

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

MICHAEL Y. OH

Appellee

v.

HELEN J. RHO

Appellant

IN THE SUPERIOR COURT OF
PENNSYLVANIA

No. 1591 WDA 2014

Appeal from the Order Entered September 11, 2014
In the Court of Common Pleas of Allegheny County
Family Court at No(s): FD11-007129-006

BEFORE: GANTMAN, P.J., LAZARUS, J., and MUSMANNO, J.

MEMORANDUM BY GANTMAN, P.J.:

FILED DECEMBER 14, 2015

Appellant, Helen J. Rho ("Wife"), appeals from the order entered in the Allegheny County Court of Common Pleas, directing equitable distribution of the parties' marital property, following bifurcated divorce proceedings. We affirm.

In its opinions, the trial court fully and correctly sets forth the relevant facts and procedural history of this case. Therefore, we have no reason to restate them.

Wife raises the following issues for our review:

WHETHER THE TRIAL COURT COMMITTED AN ERROR OF LAW OR ABUSED ITS DISCRETION IN ITS EQUITABLE DISTRIBUTION SCHEME WHERE IT AWARDED HUSBAND 35% OF THE MARITAL ESTATE DESPITE IDENTIFYING A "HUGE DISPARITY" IN INCOME AND EARNING CAPACITY BETWEEN THE PARTIES, HUSBAND'S ABILITY TO ACQUIRE POST-SEPARATION ASSETS AND THE MODEST VALUE OF

THE TOTAL MARITAL ESTATE IN COMPARISON TO HUSBAND'S YEARLY BASE SALARY?

WHETHER THE TRIAL COURT ERRED WHEN IT DENIED WIFE'S CLAIM FOR EQUITABLE REIMBURSEMENT UPON FACTS OF RECORD WHICH ESTABLISHED THAT HUSBAND, A PROMINENT NEUROSURGEON, EARNED A BASE SALARY OF ONE MILLION DOLLARS THAT ECLIPSED THE VALUE OF THE ENTIRE MARITAL ESTATE (VALUED AT \$685,287) AFTER AN APPROXIMATELY SIXTEEN YEAR MARRIAGE WHEREIN WIFE SUBORDINATED HER PROFESSION ASPIRATIONS FOR THE ADVANCEMENT OF HUSBAND'S MEDICAL CAREER, SERVING AS A HOMEMAKER AND CARETAKER OF THE PARTIES' TWO MINOR CHILDREN?

WHETHER THE TRIAL COURT ERRED WHEN IT ASSIGNED WIFE AN EARNING CAPACITY OF \$56,862 PER YEAR BASED UPON HER ASSUMED ABILITY TO SECURE FULL-TIME EMPLOYMENT AS A LAWYER IN PENNSYLVANIA EVEN THOUGH WIFE HAD NOT WORKED AS A LAWYER SINCE 1996 IN CALIFORNIA AND HAD NEVER EARNED A SALARY NEAR TO THAT WHICH THE TRIAL COURT'S EARNING CAPACITY ASCRIBED TO HER?

(Wife's Brief at 5).

We review equitable distribution matters as follows:

Our standard of review in assessing the propriety of a marital property distribution is whether the trial court abused its discretion by a misapplication of the law or failure to follow proper legal procedure. An abuse of discretion is not found lightly, but only upon a showing of clear and convincing evidence. When reviewing an award of equitable distribution, we measure the circumstances of the case against the objective of effectuating economic justice between the parties and achieving a just determination of their property rights.

Smith v. Smith, 904 A.2d 15, 18 (Pa.Super. 2006) (internal citations and quotation marks omitted). “[I]t is within the province of the trial court to weigh the evidence and decide credibility and this Court will not reverse

those determinations so long as they are supported by the evidence.”
Morgante v. Morgante, 119 A.3d 382, 387 (Pa.Super. 2015).

When a court endeavors to divide marital property equitably, it must take into consideration the factors delineated in Section 3502(a) of the Divorce Code. ***Drake v. Drake***, 555 Pa. 481, 725 A.2d 717 (1999); 23 Pa.C.S.A. § 3502(a) (stating factors which are relevant to equitable division of marital property include: length of marriage; any prior marriage of either party; age, health, station, amount and sources of income, vocational skills, employability, estate, liabilities and needs of each party; contribution by one party to education, training or increased earning power of other party; opportunity for each party for future acquisitions of capital assets and income; sources of income of both parties, including, but not limited to, medical, retirement, insurance or other benefits; contribution or dissipation of each party in acquisition, preservation, depreciation or appreciation of marital property, including contribution of party as homemaker; value of property set apart to each party; standard of living parties established during marriage; economic circumstances of each party at time division of property is to become effective; and whether party will be serving as custodian of any dependent minor children).

The weight to be given to these statutory factors depends on the facts of each case and is within the court’s discretion. We will not reweigh them. We look at the distribution as a whole, in light of a trial court’s overall application of the factors.... In addition we note, the trial court has the authority to divide the award as the equities

presented in the particular case may require.

Busse v. Busse, 921 A.2d 1248, 1260 (Pa.Super. 2007), *appeal denied*, 594 Pa. 693, 934 A.2d 1275 (2007) (internal citations and quotation marks omitted).

“The purpose of equitable reimbursement is to compensate a spouse for his or her fair share of the marital estate when the marital assets are insufficient.” **Dalrymple v. Kilishek**, 920 A.2d 1275, 1279-80 (Pa.Super. 2007). Equitable reimbursement will apply “only when one party has been unjustly enriched by...contributions rendered which exceed that imposed by law.” **Bold v. Bold**, 524 Pa. 487, 494, 574 A.2d 552, 555 (1990) (finding wife entitled to equitable reimbursement for her contributions to husband’s education and earning capacity where wife contributed three times what husband contributed during first five years of marriage because of husband’s pursuit of post-graduate degree, and husband asked wife to move out less than two years after husband obtained degree). **See also Lehmicke v. Lehmicke**, 489 A.2d 782 (Pa.Super. 1985) (finding wife entitled to equitable reimbursement for her contributions to husband’s education and increased earning capacity where wife worked to support husband financially while he earned medical degree, and parties separated less than one year after husband obtained degree). The trial court has broad discretion to determine whether an award of equitable reimbursement is appropriate. **See Dalrymple, supra**, at 1280.

