

RONALD B. MARTIN AND MARY B. MARTIN, Plaintiffs,
v. KRISSANDRA M. BENEDICT, NOW KRISSANDRA M. LAYNE,
AND DARWYN W. BENEDICT, Defendants
and DARWYN W. BENEDICT, Plaintiff,
v. KRISSANDRA M. BENEDICT,
NOW KRISSANDRA M. LAYNE, Defendant
Court of Common Pleas of the 39th Judicial District of Pennsylvania,
Franklin County Branch
Civil Action - Law, No. 1996-335

*Intervention of third party with an equity claim into a divorce action before the master; Constructive trusts;
Possible inheritance not an appropriate factor in fashioning an equitable distribution scheme*

1. A master commissioned to take evidence and make a recommendation as to economic claims between divorcing parties may hear claims which have been joined with the divorce action.
2. Although a master **generally** may not determine the rights of third parties in a divorce-related action, once the court, having received no objections from counsel, directs the master to make findings and recommendations in that regard in an attempt to expedite complex and intractable litigation, the court in reviewing exceptions to the master need not completely wipe away the record already created before the master, but may evaluate that record and decide for itself, using a de novo approach to the evidence, whether the master erred in his findings and recommendations.
3. Wife's parents were allowed to intervene in the divorce action between wife and husband so as to press their equitable claim that certain assets should be excluded from the marital estate and returned to them because wife was simply holding those assets in trust for her parents' benefit.
4. The key to finding donative intent necessary for the creation of an immediate, unconditional gift is to examine the parties' actions at the time of the asset transfer; the proponent of the trust has the burden of proving that a trust was created by evidence which is clear, direct, precise and convincing.
5. Although wife received legal title to shares of corporate stock from her father during her marriage, wife did not have equitable ownership of the stock because her father retained full de facto daily control and dominion over the stock and the corporations.
6. The possibility that wife's affluent parents might leave her money upon their deaths was too speculative to be factored into the overall scheme for equitably distributing marital assets between wife and husband; parents' estates might eventually be reduced by costly medical care or other dissipations over which wife would have no control.

Appearances:

Maria P. Cognetti, Esquire, *Counsel for Darwyn W. Benedict*

William C. Cramer, Esquire, *Counsel for Krissandra M. Layne*

J. McDowell Sharpe, Esquire, *Counsel for Ronald B. Martin & Mary B. Martin*

OPINION

Introduction

Before the court are exceptions to the master's report and recommendation as to equitable distribution and related issues. The parties are Darwyn Benedict, Krissandra Layne, and Krissandra's parents, Ronald and Mary Martin. The court allowed the Martins to intervene in the proceedings and they have also filed exceptions. The court received briefs and heard oral argument. This case has an unusually lengthy, complex and contentious history. We give a case summary to provide the proper context within which to evaluate the report and the exceptions.^[1]

Background and Procedural History

The parties married on March 21, 1987 and separated on April 26, 1996, making this a 9-year marriage. Darwyn was 23 years old and Krissandra was 22 years old when they married. Krissandra obtained her associate's degree in electronics shortly after she and Darwyn were married, though she has not been employed in that field. She worked briefly in a flower shop she purchased with her parents' financial assistance, sold Tupperware, was a part-time aerobics instructor, obtained a real estate sales license, and did occasional secretarial work for her father, Ronald Martin, who develops commercial real estate. For the most part, Krissandra was a homemaker and caretaker of the parties' two children born during the marriage.

The record shows the Martins were very supportive of and generous to Krissandra and Darwyn. Mr. Martin, a successful real estate developer, helped Darwyn get started in that field so that he and Krissandra could enjoy a comfortable lifestyle. Mr. Martin and Darwyn worked together between 1988 and 1991. Mr. Martin provided the funds to help Darwyn set up a furniture company.^[2] Mr. Martin also paid Darwyn \$2,500 a month to manage one of Mr. Martin's corporations, J-Bar Leasing, Inc. After Mr. Martin retired in 1991, Darwyn established his own business, Darwyn Benedict Realty, Inc. Part of the funds Darwyn used to establish this business came from Mr. Martin's continued payment to him of the J-Bar management fee.^[3]

During most of their marriage, Darwyn and Krissandra lived in a home worth \$200,000 and spent \$100,000 to furnish it. They drove expensive vehicles, hired domestic and lawn care professionals, and vacationed in Florida twice a year. Darwyn's social security earnings record reveals he earned a total of \$305,629.00 during the marriage, averaging \$33,958.00 per year. This level of reported income could not alone have provided him and Krissandra with the lifestyle they enjoyed during the marriage. The evidence shows that, both directly or indirectly, Darwyn and Krissandra benefited from the financial generosity of the Martins.

The Benedict marriage began to unravel in the autumn of 1995, with Darwyn being the more dissatisfied party. The parties received marital counseling, but this proved unsuccessful. Darwyn left the marriage in April of 1996. He purchased a home on Briar Ridge Drive in Waynesboro in June of 1996. Krissandra remained in the marital home on Terra Cotta Drive in Waynesboro until its sale in July, 1997. Darwyn stopped doing business as Darwyn Benedict Realty, Inc. after separation and bought a ReMax franchise, through which he continues to work in real estate. Darwyn married his second wife, Dawn, who had been employed as the Benedicts' housekeeper, after he and Krissandra were divorced in 1998.

Darwyn filed a complaint in May, 1996 for divorce and distribution of property. He then filed an action for shared residential custody of the children. The court entered a temporary order for shared residential custody and denied Krissandra's petition for special relief to change that Order.

Krissandra filed for alimony and APL, to which Darwyn responded with his own action for support and APL. Based on Darwyn's income and Krissandra's earning capacity, Darwyn was ordered to pay support, APL, medical insurance and 75% of unreimbursed medical expenses. The court denied Darwyn's request for support and APL because the parties shared residential custody of the children and his income exceeded Krissandra's. Krissandra argued Darwyn was hiding some of his income as a real estate agent by manipulating his business and household records. Discovery efforts regarding incomes and assets resulted in cross-motions to compel and several hearings.

After a two-day custody trial, the court issued an Opinion and Order on August 4, 1997 granting the parties joint legal custody and shared residential custody on an alternate weekly basis. This setup was feasible because the parties at that time lived roughly one mile apart.

Darwyn amended his divorce complaint to claim counsel fees, costs and expenses, and Krissandra responded by amending her answer to make the same demands. After the parties agreed to bifurcate the proceedings, the court entered the divorce decree on February 4, 1998.

