094.87 credit and the necessary tax documents.

The trial court did not confront the precise issue regarding which party was ultimately responsible for the failure to complete the tax reconciliation pursuant to the agreement. It simply rejected Husband's position that it committed legal error in disregarding Husband's proposed universal accounting that calculated his total outstanding obligation to Wife to be \$34,896.00. Likewise, it marginalized Husband's calculations because they were largely undocumented save for "self-created financial summaries and schedules drafted by his accountants." Trial Court Opinion, 11/5/12, at 7.

Upon review of the certified record, as fortified by the parties' submissions to the the trial court, we conclude that Husband failed to support his assertion that Wife was responsible for the delay in completing the tax reconciliation for 2006-2009. In contrast to Wife's evidence of Husband's continued obstruction, Husband did not present any evidence of Wife's interference with the reconciliation. Indeed, Husband's brief and proposed facts do not mention the contemplated tax reconciliation. Likewise, the only reference he makes to Wife's \$109,094.87 credit against her still undetermined tax liabilities for years 2006-2009 was to include the entire amount in his proposed comprehensive accounting to determine that, in light of all of the outstanding issues, the most he owed her was \$34,896.00. As the certified record belies Husband's assertion that Wife's

behavior was the reason that the tax reconciliation never occurred, that claim fails.

Moreover, it appears Husband eventually provided the necessary tax documentation. Hence, that portion of the trial court's order is moot. Nevertheless, we recognize that the evidence highlighting Husband's obstinate noncompliance with the directive to produce the documentation supports the trial court's decision to reject his universal accounting even though Wife did not submit a countervailing analysis of the remaining marital estate. As the trial court emphasized in its Rule 1925(a) opinion, "It was within [its] discretion to determine the weight to be given to the documents prepared by Husband's account[ant]. It was not mandatory that [the court] accept those calculations as true." ***Id.*** at 7. The trial court's exercise of discretion under the circumstances of this case was not tantamount to legal error. ***See Isralsky v. Isralsky***, 824 A.2d 1178, 1185 (Pa.Super. 2003) ("The law is also well settled that the trial court can accept all, some or none of the submitted testimony in determining the value of marital property.").

In ***Isralsky***, the trial court rejected undisputed evidence regarding a husband's use of proceeds from the sale of marital property. Essentially, the court determined that the husband lacked credibility generally notwithstanding that single piece of un rebutted evidence. We upheld the trial court's credibility determination and found no abuse of discretion. ***Id.*** For identical reasons, we do not disturb the trial court's determination

herein. Simply stated, the certified record sustains the trial court's determination that Husband's actions throughout the divorce proceedings stained his credibility to the point that the court was unable to accord weight to his financial calculations, even though Wife failed to provide a countervailing analysis.

Although we find the trial court's exercise of discretion was not tantamount to legal error, we must remand the matter for additional proceedings. Contrary to Wife's protestations, it is not explicitly clear from the trial court's March 12, 2012 order awarding her \$109,094.87 or its discussion in its Rule 1925(a) opinion concluding, "Based on the evidence, I found that Husband owed Wife \$109,094.87[,]" that the court did not intend to award her the entire amount without any consideration of the uncontested fact that she owes Husband an undetermined tax liability. While the trial court also identified Husband's failure to produce his tax documents, which at least implies that the court envisioned that the agreed-upon reconciliation would occur, the order awarding the sum to Wife does not mention that requirement. We will not assume the trial court's intent. To the extent that the trial court awarded Wife the entire credit without any future reduction to account for her tax liability to Husband, it was reversible error—particularly in light of the fact that the parties conceded that Husband eventually submitted the required documentation. Thus, while we affirm the trial court's decision to award the credit and earned interest to Wife, we remand for the court to clarify its order to more accurately reflect that the sum

remains subject to reduction following the tax reconciliations for years 2006, 2007, 2008, and 2009, and that the reconciliation should be completed without further delay.

Next, we confront Husband's argument that Wife received double payments for the two Citigroup defined benefit pensions. The crux of this complaint is that Husband continued to forward to Wife her share of his Citigroup defined benefit pensions after Citigroup implemented the proposed QDRO and DRO and commenced direct payments to her during January 2010 and April 2010, respectively. In addition, Husband complains that although he had paid Wife one-half of his allotted monthly pension benefits since 2006, Wife also accepted a lump sum payment from Citigroup representing her share of the pension benefits retroactive to 2008—a significant portion of which overlapped the monthly payments that he already provided. Thus, he concludes that until the date that he stopped paying Wife one-half of his monthly pension, Wife received twice the pension benefits that she was entitled to receive pursuant to the equitable distribution.