“[T]he determination of earning capacity does not involve the consideration of what one could theoretically earn.” **D.H. v. R.H.**, 900 A.2d 922, 930 (Pa.Super. 2006). Instead, a person’s earning capacity is the amount “the person could realistically earn under the circumstances, considering...her age, health, mental and physical condition and training.” **Gephart v. Gephart**, 764 A.2d 613, 615 (Pa.Super. 2000). “Although a person’s actual earnings usually reflect [her] earning capacity, where there is a divergence, the obligation is determined more by earning capacity than actual earnings.” **Baehr v. Baehr**, 889 A.2d 1240, 1244 (Pa.Super. 2005). “When either party voluntarily assumes a lower paying job, quits a job, leaves employment, changes occupations or changes employment status to pursue an education..., there generally will be no effect on the support obligation.” Pa.R.C.P. 1910.16-2(d)(1). This rule applies even if the court has yet to impose a support order on the parties. **Neil v. Neil**, 731 A.2d 156 (Pa.Super. 1999).

After a thorough review of the record, the briefs of the parties, the applicable law, and the well-reasoned opinions of the Honorable Kim D. Eaton, we conclude Wife’s issues merit no relief. The trial court opinions comprehensively discuss and properly dispose of the questions presented. (**See** Findings of Facts and Conclusions of Law, filed September 11, 2014, at 13; Trial Court Opinion, filed January 20, 2015, at 5-8) (finding: **(1)** distribution of sixty-five percent of marital estate to Wife and thirty-five

percent of marital estate to Husband produces equitable result based on large disparity in parties' income and earning capacity; Wife served as homemaker during most of marriage, has been out of workforce for many years, and has earning capacity of \$56,862.00, while Husband is currently employed with salary of \$1,000,000.00 with potential for bonuses and additional income through investments; Husband has greater opportunity for future acquisition of capital assets and income; Wife made substantial contributions to Husband's education, training and career through her role as homemaker and manager of household, which court considered in its equitable distribution determination; court carefully considered Section 3502(a) factors in rendering award, and acknowledged majority of requisite factors favor Wife; Wife advocated for seventy-five percent of marital estate, but court determined award of sixty-five percent of marital estate to Wife was equitable in light of parties' circumstances; **(2)** marital assets are sufficient to compensate Wife for her contributions to marriage; court considered Wife's marital contributions and amount of marital assets in its decision to award Wife sixty-five percent of marital estate; court did not find evidence of extraordinary contributions to marriage by Wife to justify additional equitable reimbursement award; Wife worked for two years, while Husband finished medical school; for past seventeen years, Wife has performed activities typically associated with homemaker and mother; Wife has enjoyed comfortable lifestyle because of Husband's successful

neurosurgery career, which included membership to country club and lavish vacations; court's decision to award Wife sixty-five percent of marital estate, alimony for five years, and attorney's fees effectuated economic justice in this case; while Wife's contributions to marriage were valuable, her contributions were not so extraordinary as to require additional lump-sum equitable reimbursement award; **(3)** Wife is forty-five years old and in good health, with bachelor of arts degree from American University and juris doctor degree from Fordham University School of Law; Wife passed California bar examination and worked part-time as associate at law firm in California from 1994 to 1995; Wife then worked at Los Angeles District Attorney's office from 1995 to 1996, until parties moved to Pittsburgh in 1996; once in Pennsylvania, Wife passed Pennsylvania bar examination, and subsequently worked at large law firm doing document review until parties' first daughter was born in 1997; since the birth of parties' first daughter, Wife has been full-time homemaker and mother; during marriage, Husband wanted Wife to re-enter workforce once children were in school full-time, but Wife insisted on waiting until children graduate from high school; Wife does not want to continue legal career, and instead would like to obtain master's degree in education with goal of teaching English at inner city school; in order to obtain her desired teaching position, Wife must complete two year master's degree program; Wife's expert testified Wife has earning capacity of \$44,567.00 as teacher once Wife obtains desired degree, and Wife's

earning capacity until she obtains desired degree is \$20,728.00 based on her current skills; Husband's expert contended court should assess Wife's earning capacity based on what Wife could reasonably earn in legal field; Husband's expert opined Wife's current earning capacity as non-licensed attorney is \$56,862.00, and if Wife reinstates her Pennsylvania law license, her earning capacity will increase to \$64,010.00; court rejected opinion of Wife's expert and accepted opinion of Husband's expert based on court's determination that Husband's expert was more credible on earning capacity issue; court further noted that neither Wife's age nor Wife's health precludes Wife from obtaining position in legal field; court concluded that Wife's earning capacity is \$3,784.00 per month based on court's acceptance of testimony of Husband's expert and parties' stipulation that Husband's expert used correct methodology^[1] when he calculated Wife's earning capacity).²

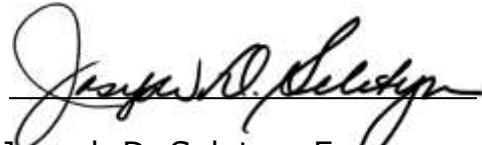
¹ In its opinion, the court states: "The parties stipulated that if the [c]ourt found the opinion of Husband's vocational expert to control, Wife's earning capacity is \$3,784 per month." **See** Trial Court Opinion, filed 1/20/15, at 6. The notes of testimony from the parties' equitable distribution trial reveal Wife's counsel, in fact, stipulated that Husband's expert used the correct methodology when he determined Wife's earning capacity. (N.T. Equitable Distribution Trial, 11/22/13, at 254-55). The trial court determined that the opinion of Husband's expert controlled on the issue of earning capacity; thus, the court correctly determined Wife's earning capacity to be \$3,784.00 per month regardless of the exact stipulation used to reach that result.

² Husband points out in his brief that the court misstates the amount of Husband's pension as \$29,655.00 on page twelve of its Findings of Facts and Conclusions of Law, despite correctly listing the value of the pension as \$50,861.00 on pages nine and eleven. (Husband's Brief, at fn. 2). *(Footnote Continued Next Page)*

The record supports the court's findings. Accordingly, we affirm on the basis of the trial court's opinions.

Order affirmed.

Judgment Entered.

