STOUFFER V. HINKLE, C.P. Franklin County Branch, No. F.R. 1988-172

Pennsylvania Divorce Code of 1990 (23 Pa. C.S. §3102[a][6] cited-The Master's "Mission" in dealing with economic issues--Setting of Valuation Date of assets a matter of discretion--Master's Report given great consideration, expecially with respect to findings as to credibility--Master not required to state specific reasons for findings on credibility--Master's Report and recommendations, nevertheless, advisory, only--Court must make independent evaluation of evidence.

1. Under the terms of the Pennsylvania Divorce Code of 1990 (23 Pa.C.S. §3102[a][6], the Master's mission is to achieve economic justice between the parties.
2. The Master must select an appropriate valuation date for the assets.
3. It is within the Court's discretion to choose a date according to the circumstances of the case so as to produce a fair and reasonable settlement of the parties' property rights.
4. In the Court's review of the Master's Report and Recommendation, such report is entitled to great consideration, particularly as it involves the assessment of credibility, since it is the Master who directly observes the parties' attitudes and demeanor.
5. The Master is not required to state specifically why she finds some testimony credible but not other testimony; implicit in her findings is the fact that she found one party credible while rejecting the assertions of the other.
6. The Master's Report and Recommendation, nevertheless, are advisory, only, and not controlling on the Court, which must make an independent evaluation of the evidence.

Carol Van Horn, Esq., Counsel for Plaintiff
Sally Winder, Esq., Counsel for Defendant
Kathleen W. Cramer, Esq., Master

OPINION AND ORDER

KELLER, S.J., March 3, 1993:

Vivian K. Stouffer (hereinafter "plaintiff") filed an action in divorce on May 1, 1990 pursuant to section 3301(d) of the Divorce Code against Randall L. Hinkle (hereinafter "defendant"). The divorce was granted on July 11, 1990, and the

Court retained jurisdiction over the issues of equitable distribution and counsel fees. On January 17, 1992 the Court appointed Kathleen Walsh Cramer as Divorce Master to determine the equitable divison of marital property. Plaintiff and defendant filed pre-trial statements and the Master's Hearing was held on March 6, 1992. The Master filed her Report and Recommendation on June 16, 1992. The parties filed timely exceptions and briefs were submitted by counsel for both parties and oral argument on the exceptions was conducted in September, 1992. This matter is now ripe for disposition.

The parties' exceptions to the Master's Report are numerous and pertain to the Master's valuations of various items possessed by the parties as of the time of their separation in March of 1988. The most substantial items were two trucks and two trailers purchased during the marriage using marital money as part of a trucking business which the parties operated jointly prior to their separation. The defendant retained possession of these vehicles after separation and continued to utilize them in his trucking business. One of the vehicles was traded in 1990, but the three others remain in the defendant's exclusive control. They constitute the bulk of the monetary sources available for equitable distribution. It was the Master's task to arrive at valuation figures for the vehicles, as well as all other marital property, in order to effectuate this division.

Under the terms of the Pennsylvania Divorce Code of 1990 (23 Pa.C.S. section 3102(a)(6))., the Master's mission is to achieve economic justice between the parties. The Master must select an appropriate valuation date for the assets. *McNaughton v. McNaughton*, 412 Pa. Super.409, 603 A.2d 646 (1992). It is within the court's discretion to choose a date according to the circumstances of the case so as to produce a fair and reasonable settlement of the parties' property rights. *Miller v. Miller*, 395 Pa. Super.255, 577 A.2d 201 (1990).

With regard to our review of the Master's Report and Recommendation, such report is entitled to great consideration, particularly as it involves the assessment of credibility, since it is the Master who directly observes the parties' attitude and demeanor. The Master is not required to state specifically why she finds some testimony credible but not other testimony; implicit in her

findings is the fact that she found one party credible while rejecting the assertions of the other. *Weaver v. Weaver,* 266 Pa. Super. 115, 403 A.2d 120 (1979); *Reichenbach v. Reichenbach,* 47 Northumberland Legal Journal 308 (1975). If the Master's objective is to effectuate economic justice, it follows that she may accept whatever evidence she deems credible, while rejecting any evidence which exhibits inconsistencies or errors. Be that as it may, the Master's Report and Recommendation remains advisory only and not controlling on the court, which must make an independent evaluation of the evidence. *Mott v. Mott,* 308 Pa. Super. 1, 453 A.2d 1038 (1982); *Valerio v. Valerio,* 298 Pa. Super.262, 444 A.2d 1166 (1982); *Herwig v. Herwig,* 279 Pa. Super. 65, 420 A.2d 746 (1980).