The trial court did not confront this portion of the parties' arguments expressly or make any factual findings relating to the nature of the monthly payments that Husband was obligated to pay to Wife under the March 2006 order and the 2009 Agreement. However, in order to countenance Wife's retention of twice her allotted share of the pension benefits, the trial court

necessarily had to conclude that she was entitled to it. Unfortunately for Wife, the certified record cannot sustain this conclusion.

The following facts are relevant. Attorney Lawson drafted the required QDRO and DRO pursuant to the Agreement and delivered the proposed orders to Citigroup for approval. While the initial drafts failed to garner Citigroup's endorsement, the financial institution began to withhold Wife's portion of the pensions and place those funds in an alternate payee account in anticipation of approving the revised QDRO and DRO. Thus, beginning September 1, 2008, Citigroup started retaining one-half of Husband's monthly pension benefits and began depositing those portions in the alternate payee account.

Citigroup eventually accepted the QDRO during January 2010, and it began direct payment to Wife of the qualified pension benefits at that time. Payments of the non-qualified pension benefits commenced during April 2010 after the financial institution implemented the DRO. Wife first notified Husband on April 15, 2010, that she was receiving her portion of his pensions "as of April." **See** Affidavit of Pamela L. Phillips, 11/18/11, Exhibit J. The next month, she voided Husband's check for the May pension payments and returned it to him. **Id.** at Exhibit K. Thereafter, between June and September 2010, Wife cashed two checks totaling \$31,240.76 that she received from Husband, retained \$11,219.75 to offset what she contended Husband owed to her for missed social security payments and

unrelated debts, and she remitted the balance of \$20,021.01. ***Id.*** However, Husband did not cash Wife's check. ***Id.***

Our review of this aspect of Husband's claim is relatively straightforward because Wife rejected or returned the majority of the funds that Husband continued to pay her between April and September 2010. However, Wife's contention that she returned the entire overpayment to Husband is inaccurate. The facts bear out that while Wife did not accept the purported double payments for the five-month period, the \$11,219.75 that Wife retained from those funds remains in controversy. While Wife is probably entitled to keep \$3,600 of the \$11,219.75 for social security payments that Husband apparently failed to submit, the remaining \$7,619.75 that she reserved is disputed. Furthermore, Wife does not have discretion under the QDRO or DRO to adjust the overpayment. As noted, she was required to return the payment to Husband or transmit the payment to the plan administrator for disposition. The trial court's general conclusion that Wife did not owe Husband any money for the overpayment simply did not address these facts.

Moreover, contrary to the trial court's conclusion, the certified record does not reveal why Wife continued to accept Husband's monthly payments for the qualified pension after Citigroup implemented the QDRO during January 2010 and began paying that benefit to her directly. Indeed, Wife failed to advise Husband that the QDRO had been accepted and implemented until three months after the fact. It is axiomatic that Wife is

no more entitled to retain the three months of double benefits she received following the QDRO's implementation than she was entitled to keep the double benefits that she rejected after April 2010. The trial court simply ignores this detail. Similarly, it disregards that Husband never cashed Wife's checks for the adjusted balance. Thus, that money remains in Wife's possession. Accordingly, for the reasons explained herein, the certified record cannot sustain the trial court's conclusion that Wife does not owe Husband any money under the Agreement for the monthly payments she retained while accepting direct payments from Citigroup pursuant to the QDRO and DRO.

Having addressed the issue of Husband's monthly payments following the implementation of the QDRO and DRO, we next confront Wife's retention of the entire lump sum payment from Citigroup totaling \$190,038, which represents her share of two years retroactive benefit payments under the QDRO. As the Agreement does not discuss the disposition of retroactive payments or even reference the possibility of those payments, it is clear that the parties did not envision Citigroup retaining the funds when they fashioned the 2006 stipulation that required Husband to pay monthly installments until the proposed QDRO and DRO were submitted, accepted, and implemented.