A handwritten signature in black ink, appearing to read "Joseph D. Seletyn". The signature is written in a cursive style and is positioned above a horizontal line.

Joseph D. Seletyn, Esq.
Prothonotary

Date: 12/14/2015

(Footnote Continued) _____

Nevertheless, on page thirteen of the Findings of Fact and Conclusions of Law, the court calculated the sixty-five/thirty-five equitable distribution scheme based on the full value of the marital estate, which included the correct amount of \$50,861.00 for Husband's pension. **See** Findings of Facts and Conclusions of Law, filed 9/11/14, at 13. Thus, the court properly calculated the parties' respective shares of the marital estate despite this typographical error.

**IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA
FAMILY DIVISION**

MICHAEL Y. OH,

NO. F.D. 11-007129-006

PLAINTIFF

V.

**FINDINGS OF FACT
AND ORDER OF COURT**

HELEN J. RHO,

DEFENDANT.

JUDGE KIM D. EATON

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FILED

2014 SEP 11 PM 3:06

**CLERK OF COUNTY RECORDS
FAMILY DIVISION
ALLEGHENY COUNTY, PA**

**IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA
FAMILY DIVISION**

NO. F.D. 11-007129-006

MICHAEL Y. OH,

PLAINTIFF

V.

HELEN J. RHO,

DEFENDANT.

This matter came before the Court to address claims for equitable distribution, alimony and counsel fees. Four days of trial were held on November 22 and 24, 2013, January 15, 2014 and February 5, 2014. The Court heard testimony from Plaintiff Michael Oh (“Husband”), defendant Helen Rho (“Wife”), Joseph Rho, Wife’s Father, and the parties’ expert witnesses. Having considered the testimony of the witnesses and exhibits introduced as evidence, the Court sets forth the following Findings of Fact, Analysis and Order.

FINDINGS OF FACT

BACKGROUND

1. The parties married on November 19, 1994. This was the first marriage for each.
2. Husband was born on June 20, 1967 in South Korea. He is 46 years old.
3. Husband emigrated from South Korea with his family when he was 6. He became a U.S. citizen prior to his marriage.
4. Wife was born on January 2, 1969 in South Korea. She is 45 years old.

5. Wife emigrated with her family when she was 3 and became a naturalized citizen through her parents.
6. The parties separated in December 2009 when Husband moved in the basement of the marital residence and the parties ceased having intimate relations.
7. The parties' daughter, T.O., was born on November 28, 1997 and is 16 years old. The parties' daughter, A.O., was born on June 29, 1999 and is 15 years old.
8. Both children are full time students attending Sewickley Academy, in the 10th and 9th grades, respectively.
9. Husband is currently the Director of the Neurosurgery Program at Allegheny General Hospital ("AGH").

EXPERT TESTIMONY

10. Husband's expert witness for valuation of his retirement assets was Lawrence J. Sipos ("Sipos").
11. Wife's expert witness for valuation of Husband's 403B account and his 2014 net disposable income was Beth Mascetta. ("Mascetta")
12. Husband's expert witness for business valuation and for Wife's net disposable income was David Kaplan ("Kaplan").
13. Husband's expert witness for the evaluation of Wife's earning capacity was Celia Evans. ("Evans")
14. Wife's expert witness for evaluation of Wife's vocational interests and her earning capacity was Karen Litzinger ("Litzinger").

HUSBAND'S EDUCATION

15. Husband graduated from medical school in 1996 and began a six year internship/residency program with Allegheny General Hospital (AGH).
16. During Husband's internship year in 1996-1997, Wife primarily managed household duties and finances.
17. Husband earned between \$35,000 and \$55,000 during his six-year program with AGH.

HUSBAND'S WORK HISTORY

18. At the end of Husband's residency with AGH, he began looking for his first job. He and Wife discussed extensively which city and which program would be best for them and their family.

19. The parties decided on Columbia, Missouri and Husband worked there as an attending physician from 2002 through 2005.
20. The parties decided to return to Pittsburgh and Husband accepted employment with The Neurosurgery Group beginning in 2005.
21. Several years later Husband went to work at AGH which became West Penn Allegheny Health System ("WPAHS").
22. Husband entered into a 5 year employment contract with Highmark when it took over WPAHS.

WIFE'S EDUCATION

23. Wife graduated from American University in Washington, D.C. in 1990 with a B.A. degree in international studies.
24. Wife graduated from Fordham University School of Law in 1993.
25. When the parties married, Wife had a J.D. degree and Husband had two remaining years of medical school.
26. Wife asserted that she wants to obtain a M.A. in English. To-date she has not done so, and has only recently enrolled in a certificate program to teach English as a foreign language.

WIFE'S WORK HISTORY

27. Wife passed the California bar exam.
28. Wife worked as an associate attorney for Shaub & Williams from 1994-1995.
29. Wife left Shaub & Williams to find a better paying job with benefits and to obtain transferable employment skills.
30. Wife was employed by the office of the Los Angeles District Attorney from 1995-1996 with a salary of \$30-\$40,000.
31. In 1996, Wife left her position with the District Attorney and moved to Pittsburgh with Husband.
32. Wife took and passed the PA bar exam.
33. Wife secured temporary employment through an employment agency with a large Pittsburgh law firm reviewing documents in relation to a big litigation case.
34. Wife has not been employed outside the home since 1997.

HUSBAND'S CURRENT INCOME

35. Husband's net monthly disposable income for 2012 was \$64,268.
36. Husband's net monthly disposable income for 2013 was \$48,819.

37. Husband holds the title of Director of Neurosurgery Program for AGH. He is also the Co-Director of the Neuro-modulation Program. He holds the academic rank of Associate Professor.
38. Husband signed an employment agreement on September 12, 2013 with a base annual salary of \$1 million dollars.
39. Under his employment agreement, Husband earns a bonus for exceeding his relative value unit (RVU) which is calculated using certain criteria benchmarks.

