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Franklin County Legal Journal
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Lawrence A. Steinberger, Plaintiff v. Teresa M. Griffin, Defendant

Court of Common Pleas of the 39th Judicial District of Pennsylvania, Franklin County Branch, Civil Action No. 2015-4020 In Divorce a v.m.

HOLDING: The Court largely upholds the Master, save for, *inter alia*, an increase in the equitable distribution of marital property and an increase of the alimony award to $475/month for 36 months with leave for Wife to petition the Court before the conclusion of 36 months so that the Court can determine whether a continuing alimony award is appropriate, and if so, the form of the award. The Court also holds that while the Master erred in not valuing the Partnership, this error does not affect the Court's equitable distribution. That is, the Court construes the *Partnership Agreement* as a quasi-partial property settlement agreement that excludes the assets, debt, and liability, including the HELOC on Wife's non-marital Linden Avenue residence, as marital property subject to equitable distribution. Instead, the Court distributes pursuant to the terms of the *Partnership Agreement* (25% to Husband, 75% to Wife).

HEADNOTES

Scope and Standard of Review of Trial Court when Ruling on Exceptions Filed to a Report and Recommendation of Master

1. When ruling on exceptions, a trial court must "conduct a complete and independent review of the evidence[.]" *Cunningham v. Cunningham*, 548 A.2d 611, 614 (Pa. Super. Ct. 1988) (citing *Rollman v. Rollman*, 421 A.2d 755, 758 (Pa. Super. Ct. 1980)).

2. The court's scope of review, however, "is limited to the evidence received by the master." *Cunningham*, 548 A.2d at 614. Any "[m]atters not covered by exceptions are deemed waived unless, prior to entry of the final decree, leave is granted to file exceptions raising those matters." Pa.R.C.P. No. 1920.55-2(b). *See Hayward v. Hayward*, 868 A.2d 554, 561 (Pa. Super. Ct. 2005). Accordingly, the Court holds "argument on the exceptions[,]" Pa.R.C.P. No. 1920.55-2(c), and *not* a "hearing de novo" under Pa.R.C.P. No. 1920.55-3.

3. Finally, the Court must give the "'master's report and recommendation, although only advisory, . . . the fullest consideration, particularly on the question of credibility of witnesses, because the master has the opportunity to observe and assess the behavior and demeanor of the parties.'" *Cook v. Cook*, 186 A.3d 1015, 1021 (Pa. Super. Ct. 2018) (quoting *Childress v. Bogosian*, 12 A.2d 448, 455-56 (Pa. Super. Ct. 2011)).

Equitable Distribution of Marital Property

4. A trial court has authority to equitably distribute marital property "as the equities presented in the particular case may require." *Cook v. Cook*, 186 A.3d 1015, 1025 (Pa. Super. Ct. 2018) (citing *Mercatell v. Mercatell*, 854 A.2d 609, 611 (Pa. Super. Ct. 2004)).

5. "Computing marital property is the threshold step in the equitable distribution of property. The second stage is the correct valuation of the property. . . . The third and last step is the equitable distribution of the properly valued, marital property. The trial court must consider equitable factors in allocating the property. *See* 23 Pa.C.S.A. § 3502(a)." *Schneeman v. Schneeman*, 615 A.2 1369, 1376 (Pa. Super. Ct. 1992).

6. When equitably distributing marital property, the Court "must consider the distribution scheme as a whole[] . . . . [and] measure the circumstances of the case against the objective of effectuating economic justice between the parties and achieving a just determination of

their property rights." *Cook*, 186 A.3d at 1026 (quoting *Morgante v. Morgante*, 119 A.2d 382, 387 (Pa. Super. Ct. 2015)) (internal quotation marks and citations omitted).

7. "[A] partnership interest is marital property." *Naddeo v. Naddeo*, 626 A.2d 608, 612 (Pa. Super. Ct. 1993) (citing *Buckl v. Buckl*, 542 A.2d 65, 66 (Pa. Super. Ct. 1988)). *See also Buckl*, 542 A.2d at 67 (explicitly recognizing partnership interest as marital property subject to equitable distribution for first time).

8. An agreement of parties to exclude some property from the marital estate therefore removes the excluded property from equitable distribution consideration. 23 Pa.C.S. § 3501(a)(2). *See Sutliff v. Sutliff,* 522 A.2d 1144, 1151 (Pa. Super. Ct. 1988).

9. The parties' failure to ascribe a value to a partnership does not absolve the master or the court of its obligation to ascertain one. *See Buckl*, 542 A.2d at 66 n.3 (rejecting trial court's rationale that "'[s]ince no evidence was presented on the value of partnership assets at time of separation other than past earnings of the architectural firm, we conclude that the business has no value other than the earning capacities of the members of the firm . . .'") (quoting trial court's opinion)).

10. The Court will value the parties' partnership but will not distribute its value via equitable distribution principles in derogation of the parties' partnership agreement.

11. In valuing a partnership, the Court will give initial consideration the partnership agreement in addition to looking at the "realties of the situation [to] avoid an unrealistic valuation." *Buckl*, 542 A.2d at 70.

12. Where a party's medical costs in three years depends on a variety of factors including the party's medical conditions at that point, the availability and scope of the medical coverage, and the costs of that coverage, the court will address those costs in the context of an alimony award, which is modifiable, rather than an equitable distribution award, which is, generally not.

13. In equitably dividing marital property, the standard is not whether the parties have the same standard of living after the divorce as before the divorce, but whether "the division of marital property [is] in a manner which effectuates economic justice." *See Viles v. Viles*, 610 A.2d 988, 991 (Pa. Super. Ct. 1992).

14. "[W]here the record alone does not indicate which party's testimony should be credited, the determination of the master can tip the balance." *Rothrock v. Rothrock*, 765 A.2d 400, 404 (Pa. Super. Ct. 2000) (citing *Mintz v. Mintz*, 392 A.2d 747, 749 (Pa. Super. Ct. 1978)).

Alimony

15. The standards and purpose of alimony are "[f]ollowing divorce, alimony provides a secondary remedy and is available only where economic justice and the reasonable needs of the parties cannot be achieved by way of an equitable distribution. An award of alimony should be made to either party only if the trial court finds it necessary to provide the receiving spouse with sufficient income to obtain the necessities of life. The purpose of alimony is not to reward one party and punish the other, but rather to ensure that the reasonable needs of the person who is unable to support herself through appropriate employment are met. Alimony is based upon reasonable needs in accordance with the lifestyle and standard of living established by the parties during the marriage, as well the payor's ability to pay." *Cook*, 186 A.3d at 1019-20 (Pa. Super. Ct. 2018) (citations and internal quotation marks omitted).

16. A court is required to consider all relevant factors, including the 17 factors in 23 Pa.C.S. § 3701(b)(1)-(17) in determining whether "'whether alimony is necessary and to establish the appropriate nature, amount, and duration of any alimony payments.'" *Cook*, 186 A.3d at 1019-20 (citing *Lawson v. Lawson*, 940 A.2d 444, 447 (Pa. Super. Ct. 2007)).

17. The Tax Cuts and Jobs Act of 2017, P.L. 115-97, December 22, 2017 § 11051 repealed tax deductions for alimony payments. *See also Zimmerman v. Zimmerman*, No. 450 MDA 2018, 2019 WL 3210656 at *6 (Pa. Super. Ct. July 16, 2019) (remanding, in part, for trial court to consider tax ramifications for alimony)

18. Although a court must consider tax consequences, the court need not adjust its alimony award based on it. *Cf. Llaurado v. Garcia-Zapata*, -- A.3d --, 2019 PA Super 338, at 3* (Pa. Super Ct. 2019) ("[23 Pa.C.S. § 3502] requires us only to consider the tax ramifications . . . along with numerous other listed factors, but the Divorce Code does not make a deduction for them mandatory." (citations and internal quotation marks omitted) (emphasis in original)).

19. Party's temporarily reduced income due to "voluntary criminal behavior" does not affect court's alimony award. *See Willoughby v. Willoughby*, 862 A.2d 654, 658 (Pa. Super. Ct. 2004).

Appearances:

Janice M. Hawbaker, Esquire, *Counsel for the Plaintiff*

Barbara B. Townsend, Esquire, *Counsel for Defendant*

OPINION OF COURT

Before Meyers, P.J.

Before the Court are the parties' exceptions to the *Master's Report and Recommendation Under Pa.R.C.P. 1920.53(C) and 1920.54* filed on October 3, 2018 ("*Report and Recommendation*") by Master Timothy D. Wilmot ("Master"). The focus of the parties' exceptions is to the Master's equitable distribution of the marital estate, 1/3 to Plaintiff Lawrence A. Steinberger ("Husband") and 2/3 to Defendant Teresa M. Griffin ("Wife"), and the $400/month alimony award for 36 months to Wife from Husband.

The Court largely upholds the Master, save for, *inter alia*, an increase in the equitable distribution of marital property and an increase of the alimony award to $475/month for 36 months with leave for Wife to petition the Court before the conclusion of 36 months so that the Court can determine whether a continuing alimony award is appropriate, and if so, the form of the award. The Court also holds that while the Master erred in not valuing the Partnership, this error does not affect the Court's equitable distribution. That is, the Court construes the *Partnership Agreement* as a quasi- partial property settlement agreement that excludes the assets, debt, and liability, including the HELOC on Wife's non-marital Linden Avenue residence, as marital property subject to equitable distribution. Instead, the Court distributes pursuant to the terms of the *Partnership Agreement* (25% to Husband, 75% to Wife).

PROCEDURAL & FACTUAL HISTORY

Background

Plaintiff Lawrence A. Steinberger ("Husband") and Defendant Teresa M. Griffin ("Wife") married in 2003, a second marriage for both. Husband was 49 years of age at the time; Wife, 45. The parties separated in July of 2015, and Husband filed a *Complaint for Divorce* on October 29, 2015. Husband, now age 64, and Wife, now age 60, had no children. Wife filed an *Answer* requesting equitable distribution, alimony pendente lite, and alimony on May 23, 2017.

Master Appointment

Pursuant to Pa.R.C.P. No. 1920.51, effective until October 1, 2019, and 39th Jud. Dist. R.C.P. No. 39-1920.53, the Court appointed the Master on July 31, 2017—as to the divorce, equitable distribution, alimony, and alimony pendent lite claims—upon Husband's *Motion for Appointment of Master*. Master was qualified the following day. The Master held hearings over the course of three days: May 2, 2018, July 25, 2018, and August 8, 2018.

Partnership

Before the hearing on July 25, 2018, the parties entered into a *Partnership Agreement* dated July 24, 2018 that took ownership of assets and debts of five real estate properties located in Franklin County, which were part of the marital estate (the "Rental Properties") (collectively, the "Partnership").[1] The Partnership also took on a loan on Wife's non-marital Linden Avenue residence, the loan having been used for "[p]artnership purposes" (*i.e.*, a home equity line of credit ("HELOC") from Patriot Federal Credit Union in the then-current amount of $68,500). Joint Exhibit 4, *Partnership Agreement*, § 3. E., Loans, page 2. The *Partnership Agreement* was entered into evidence to the Master as Joint Exhibit 4.