In essence, Husband argues that the parties agreed to share his Citigroup defined benefit pensions equally and that by permitting Wife to retain the retroactive payment and the sum of the monthly payments he

made to her under the March 15, 2006 order and July 6, 2009 agreement, she received twice the amount that she was entitled to collect. He stresses that by rejecting his claim to a portion of the proceeds paid directly to Wife, the trial court essentially awarded Wife approximately seventy-five percent of his Citigroup pension. Moreover, in anticipation of Wife's position that she was entitled to keep both the monthly pension payments and the entire retroactive lump sum she received from Citigroup for the overlapping period, Husband observes that both the March 2006 order and the 2009 Agreement belie her position.

The lynchpin of Wife's counterargument that she is entitled to retain both the \$190,038 retroactive benefit payment and Husband's monthly payment of one-half of his monthly benefit during the overlapping period is that Husband's monthly payments were spousal support rather than the equitable distribution of a marital asset. To sustain her position, she highlights that the divorce complaint requested spousal support and that she filed a separate support action in the domestic relations section of the family court. She also characterizes the trial court's March 15, 2006 order, wherein the court divided several marital assets including, *inter alia*, the Citigroup qualified and nonqualified monthly pensions and Husband's net monthly Social Security benefits, as a support order. She continues that the 2009 Agreement dividing the remainder of the estate flowed from her petition for contempt against Husband for his failure to pay spousal support in May, June, and July of 2009. She opines that when she negotiated the

Agreement, she believed that she would receive **both** “the amount held by CitiGroup for her benefit as well as, [sic] the spousal payments . . .” Wife’s brief at 13. Accordingly, Wife posits that Husband’s objection to the double payments at this juncture is merely an attempt to re-litigate the 2009 dispute that was the genesis of the Agreement. ***Id.*** at 14.

While Wife’s argument is appealing in its simplicity, it is belied by the certified record. To be sure, unlike equitable distribution, which is designed to establish the parties’ relative wealth, the purpose of spousal support is to provide sufficient income for a disadvantaged spouse. ***Compare Christianson v. Ely***, 838 A.2d 630, 636 (Pa. 2003) (purpose of support order is to assure reasonable living allowance) ***with Johnson v. Johnson***, 864 A.2d 1224, 1229 (Pa.Super. 2004) (“equitable distribution . . . is merely an equitable division of marital property between spouses[.]”). Herein, Wife’s repeated characterization of the March 2006 order as a support order is not only utterly inaccurate, but it is also disingenuous and undoubtedly designed to muddle the relevant issue. In reality, Husband’s monthly payments to Wife of one-half the net sum of his two Citigroup defined benefit pensions that were in pay status have always constituted equitable distribution of a marital asset.

The following timeline is relevant. Early in this divorce litigation, on August 31, 2004, Wife filed a petition for special relief requesting an injunction to prevent the removal or dissipation of marital property. Significantly, “Husband’s pensions through Citigroup . . .” were among the

list of **marital assets** she sought to protect. **See** Petition for Special Relief, 8/31/04, at 6. Approximately five weeks later, the trial court entered a temporary order based upon the parties' stipulation that neither would dissipate any **marital assets** pending equitable distribution, including, *inter alia*, "Husband's pensions through Citigroup[.]". **See** Temporary Order Without Prejudice to Either Party, 10/7/04, at 2. While the two orders plainly addressed the disposition of marital assets, neither of the orders mentioned spousal support.

On February 8, 2005, the trial court entered another stipulated order dividing a significant portion of the marital estate. Again, the order was silent as to spousal support. One year later, Wife filed a petition for special relief seeking enforcement of the October 2004 order. She alleged that Husband was utilizing marital assets to purchase real estate in contravention of the stipulated order. Again, she made no references to spousal support. The next day, however, Wife filed a petition to enforce the February 8, 2005 equitable distribution order. That petition complained that Husband failed to make the required distributions pursuant to the stipulated order. To reinforce the perception that she was a cash-strapped litigant and to highlight Husband's noncompliance with the 2005 distribution order, Wife pled, "Unfortunately [Husband] has further refused to provide any support/money from the marital accounts to [Wife] since July 2005 with the exception of a \$14,000 payment in February 2006." Petition for Enforcement, 2/22/06, at 4. She continued, "As a result of [Husband's]

refusal to distribute any marital funds to [her] since October 7, 2004, [she] has been forced to file a Complaint for support.” ***Id.*** Significantly, however, Wife **did not** request spousal support as a form of relief for Husband’s noncompliance. Instead, she requested payments that she believed were due and owing to her under the February 2005 equitable distribution order plus interests and attorneys’ fees.