WIFE'S EARNING CAPACITY

40. Since separation, Wife has made no employment search of any kind.
41. Wife has no definite employment plan.
42. Counsel stipulated that if this Court finds the earning capacity evaluation of Evans to control, then Wife's net monthly income is \$3,784. This Court finds that Evans earning capacity evaluation applies, so Wife's net monthly income is found to be \$3,784.
43. When the parties returned from Missouri to Pittsburgh in 2005, the children were both in school full time. T.O. was in second grade and A.O. was in first grade.
44. The parties continued to have discussions about Wife returning to work in 2007 through 2009. Husband felt that it would be good for Wife, good for the children and good for the family finances if Wife were to go back to work. Wife wanted to re-enter the workforce after the children completed high.
45. Each party presented expert testimony regarding Wife's earning capacity.
46. Wife's expert, Litzinger, is a vocational counselor. Her education emphasis has been on career education.
47. Litzinger was contracted to perform a vocational evaluation as well as an analysis of Wife's earning capacity.
48. Litzinger considered positions for Wife of middle school teacher, family and school social worker or vocational and school counselor.
49. Litzinger's evaluation did not take into consideration Wife's legal education, work history and two state law licenses. Litzinger did not even list Wife's Pennsylvania bar license in her report.
50. Husband's expert Evans testified that it made the most sense for Wife to utilize her legal education and skills and re-enter the legal profession. Since separation, Wife has made no employment search of any kind.
51. Wife has no definite employment plan.

52. Counsel stipulated that if this Court finds the earning capacity evaluation of Evans to control, then Wife's net monthly income is \$3,784. This Court finds that Evans earning capacity evaluation applies, so Wife's net monthly income is found to be \$3,784.
53. When the parties returned from Missouri to Pittsburgh in 2005, the children were both in school full time. **T.O.** was in second grade and **A.O.** was in first grade.
54. The parties continued to have discussions about Wife returning to work in 2007 through 2009. Husband felt that it would be good for Wife, good for the children and good for the family finances if Wife were to go back to work. Wife wanted to re-enter the workforce after the children completed high.
55. This Court accepts Evans' opinion that Wife has an earning capacity of \$56,862 per year as a lawyer.
56. This Court finds that Husband's expert is more credible than Wife's expert on the issue of Wife's earning capacity.

SUPPORT

57. The parties have shared custody.
58. Husband and Wife agreed that husband would pay \$20,000 per month for the support of Wife and the children. The parties arrived at this amount based upon Wife's determination of her needs and the needs of the children.
59. The \$20,000 amount has been sufficient to cover Wife's needs
60. In addition, Husband agreed to pay the children's Sewickley Academy tuition of \$20,000 per child, and all other school expenses.

NEEDS

61. Wife provided a budget for review (Ex. "Q").
62. This Court finds that Wife's budget is not an accurate portrayal of her needs, as will be discussed.

MARITAL ESTATE

63. **Residence:** The parties' are joint owners of a former marital residence located at 630 Canterbury Lane, Sewickley, PA 15143 ("Residence").
 - a.) For purposes of equitable distribution, this Court finds that the Residence has a fair market value of \$900,000.
 - b.) The Residence is encumbered by a Joint S&T Mortgage.
 - c.) For purposes of equitable distribution, this Court finds that the outstanding balance on the Mortgage is \$761,406.64.

d.) Costs of sale: For purpose of equitable distribution, this Court applies a 7% cost of sale to the residence, which calculates to \$63,000.

64. **NSC:** Husband has an 8.10714% interest in an entity known as NSC Partners, LLC (“NSC”), an Iphone software company that has generated no income for him.

65. For purposes of equitable distribution, this Court finds that the marital fair market value of NSC is \$0.

66. **Oh Medical LLC:** Husband is the owner of an entity known as Oh Medical LLC, an entity formed for medical/legal consulting work.

67. The only asset owned by this entity is a checking account with a balance of \$6500.

68. For purposes of equitable distribution, this Court finds that Oh Medical LLC has a marital fair market value of \$6,500.

69. **NI:** Husband is the owner of an entity known as Neurosurgery Innovators, LLC (“NI”), an entity formed so Husband and his partners could use their industry and academic sources to broker projects.

70. NI has been inactive for three years.

71. For purposes of equitable distribution, this Court finds that the marital fair market value of NI is \$0.

72. **IPT:** Husband is a 25% owner of an entity known as Innovative Performance Technologies, Inc (IPT”), an entity formed to bring a researcher over to AGH from UPMC.

73. AGH did not have money to fund research so Husband and 3 others formed IPT to accomplish this.

74. There is a service agreement between IPT and AGH. IPT reimburses AGH for payroll.

75. The marital fair market value pre-tax is \$51,596. The marital fair market value post-tax \$44,449. For purposes of equitable distribution, this Court finds that the marital fair market value of IPT is \$44,449.

76. **WPAHS 403(b):** Husband is a participant in the West Penn Allegheny Health System 403(b) #0514.

77. The marital fair market value of the WPAHS 403(b) pre-tax is \$109,403. The marital fair market value post-tax is \$88,912. For purposes of equitable distribution, this Court finds that the marital fair market value of the WPAHS 403(b) is \$88,912.

78. **WPAHS Pension:** Husband is a participant in the West Penn Allegheny Health System Pension #3473

79. The marital fair market value of the WPAHS Pension pre-tax is \$62,583. The marital fair market value of the WPAHS Pension post-tax is \$50,861. For purposes of equitable distribution, this Court finds that the marital fair market value of the WPAHS Pension is \$50,861.

80. **Hefren Tillotson IRA:** Husband is the owner of a Hefren Tillotson IRA #3668.

81. The Hefren Tillotson IRA was established during the marriage and no contributions or withdrawals took place after separation.

82. The marital fair market value of the Hefren Tillotson IRA pre-tax is \$71,565.26. The marital fair market of the Hefren Tillotson IRA post-tax is \$58,161. For purpose of equitable distribution, this Court finds that the marital fair market value of the Hefren Tillotson IRA is \$58,161.

83. **Vanguard IRA:** Wife is the owner of a Vanguard IRA # 4113.

84. For the purposes of equitable distribution, this Court finds that the marital fair market value of the Vanguard IRA #4113 is \$2,381.

85. **Joint PNC Checking:** The parties are the owners of a Joint PNC Checking Account #3947.

86. This Court finds that the balance on the Joint PNC Checking Account #3947 on July 21, 2010 was \$8,867.54 and that Wife received these funds.

87. **Joint S&T Checking:** The parties are the owners of a Joint S&T Checking Account #7480.

