

*Prior Multiple Convictions.* Prior multiple convictions for offenses arising out of the same criminal transaction for which concurrent or consecutive sentences were imposed are scored as a single conviction equal to the statutory classification of the most serious conviction offense. Prior multiple convictions arising out of separate criminal transactions are scored as separate convictions, and each is computed in the prior record score.

Defendant argues that both of his prior convictions for offenses under the Controlled Substance, Drug, Device and Cosmetic Act, 35 Pa. C.S.A. §780-101 et seq., arose out of the same transaction or occurrence and, therefore, merge into one conviction for the purposes of sentencing and grading the current offense under Section 303.7(c). Thus, he contends, this Court should have been prohibited from using this "single" conviction when it computed defendant's prior record score.

Again we disagree. In our judgment Section 303.7(f) only prohibits a sentencing court from considering one and only one conviction when it grades the current offense and when such grading is dependent upon past convictions. To take more than one prior conviction out of the offense gravity score would emasculate the doubler provision of the guidelines because it would require a sentencing court to give the same prior record score to individuals who have been convicted of their fifth or sixth offense of possession with intent to distribute a controlled substance as it would to those who have been convicted of the same offense only twice.

The defendant's interpretation of the statute flies in the face of an obvious legislative intent to double the penalties for repeat offenders. We will not accept it.

We find no errors committed in the pre-trial, trial or post-trial stages of the case at bar.

WALTER V. WALTER, C.P. Franklin County Branch, F.R. 1981 - 962

*Divorce — Counsel Fees*

1. In arriving at counsel fees, local standards as to fees are applied, especially where one party hires counsel from outside the area.
2. Counsel fees may only be awarded for counsel's time spent in conjunction with a divorce action and not for additional time spent on custody and support matters.
3. In an award of counsel fees, consideration should be made of necessity, income, separate estate and earning potential of both parties.

*Courtney J. Graham, Esquire, Counsel for the plaintiff*  
*Lenora M. Smith, Esquire, Counsel for the defendant*  
*David C. Cleaver, Esquire, Master*

MEMORANDUM AND ORDER

Eppinger, P.J., September 7, 1984:

On December 7, 1983, we filed an opinion and order in the above-captioned matter granting a divorce to the plaintiff, J. William Walter, on the grounds of indignities. We also denied the defendant, Judy S. Walter, an award of alimony pendente lite and expenses, but referred back to the Master for further hearing the issue of counsel fees in the divorce action.

Prior to the Master's hearing, defendant appealed our decision to the Superior Court. On May 9, 1984, because the appeal was premature, that Court remanded the cause back to this Court so the Master could hold further hearings as we directed as to counsel fees.

The Master scheduled the hearing for June 8, 1984, at which time plaintiff appeared with his attorney and defendant's attorney appeared, but defendant was not present. In his supplemental report, the Master found that the defendant should be awarded \$1,692.50 in counsel fees.

After making a complete and thorough review of all the evidence available to the Master, *Rorabaugh v. Rorabaugh*, 302 Pa. Super. 1, 11, 448 A.2d 64, 69 (1982), we find no error and accept the Master's recommendation. *Krupa v. Krupa*, 87 Dauphin R. 397, 400 (1967); *Beaver v. Beaver*, \_\_\_ Pa. Super. \_\_\_, 460 A.2d 305, 307 (1983).

In reaching his conclusion as to the award of counsel fees the Master correctly considered several pertinent facts. While it is true that defendant's counsel spent 188.1 hours in all aspects of the domestic problems between the parties, representing a total of \$11,548.00 in fees, travel time, telephone calls, postage, and copying expenses, defendant is not entitled to an award of the entire amount.

First, the total amount is based upon an hourly rate of \$80.00 per hour.<sup>1</sup> But the hourly rate for counsel in domestic actions in Franklin County is \$50.00 per hour. The Master was correct in applying the local rate as local standards are applied in determining an award of counsel fees, especially where one party chooses to hire counsel from outside the immediate locale. *Pyle v. Pyle*, 30 Del. 467 (1941). Counsel fees are to bear a relationship to the parties' station in life and since plaintiff was constrained to hire local counsel, and other competent local counsel was available to defendant, it is only fair that the Master apply the local fee. *Campana v. Campana*, 186 Pa. Super. 472, 475, 142 A.2d 169, 170-171 (1958).