Master *Report and Recommendation*

Following the hearings, the Master issued his *Report and Recommendation* on October 3, 2018, pursuant to Pa.R.C.P. No. 1920.53, No. 1920.54, and 39th Jud. Dist. R.C.P. 39-1920.53(l). The Master found the marital estate to be worth approximately $560,804.38 dollars, excluding the assets and debts of the Rental Properties incorporated into the Partnership. The Master recommended an equitable distribution of about 1/3 to Husband

1 The business of the Partnership being "to rent, lease, maintain, and repair and otherwise deal with real and personal property[] . . .including the lands and premises described on Exhibit A[,] [which listed the five Rental Properties.]" Joint Exhibit 4, *Partnership Agreement*, Preamble, page 1. *See also* Joint Exhibit 5, A-E (breakdown of net values of Rental Properties after mortgages and cost of sales), F-1 (HELOC lien). "The parties formed [the] [P]artnership[] as part of the resolution of the marital estate[.]" *Stipulations*, ¶ 22. Wife has 75% ownership of the [P]artnership whereas Husband has a 25% ownership. Joint Exhibit 4, *Partnership Agreement*, page 1.

and 2/3 to Wife,[2] as detailed on the following page:

Husband	In-Kind Distribution	Wife
	Marital Increase of [Wife's] Linden Avenue [real property]	$40,755.00
$59,152.00	[Thrift Savings Plan] TSP	$59,152.00
$61,692.00	"Reserve Pension (DFAS) | 30% (Marital Share) 70%"	$143,945.00
$1,837.00	[Husband's] Paycheck earned prior to separation	
$58,946.00	"[Federal Employee Retirement Systems] FERS | 30% (Marital Share) 70%"	$137,541.00
	Jewelry	$13,700.00
$12,893.17	PFCU Acct. 8062	
$1,768.00	[Husband's] Germany trip	
$1,350.00	[Husband's] post-separation Rent & Security Deposit	
	2003 Lexus [vehicle]	$3,625.00
$1,200.00	1995 Ford Ranger [vehicle]	
----	"2003 Mercury No value offered"	----
	Bank of America 0448	$(2,008.17)
	Chase Visa 0910	$(2,323.29)
	US Bank 5803	$(6,077.66)
$(3,714.16)	Chase 8346	
$(12,759.05)	Capital One 8589/Joint Names	
	Home Depot 8790/Joint Names	$(3,201.06)
	Lowe's 1612/Joint Names	$(1,276.57)
	Bank of America 1501/Joint Names	$(4,967.26)
	Chase MC 9766/Joint Names	$(1,363.04)
	Citi Simplicity 3554	$(3,721.53)
$4,300.00	Tax Refund	
$186,664.96	**Husband/Wife TOTAL:**	**$373,779.42**

Husband %	Marital Estate Total:	Wife %
33.31%	$560,444.38	**66.69%**

Report and Recommendation, § III, E, Recommended Distribution, page

2 Husband's $187,024.96 + Wife's $373,799.42 = $560,804.38. Husband's $187,024.96 of $560,804.38 equals 33.34%, and Wife's $373,799.42 of $560,804.38 equals 66.65%.

24-26.[3]

Additionally, the Master recommended alimony of $400/month for 36 months in favor of Wife for her Tri-Care coverage because "[t]he assets are recommended to be distributed so that the only need [Wife] will be unable to provide for herself is her medical coverage." *Id*. § IV, A, Section 3701 Factors, page 29; § IV, B, Alimony Recommendation, page 30.

Exceptions to *Report and Recommendation*

Wife and Husband then filed timely exceptions pursuant to Pa.R.C.P. No. 1920.55-2(b)-(c). These exceptions were as follows:

> Husband's exceptions—
>
> 1. The Master erred in his recommendation of equitable distribution by skewing it as much as he did in favor of Defendant.
>
> 2. The Master erred in his recommendation of alimony in failing to consider Plaintiff's age and recent medical history; there was no provision provided for Plaintiff to revisit the alimony issue if he was forced to elected [sic] to retire within the next three years.
>
> 3. The Master erred in finding that the Plaintiff had received the tax refund when in fact Defendant was the one who received the tax refund.
>
> 4. The Master erred in failing to consider the tax consequences of alimony under the new tax statute.

Plaintiff's Exceptions to Master's Recommendation.

> Wife's exceptions—
>
> I. The Master erred in his recommendation of equitable distribution by:
>
> a. Failing to equitably distribute marital debt,
>
> b. Failing to properly account for the value of the partnership's current value,
>
> c. Failing to provide for the payment of a marital loan which is a lien on Defendant's non marital property,
>
> d. Failing to recognize Defendant's reasonable needs to continue her standard of living and protect her award.
>
> II. The Master erred in his discussion of factors in shaping the recommendation for equitable distribution by:
>
> a. Failing to recognize that the partnership may not pay

3 The Master did not total or provide the percentage breakdown as the Court has chosen to do.

off a marital loan, assumed by the partnership of the parties, which is a lien against Defendant's sole property,

b. Failing to appreciate that the income from the partnership is insufficient to pay past credit card debt,

c. Failing to appreciate the cost to Defendant of medical and life insurance, costs of drugs not covered by insurance, costs of debt service, and based on her permanent disability, costs of medical expenses after three years[,]

d. Failure to appreciate the standard of living recognized by Plaintiff,

e. Failure to recognize Defendant's contribution to the increased earning capacity and assets of Plaintiff,

f. Failure to recognize Defendant's contribution as a homemaker, and her contribution to the acquisition and appreciation of marital property.

III. The Master erred in the recommendation of the length and amount of alimony by:

a. Failure to take into account Defendant's increased expenses because of the marriage,

b. Failure to appreciate the standard of living of the parties,

c. Failure to recognize the relative assets and liabilities of the parties,

d. Failure to appreciate the needs of Defendant,

e. Failure to appreciate the lack of sufficient property of Defendant,

f. Failure to recognize Defendant's contribution as a homemaker,

g. Failure to appreciate the respective abilities of each of the parties to engage in future appropriate employment[,]

h. Failure to appreciate the impact of marital fault on the relative situation of the parties post divorce[,]

i. Failure to recognize the relative income of the parties, the assets provided in settlement and the necessity of the relative attorney fees.

IV. The Master erred in presentation of the case, requiring the better party of two half days of hearing to review

stipulations of the parties with counsel instead of allowing testimony, while repeatedly warning that there would be additional expense assessed.

Exceptions to Master's Recommendation.

Trial Court

The parties filed briefs in this Court and the Court held oral argument on April 24, 2019. Subsequently, the parties notified the Court that they wished to file stipulations before the Court decided on their exceptions, which the Court granted the parties leave to do. The parties then filed their *Stipulations* on August 23, 2019.[4]

DISCUSSION & ANALYSIS

As an initial matter, neither party opposes the entry of the divorce decree, and therefore, the Court affirms the Master's *Report and Recommendation* that divorced Husband and Wife from the bonds of matrimony.

Rather, the parties take exception to, among other things, the proposed equitable distribution of the marital estate and the $400/month for 36 months alimony award to Wife.

Scope & Standard of Review

When ruling on exceptions, a trial court must "conduct a complete and independent review of the evidence[.]" *Cunningham v. Cunningham*, 548 A.2d 611, 614 (Pa. Super. Ct. 1988) (citing *Rollman v. Rollman*, 421 A.2d 755, 758 (Pa. Super. Ct. 1980)). The court's scope of review, however, "is limited to the evidence received by the master." *Cunningham*, 548 A.2d at 614. Any "[m]atters not covered by exceptions are deemed waived unless, prior to entry of the final decree, leave is granted to file exceptions raising those matters." Pa.R.C.P. No. 1920.55-2(b). *See Hayward v. Hayward*, 868 A.2d 554, 561 (Pa. Super. Ct. 2005). Accordingly, the Court holds "argument on the exceptions[,]" Pa.R.C.P. No. 1920.55-2(c), and *not* a "hearing de novo" under Pa.R.C.P. No. 1920.55-3. Finally, the Court must give the "'master's report and recommendation, although only advisory, . . . the fullest consideration, particularly on the question of credibility of witnesses, because the master has the opportunity to observe and assess

4 At oral argument on April 24, 2019, counsel for the parties indicated that they wished to submit a stipulation before the Court made its decision on exceptions. Counsel for Wife later indicated that she would not be available to file stipulations until late June, 2019. The Court then ordered the parties file a stipulation of fact or a stipulation to remand to the Master by July 31, 2019. *See* Court's June 24, 2019 Order. Counsel for the parties then notified the Court in late July, 2019, that they needed additional time to complete their stipulations and that Counsel for Husband would be not be available until August 6, 2019. The Court then ordered the parties file a stipulation of fact or a stipulation to remand to the Master on or before August 23, 2019. *See* Court's August 2, 2019 Order. The parties then filed their *Stipulations* on August 23, 2019.

the behavior and demeanor of the parties.'" *Cook v. Cook*, 186 A.3d 1015, 1021 (Pa. Super. Ct. 2018) (quoting *Childress v. Bogosian*, 12 A.2d 448, 455-56 (Pa. Super. Ct. 2011)). The Court addresses the parties' exceptions by claim, *i.e.*, (1) equitable distribution and (2) alimony.

1. Equitable Distribution of Marital Property

A trial court has authority to equitably distribute marital property "as the equities presented in the particular case may require." *Cook v. Cook*, 186 A.3d 1015, 1025 (Pa. Super. Ct. 2018) (citing *Mercatell v. Mercatell*, 854 A.2d 609, 611 (Pa. Super. Ct. 2004)). The proper procedure in doing so is as follows:

> Computing marital property is the threshold step in the equitable distribution of property. The second stage is the correct valuation of the property. . . . The third and last step is the equitable distribution of the properly valued, marital property. The trial court must consider equitable factors in allocating the property. *See* 23 Pa.C.S.A. § 3502(a).[5]

Schneeman v. Schneeman, 615 A.2 1369, 1376 (Pa. Super. Ct. 1992). When equitably distributing marital property, the Court "must consider the distribution scheme as a whole[] . . . . [and] measure the circumstances of the case against the objective of effectuating economic justice between the parties and achieving a just determination of their property rights." *Cook*, 186 A.3d at 1026 (quoting *Morgante v. Morgante*, 119 A.2d 382, 387 (Pa. Super. Ct. 2015)) (internal quotation marks and citations omitted).

The Court will first address (A) several preliminary matters before moving on to the exceptions regarding (B) the Master's discussion of the equitable distribution factors and (C) his equitable distribution recommendation.

A. Preliminary Matters

5 The factors included in 23 Pa.C.S. § 3502(a)(1)-(11) are:
(1) The length of the marriage.
(2) Any prior marriage of either party.
(3) The age, health, station, amount and sources of income, vocational skills, employability, estate, liabilities and needs of each of the parties.
(4) The contribution by one party to the education, training or increased earning power of the other party.
(5) The opportunity of each party for future acquisitions of capital assets and income.
(6) The sources of income of both parties, including, but not limited to, medical, retirement, insurance or other benefits.
(7) The contribution or dissipation of each party in the acquisition, preservation, depreciation or appreciation of the marital property, including the contribution of a party as homemaker.
(8) The value of the property set apart to each party.
(9) The standard of living of the parties established during the marriage.
(10) The economic circumstances of each party at the time the division of property is to become effective.
(10.1) The Federal, State and local tax ramifications associated with each asset to be divided, distributed or assigned, which ramifications need not be immediate and certain.
(10.2) The expense of sale, transfer or liquidation associated with a particular asset, which expense need not be immediate and certain.
(11) Whether the party will be serving as the custodian of any dependent minor children.

(i) Tax Refund

One of Husband's exceptions is that Master credited Husband with an approximate $4,300 tax refund, whereas Wife, Husband argues, in fact, received the refund. *Plaintiff's Exceptions to Master's Recommendation*.

