

# P E N N S Y L V A N I A LAW WEEKLY

## EQUITABLE REIMBURSEMENT

### *A Remedy for Unjust Enrichment*

What happens when two people marry, one works and pays the tuition for medical school and supports the other and then after the other party graduates from medical school, he decides he wants a divorce? The answer is the judicially-created doctrine of “Equitable Reimbursement” which was approved by the Pennsylvania Supreme Court in the matter of *Bold v. Bold*, 524 Pa. 487, 574 A.2d 552 (1990). The parties were married in 1974 and Mrs. Bold had a college degree at the time of marriage. Her husband had completed some college and from 1974 through 1979, Mr. Bold pursued a course of college study and graduated from Chiropractic College. During the time when Mr. Bold was in school, Mrs. Bold earned more than \$97,000.00. Mrs. Bold filed for divorce in 1981 and the Court awarded her \$33,000.00 in “reimbursement equity”. The *Bold* court looked for guidance to *Lehmicke v. Lehmicke*, 339 Pa. Super 559, 489 A.2d 782 (1985) wherein Wife was awarded equitable reimbursement for the monies she expended while her husband was in medical school. Subsequent to the *Bold* case, the Supreme Court of Pennsylvania again affirmed the doctrine of equitable reimbursement in the matter of *Zullo v. Zullo*, 531 Pa. 377 613 A.2d 544 (1992). See *Twillia v. Twilla*, 445 Pa. Super. 86, 664 A.2d 1020 (1995).

One of the identifying factors concerning equitable reimbursement is that even though one spouse is entitled to a return on that spouse’s investment in the other spouse, there are not sufficient assets at the time of divorce to appropriately reward the contributing spouse. In *Wagoner v. Wagoner*, 538 Pa. 265; 648 A.2d 299; (1994) the Supreme Court of Pennsylvania again applied the doctrine of equitable reimbursement stating:

“At dissolution, each marriage (referring to *Bold* and *Zullo*, *supra*) possessed insufficient assets to repay the sacrifice which had added so significantly to the Husband’s future financial status. Thus, in addition to equitable distribution, the Wife in each case, for her efforts was awarded payments, termed equitable reimbursement, in order to equalize the result.” *Id.* at 271.

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In the recent matter of *Johnson v. Johnson N/K/A Pamela K. Blesh*, decided on September 11, 2006, the Superior Court considered an appeal by Wife who had filed a Petition for Special Relief to realize the equitable reimbursement she had been awarded upon divorce in 1985. Subsequent to that divorce, Husband remarried but Wife did not. In March of 1986, the trial court had entered an Order of equitable distribution of the marital estate whereby Husband was to retain his mill business, Clintondale Mills, while making monthly installment payments of his equitable distribution debt to Wife. Husband was ordered to pay Wife \$385,381.00 plus 10% interest, in monthly installments that exceeded \$4,000.00. *Johnson v. Johnson N/K/A Pamela K. Blesh*, 2006 Pa. Super. 253, 2006 Pa. Super. LEXIS 2798 (2006).

Husband made those monthly payments until June of 1993 where he stopped due to the alleged failure of his mill business. *Id.* at 3. After filing various petitions, Wife received a new Order on March of 1995 which set a new payment schedule on the balance of the money due her. At that time, the agreed upon amount due was \$304,944.18. *Id.* This new schedule required Husband to sell certain assets to pay the debt due to Wife. Until that time, when assets were sold, Husband was ordered to pay Wife monthly installments of \$2,000.00. These payments were on account of equitable reimbursement and therefore were not treated as alimony, thereby having no tax advantage or burden to either party.

In 1995, Husband filed for bankruptcy pursuant to Chapter 7 of the Bankruptcy Code and Wife filed to establish an alimony award to prevent Husband's reimbursement obligation from being discharged in bankruptcy. *Id.* The trial court denied the petition and Wife appealed to the Superior Court which upheld the trial court. See *Johnson v. Blesh*, 455 Pa. Super. 702, 688 A.2d 1234 (1996) (unpublished memorandum).

Husband's bankruptcy petition was dismissed in September of 2000 after which Wife filed for contempt and enforcement of the March 1, 1995 Order. After hearing, Husband was ordered to pay \$20,000.00 to purge the contempt and 40% of his net weekly income or \$326.00, whichever was greater. These payments were in furtherance of the equitable reimbursement award to Wife. Husband filed for modification of the trial court's order due to the an alleged precipitous drop in his income. In March of 2004, the trial court granted the modification and Wife filed a Notice of Appeal to the Superior Court. The Superior Court reversed, finding that the trial court's order constituted a forfeiture. See *Johnson v. Johnson*, 2004 Pa. Super. 482, 864 A.2d 1224 (2004).