88. For the purposes of equitable distribution, this Court finds that the marital fair market value of the Joint S&T Checking Account #7480 is \$29,056, and that Wife received the funds in this account.

89. **Joint S&T CMA:** The parties are the owners of a Joint S&T Cash Management Account #5347 ("Joint S&T CMA").

90. The balance of the Joint S&T CMA at separation was \$81,666.98.

91. Wife withdrew \$40,000 from this account on March 9, 2011.

92. Husband withdrew \$67,723.55 after separation but put it right back at the request of Wife.

93. This Court finds that Wife received the funds in this account.

94. The total Wife has received from the Joint S&T Cash Management Account #5347 is \$121,666.98.

95. **Wife's PNC Checking:** Wife is the owner of a PNC Checking Account #7218.

96. This account was opened post-separation.

97. Wife made a series of \$10,000 deposits into this account post-separation, totaling \$50,000. The source of the deposits was from marital funds.

98. This Court finds that \$50,000 of marital funds was deposited by Wife into this account post-separation.

99. For purposes of equitable distribution, this Court finds that the marital fair market value of the PNC Checking Account #7218 is \$50,000 and that Wife received these funds.

100. **Wife's PNC MMA:** Wife is the owner of a PNC Money Market Account #1115 (PNC MMA”).

101. Wife deposited the \$106,130.74 proceeds of a marital CD into this account post-separation.

102. The \$106,130.74 originated from a savings CD owned by the parties prior to separation.

103. This Court finds that Wife deposited \$106,130.74 from a marital PNC Certificate of Deposit #5717 into this account post-separation.

104. For the purposes of equitable distribution, this Court finds that the marital fair market value of the PNC MMA is \$106,130.74, and that Wife received these funds.

105. **Clearview Account:** Wife is the owner of a Clearview Account #5160.

106. This Court finds that the marital fair market value of the Clearview Account #5160 is \$54,163.

107. **Mazda:** The parties were the owners of a jointly titled 2008 Mazda CX9, which Wife traded in.

108. This Court finds that the marital fair market value of the 2008 Mazda CX9 is \$14,250, and that Wife received the value of this car through trade in.

109. **Furnishings:** Husband did not remove any furnishings from the residence when he physically moved out.

110. Husband's opinion of the fair market value of the furnishings in the Residence is \$10,000.

111. This Court finds that the marital fair market value of the furnishings in the Residence is \$10,000 and that Wife received the furnishings.

112. **Cemetery Plots:** The parties are the owners of two Forest Lawn Memorial Park Cemetery plots.

113. The marital fair market value of the cemetery plots is \$31,050, and Husband will be assigned this asset.

114. **School Loans:** The current outstanding balance of Husband's Sallie Mae educational loan is \$86,169.94.

NON-MARITAL ESTATE

115. Husband is the owner of a 2008 Toyota 4 Runner. This has been Husband's work vehicle. It currently has 122,000 miles, and is a bare bones model. The car is going to T.O. for her 16th birthday.

116. This Court finds that the marital fair market value of the 2008 Toyota 4 Runner is \$12,143 and that the parties intend it to be a gift to the daughter, and will not be included in marital property.

117. Husband acquired his current residence, 510 Peebles Street, post-separation and with his personal post-separation funds.

118. Wife's parents gifted her one-third interest in a condominium located in Los Angeles, California.

119. Clearview CD #2716 (i/t/f T.O.), and Clearview CD #2717 (i/t/f A.O.), each worth \$25,567, are not marital assets and are for the children.

120. S&T CD #9153 (i/t/f A.O.) with a value of \$105,262, and S&T CD #9161 (i/t/f T.O.) with a value of \$ 108,005 were funded with pre and post separation funds for the education of the children.

121. It was a priority during the marriage for Husband and Wife to spend money funding the children's educations. (1/15/14 p.106)

122. During the early years of the marriage, Wife's Father was very generous with the parties and supplemented their income and bought Husband a car.

123. Wife's Father found himself in financial trouble and, with Husband's consent, Wife gave him \$100,000 from marital funds.

124. Husband did not object to the transfer of money, did not request any formal documentation and never raised the issue with Wife's Father.

125. Wife's Father testified that he considered the transfer to be one family member helping out another during a time of need with no consideration of repayment.

126. The Court finds that the \$100,000 transfer to Wife's Father was a gift.

ANALYSIS

Based upon the foregoing findings of fact, the marital property consists of the following:

Marital Property

	Value
1.) Joint Marital Residence 630 Canterbury Lane Sewickley, PA 15143	\$ 63,000

2.) Husband's NSC Partners LLC	0
3.) Husband's NI	0
4.) Husband's IPT.	\$ 44,449
5.) Husband's Oh Medical LLC	\$ 6,500
6.) Husband's WPAHS 403 (b)	\$ 88,912
7.) Husband's Pension	\$ 50,861
8.) Husband's Hefren Tillotson IRA # 3668	\$ 58,161
9.) Wife's Vanguard IRA # 4113	\$ 2,381
10.) Jt - S&T Bank Checking # X 7480 #X5347	\$ 29,056 \$121,668
11.) Jt PNC Account # 3947	\$ 8,868
12.) Wife's Clearview Savings	0
13.) Wife's PNC MMA #1115	\$ 106,131
14.) Wife's PNC checking Account #7218	\$ 50,000
15.) Mazda CX 9	\$14,250
17.) Furnishings	\$ 10,000
18.) Cemetery Plots	\$ 31,050
Total	\$685,287

The parties have the following assets in their possession

Wife

Marital residence	\$63,000
Vanguard IRA	\$2,381
Joint PNC Checking # 3934	\$8,868
Jt. S & T Checking # 7480	\$29,056
Jt. S & T Cash Management Account	\$121,668
PNC Checking	\$50,000
Wife's PNC Money Market Account	\$106,131
Mazda CX9	\$14,250
Furnishings	\$10,000
Total	\$405,354.