In his response to Wife’s references to spousal support in the 2006 pleading, Husband countered that Wife’s averments “twist[ed] the facts’ that the parties are/were attempting to resolve the support issues (which are not relevant to the [equitable distribution] issues herein) in order to gain a financial advantage and to intentionally place [him] in a ‘bad light’[.] Said allegations are untrue and nothing to do with the matter at hand.” Reply and Counter Claim to Motion For Enforcement, 3/10/06, at 3. He further explained, “[Wife] did file for a complaint for support but only in an attempt to gain financial leverage on [Husband]. Said support action has been resolved and is now moot.” ***Id.***

Thereafter, on March 15, 2006, the trial court resolved Wife’s petitions for special relief seeking to enforce the October 2004 and February 2005 orders by entering the above-referenced distribution order, wherein the parties agreed that they “shall share equally in the CitiGroup Qualified monthly pension payment . . . commencing with the January 2006 payment and continuing until further order of the court or agreement of the parties.” Trial Court Order, 3/15/06, at 1. The parties fashioned a similar provision

for the nonqualified pension payments. ***Id.*** at 2. Although neither the order nor the written stipulation, contains any indication that the pension payments were in the nature of spousal support, Wife attempted unsuccessfully to file the stipulation in the domestic relations section. For obvious reasons, it was rejected.

Thus, contrary to Wife's repeated protestations, the 2006 order and the concomitant payments are more accurately characterized as equitable distribution rather than spousal support. Indeed, beyond the palpable fact that the March 2006 order was entered in response to petitions to enforce equitable distribution orders, the order referenced forthcoming side agreements to address future distributions of Husband's defined benefit pensions following the death of either party—a precept that is utterly irreconcilable with spousal support, which terminates upon the death of the payee spouse. **See** Pa.R.C.P. 1910.19(d) ("All charging orders for spousal support and alimony pendente lite shall terminate upon the death of the payee spouse."); 23 Pa.C.S. § 3707 ("Upon the death of the payee party, the right to receive alimony pursuant to this chapter shall cease. . . . [.]")⁷; ***cf. Taylor v. Taylor***, 503 A.2d 439, 442 (Pa.Super. 1986) ("entitlement to support, alimony pendente lite, counsel fees and costs would cease upon

⁷ The Divorce Code defines alimony generally as "An order for support granted by this Commonwealth or any other state to a spouse or former spouse in conjunction with a decree granting a divorce or annulment." 23 Pa.C.S. § 3103.

[obligor's] death."). Tellingly, the record is devoid of any discussion suggesting that the parties intended to circumvent this established jurisprudence. Hence, the certified record contradicts Wife's characterization of the monthly pension payments as spousal support.

With that background in mind, we confront the remainder of Wife's argument that, at the time she negotiated the Agreement with Husband, she believed that she would be entitled to the amount retained by Citigroup as well as Husband's continued monthly payments. While we have already refuted Wife's claim that the payments were, in fact, tantamount to spousal support, we additionally highlight that both the certified record and Wife's actions belie her putative interpretation of the payments as support.

First, the notes of testimony from the July 6, 2009 hearing confirm that Wife understood the nature and extent of the Agreement. N.T., 7/6/09, at 13-18. As stated expressly on the record and subsequently verified by Wife, the Agreement resolved all of the issues surrounding the divorce and equitable distribution, including her petition for contempt of the March 2006 stipulation and order that divided several aspects of the marital estate and obligated Husband to divide his monthly pension payments with Wife. ***Id.*** at 44-46. Wife further testified that she was satisfied with the disclosure of all the assets and that she understood and accepted the terms of the agreement as they were recited on the record. ***Id.*** at 45. Hence, as established by the certified record, Wife was abundantly aware that the

Agreement related to the equitable division of marital assets rather than an undisclosed spousal support obligation.

Moreover, to the extent that the Agreement also resolved her petitions for contempt due to the Husband's failure to comply with the March 2006 stipulation and order, as noted in the on-the-record discussion of the Citigroup pensions, Husband's obligation to divide the monthly defined benefit pension payments he received from Citigroup until the QDRO and DRO went into effect, undoubtedly could not reasonably be construed as spousal support because it was intended to survive Wife's death. **See** Rule 1910.19(d); 23 Pa.C.S. § 3707.

