

**THE FAMILY COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY**

B----- B-----,	)	
	)	
Petitioner,	)	
	)	File No.: CN21-03285
v.	)	Petition No.: 21-13537 (Ancillary Matters)
	)	
R----- B-----,	)	
	)	
Respondent.	)	

ORDER ON MATTERS ANCILLARY TO DIVORCE

Date Submitted: April 26, 2022

Date Decided: May 4, 2022

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ARRINGTON, Judge.

On April 25, 2022, the Court conducted a hearing ancillary to divorce regarding property division. Present in Court¹ were B----- B----- (“Wife”), represented by Kara M. Swasey, Esquire (“Ms. Swasey”); and R----- B----- (“Husband”), represented by Alyssa G. Kelly, Esquire. The Court heard testimony from both parties. This is the Court’s ancillary disposition.

Procedural History

The parties were married on June 7, 1997, and separated on June 19, 2020. Wife has one previous marriage. This was Husband’s first marriage. There are two children of the marriage.

On May 26, 2021, Wife filed a Petition for Divorce without ancillary matters.² On July 8, 2021, Wife filed a Motion for Retention of Ancillary Matters.³ On July 15, 2021, the Motion was granted.⁴ On August 5, 2021, Husband filed an Answer.⁵

On August 20, 2021, the Court granted the Petition for Divorce and retained

¹ Consistent with the direction of the Chief Justice of the Delaware Supreme Court, this case was heard on the Zoom platform. All parties and counsel were visible during the hearing. Witnesses were visible during their testimony.

² Dkt. #1.

³ Dkt. #3.

⁴ Dkt. #4.

⁵ Dkt. #10.

ancillary jurisdiction over property division.⁶

On October 22, 2021, the Court set the dates for the pretrial conference and ancillary hearing.⁷

On December 10, 2021, Wife filed a Motion for Continuance based on the parties' request to conduct further discovery.⁸ On December 10, 2021, the Court granted the Motion.⁹

On December 15, 2021, Wife's counsel filed a Motion to Withdraw as Counsel.¹⁰ On January 5, 2022, the Motion was granted.¹¹ On December 20, 2021, the Court issued a Trial Scheduling Order.¹²

On January 26, 2022, the Court conducted the pretrial conference. The Court issued a new Scheduling Order, set a date for the Four-Way Meeting, set a deadline

⁶ Dkts. #6-8.

⁷ The Pretrial Conference was set for December 16, 2021. The Ancillary Hearing was set for December 21, 2021.

⁸ Dkt. #15.

⁹ Dkt. #16.

¹⁰ Dkts. #17, 19.

¹¹ Dkt. #20.

¹² Dkt. #18. The Pretrial Conference was rescheduled for January 26, 2022. The Ancillary Hearing was rescheduled for February 1, 2022.

for a joint memorandum of Matters in Agreement and Matters in Dispute, and continued the ancillary hearing to April 25, 2022.¹³

On April 4, 2022, the parties submitted the Stipulation of Matters in Agreement and Matters in Dispute.¹⁴ On April 25, 2022, the parties submitted an Addendum to the Stipulation of Matters in Agreement and Matters in Dispute.

On April 25, 2022, the parties appeared for the final hearing. The final submission was made on April 26, 2022 and the decision was reserved.

Trial Testimony

The parties testified at trial. Neither party presented additional witnesses. Both parties submitted intended exhibits and introduced those exhibits at trial. The facts listed below are limited to those which are relevant to property division and to this case in particular.

Husband is fifty-three years old and is employed as a union iron worker. Wife is sixty-one years old and works as a nurse practitioner. The parties met in a bar in 1994. Wife had a prior marriage and two children from her first marriage. Husband has no prior marriages. The parties became engaged in February 1996, and married on June 7, 1997. The parties lived together in Wife's home with Wife's older children.

In 1998, the parties purchased the former marital home in Townsend,

¹³ Dkt. #22.

¹⁴ Dkt. #23.

Delaware. The parties had two children together – Rachel and Rebecca B-----.
Husband has no other children.

Both parties contributed financially to the marriage. Wife managed the household, handled the finances, worked part-time as a registered nurse, and later worked full-time as a nurse practitioner. Husband worked full-time in Delaware, New Jersey, Pennsylvania, and New York. The parties lived comfortably and purchased a second home in Ocean View, Delaware in 2007. Husband and Wife were married for twenty-four years and two months.

Work History

Husband and Wife had a comfortable standard of living during the marriage. Both parties worked hard, did well, owned a second home, went on vacations, and sent their daughters to a private Catholic High School. As a union iron worker, Husband earned a similar to higher level of income in comparison to Wife.