Second, the Master only considered those hours devoted to the divorce action and did not consider those incurred during the custody and support proceedings. In this the Master was correct. Attorney fees may not be awarded in the absence of statutory authorization or a contractual obligation. *Dena Lynn F. v. Harvey H. F.*, 278 Pa. Super. 95, 98, 419 A.2d 1374, 1376 (1980). Section 502 of the Divorce Code, 23 Pa. C.S.A. §101 et seq., permits an award of counsel fees in divorce actions. There is no such authority in support and custody cases. *Paul v. Paul*, 281 Pa. Super. 202, 206-207, 421 A.2d 1219, 1221 (1980).

Further, the Master awarded only those hours in the divorce action from May, 1982, when defendant hired her attorney until January, 1983. At that time, defendant received \$7,973.45 as her share from the sale of the marital home and became employed as a substitute English teacher in the Chambersburg Area School system. At the Master's original hearing there was unchallenged testimony that this substitute job would have developed into the position of permanent substitute, a full-time job. See *Walter v. Walter*, F.R. 1981-962 (C.P. December 7, 1983), pp. 2-3. These factors are significant. In an award of counsel fees the Master is to

<sup>1</sup> Defendant's counsel lives and has her principal office location in Harrisburg, Pennsylvania.



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and John Foltz, Executors under the will of Paul F. Foltz, by deed dated June 1, 1968, recorded in Franklin County, PA Deed Book 626, Page 685, conveyed to the mortgagors herein, updated as to adjoiners and reference to roads.

**TRACT NO. 2: BEGINNING** at a point at or near Route 997 at lands of Letterkenny Army Depot and lands of Zeger; thence by Zeger, North 13 degrees East 10.25 perches to an iron pin; thence by the same North 10 degrees West 12 perches to an iron pin; thence by the same North 10 degrees East 8 perches to an iron pin; thence by the same North 32 degrees East 8 perches to an iron pin; thence by the same North 43 degrees East 6 perches to a post; thence by the same North 43½ degrees West 11.5 perches to an iron pin at the side of the aforesaid now or formerly public road; thence by said road North 2¼ degrees East 23.96 perches to an iron pin; thence North 17 degrees East 13.76 perches to an iron pin; thence by the creek and lands formerly of Christ Myers, now Charles H. and John M. Myers, North 71 degrees East 44 perches to a point on the bank of the creek; thence by lands of Elwood and Lorraine Bowman, South 29 degrees East 28.8 perches to a post; thence by the same North 51 degrees East 48.5 perches to an iron pin; thence by lands now or formerly of George G. Myers and Florence E. Myers, his wife, and lands of Wilbur S. Alexander, South 68¼ degrees East 105.64 perches to a hickory; thence by lands now or formerly of Forest M. Wilson, Jr. and Kathleen Wilson, South 68 degrees East 25.08 perches to a stone; thence by lands now or formerly of Robert Martin, Zola Richardson, Leroy H. Ebersole and Grace W. Ebersole, his wife, Keith Eyer and Delores Eyer, his wife, Paul Fleagle and Doris Fleagle, his wife, and Raymond B. Helman and Mary Helman, his wife, South 26¼ degrees West 106 perches to an iron pin at corner of lands of Raymond B. Helman and Mary Helman, his wife; thence by the latter lands South 43-1/8 degrees East 30.44 perches to an iron pin in Township Route No. 602; thence in said public road South 45 degrees West ¼ of a perch to a point; thence by lands of Robert E. Gettel and Tract No. 3 herein, North 43-1/8 degrees West 79 perches to an iron pin; thence across a lane by Tract No. 3 described below, North 16½ degrees East 1 perch to a stone; thence by Tract No. 3 herein, and a portion of said lane due West 140.1 perches to the point, the place of beginning. CONTAINING 119 acres and 104 perches as shown by draft of John H. Atherton, C.S., dated November 27, 1942, updated as to adjoiners and reference to roads.