The Court finds that this tax refund was marital property, *Joint Exhibit 2*, and the record reflects that Wife, not Husband, received it and used the refund to pay off debt associated with the parties' Rental Properties. N.T. 34. Therefore, because the Court finds that the Master intended to credit the refund to the party who actually received it—*see* Master's Proposed Order B (h) ("A Tax refund already received . . . .")—the Court finds that the Master's distribution of the refund to Husband was error when the record shows that Wife received it. Accordingly, the Court will credit Wife, not Husband, with the approximate $4,300 tax refund.

(ii) Wife's Post-Separation Personal Expenses

Another one of Husband's exceptions is that "the Master erred in his recommendation of equitable distribution by skewing it as much as he did in favor of Defendant." *Plaintiff's Exceptions to Master's Recommendation*. Specifically, in his brief, Husband contends that the Master "failed to include or address that Wife took $4893 out of the marital account[.]" *Plaintiff's Brief in Support of Plaintiff's Exceptions to Master's Report and Recommendation*, page 3.

Upon a review of the record, the Court agrees. Wife testified that she took $4,893.90 out of the parties' joint checking and money market accounts after the parties' separation for personal expenses, and notated these expenses on Wife's Exhibit P-2. N.T. 253 ($1,693.90 for fence at Wife's non-marital Linden Avenue residence), N.T. 254 ($1,500 for hot water heater replacement and two months of high gas bills at Wife's non-marital Linden Avenue residence), N.T. 255 ($900 for a down payment on Wife's tooth implant), N.T. 257 ($800 for tire(s) and repairs on Wife's car); Wife's Exhibit P-2. Furthermore, the Master's *Report and Recommendation* makes no mention of these post-separation personal expenses. Therefore, because the Court finds that these expenses of Wife's are purely personal in nature and unrelated to the marriage, the Court will deduct $4,893.90 from the Master's equitable distribution recommendation for Wife and add the same to Husband.[6]

(iii) Partnership Agreement

One of Wife's exceptions is that the Master "fail[ed] to properly account for the value of the partnership's current value." *Exceptions to Master's Recommendation.*

6 The Court considers the remainder of Husband's first exception in in the scope of discussing Wife's exceptions to the Master's equitable distribution recommendation in Section I. C. of this Opinion, *infra*.

Master's Explanation in *Report and Recommendation*

As to the assets of the marital estate incorporated into the *Partnership Agreement* (*i.e.*, the Rental Properties), the Master stated that:

> The thirteen rental properties described on Exhibit A of the Partnership Agreement and the existing marital rental account (PFCU #0187) are no longer available for equitable distribution, having been absorbed by the Partnership Agreement. Likewise, there were many debts that existed at date of separation that were incurred by the parties for the purposes of purchasing the real estate. The Master notes that parties did not provide a specific value to be ascribed to the partnership.

Report and Recommendation, § III, A, Identification of Marital Assets, page 13. And, as to the debts, the Master stated:

> The parties provided Joint Exhibits 1 and 2 which identify liens against the real estate which the parties have transferred to the Partnership. The Master finds that the liens are now incorporated into the Partnership and not subject to distribution because they are now owned by the Partnership.

Report and Recommendation, § III, C, Identification of Marital Debts, page 14. Thus, the Master understood the Partnership to remove the Rental Properties from his consideration.

Whether the Master Erred

For the reasons that follow, the Court finds that the Master erred in not valuing the Partnership but this error does not change our review of the Master's equitable distribution recommendation, which the Court takes up at Section 1.C. of this Opinion, *infra*, because the Court concludes that the value of the Partnership should be incorporated but not merged into the Court's equitable distribution order. This means that the Court will distribute the Partnership's value consistent with the terms of the *Partnership Agreement* and not distributed under equitable distribution principles.

Upon a review of Wife's *Brief on Exceptions* the Court notes that Wife makes exception not just to the Master's failure to place a value on the Partnership but also to the Master's failure to consider in his equitable distribution recommendation the effect of the HELOC on Wife's non-marital Linden Avenue residence, the HELOC being a liability that the Partnership took on. The latter consideration is on which Wife's exception turns. That is, as the Court understands Wife's exception, the value of the Partnership is relevant only to its value with respect to the manner of the equitable

distribution scheme.

In resolving this exception, the Court finds that there is apparent tension in the law between, on one hand, a party's partnership interest being marital property, and thus, subject to equitable distribution, *Buckl v. Buckl*, 542 A.2d 65, 66 (Pa. Super. Ct. 1988), and, on the other hand, an agreement of parties to exclude some property from the marital estate therefore removing the excluded property from equitable distribution consideration. 23 Pa.C.S. § 3501(a)(2) ("Property excluded by valid agreement of the parties entered into before, during or after the marriage[]" is not marital property). *See Sutliff v. Sutliff*, 522 A.2d 1144, 1151 (Pa. Super. Ct. 1988) (holding that trial court properly incorporated parties' stipulation into its equitable distribution order and distributed property pursuant to parties' stipulation, thus removing residence from court's equitable distribution consideration pursuant to 23 P.S. § 401(e)(2),[7] where stipulation "had specific provisions for the sale of the house and distribution of funds") *aff'd in part, rev'd in part on other grounds and remanded*, 543 A.2d 534 (Pa. 1988).

Of course, this tension is relevant because the *Partnership Agreement* between the parties here, one, ostensibly excludes from the marital estate the assets and debts of the parties' marital Rental Properties and, two, "assume[s] responsibility in the current amount of $68,500 on a . . . HELOC on Griffin's personal residence that has been used for partnership purposes." Joint Exhibit 4, *Partnership Agreement*, § 3. E., Loans, page 2. *See also* fn. 1 of this Opinion, *supra*.

Terms of the *Partnership Agreement*

To be sure, the *Partnership Agreement* reads, in pertinent part:

> This Agreement made as of the 24th day of July 2018, by and between Teresa Griffin . . . and Lawrence A. Steinberger . . . .
>
> Whereas, the parties hereto are husband and wife, but in the process of obtaining a divorce; and
>
> Whereas, the parties own . . . [the Rental Properties] that they have held for rental purposes during their marriage; and
>
> Whereas, the parties hereto have agreed to conveyances of the real estate to effect a 75% ownership by Griffin and a 25% ownership by Steinberger[] . . .
>
> Whereas, the parties desire to retain the properties as tenants in common after their divorce because of the real estates' depressed prices and a sale will have negative tax consequences without maximizing

7 The language in subdivision (e)(2) of 1980, April 2, P.L. 64, No. 26 § 401 (23 P.S. § 401), repealed, is identical to that of the current 23 Pa.C.S. § 3501(a)(2).

their value; and

Whereas, the parties hereto wish to become partners in handling the real estate which they will hold as tenants in common; and

Whereas, the parties wish to reduce their partnership to writing;

Wherefore, the parties hereto, intending to be legally bound hereby, do hereby agree to form a partnership with the following provisions:

1. Business: The parties hereby form a partnership . . . to rent, lease, maintain and repair and otherwise deal with real and personal property, of any kind or description, including the [Rental Properties]. . . . .

2. Term: The partnership shall begin on the date hereof and shall continue until terminated as herein provided.

. . .

4. Profits and Loss: The net profits and losses of the partnership shall be divided and borne according to their proportion of ownership between the partners, unless the partners agree otherwise in writing. . . . .

. . .

10. Voluntary Termination: The partnership may be dissolved at any time by agreement of the partners[] . . . . Upon dissolution, the assets of the partnership business shall be used and distributed in the following order: (a) to pay or provide for the payment of all partnership liabilities and liquidating expenses and obligations; (b) to discharge the balance of the income accounts of the partners; (c) to discharge the balance of the capital accounts of the partners; (d) to share any excess funds according to the proportion of their capita accounts. The parties will consider sale of the Property on the fifth anniversary of this Agreement and at two year intervals thereafter.

Joint Exhibit 4, *Partnership Agreement*, page 1-3. Furthermore, the *Partnership Agreement* provides that "[a]fter five years, either partner shall have the right to withdraw from the partnership at the end of any fiscal year[]" provided that "[w]ritten notice of intention to withdraw shall be served upon the other partner . . . ." *Id.* § 11, Involuntary Termination, page 3.

The result of the *Partnership Agreement* is that it took some of what was otherwise marital property (assets, debts, and liability) and folded it into a Partnership intended to survive the divorce. The *Partnership Agreement* provides that absent mutual agreement of Husband and Wife, or one of their deaths, the Partnership has a term of at least five years from the date of the *Partnership Agreement* before becoming a partnership at will thereafter. This is all to say that the Partnership appeared to operate and be independent of

what an equitable distribution of the remaining marital estate might be.[8] A review of the transcript supports this interpretation.

Testimony Regarding the Partnership

Testimony on the record both supports the interpretation that the Partnership was to operate independently of any equitable distribution, except for the consideration of the profits of the Partnership for Wife when determining Wife's monthly income,[9] as well as the Master's manifest intention that he was not including or considering the *Partnership Agreement* in his *Report and Recommendation*.

First, the exchange between Wife's Counsel and the Master on the second day of the hearing, the day after Husband and Wife entered into the Partnership, was as follows:

> Ms. Townsend: I am giving you a courtesy copy of what has been labeled Joint Exhibit 1—or 4, rather.
>
> The Master: Master's copy of Joint Exhibit 4?
>
> Ms. Townsend: Yes and both plaintiff and defendant have reached an agreement with outside counsel.
>
> The Master: Who is the attorney for this?
>
> Ms. Townsend: Jack Sharpe.
>
> The Master: Okay:

8 Indeed, the *Partnership Agreement* explicitly provides that arbitration is the method in which to handle "[a]ny controversy or claim arising out of or relating to this contract, or any breach thereof[] . . . ." Joint Exhibit 4, *Partnership Agreement*, § 13, Arbitration, page 4-5.

This evinces that the parties gave some consideration to future disputes that might occur in the future regarding the Partnership. That the parties did not specifically provide for the possibility that the Court might construe their Partnership to be a quasi- partial property settlement agreement that settles the distribution of the property and liabilities that the Partnership undertook, as with any scenario that the parties choose not to provide for, is a "risk[] that contracting parties routinely assume." *Cf. Simeone v. Simeone*, 581 A.2d 162, 166 (Pa. 1990) ("[E]veryone who enters a long-term agreement knows that circumstances can change during its term, so that what initially appeared desirable might prove to be an unfavorable bargain. . . . If parties choose not to address such matters in their prenuptial agreement, they must be regarded as having contracted to bear the risk of events that alter the value of their bargains."). This risk is heightened and even more apparent when parties enter into an agreement during divorce proceedings than when parties enter into an agreement before or at the outset of their marriage.

9 On the first day of the hearing, prior to the formation of the Partnership, Husband testified, on cross-examination by Wife's Counsel, that:

> [Husband] A: We have agreed to a partnership, but we haven't come down to the specifics.
>
> [Ms. Townsend] Q: None of the terms have been agreed to?
>
> [Husband] A: None of the terms, no.
>
> [Ms. Townsend] Q: Yet you want the income from the rental properties to be considered income for Teresa?
>
> [Husband] A: Yes.

N.T. 93-94.

Ms. Townsend: And he drew up a partnership agreement for them so that they would continue to manage the portfolio, real estate portfolio. And attached to the partnership agreement, the very last page, is Exhibit A. And Exhibit A refers to the following properties listed on Joint Exhibit 1: A, B, C, D, and E. And the letters are the same in the partnership agreement as on the Joint Exhibit.