Husband testified that he started as a non-union iron worker at Eagle Erectors. Husband entered the union in 1996, and started working in Delaware in 1997. Husband would work at least forty-eight hours per week. When at home Husband would contribute to household chores, watched the children on the weekend, and transported the children to their various activities.

Wife is a nurse practitioner and works forty hours per week. Wife testified that Wife never worried about retirement assets during the marriage because

Husband had a “union-backed retirement.”

Husband has worked in his field for thirty-two years and has worked on various jobs in Delaware, New Jersey, and Pennsylvania. Husband started to work in New York when the parties moved to the marital home in Townsend in 1998. Since 2008, Husband has worked for XLE Metals. Husband receives compensation on an hourly basis.

In 2012, the parties faced a series of unexpected challenges. Husband suffered a work injury while on a job in Brooklyn, New York while acting in a supervising capacity for J.H. Reid General Contractor. Husband tore his rotator cuff and “destroyed” his left shoulder. Husband had to undergo surgery and received physical therapy. On May 17, 2013, Husband suffered another work injury in a crane accident that injured his back, broke his shoulder, and caused him to miss at least ten weeks of work.

Husband suffered permanent injuries. Husband received worker’s compensation and a legal settlement from litigation in New York. Husband introduced a Stipulation and Order for Commutation, Workers Compensation, New York Suit, New York Complaint, and New York Closing Statement.¹⁵ Husband received a \$75,000 settlement and a net recovery of \$48,503. In a subsequent

¹⁵ Husband Exs. 2-6.

settlement, Husband recovered \$80,000 and received a net of \$28,000. Finally, Husband received a settlement of \$240,000 and a net recovery of \$34,584.¹⁶

The parties overcame the unexpected financial challenges and kept many of their finances separate. However, after receiving the worker's compensation and settlement checks, Husband deposited the funds directly into the jointly titled DEXSTA Bank Account. The DEXSTA account is and is a transactional bank account.¹⁷ The majority of the worker's compensation and settlement funds was used to pay for the tuition for parties' daughters at a private high school. Husband explained that he used the remaining funds to pay for two mortgages and other life expenses the parties incurred.

Relative Incomes of the Parties

Wife made significant contributions to the marriage. At the beginning of the marriage, Wife worked as a registered nurse in the Intensive Care Unit at Saint Francis Hospital. After the parties' children were born, Wife started to work at a weekend program. Wife explained that she received no benefits in this position and worked per diem (on call) during the week as needed. Wife introduced her Social Security Statement listing her wages and earnings.¹⁸ Between 2004 and 2009, Wife

¹⁶ Husband Ex. 6.

¹⁷ Husband Ex. 7.

¹⁸ Wife Ex. 1.

earned between \$42,000 and \$69,000. Later on, Wife decided to go back to school and earn her Nurse Practitioner certification. By 2019, Wife's income had increased to \$112,000. By way of comparison, Husband earned between \$71,000 and \$137,000 from 2011 through 2020.

The Parties Face Post-Separation Agreements and Challenges

The parties separated in June 2020, and the parties began to face new challenges. Husband contends that prior to the divorce proceeding the parties worked out an arrangement. Husband proposed that each party keep one of the properties. Wife selected the Ocean View home and Husband kept the Townsend home. Each party agreed to refinance the properties in their individual names. Wife testified that she successfully refinanced the Ocean View home in April 2021, and the parties filed for divorce.

Husband's retention of the Townsend home incurred a lot of household maintenance expense. These expenses impacted Husband's financial condition. The home needed a new well pump, required new pipes, suffered flood damage, and had insurance issues. Husband introduced copies of his bills related to those expenses.¹⁹ In summer 2020, a tornado at the former marital residence destroyed a fence and the home sustained significant property damage. Property insurance paid \$13,988 for the tornado damage. Husband introduced pictures of the damage and

¹⁹ Husband's Ex. 8.

the bills related to repairing the damage.²⁰ Husband spent a total of \$44,348.

Divorce is Finalized

The parties were divorced on August 20, 2021, marking the end of their twenty-four year marriage. Following the divorce, the parties have resolved most of the issues surrounding their vehicles. To their credit, the parties were able to make mutual decisions on retention of vehicles, marital personal property, and values for the various bank accounts. The parties had a narrow list of items for the Court to decide, including the value of Husband's personal truck and certain claimed debts.

Retirement Assets in Agreement and in Dispute

The parties agreed to share Husband's pension, but the parties later learned the breadth and depth of Husband's retirement assets. Wife was under the impression that Husband only had pensions through his employment. Because Wife only worked part-time or *per diem*, she did not accumulate separate retirement assets until more recently.