**TRACT NO. 3: BEGINNING** at an iron pin in Route 997 (formerly Route 340) probably at the beginning point of Tract No. 2 above; thence by Tract No. 2 above, due East 140.12 perches to a stone; thence by the same, South 16¼ degrees West

1 perch to an iron pin at side of lane; thence by a lane and Tract No. 2 above, South 43 degrees East 46.88 perches to a post; thence by Tract No. 1, South 36 degrees 15 minutes West 48.92 perches to a post; thence by Tract No. 1 North 64 degrees 30 minutes West 22.28 perches to a post; thence by the same South 77-1/8 degrees West 48.66 perches to a stake; thence by lands of Garman and then of Myers, North 50 degrees 45 minutes West 39 perches to a locust; thence by Myers, North 30 minutes East 38.28 perches to an iron pin; thence by the same North 76 degrees 45 minutes East 45.36 perches to the iron pin, the place of beginning. CONTAINING 49 acres and 128 perches as shown by draft of John H. Atherton, C.S., dated November 28, 1956, updated as to adjoiners and reference to roads.

**EXCEPTING AND EXCLUDING THEREFROM, HOWEVER,** those two purparts excepted out of Tract No. 2 herein, containing 8 acres and 112 perches, more or less, and 1.475 acres more or less sold by Joseph A. Myers, et ux to Secrist and Zeger respectively.

THE above described real estate is intended to be the same which Nellie M. Myers, sole, by her deed dated September 15, 1971, recorded in Franklin County Deed Book 665, Page 756, conveyed to the mortgagors herein.

BEING sold as the property of Alfred J. Miller and Helen L. Miller, Writ No. AD 1984-209.

#### TERMS

As soon as the property is knocked down to a purchaser, 10% of the purchase price plus 2% Transfer Tax, or 10% of all costs, whichever may be the higher, shall be delivered to the Sheriff. If the 10% payment is not made as requested, the Sheriff will direct the auctioneer to resell the property.

The balance due shall be paid to the Sheriff by NOT LATER THAN Monday, April 29, 1985 at 4:00 P.M., E.S.T. Otherwise all money previously paid will be forfeited and the property will be resold on Friday, May 3, 1985 at 1:00 P.M., E.S.T. in the Franklin County Courthouse, 3rd Floor, Jury Assembly Room, Chambersburg, Franklin County, Pennsylvania, at which time the full purchase price or all costs, whichever may be higher, shall be paid in full.

Raymond Z. Hussack  
Sheriff  
Franklin County,  
Chambersburg, PA  
3-22, 3-29, 4-5

#### BAR NEWS ITEM

Denis DiLoreto, Chairman, Meetings and Social Events Committee of the Franklin County Bar Association, has announced the scheduling of two social events. They are:

May 3, 1985, Spring Social Dinner (members and spouses), at the Waynesboro Country Club

Sept. 5, 1985, Golf Outing, also at the Waynesboro Country Club.

He suggests that members get these events listed on their calendars now, so as to avoid scheduling conflicts later.

consider the necessity, income, separate estate, and earning potential of each party. *Wiegand v. Wiegand*, 242 Pa. Super. 170, 177, 363 A.2d 1215, 1218 (1976). See also *Young v. Young*, 274 Pa. Super. 298, 302-3, 418 A.2d 415, 417 (1980). Of particular importance here is the fact that it is not only actual earnings which are considered but rather earning potential. *Comm. ex rel. McNulty v. McNulty*, 226 Pa. Super. 247, 250, 311 A.2d 701, 703 (1973). It was undisputed at the previous hearing that defendant would have been offered a permanent substitute position, absent the circumstances leading to her dismissal. See *Walter v. Walter*, supra, p. 4. Therefore, the Master's finding that defendant had sufficient resources after January, 1983, to provide for her own counsel is correct.

The Master properly did not award \$495.00 to defendant for the services of a certified public accountant hired by defendant to review the records of the Walter Development Corporation. No testimony was presented with regard to the bill as it was objected to as being hearsay.

Finally, we note that defendant has filed exceptions to the Master's supplemental report, but all of these were answered in our opinion of December 7, 1983, and supplemental opinion filed on February 2, 1984.

#### ORDER OF COURT

September 7, 1984, defendant's exception to the report of the Master recommending an award of \$1,692.50 to the plaintiff for counsel fees is denied.

IT IS ORDERED that the plaintiff shall pay the defendant the sum of \$1,692.50 as counsel fees in the divorce proceeding.

TURNER V. LETTERKENNY FEDERAL CREDIT UNION  
(NO. 2)\*, C.P. Franklin County Branch, No. 1982-66

*Employment - Wrongful Discharge - Post Trial Relief - Appeal*

1. Where a party limits his objection to a jury charge to one area both at trial and in post-trial motions, he may not expand the objections on appeal.

\* Editor's Note: Earlier opinion reported, supra., p. 69.