Krissandra filed an action in April 1998 seeking primary residential custody. She planned to remarry and move to Maryland within a month and wanted the children to relocate with her. She also petitioned for special relief, seeking a change in the 1997 Order to direct Darwyn to transport the children to her new home for her custodial periods. Darwyn was ordered to continue providing half the transportation until he sought modification of the 1997 Order, even though Krissandra's new residence was more than 3 hours' drive from his Waynesboro home.

After a three-day custody trial, the court issued an Order denying Krissandra's request for primary residential custody because the children were equally attached to both parents and their best interests did not lie in removing them from this community. The court also disapproved of Krissandra's attempt to force the court's decision by preemptively relocating before the trial took place. The court reaffirmed the 1997 custody Order and contemplated that the children would continue to live in Waynesboro.^[4]

Against the backdrop of the custody proceedings, the court took evidence at four hearings between May 1997 and June 1999 on Krissandra's support appeal. The delay between hearings was due to ongoing discovery which resulted in objections, motions to compel, and cross-petitions for special relief related to preserving the marital residence and the maintenance and accounting of cash flow connected with rental properties which were marital assets. Similar petitions to prevent dissipation were filed by Darwyn in connection with shares of corporate stock held by Krissandra which he considered a marital asset. Krissandra's parents petitioned to preserve the disputed corporations from dissipation and requested an accounting. Darwyn, Krissandra, and the Martins reached a temporary agreement on this issue.^[5]

The Martins petitioned to intervene in the divorce action to protect what they asserted was their interest in the corporations. After a hearing and a review of briefs, the court granted the petition. The Martins then filed an equity action, alleging the stock was non-marital property subject to a resulting trust in their favor. An alternate theory of relief was that their transfer of stock to Krissandra was a gift of a future interest only. Krissandra agreed with her parents' position, but Darwyn countered that the stock was in fact marital property subject to equitable distribution.

On December 29, 1999, the court issued an Opinion and Order on Krissandra's support appeal. Darwyn appealed the court's findings as to his earning capacity and also filed a petition to reconsider, which we granted. His support arrears continued to accrue during this period. Meanwhile, the Martins moved to compel Darwyn to comply with discovery as to their equity action. The court, after a hearing, imposed sanctions on Darwyn in the form of counsel fees for his non-compliance.

Krissandra shortly thereafter filed a complaint, seeking sole legal custody and primary residential custody. This was the third custody action filed between the parties and the second consecutive action filed by Krissandra. Carol Redding, Esquire, entered her appearance on behalf of the children.^[6]

On April 6, 2000, the court was to reconsider our findings as to Darwyn's earning capacity and support/APL obligation. Instead, the parties reached a stipulation designed to resolve all support issues, which was embodied in an Order entered that day from the bench.

The court held a pretrial conference on June 19, 2000 concerning the Martins' equity case. The conference was attended by counsel for the Martins, as well as respective counsel for Darwyn and Krissandra.^[7] After much discussion, the court ordered the equity case removed from the trial list and appointed the master to ascertain whether the stock was marital or non-marital property. If it proved to be marital property, the master was to determine its value and recommend how it and other marital property should be divided between Darwyn and Krissandra. The master qualified to his commission on August 22, 2000.

Shortly thereafter, Krissandra petitioned for special relief, seeking a temporary change in the custody Order. The court denied the petition because the allegations were not weighty enough to warrant granting relief. After two pretrial conferences, the court on December 1, 2000 set a date for the third custody trial and imposed deadlines for reciprocal motions in limine and submission of expert reports.^[8] Less than a week later, Krissandra petitioned for temporary residential custody, alleging that Darwyn had instigated a disruptive incident during a recent custody exchange. Almost simultaneously, Darwyn filed his own petition for special relief, alleging that he should have sole legal and primary residential custody pending the outcome of the trial. The court denied both petitions because the allegations were insufficient to grant emergency relief and also because it then appeared that the incident was created by the conduct of both parties.^[9]

Meanwhile, the master held a hearing to take evidence on the Martins' claim. On January 9, 2001, the master sent the parties an interim report in which he stated his conclusion that the Martins had unconditionally gifted the disputed stock to Krissandra, making the stock marital property subject to equitable distribution. The master did not file the report separately of record at that time, but instead set dates to take evidence on the equitable distribution claims of Darwyn and Krissandra.

Around this same time, Krissandra petitioned for contempt for Darwyn's alleged violation of the April 6, 2000 stipulated Order, specifically that he had not yet signed a mortgage against certain real estate as security for his support arrears. The court denied the petition after a hearing because Darwyn had not deliberately and willfully violated the Order insofar as he had been unable to obtain Krissandra's cooperation on the mechanics necessary to execute the mortgage.

The court held a five-day custody trial in early April 2001 and entered a final Order on May 21, 2001, granting shared legal custody to the parties and awarding Darwyn primary residential custody. Krissandra filed a motion to reconsider, which we denied as impermissible under court rules precluding post-trial motions in custody cases. Krissandra appealed the May 21st Order, raising 24 allegations of court error. The court issued a lengthy Opinion and the case was sent to the Superior Court.^[10] On April 24, 2002, the Superior Court affirmed the May 21, 2001 custody Order, which essentially remains in effect at present.^[11]

Meanwhile, the court held a hearing to address Krissandra's petition for reinstatement of APL, Darwyn's petition to modify his child support and APL obligation, and a domestic relations petition for contempt against Darwyn for his non-payment of support and APL. After allowing Krissandra additional hearing time, we issued an Opinion and Order on June 3, 2002 vacating the court's previous determination of Darwyn's support and APL obligations based on his earning capacity and recalculating his net income. Darwyn was ordered to pay toward the arrears and the petition for contempt was dismissed.

While the support/APL matters remained pending, the master's proceedings continued, with four full hearing days occurring between September and December 2001. The parties submitted proposed findings to the master by May 30, 2002, who filed his report and recommendation on September 23, 2002. Darwyn filed 23 exceptions, Krissandra filed 24 exceptions, and the Martins filed 4 exceptions, for a total of 51 exceptions.^[12] Counsel submitted written argument as directed by the court. The undersigned then entertained extensive oral argument from counsel. This matter is now ready for decision, beginning with the equity claim of the Martins regarding ownership of four corporations at play in Mr. Martin's real estate sales and development business.

Discussion

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I. The Martins' Equity Claim: Preliminary Procedural Question

Mr. and Mrs. Martin allege the stock in the four disputed corporations was transferred to Krissandra so that she would hold it in trust for estate planning purposes while Mr. Martin continued to run the corporations. Alternatively, the Martins allege they retained control of the stock during their lifetimes, with Krissandra receiving only a gift of a future interest to be triggered upon their deaths. The master was not persuaded by either theory. Before the court can decide whether the master erred in this regard, however, we must address a contention by both the Martins and Krissandra that the court erroneously delegated to the master the task of making findings and recommendations on the equity claim. These parties argue that the court itself was required to address this claim and that the master had no jurisdiction to do so. They now urge the court to set aside the entire equity claim proceedings before the master and hold a de novo hearing or trial on that claim.

