

Lebanon County Legal Journal

The official legal periodical for Lebanon County
containing the decisions rendered in the 52nd Judicial District

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No. 13

Public Notices

**DECEDENTS' ESTATES
ORPHANS' COURT DIVISION NOTICES
MORTGAGE FORECLOSURE**

Opinion

Jennifer S. Scipioni v. Luke Todd Scipioni No. 2004-20766

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**Paul W. Kilgore, Esq., Chair
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DECEDENTS' ESTATES

NOTICE IS HEREBY GIVEN that Letters Testamentary or of Administration have been granted in the following estates. All persons indebted to the said estate are required to make payment, and those having claims or demands to present the same without delay to the administrators or executors named.

FIRST PUBLICATION

ESTATE OF PAUL E. GINGRICH, late of Annville Township, Lebanon County, PA, deceased. Letters Testamentary have been granted to the undersigned Executrix.

Julie L. Ditmer, Executrix
141 School House Road
Palmyra PA 17078

ESTATE OF MAURICE J.A. MARKWORTH, late of North Londonderry Township, Lebanon County, PA, deceased. Letters Testamentary have been granted to the undersigned Executor.

Robert A. Markworth, Executor
505 Aurora Hills Drive
Eules TX 76039

Or to

James H. Turner, Esquire
Turner and O'Connell
4701 North Front Street
Harrisburg PA 17110

ESTATE OF W. ANN PORTER, a/k/a Winifred Ann Porter, late of the Township of Jackson, County of Lebanon and Commonwealth of Pennsylvania, deceased, have been granted to the undersigned Executors.

Pamela A. Bell, Executor
680 Shirksville Road
Jonestown, PA 17038

Timothy R. Porter, Executor
510 Hill Road
Robesonia, PA 19551

William H. Sturm, Jr., Esquire
Steiner & Sandoe, Attorneys

ESTATE OF ROY R. RUDY, late of Bethel Township, Lebanon County, PA, deceased. Letters Testamentary have been granted to the undersigned Executrix.

Diana L. Smith, Executrix
c/o Zimmerman Law Office
466 Jonestown Road
Jonestown PA 17038

Caleb J. Zimmerman, Attorney for the Estate

ESTATE OF DORIS MAY SCHOENER

a/k/a Doris M. Schoener, late of North Cornwall Township, Lebanon County, PA, deceased. Letters testamentary on the last will and testament of said decedent have been granted to the undersigned Executrix.

Kelly Lane Riegel, Executrix
PO Box 278, Mohrsville, PA 19541

Richard L. Geschwindt, Esq.
Attorney

ESTATE OF ROBERT A.

SPONHOWER, JR., late of the City of Lebanon, Lebanon County, PA, deceased. Letters Testamentary have been granted to the undersigned Executor.

Cynthia A. Leahy, Executor
415 Beagle Road
Myerstown, PA 17067
Frederick S. Long, Attorney

SECOND PUBLICATION

ESTATE OF GEORGE K. BALDWIN,

late of Cornwall Borough, Lebanon County, PA, deceased. Letters Testamentary have been granted to the undersigned Executor.

Wendy Ruth Baldwin.
Reilly Wolfson Law Office
1601 Cornwall Road
Lebanon, PA 17042

ESTATE OF HERMANN L. BOLDT,

late of the Township of Jackson, County of Lebanon and Commonwealth of Pennsylvania, deceased. Letters Testamentary have been granted to the undersigned Executor.

Hermann Joseph Boldt, Executor
111 N. Ramona Road, Lot 21
Myerstown, PA 17067

Timothy T. Engler, Esquire
Steiner & Sandoe, Attorneys

ESTATE OF ROBERT F. BRIGHTBILL,

late of North Londonderry Township, Lebanon County, PA, deceased. Letters Testamentary have been granted to the undersigned Executrix.

Mary E. Brightbill
203 Karen Drive
Downingtown PA 19353

Or to

Joseph M. Farrell, Esq.
201/203 South Railroad Street
P.O. Box 113
Palmyra PA 17078
Attorney for estate

ESTATE OF WILMA J. MELENDEZ, late of Lebanon City, Lebanon County, Pennsylvania, deceased. Letters of Administration have been granted to the undersigned Administrator.

