

SUSAN T. CRAMER, Plaintiff, v. DONALD E. CRAMER, Defendant  
Court of Common Pleas of the 39th Judicial District of Pennsylvania,  
Franklin County Branch  
Civil Action - Divorce, No. 2004-3313

*Alimony; Duration of Alimony; Master's Determination on Witness Credibility;*

*Earning Capacity of Totally Disabled Party*

1. Alimony is set by the 17 factors of 23 Pa. C.S.A. §3701(b). Alimony ensures that the reasonable needs of a person who is unable to support herself through appropriate employment are met. A Court may order alimony only if it is necessary.
2. Alimony may be awarded for any definite or indefinite period of time that is reasonable under the circumstances. Permanent alimony may be awarded if the Court finds it is necessary.
3. The Trial Court may properly defer to the Master's determinations on witness credibility.
4. Under the Divorce Code, the law will not imply an employment derived earning capacity for any party who is completely incapable of performing work.

Appearances:

Martha B. Walker, Esq., *Counsel for Plaintiff*

Michael B. Finucane, Esq., *Counsel for Defendant*

OPINION

Walsh, J., September 14, 2007

Facts

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Donald Cramer, the defendant, has filed exceptions to the Master's Report and Recommendation in this divorce action. Preliminarily, the Court notes that, since the defendant has waived exceptions one and two, the Court will decide only exception three. In this exception, the defendant argues that the master erred in his alimony recommendation primarily by crediting to the retired defendant's earning capacity the amount of Social Security he will draw at age 62 without crediting for the wife, Susan, what she could earn by early retirement. The Court has reviewed the master's report and recommendation, the transcript of the master's hearing, the exceptions, the Plaintiff's and the Defendant's briefs, the parties' arguments, and the law. The case is ripe for decision.

Discussion

The master filed a detailed report in which he found the relevant facts, weighed the parties' credibility, and made a recommendation for alimony based upon an exhaustive analysis of the seventeen alimony factors. [1] 23 Pa.C.S.A. §3701(b). "Alimony is to ensure that the reasonable needs of the person who is unable to support herself through appropriate employment are met." Twilla v. Twilla, 664 A.2d 1020, 1022 (Pa. Super. Ct. 1995).

Under the law, the Court may order reasonable alimony but only if the Court finds it is necessary. 23 Pa.C.S.A. §3701(a). Alimony may be for a definite or indefinite period of time that is reasonable under the circumstances. 23 Pa.C.S.A. §3701(c). Alimony is properly based on the needs of the recipient and may not be predicated on the relative prosperity of the payor. Nemoto v. Nemoto, 620 A.2d 1216 (Pa. Super.Ct. 1993). The determination of alimony rests in the trial court's discretion. Miller v. Miller, 202 A.2d 558, 561 (Pa. Super. Ct. 1986). A trial court determining alimony must "apply the Divorce Code in a compassionate and reasonable manner to effectuate the overriding goal of achieving economic justice between the parties." Murphy v. Murphy, 599 A.2d 647, 651 (Pa. Super. Ct. 1991).

Preliminarily, the master noted that he found the wife's testimony to be very credible. Master's Report at 7-8. Credibility is largely left to the master to determine. Schuback v. Schuback, 603 A.2d 194, 196 (Pa. Super. Ct. 1992). On the issue of credibility, the Court agrees with the master's findings and notes that Donald's testimony appears at times to be mildly deceptive, while any inconsistencies in Susan's testimony can largely be explained by her significant cognitive difficulties. For instance, Susan's counsel had to admonish her twice to listen carefully to the questions asked before answering. Transcript at 16-17. Additionally, Susan's memory gave her great difficulty even putting together a chronology of her work history. Transcript at 41-42. She also had trouble relating whether she could even baby-sit part-time. Transcript at 54. For his part, Donald claimed severe carpal tunnel syndrome, but manages to go fishing so often that he has a \$160 per month gas bill. Transcript at 68, 78. He also pled poverty yet enjoys housing at no cost besides the price of utilities and refuses to take early retirement Social Security payments of over \$1200 per month. Transcript at 70, 76. Finally, Donald claimed to have just remembered a \$20,000 pre-marital asset, but did not provide any documentation even though he agreed that he could have done so. Transcript at 84-89. All of this evidence supports the master's conclusion concerning credibility.

Considering the evidence and the master's credibility findings with respect to the seventeen alimony factors, the Court concludes that necessity supports the master's recommendation of permanent alimony for Susan Cramer. First, the parties married on May 25, 1974 and separated in 2004. Transcript at 15. A thirty year marriage weighs heavily in the determination of alimony, particularly with respect to the duration of the alimony. Also, Susan has several significant physical ailments and limitations. She has a serious lazy eye and wears a foot brace and a wrist brace. Transcript at 23. The wrist brace helps keep her hand from going numb. Id. The foot brace is needed to keep her right foot properly aligned since it is bent-in following a lifetime of compensating for injuries sustained in the bus accident. Transcript at 26. In addition, Susan suffers from brain damage from a 1966 bus accident. Transcript at 18. Even Donald concedes that Susan's health is poor and that she is in worse health than he is. Transcript at 81.