Husband

Husband's interest in IPT	\$44,449
Oh Medical LLC	\$6,500
WPAHS 403 (b)	\$88,912
Cemetery Plots	\$31,050
Husband's Hefren Tillotson IRA # 3368	\$58,161
Husband's Pension	\$29,655
Total	\$ 258,727

Equitable Distribution

The Court finds that a 65/35 distribution in Wife's favor is required to produce an equitable result. The majority of factors to be considered in equitable distribution favor Wife. The most important factors to the Court are those concerning the financial circumstances of the party at time of separation. There is a huge disparity in income and earning capacity. Wife has been out of the work force for many years and has an earning capacity of \$56,862. Husband is currently employed at a salary of \$1 million with potential for additional income through a bonus. He is invested in other businesses. He has a greater opportunity for future acquisition of capital assets and income. The Court also considered Wife's contribution to Husband's education, training and increased earning capacity and her role as a homemaker. Wife devoted her time to raising the children and managing the finances and the household so that Husband could devote time to his career. Accordingly, the Court finds a 65/35 distribution in Wife's favor to be appropriate.

The total marital estate is \$685,287. Wife's 65% is \$445,436. Wife has either received or has in her possession marital assets valued at \$405,354. In order to effectuate the distribution, Husband shall pay to Wife the sum of \$40,082 within thirty (30) days.

In addition, the Court finds that Husband shall be fully responsible for any outstanding amounts on his student loans.

Alimony

Alimony for Wife is a major point of contention between the parties. Although alimony is a secondary remedy, an award is appropriate to a party who lacks sufficient property to meet her needs and is unable to be self-supporting through appropriate employment. The Court carefully considered all relevant factors and finds that an award of alimony is necessary. Economic justice and Wife's reasonable needs cannot be achieved by way of an equitable distribution award. Wife has been out of the work force for 16 years. Should she decide to reenter the legal profession, she will need time to catch up on her CLE credits. Should she decide to change careers entirely, she will need time for additional education. In either case, Wife is entitled to alimony for a reasonable period of time to facilitate her reentry into the workforce.

The Court carefully reviewed Wife's budget (Exhibit Q) which unfortunately includes expenses for the children. Many of the expenses which are attributable to Wife are non-recurring, inflated, or significantly higher than the parties' lifestyle during the marriage. Accordingly, the

Court has done its best to determine Wife's reasonable needs. Based on the evidence presented at trial, the Court makes the following adjustment to Wife's budget:

Shelter

Mortgage 2532 (reduced by 1/2)

Food and Household Products

Groceries 267 (reduced by 2/3)

Dining out 400 (reduced by 1/2)

Utilities

308 (total reduced by 1/2)

Cellular 70 (reduced by 2/3)

Home Maintenance

568 (total reduced by 1/2)

Housekeeping

200 (amount incurred during the marriage)

Clothing

Helen's 800 (reduced to reflect spending during marriage.)

Shoes 300 (reduced to reflect spending during marriage.)

Jewelry and Accessories 100 (reduced to reflect spending during marriage.)

Automobile/ Fuel

200 (reduced to reflect spending during marriage.)

Medical Expenses

Dental 0 (covered by insurance)

Dermatological medical peel 50 (Wife only used the procedure a few times per year during the marriage)

Contacts 50 (Wife claim is inflated)

Counseling 0 (Counseling is over)

Myofacial tens unit 0 (non-recurring)

Personal Grooming

Personal trainer 0 (Testimony revealed Wife does not pay her personal trainer)

Travel 1000 (Wife's claim is over inflated.)

Many of the trips are paid for by Wife's family.)

Membership Clubs

Country Club Charges	200	(Claimed expense is for Wife's and two children dues portion remains.)
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Recreational Expense

Books, CD, Game Cartridge	10	(It is doubtful that Mother pays the amount listed which are clearly related to the children.)
Netflix	8	
Charitable Contributions	200	(Wife's claim is inflated)

With the budget readjusted based on evidence presented, Wife's reasonable needs without educational expenses amount to \$11,687.00 per month. The parties stipulated that if the Court accepted Evans' earning capacity, Wife's net income would be \$3,784. Accordingly, Husband shall pay to Wife the sum of \$7,900 per month beginning October 1, 2014.

The Court has not granted any additional funds for Wife's new education plan. Wife has a law degree and has passed the Pennsylvania Bar. If Wife has determined that she does not want to pursue this career, without making any attempt to determine if she can come back in the profession, the Court can only conclude that Wife has decided that she does not want to be a lawyer and wishes to find a more fulfilling career. The Court does not feel Husband has an obligation to pay for Wife to seek a new career.

Additionally, Wife's alimony award presumes that Husband will continue to pay all the children's educational expenses. In the event Husband seeks contribution from Wife for the children's educational expenses, and his request is granted, that will be considered a change in circumstances on Wife's part and she may seek a modification of alimony.

The Court finds that alimony shall continue for a period of five (5) years modifiable by law. The parties have been separated for 4½ years. Although the children are teenagers and the parties share custody, Wife has done little to find employment: Wife testified that she intended to return to work when the youngest child graduated from high school. Within five (5) years, the youngest child will almost be through college (and the Court presumes that Husband will be paying for college, but does not order him to do so). By that time, Wife should be self-sufficient.

Counsel Fees

The Court awards Wife the sum of \$35,000 in counsel fees and expert fees. Those fees are based solely on the disparity in the parties' earnings, and not as a result of any wrong doing on the part of Husband. This was an expensive case to try and Wife did not include a monthly lawyer fee expense on her budget. The Court carefully considered the amount of time it would take Wife to become self-sufficient and in the event Wife had to dig deeply into her assets; the timetable would have been longer.

Accordingly, the Court enters the following order.

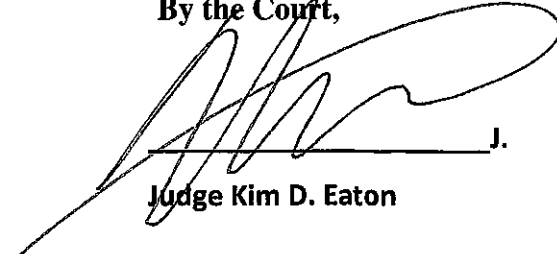
**IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA
FAMILY DIVISION**

MICHAEL Y. OH,) **No. F.D. 11-007129-006**
PLAINTIFF)
VS.)
HELEN J. RHO,)
DEFENDANT)

ORDER

AND NOW, to wit, this 11th day of September, 2014, after trial of equitable distribution, alimony, and counsel fee issues, it is hereby ORDERED, ADJUDGED AND DECREED as follows:

1. The parties shall divide marital property as discussed in the background sector of this order. Each party shall sign and exchange any documents necessary for any transfers. Transfers shall be made within 60 days unless otherwise noted.
 2. Husband shall pay to Wife the sum of \$40,083 within thirty (30) days.
 3. Beginning October 1, 2014, Wife shall receive the sum of \$7,900 as alimony. This payment shall continue for a period of five (5) years, and shall be modifiable by law.
 4. Husband shall pay to Wife the sum of \$35,000 as counsel fees within sixty (60) days.
- All other claims are dismissed. This Order shall be considered a final, appealable order.

