

**IN THE SUPERIOR COURT OF PENNSYLVANIA**

**EASTERN DISTRICT**

**NO. 2164 ED 2015**

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**Tamara Sweeney**

**Appellant**

**v.**

**Thomas J. Sweeney**

**Appellant**

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**BRIEF FOR APPELLANT**

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**APPEAL FROM THE ORDER OF JUDGE DANIELE  
ENTERED ON JUNE 18, 2015 GRANTING DECREE IN DIVORCE AND  
ORDERING EQUITABLE DISTRIBUTION**

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PRO SE**

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*Ashworth v. Commissioner*, TC Memo 1990-423

*Baker v. Baker*, 861 A.2d 298 (Pa. Super. 2004)

*Balicki v. Balicki*, 4 A.3d 654 (Pa. Super. 2010)

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*Brown v. Brown*, 863 S.W.2d 432 (Tenn. Ct. App. 1993)  
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## **STATEMENT OF JURISDICTION**

The Superior Court has jurisdiction over this appeal pursuant to 42 Pa. C.S. § 742 granting it exclusive appellate jurisdiction of all appeals from final orders of the Court of Common Pleas, and also pursuant to Pa. R.A.P. 301 and Pa. R.A.P 341.

**ORDER OR OTHER DETERMINATION IN QUESTION**

Appeal from the Order of Judge Daniele entered on June 18, 2015 granting Decree in Divorce and ordering Equitable Distribution.

## **STATEMENT OF SCOPE AND STANDARD OF REVIEW**

The scope of review in this case is consistent with other Superior Court decisions which deal with the Divorce Code. The standard of review is the abuse of discretion standard. See: Ruth v. Ruth, 316 Pa. Super. 282, 462 A.2d 1351 (1983); Gee v. Gee, 314 Pa. Super. 31, 460 A.2d 358 (1983). Geyer v. Geyer, 310 Pa. Super. 456, 456 A.2d 1025 (1983); Remick v. Remick, 310 Pa. Super. 23, 456 A.2d 163 (1983).

## **STATEMENT OF QUESTIONS INVOLVED**

Whether the court can make and render a fair and equitable property distribution determination absent complete discovery as required under the provisions of 23 Pa.C.S. § 3501 et seq.; Pa.R.C.P.1920.33; Fed.R.Civ.P. 26 (b)(1); *Richlin v. Sigma Design West, Ltd.*, 88 F.R.D. 634, 637 (E.D. Cal. 1980).

Whether the court is allowed to assign a zero value to an existing, on-going and profitable business. *Verholek v. Verholek*, 741 A.2d 792 (Pa.Super. 1999); *Litmans v. Litmans*, 673 A.2d 382 (Pa.Super. 1996); *Aletto v. Aletto*, 537 A.2d 1383 (Pa.Super. 1988); and Rev. Rul. 59-60. *Sanborn v. Sanborn*, 503 N.W.2d 499 (Minn. Ct. App. 1993).

Whether the court can determine a reasonable and unbiased alimony award absent full and fair financial disclosure. *Cortes v. Cortes* No. 624 WDA 2014, Pa. Super. 2015 (failure to report income).

Whether the court, aware of financial inconsistencies and financial falsehoods, can use fabricated data in rendering sound decrees. 18 Pa.C.S. § 4904—Unsworn Falsification to Authorities.

Whether the court is allowed to overlook an admitted claim of forgery that was used to deceive the Plaintiff as to the true financial condition of the parties. 18 Pa.C.S. § 4101—Forgery. Ashworth v. Commissioner, TC Memo 1990-423 (tacit consent).

Whether the court is allowed to ignore evidence of duress and its impact on adequate representation and equal treatment under the law. Mitchell v. Mitchell , 888 S.W.2d 393 (Mo. Ct. App. 1994).; Brown v. Brown, 863 S.W.2d 432 (Tenn. Ct. App. 1993); Shafmaster v. Shafmaster , 138 N.H. 460, 642 A.2d 1361, 1365 (1994); 23 Pa. C.S. 3332.

## **STATEMENT OF THE CASE**

### **A. FORM OF ACTION**

This is an appeal from the Divorce Decree and Order with incorporated Equitable Distribution Order entered June 18, 2015 in the Court of Common Pleas of Montgomery County Civil Division at No. 12-11558. In her self-counseled (Pro Se) representation, Appellant, Tamara Sweeney (“Wife”), appeals from the order entered in The Montgomery County Court of Common Pleas in this divorce decree and equitable distribution case. Wife contends the trial court abused its discretion in refusing to permit complete and accurate discovery, refused to impose sanctions (*Hein v. Hein*, 717 A.2d 1053, 1056 (Pa. Super. 1998), never considered imposing sanctions against Husband for repeated discovery violations, by assigning zero-value to a successful business, overlooked financial inconsistencies and falsified reporting to the Court, disregarded an admitted claim of forgery by Husband and its impact on deceiving Wife of the parties’ true financial condition, ignored evidence of duress and coercion by Husband, and failed to heed the impact of four lawyer withdrawals on Wife’s ability to

achieve fair and equitable treatment under the law. She claims the court should have (1) continued the equitable distribution hearing and (2) imposed a negative inference regarding Husband's financial status.

## **B. PROCEDURAL HISTORY OF THE CASE**

The divorce was brought under §3301(c) of the Divorce Code-Mutual Consent. Wife filed a Divorce Complaint on May 07, 2012, raising claims for equitable distribution, alimony, alimony pendente lite, counsel fees, costs and expenses. The Divorce Complaint, Interrogatories, and Request for Production of Documents were served on Husband May 8, 2012. On May 24, 2012, Husband filed an Emergency Family Petition for Special Relief regarding the future care, custody and visitation rights of the couple's four children. This began a long-running series of custodial claims and counterclaims. Wife filed a 2<sup>nd</sup> Motion to Compel Full and Complete Verified Answers to Plaintiff's First Set of Interrogatories and Plaintiff's First Request for Production of Documents on June 22, 2012. Presiding Judge Daniele issued an Order for Hearing that addressed Discovery on February 20, 2013. Husband filed a Petition to enforce Marital Settlement Agreement with Service On April 12, 2013. Wife insists she was not aware of such an agreement and filed a Brief contesting Husband's claim on June 3, 2013.

