

She says she objected to jurisdiction of this court at the conference, saying something like: "How can you decide this case here when I live in Maryland?" She claims a response not from the hearing officer but from the plaintiff's attorney. We do not accept this testimony, so the first attack on jurisdiction occurred December 7, 1981 when the petition raising a question of jurisdiction was filed by her attorney.

The order fixing the time for the conference was signed by our court on October 5, 1981 and the conference was held on November 17th, allowing her plenty of time to make arrangements for an attorney if she wanted one. Nevertheless, she appeared at the conference without counsel. Her appearance at the conference constituted a waiver of any defect in service or jurisdiction over the person of the defendant. See *Susie v. Susie*, 72 D&C 2d 240, 35 Beaver 56 (1976) (personal appearance at Master's Hearing in divorce constitutes waiver of such defects).

The Rules of Civil Procedure, Nos. 1910.1 to 1910.31, are not meant to govern actions under the interstate reciprocal provisions of the Revised Uniform Reciprocal Enforcement of Support Act (1968), 42 Pa. C.S. Sec. 6741, et seq. Rule 1910.1 (b) (1) (a). However, Rule 1910.6(c) provides an option in which plaintiff can elect to proceed under the long-arm statute of Pennsylvania, the Act of 1976, July 9, P. L. 586, 42 Pa. C.S.A. Sec. 5321 and Pa. R.C.P. 2079. (See Rules Committee Comment under Rule 1910.1, Scope.)

The plaintiff opted to bring this case under Rule 1910 and it was established in the testimony that the plaintiff resides in Franklin County, that prior to being laid off and now collecting Unemployment Compensation the defendant was employed in Franklin County and that this is the county in which the last family domicile was located. (See Rule 1910.2 and Rule 1910.6(b).) It seems to be defendant's argument, however, that Rule 1910 is not itself a long-arm statute and that in order for our court to have jurisdiction, we must find some basis for personal jurisdiction over her under the long-arm statute.

Within this Commonwealth reside the defendant's two children. Her failure to support them is causing harm within the Commonwealth under 42 Pa. C.S.A. Sec. 5322(a)(4). "Harm" as used in a long-arm statute includes economic detriment. *Monroeville Land Co. v. Sonnenblick-Goldman Corp. of Western Pennsylvania*, 247 Pa. Super. 61, 67, n.5, 371 A.2d 1326, 1329, n.5 (1977); *B. J. McAdams, Inc. v. Boggs*, 426 F. Supp. 1091 (E.D. Pa., 1977). We conclude that

the defendant is amenable to service under the long-arm statute of Pennsylvania and that our court has both subject-matter and personal jurisdiction.

The evidence before us showed that Mary Jane Monn is receiving Unemployment Compensation of \$84.00 each week and that she received \$20,000 from the sale of real estate. She accounted for the expenditure of about \$12,000 of that, including the purchase of a new car, a gift to a church school and two vacations. Taking all of this into account, we think the hearing officer was correct in finding that she would have income from this money.

After reviewing this and all of the other evidence, including the income of the father, we find that \$27.00 per week to be paid by the mother for the support of these two boys is proper.

We will dismiss the Petition Raising a Question of Jurisdiction and affirm our order of November 19, 1981 adopting the Hearing Officer's order of November 17, 1981 as the order in this case.

#### ORDER OF COURT

March 4, 1982, the Petition Raising a Question of Jurisdiction is dismissed and the order of our court dated November 19, 1981 adopting the Hearing Officer's order of November 17, 1981 is affirmed. Costs to be paid by the defendant.

BROOKENS v. BROOKENS, C.P., Franklin County Branch,  
F.R. 1980 - 727 - D

*Divorce - Bifurcated proceeding - Constitutionality of Equitable Distribution - Counsel Fees*

1. In accordance with public policy and the legislative intent of the Divorce Code, a final divorce decree may be entered prior to the resolution of all related issues.
2. The equitable distribution provisions of the Divorce Code as applied to property acquired prior to the Code's effective date is constitutional as a

reasonable exercise of the State's police powers.

3. The purpose of awarding counsel fees is to put both spouses on a "par" in defending their individual rights.

*Lawrence C. Zeger, Esq.*, Counsel for Plaintiff

*John McD Sharpe, Jr., Esq.*, Counsel for Defendant and Defendant's Estate

#### OPINION AND ORDER

KELLER, J., March 8, 1982:

Plaintiff and defendant were married on June 28, 1941 in Hagerstown, Maryland. Plaintiff filed a complaint in divorce on September 11, 1980, in accordance with Section 401(d) of the Divorce Code, Act No. 1980-26. An answer and counterclaim were filed by defendant on September 29, 1980, which set forth three counts - one each for alimony, counsel fees and expenses, and property distribution. A divorce decree was entered on December 4, 1980, with the Court reserving jurisdiction over all remaining issues raised by defendant's counterclaim.