By the Court,


Judge Kim D. Eaton

**IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA
FAMILY DIVISION**

MICHAEL T. OH,

PLAINTIFF

VS.

HELEN J. RHO,

DEFENDANT

NO. F.D. 11-007129-006

SUPERIOR COURT # 1591 WDA 2014

OPINION BY:

JUDGE KIM D. EATON

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FILED

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**DEPT. OF PUBLIC RECORDS
CIVIL/FAMILY DIVISION
ALLEGHENY COUNTY PA**

**IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA
FAMILY DIVISION**

MICHAEL Y. OH,

NO. F.D.11-007129 -006

PLAINTIFF

VS.

HELEN J. RHO,

DEFENDANT

OPINION

Kim D. Eaton, Judge

Date 1/20/15

Defendant Helen J. Rho (Wife) appeals from this Court's Order of September 11, 2014 addressing claims for equitable distribution, alimony, and counsel fees.

Wife and plaintiff Michael Y. Oh (Husband) were married on November 19, 1994. At time of trial, Husband was 46 and Wife was 45. Both were born in South Korea and are now U.S. citizens. The parties have two daughters -- **T.O.**

born November 28, 1997, and **A.O.**, born June 29, 1999. Husband graduated from medical school in 1996. He is currently employed as the Director of Neurosurgery at Allegheny General Hospital (AGH) and recently signed an employment contract with a base annual salary of \$1 million. Wife attended American

University and graduated from Fordham University School of Law in 1993. She worked as an associate attorney for a law firm in California from 1994-1995 and the Los Angeles District Attorney from 1995-1996. When the parties moved to Pennsylvania in 1996, Wife took and passed the Pennsylvania bar exam and obtained employment through a temporary agency reviewing documents in connection with major litigation at a large law firm. She has not worked outside the home since T.O. was born in 1997.

Four days of trial were held on November 22, 2013, November 25, 2013, January 15, 2014 and February 5, 2014. In addition to the parties, the Court heard testimony from Wife's Father, Wife's forensic accountant, Beth Mascetta, Husband's forensic accountant, David Kaplan, Husband's pension evaluator, Lawrence Sipos, Wife's vocational expert, Karen Litzinger and Husband's vocational expert, Celia Evans. The Court issued its Findings of Fact and Order on September 11, 2014 awarding Wife 65% of a marital estate valued at \$685,287. The Court awarded alimony to Wife of \$7,900 per month for five years based on an earning capacity of \$3784 and reasonable needs of \$11,687 per month. Wife was awarded counsel fees of \$35,000.

Wife timely appealed, and, in response to an Order issued pursuant to Pa.R.A.P. 1925(b), filed a Concise Statement of Matters Complained of on Appeal raising the following assignments of error:

1. The Court erred when it determined that Wife had an earning capacity of \$56,862 as a lawyer despite no evidence of any available positions and the fact that Wife had not worked since 1997.

2. The Court erred in its calculation and determination of Wife's earning capacity with no evidence that Wife could realistically earn this amount in the relevant job market.
3. The Court erred in adopting the opinion of Husband's vocational expert which was not supported by any facts or realities of the job market and Wife's training.
4. The Court erred by not adopting the opinion of Wife's vocational expert.
5. The Court erred by failing to award Wife a lump sum equitable reimbursement to make up for the disparity in income between the parties.
6. The Court erred by failing to award Wife a lump sum equitable reimbursement based on the findings.
7. The Court erred by awarding Wife only 65% of the marital estate given the huge disparity in income and earning capacity and his opportunity to accumulate assets.
8. The Court erred in the duration and amount of alimony in light of the parties' earnings and earning capacities, the standard of living during the marriage, the duration of the marriage and Wife's contributions as homemaker.
9. The Court erred in the calculation of Wife's reasonable needs.
10. The Court erred by decreasing Wife's budgetary expenses.
11. The Court erred by failing to award Wife rehabilitative alimony pursuant to her re-entry into the workforce.
12. The Court erred by valuing the marital assets in Wife's possession as of a date that did not correlate with the Court's separation date.

13. The Court erred in calculating the values of the marital assets in Wife's possession.

14. The Court erred in calculating the total value of the marital assets in Wife's possession.

The first four matters are addressed to the Court's determination of Mother's earning capacity. Earning capacity is defined as the amount which a person could realistically earn under the circumstances, considering age, education, training, health, work experience and earnings history. Pa.R.Civ.P. 1910.16-2(d)(4); Gephart v. Gephart, 764 A.2d 613 (Pa. Super. 2000). The facts are not in dispute. Mother is 45 years old and in good health. She graduated from American University in Washington, D.C. in 1990 with a B.A. degree in International Studies. She graduated with a J.D. from Fordham University School of Law in 1993. Wife passed the California Bar and worked as an associate attorney for the firm of Shaub & Williams from 1994 to 1995. She left there to go to work at the Los Angeles District Attorney's Office earning approximately \$40,000. The parties moved to Pittsburgh in 1996. Wife took and passed the Pennsylvania Bar and secured employment through a temporary agency working for a large Pittsburgh firm reviewing documents on a major litigation matter. When T.O. was born in 1997, Wife quit working outside the home. Since that time, Wife has devoted her time to being a full time homemaker and mother. Husband wanted Wife to re-enter the work force when both children were in school full time, but Wife preferred to wait until they graduated from high school. Wife does not intend to continue her career as a lawyer. She wants to teach middle school English in an inner city such as New York, Washington D.C. or Los Angeles. Before she can apply for such positions, she must complete a two-year Master's

program followed by a one-year apprenticeship. According to Wife's expert, Wife has an earning capacity of \$44,567 as a middle school teacher. Until she is fully educated and completes her apprenticeship, Wife's expert opined that her earning capacity is \$20,728, based on median level wages in food service, food preparation, retail sales or as a receptionist.

