

RICHARD G. MARTIN, Plaintiff, v. PATRICIA MARTIN, Defendant  
Court of Common Pleas of the 39th Judicial District of Pennsylvania,  
Franklin County Branch  
Civil Action - Divorce, No. 2002-3182

*Master's Report and Equitable Distribution*

1. Title 23 of Pennsylvania Consolidated Statutes Section 3502 requires the Court to take into account a party's income and ability to accumulate wealth when making an equitable distribution. 23 Pa.C.S.A. §3502.
2. The standing master shall be vested with the authority to issue directives for compliance in connection with any discovery pertaining to the matter commissioned to the master. Any directive issued by the master shall be considered an interim order of Court for the purpose of contempt proceedings. Upon a party's failure to comply with the directives of the standing master, the matter may be listed, at the discretion of the master, for a hearing with the Court in the day and time regularly scheduled for support contempt hearings for a finding of contempt. Franklin County Local Rule of Civil Procedure 39-1920.53(h).
3. The provision of Title 23 of Pennsylvania Consolidated Statutes Section 3505 regarding constructive trusts only applies where there has been a final distribution of property. 23 Pa. C.S.A. §3505.

Appearances:

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

Julie G. Dorsett, Esq., *Counsel for Defendant*

Timothy D. Wilmot, Esq., *Master in Divorce*

OPINION

Walsh, J., October 21, 2006

This matter is before the Court on Richard Martin's ("Plaintiff") Exceptions to the Divorce Master's Report and Recommendation. <sup>[1]</sup> Oral argument was requested and the Court set oral argument in this case for October 5, 2006. Both parties filed briefs; oral argument was held as scheduled. The Court having reviewed the Master's Report, submissions made by the parties, the issues raised at oral argument and the applicable law, the Court is now ready to decide the matter.

Background

The parties married on October 18, 1975 in Washington County, Maryland. They separated on November 20, 2002. On that same date, Plaintiff filed a Complaint in Divorce. Patricia Martin ("Defendant") filed on or about February 26, 2004, claims for equitable distribution, alimony, alimony *pendente lite* (APL) and counsel fees, costs and expenses.

Upon motion of Plaintiff, the Court appointed the Divorce Master to hear claims of divorce, equitable

distribution, alimony, APL and counsel fees, costs and expenses. The Master held hearings on June 23, 2005 and July 26, 2005. At the conclusion of the July 26, 2005 hearing, the Master kept the record open in order to receive a stipulation as to the value of the Franklin Templeton account. The Master received that stipulation on October 3, 2005.

The Master filed and delivered to counsel a Notice of the filing of his Report and Recommendation on October 28, 2005. On that same date, he delivered to counsel copies of his Report and Recommendation. The Master filed his Report and Recommendation on November 17, 2005. Plaintiff filed Exceptions to the Master's Report and Recommendation on November 7, 2005. Defendant filed Exceptions to Master's Recommendation on November 17, 2005 and filed a brief in support of her Exceptions on December 19, 2005. By letter dated March 1, 2006, Defendant requested that the Court determine the matter on briefs alone.

On March 31, 2006, this Court decided the matter and entered an Opinion and Order. The Order remanded the matter back to the Master for additional factual findings and required the Plaintiff to submit documentary evidence of the value of an American Funds IRA ("IRA")<sup>[2]</sup> On May 12, 2006, Defendant filed a Motion to Compel and Request for Sanctions against Plaintiff for failure to comply with our March 31 Order. As of June 7, 2006, Plaintiff had filed no response to the Motion to Compel and the Court granted the Motion.

At the request of the Plaintiff, the Master held a hearing on June 30, 2006, where the Master heard argument and reviewed the IRA. Counsel at the conclusion of the hearing stipulated to the value of the fund at the date of the distribution. The Master filed his Recommendation and Report on July 11, 2006. The Plaintiff filed Exceptions to the Master's Report and Recommendation on July 20, 2006. Defendant filed her brief in response to Plaintiff's exceptions on August 21, 2006. The Plaintiff then filed a brief in support of his exceptions on September 13, 2006. The Court heard argument on October 5, 2006, and is now ready to decide the matter.

### Discussion

Before the Court are three exceptions filed by Plaintiff:

1. The Master erred in paragraph 5 of the recommended Order by directing Plaintiff to pay \$45,449 in cash to Defendant, because this figure is inequitable and not in accord with the earlier approved percentage of distribution by the Court.
2. The Master erred in going beyond the specifics of the remand in making findings of fact 2E (1-5) and 2F concerning alleged withholding of information by the Plaintiff, and making findings on that without first providing necessary due process to the Plaintiff by having a hearing to provide the opportunity for Plaintiff to answer the allegations being made prior to the Master making findings of fact and a decision.
3. The Master erred by erroneously using 23 Pa. C.S.A. §3505(d) to award Defendant, in contravention of and beyond the limitation of the remand from the Court, a constructive trust on the increased value of the America Fund IRA.