The Mater: Okay. So you are acknowledging that they – the at the partnership now owns this real estate, that they would be responsible – well –

Ms. Townsend: Excuse me?

The Master: And I guess they would be responsible for the partnership.

Ms. Townsend: **That the partnership is responsible for all of the debts listed under A through E, and they picked up the debt under F1.** However, there will be more testimony about the Patriot.[10]

The Master: The Patriot. What about?

Ms. Townsend: It –

The Master: Well, let me just go ahead and read this thing.

(Discussion off the record).

(Mr. Steinberger and Ms. Griffin enter hearing room at 12:03 p.m.)

The Master: Well, good morning. And actually, good afternoon. I know both of you have been, I guess, hopefully patient waiting back there.

We got a lot of things done. There's a lot to do to catch up and assimilate some of the information that's now in the partnership agreement that was just signed yesterday.

. . . .

So we went back through a lot of exhibits, and try to update them, and make sure you applied the partnership agreement to the facts here to make sure that we – are not missing anything.

. . . .

And Joint Exhibit 4 is a partnership agreement which

10 Upon a review of the transcripts for the second and third day of hearings, the Court does not find that was "more [on the record] testimony about the Patriot[]" as Counsel for Wife indicated, at least, any testimony with respect to the HELOC. N.T. 181.

had the most impact.

. . . .

But this narrowed the issues considerably. And as I was reading through, last night, the transcript, and still there was talk of doing a partnership, and I was – I can't do that. I can't do a partnership.

In most any divorce cases, I don't have enough cooperation between the parties to even think about them continuing then to be bound together financially.

But you have gone ahead and done that because I guess you had the message that I wasn't going to be able to do that. So you went out and got Mr. Sharpe to help you, and good luck on that endeavor. And thank you for doing that **because it does cut down on the litigation here**.

N.T. 180-184 (**bold** emphasis added).

To be sure, the Master specifically asked Counsel for Wife whether the "[parties] would be responsible for the partnership[]" to which Counsel for Wife replied "the partnership is responsible for all of the debts listed under A through E, and they picked up the debt under F1[,]" with F1 referring to the HELOC. A short while later, the Master then stated, before both the parties and their respective counsel, that the *Partnership Agreement* "had the most impact[;]" "this narrowed the issues considerably[,]" which the Court understands as the Master referring to the *Partnership Agreement*; and "it does cut down on the litigation here[,]" which the Court again understands as the Master referring to the *Partnership Agreement*. In other words, it appears clear from the testimony to the Court that the Master did not intend to (and in fact did not) incorporate the *Partnership Agreement* in his *Report and Recommendation*.

Second, the above exchange was followed up by an exchange between Wife's Counsel and Wife, on the third day of the hearings, that went as follows:

[Ms. Townsend] Q: Okay. Now the credit cards are **not part of the partnership**, correct?

[Wife] A: No, they are not. That's correct.

[Ms. Townsend] Q: So the credit card is still some 41 -- $44,000 **still has to be dealt with**?

[Wife] A: **Yes**.

[Ms. Townsend] Q: Okay.

[Wife] A: Correct.

N.T. 242 (**bold** emphasis added). The above exchange supports an apparent acknowledgment by Wife's Counsel (and Wife) that at least some distinction exists between something that is part of the Partnership and something that is not, and that this distinction is significant for purposes of equitable distribution. Moreover, given the earlier exchange between the Master and Wife's Counsel on the second day of the hearing, the Court finds that this significance could be an understanding that something that is part of the Partnership means that the item should no longer be considered marital property subject to equitable distribution. Indeed, that was the Master's understanding. Further, the Court finds on its review of the transcript that neither party nor counsel for party objected during the hearing to the Master's manifest intention to not incorporate the *Partnership Agreement* in his *Report and Recommendation*. Thus, it seems clear to the Court that neither the Master nor the parties contemplated the Partnership factoring into the Master's equitable distribution recommendation. *See Seifert v. Seifert*, 9 Pa. D. & C. 4th 235, 236 (1991) ("Both parties presented testimony concerning the source and distribution of the funds in question. The master was required to evaluate the credibility of the respective parties' versions of these transactions in order *to determine the estate available for equitable distribution*.") (emphasis added)).

Of course, the significance of the foregoing is to better resolve the tension in the law between—on one hand, a partnership interest being marital property and, on the other hand, property that is otherwise marital being excluded from the marital estate because of separate agreement of the parties—to answer the question of whether the value of the Partnership should be subject to equitable distribution by the Court.

Resolving Tension by Valuing Partnership but Distributing by Terms of *Partnership Agreement*

A reasonable construction of the tension in the law is valuing the Partnership but distributing it consistent with the terms of the *Partnership Agreement* and not under equitable distribution principles. In arriving at this construction, the Court considered but rejected the following alternatives.

First, the Court could value the Partnership and then distribute the value under equitable distribution principles or by some other measure.[11] However, doing so would run contrary to the tenets of contract law that a "[c]ontracting parties are normally bound by their agreements, without regard to whether the terms thereof were read and fully understood and irrespective of whether the agreements embodied reasonable or good bargains[]" "absent

11 For example, by the distribution that the Master recommended for the entire estate (approximately 1/3 to Husband and 2/3 to Wife), the distribution for the DFAS and FERS (30% to Husband and 70% to Wife), the distribution of marital credit card debt (approximately 2/5 to Husband and 3/5 to Wife), or some combination or average thereof.

fraud, misrepresentation, or duress[,]" none of which are claimed or present here. *Cf. Simeone*, 581 A.2d at 165-66 (Pa. 1990) (upholding prenuptial agreement). Indeed, in upholding husband and wife's prenuptial agreement that limited wife's amount of support following separation or divorce of the parties, the Supreme Court stated that:

> We are reluctant to interfere with the power of persons contemplating marriage to agree upon, and to act in reliance upon, what *they* regard as an acceptable distribution scheme for their property. A court should not ignore the parties' expressed intent by proceeding to determine whether a prenuptial agreement was, in the court's view, reasonable at the time of its inception or the time of divorce. These are exactly the sorts of judicial determinations that such agreements are designed to avoid.

Id. at 166 (emphasis in original). Moreover, to distribute the value of the Partnership via equitable distribution or otherwise is contrary to the intentions of the parties as manifested in the clear and unambiguous terms of the *Partnership Agreement*. *See* Terms of the *Partnership Agreement* discussion on page 11-12 of this Opinion, *supra. Cf. Sabad v. Fessenden*, 825 A.2d 682, 688 (Pa. Super. Ct. 2003) ("When interpreting an antenuptial agreement, the court must determine the intention of the parties. When the words of a contract are clear and unambiguous, the intent of the parties is to be discovered from the express language of the agreement.") (citations and internal quotation marks omitted). That is, the *Partnership Agreement* explicitly states what the ownership interests and profit and loss allocations are (25% to Husband and 75% to Wife).

Here, Husband and Wife entered into the *Partnership Agreement* with knowledge of the relative value of the assets and debts of the Rental Properties and the liability (namely, the HELOC), all of which the Partnership would assume responsibility of. In addition, the terms of the *Property Agreement* explicitly detail the parties' respective ownership interests in, and their net profit and loss distributions of, the Partnership. The parties, of course, entered into this *Partnership Agreement* in the midst of a pending divorce between the two where Wife had filed counterclaims for equitable distribution and alimony. *See also* Joint Exhibit 4, *Partnership Agreement*, page 1 ("Whereas, the parties hereto are husband and wife, *but in the process of obtaining a divorce*[.]") (emphasis added)).

The Court cannot enforce the terms of the *Partnership Agreement* that the parties freely entered into in the midst of litigation prior to the Master issuing an equitable distribution recommendation and then subsequently alter the terms of the *Partnership Agreement* when a party is not satisfied

with the resulting Master's *Report and Recommendation*. *See Bianchi v. Bianchi*, 859 A.2d 511, 517 (Pa. Super. Ct. 2004) ("As nothing prevented [h]usband and [w]ife from agreeing that [w]ife could relinquish an asset that she would have otherwise legally been entitled to receive under a court ordered distribution, we are reluctant to modify the parties' agreement . . . absent fraud, accident, or mistake, we equally are precluded from reforming the agreement to allow [w]ife to benefit from post-separation increases.") (citations omitted)).

Second, the Court could choose not to value the Partnership and not incorporate it in an equitable distribution order, as the Master as done so. However, the Court finds that doing so runs counter to established, controlling case law that "a partnership interest is marital property." *Naddeo v. Naddeo*, 626 A.2d 608, 612 (Pa. Super. Ct. 1993) (citing *Buckl*, 542 A.2d at 66). *See also Buckl*, 542 A.2d at 67 (explicitly recognizing partnership interest as marital property subject to equitable distribution for first time). In *Naddeo*, the Superior Court "conclude[d] that the trial court erred in valuing [h]usband's partnership interest in the law firm at zero for purposes of equitable distribution." 626 A.2d at 610. In its discussion, the Superior Court stated that "[w]hile we recognize the possible difficulty of placing a value on a spouse's interest in a small business such as a partnership, we have also stated that the form of the partnership is not dispositive." *Id*. at 612 (citations omitted). *See also Buckl*, 542 A.2d at 67 ("While the general principle that an interest in a partnership is marital property presents no particular difficulty, the valuation of such interest is frought [sic] with problems."). Moreover, the parties' failure to ascribe a value to a partnership does not absolve the court of its obligation to ascertain one. *See Buckl*, 542 A.2d at 66 n.3 (rejecting trial court's rationale that "'[s]ince no evidence was presented on the value of partnership assets at time of separation other than past earnings of the architectural firm, we conclude that the business has no value other than the earning capacities of the members of the firm . . .'") (quoting trial court's opinion)).

Of course, in *Buckl* and *Naddeo*, *supra*, the partnerships the courts were faced with were of an entirely different character than the Partnership here. To wit, in *Buckl*, the Superior Court found that husband's partnership interest in an architectural firm was in fact marital property and held that, as such, husband's interest was subject to equitable distribution. 542 A.2d at 65-66. In that case, wife had no partnership interest in the firm herself. *Id*. Likewise, in *Naddeo*, the Superior Court found that husband had a partnership interest in a law firm that was subject to equitable distribution, a law firm of which wife had no partnership interest herself in. 626 A.2d at 610. In contrast, here, both Husband and Wife possess partnership interests in the Partnership and are, in fact, the only two partners in it. Furthermore,

whereas the *Partnership Agreement* here can be construed as partial property settlement agreement between parties intending to remove certain marital property from the marital estate, the same cannot be true in any sense of the partnerships in *Buckl* and *Naddeo*. Finally, neither partnership in *Buckl* or *Naddeo* was created post-separation, during a pending divorce, as is the circumstance here.

The Court finds that the parties, on their own volition, created the Partnership and structured it how they thought best. For the Court to subsequently re-balance or alter it in some fashion is antithetical to the entire notion of a private agreement entered between consenting adults, aware of the pending litigation, and acknowledged by the parties as being made "as part of the resolution of the marital estate[.]" *Stipulations*, ¶ 22. This is true whether equitably distributing the value of the Partnership itself or if equitably distributing the remaining marital property in relation to the value of the Partnership. This the Court will not do.