David Calderón, Administrator
1013 Mifflin Street
Lebanon, PA 17046

Timothy J. Huber, Esquire
Buzgon Davis Law Offices
P.O. Box 49
525 South Eighth Street
Lebanon, PA 17042

ESTATE OF ALLEN C. SUTHERLY, late of Palmyra, Lebanon County, Pennsylvania, deceased. Letters Testamentary have been granted to the undersigned Executor.

Steven A. Sutherly, Executor
829 Victoria Lane
Palmyra, PA 17078

David R. Warner, Esquire
Buzgon Davis Law Offices
P.O. Box 49
525 South Eighth Street
Lebanon, PA 17042

ESTATE OF LARRY W. SWEIGART a/k/a Larry William Sweigart, late of the City of Lebanon, Lebanon County, PA, deceased. Letters Testamentary have been granted to the undersigned Personal Representative.

Jerol L. Hughes, Personal Representative
c/o Megan C. Huff, Esquire
Nestico Druby P.C.
1135 East Chocolate Ave.
Suite 300
Hershey PA 17033

ESTATE OF DORIS E. WHITE, late of Cornwall Borough, Lebanon County PA, deceased. Letters Testamentary have been granted to the undersigned Executor.

Norma J. Higginbotham, Executor
c/o Jeffrey C. Goss, Esquire
480 New Holland Avenue, Suite 6205
Lancaster, PA 17602
Brubaker Connaughton Goss & Lucarelli
LLC
Attorneys

THIRD PUBLICATION

ESTATE OF KATHRYN L. ADAMS

late of No. 7 Cottage Lane, Borough of Newmanstown, Lebanon County, Pennsylvania, deceased. Letters testamentary on the above estate having been granted to the undersigned, all persons indebted to the estate are requested to make payment, and those having claims to present the same, without delay, to:

Molly A. Brown, Executrix
c/o Lengert & Raiders LLC
210 West Penn Avenue
PO Box 223
Robesonia, PA 19551

Attorney Rich Raiders, Esquire
Lengert & Raiders LLC
210 West Penn Avenue
PO Box 223
Robesonia, PA 19551

ESTATE OF GRACE S. FASNACHT,

late of South Londonderry Township, Lebanon County, PA, deceased. Letters Testamentary have been granted to the undersigned Executor.

Charles D. Fasnacht, III, Executor
5144 Bellerive Drive
Dallas, TX 75287

Donna Long Brightbill, Attorney

ESTATE OF MARTIN J. ILL, late of the City of Lebanon, Lebanon County, PA, deceased. Letters Testamentary have been granted to the undersigned Executrix.

Jamie Ill Berryhill, Executrix
164 Forest Circle
Palmyra, PA 17078

Thomas S. Long, Attorney

ESTATE OF HOWARD S. KREIDER,

late of Annville Township, Lebanon County, Pennsylvania, deceased. Letters Testamentary have been granted to the undersigned Executor.

Sharon K. Schwarz, Executor
c/o Keith D. Wagner – Attorney
P. O. Box 323
Palmyra, PA 17078

ESTATE OF DOLORES TROPASSO

a/k/a Dolores F. Tropasso, late of North Cornwall Township, Lebanon County, PA, deceased. Letters Testamentary have been granted to the undersigned Administratrix.

Karen Boltz, Administratrix
c/o Garrett C. Spangler, Esq., J.D., LL.M
The Erb Law Firm, PC
20 S. Valley Road, Suite 100
Paoli PA 19301

**ORPHANS' COURT DIVISION
NOTICES**

Court of Common Pleas of Lebanon
County

Notice is hereby given that the following accounts in decedents estates, Guardianships and trusts have been filed in the Office of the Register of Wills and Clerk of Orphans' Court of Lebanon County, and that the same will be presented to the Court of Common Pleas-Orphans' Court Division of said County for Confirmation NISI on Monday, November 6, 2017 at 10:00 A.M. in Courtroom No. 1, Municipal Building, City of Lebanon.

**LIST OF ACCOUNTS WITH PROPOSED
SCHEDULE OF DISTRIBUTION BY
GUARDIANSHIPS AND TRUSTS**

1. Null, Kenneth P., Sr., dec'd., Carol Greish, Exrx., Edward J. Coyle, Atty.
2. Ober, Robert C., dec'd., Todd C. Ober, Admr., Paul A. Lundberg, Atty.
3. Bachman, Fern G., dec'd., Larry L. Werner, Exr., Colleen S. Gallo, Atty.