The plaintiff's position, expressed during the March, 1992 hearing and pre-trial memorandum, was that the vehicles' worth should be calculated as of the separation in March, 1988; the defendant alone has had the use of these vehicles in his business, which were purchased with marital assets. One of these vehicles, the 1985 trailer, was traded in in 1990 without an accounting ever having been made to the plaintiff. The plaintiff and her expert based their figures on a rough list prepared by the defendant at the time of the separation assigning values to these trucks and trailers. (Plaintiff's Exhibit #3). The plaintiff's expert, Harold Jones, presented evidence as to what similar vehicles in good condition would have been worth in 1988. He testified in that manner because the vehicles in question were and remain in the defendant's exclusive control and unavailable to him. He also offered his opinion on the appropriate depreciation rates for vehicles of that type.

The defendant's position was that the vehicles should be valued as of the current time because he alone assumed the burden of making debt payments on them, as well as repairs and maintenance expenses incurred in the course of his business over the past four years. The defendant submitted a pre-trial statement which set fourth current valuations, which were then substantially reduced in his Amended Pre-Trial Statement filed four days before trial. The following chart shows the different valuations as presented by the parties before trial:

	Plaintiff's Valuations as of 1988 Separation based on Plaintiff's Exhibit #3; Plaintiff's expert's valuations of similar vehicle in good condition in 1988	Defendant's Pre-Trial Valuations of Vehicles According to 1982 Worth	Defendant's Amended Pre-Trial Valuations According to 1992 Worth
1980 Kenworth Tractor	$15,000.00	$6,000.00	$3,000.00
1981 Kenworth Truck	$18,000.00	$8,000.00	$5,000.00
1985 Fontaine Trailer	$8,000.00	$5,500.00	$0.00
1986 Transcraft Trailer	$12,000.00	$8,500.00	$6,500.00

The Master concluded, based on the provisions of the 1990 Divorce Code and case law analysis, that economic justice required that the vehicles be valued according to their worth as of separation time. The vehicles were the most valuable assests acquired during the marriage and were purchased with money from a joint checking account into which both parties had deposited their earnings. The vehicles were used to establish and maintain a trucking business in which both parties participated. A hasty *de facto* distribution of assets occurred in March of 1988, with the defendant retaining for himself exclusive control over the four vehicles for use in his trucking business. He alone assumed the burdens of paying various debts and maintenance costs, and he likewise alone benefited from their use. There is no evidence that he ever attempted to produce an accounting of profits and losses associated with the vehicles and his business. The Master was left with the task of determining their worth as of the time of separation to provide for an equitable distribution of these assets.

After considering various factors, including the credibility of the witnesses, the Master accepted the defendant's current values on the vehicles as set forth in his original Pre-Trial Statement, added to that figure the plaintiff's expert's depreciation rates on similar vehicles, and then deducted the debt amounts paid by the defendant on the vehicles after separation to arrive at the following valuations: 1980 Kenworth Tractor: $8,612; 1981 Kenworth Truck: $3,000; 1985 Fontaine Trailer: $4,800; 1986 Transcraft Trailer: $3,500.

It is clear that the Master's valuations do not simply mirror those proposed by either of the parties; in sorting through conflicting information the Master selected whatever evidence she found most credible and recombined it to arrive at this distribution scheme. Because the valuation evidence conflicted, the Master's assessment of credibility was central to her determinations.