After a lengthy chambers conference with counsel in August 2000 aimed at devising a way to expedite this litigation, we directed the master to first consider the equity matter and then take evidence and recommend to the court the proper distribution of the marital estate.^[13] The court directed the master to hear the equity claim pursuant to Pennsylvania Rule of Civil Procedure 1920.51(a)(2)(i) which provides: "The court may appoint a master in an action of divorce..., an action for annulment, and the claim of alimony, alimony pendente lite, equitable distribution of marital property, child support, partial custody or visitation, or counsel fees, costs, expenses, **or any aspect thereof.**" (Emphasis supplied.) The comments to the Rule indicate that a master may hear claims which have been joined with the divorce action.

It is worth noting preliminarily that none of the attorneys raised an objection to the master's jurisdiction at the chambers conference in August of 2000; during the entire process of presenting

evidence before the master on December 1, 2000; after the master issued his interim report in January 2001, nor during the four full days of the master's hearing on equitable distribution between September and December 2001. The first time this court was confronted with this objection was when the parties filed their exceptions in September 2002, more than two years after the court referred the equity case to the master. Now the court is being asked to completely nullify the master's efforts in this matter and return to square one.

The Martins and Krissandra cite Van Buskirk v. Van Buskirk, 590 A.2d 4 (Pa. 1991), for their position that the master is totally prohibited from determining the rights of third parties in a divorce-related action. The third parties in that case, the parents of husband in a divorce action who had an interest in the real property at issue in equitable distribution, were never joined in the action even though they were indispensable parties. The Supreme Court remanded the case to the trial court in order to correct this lack of joinder. Also, by what appears to be merely an after-thought, the Supreme Court stated: "[T]he use of a master in determining the rights of third parties in a divorce-related action is not generally authorized under the Rules...[and] we are overruling Wolf v. Wolf,...514 A.2d 901 (1986) to the extent it determined that the use of a master was permissible in a third party divorce-related action proceeding under [equitable theories]." Id. at 7. The majority cited Pa.R.C.P. 1514 which provides: "**Except as otherwise provided by Act of Assembly or rule of the Supreme Court**, no examiner, master or auditor shall be appointed." (Emphasis supplied.)

We disagree with the narrow interpretation of Van Buskirk urged by the Martins and Krissandra for several reasons. First, the purpose of the Van Buskirk remand was to correct the lack of joinder. This is precisely why we allowed the Martins to intervene. Second, the Van Buskirk court stated that the master is not **generally** authorized to decide third party rights in a divorce-related action. This hardly constitutes the definitive rule of law which the Martins and Krissandra now urge on this court. Third, the Van Buskirk majority makes no mention whatsoever of Pa.R.C.P. 1920.51, the authority for Wolf, as the Van Buskirk dissents correctly note. Finally, the litigation in Van Buskirk was nowhere near as complex and intractable as the case at bar, which prompted us to appoint the master in the first place. The court is appalled by the prospect that Van Buskirk would allow these parties, who have had little regard for the limited resources of the court, to have yet another opportunity to reposition themselves in order to advance their claims.

Despite the foregoing, we are reluctantly forced to conclude that Van Buskirk is indeed controlling precedent in the sense that we must take a de novo **approach** to the equity claim, at least to the extent that the court will evaluate the record and decide for itself whether the Martins should prevail. Insofar as the parties had ample opportunity to present evidence and written argument before the master, the court, after reviewing the exhibits and testimony produced on December 1, 2000, finds that the record as it stands is sufficient to enable the court to make its own independent ruling without the necessity of convening a hearing or trial in order to create what would amount to an essentially redundant record.

II. The Martins' Equity Claim on the Merits

The court must decide whether stock in certain corporations titled in Krissandra's name during the marriage should be excluded from the marital estate. The Martins assert that the stock was held in trust for their benefit, or in the alternative, that Krissandra's interest in the stock consisted of a future interest only. By contrast, Darwyn maintains that Ronald Martin's transfer of stock to Krissandra was an absolute, unconditional gift, making the stock part of the marital estate and subject to equitable distribution.

The Martins and Krissandra do not dispute that Krissandra received title to the stock during the marriage, nor do they dispute that she had the legal right to exercise control of the corporations until June of 1996. The question is whether Mr. Martin's transfer of shares to her was intended as an immediate, unconditional gift with all the indicia of ownership, or whether Mr. Martin retained de facto control of those shares and day-to-day control of the corporations, with Krissandra merely holding title.

We find that equitable ownership remained solely with Mr. Martin. Based on the evidence of record, we find that Mr. Martin's transfer of stock to Krissandra bestowed on her only legal title, and that he retained dominion and control over the stock and the corporations. The result is that the stock in the four disputed corporations is not part of the Benedict marital estate and therefore is not subject to division between Darwyn and Krissandra in this divorce action.

A person makes a valid, unconditional gift where there is donative intent, plus delivery of the subject matter to the donee. Donative intent is found where the donor divests himself of all dominion over the property and invests the donee with complete control. Hengst v. Hengst, 420 A.2d 370 (Pa. 1980). A transfer of corporate stock as a gift is shown by registration of the shares in the donee's name on the stock ledger, and physical delivery of the certificates to the donee. Wagner v. Wagner, 353 A.2d 819 (Pa.

1976). Donative intent is found more often when the donee is the natural object of the donor's bounty, as, for example, between a parent and child. Id.

A resulting trust is created when a person makes a disposition of property under circumstances which raise an inference that he does not intend the recipient to have a beneficial interest in the property. Fenderson v. Fenderson, 685 A.2d 600 (Pa.Super. 1996). The key is "the intent of the parties arising from and shown by their actions at the time of the transaction." Id. at 605. The proponent of the trust has the burden of proving that a trust was created by evidence which is clear, direct, precise and convincing. Id.