All of the aforesaid accounts and statements of Proposed Distribution will be confirmed ABSOLUTELY as of course by the said Orphans' Court except those to which exemptions are filed within twenty (20) days after the same are confirmed NISI.

**DAWN L. RESANOVICH REGISTER
OF WILLS AND CLERK OF ORPHANS'
COURT LEBANON COUNTY,
PENNSYLVANIA**

NOTICE OF ACTION IN MORTGAGE FORECLOSURE

In The Court of Common Pleas, Lebanon County
Civil Action – Law No. 2017-00830

U.S. Bank National Association, as Trustee, Successor in Interest to Bank of America, National Association, as Trustee, Successor by Merger to LaSalle Bank National Association, as Trustee for Merrill Lynch Mortgage Investors Trust, Mortgage Loan Asset-Backed Certificates, Series 2006-AR1, Plaintiff vs. The Unknown Heirs of June M. Bennett, Deceased, Mortgagor and Real Owner, Defendant(s)

To: The Unknown Heirs of June M. Bennett, Deceased, Mortgagor and Real Owner, Defendant(s), whose last known address is 2411 Lehman Street, Lebanon, PA 17046. This firm is a debt collector and we are attempting to collect a debt owed to our client. Any information obtained from you will be used for the purpose of collecting the debt.

You are hereby notified that Plaintiff, U.S. Bank National Association, as Trustee, Successor in Interest to Bank of America, National Association, as Trustee, Successor by Merger to LaSalle Bank National Association, as Trustee for Merrill Lynch Mortgage Investors Trust, Mortgage Loan Asset-Backed Certificates, Series 2006-AR1, has filed a Mortgage Foreclosure Complaint endorsed with a notice to defend against you in the Court of Common Pleas of Lebanon County,

PA, docketed to No. 2017-00830, wherein Plaintiff seeks to foreclose on the mortgage secured on your property located, 2411 Lehman Street, Lebanon, PA 17046, whereupon your property will be sold by the Sheriff of Lebanon County.

Notice: You have been sued in court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after the Complaint and notice are served, by entering a written appearance personally or by attorney and filing in writing with the court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the Court without further notice for any money claimed in the Complaint for any other claim or relief requested by the Plaintiff. You may lose money or property or other rights important to you. You should take this paper to your lawyer at once. If you do not have a lawyer or cannot afford one, go to or telephone the office set forth below. This office can provide you with information about hiring a lawyer. If you cannot afford to hire a Lawyer, this office may be able to provide you with information about agencies that may offer legal services to eligible persons at a reduced fee or no fee. Mid-Penn Legal Services, 513 Chestnut St., Lebanon, PA 17042, 717.274.2834. Michael T. McKeever, Atty. for Plaintiff, KML Law Group, P.C., Ste. 5000, Mellon Independence Center, 701 Market St., Phila., PA 19106-1532, 215.627.1322.

JENNIFER S. SCIPIONI V. LUKE TODD SCIPIONI

NO. 2004-20766

Civil Action-Family Law-Divorce-Equitable Distribution-Retirement Benefits-Valuation-Deferred Distribution-Immediate Offset-Student Loan Obligation-Mortgage Credit-Gifts-Counsel Fees

The parties filed Exceptions to the Order of Court adopting the Report and Recommendation of the Special Master in Divorce, asserting that the Special Master erred in valuing and distributing the parties' retirement benefits, assigning Jennifer S. Scipioni ("Wife") the sole responsibility for repayment of the student loans of the parties' children, affording Husband Luke Todd Scipioni ("Husband") credit for payment of mortgage and maintenance payments upon the marital residence, awarding each of the parties fifty percent (50%) of the marital estate and denying Husband's request for counsel fees and costs.

1. There are two (2) basic approaches to equitably dividing retirement accounts, the deferred distribution method and the immediate offset method.
2. Deferred distribution has been held to be the preferred method of equitably dividing unvested retirement benefits that never actually may be received by the employee spouse due to the possibility of early termination or death, as well as where the parties' other assets are insufficient to offset and to award a share of the pension to the non-employee spouse. Deferred distribution accounts for the uncertainties surrounding an unvested pension by requiring that the non-employee spouse receive an equitable share of the benefits only when the benefits actually are received.
3. Under the deferred distribution method, the court retains jurisdiction, and it either may determine what share of the benefits the non-employee spouse should receive and defer payment or may defer both the determination of the share to be paid and the payment.
4. The immediate offset method distributes the present value of the pension benefits at the time when distribution is made. The immediate offset method has the advantage of avoiding continued hostility between the parties because it effectuates an immediate and final distribution of retirement benefits. The non-employee spouse receives an immediate distribution of marital assets in order to provide that spouse with an equitable share of the pension even though the pension itself actually will not be received by the employee spouse until sometime in the future.
5. Under the immediate offset method, after determining the non-employee spouse's interest in the employee-spouse's pension benefits, the total of the non-employee spouse's award is offset by distributing other marital property or by ordering payment to the non-

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employee spouse.

