

*Erie
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McGrath v. McGrath

Erie County Legal Journal

*Reporting Decisions of the Courts of Erie County
The Sixth Judicial District of Pennsylvania*

Managing Editor: Heidi M. Weismiller

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Erie County Bar Association

Calendar of Events and Seminars

WEDNESDAY, MARCH 30, 2016

ECBA Live Seminar

*From Blight to Bright: Latest Developments in
Blight and Land Banking*

Bayfront Convention Center

8:30 a.m. - Registration/Continental Breakfast

9:00 a.m. - 11:30 a.m. - Seminar

(includes a 30 minute networking break)

\$90 (ECBA member/non-attorney staff)

\$116 (nonmember)

\$60 (member judge not needing CLE)

\$45 (non-lawyer employees of municipalities,
authorities and school districts)

2 hours substantive

THURSDAY, APRIL 7, 2016

ECBA Live Lunch-n-Learn Seminar

Fracking - The New "F" Word and an

Overview of Oil and Gas Law

Bayfront Convention Center

12:15 p.m. - 2:15 p.m. (registration/lunch - 11:45 a.m.)

\$90 (ECBA member/non-attorney staff)

\$116 (nonmember)

\$60 (member judge not needing CLE)

1.5 hours substantive/.5 hours ethics

FRIDAY, APRIL 8, 2016

ECBA Live Lunch-n-Learn Seminar

2016 Annual Criminal Law Update

Bayfront Convention Center

12:15 p.m. - 1:45 p.m. (registration/lunch - 11:45 a.m.)

\$67 (ECBA member/non-attorney staff)

\$87 (nonmember)

\$47 (member judge not needing CLE)

1.5 hours substantive

MONDAY, APRIL 11, 2016

ECBA Live Seminar

Critical Issues and Decisions Related to Aging

Sheraton Hotel - Ballroom

8:30 a.m. - 11:45 a.m. (8:00 a.m. registration/breakfast)

\$135 (ECBA member/non-attorney staff)

\$174 (nonmember)

\$90 (member judge not needing CLE)

3 hours substantive

THURSDAY, APRIL 21, 2016

ECBA Live Lunch-n-Learn Seminar

Navigating Emotions in Family Disputes:

Understanding a "Child's Truth"

Erie Club

12:15 p.m. - 2:15 p.m. (registration/lunch - 11:45 a.m.)

\$90 (ECBA member/non-attorney staff)

\$116 (nonmember)

\$60 (member judge not needing CLE)

2 hours substantive

THURSDAY, APRIL 28, 2016

Law Day Luncheon

Noon

Speaker: Michael Smerconish

more details coming soon

SATURDAY, APRIL 30, 2016

Law Day 5K

9:00 a.m. - Erie County Court House

registration available online @ www.eriebar.com

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13th Annual Law Day 5K Run/Walk

Saturday, April 30, 2016



Presented by the

ECBA

ERIE COUNTY BAR ASSOCIATION
IN COOPERATION WITH
THE ERIE RUNNERS CLUB

9:00 a.m. - Erie County Courthouse
140 West Sixth Street

Pre-registration Entry Fees:

\$20.00 (adults w/shirt)
\$15.00 (adults/no shirt)
\$15.00 (12 and under w/shirt)
\$10.00 (12 and under/no shirt)

**POSTMARK DEADLINE
TO PRE-REGISTER IS
FRIDAY, APRIL 15, 2016**

Race Premium: Top-quality, wicking t-shirt.

You must be pre-registered to be guaranteed a shirt.

Day-of-Race Entry Fees: \$20 (adult)
\$15 (12 or under)



*Part I of the
2016 Summer Triple Crown Series*

Packet Pick-up:

There will be a packet pick-up for pre-registered runners and walkers on Friday, April 29 from 3:00 to 6:30 p.m. at the Erie County Bar Association Headquarters, 302 West Ninth Street. Registrations for the event will also be accepted during this time. Day-of-Race registration and Chip pick-up will begin on Saturday, April 30 at 8:00 a.m. at the new Perry Square Event Platform.

Event benefits the ECBA's *Attorneys & Kids Together Program*, supporting the educational needs of Erie's homeless students and the Erie Runners Club Scholarship Fund.

Register ONLINE at www.eriebar.com.

MICHAEL T. McGRATH, Appellee
v.
VIRGINIA M. McGRATH, Appellant

FAMILY LAW – DIVORCE – STANDARD OF REVIEW

In reviewing equitable distribution Orders, the Pennsylvania Superior Court’s standard of review is limited. Absent an abuse of discretion on the part of the trial court, the Pennsylvania Superior Court will not reverse an award of equitable distribution. In addition, when reviewing the record of the proceedings, the Pennsylvania Superior Court is guided by the fact that trial courts have broad equitable powers to effectuate economic justice, and the Pennsylvania Superior Court will find an abuse of discretion only where the trial court misapplied the laws or failed to follow proper legal procedures.

FAMILY LAW – DIVORCE – EQUITABLE DISTRIBUTION

When fashioning equitable distribution awards, a trial court must weigh and apply the eleven (11) criteria found in 23 Pa. C. S. §3502(a) in order to “effectuate economic justice between parties” and “ensure a fair and just determination and settlement of their property rights.”

FAMILY LAW – DIVORCE – EQUITABLE DISTRIBUTION

Pursuant to 23 Pa. C. S. §3502(a), the eleven equitable distribution factors include: (1) the length of the marriage; (2) any prior marriage of either party; (3) the age, health, station, amount and sources of income, vocational skills, employability, estate, liabilities and needs of each of the parties; (4) the contribution by one party to the education, training, or increased earning power of the other party; (5) the opportunity of each party for future acquisitions of capital assets and income; (6) the sources of income of both parties, including, but not limited to, medical, retirement, insurance or other benefits; (7) the contribution or dissipation of each party in the acquisition, preservation, depreciation or appreciation of the marital property, including the contribution of a party as homemaker; (8) the value of the property set apart to each party; (9) the standard of living of the parties established during the marriage; (10) the economic circumstances of each party at the time the division of property is to become effective; (10.1) the Federal, State and local tax ramifications associated with each asset to be divided, distributed or assigned, which ramifications need not be immediate and certain; (10.2) the expense or sale, transfer or liquidation associated with a particular asset, which expense need not be immediate and certain; and (11) whether the party will be serving as custodian of any dependent children.

FAMILY LAW – DIVORCE – STANDARD OF REVIEW

Further, the finder of fact is free to believe all, part, or none of the evidence, and the Pennsylvania Superior Court will not disturb the Divorce Master’s credibility determinations.

FAMILY LAW – DIVORCE – STANDARD OF REVIEW

In addition, the Pennsylvania Superior Court does not evaluate the propriety of the distribution Order upon its agreement with a trial court’s actions nor will the Pennsylvania Superior Court find a basis for reversal on a trial court’s application of a single factor. Rather, the Pennsylvania Superior Court reviews the distribution as a whole, in light of the trial court’s overall application of 23 Pa. C. S. §3502(a) factors for consideration in awarding equitable distribution. If the Pennsylvania Superior Court finds no abuse of discretion, the Order must stand.

FAMILY LAW – DIVORCE – CREDIBILITY OF WITNESSES

A Master's Recommendations and Report, although only advisory, are given the fullest consideration, particularly on the question of the credibility of witnesses, because the Master has had the opportunity to observe and assess the behavior and demeanor of the parties.

FAMILY LAW – DIVORCE – MARITAL PROPERTY

Pursuant to §3501(a) of the Pennsylvania Divorce Code, "marital property" means all property acquired by either party during the marriage and the increase in value of any property acquired prior to marriage or property acquired in exchange for property acquired prior to the marriage or property acquired by gift, except between spouses, bequest, devise or descent or property acquired in exchange for such property.

FAMILY LAW – DIVORCE – MARITAL DEBT

Between divorcing parties, debts which accrue to them jointly prior to separation are marital debts.

FAMILY LAW – DIVORCE – MARITAL DEBT

A debt accrued during this time may be a non-marital debt where the other spouse did not take part in incurring the debt and received no benefit therefrom. Without documentation to support a spouse's allegations regarding marital debts, the trial court is not required to accept those allegations.

FAMILY LAW – DIVORCE – STANDARD OF REVIEW

Trial courts have broad equitable powers to effectuate economic justice in these matters and a trial court's award of equitable distribution will not be reversed absent an abuse of discretion. The Pennsylvania Superior Court will find an abuse of discretion only if the trial court misapplied the law or failed to follow proper legal procedures.

FAMILY LAW – DIVORCE – MARITAL PROPERTY – RENTAL VALUE

The general rule is a dispossessed party is entitled to a credit for the fair rental value of jointly held marital property against a party in possession of that property, provided there are no equitable defenses to the credit. Second, the rental credit is based upon, and, therefore, limited by, the extent of the dispossessed party's interest in the property. Generally, in regard to the marital home, the parties have an equal one-half interest in the marital property. It follows, therefore, in cases involving the marital home, the dispossessed party is entitled to a credit for one-half of the fair rental value of the marital home. Third, the rental value is limited to the period of time during which a party is dispossessed and the other party is in actual or constructive possession of the property. Fourth, the party in possession is entitled to a credit against the rental value for payments made to maintain the property on behalf of the dispossessed spouse.

FAMILY LAW – DIVORCE – VALUATION OF MARITAL PROPERTY

When determining the value of marital property, a trial court is free to accept all, part or none of the evidence as to the true and correct value of the property. Where the evidence offered by one party is not contradicted, a trial court may adopt that value even though the resulting valuation would be different if more accurate and complete evidence were presented. A trial court does not abuse its discretion in adopting the only valuation submitted by the parties.

CIVIL PROCEDURE – PRE-TRIAL NARRATIVE STATEMENTS

Rule 1920.33 of the Pennsylvania Rules of Civil Procedure governs the filing of pre-trial

narrative statements and appropriate sanctions for failure to timely file pre-trial narrative statements, and states.

CIVIL PROCEDURE – PRE-TRIAL NARRATIVE STATEMENTS – SANCTIONS

Within the time required by Order of Court or written directive of the master or, if none, at least sixty days before the scheduled hearing on the claim for the determination and distribution of property, each party shall file and serve upon the other party a pre-trial statement... If a party fails to file either an inventory as required by subdivision (a) or a pre-trial statement as required by subdivision (b), the court may make an appropriate Order under Rule 4019(c) governing sanctions.

CIVIL PROCEDURE – PRE-TRIAL NARRATIVE STATEMENTS - SANCTIONS

A party who fails to comply with a requirement of subdivision (b) of this rule shall, except upon good cause shown, be barred from offering any testimony or introducing any evidence in support of or in opposition to claims for the matters not covered therein. A party shall, except upon good cause shown, be barred from offering any testimony or introducing any evidence that is inconsistent with or which goes beyond the fair scope of the information set forth in the pre-trial statement...

CIVIL PROCEDURE – PRE-TRIAL NARRATIVE STATEMENTS – SANCTIONS

The Rules governing pre-trial statements and sanctions for failure to file pre-trial narrative statements are intended to provide an even playing field for both parties in the marital and economic dissolution of marriages and these Rules should not, and must not, be utilized to play games of “gotcha.”

