

**DIVORCE DECREE MAY NOT BE GRANTED POSTHUMOUSLY BUT EQUITABLE
DISTRIBUTION MAY OCCUR IF GROUNDS ARE ESTABLISHED**

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The Pennsylvania Superior Court recently decided the case of *Edward T. Taper v. Donna J. Taper*, which focuses on divorce and equitable distribution when one of the parties dies before litigation is concluded.

In *Taper*, the Superior Court reversed the decision of the Washington County court that divorced the parties after the Husband's death, but affirmed the decision adopting the Master's report for equitable distribution. Edward Taper (Husband) filed a divorce complaint in 2001 and several conferences were held with no resolution on the divorce or equitable distribution of the marital estate. An amended complaint was filed in August 2002 and both parties filed Affidavits of Consent. A hearing was held before a divorce master in August 2003, which neither Donna Taper (Wife) nor her attorney attended due to a scheduling error. The master filed a report in May 2004, and Wife filed exceptions. Two additional hearing days occurred in February and May 2005, so that Wife could present evidence, and a second Master's report was issued in September 2005. The report recommended that the value of the marital residence be split 55% to Husband and 45% to Wife. The master also awarded additional assets to Husband in part due to Husband having paid all marital debt at the time of separation.

Wife filed exceptions to the master's second report and a hearing was to be held in January 2006. Wife requested a continuance, which was granted, but in the meantime, Husband passed away. The hearing on the exceptions was held as scheduled in February 2006 and the court adopted the master's report and denied Wife's exceptions in March 2006. The court entered a divorce decree on the grounds of mutual consent, even though Husband was deceased. Wife filed an appeal to the Superior Court, citing two issues:

- (1) Whether the court erred as a matter of law in adopting the master's report and recommendations where same did not equitably divide the property based upon the law and facts?
- (2) Whether the court erred as a matter of law in granting plaintiff/appellee's request for a posthumous divorce?

An attorney had filed a Suggestion of Death and Request for Substitution of Party, requesting that another attorney handling the Husband's estate be substituted as Husband for the limited purpose of the divorce action and appeal, which was permitted. The court began their review of Wife's second issue, regarding the posthumous divorce decree. The court cited *Yelenic v. Clark*, 922 A.2d 935, 938 (Pa.Super.2007) which states, in part, that a divorce decree cannot be entered after the death of a party, since the marriage has already been ended by death. The court agreed with this and vacated the trial court's order granting the parties a divorce.

However, the court also noted the change to the Divorce Code in January 2005, which amendment provided that upon the death of a spouse, the divorce action will not abate so long as grounds for divorce have been established (23 Pa.C.S.A. §3323(d.1)). This amendment provides that the parties' economic rights with regard to equitable distribution take precedence over the elective share provisions of the Probate Code.

Since the parties had established grounds for the divorce prior to Husband's death, i.e., by filing affidavits of consent that the marriage was irretrievably broken in August 2002, and by participating in master's hearings, the divorce action with regard to equitable distribution did not abate at Husband's death. The Superior Court therefore reviewed the Master's report and

recommendation and found that no error of law occurred, nor any abuse of discretion. The parties' had nearly equal footing on some factors under the Divorce Code. However, Husband assumed all the marital debt due to Wife's fiscal irresponsibility and further, Husband left the house with nearly nothing while Wife remained in the marital residence during the pendency of the litigation. Therefore the Master awarded slightly more to Husband, as is permitted under equitable distribution (which does not mean equal). The master also determined that Husband was more credible in his testimony.

Therefore the equitable distribution part of the trial court's order was affirmed.