6. By awarding Wife the entire portion of her retirement account, while the Special Master employed the immediate offset method for distribution of Husband's retirement account and correctly assigned a value to Husband's Pennsylvania School Employees Retirement Systems Account, the Special Master erred when she inadvertently utilized the value of this account at age sixty-five (65) rather than the normal retirement age of 60.2.

7. The Special Master erred by assigning Wife sole responsibility for payment of the children's student loans when the loans are marital obligations that were paid from the parties' joint account during the marriage, the parties agreed not to pursue payment from the children and Husband paid nothing toward the loans post separation while Wife made monthly payments on the loans and paid child support including a mortgage deviation amount to Husband after separation.

8. The Special Master appropriately valued Wife's TIAA-CREFF pension by deducting post-separation contributions from the value of this account at the time of hearing, as the entire amount of this pension prior to the date of separation was acquired during the marriage.

9. Husband is entitled to a credit for payments he made upon the mortgage and the maintenance of the marital residence even though the funds for those payments were gifted to him by his mother and he allowed the parties' two (2) adult children to live there without requiring them to provide any contribution thereto.

10. Awarding each of the parties fifty percent (50%) of the marital estate was appropriate when both parties have good earning capabilities, Husband failed to better his financial position since separation following his termination from his employment as a teacher and Husband has lived off of money provided by Wife and his mother since separation while Wife has maintained her employment and has carried significant financial burden.

11. An award of counsel fees is to ensure that the financially dependent spouse will be able to maintain or to defend against an action for divorce, as well as to effectuate economic justice.

12. Counsel fees in a divorce proceeding are not awarded automatically. Rather, the petitioning party must show actual need.

13. The Special Master appropriately denied Husband's request for counsel fees when

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Husband did not show that he has been unable to pay for his legal expenses, the record indicates that Husband has ample means of paying for his legal fees and Wife has been shouldering a good deal of marital debt and paying child support including a mortgage deviation amount to Husband.

L.C.C.C.P. No. 2004-20766, Opinion by John C. Tylwalk, President Judge, June 27, 2017.

IN THE COURT OF COMMON PLEAS OF LEBANON COUNTY

PENNSYLVANIA

CIVIL ACTION – FAMILY DIVISION NO. 2004-20766

JENNIFER S. SCIPIONI

v.

LUKE TODD SCIPIONI

ORDER OF COURT

AND NOW, this 27th day of June, 2017, upon consideration of the parties' Exceptions to the Report and Recommendations of the Special Master ("SM"), it is hereby Ordered as follows:

1. Plaintiff Jennifer S. Scipioni and Defendant Luke Todd Scipioni are divorced from the bonds of matrimony pursuant to Section 3301(c) of the Divorce Code.
2. Husband shall be granted ninety (90) days from this Order to refinance or otherwise assume the mortgage on the marital residence and to have Wife's name removed from that obligation.
3. The assets of the parties shall be divided with Wife receiving fifty
4. (50) percent of the assets/debts and Husband receiving fifty (50) percent of the assets/debts.

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5. Husband's request for attorney's fees and costs is DENIED.

...

Absent credits, Husband would owe Wife the sum of \$27,324.84. With the addition of the \$1,854.30 owed to Wife in credits, Husband shall pay to Wife the sum of \$29,179.14 within ninety days of this Order to effectuate equitable distribution.

All other matters addressed in the Report and Recommendations of the Special Master are affirmed.

BY THE COURT:

JOHN C. TYLWALK, P.J.

APPEARANCES:

JASON SCHIBINGER, ESQUIRE
BUZGON DAVIS LAW OFFICES

FOR JENNIFER S. SCIPIONI

DEBRA CANTOR, ESQUIRE
MCNESS WALLACE & NURICK, P.C.

FOR LUKE TODD SCIPIONI

OPINION, TYLWALK, P.J., JUNE 27, 2017.