Second, and even more revealing, Wife's conscious decision to remit Husband's monthly payments upon receipt of the payments directly from Citigroup calls into question the legitimacy of her belief that the payments were spousal support. As noted *supra*, after Citigroup initiated the monthly payments to Wife under the DRO during April of 2010, she either voided Husband's monthly payments or returned the payments with adjustments for amounts that she believed were due for other reasons. There is no difference in the nature of the payments that Wife received from Husband prior to the January 2010 implementation of the QDRO and the payments received thereafter. Thus, if Wife honestly believed that Husband's monthly payments totaling one-half of his pension benefits were, in fact, spousal

support, she would not have refused the payments after the QDRO and DRO were implemented.⁸

As it relates to Wife's putative misunderstanding of the Agreement and her subjective belief when she entered the accord that she was going to receive duplicate payments of Husband's pensions, it is clear from the certified record that Wife was undeniably aware that Husband's monthly payments were in lieu of, and not in addition to, the Citigroup payments she would receive pursuant to the QDRO and DRO. During the 2009 hearing, the parties outlined the relevant portion of the accord that highlighted their intention to engage Attorney Lawson to draft the QDRO and DRO that would facilitate the payment of Wife's share of Husband's Citigroup defined benefit pensions and their intent to appoint Attorney Lawson to act as the escrow agent to administer the payments until the domestic relations orders were implemented. N.T., 7/6/09, at 33-34. Specifically, Wife's counsel recounted:

Mr. Lawson will also act as the escrow agent with regard to the Citi Group Qualified and Nonqualified [pension] benefits until such time as the QDRO goes into effect for [the] qualifying [plan] and the DRO goes into effect for the nonqualified plan.

⁸ In her affidavit to the trial court, Wife claimed that she believed that she was entitled to the monthly payments until the date her divorce was final. However, mindful that the final divorce decree was entered on August 10, 2009, and the 2009 Agreement resolved all outstanding economic claims, Wife failed to explain how she would be entitled to continued support for the next eight months until April 2010.

Once [the] [QDRO] and DRO go into effect for Citi Group[,], the payment will be made directly to the parties of their equal portions. Upon the death of the first party, when the side agreement goes into effect, such that the survivor is paying to the other party's estate [the] sum equal to about one half of the monthly benefit after taxes, Mr. Lawson or his successor will again become the escrow agent and will receive those monies and make the distribution to the surviving party and the estate of the deceased party.

Id. at 16-17.

While this aspect of the arrangement was not fulfilled, the contemplated appointment of Attorney Lawson to receive the pension payments from Citigroup pursuant to the domestic relations orders and distribute them to the parties under the agreement until the orders were implemented refutes Wife's position that she knew that the alternate payee account existed and believed that she would be entitled to what essentially is a second set of payments from the defined benefit pension when she negotiated the Agreement. The dichotomy between Wife's on-the-record assent to Attorney Lawson's involvement in the collection and distribution of the pension funds pending implementation of the domestic relations orders and her current legal argument is telling.

Wife's final argument in favor of keeping the \$190,038 retroactive Citigroup payment notwithstanding the fact that she already received her share of Husband's defined benefit pension for portions of the period of retroactivity is that Husband did not object when Citigroup notified the parties that it created a fund for Wife's pension payments. Relying upon 2009 correspondence from Citigroup that referenced an alternate payee

account and informed Husband that the money deposited in the account would be returned to his account unless it received an acceptable QDRO within thirty days, Wife essentially argues that because he forwarded that notice to Wife as the payee, he is now precluded from re-litigating whether he or Wife is entitled to the alternate pay account. Specifically, she asserts "Without any legal authority[,], Husband seeks to reopen the support contempt and equitable distribution proceedings by claiming that the trial court misinterpreted the property settlement agreement." Wife's brief at 14. Wife's contention fails for several reasons.