According to the Pennsylvania Rules of Civil Procedure, if exceptions to a Master's Report are filed the court shall hear argument on the exceptions and enter a final decree. Pa.R.C.P. 1920.55-2(c). The report of the Master in divorce is entitled to great consideration in that he has heard and seen the witnesses, and it should not be lightly disregarded. It is advisory only, however, and the reviewing court is not bound by it and it does not come to the court with any preponderate weight or authority which must be overcome. Rothrock v. Rothrock, 765 A.2d 400 (Pa.Super. 2000). The reviewing court must consider the evidence, its weight and the credibility of the witnesses, *de novo*. Id.

The Court will address each of the three exceptions raised by Defendant in order.

**1. The Master erred in paragraph 5 of the recommended Order by directing Plaintiff to pay \$45,449 in cash to Defendant, because this figure is inequitable and not in accord with the earlier approved percentage of distribution by the Court.**

The Superior Court in Miller v. Miller, 617 A.2d 375 (Pa. Super. 1992), recognized that upon remand by the Superior Court, a trial court has the discretion to amend a distribution scheme after considering the

facts found on remand if equity requires a finding of a different result. We see no reason why this principle of law should not be applied to the situation where a trial court remands the matter back to a Master. Pennsylvania Consolidated Statutes section 3502 requires the Court to take into account a party's income and ability to accumulate wealth when making an equitable distribution. 23 Pa.C.S.A. §3502. The contributions to the IRA are a form of income that the Master was unable to factor into his original Report and Recommendation but on remand he was supplied with the value of the IRA and adjusted the distribution scheme accordingly. Thus, we find that it was within the Master's discretion to equitably amend the distribution scheme when the Court remanded the matter back to him to make additional factual findings regarding the IRA account.

Finding that it was within the Master's discretion to equitably amend the distribution scheme, we must now address the Plaintiff's argument that the Court has "pre-approved" the division in the original Master's Recommendation. The Master's Report does not specifically mention a percentage distribution. When the Court adopted the original Master's Report the Court also adopted the rationale behind the distribution scheme and not the ratio/percentage that made up the distribution. In fact, this is confirmed in this Court's Opinion dated March 31, 2006 (pg. 4), where we make note of the fact that the Master's Report does not speak in terms of percentages and we noted that it would be speculation to believe that the Master wanted a party to have a certain percentage.

We find that the Master did not err in making a recommendation that the Plaintiff pay \$45,449 in cash. We find that it was not inequitable for the Master to adjust the distribution scheme upon making additional factual findings on remand. We also find that this Court did not adopt a ratio/percentage distribution scheme but that we did adopt the rationale used by the Master in his original report that properly considered the 23 Pa.C.S.A. §3502 factors.

**2. The Master erred in going beyond the specifics of the remand in making findings of fact 2E (1-5) and 2F concerning alleged withholding of information by the Plaintiff, and making findings on that without first providing necessary due process to the Plaintiff by having a hearing to provide the opportunity for Plaintiff to answer the allegations being made prior to the Master making findings of fact and a decision.**

The Plaintiff offers two arguments for this exception. The Plaintiff first asserts that the Master has violated Franklin County Local Rule of Civil Procedure 39-1920.53(h). The local rule states:

"The standing master shall be vested with the authority to issue directives for compliance in connection with any discovery pertaining to the matter commissioned to the master. Any directive issued by the master shall be considered an interim order of Court for the purpose of contempt proceedings. Upon a party's failure to comply with the directives of the standing master, the matter **may be listed, at the discretion of the master**, for a hearing with the Court in the day and time regularly scheduled for support contempt hearings for a finding of contempt." [Emphasis added.]

Franklin County Local Rule of Civil Procedure 39-1920.53(h).

The Plaintiff argues that when he failed to comply with discovery that the Master was required to set the matter for hearing. The Court does not find the Plaintiff's interpretation persuasive. The language "may be listed, at the discretion of the master" is unambiguous and we conclude that the local rule gives the Master discretion as to whether or not a hearing is required.

Plaintiff argues that the Master made his own finding of contempt and incorporated this into the report and recommendation. Local rule 39-1920.53(h) indicates that the Court will decide contempt matters. While it is true that the Master made findings of fact as to Plaintiff's failure to disclose the value of the IRA account, he also gives support for his recommendation by showing a finding that Plaintiff not only has a larger estate than he previously disclosed, but that the Plaintiff had a higher income when you consider the value of the IRA, and that these facts dictate that a larger share of the marital estate should be awarded to Defendant. Again, this principle is strengthened by the fact that 23 Pa.C.S.A. §3502(a) takes into account a party's income and ability to accumulate wealth when deciding equitable distribution.