3<sup>rd</sup> and 4<sup>th</sup> Motions to Compel Discovery were filed on June 28, 2013 and November 26, 2014. Hearings were held before Divorce Master Bruce Goldenberg on July 18, 2012, September 16, 2013, April 9, 2014, and July 24, 2014. The Master's Report was filed August 29, 2014. Absent adequate Discovery, Wife initiates Notice of Intent to serve Subpoena's to Produce Documents and Things for Discovery on November 26, 2014. Wife filed timely Exceptions on September 16, 2014. Husband filed no Exceptions and requested that Wife's be dismissed. On October 18, 2012, Wife's Counsel filed a Petition to Withdraw. Petitions to Withdraw as Counsel also occurred on March 6, 2013, October 3, 2014, and July 24, 2015. Withdrawal of Counsel at inopportune times impeded Wife's ability to adequately represent herself and produce timely discovery. Unnoted in the Court Record was a PFA (Protection from Abuse Order) issued by the Court of Common Pleas of Montgomery County that became effective on May 1, 2014. Between the time of the Temporary Protection from Abuse Order and the Final Order, Plaintiff was attacked by the Defendant on April 20, 2014. Wife suffered a broken foot. An Injury Case was accepted and docketed by the Trial Division—Civil, in Philadelphia County Court on June 9, 2015. A Case Management Order Expedited Track dated June 09, 2015

is directing the proceedings. On June 18, the Honorable Rhonda Lee Daniele entered a Divorce Decree and Order with Incorporated Equitable Distribution Order. Wife filed a timely Notice of Appeal (Amended and Supplemental Concise Statement of Errors Complained of on Appeal) on July 13, 2015. On July 27, 2014, the Superior Court issued a Docketing Statement. On September 10, 2015, Judge Daniele responded with her Opinion. Plaintiff was scheduled to file her Brief on October 26, 2015.

Given the challenge of representing herself Pro Se and needing more time to file an effective and Court compliant (210 Pa. Code Rule 2111) Brief, she filed a Motion for Extension of Time (30 Days) to File Brief for Appellant (First Request) on October 22, 2015. On October 23, Superior accepted “Application for Extension of Time to File Brief—First Request” and granted Application for Extension on October 28, 2015. Note: There is a reference to a Master’s Order on May 10, 2013 for which there is no docket recording (filing date).

### **C. PRESIDING JUDGE—RHONDA LEE DANIELE—MONTGOMERY COUNTY FAMILY COURT**

Judge Daniele presided throughout the case. Her determinations are twofold: 1) Divorce Decree and Order with Incorporated Equitable Distribution Order dated June 18, 2015 and 2) Opinion responding to the

Concise Statement of Errors Complained of on Appeal dated September 10, 2015.

#### **D. STATEMENT OF THE FACTS**

The parties were married on July 10, 1993, separated on October 4, 2012 (Court record incorrectly cites April 22, 2012), and Wife filed a Divorce Complaint on May 7, 2012. Four children were born of this marriage. Dillon, age 20 and Daulton, age 19, attend college. Anja, age 16 resides with Husband. Dustin, age 15 resides equally with Husband and Wife. (EDO— Findings of Fact General Background June 18, 2015).

As can be seen from the procedural history, what appears to be a simple case in concept (agreement to divorce) became a 37-month ordeal due to a ‘custodial agenda’ by the Husband, non-compliant behavior in meeting discovery production deadlines, obfuscation of the real value of marital assets, unexplained withdrawal of Wife’s legal representation at critical hearing junctures, and failure to recognize duress and coercion including, but not limited to, the existence of an in-place PFA and pending Injury Case before Philadelphia County Court.

Wife filed for divorce on May 7, 2012 after legally separating a month before. Coincidentally, on the same date, Husband began a pre-meditated initiative to brand wife as an unfit parent. A Notice of Counseling, Notice to Attend Mediation, and Notice to Attend Our Children First Seminar were issued the same day. Subsequent filings, Petition for Psychiatric Evaluation and Emergency Family Petition for Special Relief (May 24, 2012), Petition for Hair Follicle Drug and Alcohol Testing (June 5, 2012), Husband's Answer to Counterclaim (June 20, 2012), and Wife's Emergency Family Re-Petition (February 13, 2013), and other initiatives contributed to the case's hostile landscape. Final Custody terms were enumerated in the Divorce Decree and Order dated June 18, 2015. Findings of Fact Specific to Equitable Distribution (11) gave sole custody of the three older children to an alcoholic husband (Findings of Fact (14) Specific to Alimony Factors) is evidence of a skewed judicial environment, especially since Mother was not declared to be an unfit parent. This contributed to duress of Wife after having been sole caregiver for the four children for nearly 17 years (Judge Daniele Opinion September 10, 2015, Discussion Item 2). In her Opinion she recognized that Parental Alienation Syndrome affected the three children (Discussion Item 15). Wife's contention is Husband used this

hostile, disruptive, and distracting environment to thwart and deflect parallel and repeated efforts of discovery.

The Wife's overarching claim is that the Court erred first and foremost in declaring that marital liabilities exceeded marital assets. This compels discussion of inadequate discovery, failure to value Husband's principal business, his fabrication of produced records including those claimed to have been filed, as well as false and misleading verbal statements.

In the Divorce Decree and Order (September 10, 2015), "Therefore, the Court finds that Construction Marketplace ("CM"), LLC and Roofingprojects.com ("RP"), LLC, although marital assets, have no value subject to equitable distribution" (Page 4). "Husband will retain his business which produces substantial income to him although it has no value for Equitable Distribution purposes" (Page 7). Master Bruce Goldenberg correspondingly reached the same conclusion in his Master's Report and Recommendation dated August 29, 2014. While it was ultimately overlooked, Wife claims the Court gave no weight to her role in incubating CM/RP by providing start-up funds through stock liquidation and other cash sources (ED/Exceptions Transcript Box 144, Lines 8-9).

*Mercatell v. Mercatell*, 854 A.2d 609, Pa. Super 2004; *Hutnik v. Hutnik*, 535 A.2d 151, Pa. Super 1987. Husband's testimony, produced evidence, and pro-forma income calculations belie this "worthless" determination.