After considering all the evidence, the Master concluded that the defendant was a less credible witness than the plaintiff. A

close examination of the transcript of the March 6, 1992, trial, as well as other relevant documents, leads us to conclude that this decision was not erroneous. The defendant resisted the plaintiff in her efforts to bring this matter to a resolution, as is evidenced by his initial failure to answer her interrogatories and to appear in court for a hearing on her motion for sanctions, and the ensuing issuance of a bench warrant. The defendant arrogated to himself the sole right to make a distribution of jointly owned assets and continued to exercise exclusive dominion over the most valuable of the marital property, despite the fact that those vehicles belonged equally to both parties. The defendant never made an accounting of either losses or profits associated with these vehicles to the plaintiff, and he even traded in one of them in 1990 without the plaintiff's knowledge or consent. She received no benefit from that transaction. The defendant simply withheld these assets from the plaintiff and used them in his business as he saw fit, assets which were obviously depreciating consumer goods purchased with marital monies. Futhermore, the drastic lowering of the vehicle valuations presented in his Amended Pre-Trial Statement filed only four days before trial legitimately called into question his credibility, in light of the fact that he assigned higher values to items in the plaintiff's possession while continuing to assign much lower values to those items retained by him after the separation.

While the Master found the plaintiff to be a more credible witness than the defendant, she did not accept all the plaintiff's valuations in their totality. The plaintiff's figures for the vehicles are those set forth in Plaintiff's Exhibit #3. The values the defendant assigned to the vehicles were not substantiated at or near the time of separation, which was presumably a chaotic time in this relationship. The plaintiff's expert, Harold Jones, attempted to substantiate these values four years after they were assigned, without being able to view the actual vehicles, neither at the time of separation or in 1992, because they remained in the defendant's possession and Jones was not permitted to examine them first-hand. Instead, he based his valuations on information provided to him by the plaintiff as to what their condition was back in 1988, and standared depreciation rates commonly applied to vehicles of these types. The Master accepted as accurate the

higher of the depreciation rates Jones offered. For the 1980 and 1981 trucks, Jones testified to depreciation rates of $1,500 to $2,000 per year, and the Master accepted the higher of these. For the 1985 and 1986 trailers, the Master accepted Jones' rate of $500. The fact that Jones was unable to view the particular vehicles in question accounted perhaps for her reluctance to simply adopt Exhibit #3 in its totality.

We have closely examined the evidence presented at the hearing and all other supporting documents in this case and find that, although we agree with the Master's assessment of the credibility of the parties, we will not approve the method she used in calculating 1988 values for the four vehicles.

We agree with the Master that the defendant's testimony and other statements are evasive and self-serving and that he consistently assigned lower values to items in his possession while assigning higher values to those items in the plaintiff's possession. The defendant must have been aware, both in 1988 and at the 1992 hearing, that those vehicles were purchased with joint monies and were therefore joint property, but he nevertheless simply took them because that suited him at the time. (N.T. pp. 159-164). He produced no expert testimony as to their current values. Although Mr. Jones' figures were not based on his personal examination of the vehicles, it will not be overlooked that he was prevented from conducting his own examination because they remained in the defendant's exclusive control. The plaintiff should not be penalized because the defendant wrongfully withheld access to these vehicles from her in 1988 and from her expert in 1992. It would be manifestly unfair to permit the defendant to gain an advantage from such arbitrary conduct. Therefore, the fact that Mr. Jones' figures were based on what similar vehicles in good condition would have been worth in 1988, rather than on a viewing of these particular vehicles, will not in itself work against the plaintiff.

Furthermore, there appear to be inconsistencies and ambiguities in the Master's findings as they relate to these vehicles. The Master correctly determined that separation was the appropriate

date for the valuation of these assets, yet her valuations do not appear to reflect such a conclusion. The plaintiff's Exhibit #3 was prepared by the defendant at the time of separation and was substantiated by Mr. Jones. In paragraph #36 of her Report, the Master found that these values were "truthful estimation[s] by [the defendant]" as to the worth of the vehicles. While we agree with the Master that as a whole, defendant's 1988 distribution list (plaintiff's Exhibit #3) was "inequitable, unfair to Vivian and disproportionately favorable to [the defendant]", (Master's Report, Finding of Fact #37), we do not believe that the Master's proposed distribution scheme goes far enough in applying the valuations to properly compensate the plaintiff. By using an alternative reasonable valuation method, the plaintiff may have been awarded an additional $7,000 in equitable distribution.

