

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF

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Plaintiff,

Index No.: \_\_\_\_\_

-against-

**DECISION AFTER TRIAL**  
(# 2)

Defendant.

-----X

\_\_\_\_\_, J.:

The plaintiff commenced this action on \_\_\_\_\_. A divorce was granted after inquest on the grounds of \_\_\_\_\_. A trial was held on the ancillary issues including \_\_\_\_\_.

**BACKGROUND**

(Optional fact pattern for more complex matters).

**EQUITABLE DISTRIBUTION**  
**Marital Property and Separate Property**

(Where issues of classification of property arise).

Marital property is defined in Domestic Relations Law Section 236 B(1)(c) as “all property acquired by either or both spouses during the marriage...”.

Separate property is: “Property acquired before marriage or property acquired by bequest, devise, or descent, or gift from a party other than the spouse...”. (Domestic Relations Law Section 236 B(1)(d)). Utilizing these definitions and the evidence adduced at trial the following identifies

and classifies the property of the husband and wife herein.

The following assets are classified as marital property:

- 1.
- 2.

The following assets are classified as separate property:

- 1.
- 2.

### **Valuation Date**

Domestic Relations Law §236 B(4)(b) provides in pertinent part: "...The valuation date or dates may be anytime from the date of commencement of the action to the date of trial."

As to the valuation of specific assets, the court in *Wegman v. Wegman*, 123 A.D.2d 220, 234 [2nd Dept., 1986] found that "[i]f an asset increases in value due to market forces or inflation, valuation as of the date of commencement of the action would result in a windfall to the titled spouse and injustice to the other. If the asset greatly decreased in value ... a court which values assets might make a distributive award that is beyond the owner spouse's ability to pay (citations omitted)."

Thus, a passive asset is properly valued at the date of trial whereas an active asset may be more appropriately valued at an earlier time. The court noted "[a]n asset such as, for example, a business, might suddenly appreciate in value due solely to the efforts of the owner spouse. If a considerable period of time has elapsed since the date of commencement or the date of separation,



- 5) An award of maintenance -
  
- 6) Direct and indirect contributions -
  
- 7) Liquid or non-liquid character of the property -
  
- 8) Future financial circumstances of the parties -
  
- 9) The difficulty of valuing marital assets -
  
- 10) The tax consequences to each party -
  
- 11) The wasteful dissipation of assets -

12) Transfer in contemplation of action -

13) Any other factors -

The premise of the equitable distribution law as it has been written and interpreted by the courts of this state is that the marriage is an economic partnership. (*O'Brien v. O'Brien*, 66 N.Y.2d 476 (1985)). The success of this partnership depends not only on the contributions of the wage earner spouse but on various contributions made by the non-titled spouse. In *Price v. Price*, 69 N.Y.2d 813 (1986), the Court of Appeals recognized this concept stating: “The Equitable Distribution Law reflects an awareness that the economic success of the partnership depends not only upon the respective financial contributions of the partners, but also on a wide range of non-remunerated services to the joint enterprise, such as homemaking, raising children, and providing emotional and moral support necessary to sustain the other spouse in coping with the vicissitudes of life outside the home”.

As this court wrote in *Greenwald v. Greenwald*, NYLJ, 6/6/90, p. 22, col. 5: “Although it is true under New York Law at the present time equitable distribution is not necessarily synonymous with equal distribution. Nevertheless, the legislative history bespeaks an intent that the courts direct an equal distribution unless the circumstances of an individual case clearly require an unequal

distribution. More often than not, equal distribution should be and is the rule”.

The court in *Conner v. Conner*, 97 A.D.2d 88 [2nd Dept. 1983] voiced its opinion stating: “According to the Assembly memorandum in support of the new law [*llc Zett - Kaufman - Kraut, N.Y. div. Prac., Appendix B, p. 8*]: “The basic premise for the marital property and alimony (now maintenance) reforms of this legislation (§236) is that modern marriage should be viewed as a partnership of co-equals. Upon the dissolution of a marriage, there should be an equitable distribution of all family assets accumulated during the marriage and maintenance should rest on the economic basis of reasonable needs and the ability to pay. From this point of view, the contributions of each partner to the marriage should ordinarily be regarded as equal and there should be an equal division of family assets, unless such a division would be inequitable under the circumstances of the particular case. (emphasis supplied) Id. 96.”

Accordingly, the judgment settled shall include a(n) \_\_\_\_\_ distribution.

### **Maintenance**

The court has considered the following factors as enumerated in Domestic Relations Law §236 F(6)(a):

1. The income and property of the respective parties including marital property distributed -
  
2. The duration of the marriage and the age and health of both parties -



9. Wasteful dissipation of marital property -
  
10. Any transfer or encumbrance made in contemplation of a matrimonial action without fair consideration -
  
11. Any other factor(s) -

**Child Support**

This court, pursuant to Domestic Relations Law §240(1-b), has considered the calculations delineated in Domestic Relations Law §240(1-b)(c) as well as the factors set forth in Domestic Relations Law §240(1-b)(f) which permit a deviation from the calculations set forth in Domestic Relations Law §240(1-b)(3).

In determining the level of child support, the court will apply the child support guidelines up to \$\_\_\_\_\_. The court finds that based on the facts and circumstances of this particular case, this would result in a just and appropriate award for base child support. Matter of Cassano v. Cassano, 85 N.Y.2d 649 (1995).

Accordingly, the *Plaintiff / Defendant* is directed to pay \$\_\_\_\_\_ per month

to the *Plaintiff / Defendant* as and for child support. *Plaintiff / Defendant* is also to pay \_\_\_\_\_% of all unreimbursed medical costs for the parties' child/children, \_\_\_\_\_% of private school tuition, \_\_\_\_\_% of camp costs, etc....

The *Plaintiff / Defendant* is further directed to maintain medical insurance for the parties' child/children naming the *Plaintiff / Defendant* and the child/children as beneficiaries.

### **Counsel Fees**

Domestic Relations Law §237 provides that in an action for a divorce the court may award counsel fees "to enable that spouse to carry on or defendant the action or proceeding as, in the court's discretion, justice requires, having regard to the circumstances of the case and the respective parties.

The Court of Appeals in its ruling in *DeCabrera v. Cabrera-Rosete*, 70 NY2d 879 (1987) has held that indigence is not a prerequisite to an award of counsel fees pursuant to Domestic Relation Law §237. In considering an application for an award of counsel fees the court shall consider the "equities and circumstances" of the case before it. (*Basile v. Basile*, 122 A.D.2d 759).

For the foregoing reasons, the *Husband / Wife* is directed to pay \$\_\_\_\_\_ as and for *his / her* share of the *Husband's / Wife's* counsel fees.

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Settle judgment in accordance with this decision.

Dated: \_\_\_\_\_

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J.S.C.