FAMILY LAW – DIVORCE – MASTER’S REPORT – EXCEPTIONS

Within twenty days of the receipt of the date of mailing of the master’s report and Recommendations, whichever occurs first, any party may file exceptions to the report or any part thereof, to rulings on objections to evidence, to statements or findings of fact, to conclusions of law, or to any other matters occurring during the hearing. Each exception shall set forth a separate objection precisely and without discussion. Matters not covered by exceptions are deemed waived unless, prior to entry of the final decree, leave is granted to file exceptions raising those matters...

IN THE COURT OF COMMON PLEAS OF ERIE COUNTY, PENNSYLVANIA
 CIVIL DIVISION NO. 13760-2009

Appearances: Gerald J. Villella, Esq., Attorney for Virginia M. McGrath, Appellant
 James L. Moran, Esq., Attorney for Michael T. McGrath, Appellee

OPINION

Domitrovich, J., January 20th, 2015

This matter is currently before the Pennsylvania Superior Court on the appeal of Virginia M. McGrath (hereafter referred to as “Appellant”) from this Trial Court’s Memorandum Opinion and Order dated October 23rd, 2014. In its Memorandum Opinion and Order dated October 23rd, 2014, after consideration of oral argument held September 23rd, 2014 and briefs provided by the parties after oral argument and review of statutory and case law, this Trial Court granted in part and dismissed in part Appellant’s Exceptions to Master Ralph R. Riehl III, Esq.’s (hereafter referred to as “Master”) Recommendations and Report dated

May 9th, 2014. This Trial Court awarded Appellant the marital residence, thereby achieving a 75% distribution of the marital estate to Appellant; awarded Appellee the proceeds from the failed sale and current rent of the pizza shop and the rental proceeds from the rental unit to achieve a 25% distribution of the marital estate to Appellee; concluded the Morgan Stanley loans were marital debt and allocating full repayment of the Morgan Stanley loans to Appellee; concluded a proper valuation of the pizza shop equipment at the time of separation was the agreed-upon amount of \$10,000.00; concluded a proper valuation of the parties' joint credit card debt at the time of separation was the amount of \$10,000.00, which was the only value given to the Master and to the Court; allocated full repayment of the credit card debt to Appellee; and concluded Appellant's counsel's untimely filing of Appellant's Pre-trial Narrative Statement violated Rule 1920.33 of the Pennsylvania Rules of Civil Procedure.

A. Procedural History

Appellee Michael T. McGrath filed a Complaint in Divorce, alleging irretrievable breakdown of his and Appellant Virginia M. McGrath's marriage, by and through his counsel, James L. Moran, Esq., on August 20th, 2009. On August 26th, 2011, Appellee filed an Affidavit under §3301(d) of the Divorce Code, alleging he and Appellant have not lived together as husband and wife since August 1st, 2009, and have continued to live separate and apart for a period of at least two (2) years. Appellant filed a Counter-Affidavit under §3301(d) of the Divorce Code on September 14th, 2011, opposing the entry of a divorce decree as Appellant desired economic issues be resolved prior to the entry of a divorce decree and also desired to claim economic relief, including alimony, division of property, attorney's fees, etc. A Praecipe for Appearance on behalf of Appellant was filed by Joseph Martone, Esq., on November 14th, 2011.

Appellee filed a Motion for Appointment of a Master on July 25th, 2013. By Order of Court dated July 29th, 2013 and signed by Judge Elizabeth K. Kelly, Ralph R. Riehl, III, Esq. was appointed as Master. Said Order also directed the parties to file their Income and Expense statements and Inventory and Appraisal forms within forty-five (45) days from the date of said Order. Appellant filed her Income and Expense statements and Inventory and Appraisal forms on August 27th, 2013. Appellee filed his Income and Expense statements and Inventory and Appraisal forms on August 30th, 2013. On December 12th, 2013, Paige Peasley, Esq., filed a Motion for Special Relief requesting the Law Firm of Martone & Peasley be permitted to withdraw as Appellant's counsel. As Motion Court Judge, the undersigned judge granted said Motion on the same day. Appellant was granted an additional thirty (30) day time period to secure new counsel.

By letter dated January 17th, 2014, Master Ralph R. Riehl, III, Esq. stated the Master's hearing had been scheduled for March 31st, 2014 and directed the parties to file their Pre-trial Narrative Statements on or before March 17th, 2014.¹ Appellee filed his Pre-trial Narrative Statement on March 17th, 2014. Appellant, by and through her new counsel, Gerald J. Villella, Esq., filed her Pre-trial Narrative Statement on March 20th, 2014.² The Master's Hearing

¹ The Master also directed the parties' attention to Rule 1920.33(b) and (d) of the Pennsylvania Rules of Civil Procedure regarding the time period for filing Pre-trial Narrative Statements and failure to adhere to said time period.

² It should be noted that the deadline for filing Pre-trial Narrative Statements was March 17, 2014; therefore, Appellant's Pre-trial Narrative Statement was filed three (3) days after the deadline and was deemed "untimely."

commenced on March 31st, 2014, at which both parties and their counsel were present. Despite Appellant's counsel's untimely filing of Appellant's Pre-trial Narrative Statement, to which the Master held his ruling for sanctions in abeyance and allowed Appellant to testify, comprehensive testimony and evidence were presented by both parties and their counsel. Although he allowed Appellant to testify over Appellee's counsel's objections, the Master ultimately concluded Appellant should have been precluded from offering testimony and evidence; however, the Master also concluded preclusion of Appellant's testimony and evidence would not be prejudicial, stating "no harm will befall [Appellant] as a result of that ruling given the nature of the assets and liabilities of the parties and given the necessary conclusions to be drawn therefrom." See *Master's Recommendations and Report*, pg. 11. Master Ralph R. Riehl, III, Esq. filed his Master's Recommendations and Report on May 9th, 2014, concluding, after considering the testimony and evidence presented by both parties, Appellant would receive 65% of the net marital assets and Appellee would receive 35% of the net marital assets. Following his Report, the Master made the following Recommendations: (1) the parties would be officially divorced from their marriage; (2) the marital residence would be awarded to Appellee and credit for \$10,400.00 in real estate taxes paid after the date of separation would also be awarded to Appellee; (3) the rental income from the 1st floor rental unit, as well as fair rental value for continued utilization of the rental unit after the date of separation, in the amount of \$30,600.00 would be awarded to Appellant; (4) the proceeds from the sale of the Pizza Shop and all rental income from the Pizza Shop in the amount of \$21,912.00 would be awarded to Appellant; (5) each party would retain all personal property in their possession; (6) Appellee would retain his IRA, valued at \$36,756.00, and his annuity, valued at \$30,541.00; (7) each party would retain their respective life insurance policies; (8) Appellee would retain his 2003 Lexus 300, valued at \$15,000.00; (9) Appellant would retain her 1993 BMW 318i, valued at \$4,000.00; (10) Appellant would retain her IRA, valued at \$7,774.00, and her annuity, valued at \$22,767.00; (11) Appellee would become solely responsible for repaying the outstanding Morgan Stanley loan amount of \$217,085.71 and the credit card debt of \$10,000.00; (12) Appellant would retain the income tax refund she received in the year 2011, valued at \$6,593.00; and (13) Appellee would retain his Morgan Stanley AAA investment account, valued at \$119,440.00, as well as the \$5,000.00 he retained from said account, which he had utilized for purchasing his Bonnie Brae Drive property.³

On May 28th, 2014, Appellant filed her Exceptions to the Master's Recommendations and Report. Additionally, Appellant filed a Demand for a *De Novo* Hearing on the same day. Appellee filed a Motion to Quash Appellant's Exceptions to the Master's Recommendations and Report on July 3rd, 2014, arguing Appellant's counsel did not adhere to the proper procedure in filing a Request for Argument. By Order of Court dated July 15th, 2014 and signed by Judge John J. Trucilla, Appellee's Motion to Quash was denied and Appellant was granted an additional ten (10) days to file a Request for Argument. Appellant filed said Request for Argument on July 22nd, 2014.

Appellant filed her Brief in Support of Exceptions to Master's Recommendations and

³ Appellant received \$113,210.00, equaling 66.49% of net marital assets, and Appellee received \$67,051.29, equaling 22.51% of the net marital assets, according to the Master's findings in his Recommendation and Report.

Report on August 22nd, 2014. Appellee filed his Brief in Opposition to Exceptions to Master's Recommendations and Report on August 25th, 2014. A hearing on Defendant's Exceptions to the Master's Report convened on September 2nd, 2014 before Judge John J. Trucilla; however, due to a conflict of interest and upon immediate notification to both parties and their counsel, Judge Trucilla as Administrative Judge recused himself and reassigned the instant matter to this Trial Court Judge. Oral Arguments were heard by this Trial Court Judge on September 23rd, 2014. Appellant filed Supplemental Authority in Support of Exceptions to Master's Recommendations and Report on the same day. This Trial Court entered its Memorandum Opinion and Order on October 23rd, 2014, granting in part and dismissing in part Appellant's Exceptions to the Master's Recommendations and Report.

Appellant filed her Notice of Appeal to the Pennsylvania Superior Court on November 19th, 2014, appealing this Trial Court's Memorandum Opinion and Order dated October 23rd, 2014. This Trial Court filed its 1925(b) Order on November 20th, 2014. Appellant filed her Statement of Matters Complained of on Appeal on December 11th, 2014.

A. Legal Argument

In reviewing equitable distribution Orders, the Pennsylvania Superior Court's standard of review is limited. *Lee v. Lee*, 978 A.2d 380, 382 (Pa. Super. 2009) (quoting *Anzalone v. Anzalone*, 835 A.2d 773, 780 (Pa. Super. 2003)). Absent an abuse of discretion on the part of the trial court, the Pennsylvania Superior Court will not reverse an award of equitable distribution. *Id.* In addition, when reviewing the record of the proceedings, the Pennsylvania Superior Court is guided by the fact that trial courts have broad equitable powers to effectuate economic justice, and the Pennsylvania Superior Court will find an abuse of discretion only where the trial court misapplied the laws or failed to follow proper legal procedures. *Id.* When fashioning equitable distribution awards, a trial court must weigh and apply the eleven (11) criteria found in 23 Pa. C. S. §3502(a) in order to "effectuate economic justice between parties" and "ensure a fair and just determination and settlement of their property rights." *Smith v. Smith*, 653 A.2d 1259, 1264 (Pa. Super. 1995). Pursuant to 23 Pa. C. S. §3502(a), the eleven equitable distribution factors include:

1. The length of the marriage;
2. Any prior marriage of either party;
3. The age, health, station, amount and sources of income, vocational skills, employability, estate, liabilities and needs of each of the parties;
4. The contribution by one party to the education, training, or increased earning power of the other party;
5. The opportunity of each party for future acquisitions of capital assets and income;
6. The sources of income of both parties, including, but not limited to, medical, retirement, insurance or other benefits;
7. The contribution or dissipation of each party in the acquisition, preservation, depreciation or appreciation of the marital property, including the contribution of a party as homemaker;
8. The value of the property set apart to each party;
9. The standard of living of the parties established during the marriage;
10. The economic circumstances of each party at the time the division of property is to become effective;

- 10.1 The Federal, State and local tax ramifications associated with each asset to be divided, distributed or assigned, which ramifications need not be immediate and certain;
- 10.2 The expense or sale, transfer or liquidation associated with a particular asset, which expense need not be immediate and certain; and
11. Whether the party will be serving as custodian of any dependent children.