We have difficulty understandig why the Master took as her starting point the current values presented in the defendant's original Pre-Trial Statement when he produced no expert substantiation of these figures and was never qualified as an expert during the trial. Given that the Master found 1988 to be the proper date for valuation of the vehicles, it is not clear why she did not begin her calculations with the valuations in plaintiff's Exhibit #3 which were supported by the expert witness. At that point, it would seem the Master could have deducted the debts the defendant paid on the vehicles, thereby eliminating the need to back-track to 1988 values using Mr. Jones' depreciation rates. Such an approach would appear to produce the following valuations: 1980 Kenworth Tractor: $9,612 ($15,000 minus $5,388 debt); 1981 Kenworth Truck: $5,000 ($18,000 minus $13,000 debt); 1985 Fontaine Trailer: $6,300 (8,000 minus $1,700 debt); 1986 Transcraft Trailer: $6,000 ($13,000 minus $7,000 debt; both Mr. Jones and the defendant agreed that this trailer was worth an additional $1,000 because it had an air ride suspension, making it worth $13,000 rather than $12,000 in 1988., N.T. pgs. 17; 120).

The mere fact that the Master did not wholly adopt either party's figures does not concern us: she is not required to do so. Rather, the difficulty lies in the fact that, given the Master's conclusion that the list defendant prepared in 1988 represented

is "truthful estimation" of the vehicles' worth, we have serious reservations about the appropriateness of using the valuations contained in his original Pre-Trial Statement as a starting point for the calculations. The *weight* of the evidence suggests that the better approach is the one outlined above. If there were additional factors at play in the Master's reasoning which would eliminate these apparent ambiguities, they should be made more explicit in her report. We will remand this matter for further review of the proper valuations of the vehicles by the Master. If she determines additional evidence is required, she may schedule another evidentiary hearing limited to this issue.

In addition to the four vehicles, there were numerous other items of marital property which required valuation as of separation. The parties' exceptions to the Master's valuations of these items will be discussed in detail below. After reviewing all the evidence, we find nothing erroneous in the Master's approach to their valuation and therefore uphold her findings.

Both parties have taken exception to the Master's determinations regarding the marital home. Defendant's exception #3 states:

> "The mobile home was sold by Plaintiff for $100.00; however, its value was appraised at $1,000.00 as shown on Plaintiff's Exhibit B of her pre-trial statement; therefore the Master's assignment of value was incorrect and her assignment of marital values based on the mobile home value is incorrect."

Plaintiff's exception #1 states:

> "The Master erred in Finding of Fact paragraph #42 wherein she concluded that the post-separation damage done to the mobile home was not at the hands of the Defendant and further erred in finding that such damage had no substantial effect in reducing the value of the mobile home."

The plaintiff purchased the mobile home before marriage for $5,000 and after marriage the defendant contributed to the monthly payments. The Master found that 80% of the home was marital property. Sometime before August, 1988 the home was severely damaged. Conflicting testimony was given as to precisely when this damage occurred. The plaintiff testified that the

defendant lived in the home between March and August of 1988 and that he was responsible for all the damage, (N.P. pp 36-39; 103), yet she also seemed to indicate that some of the damage occurred sometime in March of 1988 when the parties were still living together in the home, (N.T. pp. 36-39). The defendant denied that he was responsible for the damage and maintained that it occurred prior to separation, (N.T. pp. 126-132). In April of 1988 the home was appraised as being in "poor" condition (plaintiff's Exhibit B from her Pre-Trial Statement), and that it would have cost $1,850 to return it to saleable condition. The appraiser offered a bid of $1,000 for it in April, but the plaintiff sold it "as is" for $100 in August. Both parties agreed that the mobile home was not worth very much at separation, yet in his Amended Pre-Trial Statement and his testimony, the defendant claimed that it would have been worth $4,000 if repairs had been performed and he disputed that it would have cost $1,850 to restore it to marketable condition, (N.T.pp 154-159).

In our judgment, even after being repaired, it is doubtful that a typical mobile home which had been purchased new in 1982 for $5,000 and subject to the normal depreciation for six years, could have been sold for $4,000, particularly after being as severely damaged as this one was. The Master concluded that the defendant's assertion that the home could have been sold for $4,000 after repairs was unsubstantiated and a contradiction of his testimony that it was not worth much at separation, (N.T. p 154). The Master refused to value this home based on the defendant's estimation of its market value after repairs which were never actually performed. Since the Master was unable to determine exactly when the damage was done, she could not conclusively assign responsibility, but surmised that it was most likely that the damage occurred in early March, either immediately before or at the time of separation. After reviewing the evidence, including the hearing transcript, we find nothing erroneous in the Master's conclusions.