Therefore, the Court concludes that while it must value the Partnership, the Court will not distribute the Partnership's value via equitable distribution principles in derogation of the distribution outlined in the parties' *Partnership Agreement. See Sutliff*, 522 A.2d at 1151. Thus, because the Partnership is allocated 25% (for ownership interest, profits, and losses) to Husband and 75% (the same) for Wife, the Court incorporates the *Partnership Agreement* into its equitable distribution order and distributes the value of the Partnership, calculated below, according to its terms.[12]

Valuing the Partnership

In valuing a partnership, initial consideration is given to the partnership agreement because "[g]enerally, a partnership agreement will deal with valuation upon the voluntary withdrawal, death of a partner or dissolution of the firm." *Id*. at 70. In addition, the court must "look at the realities of the situation and avoid an unrealistic valuation." *Id*.

Here, the *Partnership Agreement* deals with, among other things, voluntary termination of the Partnership. Joint Exhibit 4, *Partnership Agreement*, § 10, Voluntary Termination, page 3. The Voluntary Termination section provides, in pertinent part, that:

Upon dissolution, the assets of the partnership business

12 In a practical sense, the Court's "distribution" of the Partnership has little if any effect on the Partnership itself because the Court is merely assigning Husband and Wife a value in the Partnership based on stipulated values of the Partnership's assets, debts, and liabilities, at the now existing-point in time. Were the Partnership to subsequently take on additional, or pay off, debt, for instance, the Court's valuation of the Partnership would no longer be accurate. To be sure, all that the Court intends to do in this respect is to say that there exists this Partnership between Husband and Wife that incorporated certain property, the *Partnership Agreement* dictates Husband's and Wife's respective interests in the Partnership, and this is what Husband's and Wife's respective interests are based on that dictation. The parties' interests do not influence the Court's equitable distribution consideration for the remaining marital property other than that the Court considers the volatility of the Rental Properties/Partnership's profits when considering Wife's income, as testified to by Husband. *See* fn. 9 of this Opinion, *supra*.

> shall be used and distributed in the following order: (a) to pay or provide for the payment of all partnership liabilities and liquidating expenses and obligations; (b) to discharge the balance of the income accounts of the partners; (c) to discharge the balance of the capital accounts of the partners; (d) to share any excess funds according to the proportion of their capita accounts.

Joint Exhibit 4, *Partnership Agreement*, § 10, Voluntary Termination, page 3. Additionally, the *Partnership Agreement* states that "[t]he capital of the partnership shall consist initially of the real estate and the existing marital rental account." Joint Exhibit 4, *Partnership Agreement*, § 3, Capital, A., page 1. The agreement further provides, as mentioned before, that:

> The partnership shall also assume responsibility in the current amount of $68,500 on a home equity line of credit ("HELOC") on [Wife's] personal residence that has been used for partnership purposes.

Joint Exhibit 4, *Partnership Agreement*, § 3. E., Loans, page 2.

Although the Master found that the parties did not provide a specific value for the Partnership, the parties, fortunately, entered into evidence before the Master Joint Exhibit 5, the exhibit "intend[ing] to show the properties which are involved in the partnership, the current mortgages which are involved in the partnership, the cost of sale as required under the Divorce Code . . . and the balance if things were liquidated as stated on today – the end of July 2018." N.T. 195-96. Thus, the Court finds that it can value the Partnership based on the values listed in Joint Exhibit 5.

The net value of the five Rental Properties in Joint Exhibit 5 is $25,063.[13] However, because the Partnership assumed the responsibility of the HELOC on Wife's non-marital residence, the amount of the HELOC must be subtracted from the value of the Rental Properties pursuant to the terms of the *Partnership Agreement*. *See* Joint Exhibit 4, *Partnership Agreement*, § 10, Voluntary Termination, page 3. Failing to account for the HELOC would ignore the "realities of the situation" and result in "an unrealistic valuation[]" of the Partnership. *Buckl*, 542 A.2d at 70. *See also id*. ("'Generally speaking the monetary worth of this professional partnership will consist of the total value of the partners' capital accounts, accounts receivable, the value of work in progress[] . . . the total so arrived at *to be diminished by the amount of accounts payables as well as any other liabilities not reflected on the partnership books.*'") (emphasis added) (quoting *Stern v. Stern*, 331 A.2d 257, 331 (N.J. 1975)). Therefore, the

13 Joint Exhibit 5 lists the current balance of each of the five Rental properties, any encumbrances on the property, and a cost of sale for each, that yields a net amount. The Court added these five net amounts together to get $25,063.

Court finds the Partnership to have a value of - $41,340 ($25,063 - $66,403 = - $41,340).[14]

Distributing Value of Partnership by Terms of the *Partnership Agreement*

Husband's 25% interest in the Partnership is - $10,355 whereas Wife's 75% interest in the Partnership is - $31,005. The Court is mindful that the value of the Partnership, at present, is negative.

(iv) HELOC on Wife's non-marital Linden Avenue residence

Another one of Wife's exceptions was that the Master "fail[ed] to provide for the payment of a marital loan which is a lien on Defendant's non marital property." *Exceptions to Master's Recommendation*. This lien is the HELOC on Wife's non-marital Linden Avenue residence that the Partnership assumed responsibility for, which the Court previously considered at length when determining the value of the Partnership. *See* Section 1.A.iii. of this Opinion, *supra*. Because the value of the Partnership as distributed already accounts for the HELOC, the Court will not consider it separately.

B. Master Discussion of Factors Shaping Equitable Distribution Recommendation

The Court next turns to the specific exceptions raised by Wife with respect to the Master's discussion of the factors shaping his recommendation for equitable distribution. Wife's exceptions can be broadly divided into four categories, which the Court addresses in the following order: (i) Husband standard of living, (ii) credit card debt, (iii) Wife's contribution, and (iv) Partnership/HELOC. The Court takes up Wife's exceptions with respect to Wife's medical costs after three years in Section 2 of this Opinion, Alimony, *infra*. The Court believes that Wife's medical costs are better addressed in the context of an alimony award, which is modifiable, than an equitable distribution award, which is, generally, not where the costs of Wife's medical costs in three years depends on a variety of factors including Wife's medical conditions at that point, the availability and scope of the medical coverage, and the costs of that coverage. *Compare* (alimony) 23 Pa.C.S. § 3701(e) ("An order entered pursuant to this section is subject to further order of the court upon changed circumstances . . . ."); *Speaker v. Speaker*, 183 A.3d 411, 415 (Pa. Super. Ct. 2018) *with* (equitable distribution) *Romeo v. Romeo*, 611 A.2d 1325, 1327 (Pa. Super. Ct. 1992) ("The Divorce Code makes no provision for a 'modification' of a final decree of equitable distribution, and in fact it is settled law that such a decree is non-modifiable.").

14 The Court used the $66,403 amount in Joint Exhibit 5—*see* F1- Patriot - HELOC); N.T. 181—to stay consistent wih the net values of the Rental Properties used from the same exhibit as opposed to the $68,500 amount included in the *Partnership Agreement.*

(i) Husband Standard of Living

Wife first takes exception to the Master's "[f]ailure to appreciate the standard of living recognized by Plaintiff." *Exceptions to Master's Recommendation*. Master stated in his discussion of 23 Pa.C.S. § 3502(a)(9), the standard of living of the parties established during the marriage, that: "[a]ccording to Larry, the parties lived a 'middle class' standard of living . . . 'nothing extravagant'. (N.T. at 54). This was not disputed." *Report and Recommendation*, § III, D, Section 3502 Factors, page 23.

Initially, here, as to the parties', or Husband's, standard of living, during the marriage, the Court's review of the record supports the Master's discussion. *See* N.T. 54. Moreover, the Court has not found nor has it been directed to any evidence contrary in the record that the parties' standard of living, during the marriage, was anything other than "middle class" or "nothing extravagant." Therefore, the Court finds that the Master's discussion of this factor was proper.

Additionally, to the extent that Wife, as it appears to the Court, is arguing about the Master's failure to appreciate Husband's standard of living post-separation, *see Defendant's Reply Brief*, page 2 (unnumbered), the Court finds Wife's argument to be without merit. Wife states that "[Husband] has already replaced the life style he enjoyed during the marriage. His current investments are not encumbered with the remains of the marital decisions." *Defendant's Reply Brief*, page 2 (unnumbered). The Court finds that the Master did not err in his discussion.

The Master found that Husband's car and house acquired post-separation were financed. *Report and Recommendation*, § III, B, Identification of Non-Marital Assets, page 14. That these assets were financed, of course, means that they will be encumbered. The same would be true for Wife, if she chose to finance the purchase of any assets post-separation. Moreover, the issue of the respective parties' assets being encumbered post-divorce by "the remains of the marital decisions" is mostly moot following the parties' full payment of the marital credit card debt.[15]

15 In February 2019, the parties entered into an Agreement where Husband would (and in fact did) invade the TSP to pay off the outstanding marital credit card debt of $45,568.23, which amounts to 2,830.4655 shares of the TSP. *Stipulations*, ¶ 11, 20, 25. 2,830.4655 shares of the 5,711.649 marital shares (as of the date of separation) is 49.55% of the marital shares of the TSP. *Stipulations* ¶ 14. In other words, as the Court understands it, the parties used approximately half of the marital portion of the TSP to pay off the marital credit card debt. That the parties decided to use some of the TSP to pay off the debt is the parties' decision, and their assets post-divorce are mutually benefited.

It is not entirely clear to the Court from the parties' *Stipulation* (or briefs) precisely how the 2,830.4655 shares of the TSP were to be apportioned between Husband and Wife. For example, the Court is not sure whether: the parties paid the debt in accordance with their respective credit card debt as recommended by the Master in his *Report and Recommendation*, 2/5 to Husband and 3/5 to Wife, *see* fn. 16 of this Opinion, *infra*; by splitting the debt evenly; or by some other apportionment.

To resolve, the Court finds, for purposes of this question, the shares of the TSP were apportioned in accordance with the parties' respective credit card debt as recommended by the Master. *Cf. Rothrock v. Rothrock*, 765 A.2d 400, 404 (Pa. Super. Ct. 2000) ("[W]here the record alone does not indicate which party's testimony should be credited, the

Further, the analysis is not whether the parties have the *same* standard of living after the divorce as before the divorce, but whether "the division of marital property [is] in a manner which effectuates economic justice." *See Viles v. Viles*, 610 A.2d 988, 991 (Pa. Super. Ct. 1992) ("Appellant does not refer us to any authority, nor are we aware of any, which mandates the imposition of an equitable distribution scheme that enables a spouse to possess the *same* standard of living after the divorce that he or she had prior to the divorce. Rather, the Divorce Code only requires the division of marital property in a manner which effectuates economic justice.") (emphasis added) (citations omitted)). Thus, the Court finds that the Master did not err in his discussion of this standard of living factor with respect to Husband.

Separately, but also under the rubric of § 3502(a)(9), the Court wishes to briefly address Wife's contention that "Larry considered $2,900 per month cash flow as the correct amount for Teresa to maintain herself according to the standard established during the parties' cohabitation." *Defendant's Reply Brief*, page 4 (unnumbered). First, to be sure, this $2,900 amount was on top of the monthly Social Security Disability benefit (net) of $1,392 Wife was receiving. *Stipulations* ¶ 1; *Brief on Exceptions*, page 10. Second, the Court finds that this amount was to go towards, in part, Wife's payment of the marital credit card debt. N.T. 53, 156. Indeed, Wife indicated in her brief that she "dedicat[ed] over $1,000 per month to reducing the [parties' credit card] obligations." *Brief on Exceptions*, page 11. Therefore, with that debt now paid off, *Stipulations* ¶ 20, 25, Wife's need for the same $2,000 plus amount from Husband to use to partially pay the debt is no longer present.