23 Pa. C. S. §3502(a). Further, the finder of fact is free to believe all, part, or none of the evidence, and the Pennsylvania Superior Court will not disturb the Divorce Master's credibility determinations. *See Lee*, 978 A.2d at 382 (Pa. Super. 2009) (quoting *Anzalone*, 835 A.2d at 780 (Pa. Super. 2003)).

In addition, the Pennsylvania Superior Court does not evaluate the propriety of the distribution Order upon its agreement with a trial court's actions nor will the Pennsylvania Superior Court find a basis for reversal on a trial court's application of a single factor. *Lee v. Lee*, 978 A.2d 380, 382 (quoting *Trembach v. Trembach*, 615 A.2d 33, 36 (Pa. Super. 1992)). Rather, the Pennsylvania Superior Court reviews the distribution as a whole, in light of the trial court's overall application of 23 Pa. C. S. §3502(a) factors for consideration in awarding equitable distribution. *Id.* If the Pennsylvania Superior Court finds no abuse of discretion, the Order must stand. *Id.*

Finally, a Master's Recommendations and Report, although only advisory, are given the fullest consideration, particularly on the question of the credibility of witnesses, because the Master has had the opportunity to observe and assess the behavior and demeanor of the parties. *See Moran v. Moran*, 839 A.2d 1091, 1095 (Pa. Super. 2003).

In her Statement of Matters Complained of on Appeal, Appellant raises seven (7) separate issues on appeal for consideration, which this Trial Court will summarize as follows:

1. "Neither the Trial Court nor the Master properly allocated all of the proceeds of the two Morgan Stanley loans, totaling \$243,600, to [Appellee]..."
2. "The distribution of income to [Appellee] from the proceeds of the failed sale and current rental of the pizza shop business and the residential rental unit in the marital real estate from date of separation through calendar year 2012 is improper and/or inequitable..."
3. "Crediting [Appellee] with \$10,400.00 for part of the rental of the apartment used as their marital residence is inequitable..."
4. "The value of the pizza shop equipment was agreed as \$10,000 at time of separation but has substantially declined in value since then..."
5. "[Appellee]'s solely verbal claim of having paid a credit card debt of approximately \$10,000.00 post-separation should not be credited to him..."
6. "The affirmation of the Master's sanction of prohibiting [Appellant]'s testimony and proffered exhibits at the March 31st, 2014 hearing at [Appellee]'s instance because [Appellant]'s Pre-trial Narrative Statement was filed March 20th, 2014, merely three (3) days after the Master's designated date, March 17th, 2014, is contrary to the appellate decisions of the Commonwealth..." and
7. "Any marital asset value in excess of 75% resulting to [Appellant] after any or all

of the foregoing matters are determined should have been deemed as either in lieu of alimony, and/or in recognition of [Appellant]’s substantial pre-marital contribution of funds....”

See Appellant’s Statement of Matters Complained of on Appeal. This Trial Court will address Appellant’s issues as follows.

1. This Trial Court, having given the fullest consideration to the Master’s Recommendations and Report regarding the credibility of the parties, concluded the two Morgan Stanley loans, incurred during the marriage and utilized by both parties for marital expenditures, were marital debt and properly allocated full repayment to Appellee in the amount of \$217,085.71.

Pursuant to §3501(a) of the Pennsylvania Divorce Code, “marital property” means all property acquired by either party during the marriage and the increase in value of any property acquired prior to marriage or property acquired in exchange for property acquired prior to the marriage or property acquired by gift, except between spouses, bequest, devise or descent or property acquired in exchange for such property. *See 23 Pa. C. S. §3501(a)*. Between divorcing parties, debts which accrue to them jointly prior to separation are marital debts. *Litmans v. Litmans*, 673 A.2d 382, 391 (Pa. Super. 1996). However, a debt accrued during this time may be a non-marital debt where the other spouse did not take part in incurring the debt and received no benefit therefrom. *Lizik v. Lizik*, 3 Pa. D. & C. 5th 484, 489 (Pa. County Ct. 2007). Without documentation to support a spouse’s allegations regarding marital debts, the trial court is not required to accept those allegations. *Id.* (quoting *Litmans*, 673 A.2d 382, 395 (Pa. Super. 1996)).

At the Master’s hearing on March 31st, 2014, Appellee stated that when he commenced employment with Morgan Stanley in August of 2007 and as part of the financial arrangement with Morgan Stanley, Morgan Stanley gave Appellee two loans totaling \$243,600.00 – one loan in the amount of \$185,600, payable in 7 years at \$26,514.29 per year, with 5.25% interest accruing on unpaid amounts, and one loan in the amount of \$58,000.00, payable in 5 years at \$11,600.00 per year, with 3.5% interest accruing on unpaid amounts. *Transcript of Master’s hearing*, pg. 21, line 20 – pg. 22, line 5; *see also Appellee’s Master’s hearing Exhibit I*. When he was terminated from Morgan Stanley, Appellee entered into a repayment agreement to pay the remainder of the balance of the two loans, which Appellant did not contribute to, and commenced repayment of the balance of the two loans prior to the date of separation and was current on all loan payments.⁴ *Id.* pg. 25, lines 4-20. Appellee indicated he invested a substantial amount of funds from the two Morgan Stanley Loans into an AAA Investment account, which he used to make the annual payments on the two Morgan Stanley loans, and used an unspecified amount of funds from the two Morgan Stanley loans to pay marital expenditures. *Id.*, pg. 25, line 21 – pg. 26, line 11; pg. 27, lines 4-10; pg. 47, lines 14-15; pg. 48, lines 3-6, 10-15; pg. 49, lines 10-14. In her testimony, Appellant stated Appellee told her, and she believed, the two loans were a “bonus” Appellee received following an offer of employment from Morgan Stanley. *Id.*, pg. 99, line 19 – pg. 100, line

⁴At the date of separation, August 1st, 2009, the total outstanding balance on the two Morgan Stanley loans was \$217,085.71.

9. Appellant insisted she never had possession of any funds from the two Morgan Stanley loans and was not aware of any purchases made using those funds. *Id.*, pg. 100, lines 12-20. However, Appellee maintained Appellant was fully aware of the nature of these loans he received from Morgan Stanley. *Id.*, pg. 52, lines 8-12.

After consideration of the testimony and evidence presented by both parties, the Master found Appellee's testimony and evidence were more credible and determined the two Morgan Stanley loans were marital debt, stating:

As to the Morgan Stanley debt, the [\$243,600.00] undoubtedly was available to the parties during the marriage. Whether Mrs. McGrath knew that it was a loan as opposed to a bonus is of little consequence. The money was there. There is no evidence to the effect that Mr. McGrath has hidden it anywhere, and therefore, the Master concludes that aside from the \$5,000.00 retained by Mr. McGrath from the Bonnie Brae purchase, and aside from the \$119,400.00 which he had in the AAA account at the date of separation... there are no assets remaining which can be traced to that loan. However, at the date of separation, the loan did remain outstanding, and therefore, must be considered to be a marital debt.

See Master's Recommendations and Report, pg. 17. In its Opinion and Order, this Trial Court concluded the Master did not err in determining the two Morgan Stanley loans incurred solely by Appellee were marital debt, and this Trial Court dismissed Appellant's Exception thereto, accepting the Master's Recommendations that Appellee's testimony and evidence were more credible than Appellant's. A master's recommendations and report, although only advisory, are given the fullest consideration, particularly on the question of the credibility of witnesses, because the master has had the opportunity to observe and assess the behavior and demeanor of the parties. *See Moran*, 839 A.2d 1091, 1095 (Pa. Super. 2003). Appellee's testimony indicated that, while Appellant did not have a hand in securing either of the two Morgan Stanley loans, she did receive a substantial benefit from the loans, as the funds were used towards household, joint business and other marital expenditures. Although Appellant's testimony indicated her confusion as to the nature of the loans, Appellant's testimony did not show a complete lack of knowledge as to the loans' existence and availability. Therefore, this Trial Court, having given the fullest consideration to the Master's Recommendations and Report regarding the credibility of the parties, concluded the two Morgan Stanley loans, incurred by both parties during the marriage and utilized for marital expenditures, were marital debt and properly allocated full repayment to Appellee in the amount of \$217,085.71. This Trial Court finds Appellant's first issue on appeal is without merit.

2. This Trial Court properly distributed to Appellee the income from the proceeds of the failed sale and current rental of the pizza shop business, in the amount of \$21,912.00, and the residential rental unit in the marital real estate, in the amount of \$30,600.00, from the date of separation.

Trial courts have broad equitable powers to effectuate economic justice in these matters and a trial court's award of equitable distribution will not be reversed absent an abuse of discretion. *Lyons v. Lyons*, 585 A.2d 42, 45 (Pa. Super. 1991). The Pennsylvania Superior Court will find an abuse of discretion only if the trial court misapplied the law or failed to follow proper legal procedures. *Id.*

In the proposed Order following his Recommendations and Report, the Master recommended awarding each party their respective IRA's and annuities, their respective vehicles, their respective life insurance policies, their respective items of personal property. Furthermore, the Master recommended awarding Appellant the proceeds she received in rent from the apartment, the proceeds from the failed sale and current rent of their marital pizza shop, and the joint IRS tax refund. The Master recommended awarding and allocating to Appellee his AAA investment account, the remainder of the proceeds utilized for purchasing Appellee's real property on Bonnie Brae Drive, and allocated repayment of the two Morgan Stanley loans and the credit card debt to Appellee. After this allocation of assets and debts, Appellant received \$124,246.00 from the marital estate and Appellee received -\$30,748.71, a negative amount, from the marital estate; therefore, the Master recommended awarding Appellee the marital residence to achieve a 65% distribution of the marital estate to Appellant and a 35% distribution of the marital estate to Appellee as the Master envisioned.⁵

After review of the eleven equitable distribution factors, *see 23 Pa. C. S. §3502(a)*, and the relevant statutory and case law, this Trial Court dismissed the majority of Appellant's Exceptions and reinstated the majority of the Master's recommended distribution Order. However, this Trial Court granted Appellant's Exceptions regarding the recommended award of the marital residence to Appellee after review of the statutory equitable distribution factors and, therefore, awarded the marital residence to Appellant, stating:

As the Master found in his findings of fact, [Appellee] not only has significant sources of income, but has greater income-producing capabilities. [Appellee] stated he graduated from high school and completed one and a half years of college, while [Appellant] did not graduate from high school. [Appellee] also indicated he has a detailed work experience history, while [Appellant] stated she only worked in the Pizza Shop business. Finally, [Appellee] has shown capability of procuring his own residence, as he was able to purchase a home on Bonnie Brae Drive after the parties separated in November of 2009. Finally, [Appellant] stated her health was an issue as [Appellant] stated she is "full of radiation," is frequently sick, and now sees a gynecologist.

Such disparity in income, education and work experience, as well as [Appellant]'s testimony regarding her physical health, leads this Trial Court to conclude [Appellant] should have been awarded the marital residence, in contrast to the Master's Decree awarding [Appellee] the marital residence. [Appellant] will not be able to sustain the standard of living the parties were accustomed to prior to separation; thereby depriving the marital residence from her distribution would cause her further economic hardship.