In a statement to Tom Quinn (friend), Husband declared that CM/RP was generating \$1.5mm in revenue in 2011 (ED/Exceptions Transcript Box 85, Lines 20-23, January 21, 2015). New IRS and State of Pennsylvania Tax Liens of \$743,791 (ED/Exceptions Transcript Box 62, Lines 6-7) and \$34,031 respectively were entered in 2013. Assuming this tax liability arose from 2012 income and applying the highest marginal 2012 Federal Tax Rate of 35%, this equates to an AGI (Adjusted Gross Income) of \$1,144,294. Yet Husband reports 2012 AGI of \$268,849 while also retiring \$478,551 of prior IRS liens in the same year. Husband testifies his 2014 Draw/Officer Compensation was \$234,091 (ED/Exceptions Box 106, Lines 14-25). In answer to attorney questioning about 2015 average monthly income (Box 292, Lines 22-23), Husband responds, "So a good month could be \$100,000, it could be \$150,000 (ED/Exceptions Box 293, Lines 18-19). In summary, Wife contends that Court erred egregiously by declaring that a business, generating revenue near to-or-above \$1,000,000 per year, had no value. Such a determination defies all mathematical logic. The Court also declared the business had no value without its principal.

This contravenes normal logic. A business derives value from the contributions of an owner-principal and its employees. But if the owner wants to reap the benefits of having built a successful business, he will either continue to operate it or sell it, not dissolve it. The Court claims it gave Wife ample time to conduct a Forensic Accounting of CM/RP and she that she did not hire a forensic accountant (Opinion, Discussion, Item 11). Contrary to this contention, Wife did enlist services and opinions from four (4) different, qualified practitioners but, aligning with Wife's contention of inadequate information, declared that it was impossible to fairly value the business based on normal valuation metrics, including but not limited to Seller's Discretionary Earnings (routinely used in Small Business valuation). Wife was also disadvantaged by the absence of marital funds and post-separation assets from which to conduct a thorough investigation. Lack of husband's submission of current income data enhances the assertion of obfuscation and attempt to deny Plaintiff just distribution and support (repeated discovery requests noted in Procedural History and ED/Exceptions Report, Husband's Exhibits, Page 1). Further examination of the January 21, 2015 Equitable Distribution/Exceptions Transcript supports the claim that discovery was not only incomplete but also fabricated. Wife produced a purported copy of Husband's 2013 IRS

Individual Tax Return (Exhibit W-28). Husband's evidence included an IRS Account Transcript dated 01.07.14 (Exhibit H-10). At the bottom of the official IRS Account Transcript for Tax Year 2013 was language, "Return Not Present for This Account". At an October 1, 2015 Modification Conference Hearing in Montgomery County Court, Husband continued this line of deception by telling Support Master, Patricia Coacher Esquire, he had formally filed IRS Returns for Tax Years 2013 and 2014. When presented with Transcript evidence that neither return had been filed, husband backtracked (Unreleased Court Summary of November 1 Hearing). Wife contends that not only did the Court fail to recognize inconsistencies in the Husband's evidence record but it failed to warn him about committing punishable misdemeanors. Additionally, Husband's failure to produce a current income history as required under Pa. Rules of Civil Procedure governing discovery is an additional violation of standard court procedures.

As noted above, Husband was delinquent in not producing timely discovery on four (4) separate occasions. Yet presiding Judge Daniele contends "The parties had ample time to complete discovery" (Opinion, Discussion, Item 7, September 10, 2015). Wife contends Husband was favored repeatedly

and that Judge Daniele's denial of further discovery made shortly after securing new counsel, her 4<sup>th</sup> attorney, was capricious and in violation of Pa. C.S. §3505 (b). Wife believes the Judge's truncation of discovery puts adequate discovery in the context of time and not quality and completeness of furnished documents.

Wife disputes Court's contention (Opinion, Discussion, Item 10) that Defendant-Appellee's signing of Plaintiff-Appellant's name on IRS documents (Defendant-Appellee testified as such) did not constitute forgery. Court claims it did not constitute forgery because it lacked a specific intent to defraud or injure. Wife argues that his non-filing of taxes from 2003-2011 (Attachment—Berkshire Capital Letter Dated March 22, 2013), his forged filings of IRS Form 2848 (Power of Attorney and Declaration of Representative) on May 24, 2011, IRS Form 8821 (Tax Information Authorization) on January 5, 2011, and IRS Form 1040A (U.S. Individual Income Tax Return) on January 5, 2012 constitutes an effort to deceive and deprive Wife of rights, money, and property by deception. By definition, then, it resulted in Husband's financial gain. Wife's position is diametrically opposed to the Court's, is probative and doesn't violate the

intention of Rule 404 (Character Evidence), and in no way conforms to the definition of 'tacit consent'. Wife's directive to Husband to "straighten out the IRS issues" inferring responsibility to negotiate a tax settlement does not constitute authority to commit acts of forgery, perjury, or deception.

In addressing the last Question Involved (duress), Wife heartily disagrees with Presiding Judge's statement (Opinion, Discussion, Item 15) that "There is no evidence of record that Defendant-Appellee threatened Plaintiff-Appellant with bodily harm or psychological pressure". Wife was exposed to an extensive campaign of hostility, threat, intimidation, and physical/mental/emotional abuse. (795-Page Binder with evidentiary proof (photos, texts, emails, letters) of degradation, humiliation, fear-inducing behavior, and use of parental alienation tactics (Judge Daniele recognized the argument, tacitly affirmed its merit, but said it was not germane to the discussion of Equitable Distribution (Opinion, Discussion, Item 15); Binder is part of the official court record and was reviewed in the Record Room at Superior's Prothonotary's Office at 530 Walnut Street, Philadelphia, PA on September 30, 2015). It was handed to Presiding Judge Daniele who did not review the material and said to the Plaintiff in a dismissive manner, "You don't expect me to read this, do you?"

The situation between the Parties was so serious it merited filing by Wife of several Protection from Abuse Orders (PFA's) in 2013 and 2014. On April 8, 2014, an initial PFA was filed. On May 1, 2014, a Final Protection from Abuse Order became effective. It ordered the defendant, Thomas James Sweeney, to not abuse, harass, stalk or threaten Tamara Jean Sweeney in any place where she might be found and not to not contact the Plaintiff by telephone or by any other means, including through third persons.