When the transfer is made by a parent to a child, a rebuttable presumption exists that the transfer was intended as a gift. Id. However, this presumption can be rebutted by facts surrounding the transfer which show the intent of the grantor. Lapayowker v. Lincoln College Preparatory School, 125 A.2d 451 (Pa. 1956). The husband in Lapayowker transferred legal title to stock in his company to his wife in order to avoid a potential lawsuit. He continued to exercise sole control over company operations and assets. His wife never had or attempted to have control and never received any economic benefit from its operations, nor did she show interest in those operations. The presumption was successfully rebutted because the transferor's intent was to retain actual control of the business, despite placing legal title in his wife. It is in precisely this type of situation that courts have imposed resulting trusts. ^[14]

Ronald Martin's occupation is commercial real estate development and sales. Both before and during the Benedict marriage, Mr. Martin formed shell corporations using his own assets and distributed the shares among family members. (N.T., Intervention Hearing, November 12, 1998, pp. 9-12.) He placed shares in four corporations in Krissandra's name and then purchased commercial real estate which he titled to those corporations. Mr. Martin issued stock certificates for those corporations to his daughter during the course of her marriage to Darwyn, specifically the years 1988-1989. Krissandra received 500 of the 600 shares of Belle-Mar Leasing, Inc., with Mr. Martin holding the remaining shares in his own name. Mr. Martin placed 290 of the 300 shares of T.P.- Mar Leasing, Inc. in Krissandra's name. She received 290 of the 300 shares of Bar-Mar Leasing, Inc. during the marriage. (Her brother Bradley holds the other 10 shares). By these transfers, Krissandra became majority shareholder of these three corporations. Ronald Martin also had gifted 21 of the 75 shares in another corporation, Blain-Mar Leasing, Inc., to Krissandra in 1986 before her marriage to Darwyn; she received an additional 5 shares during the marriage.

The corporate income tax returns show that Krissandra held legal ownership of the stock. No written agreement was ever executed stating the stock was anything but hers because this would have frustrated Mr. Martin's purpose in making these transfers. That purpose, he testified, was to remove those assets from his estate so that they would pass tax-free to Krissandra upon his death. His testimony on this point was corroborated by his long-time corporate counsel, Attorney Donald Kornfield, Esquire; his accountant, David Burkholder; and his son Bradley. (N.T. December 1, 2000, pp. 65, 75, 127-128, 145, 164-167, 188, 233, 237-239, 248; N.T. Intervention Hearing, November 23, 1998, p. 13; Martins' exhibit #7.)

The evidence shows that Mr. Martin realized when he transferred the stock to Krissandra that he was risking that she might exercise her power as majority shareholder to block him from exerting any control of the corporations. After discussions with Attorney Kornfield and Mr. Burkholder in early 1994, Mr. Martin deemed it prudent (despite his good relationship with his daughter) to restructure the stock in order to eliminate that possibility, however unlikely. The restructuring created two classes of stock -- voting and non-voting -- and resulted in the creation of Ronnie Martin Realty, Inc. Under this arrangement, Krissandra could no longer even theoretically out-vote her father on corporate matters. (Martins' exhibit #3, 4, 5, 8, 9, 10.) The restructuring was not completely finalized in written form until June 1996, shortly after the Benedicts separated. At that time, Krissandra transferred all her shares in Belle-Mar, T.P.- Mar, Bar-Mar, and Blain-Mar back to her father. Mr. Burkholder acknowledged in his testimony before the master that the delay in restructuring was due to an oversight on his part.

The credible evidence shows Mr. Martin alone provided the capital for these four corporations. He continued to exercise total control over the corporations on a daily basis and it was understood by his business advisors and his family (including his son-in-law) that they were his property. Mr. Martin made all business decisions and took all the risks and bore all losses associated with their operation. (N.T. December 1, 2000, pp. 143, 204-208, 212-232, 249-250; Martins' exhibit #13, 15, 17, 18, 20, 21, 24, 25, 26.) Mr. Martin included the corporations in his personal financial statements to the Chambersburg Trust Company in 1993. (Martins' exhibit #27.) These four corporations, in addition to several others also created and funded by Mr. Martin, functioned as one consolidated corporation for tax purposes, which allowed Mr. Martin to mingle the profits, losses, depreciation and other expenses for the purpose of maximum flexibility and tax benefits. (N.T. December 1, 2000, pp. 38-39, 149-150, 224-231; Martins' exhibits #8 and #9.) The fact that Mr. Martin accomplished the restructuring without input from either of his children or from Darwyn demonstrates Mr. Martin's total control over corporate operations.

The facts of record show that, in all respects, none of Krissandra's actions demonstrated any of the indicia of ownership and indeed indicate a totally passive approach to the corporations, which is consistent with nominal ownership only. Although the shares were registered in Krissandra's name and she held title, the certificates remained in her father's corporate office and not in her physical possession. In fact, she never even asked to see them. She never received or reported any dividends or other income from the corporations on her personal income tax returns. She did not borrow against the stock and did not report it as an asset in any of her financial statements. (Martins' exhibit #6.) She never sold any of the stock, nor did she participate in decisions pertaining to the corporations; her role was strictly ministerial -- to sign, as corporate officer and majority shareholder, whatever documents her father asked her to sign. She never attempted to exert control over the corporations, but completely deferred to him, anticipating that he would continue to run them as he always had, and that she would own the stock in an absolute sense only after his death. (N.T. December 1, 2000, pp. 32-33, 43, 55, 67; 87-89; 142-143; 147-148, 244-245; N.T. Intervention Hearing, November 23, 1998, pp. 14-16, 51-52, 95.) Krissandra's brother Bradley displayed the same deference to his father's wishes regarding corporations in which Bradley held legal title to shares of stock. (N.T. December 1, 2000, pp. 137-138.)

As was the case with Krissandra and Bradley, Darwyn did not list the shares on any loan applications submitted to banks during the marriage, nor was he aware that the stock had been restructured until sometime after this had been accomplished. (N.T. December 1, 2000, pp. 109-110, 122; Martins' exhibit #6.) Again, like Krissandra and Bradley, Darwyn displayed a passive, secondary role in the corporations compared to Mr. Martin. Although Mr. Martin included Darwyn in informal meetings concerning corporate activities, the purpose of those occasional meetings was to keep family members and his hired professionals aware of his activities and plans. According to Attorney Kornfield, "[T]hese [meetings] were there for Ronnie to receive the advice he wanted from the people around him and to inform them of his intentions and plans. So it would be much like the governor and his cabinet. He was there running the show but we were there to support him." (N.T. December 1, 2000, p. 46; Martins' exhibit #28.)

In this connection, we note that, although Darwyn held 290 of the 300 shares in another corporation created by Mr. Martin, Ron-Mar Leasing, Inc., and Mr. Martin held the remaining 10, Darwyn himself made no attempt to control that corporation until around the time he and Krissandra separated. This is further evidence that all members of Mr. Martin's family deferred to his de facto, daily dominion over all corporate entities which he created and funded.