See Trial Court's Opinion, pg. 23-24. However, the award of the marital residence to Appellant again left Appellee with -\$30,748.71 (negative) from the marital estate, due to the full amount of debt from the two Morgan Stanley loans and the credit card debt being allocated to Appellee. Thus, in order to effectuate economic justice between the parties and

⁵ The Master's award of the marital residence to Appellee, and not to Appellant, was a major point of contention and was discussed considerably in Appellant's Exceptions nos. 8 and 10.

achieve as close to a 65% distribution of the marital estate to Appellant and a 35% distribution of the marital estate to Appellee, as envisioned and recommended by the Master, this Trial Court awarded Appellee the proceeds from the failed sale and current rent of the pizza shop, in the amount of \$21,912.00, and the rental proceeds from the apartment, in the amount of \$30,600.00, both retained by Appellant. This Trial Court's distribution scheme, rather than the Master's, not only allocated a positive distribution to Appellee, thereby effectuating economic justice between the parties, but created a greater distribution for Appellant, as Appellant now would receive nearly 75% of the marital estate, as opposed to 65% of the marital estate from the Master's distribution Order. This Trial Court finds Appellant's second issue on appeal is without merit.

3. This Trial Court properly allocated to Appellee a credit in the amount of \$10,400.00 for part of the fair rental value of the apartment used as the parties' marital residence.

The general rule is a dispossessed party is entitled to a credit for the fair rental value of jointly held marital property against a party in possession of that property, provided there are no equitable defenses to the credit. *Trembach v. Trembach*, 615 A.2d 33, 37 (Pa. Super. 1992) (quoting *Hutnik*, 535 A.2d 151, 154 (Pa. Super. 1987)). Second, the rental credit is based upon, and, therefore, limited by, the extent of the dispossessed party's interest in the property. *Id.* (quoting *Gee v. Gee*, 460 A.2d 358, 360 (Pa. Super. 1983)). Generally, in regard to the marital home, the parties have an equal one-half interest in the marital property. *Id.* (quoting *Hutnik*, 535 A.2d at 154 (Pa. Super. 1987)). It follows, therefore, in cases involving the marital home, the dispossessed party is entitled to a credit for one-half of the fair rental value of the marital home. *Id.* Third, the rental value is limited to the period of time during which a party is dispossessed and the other party is in actual or constructive possession of the property. *Id.* Fourth, the party in possession is entitled to a credit against the rental value for payments made to maintain the property on behalf of the dispossessed spouse. *Id.*

In his testimony at the Master's hearing, Appellee stated he paid approximately \$2,600.00 per year in real estate taxes for the marital residence after the parties had separated in the year 2009, except for the year 2011, when the parties' joint income tax return was used to pay the real estate taxes. *Transcript of Master's hearing*, pg. 8, line 8 – pg. 9, line 2. Appellee further stated he paid the utilities and other expenses for the marital residence after the parties separated in the year 2009. *Id.*, pg. 7, lines 10-15. Although Appellee voluntarily chose to leave the marital residence in the year 2009, such action did not invalidate Appellee's interest in the marital residence. The basis of the award of rental value is that the party out of possession of jointly owned property (generally the party who has moved out of the formal marital residence) is entitled to compensation for her/his interest in the property. *Lee v. Lee*, 978 A.2d 380, 385 (Pa. Super. 2009). Furthermore, Appellee voluntarily chose to pay the real estate taxes, utilities and other expenses for the marital residence, despite no longer residing in the marital residence. Finally, while Appellee was paying the real estate taxes, utilities and other expenses for the marital residence, Appellant was living in the marital residence without making any contributions towards said expenses. These voluntary expenses for the marital residence paid by Appellee after separation in the year 2009, coupled with Appellant's lack of contribution, entitled Appellee a credit for the fair rental value of the marital residence in the amount of \$10,400.00. This Trial Court finds Appellant's third issue on appeal is without merit.

4-5. This Trial Court properly valued the pizza shop equipment, allocated to Appellee, in the amount of \$10,000.00 as the agreed-upon amount by both parties; and properly credited Appellee in the amount of \$10,000 for payment made by Appellee on the credit card debt as the only value amount provided by the parties to the Master and to this Trial Court.

When determining the value of marital property, a trial court is free to accept all, part or none of the evidence as to the true and correct value of the property. *Biese v. Biese*, 979 A.2d 892, 895 (Pa. Super. 2009). Where the evidence offered by one party is not contradicted, a trial court may adopt that value even though the resulting valuation would be different if more accurate and complete evidence were presented. *Id.* A trial court does not abuse its discretion in adopting the only valuation submitted by the parties. *Id.*

As Appellant's fourth and fifth issues concern the valuation of assets and debts, and therefore, utilize similar case law, these issues will be addressed simultaneously. First, Appellant's fourth issue concerns the valuation of the equipment from the pizza shop. The parties' marital residence consisted of three separate units – the 2nd floor residential unit where the parties resided, the 1st floor residential unit the parties placed for rent, and a commercial unit. *Transcript of Master's hearing*, pg. 6, line 24 – pg. 7, line 1. During their marriage, the parties operated the commercial unit as the "Mr. Pizza" pizza shop. *Id.* During his testimony at the Master's hearing, Appellee stated the remaining equipment from the pizza shop was worth an estimated \$10,000.00. *Id.*, pg. 30, lines 3-6. Furthermore, in his Recommendations and Report, the Master stated: "The parties agreed on the record that in all likelihood, the equipment remaining in the business is worth no more than \$10,000.00." *See Master's Recommendations and Report*, pg. 8. Although Appellant now insists the value of the pizza shop equipment has substantially declined in value, there was little or no contradiction from Appellant in the form of direct or cross-examination regarding the current value of the pizza shop equipment. Without a more detailed valuation of the pizza shop equipment after the Master's hearing to substantiate a significant decrease in value, this Trial Court was within its authority to adopt the agreed-upon valuation of the pizza shop equipment in the amount of \$10,000.00. *Biese*, 979 A.2d at 895. This Trial Court finds Appellant's fourth issue on appeal is without merit.

Furthermore, Appellant's fifth issue concerns the valuation of credit card debt at the date of separation. During his testimony at the Master's hearing, Appellee stated, as of the date of separation, the parties had a joint credit card account used to purchase inventory and equipment for the pizza shop and said account had a current balance of at least \$10,000.00. *Transcript of Master's hearing*, pg. 37, lines 7-16. In the Master's Report, the Master recommended that the full repayment of the credit card debt be allocated to Appellee, along with the two Morgan Stanley loans. *See Master's Recommendations and Report*, pg. 21. Again, there was little to no contradiction from Appellant in the form of direct or cross-examination regarding the credit card debt, and without a more detailed valuation of the credit card debt at the date of separation, this Trial Court was within its authority to adopt the only valuation provided to the Master and to this Trial Court regarding the credit card debt in the amount of \$10,000.00. *Biese*, 979 A.2d at 895. This Trial Court finds Appellant's fifth issue on appeal is without merit.

6. This Trial Court properly affirmed the Master holding his ruling on sanctions in abeyance; allowing Appellant to offer testimony; and concluding that Appellant's testimony and evidence should have been precluded at the March 31st, 2014 Master's hearing, due to Appellant's filing of her Pre-trial Narrative Statement three (3) days after the Master's designated date for filing pre-trial narrative statements.

Rule 1920.33 of the Pennsylvania Rules of Civil Procedure governs the filing of pre-trial narrative statements and appropriate sanctions for failure to timely file pre-trial narrative statements. Rule 1920.33 states, in pertinent part:

(b) Within the time required by Order of Court or written directive of the master or, if none, at least sixty days before the scheduled hearing on the claim for the determination and distribution of property, each party shall file and serve upon the other party a **pre-trial statement...**

(c) If a party fails to file either an inventory as required by subdivision (a) or a **pre-trial statement** as required by subdivision (b), the court may make an appropriate Order under Rule 4019(c) governing sanctions.

(d)(1) A party who fails to comply with a requirement of subdivision (b) of this rule shall, except upon good cause shown, be barred from offering any testimony or introducing any evidence in support of or in opposition to claims for the matters not covered therein.

(2) A party shall, except upon good cause shown, be barred from offering any testimony or introducing any evidence that is inconsistent with or which goes beyond the fair scope of the information set forth in the pre-trial statement...

Pa. R. Civ. P. 1920.33(b), (c), (d)(1)-(2) [emphasis added]. Furthermore, Rule 4019(c) of the Pennsylvania Rules of Civil Procedure states, in pertinent part:

(c) The court, when acting under subdivision (a) of this rule, may make:

...

(2) an Order refusing to allow the disobedient party to support or oppose designated claims or defenses, or prohibiting such party from introducing in evidence designated documents, things or testimony, or from introducing evidence of physical or mental condition...

Pa. R. Civ. P. 4019(c)(2) [emphasis added].

Prior to the Master's hearing, Master Ralph R. Riehl III, Esq., by letter dated January 17th, 2014, informed both parties and their counsel as to the date the Master's hearing would be held, March 31st, 2014, and directed the parties to file their Pre-trial Narrative Statements on or before March 17th, 2014. Appellee, by and through his counsel, filed his Pre-trial Narrative Statement on March 17th, 2014. Appellant's counsel, however, filed Appellant's Pre-trial Narrative Statement on March 20th, 2014, three (3) days after the due date set forth by the Master for filing Pre-trial Narrative Statements. At the Master's hearing on March 31st, 2014, Appellee's counsel objected to any and all testimony and evidence offered by Appellant, arguing violation of Rule 1920.33 of the Pennsylvania Rules of Civil Procedure. Appellant's counsel admitted filing Appellant's Pre-trial Narrative Statement outside of the Master's designated time period, but argued against any prohibitive sanctions, stating three

(3) days were a “minimal delay” in filing her Pre-trial Narrative Statement; most of the evidence Appellant would introduce would come from public records or was included in her previously-filed Inventory Statement; Appellant’s counsel, who was out-of-town, had difficulty in reaching his own client, the Appellant, prior to the Pre-trial Narrative Statement being filed; and Appellant’s counsel was hoping for a settlement and, therefore, did not start working on Appellant’s Pre-trial Narrative Statement as early as he could have done. The Master held his ruling in abeyance and permitted Appellant to testify at the Master’s hearing, but ultimately concluded Appellant should have been precluded from offering any testimony or evidence. However, the Master also concluded preclusion of Appellant’s testimony and evidence would not be prejudicial, stating “no harm will befall [Appellant] as a result of that ruling given the nature of the assets and liabilities of the parties and given the necessary conclusions to be drawn therefrom.” See *Master’s Recommendations and Report*, pg. 11.

Although Appellant’s counsel argues his filing of Appellant’s Pre-trial Narrative Statement three (3) days after the due date was a “minimal delay” and such delay would not prejudice Appellee, Appellant’s failure to adhere to the time limit set forth by the Master for filing Pre-trial Narrative Statements is a *per se* violation of Rule 1920.33(b); therefore, where a party fails to comply with the requirements of Rule 1920.33(b), prohibiting the untimely party from introducing testimony or evidence supporting or opposing claims addressed therein, absent a showing of good cause, is an appropriate sanction.