However, between the time of the Temporary Protection from Abuse Order and the Final Order, Plaintiff was assaulted by the Defendant on April 20, 2014. She was pushed, knocked to the ground, required Emergency Room care, and was diagnosed with a serious foot injury. An Injury Case was accepted and docketed by the Trial Division—Civil, in Philadelphia County Court on June 9, 2015. Interrogatories and Requests for Documents are currently in process. An expedited Case Management Order (No. 01204) is in place and labeled Sweeney v. Sweeney ETAL.

Duress, here defined as pressure not coercion, also played a factor in the Plaintiff's ability to secure adequate legal representation. While not claiming ineffective counsel, Plaintiff notes that three attorneys elected to withdraw from her case as very inopportune times, right before critical hearings. This

necessitated a scramble to secure counsel and, not surprisingly, delayed her ability to force and compel adequate discovery as well as securing a forensic accounting of Husband's business.

In the outer chamber of a Montgomery County Court hearing room in early January 2013, Defendant, confronted the Wife, told her their financial situation was dire, an IRS tax liability projected at a minimum of \$695,225 existed (Attachment—summarized in a Berkshire Capital letter dated March 22, 2013; copy of letter also resides in 795-page binder), that bankruptcy was probable, Wife should exit the relationship expediently, accept a \$38,000 cash payment in lieu of nothing, and free herself of future encumbrances. Shortly thereafter, on January 11, 2013, Petitioner sent Respondent a Marital Settlement Agreement with embedded \$38,000 offer to Wife. After a back-and-forth negotiations between Attorneys Andrew Laird (Plaintiff) and Sheryl Rentz (Defendant), Wife refused to sign the proposed MSA because there was no consideration given to Husband's business valuation. (Docket Item 74--details contained within Petition to Enforce Marital Settlement Agreement dated April 12, 2013).

Coincidentally, in the same Berkshire Capital letter, Steve Pierce, Senior Associate, opined "Plaintiff was foolish to fail to go through with the

agreement". These exchanges occurred outside of normal legal protocols, were malicious and illegal, and never recognized by the Court despite testimony by the Plaintiff. Plaintiff notes 23 Pa. C.S. 3332 allows for a re-opening of a case where there is evidence of intrinsic fraud or new evidence relating to the cause of action which will sustain the attack upon its validity. This provision not only applies to inadequate and deceitful discovery but also the Defendant's attempt to coerce and cajole the Plaintiff outside of normal attorney negotiations or proper Court supervised hearings.

## **ARGUMENT**

The Appellant's argument in this matter is fundamentally that the lower court completely abused its discretion in fashioning the equitable distribution award in this case, that wholly neglected to consider all of the evidence of record in this case, which was on its docket for over 3 years, and involved numerous hearings, and where issues were brought to the attention of the Court throughout that were given no consideration on the final order. The lower court effectively neglected to consider the entirety of the record in this matter, including approximately 800 pages of evidence that were filed by the Appellant, which included abundant evidence of the Appellee's abuse of the divorce proceedings and withholding of evidence pertinent to the valuation of the marital estate, all of which created a record at the January 21, 2015 Equitable Distribution/Exceptions Hearing that was incomplete, and could not form the basis of an award that could, under any circumstances, fairly be called "equitable."

The Appellant in this matter had four attorneys, all of whom withdrew for reasons having nothing to do with the merits of the case, or with the conduct of the Appellee, who was diligent and cooperative with her lawyers

throughout, and properly focused on mitigating the impact of the misbehavior of the Appellee/husband on the lives of their children, and in reaching a distribution that was, indeed, equitable. In fact, the Appellant placed the court on notice in November, 2014 of the difficulties she was having in gathering information to conduct a proper business valuation, and that yet another attorney was withdrawing from the case as the hearing on equitable distribution was nearing, and the court ruled that the hearing would proceed on January 21, 2015 with no real consideration being given to the difficulties that the Appellant was experiencing through no fault of her own, and due, in significant part, to the abusive and obstructionist conduct of the husband.

#### **A. EQUITABLE DISTRIBUTION/BUSINESS VALUATION**

Pursuant to 23 Pa.C.S.A. § 3502(a), when fashioning equitable distribution awards, the trial court must consider: the length of the marriage; any prior marriages; age, health, skills, and employability of the parties; sources of income and needs of the parties; contributions of one party to the increased earning power of the other party; opportunity of each party for future acquisitions of assets or income; contribution or dissipation of each party to the acquisition, depreciation or appreciation of marital property, value of each party's separate property, standard of living established during the

marriage; economic circumstances of each party and whether the party will be serving as custodian of any dependent children. 23 Pa.C.S.A. § 3502(a)(1-11). The weight to be given to these statutory factors depends on the facts of each case and is within the court's discretion. Gaydos v. Gaydos, 693 A.2d 1368, 1376 (Pa. Super. 1997) (en banc).

### **1. Discovery Incomplete**

At the outset, despite the lower court's gratuitous statements to the contrary, discovery was incomplete and misused in shaping the Equitable Distribution Order. Husband failed to produce discovery in a timely manner, including a list of businesses both held outright and in other registration manners (Hands-On Media, Infra Tech engineering LLC, and GlobalSpec), their 1120-S IRS Income Tax Returns (for S-Corporations), his personal income tax returns (filed as single payer), list of payments to family members, consultants, and others who were not employees of his companies, and other manner of requests. For example, in 2013, the IRS entered a tax lien of \$743,791, which equates to an AGI of \$1,231,442. A non-audited, non-filed Tax Return draft presented to the Plaintiff by the Defendant shows an AGI of \$258,471. Clearly, the document was prepared to mislead the Plaintiff, deny her adequate support, and affirms the defendant's dishonest intentions. True and proper stating of income and

determination of marital assets was impaired. These were deliberate failings of Husband, as the neglecting, misleading, and confusing testimony of Husband as outlined above, makes clear.

It was an abuse of discretion for the lower court judge to conclude that the parties had ample time to complete discovery, under the circumstances, as that conclusion depends on the cooperation of both parties in meeting their discovery obligations, and the husband had a long record of demonstrated non-cooperation. That finding is too narrowly focused. It puts adequate discovery in the context of time and not quality of furnished documents.