We find that the Master did not violate Local rule 39-1920.53(h) because he made no findings of contempt and he based his reasoning on additional facts, which he learned on remand.

Next, the Plaintiff poses a constitutional due process argument. Plaintiff contends that the Master's recommendation included a punitive element and as such the Plaintiff should have been afforded a hearing to answer allegations and to present additional facts. Again, the Master does make findings of fact regarding Plaintiff's failure to disclose the value of the IRA but as mentioned above, the Master's findings

are not tantamount, as Plaintiff would have us believe, to a finding of contempt.

We find that the Master was not attempting to punish the Plaintiff but was adjusting the distribution scheme by applying the facts found on remand to the factors enumerated in 23 Pa.C.S.A. §3502 in order to come to an equitable distribution of the property. Therefore, there was no need for an additional hearing.

**3. The Master erred by erroneously using 23 Pa. C.S.A. §3505(d) to award Defendant, in contravention of and beyond the limitation of the remand from the Court, a constructive trust on the increased value of the America Fund IRA.**

Plaintiff argues that the Master applied 23 Pa. C.S.A. §3505(d)<sup>[3]</sup> and awarded to the Defendant a constructive trust as to the increased value of the IRA. Both parties and the Court agree that §3502(d) only applies where there has been a final distribution of property and there has been no such final distribution in this case so this section does not apply.

The Master makes no reference to 23 Pa. C.S.A. §3505(d) in his Recommendation or Report. He makes no reference to a constructive trust. While it is true that the Master made findings of fact as to Plaintiff's failure to disclose the value of the IRA account, and that the language<sup>[4]</sup> used in the Report indicated that the Master was not pleased with Plaintiff's conduct, the Master does give sufficient support for his recommended distribution scheme. As stated above this Court finds that the Master was not punishing the Plaintiff but was adjusting the distribution scheme after considering the facts found on remand that the Plaintiff not only has a larger estate than he previously disclosed, but that the Plaintiff had a higher income when considering the increase in value of the IRA, and that when applying these facts to the enumerated factors of 23 Pa.C.S.A. §3502(a) a larger share of the marital estate should be awarded to Defendant in order to come to an equitable distribution of the property.

We find that the Master did not apply 23 Pa. C.S.A. §3505(d) to this case and that he imposed no constructive trust for the benefit of the Defendant in this case.

Conclusion

Based on the above, the Court dismisses all of the Exceptions to the Master's Report and Recommendation raised by Plaintiff. The Court having dismissed all of the Exceptions filed by Plaintiff will enter the Final Order proffered by the Master. Pa.R.C.P. 1920.55-2(c).

ORDER OF COURT

Now this 21st day of October 2006, upon review of the entire record of these proceedings including Master's Report and Recommendation, Plaintiff Richard G. Martin's Exceptions to Master's Recommendation, Defendant and Moving Party's Brief on Exceptions Filed to Master's Recommendation and Report, Transcript of Proceedings of Master's Hearing, the arguments of the parties and the law, it is hereby ordered that Plaintiff's Exceptions are overruled. Further, the Master's proposed order granting the divorce and finally determining the matters between the parties will be entered.

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[1] The Master's Report and Recommendation were filed with the Court on July 11, 2006.

[2] "It is Further Ordered that this matter be remanded to the Master for a determination of the value of the marital portion of the American Funds IRA as of the date of distribution; and that the Master thereafter transmit to the Court a new Order." (Court Order dated March 31, 2006)

[3]

23 Pa. C.S.A. § 3505

**(d) Constructive trust for undisclosed assets.** --If a party fails to disclose information required by

general rule of the Supreme Court and in consequence thereof an asset or assets with a fair market value of \$1,000 or more is omitted from the final distribution of property, the party aggrieved by the nondisclosure may at any time petition the court granting the award to declare the creation of a constructive trust as to all undisclosed assets for the benefit of the parties and their minor or dependent children, if any. The party in whose name the assets are held shall be declared the constructive trustee unless the court designates a different trustee, and the trust may include any terms and conditions the court may determine. The court shall grant the petition upon a finding of a failure to disclose the assets as required by general rule of the Supreme Court.

[4] "The master warns litigants that a party who fails to reveal or disclose the existence or value of a marital asset, particularly where that party has exclusive access thereto, will be deemed to have waived any interest in said asset." (Master's Finding of Fact)