As to whether Appellant had “good cause” for this delay in filing her Pre-trial Narrative Statement, Appellant’s counsel stated he had been out of town the Friday before the Pre-trial Narrative Statements were due and had difficulty obtaining information from his own client, the Appellant. *Transcript of Master’s hearing*, pg. 84, lines 13-15. Appellant’s counsel also stated it was not Appellant’s intention to proceed with the Master’s hearing, but instead he wanted to “try and work it out” with Appellee and his counsel. *Id.*, pg. 86, lines 12-14. However, it was admitted by Appellant’s counsel that a Status Conference had taken place on January 16th, 2014, at which no agreement could be reached, and no further settlement discussions had taken place thereafter. *Id.*, pg. 86, lines 15-25. Appellant’s “hope” that a settlement could be reached prior to the Master’s hearing, where the evidence demonstrated the lack of any substantial settlement discussions taking place for months prior to the Master’s hearing, did not constitute “good cause” for failure to adhere to the time limit set forth by the Master for filing Pre-trial Narrative Statements. The Rules governing pre-trial statements and sanctions for failure to file pre-trial narrative statements are intended to provide an even playing field for both parties in the marital and economic dissolution of marriages and these Rules should not, and must not, be utilized to play games of “gotcha.” See *Anderson v. Anderson*, 822 A.2d 824, 829 (Pa. Super. 2003). However, Appellant’s counsel’s unavailability prior to filing Pre-trial Narrative Statements and difficulty in obtaining information from Appellant did not constitute “good cause,” as Appellant and her counsel had received the Master’s letter dated January 17th, 2014, which stated pre-trial narrative statements were due fifty-nine (59) days, a more than reasonable time to prepare for trial and submit Appellant’s Pre-trial Narrative Statement. Therefore, Appellant and Appellant’s counsel did not show “good cause” for their failure to file her Pre-trial Narrative Statement within the time period as set forth by the Master and was a clear violation of Rule 1920.33 of the Pennsylvania Rules of Civil Procedure. This Trial Court finds Appellant’s sixth issue on appeal is without merit.

7. At the time of the Master's hearing, Appellant admitted that only equitable distribution was outstanding and waived the issue of alimony by failing to preserve this issue in her initial Exceptions and failed to request leave to file additional Exceptions. Furthermore, any marital asset should not be deemed in recognition of Appellant's substantial pre-marital contribution of funds as acknowledged in part by Appellee.

The Sixth Judicial District known as the Court of Common Pleas of Erie County, Pennsylvania follows Rule 1920.55-2 of the Pennsylvania Rules of Civil Procedure regarding Master's Reports, Exceptions to Master's Reports, and Final Decrees entered by a trial court, as do a majority of counties in the Commonwealth of Pennsylvania. *See Pa. R. Civ. P. 1920.55-1*. Pursuant to Rule 1920.55-2:

(b) Within twenty days of the receipt of the date of mailing of the master's report and Recommendations, whichever occurs first, any party may file exceptions to the report or any part thereof, to rulings on objections to evidence, to statements or findings of fact, to conclusions of law, or to any other matters occurring during the hearing. Each exception shall set forth a separate objection precisely and without discussion. **Matters not covered by exceptions are deemed waived unless, prior to entry of the final decree, leave is granted to file exceptions raising those matters...**

Rule 1920.55-2(b). [emphasis added].

Appellant argues any distribution of marital assets, after all foregoing matters have been determined, should be deemed in lieu of alimony. However, of the eleven (11) Exceptions filed by Appellant on May 29th, 2014, Appellant did not list an Exception in any pleading concerning equitable distribution in lieu of alimony, and, therefore, failed to raise and preserve an issue regarding alimony. Additionally, as included in her Pre-trial Narrative Statement, Appellant merely mentions alimony as part of a "Proposed Resolution of Economic Claims," which did not clearly indicate a direct claim for alimony. Finally, the parties stipulated at the Master's hearing that the Master was "authorized to hear the case and make Recommendations concerning equitable distribution" only. *See Master's Recommendations and Report*, pg. 3. Furthermore, the Master indicated there were "no pleadings of record raising any economic claims." *See id.* If Appellant truly desired a claim for alimony, as mentioned in her Pre-trial Narrative Statement, she could have raised and preserved alimony prior to or during the Master's hearing; could have filed an additional Exception to the Master's Recommendations and Report for alimony in her initial Exceptions; and could have requested leave to file additional Exceptions before the final divorce decree was entered. Appellant chose none of these methods to preserve the issue of alimony. As Appellant decidedly chose none of these actions, any claim for alimony now on appeal is deemed waived, pursuant to Rule 1920.55-2(b) of the Pennsylvania Rules of Civil Procedure.

Appellant also argues any distribution of marital assets, after all foregoing matters have been determined, should be deemed in consideration of her pre-marital contribution of funds. As part of his Report, the Master acknowledged Appellant's pre-marital contributions towards the current parties' marital estate, including funds utilized towards the purchase of the parties' marital residence and furnishings within the marital residence; the pizza shop

business; Appellant's 1993 BMW 318i; an investment account; a term life insurance policy for Appellee; and an IRA account for Appellee. However, the Master also acknowledged Appellant's testimony and evidence were received over Appellee's objections regarding Appellant's untimely filing of her Pre-trial Narrative Statement and that the Master ultimately concluded Appellant should have been precluded from testimony and evidence pursuant to Rule 1920.33 of the Pennsylvania Rules of Civil Procedure.⁶ Furthermore, the Master determined preclusion of Appellant's testimony and evidence would not be prejudicial to Appellant, stating "...no harm will befall [Appellant] as a result of that ruling, given the nature of the assets and liabilities of the parties and given the necessary conclusions to be drawn therefrom." See *Master's Recommendations and Report*, pg. 11. In its Opinion, this Trial Court, while acknowledging Appellant's pre-marital contributions to the current parties' marital estate, properly concluded preclusion of Appellant's testimony and evidence would not prejudice Appellant and dismissed Appellant's Exceptions regarding pre-marital contributions.⁷ The Trial Court finds Appellant's final issue on appeal is without merit.

B. Conclusion

For the foregoing reasons, this Trial Court finds the instant Appeal is without merit.

Respectfully submitted by the Court:

/s/ Stephanie Domitrovich, Judge

⁶See Legal Argument no. 6 above.

⁷See Appellant's Exceptions to Master's Report nos. 7 and 9.

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

MICHAEL T. MCGRATH, Appellee**v.****VIRGINIA M. MCGRATH, Appellant**

IN THE SUPERIOR COURT OF PENNSYLVANIA

No. 1913 WDA 2014

Appeal from the Order October 23, 2014
In the Court of Common Pleas of Erie County
Civil Division at No(s): 13760-2009

BEFORE: FORD ELLIOTT, P.J.E., BOWES AND MUSMANNO, JJ.

MEMORANDUM BY BOWES, J.:

FILED MARCH 18, 2016

Virginia M. McGrath (“Wife”) appeals from the October 23, 2014 equitable distribution order that addressed her exceptions to the domestic relations master’s report and divided the marital estate that she accumulated with Michael McGrath (“Husband”). We affirm.

Husband and Wife married on July 2, 1994 and separated on August 1, 2009. Both were previously married. Wife has an adult child from her earlier marriage. Husband has no children.

Soon after Husband and Wife married, the couple purchased a building that was divided into an existing pizza restaurant, Mister Pizza, and two apartments. Wife utilized the proceeds of her property settlement from her first marriage to pay the down payment for the pizza business and the building. Husband reimbursed Wife \$2,500 towards the purchase of the business and paid the balance of the mortgage in monthly installments. Both parties are named on the deed to the property. The couple operated Mister Pizza on the ground floor, lived in the second floor apartment, and rented the other ground-floor unit for either \$550 or \$600 per month. Even after the date of separation, they reported the pizza business and the residential rental unit as partnership income on their joint tax returns.

Husband is a high school graduate with several college credits. Wife failed to graduate high school, and it is unclear whether she attained a GED. While the couple operated Mister Pizza jointly, Husband also engaged in outside employment as an insurance salesman and financial advisor. Husband initially worked at UBS Paine Webber, but during August 2007, he accepted a position with Morgan Stanley and Company (“Morgan Stanley”). As a requisite of employment, Morgan Stanley provided Husband a loan in the amount of \$185,600. Husband issued a promissory note committing to repay the amount in seven yearly installments. During 2008, the firm issued another loan totaling \$58,000, and Husband executed a second promissory note establishing a five-year repayment schedule. Using loan proceeds, Husband opened an investment account (“AAA account”) and used portions of the loans to pay marital expenses, cover investment losses, and satisfy the repayment schedules.

On August 1, 2009, the parties separated; however, Husband remained in the marital home until November when he purchased his own residence. On August 27, 2009, Husband filed a complaint in divorce that invoked the no-fault provisions in § 3301(c) of the Divorce Code, 23 Pa.C.S. §§ 3101-3904. Each of the parties filed affidavits of consent to the divorce.

Husband continued to work for Morgan Stanley until he was terminated from employment during November 2011 as a result of firm-wide streamlining. Husband has continued to repay the loan proceeds to his former employer. Following his discharge, Morgan Stanley renegotiated the repayment terms so that between February 2012 and December 2014, Husband would remunerate \$2,503.81 each month. He earned approximately \$71,000 during 2012, and, at the March 2014 master's hearing, Husband testified that he earned approximately \$56,000 per year as a financial advisor and insurance salesman with Mass Mutual.

Meanwhile, following the dissolution of the marriage, Wife continued to operate Mister Pizza, maintain the rental unit, and reside in the marital apartment. She stopped operating Mister Pizza during 2012. She attempted to sell that business for \$25,000 but the buyer defaulted after one year of operation. Thereafter, she rented the shop and equipment to Yum Yum Pizza for \$1,000 per month. Husband paid the taxes and utilities on the property and divided with Wife the proceeds of the jointly-filed federal income tax return. He also paid to her approximately \$8,600 for maintenance of the property and for discretionary spending.

Wife did not share the proceeds of the pizza shop and rental income with Husband or contribute to the repayment of the Morgan Stanley loan. Despite receiving an equal portion for the joint tax refunds between 2009 and 2011, Wife failed to contribute to the couple's \$7,000 tax liability during 2012. She is currently unemployed and lives primarily from rental income.

On July 25, 2013, Husband filed a motion for the appointment of a master to address the divorce and distribution of marital property. On July, 31, 2013, the trial court appointed Ralph Riehl III, Esquire, as the domestic relations master. The parties filed their respective inventories, appraisals, and income/expense statements, and they scheduled a status conference for December 13, 2013. That hearing was continued, when Wife's counsel withdrew from representation. Following the completion of the rescheduled status conference, on January 17, 2014, the master issued a letter scheduling an evidentiary hearing for March 31, 2014. The letter directed that pretrial statements must be filed on or before March 17, 2014. The master cautioned that, pursuant to Pa.R.C.P. 1920.33(b) and (d), absent good cause shown, the failure to timely file a pretrial statement would result in the preclusion from presenting evidence during the master's hearing.¹ Husband filed a timely pretrial statement. Wife submitted her pretrial statement three days late.

During the ensuing master's hearing, Husband testified on his own behalf and introduced several exhibits. Wife also testified. However, when she attempted to introduce evidence, Husband invoked Rule 1920.33 and objected to its admission. Following a brief argument on the record and consideration of Wife's justification for the delay, i.e., counsel was out of town on the preceding business day and had difficulty obtaining the necessary information from Wife, the master decided to withhold its ruling so that Wife could compile an evidentiary record. During Wife's testimony, Husband raised additional objections to references to

¹ Notwithstanding Husband's contention that the master filed the January 17, 2014 letter, it is not recorded on the list of docket entries. However, since the trial court attached the letter to the October 23, 2014 opinion as Exhibit A, the document was included in the certified record transmitted to this Court on appeal. For the sake of clarity, we highlight that the master filed and served **formal** notice of the evidentiary hearing separately. That notice, which is included in the record, was served by first-class mail on February 5, 2014.

other documents that she had not identified in the untimely pretrial statement. The master sustained those objections.