Plaintiff Jennifer S. Scipioni ("Wife") and Defendant Luke Todd Scipioni ("Husband") were married on November 24, 1990. Wife originally initiated this divorce action in 2004; however, the parties attempted reconciliation and did not physically separate until January 5, 2014. They have stipulated to a separation date of November 13, 2013, when Wife filed and served this Complaint in Divorce. A hearing was conducted by the Special Master ("SM") on May 23, 2016 and the SM's Report and Recommendations was filed on October 6, 2016. Both parties have filed Exceptions which are presently before the Court.

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The parties have four children – three who are adults, Luke, Joshua and Hannah, and a son, Max, who is 14 years old. Max resides primarily with Husband and, as a result, has been able to remain in his school district. Wife pays Husband monthly child support of \$844.81 for Max and pays for his health insurance in the amount of \$243.77 per month through her employer. She has also been paying a \$240.00 monthly mortgage deviation to Husband. One of the adult children is still attending college.

Wife was 47 years old at the time of the hearing. She is President and CEO of the Pennsylvania State System of Higher Education Foundation with an annual salary of \$92,000 plus bonuses which have been \$10,000 to \$15,000 during the past few years. She has full benefits and a TIAA-CREF to which she contributes 5% (\$178.62) per bimonthly pay which is matched by her employer. She also receives \$53.00 per bimonthly paycheck for her cellphone. Wife resides with her mother in Palmyra, and contributes rent, real estate taxes, and groceries to her mother's household.

Husband was 49 years old at the time of the hearing. He had been employed as a high school teacher with the Cornwall-Lebanon School District ("School District") since 1997. He had a Public School Employees' Retirement System ("PSERS") pension through his employment. His employment was terminated by the School District in October 2014 and he has been unemployed since then. After his Education Association filed an appeal of his termination, an arbitrator ordered his reinstatement. The School District filed an appeal and the arbitrator's decision was overturned by this Court. The School District filed an appeal to the Commonwealth Court of Pennsylvania which was pending at the time of the SM hearing.

The SM found that Husband's last annual salary was \$72,000 and the parties have stipulated to that figure as his present earning capacity. If he is ultimately reinstated to his position with the School District, he will receive a lump sum payment of past salary and retroactive payments to his retirement account. He was paying for his own health insurance through COBRA at \$719/month, which was to expire at the end of May 2016. Upon expiration of the COBRA eighteen-month period, he would have to pay \$576.21 per month for Capital Blue health coverage. He testified that he was paying his living expenses by borrowing money from his mother. He claimed that the funds provided by his mother are loans and that he will repay her, but also admitted that these loans might not be repaid.

Wife paid the \$1,719 monthly mortgage on the marital residence for January of 2014; thereafter, Husband assumed responsibility for paying the mortgage and the homeowner's

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insurance. Since March 2014, Wife has been paying him child support for Max and the mortgage deviation in the amount of \$240.00. He resides in the marital home with Max. Some of the other children (and a grandchild/grandchildren) also reside with Husband periodically, but do not contribute to household expenses. With regard to the marital home, the parties have stipulated to a fair rental credit of \$1,100/month. Husband would like to keep the marital home and feels that his mother would co-sign a mortgage.

The SM awarded fair rental credit to Wife, included the value of Husband's PSERS account in the final distribution, awarded credits for payments made toward marital assets by both parties, assigned responsibility for marital debts, and denied Husband's claim for attorney's fees and costs. The marital estate was to be divided equally. Both parties have filed Exceptions which are before the Court.

At the hearing, two values for the marital portion of Husband's PSERS pension were presented: \$286,579 with a normal retirement age of 60.2 and \$212,786 with a retirement age of 65. (Exhibits 34 & 35) At the hearing, Husband testified he would return to his employment depending on the outcome of his litigation, but did not state when he would retire. In her Report, the SM stated that she would use the normal retirement age valuation for equitable distribution purposes, which was \$286,579 (60.2 years old with 30 years of service). However, in her calculation of marital assets, she actually used the \$212,786 figure (for age 65).

Wife argues that the SM indicated that she would use the figure for normal retirement age, but mistakenly used the figure for retirement at age 65 in her calculation. In Husband's Exceptions, he argues that the SM erred in placing any value on his PSERS pension and in including its value in the final distribution. He reasons that the value of this asset is in flux, given its unknown status due to Husband's employment litigation and the unknown date of his actual retirement. He contends that including its value was erroneous because a stated value of a pension is necessary only if it is being offset by other assets for distribution at the present time. He argues that under the distribution scheme determined by the SM, only a QDRO is necessary and the present value of the PSERS should be removed from the division of assets.