Furthermore, Susan sank \$129,000 from her personal injury settlement into marital property, leaving her with only \$21,000 in principal and about \$50 per month in interest. Transcript at 19-20, Master's Report at 9. Additionally, Susan is 59 years old and is under the care of her doctor for a recent hip replacement. Transcript at 23. Susan also testified that her feet give her problems standing. Transcript at 34. Unsurprisingly, the master specifically found that Susan's medical problems prevented her from obtaining meaningful employment. Finally, Susan pays \$500 a month in rent for her apartment, and her income at the present is approximately \$1,140 per month, of which \$647 was APL.

The master correctly found that Susan faces a patent necessity for the alimony payments that the master has awarded to her. Initially, the Court notes that equitable distribution came out at slightly over 53% for Susan with the remainder going to Donald. This is certainly within the parameters of the Divorce Code and seems fair on these facts. Susan has significant, even crippling, health problems that deny her potential gainful employment and will raise her basic daily needs far above those of Donald Cramer. Although Mr. Cramer complains of carpal tunnel syndrome, this affliction does not seem to prevent him from engaging in his retirement hobby of very frequent fishing. Moreover, Susan's hardships are not of the type that will be alleviated during her lifetime, and, accordingly, permanent alimony, as recommended by the master, is appropriate. The master based his recommendation upon Susan's need and not upon the relative prosperity of Donald, and this result accords with the law.

Donald Cramer places great reliance on the Cortese case from the Court of Common Pleas of Allegheny County. Cortese v. Cortese, 152 P.L.J. 111 (CCP Allegheny 2003). In Cortese, however, the Court specifically found that the wife was articulate and intelligent and capable of great earning potential. However, Susan Cramer suffers from brain damage, is nearly at retirement age, and has no ability to

obtain gainful employment. The fact patterns between the cases are strikingly dissimilar. Furthermore, the Court in Cortese had already given the wife \$7,200 per year in alimony for twenty years. In light of this substantial award and her earning potential, Cortese, albeit on different facts, actually supports the reasonableness of the master's recommendation.

Donald also argues that in Watts v. Watkins this Court established a rule that a disabled party receiving Social Security Disability payments yet physically capable of working should be assigned a minimum wage earning capacity based on a 37.5 hour work week. Watts v. Watkins, D.R.S. 2001-00078, 39th Judicial District, 2006. However, Watts is distinguishable. In Watts, credible evidence showed that Watkins, while disabled, was capable of working at any desk job or at any job requiring only moderate lifting. Indeed, in that case the defendant had actually worked at Friendly's Ice Cream following his heart surgery. However, in this case, credible evidence demonstrates Susan's incapacity for actual employment, and, as such, to extend the Watts rule to her would be inequitable, and the Court declines to do this by assigning her a minimum wage earning capacity. A person who is incapable of work has no work-derived earning capacity implied by law.

Finally, although the master remarks in his report that Donald has earned as much as \$35,000 a year in the past, the master assigns Mr. Cramer only the amount of income that he will earn from Social Security. Thus, his comment aside, the master cannot have committed an error because he did not include any employment income in Donald's earning power. Finally, the master did not credit Susan with the earning potential from early retirement, but the Court can find no fault with this considering that this is an equitable proceeding and, overall, the master's award is very fair to both parties. Thus, this Court affirms the master's recommendation of permanent alimony.

### Conclusion

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Crucially, all of the master's conclusions have a substantial factual basis, and the master has found Susan to be very credible. Moreover, the award of alimony as a whole is not unfair considering Susan's needs and Donald's ability to pay. The law and the facts support the master's recommendation. Accordingly, the Court denies the defendant's exception to the master's report and recommendations.

### ORDER OF COURT

September 14, 2007 this matter having come before the Court on Defendant's Exceptions to the Master's Recommendation and Report, and the Court having reviewed the master's report and recommendation, the transcript of the master's hearing, the exceptions, the Plaintiff's and the Defendant's briefs, the parties' arguments, and the law, it is hereby ordered that Defendant's Exceptions are overruled and the Master's proposed order will be entered as a final order between the parties.

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[1] **(b) Factors relevant.**--In determining whether alimony is necessary and in determining the nature, amount, duration and manner of payment of alimony, the court shall consider all relevant factors, including:

- (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.

(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 Pa.C.S.A. §3701(b).