The master's report and recommendation was filed on May 9, 2014. The report included a thorough review of the facts and procedural history. Ultimately, the master fashioned a recommended order that divided the net marital assets 65%-35% in favor of Wife. The master also determined that, excluding the real property, Wife had received the benefit of the marital property totaling \$124,246 while Husband had a deficit of \$30,748.71, including the repayment of the balance owed on the promissory notes to Morgan Stanley. The result of the recommended equitable distribution order was that Husband would be awarded \$67,051.29 from the marital estate, which would be funded by his receipt of the real estate and Wife's payment of \$10,000.

As to the sanctions for Wife's late pretrial statement, the master precluded Wife's evidence in accordance with Rule 1920.33, but determined that the impediment did not affect the outcome of his decision. Stated simply, the master opined that, since Wife's testimony lacked specificity and concerned facts that occurred fifteen years prior to the parties' separation, i.e. her significant contribution toward the down payment for the marital home, her evidence would not have altered his consideration of the factors relevant to equitable distribution under 23 Pa.C.S. § 3502(a), which we reproduce *infra*.

Wife filed timely exceptions to the master's report and recommendation. She challenged the master's determinations regarding, *inter alia*, whether: (1) Husband benefited from the continued operation of the pizza shop by realizing post-separation tax benefits; (2) the Morgan Stanley loans were marital debt; (3) Wife was liable for one-half of the monthly rental value of the marital unit in which she continued to reside in post-separation; (4) Husband, rather than Wife, should retain the marital residence; and (5) the master improperly sanctioned Wife for the untimely filing of her pretrial statement by precluding her from introducing evidence under Rule 1920.33.

Following briefing and oral argument, on October 23, 2014, the trial court entered an opinion and order that granted relief, in part, denied relief, in part, and fashioned the equitable distribution order so that Wife received 75% of the marital estate. Specifically, it awarded Wife the marital residence with a stipulated value of \$87,800, a \$22,767 annuity, and her IRA worth \$7,774. Wife retained her 1993 BMW appraised at \$4,000, the proceeds of an IRS refund in the amount of \$6,593, and the personal property that she currently possessed.

Husband received, *inter alia*, \$21,912 in the proceeds from the unconsummated sale of Mister Pizza and the post-separation rents from the restaurant. He was awarded the post-separation proceeds from the residential rental, \$30,600, and a credit for \$10,400, representing approximately one-half of the fair rental value of Wife's continued utilization of the marital residence.² He was also granted \$10,000 for the value of the kitchen equipment in the pizza shop. Although the trial court sustained the master's finding that the loans secured

² We observe that the equitable distribution order described the credit as representing a credit for post-separation property taxes. However, in disposing of Wife's exceptions to the master's report and in addressing her Rule 1925 Statement, the trial court considered it a credit to the spouse dispossessed of the marital unit and applied the legal principles relevant to that credit. See Trial Court Opinion, 10/23/14, at 17-19; Rule 1925(a) Opinion, 1/20/15, at 13-14. It is inconsequential that the trial court misidentified the credit in the equitable distribution order because the court's rationale for sustaining the credit, i.e., Husband's payments of taxes, maintenance, and expenses, subsumed the post-separation payment of real estate taxes.

by promissory notes were a marital debt, it allocated to Husband the full responsibility for repayment totaling \$217,085.71 as well as the \$10,000 balance on the marital credit card as of the date of separation. As it relates to Wife's exception challenging the master's decision to ignore her evidence as a sanction for filing an untimely pretrial statement, the trial court rejected Wife's contention. Succinctly, it determined, at least implicitly, that Wife failed to establish good cause for her tardiness under Rule 1920.33. The court also highlighted that Wife's evidence would not have altered the master's proposed distribution of the marital estate. Thus, that exception was dismissed.

On appeal, Wife presents four questions for our review:

1. Did the court below err in not allocating the full amount of loan funds to [H]usband which he held and retained exclusively and ultimately to repay a large loan, resulting in a false imbalance in the distribution of assets and debts?
2. Did the court below err in awarding Husband credit for the two joint business ventures of the parties which he continued to use and benefit after the marital separation?
3. Did the court below err in assessing Wife a debt to Husband for the marital living unit under the circumstances?
4. Did the court below err in affirming the Master's determination to disregard Wife's testimony and exhibits because her Pretrial Statement as the responding party was filed [three] days [late] with no showing of prejudice?

Wife's brief at 5.

The following principles guide our review.

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.

McCoy v. McCoy, 888 A.2d 906, 908 (Pa.Super. 2005) (internal quotations omitted). 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." *Hayward v. Hayward*, 868 A.2d 554, 559 (Pa.Super. 2005).

Smith v. Smith, 904 A.2d 15, 18 (Pa.Super. 2006). In determining the propriety of an equitable distribution award, courts must consider the distribution scheme as a whole. *Morgante v. Morgante*, 119 A.3d 382, 387 (Pa.Super. 2015.).

Section 3502(a) of the Divorce Code outlines the factors relevant to a trial court's equitable distribution of marital property. Those considerations include:

- (1) The length of the marriage.
- (2) Any prior marriage of either party.
- (3) The age, health, station, amount and sources of income, vocational skills, employability, estate, liabilities and needs of each of the parties.
- (4) The contribution by one party to the education, training or increased earning power of the other party.
- (5) The opportunity of each party for future acquisitions of capital assets and income.
- (6) The sources of income of both parties, including, but not limited to, medical, retirement, insurance or other benefits.

(7) The contribution or dissipation of each party in the acquisition, preservation, depreciation or appreciation of the marital property, including the contribution of a party as homemaker.

(8) The value of the property set apart to each party.

(9) The standard of living of the parties established during the marriage.

(10) The economic circumstances of each party at the time the division of property is to become effective.

(10.1) The Federal, State and local tax ramifications associated with each asset to be divided, distributed or assigned, which ramifications need not be immediate and certain.

(10.2) The expense of sale, transfer or liquidation associated with a particular asset, which expense need not be immediate and certain.

(11) Whether the party will be serving as the custodian of any dependent minor children.

23 Pa.C.S. § 3502(a), (1)-(11).

The crux of Wife's first argument is that the trial court erred in deeming the Morgan Stanley loan to be marital debt. Wife agrees with the trial court's decision to encumber Husband with repaying the entire loan debt. However, she contends that by incorporating the \$217,085 loan balance into the marital estate, the court improperly deflated the marital estate by that amount, which, in turn, reduced the value of her 75% share. She contends that the loan proceeds must either be excluded from the marital estate entirely or included in the estate with both the proceeds and repayment assessed against Husband. The point of Wife's contention is that Husband maintained exclusive control over the loan proceeds and utilized less than 1% of the money for marital expenses.

Initially, we observe that "marital property" includes "all property acquired by either party during the marriage and the increase in value of any nonmarital property acquired [prior to the marriage or in exchange for property acquired prior to the marriage]." *Id.* at 23 Pa.C.S. § 3501(a), (1) and (3). Herein, it is beyond argument that the loan proceeds that Husband acquired during the marriage and that he used, at least to some degree, to satisfy marital expenses, is marital property. *See* N.T., 3/32/14, at 47. Specifically, while Husband could not pinpoint the exact expenses that he paid from the loan, he testified, "I know that I did tap into it a bit . . . I could not tell you if it was five hundred, a thousand, or two thousand [dollars]. I couldn't tell you what [the amount] is." *Id.* at 52. Husband did recall, however, that the couple used some of the money to go to a Disney theme park, as well as other destinations, with their grandson. *Id.* at 51. Although the certified record does not indicate the total amount of marital expenses that Husband paid from the Morgan Stanley loan, mindful of our deferential standard of review, we find no basis to disturb the trial court's decision to reject Wife's attempt to diminish the contributions of the loan proceeds to the marital estate as inconsequential.

Further, while Husband controlled the money from the loan, which Wife believed to be a signing bonus, he used it to open the AAA investment account. Significantly, unlike the facts of the case that Wife relies upon in her brief, Husband did not transfer the money to a sole proprietorship in which Wife had no interest.³ *Compare McNaughton v. McNaughton*,

³ It is unclear whether Husband used money from the AAA account to fund a \$30,000 down payment on a home he purchased post-separation during 2009. However, to the extent that the money was from marital funds, Husband repaid \$25,000 of that amount to Morgan Stanley directly upon the subsequent sale of the home. While Husband is undoubtedly liable for the remaining \$5,000, the shortfall is not significant enough to upset the trial court's equitable distribution scheme in light of the fact that Husband is solely responsible for the loans' repayment under the equitable distribution order.

603 A.2d 646 (Pa.Super. 1992) (holding trial court properly assigned debt to husband's business rather than marital estate). The fact that Husband did not consult with Wife before selecting the individual investment opportunities under the AAA account did not render that money a non-marital asset. As the loans were acquired during the marriage and used for marital purposes prior to separation, they were properly included in the marital estate. *See* 23 Pa.C.S. § 3501(a)(1). The trial court reached this precise conclusion based upon the evidence adduced during the master's hearing and included in the certified record. Thus, no relief is due.

Moreover, notwithstanding Wife's protestations, the trial court did not err in declining to increase the value of the marital estate by the amount of the loan proceeds owed at the time of separation. Wife's argument is misguided. The money owed to Morgan Stanley is a debt rather than an asset. While any income produced as a result of Husband's investments using the corpus of the loan is indisputably a marital asset, the loan itself is no less of a marital debt than any mortgage, car note, or consumer credit card secured during the marriage. Hence, it would be improper to inflate the marital estate by an amount that is commensurable with the loan balance. Instantly, the Morgan Stanley loan represents \$217,085.71 of marital debt, the repayment of which the trial court reasonably assessed against Husband. As the trial court's decision is within its discretion and free of legal error, we will not disturb it.

Next, Wife argues that the trial court erred in awarding Husband credit for the value of the post-separation income Wife retained from the first floor rental unit and the sale and/or rent of the pizza restaurant. Wife asserts that since Husband benefited from these ventures by receiving tax advantages based upon their joint filing status, he is not entitled to postseparation proceeds through December 2012, the final year the parties filed a joint tax return. Wife frames the crux of her contention as follows, "Husband would certainly have incurred a much larger income tax obligation had he filed separately and/or without including the expenses and losses attributable to the [pizza shop and rental unit], given his much larger income, as Wife's share of income was consistently miniscule." Wife's brief at 18. Wife contends that she retained the meager income from the rental unit and the proceeds of the failed sale of the pizza shop in lieu of spousal support. Hence, Wife reasons, while she consumed the rents and income from the pizza shop in order to survive, benefits from the two enterprises inured to Husband nevertheless. Thus, Wife argues that the trial court erred in carving from these incomes a distribution to Husband because between the date of separation and December 2012, the parties shared different aspects of the two ventures. Wife's arguments are unconvincing.

As the monthly rent and the income from the pizza shop were marital property, they were subject to equitable distribution. Husband was entitled to at least the value of his share of the proceeds that Wife retained. Additionally, we observe, that while Husband did, in fact, benefit from the jointly filed tax return, on at least three occasions, he transferred to Wife her one-half share of the substantial income tax refunds, although he deducted Wife's share of the property taxes from the refund for 2011. Thus, the benefit that the parties realized from their joint filing status was apportioned equally between them. In addition, Husband provided Wife with approximately \$8,600 during 2012 for maintenance of the property and her discretionary spending. Given these facts, we cannot agree with Wife's assertion that the trial court erred in awarding to Husband the proceeds from the rental unit and pizza shop. Stated plainly, the instant record will not sustain Wife's complaint that the trial

court's equitable distribution scheme is unreasonable because it requires her to relinquish post-separation payments that she has retained since the date of separation.