Discovery efforts by Plaintiff were impaired because wife's attorney inexplicably resigned from the case that left her improperly represented.

After granting a delay, the Court denied Plaintiff's request for an additional extension. Thereby tacitly favoring the Defendant in the matter of Equitable Distribution. This violates the intent of 23 Pa.C.S. § 3505(b) that requires the parties to file inventories listing the marital property and liabilities, non-marital property, and property transferred within three (3) years prior to the commencement of the action.

This also violates the provisions of Pa. Code Rules contained in Chapter 4000 (Depositions and Discovery). Husband routinely violated the guidelines covered individually under the heading, "Production of Documents and Things and Entry for Inspection". Sanctions that could have been applied by the court (Hein v. Hein, 717 A.2d 1053, 1056 (Pa. Super. Ct. 1998), were addressed but overlooked by Judge Daniele who seemed unresponsive to Plaintiff's petition about inadequacy of document production.

In Hein, the Court said:

We take note that the integrity of the adjudication process requires that all parties promptly and with thoroughness respond to discovery requests. While this principle is applicable to all litigation, it is especially meaningful in domestic relations matters. Domestic relations litigation frequently involves bitterness and hostility coupled with an unwillingness of the parties to cooperate. The parties who at one time had an intimate relationship with one another are now engaged in a fight and the litigation process is used as an arena to resolve personal problems. However, a court cannot proceed to a fair resolution of the matter without the necessary information. The Divorce Code requires that the courts do "economic justice." 23 Pa.C.S.A. § 3102(a)(6).

The lower court failed to recognize that these principles are of paramount significance, and her simply casting them aside, then refusing to assign any value to the business that produced at least \$1

million a year, or more, was a clear abnegation of her duties, and an abuse of discretion.

## **2. Business Valuation**

Most significantly, as it relates to the terms of the distribution of the estate, the lower court wholly failed to engage in a full and proper valuation of the business ventures of the husband, from which he drew significant income over the years of the marriage. The court in this case effectively “punted” on the issue of the business valuation, and made a determination that, because the husband engaged in financial mis-dealings which resulted in over \$800,000 in unpaid taxes and penalties, that the wife was complicit in this scheme, and should be penalized because it allowed her to live a life of luxury off of tax monies “borrowed” from the IRS. This conclusion of the lower court is not supported by the evidence of record, does not reflect the true nature of the circumstances under which the Appellant lived during the marriage, and effectively rewards the husband for his own misconduct, and plays right into his agenda to use the divorce proceedings to continue his abuse of the Appellant.

The Divorce Code does not contain a specific method for valuing marital assets (except, perhaps, defined benefit retirement annuities; see 23

Pa.C.S. § 3501(c)). The trial court may consider estimates, inventories, records of purchase price, and appraisals submitted by the *Verholek v. Verholek*, 741 A.2d 792 (Pa.Super. 1999); *Litmans v. Litmans*, 673 A.2d 382 (Pa.Super. 1996). *Johnson v. Johnson*, 529 A.2d 1123 (Pa.Super. 1987) (increase in value of business).

In *Littmans*, the Court said:

In determining the value of marital property, the court is free to accept all, part, or none of the testimony as to the true and correct value of property. *Aletto v. Aletto*, 537 A.2d 1383 (Pa. Super. 1383). "[W]here the evidence offered by one party is un-contradicted, the court may adopt this value although the resulting valuation would have been different if more accurate and complete evidence had been presented." *Holland v. Holland*, 588 A.2d 58 (Pa. Super. 1991).

Implicit in the holding of these cases is that a business valuation must be conducted when it impacts on the matter of equitable distribution, and Judge Daniele simply calling it a wash under the circumstances, and criticizing Wife for living a lavish lifestyle and benefitting from the misconduct of the Husband is not supported by the record, and is an abuse of discretion.

Pennsylvania Rule of Civil Procedures 1920.52(a) requires that in an action for Divorce, the resultant Decree "shall state the reasons therefore." In fashioning an equitable distribution award, the trial court

must, at a minimum, show that it has fairly considered the eleven factors set forth in 23 Pa.C.S.A §3502. Gates v. Gates, 933 A.2d 102, 108 (Pa.Super. 2007). Each factor must be evaluated individually to determine whether or not it favors one party and, the Court must consider how many factors favor each party. (See Balicki v. Balicki, 4 A.3d 654 (Pa. Super. 2010). Where the analysis employed by the trial court in its opinion discusses in a cursory fashion only a few of the [required] factors, the distribution plan must be set aside. Aletto v. Aletto, 537 A.2d 1383 (Pa. Super. 1988). Here, the lower court failed to follow required procedures and set forth the factual basis upon which the ruling was made in that there are no findings of fact and no conclusions of law in support of either the Divorce Decree or the Support Order. The lower court essentially ignored its duty to weigh the evidence and make necessary credibility determinations, or, more specifically, made credibility determinations in favor of husband when the evidence shows clearly that he was deceptive and not at all credible, including demonstrated forgery, and made biased and prejudicial determinations against Wife that unquestionably were not “equitable” in any sense of the word.

Not only did Judge Daniele err by not insisting on valuation of a lucrative business (marital asset not contested by the husband) but she over looked Plaintiff's contribution to starting the business. Wife's money in the amount of \$19,000, a combination of the proceeds from equity sales (\$14,000 in Roadway and FedEx stock) and \$5,000 of other liquid assets, was used to fund Roofing Projects aka roofingprojects.com. In dividing marital property, the trial court must consider each of the spouse's contributions to the acquisition, preservation, appreciation and depreciation of the marital estate. *Mercatell v. Mercatell*, 854 A.2d 609 (Pa.Super. 2004). However, a spouse's status as breadwinner did not entitle him to more favorable treatment in equitable distribution. *Hutnik v. Hutnik*, 535 A.2d 151 (Pa.Super. 1987).

One should not be required to read the trial court's voluminous transcripts of testimony to find the court's "reasoning" but rather such analysis should be contained in proper findings of fact and conclusions of law, and, significantly, the record should reflect the true nature of the proceedings, which, in this case, it does not. To the contrary, a review of Judge Daniele's Opinion, in the context of the facts set forth above, and in comparison to the post-hearing brief submitted by Husband's lawyer,

shows that she was biased and prejudiced against Wife, and simply adopted the arguments of Husband's lawyer, with no review and consideration of the evidence herself.