First, Wife continues to misstate the nature of these proceedings. As we previously discussed, the certified record will not sustain the conclusion that any of the underlying orders, stipulations, or agreements implicate spousal support. Moreover, Wife's overly simplistic position that Husband is leveling a novel claim to the payee fund ignores that money is fungible and that she is obligated under the QDRO and DRO to return any inadvertent payments to Husband or the plan administrator. **See** QDRO, 10/6/09, at 5-6; DRO, 10/6/09, at 6. Additionally, notwithstanding Wife's characterization of Husband's contention, Husband does not argue that Wife was not entitled to the Citigroup alternate payee fund, nor does he claim any right to the fund. The obvious emphasis of Husband's argument is that, pursuant to the 2009 Agreement and the subsequent domestic relations orders, Wife was entitled to fifty percent of his Citigroup defined pension benefits and, having accepted one-half of the monthly benefits between September 2008 and

January 1, 2010, she was not entitled to a second, retroactive payment of her share of the pension covering the **identical** period.

As noted, Wife attempts to circumvent the inconvenient reality that she was entitled to only a fifty-percent share of Husband's defined benefit pension by framing Husband's monthly payments as supposal support rather than equitable distribution. Even though we rebuff Wife's continued efforts to interject support considerations into this matter, to the extent that we would treat any of Husband's payments of one-half of his pension benefits as spousal support, Wife concedes, as she must, that the "the support payments substantively changed to monthly equitable distribution payments by virtue of the divorce agreement." ***Id.*** at 15. Since the divorce decree was entered on August 10, 2009, and Wife continued to accept Husband's monthly pensions payments under the Agreement until April 2010, by her own argument, she double-dipped into Husband's pensions by accepting the entire lump sum of the payee account and continuing to accept Husband's payments for the eight month's following the divorce decree. Thus, even if we were persuaded by Wife's contention that the monthly payments that Husband submitted prior to August 2009 were tantamount to support, which we are not, a considerable portion of Citigroup's retroactive lump sum payment that Wife retained was amassed after the decree was entered. For these reasons, we find that the record does not sustain the trial court's conclusions that Wife is not liable to Husband for any over payment.

Next, Wife argues that the parties were cognizant of the alternate payee account when they fashioned the July 6, 2009 Agreement and that she believed that she was entitled to retain both the corpus of the account and the monthly payments. In an attempt to bolster this position, Wife refers to "several communications [between the parties] concerning the restrictions." Wife's brief at 17. She also contends, "The restriction had already been in effect on the accounts for over a year at the time of the Master's hearing." *Id.* However, despite the voluminous certified record and the parties' willingness to attach any document with marginal relevance as an exhibit to their filings, Wife does not point to any documents in the record to support her claim that the parties discussed the alternate payee account.

Wife places significant weight upon Husband's former employment with Citigroup as a Vice President of Human Resources and an undated booklet that she received from Citigroup concerning the qualification process for draft QDROs. The pertinent portion of the booklet, entitled "Qualified Domestic Relations Order: 'Procedures,'" indicates that upon receiving a draft QDRO, Citigroup generally restricts a participant's activity, in pertinent part, by suspending benefits in pay status in an amount specified by the draft order for a maximum of eighteen months or until the draft order is qualified. *See* Affidavit of Pamela Phillips, 11/18/11, at Exhibit C. The booklet continues, "**When an order is qualified**, the suspended amount will be paid retroactively to the alternate payee." *Id.* at 7. (emphasis

added). Wife argues that combined with the imputed knowledge Husband acquired as a senior officer in human resources, the booklet is evidence that Husband was aware that the alternate payee account existed. We disagree.

First, Wife cannot establish that Husband received, much less read, the information in the undated booklet. We point out that neither Wife nor the certified record indicates that Husband was independently familiar with Citigroup's retirement services as a result of his employment. Contrary to Wife's speculation that Husband was aware of the retirement procedures, his responsibilities within Citigroup's human resources department just as easily could have concentrated on payroll, hiring, labor compliance, negotiating employee contracts, or procuring health benefits with outside vendors. None of those roles would necessitate a working knowledge of retirement procedures. Thus, while it may be appealing to adopt Wife's position and impute Husband's awareness of Citigroup's practices and procedure with regard to retirement accounts, absent a trace of evidence relating to Husband's actual responsibilities, we decline to do so. Furthermore, we observe that the information booklet that is the cornerstone of Wife's argument reveals that Citigroup does not administer the retirement plans or craft its own retirement procedures. In actuality, Citigroup contracts with "Hewitt Associates LLC to establish procedures and administer QDROs." ***Id.*** at 9.