Darwyn places heavy emphasis on Brody v. Brody, 758 A.2d 1274 (Pa.Super. 2000).^[15] In that case, wife's father formed a company with wife during her marriage to husband. Wife owned 45% of the shares of the corporation, with the rest of the shares given to her sister. Wife claimed that her father placed the company in her name to protect it from litigation with his brother. This, she claimed, was merely sham ownership insofar as she did not have control over or access to the company and therefore her stock was not marital property. The court disagreed and held that her ownership was marital. In particular, the court noted that "once it is determined that donative intent was present [at the time father transferred stock to daughter/wife], inquiry into the reason or motive for a gift becomes meaningless." The father's **intent** was to give her the stock; his **motive** for doing so was irrelevant, the court reasoned. *Id.* at 1276. Likewise, Darwyn argues that, although Mr. Martin's **motive** was estate planning and tax avoidance, his **intent** was to transfer ownership of the stock to Krissandra. His ultimate aim, i.e., his motive is irrelevant; what matters is that he intended to make the absolute transfer of ownership.

We find Darwyn's reliance on Brody to be misplaced because its facts are distinguishable. Seven months after the Brody wife received the shares, she redeemed them for a substantial sum, most of which she received before her separation from husband. This shows that she exercised actual dominion and received an immediate financial benefit as a result of her father giving up his dominion. By contrast, Krissandra evidenced none of the usual indicia of ownership. The credible testimony -- from Mr. Martin, Mr. Burkholder, Attorney Kornfield, Krissandra and Bradley Martin -- clearly shows that everyone involved understood that Mr. Martin's aim was not to convey absolute, present ownership to Krissandra, but that she was the nominal owner only and was not to enjoy the direct, immediate benefits of ownership until her father's death. We find that Belle-Mar, T.P.- Mar, Bar-Mar, and Blain-Mar are not marital assets and should not be included in the marital estate subject to equitable distribution.^[16]

III. Equitable Distribution

Having concluded that the four corporations are not marital property, the court must now identify the marital assets and liabilities, and distribute them using the factors set out in the Divorce Code. We will not repeat here the master's findings as to those factors which have not prompted the parties' exceptions,

but instead we focus on the more controversial issues.^[17] Generally speaking, Darwyn takes issue with how the master weighed certain section 3502 factors. Kris also objects to the weighing process, particularly the master's failure to hold Darwyn responsible for the dissipation of marital assets as part of what she perceived to be Darwyn's well-laid plan to leave the marriage with as many assets as possible. She also objects to what she views as the master's bias against her contributions to the marriage in her role as homemaker and his presumption that she is certain to inherit substantial assets from her affluent parents.

After reviewing the record, the master's report, and the law, we agree with Krissandra that the master de-emphasized her contributions to the marriage as homemaker and caretaker of the children. It is also impossible to ignore the fact that Darwyn, the initiator of the divorce, left the marriage with a greater percentage of the marital assets.

We further agree that the master placed undue emphasis on the proposition that Krissandra is certain to receive an inheritance because she is the daughter of affluent parents, and that this alleged certainty should play a role in the division of the marital estate. Although the Martins have been financially generous to their daughter, Krissandra's inheritance is far too speculative to be considered a factor here. It appeared from the court's observations during hearings connected with this litigation that the Martins are relatively young and in good health. Any monies which Krissandra might receive upon their deaths would not be forthcoming for many years. In addition, many things could happen in the intervening years to decrease the value of any inheritance she would receive, such as costly medical care or other dissipations over which Krissandra would have no control. Gruver v. Gruver, 539 A.2d 395 (Pa.Super. 1988). We have kept these principles in mind when distributing the marital assets and liabilities.

The master identified the marital assets as real estate (both land and rental properties), vehicles, insurance policies, bank accounts, a worker's compensation award, items of miscellaneous personal property, stock in Ron-Mar, Inc., and Darwyn's real estate sales franchise. The master identified the marital liabilities as two mortgages.

Cash and Cash-Equivalent Assets

After separation, the parties each received one-half of a bank account, or rental account, containing \$6,112. Each party also received \$1,100 from an insurance policy.

At the time of separation, Krissandra had five bank accounts valued at \$1,262. She also received a workers' compensation award of \$2,800. She therefore retained **\$8,218** in marital assets of the cash or cash-equivalent type.

Darwyn retained the following assets after separation: bank accounts valued at \$848, \$1,552 and \$65; two insurance policies with marital values of \$4,000 and \$2,000; a certificate of deposit worth \$10,000. The parties were owed a mortgage payment at the time of separation known as the Hade mortgage. Darwyn received the entire \$19,000 payment after separation. Darwyn therefore left the marriage with **\$41,621** in marital assets of the cash or cash-equivalent type.

Miscellaneous Personal Property

Krissandra retained most of the items of marital personal property when Darwyn left the marital home. This category of assets included a gun collection which the master valued at \$4,500, and a collection of Longaberger baskets which he valued at \$25,500. The rest of the items were household furnishings purchased in 1990, the type of assets which depreciate rapidly. The master gave the guns to Darwyn and the baskets to Krissandra. This makes the total value of personal property \$30,000, with Krissandra receiving 85% and Darwyn receiving 15%.

Vehicles

When the parties separated, Krissandra retained a 1994 Land Rover which has a value of \$24,123. Darwyn retained a 1995 Range Rover worth \$34,700. Darwyn also retained a storage trailer worth \$1,000, as well as a van which the parties bought one year before their separation for \$9,500. He sold it two years after separation for \$5,000. The master valued the van at \$5,000 for distribution purposes. The master distributed these vehicles to the party who retained them after separation. This means that Krissandra received **\$24,123** worth of assets, and Darwyn received **\$40,700**. These vehicles were depreciating assets.

Darwyn chose to leave the marriage with two extra vehicles, plus the more valuable of the family's primary vehicles, and had exclusive use of all three. We find this is a factor in our decision to award Krissandra a greater share of appreciating marital assets, such as the real estate, as we discuss below.

Ron-Mar Leasing, Inc.

Ronald Martin formed this corporation in 1987. Krissandra held 290 of the 300 shares. Mr. Martin later transferred the 290 shares to Darwyn and kept 10 for himself. The corporation owned a 40-acre piece of land which Mr. Martin bought with a \$400,000 bank loan, using his own residence as security. He paid the \$4,000 monthly mortgage using his own personal funds, and funds from his other corporations, including the four at issue in the equity claim addressed above. The land was re-zoned for development of commercial lots, a mobile home park, and apartments following an arduous hearing process. The infrastructure was laid in, and Mr. Martin was on the verge of completing development of the site just as Krissandra and Darwyn separated.