As pointed out, the entirety of these proceedings cannot adequately be reflected on the one-day hearing on equitable distribution held on January 21, 2015. Prior to that hearing, the lower court was on notice of years of uncooperative efforts on the part of Appellee/husband, and the obstruction of Appellant's access to, and concealment of, evidence pertinent to the issue of the valuation of the husband's business that was, without question, a significant asset of the marital estate, to which Appellant contributed significantly financially in the early years of the marriage, and which was permitted to thrive due to her efforts in maintaining the family home, and raising the children. The manner in which her efforts were discounted by the court was demeaning and insulting, and did not reflect the true nature of the factors that are to be considered on equitable distribution.

The final Master's Report and Recommendation upon Equitable Distribution, Alimony, Counsel Fees and Costs, dated July 24, 2014 and

signed by Master Bruce Goldenberg, was deficient. Judge Daniele's statements to the contrary, this was relied upon significantly in the Divorce Decree and Equitable Distribution Order. The background section acknowledged husband's annual earning capacity of \$193,644 from an S-Corp (flow-through entity) but assigned no value to the business. The Marital Estate section reinforced this illogic by saying there were no marital assets other than a home. Also in the Marital Estate discussion, the value of the home was misstated. Regarding an outstanding IRS liability, the Master went on to state that husband would assume liability and hold wife harmless. This was an error by the Master in that only the IRS can grant an innocent spouse exemption. Report identified wife's monthly income as \$3,214 and husband's as \$16,137. Despite income disparity, Master denied Plaintiff's claims for attorney's fees and costs. Plaintiff claims this is unfair given difference in ability to pay.

The lower court accepted and incorporated deficient provisions of the Master's Report, most glaringly by adhering to the determination that a six-figure income-producing business asset had no value. This oversight challenges and contravenes the Court's logic in contending that marital debt exceeded marital assets. Court also refused to accept Plaintiff's timely

home real estate appraisal that assigned a higher value to the home than Defendant claimed.

Plaintiff contends that failure to value a business is the same as failure to report income. Failure to report income results in retroactive child support award (12+ years). *Cortes v. Cortes*, (non-precedential), No. 624 WDA 2014 (Pa. Super., September 3, 2015). Equitable distribution of marital property, 23 Pa.C.S. § 3501 et seq. requires marital property to be valued before it can be fairly distributed.

## **B. ALIMONY ISSUES**

Related to the above, but alternatively, is the issue of alimony. The lower court, again revealing both her abuse of discretion in fashioning the equitable distribution award, and somehow, despite the clear evidence of obfuscation and deception, crediting the Husband's testimony as credible, and showing her bias against the Wife, reduced the APL award, and entered a limited term of alimony, at \$2500/month, for a limited time, until their last son's 18<sup>th</sup> birthday.

Where the court denies alimony, or, in this case, makes an award that substantially reduces the APL, it must issue an Order setting forth the

reason justifying its actions. 23 Pa.C.S.A. §3701(d). The trial court is required to enter a Decree "separately adjudicating each claim raised". See, Pa. R.C.P, Rule 1920.51(d). The trial court must dispose of *all* the pending issues before the court. 23 Pa. C.S.A. § 3323. It is likewise reversible error for a trial court sitting in place of the Master to fail to issue findings of fact in disposition of a claim for alimony. Hess v. Hess, 475 A.2d 796 (Pa. Super. 1984) ( "the reason for the denial" of alimony as required by 23 Pa.C.S.A. §3701(d).

Clearly, the lower court made the preliminary determination that alimony at some level was proper, and it is, but she abused her discretion, and exhibited her clear bias and prejudice against the Wife in fashioning the Order. In fact, this is revealed by the lower court's own strained analysis, to wit, the Divorce Code provisions and case law governing alimony mandate that the award of alimony be made to allow the former spouse to live the lifestyle that was achieved during the marriage. The lower court purportedly used this factor against the Wife when it saddled Wife with the Husband's misdealing with the IRS and his business ventures, but then reduced the APL award in her alimony award against her. The court also reached back to the 2004 time-frame to arbitrarily make a determination of

Wife's earning capacity, and did not recognize that she had been out of the work force for many years, made all her major contributions to the family, and even contributed to Husband's business ventures. The Court's findings in this regard clearly did not reflect the true nature of the evidence, were an abuse of discretion, and clearly revealed a bias and prejudice against the Wife. Effectively, even if Husband's business could not be valued, there is significant evidence that he earns at or over \$100,000/month, and a reduction of the APL to \$2500, and continuing it for a limited period of time does not do economic justice between these parties.

While the lower court in this case unduly criticized and punished the Wife for what the court erroneously labeled an extravagant lifestyle, the equitable distribution and alimony laws dictate a different result. In Hess, for example, the court upheld the equitable distribution award to wife wherein she received the majority of the marital estate valued at less than \$200,000.00 and alimony in the amount of \$4,000 per month for eleven years following a ten year marriage. The court determined that the alimony award was appropriate where the couple had "lived a privileged lifestyle while married;" where wife was presently unable to work and her

yearly income derived from disability payments was less than \$15,000 per year; and where husband could pay such an amount while maintaining his lifestyle given that his yearly income ranged between \$171,445 and \$216,967. The appellate court approved the trial court's reasoning due to the fact that the alimony award would allow the wife to provide a comparable lifestyle for the parties' minor child and that husband retained significant non-marital property by virtue of an antenuptial agreement and where his income greatly exceeded that of wife's.

Likewise, in Balicki v. Balicki, 4 A.3d 654 (Pa. Super. 2010), Wife was awarded 60% of the marital estate which exceeded \$850,000 and, over ten years of alimony (until age 62) in the amount of \$5,540 per month. Critical to the Court's decision is the fact that the parties were married 25 years, with wife's highest educational level being high school; wife devoted herself during the marriage to caring for the parties' two children and serving as a homemaker; and where Husband had substantial earnings of \$21,000 net per month as an Attorney and firm shareholder as well as a part owner of an insurance agency. (See also Baker v. Baker, 861 A.2d 298 (Pa. Super. 2004), where Wife was awarded 65% of the marital estate and \$400 per month in alimony for

three years after an eleven Year marriage where wife, although unemployed at the time of the hearing, had provided support to husband while he attended veterinary school; Schneeman v. Schneeman, 615 A.2d 1369 (Pa. Super. 1002) (wife awarded alimony until time of retirement of husband); Teriberry v. Teriberry, 516 A.2d 33 (Pa. Super. 19086) where dependent homemaking spouse was awarded permanent alimony and 72% of the marital estate.