Second, it is not clear from the information booklet whether the stated procedure relating to the qualification process for QDROs applies to the non-

qualified DRO at issue herein, which by definition **is not subject to qualification**. Significantly, the non-qualified benefit constitutes the lion's share of Wife's monthly payments. Third, and most importantly, while the booklet outlines the general procedure Citigroup follows when draft QDROs are submitted for qualification, on October 22, 2007, Citigroup mailed a letter to the parties wherein it informed them that it denied the draft QDRO and specified, "[It] can take no further action this time. You may submit a revised order for a review . . . and a new determination will be made within 30 days of receipt[.]" **Id.** at Exhibit D. Notably, the denial letter did not reference the putative alternate payee fund or indicate how its specific determination that the draft was denied affected the general procedures outlined in the information booklet. Instead, it directed that it will "take no further action." **Id.** Thus, while Wife relies upon the general information in the undated procedural booklet as evidence of Husband's familiarity of the alternate payee account, Citigroup's specific letter to the parties indicating that it would not pursue the matter any further militates against the finding that Husband was cognizant that the plan administrator was amassing an alternate account.⁹ Accordingly, as Wife failed to support with any relevant

⁹ Wife also relies upon a check stub dated June 1, 2010, that she purports explains the relevant deductions. However, that check stub, which was issued six months after Citigroup distributed the lump sum payment, does not reveal the existence of an alternate payee account.

documentation her contention that the parties knew of the alternate payee account since 2006, this assertion also fails.

Moreover, since Citigroup did not provide actual notice of the fund's existence until the September 9, 2009 letter discussing its potential termination, the parties' July 2009 Agreement actually **preceded** the notice that Wife's argument is predicated upon by two months. Indeed, when Husband and Wife entered the July 2009 accord resolving all of the existing equitable distribution issues, neither party indicated an awareness that the alternate payee account existed. While Wife stresses repeatedly that she knew of the fund and negotiated the Agreement based upon the fund's existence and her entitlement to it, the record does not support her assertions. Notwithstanding Wife's revisionist understanding of the facts and circumstances surrounding the agreement, in reality, the record demonstrates unequivocally that the parties intended for Citigroup to submit the funds directly to Attorney Lawson so that he, rather than Citigroup, could distribute the money to the parties until the domestic relations orders were implemented. Attorney Lawson's participation, which the parties assented to and Wife's counsel specifically outlined on the record during the July 6, 2009 hearing, would have served no purpose had the parties actually understood that Citigroup was withholding the alternate payee account based upon the defective domestic relations orders and believed that it would pay that amount retroactively to Wife upon any subsequent approval of the yet-to-be-submitted revised domestic relations orders. Hence, Wife's

current position that she was aware of the alternate payee account and understood that she was authorized to retain both those funds and Husband's continued monthly payments is insincere. Indeed, Wife's current argument contradicts her on-the-record acceptance of the Agreement. **See** N.T., 7/6/09, at 16, 44-47.

For all of the forgoing reasons, we are constrained to conclude that the certified record does not sustain the trial court's determination that Wife is not liable to Husband for any overpayment of her share of his Citigroup pensions. Thus, we reverse that portion of the order and remand so the trial court can calculate the precise amount of Husband's overpayment consistent with the parties' intent to share the pensions equally and then reconcile that amount with the money Husband still owes Wife for other obligations under the Agreement. The court shall direct the parties to produce documentation to support their respective claims for amounts due and impose sanctions for their failure to comply with its directives.

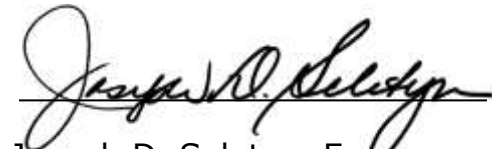
In sum, we affirm the trial court's conclusion that Wife was entitled to retain the \$109,094.87 credit pursuant to the Agreement and reverse the trial court order to the extent that it did not direct that the credit was subject to reduction for Wife's tax liability owed to Husband. In addition, having concluded that the record cannot sustain the trial court's determination that Wife is not liable to Husband for the overpayments she received from his two Citigroup pensions, we reverse that aspect of the

order and remand for additional proceedings consistent with this memorandum.

Order affirmed in part, reversed in part, and remanded for further proceedings. Jurisdiction relinquished.

Judge Ott Concurs in the Result.

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: 10/25/2013