Plaintiff filed a motion for the appointment of a Master on March 3, 1981, and hearings were held on April 16 and 27, 1981. The transcript of the hearings was received by the Master on May 15, 1981. On May 27, 1981 an order was entered on petition of the plaintiff terminating the existing support in favor of defendant and against plaintiff retroactively effective to January 23, 1981. By order of November 16, 1981, the Master was granted leave to file his report nunc pro tunc. The defendant died on September 14, 1981. Plaintiff's exceptions to the Master's Report were filed on November 25, 1981. The matter was listed for February Argument Court, briefs were filed and oral arguments of counsel were heard on February 4, 1982. The issues are now ripe for disposition.

Bifurcation of matters raised in divorce proceedings is specifically authorized by Section 401(b) of the Divorce Code. In *Casey v. Casey*, C.P. Allegheny Co., No. 485 of October Term, 1980, the court held that it would be contrary to the legislative intent as set forth in Section 102(a)(1), (3) and (4) of the Code to keep people married "... while all of the complex and time-consuming financial details were litigated." The public policy behind the enactment of the Code was to deal with the "realities of matrimonial experience," and bifurcation provides one means of doing so. Rather than with-

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**LEGAL NOTICES, cont.**

of Allen Webster Smith late of St. Thomas Township, Franklin County, Pennsylvania, deceased.

STITELY First and final account, statement of proposed distribution and notice to the creditors of A. Ray Stitely, administrator of the Estate of R. Brooke Stitely late of Washington Township, Franklin County, Pennsylvania, deceased.

Glenn E. Shadle  
Clerk of Orphans' Court of  
Franklin County, Pa.

4-9-82, 4-16-82, 4-23-82, 4-30-82

hold the final decree of divorce until all related issues were resolved in this case, we permitted the divorce decree to be entered prior to settlement of property rights in accordance with the general policy and plan of the Divorce Code.

Plaintiff, in his exceptions, advances the argument that the equitable distribution provisions of the Divorce Code are unconstitutional as applied to property acquired prior to the Code's effective date and cites *Bacchetta v. Bacchetta*, C.P. Chester Co., No. 427 of October Term, 1979, as support for this proposition. To this date no guidance on this point has been provided by the appellate courts of Pennsylvania. Until instructed to the contrary this Court elects to follow the rationale of *Bank v. Bank*, C.P. Philadelphia Co., No. 485 of October Term, 1980, upholding the equitable distribution principles of the Divorce Code. In *Bank*, Judge Cipriani declared that a retroactive taking of property was a reasonable exercise of the State's police powers in the public interest.

In the case at bar it was plaintiff who first invoked the provisions of the new Code to secure his divorce. Certainly he will not now be heard to complain that the Code is unconstitutional.

Plaintiff urges this Court to make an independent review of the record and to not be bound by the Master's findings. He contends that since the defendant did not appear at the hearings, deference need not be given the Master's findings due to the fact that the Master was not able to judge the credibility of the parties. After reviewing the entire record of this case, as we are required to do, we are persuaded that the Master's findings and recommendations are totally supported by the evidence presented at the hearings. The extreme poor health of defendant was sufficient reason for her non-appearance at the hearing. Plaintiff was not prejudiced in any way by her absence since a competent witness was available to supply the necessary information, and plaintiff made no effort to compel the attendance of defendant or depose her.

The relevant factors listed in Section 401(d) of the Divorce Code were carefully considered by the Master in awarding defendant the real estate, attorney's fees and expenses, and alimony pendente lite. Since the defendant's death had not been noted on the record at the time the Master filed his report, his recommendations are all couched in terms assuming the defendant to be still living. However, in the "Alimony" section the Master specifically limits his recommendation for indefinite alimony by providing inter alia "until the death of either party," which is an effective self executing condition.

The awarding of counsel fees to defendant is a proper recommendation for the Master to make. The purpose of such an award is to put both spouses on a "par" in defending their individual rights. *Hoover v. Hoover*, Pa. Super. , 431 A. 2d 337 (1981). The Master based his award on the relative ability of each party to pay and the situation and surroundings of the parties as was done in *Young v. Young*, 274 Pa. Super. 298, 418 A. 2d 415 (1980). The record clearly supports such an award. The testimony of defendant's attorney as to the nature and value of his legal services cannot be construed as requiring that attorney's withdrawal as counsel.