Clearly under these precedents, the alimony award in this case was not equitable.

In addition, there are two elements of mistake in both the pre-divorce APL award by the Court and the final award under the Divorce Order. The Master committed an APL calculation error in not using Pa. Rule 1910.16-4 to formulaically determine an appropriate Alimony award. Plaintiff notes there were no special circumstances or unusual needs at the time of APL determination, therefore, formula use should prevail. Court did not take into account that Plaintiff's absence from the workforce and an injury sustained while under a PFA (Protection from Abuse) Order impaired her ability to re-employ in a former, equivalent, higher-paying position. Rule 1910.16-4

(Support Guidelines. Calculation of Support Obligation. Formula) states that “in high income cases, Part IV shall be used as a preliminary analysis in the calculation of spousal support or alimony pendente lite obligations. High-income is defined as combined income above \$30,000. In 2012, combined income was above \$300,000, and, but-for the Husband’s deceptive business practices, would likely be provably much greater than that. Alimony based on 2011 and 2012 IRS Tax Return information, should have been set at \$17,929/month using 2011 data, \$5,930/month using 2012 figures. As the original Master’s Report states, a payment of \$3,359/month was ordered. There’s also an evidence of failure to consider. Defendant failed to file his 2013 and 2014 IRS Tax Returns. This is verified by IRS Tax Transcripts annotated “did not file”. Transcripts were submitted as new and heretofore undisclosed evidence during a Support Modification Conference held at Montgomery County Court (PA) on October 1, 2015. Wife’s income is 1/10<sup>th</sup> that of her ex-husband’s, hence the need for the Court to revisit. In dividing marital property, the trial court must consider the relative economic circumstances of the parties and consider each spouse’s ability to recover from the adverse economic consequences of divorce. *Ressler v. Ressler*, 644 A.2d 753 (Pa.Super. 1994); *Hayward v. Hayward*, 630 A.2d 1275 (Pa.Super. 1993).

Under all the facts and circumstances, the Wife has unequivocally shown that the lower court committed an abuse of discretion, and revealed bias and prejudice against Wife, and entered an award on equitable distribution that did not do economic justice between the parties.

### **C. HUSBAND'S FORGERY/CREDIBILITY ISSUES**

Implicit in the lower court's determination was that Husband was somehow credible, or more credible than Wife, in his testimony. Nothing could be farther from the case, and the lower court giving credit to Husband in light of his demonstrably and obviously duplicitous obfuscating testimony reveals the abuse of discretion of the lower court judge, and her clear bias and prejudice against the Wife. Even if the final equitable distribution order is compared to the post-hearing submission by Husband's lawyer, it is apparent that all the lower court did was adopt the arguments of Husband with no critical analysis of the evidence or the testimony.

Contrary to what Judge Daniele claims (there was no specific intent using The Crimes Code definition), it is a clear violation of 2010 Pennsylvania Code Title 18 - CRIMES AND OFFENSES Chapter 41 – Forgery and Fraudulent Practices 4101 for Husband to have signed Wife's name to the tax submissions to the IRS. It does not meet the 'tacit consent' exceptions

as elaborated in the Tax Court case of Ashworth v. Commissioner, TC Memo 1990-423. It was never the intent of the Plaintiff to grant tacit consent, therefore the Court's contention is invalid. Defendant admitted to forging the Appellant's name on several documents as evidenced by testimony contained in the attached Equitable Distribution/Exceptions Transcript dated January 21, 2015.

Regardless of the actual criminality of the signing of Wife's name to the IRS submissions, this clearly impacts greatly upon Husband's credibility, as does his entire course of deceptive business dealings; it is so blatantly obvious on the face of his testimony, but the lower court did not even mention any of it, and appeared to treat the husband as the good father and man that he clearly is not. It is beyond an abuse of discretion of the lower court, and reveals her clear bias against the Plaintiff.

One example that demonstrates this is the fact that the lower court at one point said that she was holding husband exclusively responsible for the tax problems in her equitable distribution order, and even almost commended husband for how he dealt with the matter, but then she later 1) reduced the Wife's alimony, and failed to recognize her rights in connection with the

equitable distribution by falsely stating that Wife somehow benefitted from the lifestyle afforded by Husband “borrowing” from the IRS through his deceptive course of dealings and management of the affairs of his business, and 2) the lower court specifically, in direct contradiction to her expression of holding Wife harmless, said Wife will be responsible for 10% of Husband’s tax liability. This will be deducted from Wife’s portion of the sale of the marital home when the last minor child reaches the age of majority, and will significantly further reduce the distribution to Wife, which will not at all be equitable.

#### **D. DURESS AND COERCION OF WIFE**

Wife was exposed to an extensive campaign of hostility, threat, intimidation, and physical/mental/emotional abuse. The consideration of these matters, whether or not directly related to the business valuation and alimony issues, clearly significantly impacted upon the entirety of these proceedings, including Husband’s deceptive testimony, and reveals, again, that the lower court abused its discretion as apparent on the face of the record, conducted no critical analysis of the record, and was biased and prejudiced against Wife. The lower court makes it appear that the January 21, 2015 hearing was the only proceeding in this matter, when the court was well-aware of the extensive proceedings that preceded January 21,

2015, which included a hearing related to the beach house, and the submission of 800 pages of evidence showing how horrific Husband mistreated her, which the lower court judge simply refused to consider, then punished the Wife financially, allowing the Husband to use the court proceedings to abuse the Wife, and harm her financially, and deprive her of her children well into the future.