The defendant's Exception #9 and #15 state respectively;

> "The Master erred in failing to discount the value of tarps, binders, chains and equipment which Mr. Jones testified would be reduced in value by use...The Master erred in refusing to accept Defendant's statements as to the debt balances for trucks, trailers

and equipment."

The defendant objects to the Master's valuations of the trucking equipment, which consist of tarps, chains, binders and side kits purchased new in 1985 and 1986 with marital monies. These items remained in the defendant's exclusive control since separation. There was some conflict in defendant's valuation of athese items. In his Pre-Trial Statement, he assigned them a current value of $1,500, whereas in 1988 he had valued them at either $1,500 or $2,000. Plaintiff's expert, Mr. Jones, testified that in 1988 this equipment would have been worth more: $1,500 for the tarps, $500 for the chains and binders, and $1,000 for the side kits. Master chose to accept Mr. Jones' figures and therefore found separation value of these items to be $3,000. Because the defendant's exceptions are based on the erroneous assumption that the current time is the correct point at which to value these assets, we see no difficulty with the Master's assessment and uphold it.

Defendant's Exceptions #6 and #7 address the issue of the valuation of the 22 colt W.V. commemorative pistol and state:

> "The Master obviously allowed an uninformed assumption to color her asessment of defendant's entire testimony because she clearly erred in saying defendant's father failed to testify although present. Defendant's father was *not* at the hearing. Plaintiff's uncle was ... Defendant's testimony that the 22 colt W.V. commemorative pistol was his father's is truthful and accurate."

The plaintiff testified that the pistol had been purchased by both parties from the defendant's father, Luther Hinkle, during the marriage, (N.T. p. 47). The defendant characterized the transaction as a bailment, whereby the defendant took possession of the gun, lent his father a sum of money, and stated that whenever his father was able to repay the money, the gun would again be returned to the father's possession. The defendant testified that Luther Hinkle repaid the money, and that the plaintiff was not a witness to these transactions. When questioned about the pistol's current location, the defendant first replied that it was in his possession, but then stated that it was in the home which he and his father share, (N.T. pp. 132-133). The Master doubted the defendant's credibility regarding this item.

The defendant argues that the Master's conclusion was colored by her mistaken belief that Luther Hinkle was present at the hearing but did not testify. The defendant maintained that his uncle was present at the hearing, not Luther Hinkle. Despite this possible error by the Master, we nevertheless agree with her conclusion that the defendant's testimony does not seem consistent or likely, and therefore we uphold the Master's inclusion of this item as part of the marital distribution scheme. Futhermore we are constrained to observe that no explanation was given why Father was not present to testify and why the adverse witness rule would not apply.

Three of the defendant's exceptions focus on the Master's manner of valuing the trucks and trailers discussed above. Exception #8 states:

> "The Master erred in using the maximum depreciation of $2,000 instead of $1,500 to arrive at the valuations for trucks and trailers."

Execption #15 states:

> "The Master erred in refusing to accept Defendant's statements as to the debt balances for trucks, trailers, and equipment."

Exception #10 states:

> "The Master erred in not accepting substantiated testimony as to the value of Defendant's trucks and trailers and assigning greater weight to the testimony of a witness who had never seen the trucks, trailers, or equipment.

We have already addressed the issue of whether the Master even needed to utilize Mr. Jones' depreciation figures. Furthermore, we have found that the defendant's current values are irrelevant and unsubstantiated, and that the plaintiff should not be penalized by the defendant's arbitrary arrogation to himself of the right to distribute these assets back in 1988, and his more recent refusal to allow them to be examined by Mr. Jones. The defendant produced no substantiation of the current debts, if any, which may exist in the vehicles.

The defendant's next exception is #11, which states:

"The Master erred in valuing the 1982 Olds Cutlass at $1,400."

According to the plaintiff, this car was purchased during the marriage for approximately $1,400. The defendant retained this car in his possession after separation and assigns a current value of $100 to it. At separation, he had assigned it a value of $1,500 (N.T. pp. 51, 84, 135, 162-164). The Master did not accept the $100 figure, but valued it as of separation at $1,400, and we see nothing erroneous in this valuation.

The defendant's exception #12 states:

"The Master erred in valuing the 1981 Isuzu at $1,025."