It is ... well-established that there are two basic approaches to equitably dividing this form of marital property: the immediate offset method and the deferred distribution method. Deferred distribution has been held to be the preferred method of equitably dividing unvested retirement benefits which may never actually be received by the employee

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spouse because of possibilities like early termination or death. It is also preferred where the parties' other assets are insufficient to offset an award of a share of the pension to the non-employee spouse. ... Deferred distribution accounts for the uncertainties surrounding an unvested pension by requiring that the non-employee spouse receive an equitable share of the benefits only when they are actually received. The court retains jurisdiction and may either determine what share of the benefits the non-employee spouse should receive and merely defer payment, or may defer both the determination of the share to be paid and payment. ... Since deferred distribution does not contemplate a present distribution of assets, no present value of the pension need be calculated.

Lowry v. Lowry, 544 A.2d 972, 979 (Pa. Super. 1988) (citations omitted).

The immediate offset method distributes the present value of the pension benefits at the time when distribution is made. In this manner, the non-employee spouse receives an immediate distribution of marital assets in order to provide him or her with an equitable share of the pension even though the pension itself will not actually be received by the employee-spouse until sometime in the future.

...

... After determining the non-employee-spouse's interest in the employee-spouse's pension benefits, the total of the non-employee-spouse's award is offset by distributing other marital property or by ordering payment to the non-employee-spouse.

...

The immediate offset method, because it effectuates an immediate and final distribution of retirement benefits, has the advantage of avoiding continued hostility between the parties.

Berrington v. Berrington, 598 A.2d 31, 35 (Pa. Super. 1991).

[I]n a deferred distribution, one does not "value" the marital portion of the pension plan at the time of equitable distribution, because there are unknown factors, such as when the participant will retire and whether the formulation of the plan will change after equitable distribution. One identifies the marital share of the benefit, but one does not "value" it. In an immediate offset, however, one is dealing in the present instead of the future. The marital share of the pension is presently being offset against other marital property, and it is "valued" as of the date of equitable distribution.

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Gordon v. Gordon, 681 A.2d 732, 739 (Pa. 1996) (citations omitted).

The SM's Report indicates that "[t]he Master will value the PSERS retirement at \$212,786 – the normal retirement date." She then assigns both parties \$106,393.00 as their 50 per cent share. Wife is also awarded 100 percent of the marital portion of her own TIAA-CREF retirement account, with Husband owing her the sum of \$30,098.76 to effectuate the overall scheme of equitable distribution.

In this case, both parties had their own retirement accounts, a portion of which was marital property. The SM awarded Wife the entire portion of her own TIAA-CREF account and fifty percent of Husband's PSERS account. We believe that by awarding Wife the entirety of the marital portion of her own retirement account, the SM indicated her intention to employ the immediate offset method of distributing Husband's retirement account. Under this scheme of distribution the SM correctly assigned a value to Husband's PSERS account and we must address the issue of the value assigned by the SM.

There was scant testimony regarding Husband's retirement. Although Husband testified that he would return to his position in the event of a favorable outcome of his employment litigation, he did not testify as to his anticipated date of retirement. In her Report, the SM referred to Defendant's normal retirement date of April 13, 2027 in her findings. (SM Report, F.O.F. 94) She also specifically stated that she would accept the valuation at his normal retirement age of 60.5 years rather than a valuation with a retirement age of 65. Despite her stated intention, however, she utilized the wrong figure in her calculation of marital assets. Since Husband's normal retirement date was noted several times in the SM's discussion and findings, we believe this appears to have been a simple mix-up of figures on her part and does not indicate that she meant to choose the figure for the later retirement date. Therefore, we will sustain Wife's Exception and correct that calculation by using the correct figure - \$286,579. (Exhibit 34)

During the marriage, Lendkey student loans were obtained for Joshua and Hannah's college expenses. Wife has been paying \$25.00 per month toward each of the balances and the SM assigned her responsibility for payment of both debts. Wife contends that the SM erred in assigning her the entire responsibility for repayment of both of these loans. At the time of the hearing, the student loan for Joshua had a balance of \$18,305.28 and Hannah's loan balance was \$14,655.02, both with a variable interest rate. At separation the interest rate was 9.27 % and at the time of the hearing it was 9.35%. Wife testified that she is only able to pay the small monthly amount total toward both loans, and that the balances have actually increased since separation as a result. She also explained that although she has

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paid these since separation, she never assumed sole responsibility for their repayment.