The situation was so serious it merited filing several Protection From Abuse Orders (PFA's) in both 2013 and 2014. On April 8, 2014, an initial PFA was filed. On May 1, 2014, a Final Protection From Abuse Order became effective. It ordered the defendant, Thomas James Sweeney, to not abuse, harass, stalk or threaten Tamara Jean Sweeney in any place where she might be found and not to contact the Plaintiff by telephone or by any other means, including through third persons. However, between the time of the Temporary Protection From Abuse Order and the Final Order, Plaintiff was attacked by the Defendant on April 20, 2014. She was pushed, knocked to the ground, required Emergency Room care, and was diagnosed with a serious foot injury that requires surgery. Plaintiff also asserted in Court that the Defendant was mostly successful in alienating three of her four children. Judge Daniele recognized the soundness of this

argument, silently affirmed it, but said it was not germane to the discussion of Equitable Distribution. Duress also played a factor in the Plaintiff's ability to secure adequate legal representation, and will affect her into the future, analysis of which is required by the alimony provisions. While not claiming ineffective counsel, Plaintiff notes that three attorneys elected to withdraw from her case at very inopportune times, right before critical hearings. This necessitated a scramble to secure counsel and, not surprising, delayed her ability to apply adequate discovery pressure for document submission. During this sustained period of duress, Defendant, using an outside 3<sup>rd</sup> Party, tried to cajole, persuade, unfairly influence, and intimidate Plaintiff into signing a wholly-inadequate PSA (Property Settlement Agreement). For the conveyance of \$38,000, Defendant offered to drop the divorce case and further costly proceedings. While mediation and attorney-to-attorney side-bar agreements are often expeditious, this occurred outside of normal legal protocols and was malicious and illegal but never recognized by the Court despite testimony by the Plaintiff. In addition, Plaintiff was subjected to constant emotional abuse by the Defendant. He engaged in behavior meant to control, intimidate, subjugate, demean, punish, and isolate her by using degradation, humiliation, fear, and parental alienation tactics. Plaintiff

submitted a 795-page accounting of this conduct along with evidentiary proof. It was entered into the record but, in a mistake by the Court, Judge Daniele did not review the material and said to the Plaintiff in a dismissive manner, “You don’t expect me to read this, do you?”

In addition to the personal duress cited above, this case also includes a form of coercion. *Mitchell v. Mitchell* , 888 S.W.2d 393 (Mo. Ct. App. 1994).; *Brown v. Brown* , 863 S.W.2d 432 (Tenn. Ct. App. 1993); *Shafmaster v. Shafmaster* , 138 N.H. 460, 642 A.2d 1361, 1365 (1994); 23 Pa. Cons. Stat. 3332 allows for a re-opening of a case where there is evidence of intrinsic fraud or new evidence relating to the cause of action which will sustain the attack upon its validity. This provision not only applies to inadequate and deceitful discovery production but also the Defendant’s attempt to buy-off the Plaintiff, and the entire course of these proceedings.

Again, consideration of all of these matters reveals that the lower court’s June 15, 2015 Equitable Distribution Order was not based upon a proper analysis of the entire record of these proceedings, and was essentially just an adoption of the Husband’s post-hearing submission, making it appear that the January 21, 2015 hearing was the only proceeding in this matter,

and which neglects to take into consideration the entirety of the record of these proceedings, and clearly reveals extreme abuses of discretion and bias and prejudice against Wife.

## **SUMMARY OF THE ARGUMENT**

The lower court abused its discretion and committed procedural violations in fashioning its equitable distribution award in this case that: 1) failed to assign any value to the ongoing business of the Husband that generates him revenue in excess of \$100,000 per month, and 2) reduced the Wife's APL substantially, and failed to make a separate payment to her to adequately reflect the financial condition of the parties, due to the Husband's fraudulent misconduct, deception, and failure to cooperate in discovery. The lower court revealed a clear bias and prejudice against Wife by effectively adopting that post-hearing submission by Husband's attorney with no independent analysis of the entirety of the record of these proceedings.

The business in which Husband was involved has substantial value as a going concern and generates a significant stream of income, and the lower court abused its discretion in assigning it no value, then in neglecting to take the substantial income stream into consideration in fashioning its equitable distribution and alimony award. The abuse of discretion in these

regards is revealed by the lower court dismissing the Wife's contention that she had not received adequate discovery, due, in part, to the Husband's obfuscations, but then criticizing her for not having done more discovery. The lower court was aware of all the circumstances surrounding this matter, and entered its Order in a biased and prejudiced manner.

The lower court abused its discretion in fashioning the equitable distribution award in this case by wholly neglected to consider all of the evidence of record in this case which was on its docket for over 3 years, that involved numerous hearings, and where issues were brought to the attention of the Court throughout that were given no consideration on the final order, and making it appear that the January 21, 2015 record was the only evidence in the case. The lower court effectively neglected to consider the entirety of the record in this matter, including well over 800 pages of total evidence that were filed by the Appellant, which included abundant evidence of the Appellee's abuse of the divorce proceedings and withholding of evidence pertinent to the valuation of the marital estate, all of which created a record at the January 21, 2015 that was incomplete, and could not form the basis of an award that could, under any circumstances, fairly be called "equitable."

The lower court abused its discretion in the fashioning of the alimony award by concluding that Wife was complicit in the financial misconduct of Husband, and that she somehow was the beneficiary of a lavish lifestyle that she was allowed to love by “borrowing” funds out of which Husband effectively cheated the IRS. The testimony at the January 21, 2015 hearing, and otherwise in the record, clearly showed that this was not the case, as Wife was not living a lavish lifestyle, and was not the beneficiary of the failure of Husband to pay his taxes. There was also a clear pattern of deception here, as well, and the lower court revealed her clear bias and prejudice against Wife in making these determinations. While having the proven, significant monthly income of over \$100,000, which was concealed from Wife, Husband also testified that the parties were having financial difficulties, and that is what Wife was led to believe. Wife submits that the inconsistencies in Husband’s testimony itself reveals that the whole matter of the IRS liabilities, as to which Husband presented conflicting and internally inconsistent testimony, shows that he may not even have the tax liability he claims, and it is all a deliberate pattern to hurt and harm the Wife in this very proceeding, to deprive her of that to which she is entitled under the law.

## **CONCLUSION—PRECISE RELIEF SOUGHT**

In summary, Statement of the Case and Summary of the Argument provide compelling arguments and cite judicial precedents as ample reason in pleading the Superior Court to reverse and remand the case for re-hearing.

## **APPENDIX**

1. Equitable Distributions/Exceptions Transcript Dated January 21, 2015
2. Berkshire Capital Letter Dated March 22, 2013