(ii) Credit Card Debt

Second, Wife takes exception to Master's "[f]ailing to appreciate that the income from the partnership is insufficient to pay past credit card debt[.]" *Exceptions to Master's Recommendation*. In his *Report and Recommendation*, the Master, in the context of the entire distribution scheme, allocated the marital credit card debt 2/5 to Husband and 3/5 to Wife.[16] Because the parties paid off this debt, *see* fn. 15 of this Opinion, *supra*, this issue is now moot because this past debt is no longer an obligation of the Partnership. [17]

(iii) Wife's Contribution

Third, Wife takes exceptions to the Master's failure to recognize

determination of the master can tip the balance.") (citing *Mintz v. Mintz*, 392 A.2d 747, 749 (Pa. Super. Ct. 1978)).

16 Husband was responsible for $16,473.21 of the debt whereas Wife was responsible for $24,938.58. Husband's responsibility of the total $41,411.79 debt is 39.78% whereas Wife's is 60.22%.

17 With respect to Wife's I.a. exception in her *Exceptions to Master's Recommendation*, the Court finds no error in the Master's 2/5 to 3/5 equitable distribution of the martial credit card debt. Indeed, $24,938.58 in debt is merely 6.25% of Wife's total of $398,718 that she would receive under the Master's *Report and Recommendation.*

Wife's perceived contribution to the marital estate, § 3502(a)(7), and to Husband, § 3502(a)(4). That is, Wife's exceptions are, first, to the Master's "[f]ailure to recognize Defendant's contribution as a homemaker, and her contribution to the acquisition and appreciation of marital property[]" and, second, to the Master's"[f]ailure to recognize Defendant's contribution to the increased earning capacity and assets of Plaintiff[.]" *Exceptions to Master's Recommendation*.

First, the Master stated in his discussion of 23 Pa.C.S. § 3502(a)(7), the contribution or dissipation of each party in the acquisition, preservation, depreciation, or appreciation of the marital property, including the contribution of a party as a homemaker, in part, that:

> The parties acquired residential rental properties during the marriage. Teresa took over the vast majority of the tasks involved in the managing the properties while Lawrence worked for the Federal Government. She will continue to manage these properties which are now transferred to the partnership the parties have formed.

Report and Recommendation, § III, D, Section 3502 Factors, page 22. Additionally, the Master found how the parties had shown they could "aggressively pay off their business and personal debts[,]" which necessarily includes Wife's contributions on this point. *Id*. page 20. Finally, there was scant evidence in the record as to Wife's contribution as a homemaker. The Court finds that the extent of the evidence entered by Wife was this brief exchange on direct examination between Counsel for Wife and Wife:

> Q [Counsel]: During the marriage did you – were you the – primarily a homemaker as well as a business partner?
>
> A [Wife]: Yes, I was.

N.T. 262. Counsel ended her direct examination shortly after. N.T. 262 at line 15. Evidently, Counsel did not seek to enter any additional evidence as to Wife's contribution as a homemaker that were separate from her contributions to the parties' Rental Properties. Indeed, the Court is unable to discern any other evidence other than the exchange reproduced above on its review of the record, nor does Wife direct the Court's attention to or attempt to illuminate any other evidence in the record. Therefore, the Court finds that the Master properly discussed Wife's contribution to the condition of the marital property with respect to her contribution to the management of the Rental Properties. Likewise, the Court finds proper the Master's lack of discussion as to Wife's contribution as a homemaker given the scarcity of evidence entered into the record on this.

Second, Master stated in his discussion of 23 Pa.C.S. § 3502(a)(4),

the contribution by one party to the education, training or increased earning power of the other party, in total, that:

> When the parties met, Teresa had been found to be disabled by the Social Security Administration. There is no evidence that Wife contributed to the education or increased earning power of the Husband, nor vice versa."

Report and Recommendation, § III, D, Section 3502 Factors, page 19-20. Upon an independent review of the record, the Court is unable to find any evidence that Wife contributed to the earning power of Husband (separate from the Rental Properties' venture) and neither does Wife point the Court to the same either. Thus, the Court finds the Master's discussion on this factor proper.

(iv) Partnership/HELOC

Finally, fourth, Wife takes exception to Master's "[]failing to recognize that the partnership may not pay off a marital loan, assumed by the partnership of the parties, which is a lien against Defendant's sole property[.]" *Exceptions to Master's Recommendation*. For the reasons stated in Section 1.A.iii. of this Opinion, *supra*, the Court found that the Master erred when he did not value the Partnership. The Court found that the Partnership has a value of $41,340. And, by the terms of the *Partnership Agreement*, Husband and Wife have a 25% and 75%, respectively, ownership interest in the Partnership, with net profits and losses following the same 25%:75% distribution. However, also at Section 1.A.iii. of this Opinion, *supra*, the Court determined that it would not distribute the value of the Partnership pursuant to equitable distribution principles. Rather, the Court would distribute the Partnership's value pursuant to the terms of the *Partnership Agreement*. Therefore, the Court finds it improper to discuss the distribution of the Partnership value under the equitable distribution factors § 3502(a)(1)-(11).[18]

C. Equitable Distribution Recommendation

As mentioned at the outset, the Court "must consider the [equitable] distribution scheme as a whole[] . . . . [and] measure the circumstances of the case against the objective of effectuating economic justice between the parties and achieving a just determination of their property rights." *Cook*, 186 A.3d at 1026 (quoting *Morgante*, 119 A.2d at 387) (internal quotation marks and citations omitted).

Wife's Exceptions

Under the Master's *Report and Recommendation*, and assuming 75% of an average monthly profit of the Partnership consistent with past

18 The Court considers Wife's exceptions at I.b and I.c disposed of under this discussion. *Exceptions to Master's Recommendation*.

profits and pursuant to the terms of the *Partnership Agreement*, Wife would have a $2,846.57 per month income, as detailed on the following page.

Wife's Income

Source	Per Month	Citation	Explanation
Social Security Disability (net Medicare)	$1,392.00	*Stipulations* ¶ 1.	Net after $135.50 monthly deduction for Medicare
70% of Reserve Pension (DFAS) (net taxes)	$499.17	Wife's Exhibit R-1.	$1,814.50 net after taxes x 39.3% marital coverture x 70% for Court equitable distribution = $499.17
70% of Federal Employee Retirement Systems (FERS) (net)	$588.59	*Stipulations* ¶ 3.	Net after deduction for surviving spouse benefit; $2,156 per month x 39% marital coverture x 70% for Court equitable distribution = $588.59
75% of Partnership profits	$366.81	Wife Exhibit H-1	$366.81 is 75% of $489.08 average profit per month based on 2016-2017 records.
TOTAL:	**$2,846.57**		

Wife has often repeated that Husband provided her an amount in the upper $2,000s ($2,800 or $2,900) as "support" in addition to what she was receiving in social security disability. However, as the Court previously noted, at that point, Wife was "dedicating over $1,000 per month to reducing the [parties' credit card] obligations[,]" *Brief on Exceptions*, page 11, which is no longer an obligation because the parties paid off the debt. *See* fn. 14 of this Opinion, *supra*. Therefore, the Court finds that Wife had a monthly net income (net of past marital credit card debt obligation) of approximately $3,242 ($2,850 + $1,392 Social Security Disability = $4,242; $4,242 - $1,000 marital credit card debt obligation = $3,242).

Thus, Wife would receive approximately $395.43 less per month under the Master's *Report and Recommendation* than what Wife was receiving during the marriage ($3,242 - $2,846.57 = $395.43). However, the Court finds, for the reasons that follow, that this amount is understated and requires further scrutiny before the Court accepts it at face value.

Wife takes exception to the Master's equitable distribution recommendation by "[f]ailing to recognize [Wife's] reasonable needs to continue her standard of living and protect her award." *Exceptions to Master's Recommendation*. Of course, her standard of living is dependent on her income. Upon a review of the record, the Court finds that the Master did not properly account in his discussion of Wife's income for the volatility

of her income from the Partnership for factor § 3502(a)(6)—the sources of income of both parties, including, but not limited to, medical, retirement, insurance or other benefits. Wife testified that she did not believe it to be appropriate to count on income from the rental properties to cover expenses for personal use because the income is "too up and down." N.T. 153.

Given the volatility of this source of income, the Court finds that an upward adjustment of the Master's equitable distribution recommendation is warranted. It is not seriously contended by Husband, nor did the Master, or the Court now, find that Wife is able to gain meaningful employment outside of her management of the Partnership because of her various medical issues. This is not in question. Furthermore, the Master stated in reference to his equitable distribution recommendation that "[t]he assets are recommended to be distributed so that the only need she will be unable to provide for herself is her medical coverage." *Report and Recommendation*, § IV, A, Section 3701 Factors, page 29. The Court finds that a $395.43 decrease in income per month together with a volatile average income of $366.81 per month puts Wife at too much risk given her unemployment and her medical condition. Indeed, a below average rental month might put Wife in an over $575 deficit[19] when compared to her previous $3,242 monthly income (net credit card debt) during the marriage.

Therefore, to close the gap between Wife's income during the marriage and after, and to militate against the volatility of a poor rental income month, the Court finds that an 80% to 20% distribution in favor of Wife of Husband's DFAS and FERS is necessary.

19 A $366.81 average means that there will be months above and below that amount. For illustration purposes, $183.41 (50% of $366.81) would be a below average month. $183.41 combined with the $395.43 decrease equals $578.84. Thus, there is a risk that, half the year, Wife will have a $578.84 monthly deficit when compared to her marriage income.

The Court notes that it only had the yearly totals for the Rental Properties' profits for 2016 and 2017 from Wife's Exhibit H-1, and thus, did not have month-to-month data to see what the variance of the Rental Properties' profits would be.

Wife's Income (Upward Adjustment)

Source	Per Month	Citation	Explanation
Social Security Disability (net Medicare)	$1,392.00	*Stipulations* ¶ 1.	Net after $135.50 monthly deduction for Medicare
80% of Reserve Pension (DFAS) (net taxes)	$570.48	Wife's Exhibit R-1.	$1,814.50 net after taxes x 39.3% marital coverture x 80% for Court equitable distribution = $570.48
80% of Federal Employee Retirement Systems (FERS) (net)	$672.67	*Stipulations* ¶ 3.	Net after deduction for surviving spouse benefit; $2,156 per month x 39% marital coverture x 80% for Court equitable distribution = $672.67
75% of Partnership profits	$366.81	Wife Exhibit H-1	$366.81 is 75% of $489.08 average profit per month based on 2016-2017 records.
TOTAL:	**$3,001.96**		

This adjustment would provide Wife a monthly income of $3,001.96, which is merely a $240.04 difference in her income as opposed to a $395.43 difference. The Court notes that any shortfall Wife might experience may be made up from the substantial Thrift Savings Plan distribution of $59,152 (or of $34,213.42 net marital credit card debt) as well as her $58,889.75 inheritance. *Report and Recommendation*, III, B, Identification of Non-Marital Assets, page 14.

Thus, adjusting for both Husband's and Wife's exceptions, the Court finds that a just equitable distribution is as follows on the next page.