This vehicle was marital property titled in both parties' names and, according to the plaintiff, was stolen from her in her presence in July of 1988. When it was located, the ignition switch had been torn out and the key was bent, making it impossible for her to drive it, (N.T. pp. 50, 82-84). The defendant testified that the truck has been sitting up on blocks since 1988 but has not been worked on or sold, (N.T. pp 133-135; 159-163). The Master assigned a separation value of $1,025 to this truck. Given the fact that the defendant has again retained sole possession of an undisputedly marital asset which he has permitted to remain outside to deteriorate for several years, it is particularly important that this item be assigned a 1988 value. We therefore uphold the Master's valuation of the 1981 Isuzu truck.

The defendant next objects to the Master's findings regarding the oak shed. Defendant's exception #13 states:

"The Master erred valuing the oak shed at $1,000."

During the marriage the plaintiff constructed this shed herself. At the hearing she assigned a value of $1,000 to it, which included her labor and the materials, (N.T.p. 63) The defendant presently has possession of the shed and has had the benefit of using it at no cost. An examination of the transcript reveals that the defendant's answers regarding this item were evasive and therefore not credible, and we concur in the Master's valuation of the shed at $1,000, (N.T.pp. 172-173).

Defendant's exception #14 states:

"The Master erred in valuing the chain saw at $200."

The Master assigned a separation value of $200 to the chain saw, which also remained in the defendant's possession after separation, (N.T. p. 53). The defendant had valued it at $100 (plaintiff's Exhibit #3), but the Master accepted the plaintiff's value and we uphold this assignment of value.

The defendant's exception #16:

"The Master erred, and evidenced her bias against the defendant, in not accepting Defendant's statement he paid the Lowe's account after Plaintiff produced no receipts for payment."

During the marriage, the parties purchased a garden tractor for $1,000 from Lowe's. At separation there was an outstanding debt on it for $550. The defendant retained possession after separation. The plaintiff initially claimed to have paid the loan in her Pre-Trial Statement, but later testified that she could not recall whether or not she had paid this bill, and could not produce proof of payment, (N.T.pp. 92-93). The defendant testified to having paid the bill, but he was likewise unable to prove this with documentation. Because neither party could produce proof of having paid this bill, we surmise that the Master assigned this debt to the defendant based on a credibility determination which we will not disturb.

We will now address the plaintiff's exceptions #1-8, filed July 2, 1992. Exception #1 regarding the mobile home has already been addressed above. Plaintiff's exception #2 states:

"The Master erred in Finding of Fact paragraph 43 in that Plaintiff's credible testimony established the fact that Defendant damaged or destroyed personal items of clothing of Plaintiff's after separation."

The Master refused to allocate money in the distribution scheme for articles of clothing which the plaintiff claims were damaged by the defendant at or shortly after separation (N.T.pp. 70, 95). The defendant denied intentionally putting grease on her clothing, testimony which the Master found credible (N.T.p. 124), and we will not disturb that conclusion.

The plaintiff's exception #3 states:

"The Master erred in Finding of Fact paragraph #55 in excluding the listed items from the marital property given Plaintiff's credible testimony that the television and games and wireless telephone were delivered to Defendant's former legal counsel, that the cart for the garden tractor is located at the former marital residence property, and that the silver halter and lead, knife set and food processor were last seen at the marital home occupied by Defendant and which items were not present when Plaintiff sold the mobile home."

The Master was unable to determine to any degree of certainty who had possession of these items, and what their current location is. A close examination of the record leads us to the same conclusion, and we therefore uphold the Master's refusal to include these items in her calculations.

The plaintiff's exception #4 states:

"The Master erred in Finding of Fact paragraph #56 in that her [plaintiff's] more credible testimony valued the checking account at $2,000."

The plaitiff believed that this joint account contained approximately $2,000 at separation (N.T. p. 101). The defendant, who testified to having the bank records, testified that it had contained an average balance of approximately $1,000 (N.T.pp. 153-154). The Master accepted the defendant's figure and we see no difficulty with that conclusion.

The plaintiff's exception #5 states:

"The Master erred in charging Defendant with only 50% of the responsibility for the lot rental on the mobile home at the time of separation given the credible testimony of Plaintiff that Defendant solely resided in said mobile home from the date of separation until the date of sale of said mobile home."