Wife's third issue pertains to the trial court's assessment of one-half the rental value of the marital apartment since the date of separation. Generally, Pennsylvania law provides that, absent an equitable defense, a dispossessed spouse is entitled to a credit against the spouse in exclusive possession for the fair rental value of the marital residence. *See Lee v. Lee*, 978 A.2d 380 (Pa.Super. 2009) (quoting *Trembach v. Trembach*, 615 A.2d 33 (Pa.Super. 1992) ("the general rule is that the dispossessed party is entitled to a credit for the fair rental value of jointly held marital property against a party in possession of that property, provided there are no equitable defenses to the credit.")). As we reiterated in *Lee, supra*, "The basis of the award of rental value is that the party out of possession of jointly owned property . . . is entitled to compensation for her/his interest in the property." *Id.* (citation omitted).

Wife stresses that the rental credit is not mandatory and argues that the trial court erred in applying the credit under the facts of the case at bar in light of the disparity between the parties' financial circumstances. She relies upon our holding in *Middleton v. Middleton*, 812 A.2d 1241, 1248 (Pa.Super. 2002) (*en banc*), where we affirmed the trial court's decision to forego the credit because it "would clearly not effectuate economic justice between the parties." We highlighted that the dispossessed spouse in that case, a retired professional sports referee, earned significantly more than the wife, and even though he paid voluntary payments to the wife that were outside of the equitable distribution scheme, the credit would be burdensome upon the wife despite her award of sixty percent of the marital estate. Essentially, we deferred to the trial court's judgment. We reasoned that, since the distribution order reflected "a considered weighing of the economic standings and needs of the parties" and evinced consideration of the relevant statutory factors, the trial court's decision to forego the credit was a reasonable exercise of discretion. *Id.*

Unlike the facts of *Middleton*, however, instantly Husband is not as financially secure as the dispossessed spouse in *Middleton*. Thus, although the husband in that case could sustain the financial blow associated with receiving only 40% of the marital estate while still providing voluntary support payments, Husband cannot endure that responsibility. He earns between \$54,000 and \$71,000 per year as a financial advisor and insurance salesman. While he retained his IRA and annuity valued at \$36,756 and \$30,541 at the date of separation, he is not wealthy by any definition. Husband contributed voluntarily to the post-separation real estate taxes, utilities, and other property expenses while Wife remained in the home rent free, and he is solely responsible for the marital debt associated with the Morgan Stanley loan. Thus, unlike the dispossessed husband in *Middleton*, Husband, herein, lacks the financial assets to support the deviation from the general principle that a disposed spouse is entitled to one-half of the rental value of the marital home. As the trial court considered the relevant factors in declining the credit,⁴ and its decision weighed

⁴ In *Trembach, supra* at 87-88 (citations omitted), we enumerated the following relevant considerations for determining whether to apply the rental credit:

First, the general rule is that the dispossessed party is entitled to a credit for the fair rental value of jointly held marital property against a party in possession of that property, provided there are no equitable defenses to the credit. Second, the rental credit is based upon, and therefore limited by, the extent of the dispossessed party's interest in the property. Generally, in regard to the marital home, the parties' have an equal one-half interest in the marital property. It follows, therefore, that in cases involving the marital home that the dispossessed party will be entitled to a credit for one-half of the fair rental value of the marital home. Third, the rental value is limited to the period of time during which a party is dispossessed and the other party is in actual or constructive possession of the property. Fourth, the party in possession is entitled to a credit against the rental value for payments made to maintain the property on behalf of the dispossessed spouse.

the economic standings and needs of the parties, there is no basis to find an abuse of discretion.

Wife's final issue concerns the master's preclusion of her evidence as a sanction for the untimely filing of her pretrial statement. Relying upon our decision in *Estate of Ghaner at al v. Bindi*, 779 A.2d 585 (Pa.Super. 2001), Wife contends that the wholesale preclusion of evidence was too severe of a sanction insofar as the prejudice to Husband as a result of her three-day delay was insignificant. In *Estate of Ghaner*, this Court reversed the trial court's decision to preclude a plaintiff from introducing exhibits or testimony in a wrongful death action after she failed to file a pre-trial statement pursuant to Pa.R.C.P. 212.2(a) and (c), an analogous rule that is applicable to civil jury trials. Stated simply, we reasoned that the preclusion of evidence in that case was "tantamount to a dismissal of [the] action." *Id.* at 589. After considering the relevant facts of that case, we deemed the sanction too severe of a punishment for the plaintiff-appellant's misstep and, therefore, determined that the trial court committed an abuse of discretion in imposing it. *Id.* at 590.

Instantly, unlike the situation in *Estate of Ghaner*, the sanction that the master imposed was not tantamount to a dismissal of Wife's case. In fact, the omissions had no effect on the fact-finder's consideration of the evidence before it. Wife identifies only three points of evidence that she believes would have altered the outcome had it been considered. First, Wife stresses that she proffered evidence relating to her payment of the mortgage on the marital residence during 2004, using a low-interest credit card, which she paid in full prior to the 2009 separation. Additionally, Wife contested Husband's assertion that she had engaged in an extramarital affair prior to the parties' separation. Finally, Wife refuted Husband's contention that he paid for the couple's vacations with money from the AAA investment account. None of this evidence, if believed by the fact-finder would have altered the outcome of the hearing.

First, the evidence concerning her payment of the mortgage is stale as Wife obtained the credit card during 2004 and paid the balance prior to the date of separation. Likewise, the reference to her extramarital affair was irrelevant to equitable distribution pursuant to § 3502(a), and therefore her denials were equally immaterial. Finally, to the extent that Wife sought to dispute Husband's assertion that he paid for family vacations from the Morgan Stanley loan, the fact finder made a credibility determination in Husband's favor, concluding that Husband paid some portion of the expense from the marital account. Thus, as the master and the trial court both indicated in rejecting Wife's claim of prejudice stemming from the Rule 1920.33 sanction, the testimony and exhibits that Wife proffered during the hearing would not have altered the equitable distribution scheme. Accordingly, we conclude no relief is due.

Order affirmed.

Judgment Entered.

ARTICLES OF AMENDMENT

The Warren County Solid Waste Authority, having a registered office at the Warren County Courthouse, 402 Fourth Street, Warren, PA 16365, intends to file articles of amendment with the Secretary of the Commonwealth pursuant to the Municipalities Authorities Act of Pennsylvania, 53 Pa.C.S. §5605, to reduce the number of its directors to five and to amend its duties to conform to landfill post-closure obligations. The articles of amendment will be filed on or after April 10, 2016.

Mar. 25



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Presenter:

IRENE MCLAUGHLIN

Irene McLaughlin has a strong record of public service as an attorney and former Judge. She started practicing law in Pittsburgh in 1988. Judge Irene served the Pittsburgh Municipal Court by Mayoral appointment from 1993 to 2003 when the Pittsburgh bench was reorganized. In addition to handling criminal, traffic and parking matters, Judge Irene served as the Pittsburgh Housing Court Judge hearing all property code citations and spearheading court improvements including systematic collection of fines and costs that positively impacted neighborhood quality of life. During her judicial tenure and since, her private practice has included mediating community, landlord/tenant, workplace and family disputes. Since 2003, Ms. McLaughlin has provided legal services related to difficult real property problems that resulted in solutions including:

- affordable payment plans for homeowners' facing tax foreclosure;
- 'tangled title' legal services to save the family home;
- free and clear title on properties with unavailable record owners;
- acquisition, remediation and beneficial re-use of over 60 scattered-site, blighted parcels in a tax claim bureau jurisdiction;
- advocacy and enactment of state laws that give communities and municipalities new tools to prevent and address blight and abandonment including the PA Land Bank Law;
- technical assistance as a Consultant to the Housing Alliance of Pennsylvania that supported local 'Fight Blight' initiatives like the Pittsburgh Land Recycling Task Force, Operation Better Block's Resident Driven Cluster Planning & Vacant Property Remediation in the City's Homewood neighborhood, and the Tri-COG Collaborative's Land Bank Business Plan for Allegheny County communities.



She received her B.S. in Economics from the Wharton School of the University of Pennsylvania, her J.D. from CUNY Law School at Queens College and her M.A. with a concentration in Conflict Resolution from the McGregor School at Antioch University. She is a member of the Allegheny County Bar Association (ACBA) and served as the 2013-2014 Chair of the ACBA Real Property Section.

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NOTICE BY
KENNETH J. GAMBLE**

**Clerk of Records,
Register of Wills and Ex-Officio Clerk of
the Orphans' Court Division, of the
Court of Common Pleas of Erie County, Pennsylvania**

The following Executors, Administrators, Guardians and Trustees have filed their Accounts in the Office of the Clerk of Records, Register of Wills and Orphans' Court Division and the same will be presented to the Orphans' Court of Erie County at the Court House, City of Erie, on **March 28, 2016** and confirmed Nisi.

April 21, 2016 is the last day on which Objections may be filed to any of these accounts.

Accounts in proper form and to which no Objections are filed will be audited and confirmed absolutely. A time will be fixed for auditing and taking of testimony where necessary in all other accounts.

2016 ESTATE

ACCOUNTANT

ATTORNEY

- | | | | |
|-----|----------------------------|-----------------------------------------------------------------------------------------------------|----------------------------|
| 58. | James L. DeSantis Sr. | Rosemary W. DeSantis, Executrix | S. Craig Shamburg, Esquire |
| 59. | Gail Davis, a/k/a | Patrick W. Sheehan and
Gail A. Davis
Monsignor Richard J. Sullivan
Co-Administrators | Darlene M. Vlahos, Esquire |
| 60. | Edmund J. Statkun | Michael M. Statkun, Executor | Darlene M. Vlahos, Esquire |

KENNETH J. GAMBLE
Clerk of Records
Register of Wills &
Orphans' Court Division

Mar. 18, 25

ESTATE NOTICES

Notice is hereby given that in the estates of the decedents set forth below the Register of Wills has granted letters, testamentary or of administration, to the persons named. All persons having claims or demands against said estates are requested to make known the same and all persons indebted to said estates are requested to make payment without delay to the executors or their attorneys named below.

