

Oral Argument—Superior Court Appeal Hearing

Intro: “May it please the court”.

“My name is Tamara J. Sweeney and I am here today representing myself, the appellant in this case.”

“I respectfully ask this court to reverse the lower court’s decision regarding the final Divorce Decree and Equitable Distribution Order dated June 18, 2015 for one main reason.

Pa. C.S. 3502 specifically directs the court to “equitably divide, distribute or assign, in kind or otherwise, the marital property between the parties”. This presupposes that: 1) the assets, liabilities, and income of the parties are properly identified and valued. As the brief indicates, the final order was based on incomplete discovery, which by extension, negates the statutory requirement to distribute the marital estate in an equitable and fair manner.

Your Honor, this case is about the lower court’s abuse of discretion in failing to follow proper legal procedures as defined in the Pennsylvania Divorce Code. The importance of this is laid out in cases such as Ruth v. Ruth, Gee v. Gee, Geyer v. Geyer, and Remick v. Remick.

Because this order is essentially a monetary judgment that has a lasting and decisive effect on the lives of the parties, it meets the guidance in “Remick” that it should be subject to an abuse of discretion test. In this vein, an overriding duty of the court is to be a “Finder of Fact”.

Without addressing some inconsistencies/errors in the assessment of “relevant factors” by the lower court both in dividing assets and awarding alimony, it is my contention that the lower court “failed to make certain critical findings of fact and failed to consider those facts in the light of factors enumerated in the Divorce Code”.

Allow me to elaborate.

To the first question in my brief, the court assigned a zero value to an existing, on-going, and profitable business, one that according to testimony had generated 7-figure income. Cases such as Litmans v. Litmans stress the importance of properly determining the marital value of assets. This non-valuation suppresses property available for distribution, creates beneficial favor upon the Appellee, and, in a sense, sanctions fraud against the court itself.

To the second question in my brief, the court, while properly awarding alimony, failed to calculate it correctly and fairly because of insufficient data, most notably the lack of current and past years’ income information along with accompanying proof of income documents and IRS tax returns. This made it impossible to accurately determine the relative earnings and earning capacities of the parties as established in Section 501 (b) of the Code. In addition, it is my contention, and one raised in the lower court, that the Appellee also owned and controlled other income-generating entities (LLCs) but whose ownership was concealed using non-Appellee ownership names, thus effectively hiding a source of income. Moreover, when APL (Alimony Pendente Lite) was established, the lower court erred in not using Part IV of Rule 1910.16-4 (calculation of support obligation in high income cases). Employing an alternate approach rather than Part IV caused the court to establish a much lower level of APL support

than should have been awarded under the guideline. Absent full and fair disclosure, this is tantamount to a "failure to report income" as elaborated in *Cortes v. Cortes*.

For these reasons, I respectfully ask this Court to reverse and remand the case to Montgomery County Court because on the grounds of *Inadequate Discovery* and because the lack thereof made it impossible for the lower court to meet the fair and equitable distribution standard specified in the State's Divorce Code. Additionally, I petition the Court to order the lower court to assign a new judge to the matter.

Thank you.