The Master concluded that because each party was equally obligated to pay this lot rent and both parties had access to the home between March and August of 1988, it was not unreasonable that each party should be responsible for $50 of the $100 cost. We see nothing erroneous in this conclusion.

Plaintiff's exception #6 states:

"The Master erred in charging the Defendant with only 50% of the responsibility for the Valleybank overdraft given the credible testimony of Plaintiff that said overdraft resulted from Defendant's actions alone."

The overdraft occurred sometime shortly after the parties separated. This joint account had a joint personal credit line. In April of 1988 the plaintiff attempted to open her own checking account, but was informed that the defendant had bounced a check on the account, making it necessary for her to pay $100.22 to remove her name from the account and the joint credit line; the bounced check needed to be satisfied before the plaintiff would be permitted to establish her own checking account and personal credit line, (N.T. pp 70, 88-90, 105-107). Although at first glance it may seem unfair to make the plaintiff pay for half of this overdraft, the joint account and credit line were still in both parties' names, and therefore both partie were jointly liable for all checks written on that account. Given such mutual responsibility, we uphold the Master's conclusion that the plaintiff is entitled to only half of the $100 she paid as a result of this overdraft.

Plaintiff's exception #7 pertains to the issue of the valuation of the two trucks and two trailers which we have already addressed above, and we will not reiterate our previous determinations here.

The plaintiff's final exception, #8, states:

"The Master erred in assigning no value to an Isuzu engine."

The engine was purchased during the marriage and was left outside to deteriorate since separation with the knowledge of both parties. Although the engine may have been worth as much as $500 at separation, (N.T. p. 54), the Master assigned no value to it because both parties seem to have abandoned it, (N.T. p. 136), and we see no error in the Master's finding regarding this item.

ORDER OF COURT

NOW, this 3rd day of March, 1993, the Court hereby:

1. Remands the Master's Report to the Master for the purpose of recalculating the value of the two trucks and two trailers currently in the possession of the defendant which constitute marital property, and

2. Affirms the Master's Findings pertainig to all other items of marital property.

Exceptions are granted to the Plaintiff and the Defendant.

PATRIOTIC ORDER SONS OF AMERICA, WASHINGTON CAMP #665 VS. BUMBAUGH AND WIFE, C.P. Civ. Div., Franklin County Branch, No. A.D. 1990-320

Tort Action--Negligence--Res Ipsa Loquitur sought to be invoked--Restatement of Torts (2d) §328D cited--Court's refusing to charge Point of binding instructions thereon--Verdict adverse to Plaintiff and Motion for New Trial--Potential invasion of province of Jury--Court's duty, sua sponte, to instruct on subject of a partially erroneous Point for Charge--Limitation on such duty.

1. A point for charge which included, *inter alia,* the following words, was rejected as an invasion of the function of the jury: "I charge you that the type of accident here involved is of a kind which ordinarily does not occur in the absence of negligence," and "I charge you that other causes have been sufficiently eliminated since it is established defendant had exclusive control of the instrumentality here involved, or owed a nondelegable duty to the plaintiff at the time when the negligence claim would have occurred."
2. In this case, evidence was presented about the Defendant and the Plaintiff, which if believed and found more credible than conflicting evidence presented by the Plaintiff, would permit the jury to reach a conclusion contrary to the requested point for charge, and therefore, the point for charge was inappropriate.
3. The point for charge could reasonably be construed by the jury as constituting an instruction for a directed verdict in favor of the Plaintiff, when there was conflicting evidence which would prevent the direction of a verdict.
4. If the Plaintiff produces sufficient evidence to raise an inference of *Res Ipsa Loquitur,* then the Plaintiff is entitled to have the jury instructed on this evidentiary rule, even though the Defendant has produced a quantity of contrary evidence.
5. Where the Plaintiff has furnished the Court with a written proposed point for charge which, although partially erroneous, sufficiently alerts the Court that an important issue needs to be addressed in its jury charge, omission of an instruction on the important issue is grounds for reversal where the issue is not otherwise covered in the charge and the objecting party has been prejudiced.
6. Restatement of Torts (2d) §328D, on *Res Ipsa Loquitur,* is cited and quoted, as the law of Pennsylvania.
7. Comment (a) of Restatement of Torts (2d) §328D, subsec. 1, is quoted.