Husband counters that the SM did not err in allocating responsibility to Wife for both LendKey loans. He argues that the SM was not required to make an equal division and that this was an equitable assignment of the marital debts. He points to the fact that Wife was assigned these two debts and the remainder of her car loan while he is responsible for refinancing the mortgage on the marital home and for two credit cards/personal loans. He further argues that while Wife has been making minimum payments on these loans, she has had a substantial salary while he has been unemployed for two years. For these reasons, he believes that it would be inequitable to assign additional debt to him.

We agree with Wife that she should not bear sole responsibility for the repayment of these loans. Both of these loans are marital obligations and were paid from the parties' joint account during the marriage. The parties have agreed not to pursue payment of these two debts from Hannah and Joshua. We find this recommendation to be inequitable in view of the fact that Husband has paid nothing toward them post-separation, while Wife is making monthly payments as well as paying him child support and a mortgage deviation, has paid for Max's health coverage, and has paid off a portion of the marital debt, including credit cards and orthodontist expenses. Given his stipulated earning capacity, Husband has also had the financial means to help with the loans despite his decision to refrain from seeking alternative employment during the pendency of his appeal of his termination from the School District and despite his receipt of funds from his mother. Thus, we believe that both parties should bear some responsibility for repayment and we will sustain this Exception. We will order Husband to pay off Hannah's loan, as it is the lesser of the two.

The parties also differ on the value assigned to Wife's TIAA-CREFF pension.

The SM noted the current value of Wife's TIAA-CREFF account with her present employer of \$108,894.11, Wife's consistent post-separation contributions, and the fact that there had been no withdrawals. She found Wife's post-separation contributions to be \$23,152 for a marital value of \$85,742.11. Wife contends that the SM erred in this calculation. She argues that the value assigned by the SM is at odds with the evidence of her and her employer's post-separation contributions she presented at the hearing. She claims that the SM incorrectly used the wrong figure for the post-separation increase, which resulted in an incorrect value for the marital portion. By Wife's calculations, a summary of post-separation contributions total \$28,060.03, for a marital portion value of \$80,834.08.

Husband notes that the time-of-separation balance was \$82,662 and was wholly marital.

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He reasons that since the balance at the time of the hearing was \$108,894.11, the post-separation contributions were \$23,152 which results in a marital value of \$85,742. He claims that Wife is attempting to add contributions which were made after the hearing date and that the SM properly used the information before her at the time of the hearing.

We agree with the SM's valuation of this asset. By our calculation, the amount of post-separation contributions by Wife and her employer totaled \$23,152.67. The October 31, 2013 statement for this account, just a few weeks prior to the parties' stipulated date of separation, indicated a balance of \$82,661.68. This amount was wholly marital as the entire value was acquired during the parties' marriage. Deducting the post-separation contributions, \$23,152.67, from the value at the time of the hearing, \$108,894.11, leaves a marital portion of \$85,741.44, which includes the increase in value of the time-of-separation balance of \$82,661.68.

Husband complains that the SM erred by double-counting Wife's fair rental credit. He explains that in the calculation contained in his proposed findings, he consolidated the mortgage payment and homeowner's insurance credit and then offset the fair rental value credited to Wife. He points out that the SM used that consolidated figure but also gave Wife a separate credit for fair rental value. Husband argues that this figure should be corrected to remove the double credit to Wife.

Wife argues that Husband should not be credited for the amounts he paid for the mortgage and maintenance of the property because this money came from his mother and he admitted that he probably won't have to repay the money he received from her. Wife also disputes Husband's entitlement to this credit because, at times, he permits two of the parties' adult children to reside with him in the residence without compensation. Wife argues that it is inequitable that she should pay him a mortgage deviation while he subsidizes the parties' adult children and does not pay anything out-of-pocket himself. Husband argues that the source of his funds should not be considered as long as he paid the expenses.

Because Husband has made these payments with his own funds, he is entitled to a credit for those payments. We do not believe that he should be precluded from receiving a credit for those amounts by virtue of the fact that the cash for the payments was provided to him by his mother.