FIRST PUBLICATION**BARTLETT, RUTH ANN,****deceased**

Late of North East Township, Erie County, Commonwealth of Pennsylvania

Executor: Matthew M. Bartlett, c/o Leigh Ann Orton, Esquire, 11 Park Street, North East, PA 16428
Attorney: Leigh Ann Orton, Esq., Knox McLaughlin Gornall & Sennett, P.C., 11 Park Street, North East, PA 16428

GRUMBLATT, JOAN M.,**deceased**

Late of the Township of Millcreek, Erie County, PA

Executrix: Christine Hall McClure, c/o 120 West 10th Street, Erie, PA 16501
Attorney: Christine Hall McClure, Esquire, Knox McLaughlin Gornall & Sennett, P.C., 120 West Tenth Street, Erie, PA 16501

PINEO, ROSS VICTOR,**deceased**

Late of Millcreek Township, County of Erie, Commonwealth of Pennsylvania

Executrix: Patricia P. Pineo, 10715 Konneyaut Trail, Conneaut Lake, PA 16316
Attorney: Ross C. Prather, Esquire, 791 North Main Street, Meadville, PA 16335

RATHBUN, NANCY L.,**deceased**

Late of the City of Corry, Erie County, Pennsylvania

Executor: Brian T. Rathbun, 420 Hatch Street, Corry, PA 16407
Attorney: William E. Barney, Esq., 200 North Center Street, Corry, Pennsylvania 16407

YEZZI, ALPHONSO W.,**deceased**

Late of the City of Erie, Erie County, Pennsylvania

Executor: David J. Yezzi, 10229 Jones Road, Erie, PA 16510
Attorney: Thomas C. Hoffman, II, Esq., Knox McLaughlin Gornall & Sennett, P.C., 120 West Tenth Street, Erie, PA 16501

SECOND PUBLICATION**CARDONA, VERONICA,****deceased**

Late of the City of Erie, County of Erie, State of Pennsylvania

Co-Executors: Elizabeth Cardona and Jesus Cardona, 1327 East 7th Street, Erie, PA 16503
Attorney: James R. Steadman, Esq., 24 Main St. E., PO Box 87, Girard, PA 16417

CHASE, LOIS A.,**deceased**

Late of the Township of Summit
Executor: Gary E. Chase, 11401 Donation Road, Waterford, PA 16441

Attorney: Michael A. Fetznar, Esquire, Knox McLaughlin Gornall & Sennett, P.C., 120 West Tenth Street, Erie, PA 16501

CLARK, WESTBROOK,**deceased**

Late of the City of Erie, County of Erie and Commonwealth of Pennsylvania

Executor: George M. Clark
Attorney: Thomas J. Minarcik, Esquire, Elderkin Law Firm, 1605 East 8th Street, Erie, PA 16501

DUDEHOEFFER, GERALDINEA.,**deceased**

Late of the City of Erie, County of Erie and Commonwealth of Pennsylvania

Co-Executors: Jon M. Dudenhoeffer and Thomas R. Dudenhoeffer, c/o 300 State Street, Suite 300, Erie, PA 16507
Attorney: Thomas V. Myers, Esquire, Marsh Spaeder Baur Spaeder & Schaaf, LLP, 300 State Street, Suite 300, Erie, PA 16507

EBERT, RONALD E.,**deceased**

Late of North East Township, County of Erie and State of Pennsylvania

Executor: Joyce Askins, c/o 227 West 5th Street, Erie, PA 16507
Attorney: Mark O. Prenatt, Esquire, 227 West 5th Street, Erie, PA 16507

GARNOW, EDWARD W.,**deceased**

Late of the City of Erie, County of Erie and Commonwealth of Pennsylvania

Executrix: Pamela J. Tann, 2222 West Grandview Blvd., Erie, PA 16506
Attorney: Thomas E. Kuhn, Esquire, Quinn, Buseck, Leemhuis, Toohey & Kroto, Inc., 2222 West Grandview Blvd., Erie, PA 16506

GRIESHOBBER, DONALD W.,**deceased**

Late of the Borough of Edinboro, County of Erie and Commonwealth of Pennsylvania

Executor: Gary H. Nash, Yochim, Skiba & Nash, 345 West Sixth Street, Erie, PA 16507
Attorney: Gary H. Nash, Esq., Yochim, Skiba & Nash, 345 West Sixth Street, Erie, PA 16507

**HUFF, WAYNE R., a/k/a
WAYNE HUFF,
deceased**

Late of the City of Erie, County of Erie and Commonwealth of Pennsylvania

Administrator: Kathleen A. Clement, c/o 504 State Street, 3rd Floor, Erie, PA 16501

Attorney: Michael J. Nies, Esquire, 504 State Street, 3rd Floor, Erie, PA 16501

**LAIRD, DONALD C.,
deceased**

Late of Fairview, County of Erie and Commonwealth of Pennsylvania

Executor: Marykay Cioccio, c/o Norman A. Stark, Esq., Suite 300, 300 State Street, Erie, PA 16507

Attorneys: Marsh, Spaeder, Baur, Spaeder & Schaaf, LLP, Suite 300, 300 State Street, Erie, PA 16507

**MARTIN, MARGARET J., a/k/a
MARGARET MARTIN,
deceased**

Late of the Township of Millcreek, County of Erie, Commonwealth of Pennsylvania

Executor: Brian Paul Martin, 2549 East Grandview Boulevard, Erie, PA 16510

Attorneys: MacDonald, Illig, Jones & Britton, LLP, 100 State Street, Suite 700, Erie, Pennsylvania 16507-1459

**PIERCE, JACQUELINE M.,
deceased**

Late of the City of Erie, Erie County, Commonwealth of Pennsylvania

Executor: Neal Devlin, c/o Jerome C. Wegley, Esq., 120 West Tenth Street, Erie, PA 16501

Attorney: Jerome C. Wegley, Esq., Knox McLaughlin Gornall & Sennett, P.C., 120 West Tenth Street, Erie, PA 16501

**RUFF, CHARLES J.,
deceased**

Late of the City of Erie

Administrator: Nealy Leach-Ruff

Attorney: Andrew J. Sisinni, Esquire, 1314 Griswold Plaza, Erie, PA 16501

**RUTKOWSKI, EDWARD W.,
deceased**

Late of the City of Erie, County of Erie, Commonwealth of Pennsylvania

Executrix: Regina Rutkowski, 741 East 31st Street, Erie, PA 16504

Attorney: Ross C. Prather, Esquire, 791 North Main Street, Meadville, PA 16335

THIRD PUBLICATION

**ALDAY, CATHERINE E., a/k/a
CATHERINE S. ALDAY, a/k/a
CATHERINE ALDAY,
deceased**

Late of the Township of Fairview, County of Erie, State of Pennsylvania

Executrix: Margaret E. Yates, 165 Hope Road, Cranberry Township, PA 16066-3805

Attorney: James R. Steadman, Esq., 24 Main St. E., PO Box 87, Girard, PA 16417

**BALDWIN, VELMA R.,
deceased**

Late of the Borough of Lake City, Erie County, Pennsylvania

Executors: Penny Harvey, 9935 Martin Avenue, Lake City, PA 16423 and Brian Baldwin, 931 Aurora Avenue, Girard, PA 16417

Attorney: Gary J. Shapira, Esq., 305 West Sixth Street, Erie, PA 16507

**BENJAMIN, BERNARD, JR.,
deceased**

Late of the Township of Harborcreek, County of Erie and Commonwealth of Pennsylvania

Executor: Annmarie E. Jensen, c/o Norman A. Stark, Esq., Suite 300, 300 State Street, Erie, PA 16507

Attorneys: Marsh, Spaeder, Baur, Spaeder & Schaaf, LLP, Suite 300, 300 State Street, Erie, PA 16507

**BRIGHAM, DONNA,
deceased**

Late of the Boro of Wesleyville

Executor: Robert M. Brigham

Attorney: Steven E. George, Esq., Shapira, Hutzelman and Smith, 305 West 6th Street, Erie, PA 16507

**BUCCOS, MARY M.,
deceased**

Late of North East Borough, Erie County, North East, Pennsylvania

Co-Executors: John Buccos III and Nancy J. Brown-Williamson, c/o Robert J. Jeffery, Esq., 33 East Main Street, North East, Pennsylvania 16428

Attorneys: Orton & Jeffery, P.C., 33 East Main Street, North East, Pennsylvania 16428

**DITRICH, JOHN C., JR.,
deceased**

Late of Harborcreek Township, County of Erie and Commonwealth of Pennsylvania

Executor: Vincent H. Ditrich

Attorney: David J. Rhodes, Esquire, Elderkin Law Firm, 150 East 8th Street, Erie, PA 16501

**DUER, ALICE MAE, a/k/a
ALICE M. DUER,
deceased**

Late of the Township of Millcreek, County of Erie, Commonwealth of Pennsylvania

Administratrix C.T.A.: Jacqueline Duer Hughes, 1301 Waterford Drive, Mt. Pleasant, SC 29464

Attorneys: MacDonald, Illig, Jones & Britton LLP, 100 State Street, Suite 700, Erie, Pennsylvania 16507-1459

**EDDY, RODNEY LaSHAWN,
deceased**

Late of the City of Erie

Executors: Everett J. and Brenda M. Eddy, 2527 Reed St., 1st Ft., Erie, PA 16503

Attorney: None

**EVERETT, E. RUTH, a/k/a
RUTH EVERETT a/k/a
EMMA R. EVERETT, a/k/a
EMMA RUTH EVERETT, a/k/a
EMMA EVERETT,
deceased**

Late of the Township of
Springfield, County of Erie, State
of Pennsylvania
Executrix: Janet Shattuck, 11613
Lucas Road, East Springfield,
PA 16411
Attorney: Grant M. Yochim, Esq.,
24 Main St. E., PO Box 87, Girard,
PA 16417

**GOULIONE, KATHRYN L.,
deceased**
Late of the City of Erie, County
of Erie
Executor: Christian Goulione,
8900 Rohl Road, North East,
Pennsylvania 16428
Attorney: Kari A. Froess, Esquire,
Carney & Good, 254 West Sixth
Street, Erie, Pennsylvania 16507

**HERSHELMAN, GLADYS M.,
deceased**
Late of Millcreek Township, Erie
County, Pennsylvania
Executor: Thomas H. Hershelman,
c/o 3209 East Avenue, Erie, PA
16504
Attorney: Cathy M. Lojewski,
Esq., 3209 East Avenue, Erie,
PA 16504

**LYNCH, CHARLES G.,
deceased**
Late of the City of Erie, Erie
County, Pennsylvania
Executor: David B. Lynch, 510
Cranberry Street, Suite 301, Erie,
Pennsylvania 16507
Attorney: Raymond A. Pagliari,
Esq., 510 Cranberry St., Suite 301,
Erie, Pennsylvania 16507

**MIKIELSKI, EVE H.,
deceased**
Late of the City of Erie
Executor: Robert Mikielski, 163
B Kohler Hill Road, Hamburg,
PA 19526
Attorney: Michael A. Fetzner,
Esquire, Knox McLaughlin
Gornall & Sennett, P.C., 120 West
Tenth Street, Erie, PA 16501

**MUSSINA, WILLIAM,
deceased**
Late of Millcreek Township,
Erie County, Commonwealth of
Pennsylvania
Administratrix: Judith Kinnear,
1890 Davison Road, Harborcreek,
PA 16421
Attorney: Robert D. Kinnear, Esq.,
24 West 5th Avenue, Warren, PA
16365

**STRAESSLEY, WILLIAM J.,
a/k/a WILLIAM STRAESSLEY,
deceased**
Late of the Borough of Girard,
County of Erie, State of
Pennsylvania
Executrix: Mary Helen Straessley,
944 West 9th Street, Erie, PA
16502
Attorney: James R. Steadman,
Esq., 24 Main St. E., PO Box 87,
Girard, PA 16417

**TAYLOR, RONALD E., a/k/a
RONALD TAYLOR,
deceased**
Late of the Township of
Springfield, County of Erie, State
of Pennsylvania
Co-Executrices: Terry Jo Ramey,
2500 Nursery Rd., Lot 206 Sh,
Lake City, PA 16423 and Dawnita
Rae Sterling, 3850 Williams Rd.,
Lot 5, Girard, PA 16417
Attorney: Grant M. Yochim, Esq.,
24 Main St. E., PO Box 87, Girard,
PA 16417

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