Husband's expert, Celia Evans, testified that with Wife's law degree, training, experience and skills, she should be assessed an earning capacity based on what she could reasonably earn in the legal field. Wife previously worked as a law clerk, associate attorney, Deputy District Attorney and legal document reviewer. She successfully passed the bar in two states. According to Dr. Evans, the occupational area that holds the best earning potential for Wife currently is as a non-licensed attorney with a full-time mean earning capacity of \$56,862 a year. If Wife were to take action to reinstate her Pennsylvania law license, she would have a full time earning capacity of at least \$64,010.

The Court rejected the opinion of Wife's expert and accepted the opinion of Dr. Evans. The Court found Husband's expert to be more credible than Wife or her expert on this issue. The Court is aware that an earning capacity must be realistic rather than theoretical. Mother's education, training, work experience and earnings history are all in the legal field. There is nothing in her age or health which precludes her from obtaining a position in that field. Based on the evidence presented at trial, it was not appropriate to assess her with a near minimum wage earning capacity in the areas of food preparation, food services, retail sales, or working as a receptionist. The parties stipulated that if the Court found the opinion of Husband's vocational expert to control, Wife's earning capacity is \$3,784 per month.

In the fifth matter, Mother contends that the Court erred by not awarding her a lump-sum amount for equitable reimbursement. The judicially created doctrine of equitable reimbursement is a method of compensating a spouse for his or her extraordinary contributions to the marriage where the marital assets are insufficient to do so. Schenk v. Schenk, 880 A.2d 633, 640 (Pa. Super. 2005). Here, the marital assets are sufficient to compensate Wife for her contributions to the marriage and were the key factor in the Court's decision to award her 65%. The Court did not find evidence of extraordinary contributions justifying an additional award. Wife worked for two years while Husband was completing medical school. For the past 17 years, she performed activities typically associated with a homemaker and mother, such as handling the finances, managing the household, caring for the children, participating in social events, and assisting Husband in career and business matters. Wife enjoyed a comfortable lifestyle as a result of her Husband's successful career, including membership in prestigious country clubs and lavish vacations. The Court was able to effectuate economic justice in this case through awarding Wife 65% of the marital estate, alimony for five years and an award of attorneys' fees. Her contributions to the marriage, although certainly valuable, were not so extraordinary as to require any additional lump sum.

Matters 6 and 7 are directed to the amount Wife was awarded in equitable distribution. Wife advocated for 75% of the marital estate. The Court carefully considered the requisite factors in rendering an award in equitable distribution. The majority of factors favor Wife. The most important factors are those concerning the financial circumstances of the parties at time of separation. There is a large disparity in income and earning capacity. The Court considered the time Wife devoted to raising the children and managing the household and finances so that Husband could devote time to

his career. The Court determined that an award of 65% of the marital estate was equitable.

Matters 8 through 11 complain that the amount and duration of Wife's alimony award are insufficient to meet her reasonable needs. The provisions for alimony are set forth in 23 P.S. § 501(a)-(c). In pertinent part, the law states as follows:

(A) The Court may allow alimony, as it deems reasonable, to either party, only if it finds that the party seeking alimony:

- (1) lacks sufficient property, including but not limited to any property distributed pursuant to Chapter 4, to provide for his or her reasonable needs; and
- (2) Is unable to support himself or herself through appropriate employment.

(B) 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 it would be inappropriate for a party, because said party will be custodian of a minor child, to seek employment outside the home.
- (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; however, the marital misconduct of either of the parties during separation subsequent to the filing of a divorce complaint shall not be considered by the Court in its determinations relative to alimony.

(C) Unless the ability of the party seeking the alimony to provide for his or her reasonable needs through employment is substantially diminished by reason of age, physical, mental or emotional condition, custody of minor children, or other compelling impediment to gainful employment, the Court in ordering alimony shall limit the duration of the order to a period of time which is reasonable for the purpose of allowing the party seeking alimony to meet his or her reasonable needs by:

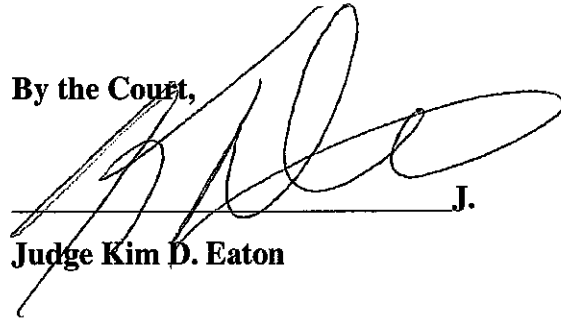
(1) Obtaining appropriate employment; or

(2) Developing an appropriate employable skill.

The Court determined that economic justice and Wife's reasonable needs could not be achieved solely through equitable distribution so that alimony was appropriate in this case. At time of trial, Wife had been out of the workforce for 16 years. She needs time to either reinstate her law license or prepare for a career in education. The parties had been separated for 4 ½ years at time of trial. During that time Wife did little to find employment or render herself employable. The Court determined that an additional 5 years was sufficient. Alimony is in addition to the amount Husband is paying in child support and takes into consideration that Husband will continue to pay all educational expenses for the children. Wife does not specify which of the budget items the Court improperly reduced or rejected. In its Findings of Fact, the Court set forth, specifically the basis for every modification to the budget. The Court based the award on a budget with reasonable needs of \$11,687. This amount is sufficient to meet all here reasonable and necessary expenses.

In her last three matters, Wife asserts that the valuation of marital assets in Wife's possession does not correspond with the date of separation. Wife did not identify which of the many assets in her possession were erroneously valued or provide a basis for the alleged error. For the foregoing reasons, the Court's award of equitable distribution, alimony and counsel fees appropriately effectuated economic justice under the evidence presented.

By the Court,

A handwritten signature in black ink, appearing to read "K. Eaton", is written over a horizontal line. The signature is stylized and cursive.

Judge Kim D. Eaton