Husband	In-Kind Distribution (Updated)	Wife
	Marital Increase of [Wife's] Linden Avenue [real property]	$40,755.00
$59,152.00	[Thrift Savings Plan] TSP	$59,152.00
$41,127.40	"Reserve Pension (DFAS) | 20% (Marital Share) 80%"	$164,509.60
$1,837.00	[Husband's] Paycheck earned prior to separation	
$39,297.40	"[Federal Employee Retirement Systems] FERS | 20% (Marital Share) 80%"	$157,189.60
	Jewelry	$13,700.00
$12,893.17	PFCU Acct. 8062	
$1,768.00	[Husband's] Germany trip	
$1,350.00	[Husband's] post-separation Rent & Security Deposit	
	2003 Lexus [vehicle]	$3,625.00
$1,200.00	1995 Ford Ranger [vehicle]	
----	"2003 Mercury No value offered"	----
	Bank of America 0448	$(2,008.17)
	Chase Visa 0910	$(2,323.29)
	US Bank 5803	$(6,077.66)
$(3,714.16)	Chase 8346	
$(12,759.05)	Capital One 8589/Joint Names	
	Home Depot 8790/Joint Names	$(3,201.06)
	Lowe's 1612/Joint Names	$(1,276.57)
	Bank of America 1501/Joint Names	$(4,967.26)
	Chase MC 9766/Joint Names	$(1,363.04)
	Citi Simplicity 3554	$(3,721.53)
	Tax Refund	$4,300.00
$4,893.90	Wife's Post-Seperation Personal	$(4,893.90)
$147,045.66	**Husband/Wife TOTAL:**	**$413,398.72**

Husband %	Marital Estate Total:	Wife %
26.24%	$560,444.38	**73.76%**

Additionally, to the extent that the marital portion or the growth of the non-marital/premarital shares attributable to marital of the TSP has changed, the Court divides it in the same proportion as the Master (*i.e.*, 50/50). The Court is unsure what this precise amount is as it appears from the *Stipulations*

at ⁋ 14-16, that the number of shares on which the Master calculated his $59,152 per party distribution has increased.[20]

2. Alimony[21]

The Superior Court recently explained the standards and purpose of alimony:

> Following divorce, alimony provides a secondary remedy and is available only where economic justice and the reasonable needs of the parties cannot be achieved by way of an equitable distribution. An award of alimony should be made to either party only if the trial court finds it necessary to provide the receiving spouse with sufficient income to obtain the necessities of life. The purpose of alimony is not to reward one party and punish the other, but rather to ensure that the reasonable needs of the person who is unable to support herself through appropriate employment are met. Alimony is based upon reasonable needs in accordance with the lifestyle and standard of living established by the parties during the marriage, as well the payor's ability to pay.

Cook, 186 A.3d at 1019-20 (citations and internal quotation marks omitted). Additionally, "in determining 'whether alimony is necessary and to establish the appropriate nature, amount, and duration of any alimony payments, the court is required to consider *all* relevant factors, including the 17 factors that are expressly mandated by statute."[22] *Id*. at 1020 (citing *Lawson v.*

20 The Master's calculation was based on 5,612.9332 marital shares valued at approximately $87,952 and an increase of non-marital shares valued at approximately $30,352, for a total of $118,304. *See* Wife's Exhibit R-3. However, the *Stipulations* state that there are 5,711.649 marital shares and an increase of non-marital shares valued at approximately $29,865.21, but does not state what the total value is. *See Stipulations* ⁋ 14-16.

21 The Court considers disposed any of Wife's exceptions concerning the Master's recommended alimony award that overlap with her other exceptions that the Court previously addressed, unless separately addressed in this Alimony section here.

22 The factors included in 23 Pa.C.S. § 3701(b)(1)-(17) are:

(1) The relative earnings and earning capacities of the parties.

(2) The ages and the physical, mental and emotional conditions of the parties.

(3) The sources of income of both parties, including, but not limited to, medical, retirement, insurance or other benefits.

(4) The expectancies and inheritances of the parties.

(5) The duration of the marriage.

(6) The contribution by one party to the education, training or increased earning power of the other party.

(7) The extent to which the earning power, expenses or financial obligations of a party will be affected by reason of serving as the custodian of a minor child.

(8) The standard of living of the parties established during the marriage.

(9) The relative education of the parties and the time necessary to acquire sufficient education or training to enable the party seeking alimony to find appropriate employment.

(10) The relative assets and liabilities of the parties.

Lawson, 940 A.2d 444, 447 (Pa. Super. Ct. 2007) (emphasis in original). Finally, as stated earlier, the Court must give the "'master's report and recommendation, although only advisory, . . . the fullest consideration, particularly on the question of credibility of witnesses, because the master has the opportunity to observe and assess the behavior and demeanor of the parties.'" *Id*. at 1021 (quoting *Childress*, 12 A.2d at 455-56).

Tri-Care Medical Coverage

Wife takes exception to Master's "[f]ailing to appreciate the cost to Defendant of medical and life insurance, costs of drugs not covered by insurance, costs of debt service, and based on her permanent disability, costs of medical expenses after three years[.]" *Exceptions to Master's Recommendation*. The Court understands this exception to go specifically towards these costs occurring after three years, as the Court finds that the Master properly accounted, save one qualification,[23] for those costs for the first three years by recommending a $400/month alimony award for 36 months. *Report and Recommendation*, IV, B, Alimony Recommendation, page 30.

The Court agrees with Wife that after three years, Wife will be in need of supplemental medical insurance once her Tri-Care coverage expires. Because alimony awards may be for a definite or indefinite period of time, § 3701(c), and because alimony awards are modifiable, § 3701(d), the Court concludes that revisiting Wife's medical coverage near the end of her Tri-Care coverage is preferable than to attempt to provide for it now, presently, where Wife's medical conditions, the availability and scope of the medical coverage, and the costs of that coverage are subject to change.

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(11) The property brought to the marriage by either party.

(12) The contribution of a spouse as homemaker.

(13) The relative needs of the parties.

(14) The marital misconduct of either of the parties during the marriage. The marital misconduct of either of the parties from the date of final separation shall not be considered by the court in its determinations relative to alimony, except that the court shall consider the abuse of one party by the other party. As used in this paragraph, "abuse" shall have the meaning given to it under section 6102 (relating to definitions).

(15) The Federal, State and local tax ramifications of the alimony award.

(16) Whether the party seeking alimony lacks sufficient property, including, but not limited to, property distributed under Chapter 35 (relating to property rights), to provide for the party's reasonable needs.

(17) Whether the party seeking alimony is incapable of self-support through appropriate employment.

23 Both testimony and the parties' *Stipulations* show that the cost for Wife to continue with Tri-Care medical coverage is $475 per month. N.T. 84-85; *Stipulations* ¶ 6.

Therefore, the Court will increase the alimony to Wife from $400 to $475 per month so that Wife may continue with the same Tri-Care coverage as she had during the marriage. This upward adjustment is supported by § 3701(1),(2),(3),(8),(9),(10),(13),(17) factors because of Wife's demonstrated medical issues, *see Report and Recommendation*, III, D, page 18-19 (describing Wife's condition), and Wife's inability to obtain meaningful employment outside of the Rental Properties/Partnership.

Indeed, Wife stated in her brief that "[s]hould Teresa be required, she could produce proof of her annual medical costs[.]" *Brief on Exceptions*, page 17.

However, in regard to Wife's three-year Tri-Care medical coverage, Wife takes issue with the fact that Wife "would have to commute at least monthly to Carlisle to pick up her medications[,]" *Brief on Exceptions*, page 14. The reason for the commute, of course, is that Carlisle Barracks fills Tri-Care coverage holders' prescriptions at no cost. N.T. 286-287; *Stipulations* ¶ 6. The Master was aware of this fact, and still recommended Tri-Care coverage in spite of the commute.

Upon an independent review of the record, the Court is unable to locate any evidence indicating that Wife is unable to drive or that driving to Carlisle would cause such an undue burden on her or be unreasonable. Were that to change, the Court's alimony award may be "changed upon changed circumstances of either party of a substantial and continuing nature[]." § 3701(e). The Court assumes without deciding that a scenario where Wife was unable to pick up necessary medication due to an inability to drive would so qualify. However, Wife has not represented to the Court that this is the case. And as mentioned before, the Court did not find in its a review of the record an indication that this is the case either.

Additionally, "where the record alone does not indicate which party's testimony should be credited, the determination of the master can tip the balance[.]" *Rothrock*, 765 A.2d at 404 (citing *Mintz*, 392 A.2d at 749). Furthermore, factors for the Court to consider in awarding alimony include not only "the party seeking alimony [being] incapable of self-support through appropriate employment[,]" § 3701(b)(17), but also the *other* spouse's earnings, § 3701(b)(1); sources of income, § 3701(b)(3), assets, § 3701(b)(10); and needs, § 3701(b)(13). Thus, there are competing considerations. Finally, the parties stipulated that without supplemental coverage, Wife's monthly drug costs would exceed $1,300. *Stipulations* ¶ 7

Weighing these competing factors and considerations, the Court agrees with the Master's recommendation that Wife continue with Tri-Care coverage that necessarily includes the commute to Carlisle. Therefore, Husband shall provide Wife with $475 per month for Tri-Care medical coverage for 36 months from the date of this Order and Opinion. Prior to the end of Wife's 36-month coverage, Wife shall petition the Court with appropriate cost estimates and scope of coverages of supplemental insurance that Wife may obtain as well as an update as to her medical conditions compared with the evidence entered in the record so that the Court can determine whether a continuing alimony award is appropriate, and if so, the form of the award.

Tax Cuts and Jobs Act of 2017, P.L. 115-97, December 22, 2017 § 11051

Husband takes exception for the Master "err[ing] in failing to consider the tax consequences of alimony under the new tax statute." *Plaintiff's Exceptions to Master's Recommendation*. In his R*eport and Recommendation*, the Master stated that "[t]he Master's recommendation is for modest alimony. Tax ramifications will also be modest." *Report and Recommendation*, IV, B, Alimony Recommendation, page 29. Husband subsequently represented to the Court that Husband would withdraw this exception if "alimony is modifiable in order to address tax consequences of alimony under the new tax statute." *Plaintiff's Brief in Support of Plaintiff's Exceptions to Master's Report and Recommendation*, page 7. Of course, these consequences were that the Tax Cuts and Jobs Act of 2017, P.L. 115-97, December 22, 2017 § 11051 repealed tax deductions for alimony payments. *See also Zimmerman v. Zimmerman*, No. 450 MDA 2018, 2019 WL 3210656 at *6 (Pa. Super. Ct. July 16, 2019) (remanding, in part, for trial court to consider tax ramifications for alimony).[24]

Although the Court must consider these tax consequences, the Court need not adjust its alimony award based on it. *Cf. Llaurado v. Garcia-Zapata*, -- A.3d --, 2019 PA Super 338, at 3* (Pa. Super Ct. 2019) ("[23 Pa.C.S. § 3502] requires us only to *consider* the tax ramifications . . . along with numerous other listed factors, but the Divorce Code does not make a deduction for them mandatory." (citations and internal quotation marks omitted) (emphasis in original)). Indeed, based on the parties' *Stipulations*, Husband's monthly income is approximately $5,566.48 even after accounting for a $475 alimony award, as detailed below, which is more than enough to handle any increase in taxable income due to alimony payments no longer qualifying as tax deductions.

24 *Cf.* Pa.R.C.P., Rule 126(b)(1)-(2) states that unpublished non-precedential memorandum decisions of the Superior Court filed after May 1, 2019 may be cited for its persuasive value.