After separation, Darwyn ousted Mr. Martin from operational control of Ron-Mar. Mr. Martin responded by refusing to continue paying the mortgage. Darwyn lacked the funds to pay the mortgage and was unable to find a purchaser for the land. The result was that Ron-Mar wound up in bankruptcy court in 1997. Mr. Martin eventually bought the mortgage in order to save his own home from foreclosure. The land was sold for \$905,098 and the money used to pay off Ron-Mar's creditors, which included Mr. and Mrs. Martin, as well as the other corporations whose funds had kept Ron-Mar afloat. According to the record developed before the master, the value remaining in Ron-Mar at the time of the bankruptcy proceedings, \$167,866, was distributed among the four corporations discussed above.

The master found that Krissandra, Mr. Martin and Darwyn all shared responsibility for the loss of Ron-Mar's value. We find, however, that its dissipation was caused by the conflict between Mr. Martin and Darwyn. Krissandra was not to blame because she was not in actual control of the other corporations whose funds could have been used to maintain Ron-Mar.

Considering the money and effort which Mr. Martin had already expended in getting approval for the re-zoning, it certainly would have been prudent for him to continue paying the mortgage despite Darwyn's attempt to claim this asset for himself. This is especially so in light of the fact that the developed properties were right on the cusp of becoming quite profitable. Mr. Martin's refusal to maintain this asset was definitely short-sighted and a good example of cutting off one's nose to spite one's face. However, Darwyn's conduct with regard to this asset was indefensible insofar as Ron-Mar was created and funded by Mr. Martin. The only reason Darwyn had 290 of the 300 shares was because of Mr. Martin's generosity. Darwyn was certainly a major player in the dissipation of this marital asset, and the court has kept that in mind in fashioning an appropriate division of the marital estate.

Ben-Mar Realty and Leasing, Inc.

Ben-Mar was incorporated in 1989 as a joint venture between Darwyn and Mr. Martin. At separation, Darwyn held 99 shares and Mr. Martin held 1 share. The Martins and Krissandra sued Darwyn over ownership of this corporation after Darwyn and Krissandra separated. The parties resolved the suit in March of 1998 by agreeing that Darwyn and Mr. Martin would share equally in Ben-Mar's profits. When Ron-Mar was dissolved in the bankruptcy proceedings, Ben-Mar received \$48,682 of Ron-Mar's remaining value. Ben-Mar also received \$15,000 in proceeds from the sale of two other lots in 2000.

We find that one-half of the \$63,682 which Ben-Mar received, or \$31,841, is part of the marital estate. Darwyn retained the entire \$63,682 and was unable to account for how most of that money was spent after separation, aside from conceding that much of it was spent on litigation expenses. This prompts Krissandra to argue that Darwyn should be charged with having received this entire amount. We disagree. Any dispute as to the \$31,841 that was to be Mr. Martin's share is between Darwyn and Mr. Martin. Mr. Martin chose not to pursue Darwyn for his (Mr. Martin's) share of the settlement proceeds. The other \$31,841 is marital property and Darwyn should be considered to have received that amount already.

Real Property

Proceeds from the post-separation sale of the marital home on Terra Cotta Drive in Waynesboro amounted to \$42,238. Darwyn and Krissandra have already received half of this asset -- \$21,119 each. Proceeds from the post-separation sale of associated lots on Terra Cotta Drive amounted to \$26,869. The parties have already received half of this asset -- \$13,434 each.

The parties own five other lots on Terra Cotta Drive, with a stipulated value of \$180,000. The parties also own an office building on East Main Street in Waynesboro known as Market Square. It is valued at \$343,500. However, there is a mortgage against that property in the amount of \$106,440. The parties own another building in Waynesboro on North Landis Avenue. It is a rental property valued at \$261,500. It has a mortgage against it in the amount of \$107,407.^[18]

After reviewing the evidence, we find that Market Square should be awarded to Darwyn. The

property is titled in his name and he alone has paid the mortgage and maintained the building since separation. It is also the location from which he operates his real estate business. Contrary to Krissandra's contention, we decline to charge Darwyn for having the benefit of using Market Square as his office for several years after separation because the rental value of that office has already been taken into account in the support proceedings.

On the other hand, we find it appropriate to award Krissandra the five lots on Terra Cotta Drive. We also find that she should receive the property on North Landis Avenue, including the rental income it generates. This gives Krissandra the bulk of the appreciating marital assets. The master awarded Landis Avenue to Darwyn, in part to compensate Darwyn for Krissandra being the sole owner of the four disputed corporations. One of Darwyn's exceptions is that the master did not give him credit for post-separation improvements to that property. Clearly Darwyn will be even more disappointed with the court's decision to award the Landis Avenue property to Krissandra. However, Darwyn made it clear during argument on the exceptions that his main desire was to have the court award him the Market Square property and that Landis Avenue was less important to him. We are prepared to take him at his word on this matter.

Marital Debt

The credible evidence shows that a \$50,000 line of credit was run up against the marital home on Terra Cotta Drive by both parties before separation. This was therefore a marital debt paid off with marital assets, that is, the sale of the home after separation.

Darwyn Benedict Realty, Inc.

Darwyn formed this corporation in 1991 and held all its 100 shares. He valued it at \$65,000 as of the 1996 separation, with most of its value derived from the parties' vehicles as discussed above -- \$58,824. According to the credible evidence, the other corporate assets were office furniture and equipment, all of which have greatly depreciated in the years since separation. The remaining distributable value of this corporation is \$6,176, as determined by the master. (Krissandra's exhibits 26, 27, 54.)

Other Exceptions: Krissandra

Krissandra contends the master erred in refusing to classify certain items as marital property. She points to a property titled in Darwyn's name on Briar Ridge Drive. The master found that Darwyn bought the property in 1998, two years after separation, for himself and his second wife Dawn. The record shows, however, that Darwyn purchased Briar Ridge in June of 1996, only two months after he left the marriage, and that he and Dawn together had the benefit of that residence. As of the time of the master's hearing, Darwyn no longer lived at Briar Ridge, but was renting it out and retaining the rents. Krissandra complains that Darwyn used Market Square, a marital asset, as collateral for the purchase of Briar Ridge, but then provided her with no accounting of the rents he received.

Although we note that the master did err in his dates, we decline to award Krissandra the rental value of Briar Ridge because we disagree with her contention that Darwyn improperly "converted" Market Square, a marital asset, to his own exclusive use, simply because he pledged it as collateral. The purchase price of Briar Ridge was \$122,000 and that purchase was 100% financed. We cannot consider this as an improper conversion. (N.T. 9/27/01, p. 92, 95-96; N.T., 11/7/01, p. 46.) We agree with the master that Briar Ridge is not a marital asset subject to equitable distribution.