Although defendant died prior to the belated filing of the Master's report and recommendation, this delay in filing cannot and will not prejudice decedent's estate from obtaining the distribution that was determined by the Master to be fair at the time of the hearing and remained fair up to the date of decedent's death. Therefore, plaintiff's exceptions are overruled and the Court order will properly reflect the effect of decedent's death by awarding the property to her estate.

#### ORDER OF COURT

NOW, this 8th day of March, 1982, the plaintiff's exceptions 1 and 2 are sustained, and the Master's Report will be deemed amended to reflect the death of Zelda R. Brookens, defendant, on September 14, 1981. Exceptions 3 through 13 are dismissed.

Pursuant to the Master's recommendations as modified by reason of the death of Zelda R. Brookens on September 14, 1981:

#### IT IS ORDERED THAT:

- (A) The division of the marital property between the parties shall be:

#### TO THE ESTATE OF ZELDA R. BROOKENS:

1. The marital residence.
2. All personal property at the marital residence with the exception of Mr. Brookens' rifle, Japanese souvenirs and his clothing.
3. The cemetery lots.
4. Bank accounts in her name.

#### TO JAMES D. BROOKENS:

1. The rifle, the Japanese souvenirs, and his personal

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**LEGAL NOTICES, cont.**

Sale of Real Estate - 10:00 A.M. Unused and unnecessary land and building:

Tract 1. A plot of ground containing 5.9 acres more or less, having erected thereon a brick building, one story, 12,600 sq. ft. size, with basement, formerly used as a school. Has 6 rooms on first floor, including one large room used as auditorium and stage.

Basement has 5 rooms, including large room used as gymnasium and several storage rooms.

It is heated with a York oil fired boiler in repairable condition. There is a 3,000 gallon oil storage tank. Water is supplied by a drilled well and submersible pump in working condition. Sewerage is an underground septic system.

**LEGAL NOTICES, cont.**

Tract 2. An unimproved lot located to the south of tract 1, the size of 2/3 acre more or less.

Tract 3. An unimproved lot to the south of tract 2, the size of 1/2 acre more or less.

Terms of real estate, 10% down, balance on or before July 9, 1982. Possession time of settlement. Detailed terms sale day. For inspection phone 328-3127 or 369-4169.

Rudolf M. Wertime, Solicitor  
173 Lincoln Way East  
Chambersburg, Pa. 17201

Tuscarora School District  
118 East Seminary Street  
Mercersburg, Pa. 17236

4-16, 4-23, 4-30



**PLEASE NOTE**

Donald R. Berry, Clerk of the United States District Court for the Middle District of Pennsylvania, has announced:

There will be a Bankruptcy Judge vacancy at Harrisburg for the Middle District of Pennsylvania effective August 1, 1982. The judges of this district will appoint a successor and are seeking applications from interested attorneys throughout the district. Applications and resumes should be submitted to the Clerk of Court, P.O. Box 1148, Scranton, Pa. 18501 by May 14th. The Clerk may also be contacted for further information about the position.



clothing located at the marital residence.

2. The pension fund interest through his employment.
3. Bank accounts in his name.

The Court finds that Mrs. Brookens' non-marital property consists of all personal property at the marital residence not otherwise awarded by this order to Mr. Brookens, and which she has acquired since the parties' separation. The Court finds that Mr. Brookens' non-marital property consists of all personal property he has acquired since the parties' separation and which is in his possession at his current residence and, specifically, includes his 1974 Matador vehicle.

(B) The Court finds that Zelda R. Brookens had income of approximately twenty-five (\$25.00) dollars per week plus medical assistance coverage and that Mr. Brookens has a net income of approximately two hundred forty (\$240.00) dollars per week.

The Court hereby awards Zelda R. Brookens alimony in the amount of \$85.00 every two weeks, together with a \$.50 per payment service charge payable by James D. Brookens to the Franklin County Domestic Relations Office commencing with and retroactive to January 23, 1981, and payable biweekly from that date to September 14, 1981, the date of death of Zelda R. Brookens. The Franklin County Domestic Relations Office shall distribute the alimony payments to the Estate of Zelda R. Brookens.

(C) Zelda R. Brookens' claim for counsel fees and expenses is reasonable and it is ordered that James D. Brookens shall pay five hundred (\$500.00) dollars to Mrs. Brookens Estate on account of the counsel fees incurred by her, to reimburse her Estate in the sum of four hundred ten (\$410.00) dollars for expenses incurred. The total sum of nine hundred ten (\$910.00) dollars is to be paid within sixty (60) days of the date of entry of this order.

(D) The costs of this proceeding shall be paid by the plaintiff, James R. Brookens.

Exceptions are granted the plaintiff.