Husband's Income

Source	Per Month	Citation	Explanation
Alimony Award	$(475.00)		
Social Security Retirement (net Medicare)	$1,976.00	*Stipulations* ¶ 2.	Net after $135.50 monthly deduction for Medicare
20% of Reserve Pension (DFAS) (net taxes)	$142.62	*Stipulations* ¶ 5.	$1,814.50 net after taxes x 39.3% marital coverture x 20% for Court equitable distribution = $142.62
Non-Marital Reserve Pension (DFAS) (net taxes)	$1,101.40	*Stipulations* ¶ 5.	$1,814.50 net after taxes x 60.7% non-marital
20% of Federal Employee Retirement Systems (FERS) (net)	$168.17	*Stipulations* ¶ 3.	Net after deduction for surviving spouse benefit; $2,156 per month x 39% marital coverture x 20% for Court equitable distribution = $672.67
Non-Marital Federal Employee Retirement Systems (FERS) (net)	$1,315.16	*Stipulations* ¶ 3.	Net after deduction for surviving spouse benefit; $2,156 per month x 61% non-marital
Veteran's Administration Disability	$1,215.86	*Stipulations* ¶ 4.	
25% of Partnership profits	$122.27	Wife Exhibit H-1	$122.27 is 25% of $489.08 average profit per month based on 2016-2017 records.
TOTAL:	**$5,566.48**		

Therefore, the Court finds that any reduction in the Court's $475 per month for 36-month alimony award because of the tax consequences would be more harmful to Wife than harmful to Husband. Husband's temporarily reduced income due to his "voluntary criminal behavior" does not change the Court's view.[25]

Marital Misconduct

Wife next takes exception to the Master "[f]ail[ing] to appreciate the impact of marital fault on the relative situation of the parties post divorce[.]" *Exceptions to Master's Recommendation*. The Master noted that Husband took a pre-separation trip "to Germany to spend time with

25 *See Willoughby v. Willoughby*, 862 A.2d 654, 658 (Pa. Super. Ct. 2004) (applying "no justification" approach in context of permanent alimony because "[c]riminal activity that might foreseeably lead to incarceration is 'obviously within an individual's control,' and is certainly distinguishable from illness, injury, job loss or other matters outside the control of the obligor that cause a reduction in income[]) (citing *Yerkes v. Yerkes*, 824 A.2d 1169, 1176 (Pa. 2003)). Husband is, or likely will be, incarcerated for some period of time because he entered a guilty plea for two counts of Child Pornography, 18 Pa.C.S. § 6312(d), each a felony of the second degree, and one count of Criminal Use of Communication Facility, 18 Pa.C.S. § 7512(a). *Stipulations* ⁋ 31-37. As a result, Husband's Social Security Retirement and Veteran's Administration Disability income may be temporarily reduced from the amounts included above. *Stipulations* ⁋ 32-37. Indeed, the Superior Court in *Willoughby* stated that "[p]rinciples of equity dictate that [husband] should not be relieved of his duty to pay the accrued arrearages upon his release." *Willoughby*, 862 A.2d at 658.

girlfriend." *Report and Recommendation*, IV A, Section 3701 Factors, page 28. In addition, upon a review of the record, the Court finds that the extent of the impact of Husband's trip with respect to the "relative situation of the parties post divorce[]" is scarce. The Court finds that the Master gave this marital misconduct factor, § 3701(14), the appropriate weight in his alimony award recommendation, save the Court's increase of the award to $475 per month for 36 months so that the full cost of Wife's Tri-Care coverage is covered.

3. Remaining Exception

The last unaddressed exception is that of Wife. Wife states "[t]he Master erred in presentation of the case, requiring the better party of two half days of hearing to review stipulations of the parties with counsel instead of allowing testimony, while repeatedly warning that there would be additional expense assessed." *Exceptions to Master's Recommendation*.

Wife does not take up the exception in either her Brief or Reply Brief. Additionally, upon the Court's exhaustive review of the record in addressing the parties' exceptions, the Court finds that the Master committed no error in how he conducted the proceedings. Moreover, at the conclusion of the second day of the hearing, the Master stated "[w]e are not going to be able to finish this today. I'm going to schedule you for another day of hearing, but I am going to waive—I just simply won't submit the fee. There is a fee that is supposed to be paid if you go to a third day of hearing. That's not going to happen here." N.T. 183. Thus, the Court finds this exception without merit.

CONCLUSION

To sum up. Husband and Wife are divorced from the bonds of matrimony. The *Partnership Agreement* is incorporated but not merged into the Court's equitable distribution order. The value of the Partnership is - $41,340 and is distributed pursuant to the terms of the *Partnership Agreement* as: - $10,355 to Husband for his 25% interest and - $31,005 to Wife for her 75% interest. The Court's equitable distribution of marital property is as follows:

Husband	In-Kind Distribution (Updated)	Wife
	Marital Increase of [Wife's] Linden Avenue [real property]	$40,755.00
$59,152.00	[Thrift Savings Plan] TSP	$59,152.00
$41,127.40	"Reserve Pension (DFAS) | 20% (Marital Share) 80%"	$164,509.60
$1,837.00	[Husband's] Paycheck earned prior to separation	
$39,297.40	"[Federal Employee Retirement Systems] FERS | 20% (Marital Share) 80%"	$157,189.60
	Jewelry	$13,700.00
$12,893.17	PFCU Acct. 8062	
$1,768.00	[Husband's] Germany trip	
$1,350.00	[Husband's] post-separation Rent & Security Deposit	
	2003 Lexus [vehicle]	$3,625.00
$1,200.00	1995 Ford Ranger [vehicle]	
----	"2003 Mercury No value offered"	----
	Bank of America 0448	$(2,008.17)
	Chase Visa 0910	$(2,323.29)
	US Bank 5803	$(6,077.66)
$(3,714.16)	Chase 8346	
$(12,759.05)	Capital One 8589/Joint Names	
	Home Depot 8790/Joint Names	$(3,201.06)
	Lowe's 1612/Joint Names	$(1,276.57)
	Bank of America 1501/Joint Names	$(4,967.26)
	Chase MC 9766/Joint Names	$(1,363.04)
	Citi Simplicity 3554	$(3,721.53)
	Tax Refund	$4,300.00
$4,893.90	Wife's Post-Seperation Personal	$(4,893.90)
$147,045.66	**Husband/Wife TOTAL:**	**$413,398.72**

Husband %	Marital Estate Total:	Wife %
26.24%	$560,444.38	**73.76%**

The Thrift Savings Plan, so referenced, to the extent that its total value has changed, is divided 50/50, as more fully described on pages 34-35 of this Opinion and in fn 19, *supra*.

Finally, Husband shall provide Wife with $475 per month for Tri-Care medical coverage for 36 months from the date of this Order and Opinion as alimony. Prior to the end of Wife's 36-month coverage, Wife shall petition the Court with appropriate cost estimates and scope of coverages of supplemental insurance that Wife may obtain as well as an update as to her medical conditions compared with the evidence entered in the record so that the Court can determine whether a continuing alimony award is appropriate, and if so, the form of the award.

Pursuant to Pa.R.C.P. No. 1920.55-3(e), "[n]o [m]otion for [p]ost-[t]rial [r]elief may be filed to [this] final decree."

An appropriate Order follows.

ORDER OF COURT

AND NOW THIS 31st day of December, 2019, upon review of the *Master's Report and Recommendation Under Pa.R.C.P. 1920.53(C) and 1920.54* filed on October 3, 2018, *Exceptions to Master's Recommendation* filed by Defendant on October 22, 2018, *Plaintiff's Exceptions to Master's Recommendation* filed on November 5, 2018, the parties' briefs and reply briefs thereto, oral argument the Court heard on April 24, 2019, the *Stipulations* filed by the parties on August 23, 2019, the record, and the applicable law,

T**HE COURT HEREBY ORDERS** that:

A. DIVORCE:

1. Plaintiff, Lawrence A. Steinberger ("Husband"), and Defendant, Teresa M. Griffin ("Wife"), are hereby divorced from the bonds of matrimony.

B. ECONOMIC MATTERS:

1. Husband shall receive sole right, title, and, interest in:

a. Thrift Savings Plan subject to a payment to Teresa M. Griffin in the amount of $59,152, with one qualification. If the total value of the Thrift Savings Plan, meaning marital shares plus the increase of non-marital shares attributable to marital, is no longer $118,304 due to an increase in marital shares and non-marital shares as the parties stipulated to in their *Stipulations* at ¶ 14-16 and more fully described in fn. 20 of this Opinion, then that resulting amount shall be divided 50/50 between Husband and Wife. Husband shall then transfer $59,152, or half of the resulting amount, whichever the case, to Teresa M.

Griffin within 30 days of this Order;

b. Paycheck in the amount of $1,837 which amount has already been distributed;

c. $12,893.17 from Patriot Federal Credit Union 8064 which amount he has received;

d. $1,768 previously distributed from the PCFU account and used for a trip to Germany;

e. $1,350 which amount has previously been distributed and used to pay his post-separation expense;

f. 1995 Ford Ranger;

g. 2003 Mercury;

h. $4,893.90 for Wife's post-separation personal expenses of $1,693.90 for fence, $1,500 for hot water heater replacement and two months of high gas bills, and $800 for tire(s) and repairs on Wife's car;

i. All personal property within his possession and control, unless otherwise specified within this Order.

2. Wife shall receive sole right, title, and interest in:

a. The Linden Avenue property

b. Jewelry;

c. 2003 Lexus

d. Full ownership of the $100,000 Term Life Insurance Policy on the life of Husband;

e. 80% of the marital portion of the DFAS Reserve Pension QMRO;

f. 80% of the marital share of the FERS pension via QDRO;

g. Tax refund already received in the amount of $4,300.

3. Wife shall be solely responsible for the following debts and shall hold Lawrence A. Steinberger harmless for said obligations:

a. Bank of America Credit Card Account #0448;

b. Chase Visa Credit Card Account #0910;

c. US Bank Account #5803;

d. Home Depot Account #8790;

e. Lowe's Credit Card Account #1612;

f. Bank of America Account #1501;

g. Chase Master Card Account # 1501;

h. Citi Simplicity Credit Card Account #3554;

i. $4,893.90 for Wife's post-separation personal expenses of $1,693.90 for fence, $1,500 for hot water heater replacement and two months of high gas bills, and $800 for tire(s) and repairs on Wife's car.

4. Husband shall be solely responsible for the following credit card debts and shall hold Teresa M. Griffin harmless for said obligations:

a. Chase Credit Card #8346;

b. Capital One Credit Card # 8589;

5. Any claim for counsel fees, costs and expenses is hereby DENIED and Husband is solely responsible for the transcription costs.

6. For 36 months from the date of this Order, Lawrence A. Steinberger shall pay $475/month to Teresa M. Griffin for her Tri-Care premium, which shall be considered alimony. Prior to the end of Wife's 36-month coverage, Wife shall petition the Court, pursuant to Chapter 37. Alimony and Support of Title 23 Pa.C.S., with appropriate cost estimates and scope of coverages of supplemental insurance that Wife may obtain as well as an update as to her medical conditions compared with the evidence entered in the record so that the Court can determine whether a continuing alimony award is appropriate, and if so, the form of the award.

7. The parties shall bear the cost of preparing and recording the documents, including deeds or titles, for assets they are to receive under this Order for distribution.

8. The parties shall execute all releases or other documents by opposing counsel, within 10 days of their presentation, which are reasonably necessary to effectuate this Order.

9. Jurisdiction is retained by the Court of Common Pleas of the Thirty-Ninth Judicial District of Pennsylvania to enforce this Order.

This Order is pursuant to the attached Opinion.

Pursuant to Pa.R.C.P. 236, the Prothonotary shall give written notice of the entry of this Order, including a copy of this Order, to each party, and shall note in the docket the giving of such notice and the time and manner thereof.