The plot thickened. In the Fall of 2005, Husband and his current wife sold a vacation home in Vermont which vacation home had been owned by them as tenants-by-the-entireties. Upon learning of that sale, Wife took her money judgment against Husband to Vermont to

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collect on the judgment from the proceeds of sale. Husband filed a Motion for Summary Judgment in Vermont which the Vermont trial court granted.

Still determined, to get the monies due her, Wife filed a Petition for Special Relief in Pennsylvania and sought to collect on her judgment from the proceeds of sale of the Vermont vacation home. At the conclusion of trial, Husband was ordered to produce his 2003 and 2004 joint federal tax returns to Wife so she could determine if rent had been paid to Husband from the vacation home and the Court ordered Briefs. While reviewing those tax returns, Wife learned that there had been a sale by Husband and his current wife of a certain Oppenheimer fund. Wife filed a second Petition for Special Relief requesting payment of her judgment from the sale of the Oppenheimer funds. The trial court denied both of Wife's Petitions for Special Relief. Wife filed a Notice of Appeal to the Superior Court, which affirmed the trial court with regard to Wife's not being able to reach the proceeds from the sale of the vacation home. However, the Superior Court reversed that part of the decision dealing with the denial of the Oppenheimer funds to satisfy Wife's Judgment and remanded to the trial court with instructions to conduct a hearing to determine the type of joint ownership which Husband and his current wife had with regard to the Oppenheimer funds prior to their sale. Wife's award was in 1986; this matter was just decided in 2006 and the matter is not yet concluded.

When is equitable reimbursement not equitable? The answer is when funds cannot be reached to discharge the debt. The Superior Court examined the tenants-by-the-entireties doctrine to determine what happened to that form of co-ownership when real property is transferred to another forum. *Id.* at 16. A tenancy-by-the-entireties is a form of co-ownership of real or personal property by Husband and Wife, with its essential characteristic being that "each spouse is seized *per tout et non per my*, i.e., of the whole or the entirety and not other share, moiety or divisible part." *Id.* citing *In re Gallagher's Estate*, 352 Pa. 476, 43 A.2d 132 (1945). The *Johnson* Court also stated, "Entireties property is unavailable to satisfy the claims of the creditor of one of the tenants." citing *Patwardhan v. Brabant*, 294 Pa. Super. 129, 439 A.2d 784 (1982). *Id.* at 14. In the instant matter, the sale of the Vermont vacation home did not convert the tenancy-by-the-entireties. The cash received from that sale was still entireties property.

The Superior Court, however, did not reach that same conclusion with regard to the Oppenheimer funds sold by Husband and his current wife. The Superior Court reversed and remanded because the trial court held no hearings with regard to the Oppenheimer funds and therefore the record was bare concerning the nature of the tenancy of the Oppenheimer funds. The Superior Court stated:

"We recognize that in this Commonwealth, a presumption exists that property held by a husband and wife is held by the entireties

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and that said presumption can be overcome only when the opposing party demonstrates through clear and convincing evidence that the property was not intended to be held by the husband and wife as entireties property.” *Id* at 19.

On remand, Wife has the burden to prove by clear and convincing evidence that the Oppenheimer funds were not held by Husband and his current wife as tenants-by-the-entireties.

The doctrine of Equitable Reimbursement is one clearly intended to accomplish economic justice and fairness. New York created its own equitable doctrine by holding that a professional degree can be valued. See *McGowan v. McGowan*, 535 N.Y.S. 2d 990, 1988 N.Y. App. Div. LEXIS 13885 (1988). Conversely, North Carolina has held that the direct and indirect expenses of a graduate education are within the duty of support of a spouse and does not permit equitable reimbursement as Pennsylvania does. See *Kuder v. Schroeder*, 110 N.C. App. 355, 430 S.E.2d 271 (1993). Texas has held that a professional educational degree does not have a property interest and that there is no specific remedy or compensation to the supporting spouse other than what community property awards her or him. Delaware and Maryland have declined to establish equitable compensation to a supporting spouse.

The equitable reimbursement doctrine created in Pennsylvania was a modern attempt to fashion a fair and just result. However, the bottom line is the words stated by Cuba Gooding Jr. in the movie Jerry McGuire: “Show Me the Money.” If, as in *Johnson*, the money is not there, or, a subsequent tenancy-by-the-entireties is the only source of available money, the reimbursement will not take place. When is an equitable remedy not equitable? When it cannot be paid. The old adage of “A bird in the hand is worth two in the bush.” is still true. However, Pennsylvania, unlike other jurisdictions, has at least tried to fashion a doctrine of economic justice designed to avoid unjust enrichment.

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