Krissandra also contends that Darwyn improperly transferred marital monies to members of his family before the separation in order to conceal those monies from her and to marshal them for his own post-separation use. The credible evidence shows that Darwyn's mother lent him money during the marriage, that the loans were secured by notes, and that the transfers were simply loan repayments. (N.T. 12/18/01, pp. 72-75, 208-212; Darwyn's exhibit 15.) In addition, Krissandra asserted that Darwyn wrote a check to his brother on a joint marital bank account before the separation in order to parcel out those funds for his sole use post-separation. However, she did not present sufficient evidence to support this assertion. (N.T. 12/18/01, p. 12-13.)

Another transaction in this vein is the sale of a house on Gehr Road. The house was a marital asset, and was located next to the home of Darwyn's mother. The parties acquired it in 1993 and Darwyn's grandmother lives there. It was sold to Darwyn's sister Sally one month before the separation. The grandmother pays Sally rent. Krissandra contends that Darwyn retained \$26,085 without providing her with an accounting as to how he disposed of those funds. However, the evidence clearly shows that the property was sold for its appraised value and that Krissandra approved the sale. (N.T. 12/18/01, pp. 43-44, 103-104; Krissandra's exhibit 33.) Under these circumstances, we cannot agree with Krissandra's characterization of this particular transaction as an example of Darwyn's "systematic dissipation and manipulation of marital assets." We believe Krissandra overstates her position regarding Darwyn's

deliberate plan to strip the marital estate and leave her to the care of her parents.

Another item Krissandra takes exception to is referred to as the Shepard mortgage. The evidence shows that two agents employed by Darwyn sold a property in 1994, two years before separation. There were insufficient funds to cover commissions and fees, so Darwyn accepted a mortgage from Mrs. Shepard in order to complete the sale. Darwyn collected the monthly mortgage payments from Mrs. Shepard and deposited them in the Darwyn Benedict Realty account, from which he paid out the funds to the two agents. In this respect, Darwyn was simply the facilitator of the transaction and a conduit for the agents' commissions; he did not retain those funds, and therefore they were not marital assets available for equitable distribution. (N.T. 12/18/01, pp. 77, 90.)

Other Exceptions: Darwyn

Darwyn's main exception is the master improperly weighed some of the factors set out in section 3502(a) of the Divorce Code. In particular, he contends the master placed too much emphasis on the financial generosity of Mr. and Mrs. Martin as the basis for the accumulation of marital assets by himself and Krissandra during their 9-year marriage, and downplayed Darwyn's role as primary wage earner. After reviewing the record, it is clear to the court that the parties' extremely comfortable lifestyle was due in no small measure to Mr. Martin's efforts to ease Darwyn into the world of entrepreneurship. This is not to say that Darwyn is or was totally devoid of skills in the arena of finances and real estate sales. To the contrary, Darwyn has enjoyed success in those fields, but certainly not to the extent which would have supported the marital standard of living.

Darwyn also complains about the master's failure to give him credit for post-separation improvements to the Landis Avenue property which increased that property's value. Obviously Darwyn's disappointment will grow in light of the court's decision to award the Landis Avenue property in its entirety to Krissandra. As discussed above, the court has considered the following factors in making this award: Darwyn benefited both directly and indirectly from his father-in-law's eagerness to introduce him to the world of the self-employed businessman; Darwyn left the marriage with more of the marital assets than he left behind, including both appreciating and depreciating assets; Darwyn's partial role in the dissipation of the Ron-Mar corporation, which was a marital asset; Krissandra's role as homemaker and caretaker of the parties' two children; and the speculative nature of Krissandra's future inheritance from her parents. It is the court's desire to award Krissandra slightly more than 50% of the marital estate under the following distribution scheme:

Marital Assets Totaling \$822,938

Darwyn Krissandra

Proceeds from sale of home on Terra Cotta Drive	\$21,119	\$21,119
Proceeds from lots on Terra Cotta Drive	\$13,434	\$13,434
Market Square		\$343,500
North Landis Avenue		\$261,500
5 lots on Terra Cotta Drive	\$180,000	
1994 Land Rover		\$24,123
1995 Range Rover		\$34,700
Rental account, Citizens Bank	\$3,056	\$3,056
2 Erie insurance policies	\$1,100	\$1,100
Certificate of deposit		\$10,000
Workers' compensation award		\$2,800
5 Patriot Bank accounts		\$1,262
CNA insurance policy	\$4,000	
Security insurance policy	\$2,000	
Building account	\$1,552	
Storage trailer		\$1,000

Box van	\$5,000	
Construction account, First National Bank	\$848	
Bank account		\$65
Darwyn Benedict Realty, Inc.	\$6,176	
Ben-Mar Realty and Leasing, Inc.	\$31,841	
Proceeds from Hade mortgage		\$19,000
Household goods		\$4,500 \$25,500
<u>Minus mortgage debts</u>		
Market Square		-\$106,440
North Landis Avenue		\$-107,407
TOTAL ASSETS TO EACH PARTY:	\$396,451	\$426,487
Percentage of marital assets to each party:	48.18%	51.82%

ORDER OF COURT

Now this 17th day of March 2004, the court upon consideration of the exceptions filed to the report and recommendation of the master, written argument, oral argument, and the relevant law, and further having conducted a de novo review of the entire record, for the reasons stated in the attached Opinion of the court:

1. The court grants the relief sought by the intervening plaintiffs, Ronald B. and Mary B. Martin on their claim to exclude certain corporate assets from distribution as marital property, specifically, the claims which relate to Belle-Mar Leasing, Inc., T.P.-Mar Leasing, Inc., Bar-Mar Leasing, Inc., and Blain-Mar Leasing, Inc.
2. The court terminates any existing award for alimony pendente lite and denies any claim for permanent alimony.
3. The following assets will be distributed to Darwyn W. Benedict, free of any claim by Krissandra M. Layne:
 - a. All proceeds currently in his possession from the sale of the marital residence and from the sale of lots on Terra Cotta Drive.
 - b. All real estate improvements and fixtures located on East Main Street in Waynesboro, Pennsylvania, known as the Market Square property, along with sole responsibility for the current balance of the mortgage against this property and associated indebtedness.
 - c. A 1995 Range Rover and all proceeds received therefrom.
 - d. One-half of the Citizens National Bank joint rental account.
 - e. The Erie insurance policy currently within his possession and control.
 - f. A \$10,000 marital certificate of deposit from Citizens National Bank.
 - g. CNA insurance policy.
 - h. Security Mutual insurance policy.
 - i. A building account valued at \$1,552.10.
 - j. Storage trailer.
 - k. Ford box van.
 - l. First National Bank construction account.
 - m. Patriot Federal Credit Union account in the amount of \$65.20.