Husband has several retirement assets. He decided to take withdrawals from the assets after the parties' separation to assist in the unreimbursed cost of repairs. Similarly, Wife cashed out two of her retirement assets.

Wife contends that Husband failed to disclose his retirement assets in full as several annuities and pensions were identified later in the discovery process. Wife

²⁰ Husband Ex. 9.

characterized Husband's disclosures as "deceit" and requested a disproportionate division of certain retirement assets. Additionally, Wife incurred additional attorney's fees in attempting to identify all of the retirement assets. Wife requested that the Court order Husband to pay Wife the extra attorney's fees incurred in conducting discovery.

Husband credibly testified that he submitted all the information he had on his retirement assets as he learned about them. Wife conceded that she did not file a motion to compel during the discovery process. Husband credibly testified that he submitted the requested documents as he learned more about his retirement assets and received them from the unions.

Wife Concealed Substantial Financial Obligations from Husband

Wife amassed her own financial obligations over the course of the marriage. As early as 2003, Wife had co-signed student loans for her separate children. Wife began to pay some of those loans during the marriage, but later deferred payments when she began her nurse practitioner certification. Wife took out her own student loans when she went back to school for her N.P. Certification. The student loans total \$206,303 of which \$137,793 is attributable to the parties' children.²¹ When Wife refinanced the parties' Ocean View home in 2021, she spent \$52,027 of equity to pay

²¹ Wife Ex. 6. The exhibit was admitted for the limited purpose of demonstrating the financial transactions and balance surrounding Loan 8 of the Navient Student Loans.

off one of the loans attributable to a child of the parties.

Significantly, Wife conceded that she never had a conversation with Husband about taking out student loans for the parties' daughters. The daughters also decided not to inform Father about the loans because they were worried about his reaction.

Husband was entirely unaware that Wife paid for some of the loans from marital funds. Wife never consulted Husband before incurring those loans. Wife never acquired Husband's permission before using the \$52,027 from the Ocean View property refinance to pay off one of the loans.

Wife conceded that four of the loans had disbursement dates after the date of separation. Wife requests that Husband reimburse Wife for half of the loan that Wife paid off. Wife further requests that Husband split future loan costs "50-50" with Wife on an "if, as, and when" basis.

Husband argues that he retained the home that was in worse repair thereby reducing his equity, while Wife used her surplus marital equity in the Ocean View property to pay off one of the loans. Wife did not provide Husband the opportunity to act on Wife's use of the \$52,027 from the Ocean View property's refinance.

Other Debts

The parties have other debts including IRS debts for the tax years of 2017 through 2019. Wife has paid \$7,724 towards the debt and Husband has paid \$5,500

towards the debt. Wife, by agreement, will continue to pay \$250 per month under the installment plan with the IRS.

At trial, Wife explained that she learned the parties' 2021 tax refunds were applied towards the IRS debt. The parties agreed to use the pre-tax refund balance of the IRS debt and will be able to reconcile the differences outside of the Court process.

In contrast to the student loan issue, Husband decided to pay off an old credit card without consulting Wife. Husband held a credit card with Capital One (-4858) used during the marriage. Wife was the primary user of the credit card and charged general expenses. The card was closed in 2013. While Wife believes that the lender charged off the balance, she relies solely on a statement from a credit reporting agency noting a change in the card balance for the credit reporting agency's correction.

Husband paid off the remaining debt on the credit card on October 30, 2020, as he was not permitted to refinance the mortgage loan out of Wife's name without clearing the debt. Husband introduced the Capital One credit card's statement and a letter indicating that Husband paid off the total balance.²² Husband requests that the Court credit Husband's payment of the Capital One debt.

Wife does not wish to divide the debt and claims that the lender could not

²² Husband Exs. 13a, 13b.

have collected on the card that had been closed. There was no other evidence to support this proposition.

Vacation and Bonus Funds

A major point of dispute was Husband's bonus compensation. Husband received bonuses periodically over the course of the marriage. Wife introduced into evidence Husband's 2020 compensation statement from XLE Metals showing that Husband received a bonus of \$23,500 in 2020.²³ Wife did not learn about this bonus compensation until Wife's attorney had reviewed paperwork submitted by Husband during discovery. Husband received \$11,829 of the bonus compensation after taxes were paid.

Husband testified that he never received a large bonus such as the \$23,500 in the past. Husband introduced his 2021 Bonus Statement.²⁴ Husband was adamant that bonus compensation was at the owner's discretion and was never paid out on an annual basis. According to Husband, the employer had leftover COVID relief funds and awarded the bonus to Husband because of his service to the company and profitability to the employer.

Wife requests 25% of Husband's 2020 Bonus Compensation because the parties separated in June 2020. Wife argues that the bonus compensation is marital

²³ Wife Ex. 3.