Although Wife is entitled to the fair rental credit for the marital home, we agree that she should not receive a double credit. Husband has paid the mortgage on his own since February 2014, which is twenty-nine (29) months at \$1,719.53 for a total of \$49,866.37.

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He has also paid homeowners' insurance costs of \$3,278.00. Together, these add up to \$53,144.37. Wife is entitled to fair rental credit of \$1,100.00 for twenty-nine (2) months, \$31,900, divided by one-half for a total credit of \$15,950. We will use these figures in our recalculation of the credits due the parties.

At the time of separation, the loan for Husband's van had a \$3,563 balance which Husband paid off after separation. Husband argues that the SM erred in failing to credit him for payment of this debt. Wife concurs that Husband should receive a credit of \$3,563 for payment of this loan. Thus, we will grant this Exception.

Husband next charges error to the SM's failure to award him 55% of the marital estate. He claims that he is entitled to a greater share of the marital estate based on the length of the marriage – nearly 23 years, Wife's superior financial status and earning capacity, the status of Husband's employment, Husband's responsibility for payment of his own health insurance, and the fact that he is Max's primary custodian.

Wife counters that the SM properly split the marital estate on an equal basis. She argues that Husband has presented nothing to suggest he is unable to work as he already has his Master's Degree and is working on his Principal's Certificate. In contrast, Wife has only a few credits towards her Master's Degree. In addition, Wife argues that Husband is actually in a better financial position than her due to his superior retirement benefits, and the fact that his car is paid off, while she is still making monthly payments of \$482.15 on her own car. Wife also points out that she took \$48,796.58 out of one of her 403(b) accounts to buy the marital home which has depleted her retirement. She argues that she has paid most of the marital debt since separation. She also pays child support, a mortgage deviation, Max's health insurance, and college loans for Hannah and Joshua. In contrast, Husband has not applied for any other jobs in the 2 ½ years of his unemployment and he has paid his bills with money provided by his mother and Wife during that entire time period.

We believe that the equal division is appropriate under these circumstances. Both of the parties' have good earning capacities and they are on fairly equal economic levels with regard to the future. If Husband's employment is not reinstated, he can seek comparable employment based on his credentials. Moreover, it is true that Husband has failed to better his financial position since separation and he has lived off the money provided by Wife and his mother while Wife has maintained her employment and carried significant financial burden. Thus, we will overrule this exception.

Husband next complains that the SM erred in not awarding counsel fees and costs to him.

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He believes that he should have received such an award based on his substantially reduced economic position, his having primary custody of Max, and Wife's superior financial circumstances.

The purpose of an award of counsel fees is to ensure that the financially dependent spouse will be able to maintain or defend against an action for divorce, as well as to effectuate economic justice. Counsel fees in a divorce proceeding are not awarded automatically; the petitioning spouse must show actual need before such an award is justified. Moreover, a 'dependent spouse may be entitled to alimony pendent lite and counsel fees because both are necessary to maintain the divorce proceeding.' The amount of an award for counsel fees, costs and expenses awarded in a divorce action is within the discretion of the trial court and is subject to an abuse of discretion standard on appeal.

Butler v. Butler, 621 A.2d 659, 667 (Pa. Super. 1993) (citations omitted).

Wife argues that the SM properly denied Husband's request for counsel fees and costs as he has not shown "actual need." She notes that he has stipulated to a \$72,000 earning capacity and has kept up with his bills throughout this litigation. She further argues that if his employment is reinstated, he will receive back pay and have full benefits, ending up with more monthly income than Wife. Husband has also been gifted with large sums of cash from his mother in the past and she pays many of Husband's monthly expenses. Wife further claims that she has insufficient financial resources to contribute to Husband's counsel fees and costs. She pays Husband over \$1,000 monthly in child support and mortgage deviation, pays for Max's health insurance and had to move in with her mother to make ends meet. She argues that Husband will also receive substantial assets in equitable distribution to pay these amounts.

We agree with Wife and will overrule this exception. Husband did not show that he has been unable to make the payments toward these items. Based on his earning capacity and other sources of income, it appears that he has ample means of paying these amounts in the future. We believe that since Wife has been shouldering a good deal of the marital debt, as well as paying child support, the mortgage deviation, and Max's insurance coverage, she should not be required to contribute to Husband's litigation expenses.

We will enter an Order addressing the parties' Exceptions with the calculations discussed here.