- n. Darwyn Benedict Realty, Inc., and all assets titled to same, unless said asset is currently in the possession of Krissandra M. Layne.
- o. One-half ownership of Ben-Mar Realty and Leasing, Inc., in accordance with the terms of an agreement between the parties dated March 11, 1998 and free from any liability to Krissandra M. Layne.
- p. Proceeds from the Hade mortgage.
- q. All personal property currently in his possession and control.
4. The following assets will be distributed to Krissandra M. Layne, free of any claim by Darwyn W. Benedict:
- a. All proceeds currently in her possession and control from the sale of the marital residence and from the sale of lots on Terra Cotta Drive.
- b. Real estate and all fixtures located on North Landis Avenue, including sole liability for all associated indebtedness.
- c. Five real estate parcels known as the Terra Cotta lots, numbers 2, 3, 7, 10 and 11.
- d. A 1994 Land Rover and all proceeds received therefrom.
- e. One-half of the Citizens National Bank joint rental account.
- f. The Erie insurance policy currently in her possession and control.
- g. Workers' compensation proceeds received in her name.
- h. Five bank accounts at the Patriot Federal Credit Union with a combined value of \$1,262.81.
- i. All personal property currently in her possession and control.
5. Each party shall be solely responsible for assuming the debts and liabilities associated with the assets they are to receive, except that Darwyn W. Benedict shall be solely responsible for any overdue mortgage payments, outstanding taxes or other encumbrances related to the North Landis Avenue property which may exist at the time the property is transferred to Krissandra. Krissandra shall be solely responsible for paying or refinancing the mortgage against the North Landis Avenue property within 45 days of the transfer of the deed into her name. She will not be responsible for any arrearages which may have accrued on the mortgage since January 1, 2002.
6. The North Landis Avenue property shall be transferred to Krissandra M. Layne subject to the leasehold interest of any tenants, and she will be entitled to receive all rental proceeds therefrom, effective on the date when the real estate transfer is complete.
7. The parties will cooperate in signing all documents necessary to effectuate this Order.
8. Whichever party is to receive an asset will be solely responsible for the preparation of any documents necessary to complete the transfer.
9. All assets not otherwise identified in this Order will become the sole property of the person who currently has possession and control, free from liability to the other party.
10. The cost of the court reporter will be assessed in the amounts previously advanced by the parties.
11. The Court of Common Pleas of the 39th Judicial District of Pennsylvania retains jurisdiction to the extent necessary to enforce the provisions of this Order.

[1] The files currently occupy four full boxes in the Prothonotary's Office and more than one box at Domestic Relations.

[2] That company was not successful. Mr. Martin made up the losses incurred.

[3] Krissandra's brother Bradley Martin was the majority shareholder in J-Bar.

[4] The evidence showed that Krissandra maintained an apartment in Waynesboro which she and the children used during her alternate weekly custody periods. This apartment was part of a building owned by her parents. Krissandra lived with her new husband in Maryland during her non-custodial weeks.

[5] Additional post-separation litigation between Darwyn and Ronald Martin took place in bankruptcy court concerning the corporation known as Ron-Mar Leasing, Inc. We discuss this matter later in this opinion.

[6] It was understood by the parties and the court that Attorney Redding was being paid by Krissandra's parents. We are unaware of any other custody case in this judicial district or elsewhere in which the parents of a party hired separate counsel with the ostensible purpose of representing the children. In this case, since the Martins and Krissandra sought the identical outcome - sole legal custody and primary residential custody in Krissandra - the court found itself presiding over a "two-against-one" contest.

[7] A total of five attorneys appeared at the conference. In this connection, we note that both Darwyn and Krissandra have repeatedly changed counsel over the course of this litigation, which at this point, has lasted almost as long as their marriage. Such frequent changes in representation have caused occasional confusion and delays in the proceedings.

[8] Three expert evaluators were initially involved in the case: one hired by each party, and an independent evaluator appointed by the court to assist in sorting through the many areas of dispute between the parties as to their children's best interests.

[9] In addition, based on the court's experience during the previous year when the parties sought last-minute intervention to clarify their custodial rights during the end-of-year holidays, the court directed the parties to submit proposals for those periods in advance. The court entered an order on December 21, 2000, specifying holiday custody and transportation arrangements.

[10] While the case was on appeal, Krissandra petitioned for contempt and for special relief, alleging that Darwyn violated several provisions of the May 21st order. We deferred action until the parties first pursued mediation as specifically directed by the order. The court thereafter learned from counsel that the parties had managed to agree on a mediator.

[11] Krissandra filed a complaint in December 2003 seeking primary residential custody, making this the fourth custody action filed since this litigation began, and Krissandra's third complaint for custody since 1998.

[12] Technically, Krissandra filed 25 exceptions. However, exception #25 simply reiterates the four exceptions raised by her parents to the master's findings as to their separate equity claim.

[13] The master at that point had five years' experience as this county's standing divorce master, and had proven himself very able at promoting settlements.

[14] See also Wolf v. Wolf, 514 A.2d 901 (Pa.Super. 1986)(intent found where parents have title to home, but son and daughter-in-law provided all expenses of ownership and purchase price); Grubb v. Delathauwer, 418 A.2d 523 (Pa.Super. 1980)(payment of all costs and expenses, plus living in the home, was sufficient to sustain a resulting trust when the title was in parents' name); Mermon v. Mermon, 390 A.2d 796 (Pa.Super. 1978)(despite transfer of property to a family member, with the purchase price paid by another person, a resulting trust was imposed where the transferor's intent was not to give a family member a beneficial interest in the property).

[15] The master also relied on Brody to support his conclusion that Mr. Martin's transfer of stock during the Benedict marriage constituted an immediate and unconditional gift to Krissandra.

[16] The master clearly was troubled by what he perceived was Mr. Martin's attempt to have his cake and eat it, too. On the one hand, Mr. Martin's initial goal was to have the I.R.S. view the transfer as a complete, unconditional gift to Krissandra for estate tax purposes, but he now characterizes that same transfer as an incomplete, conditional one in the context of this divorce case.

[17] These factors are: the length of the marriage; any prior marriages; the age, health, station, amount and sources of income, vocational skills, employability, estate, liabilities and needs of the parties; the contribution of one party to the education, training or increased earning power of the other party; the opportunity of each party for future acquisitions of capital assets and income; the sources of income of both parties, including but not limited to medical, retirement, insurance or other benefits; the contribution or dissipation of each party to the acquisition, preservation, depreciation or appreciation of the marital property, including the contribution of a party as a homemaker; the value of the property set aside to each party; the standard of living the parties established during the marriage; the economic circumstances of each party, including tax ramifications, at the time the division of property is to become effective, and whether either party will be the custodian of any dependent minor children. 20 Pa.C.S.A. § 3502.

[18] The court is aware that these figures represent values as of the time of the first master's hearing on equitable distribution in September of 2001.