²⁴ Husband Ex. 11.

property and Wife should receive “a half of a half.”

A second point of dispute was Husband’s vacation funds. Wife knew that Husband had a vacation fund while he worked in New York although she did not have clear documentation of any balances being held for Husband. Until recently, Wife was unaware that Husband had vacation funds in localities in which he worked other than New York. Wife’s position is that the vacation funds are Husband’s after-tax wages and Wife deserves a share.

Wife contends that Husband failed to disclose these funds and “hid them” from Wife during discovery. Wife requests 100% of the vacation funds in light of Husband’s actions. Husband’s position is that the vacation funds came directly out of his paycheck. Husband adamantly denied that he ever concealed any assets from Wife. Husband credibly testified that he was not aware of all his vacation and bonus funds.

Post-Divorce Developments

The parties face a multitude of changes as the divorce process ends. Wife can support herself with her work as a nurse practitioner. Wife’s money goes straight to household expenses, and she helps pay for her daughters’ health insurance, phones, car insurance, and summer courses for university. Wife testified that she is in good physical and mental health.

Husband can support himself as an iron worker. He pays his daughters’

gasoline bills and helps pay for their cars. Husband testified that his health could be better. He has pain in his back, a prosthetic right hip, a prosthetic left knee, and a fused wrist.

The Parties' Requests

Wife requests an equal division of the marital estate as of the date of separation. Wife requests 50% of Husband's bonus compensation pro-rated based on the date of separation, and 100% of Husband's 2020 vacation account balance. Wife requests that the Court ascribe the clean trade-in value to Husband's 2010 Chevy Silverado Pickup. Wife requests that Husband's retirement distribution of \$25,000 from "Ironworks Local" be credited as received by Husband and added back to the account. Wife further requests that Husband reimburse Wife 50% for the \$52,027 payment on the Navient Student Loans and pay 50% of any future student loan payments for the parties' daughters.

Husband requests a 60/40 division of the marital estate favoring Husband. Husband requests that the Court ascribe the purchase price of \$1,500, rather than the NADA clean trade-in value, to Husband's 2010 Chevy Silverado Pickup. Husband requests that he retain 100% of his bonus funds. Husband requests a marital division percentage of 0% to Husband and 100% to Wife of the student loan debt. Husband further requests the \$6,624 paid to the Capital One debt be credited to Husband.

ANALYSIS
Issues in Agreement

Based on the updated Stipulation of Matters in Agreement and Matters in Dispute provided to the Court on the day of the ancillary hearing, the parties agree upon the disposition of the following marital property:

Real Property

1. Wife shall retain the former marital home located at xxxxx B---- H----- C----, Ocean View, Delaware without further division or set-off.
2. Husband shall retain the former marital home located at xxx M----- L----, Townsend, Delaware without further division or set-off.

Vehicles

3. The 2010 Camaro owned jointly with the parties' daughter was sold and proceeds went to parties' daughter for the purchase of a new vehicle. This vehicle shall be excluded from the marital estate.
4. The 2006 Mazda 6 driven by daughter R-----, will be retained by the parties for R-----'s benefit and when sold, proceeds to be distributed to R-----.
5. The 1969 Camaro, valued by the parties at \$21,125, shall be sold and the proceeds divided at the percentage division.
6. The 2010 Volvo XC60 with a NADA clean trade-in value of \$5,525 traded in by Wife shall be attributed to Wife at the value of \$5,525 with set-off at the percentage of division.

7. The 2008 Cadillac with a NADA clean trade-in value of \$4,400 shall be retained by Husband without set-off as his post-separation vehicle.
8. The 2020 Jeep Cherokee with a NADA clean trade-in value of \$29,375 and loan balance of \$27,595 shall be retained by Wife without set-off as her post-separation vehicle.

Bank Accounts

9. M&T Bank Account ending in ***5234 shall be closed with the proceeds given to the parties' daughter, R----- B-----.
10. PNC Checking Account ending in ***4397 with a separation date value of \$8,604.39 shall be retained by Husband with set-off at the percentage division.
11. Louviers FCU Account ending in ***2004-01 with a separation date value of \$106.28 shall be retained by Wife with set-off at the percentage division.
12. M&T Bank Account ending in ***4713 with a separation date value of \$19.01 shall be closed with Wife to retain with set-off at the percentage division.
13. PNC Checking Account ending in ***0042 with a separation date value of \$651.23 shall be retained by Husband with set-off at the percentage division.
14. M&T Bank Account ending in ***2204 with a separation date value of \$2,826.90 shall be retained by Wife with set-off at the percentage division.
15. DEXSTA Account ending in ***8595 with separation date values of \$11,989.19 in checking and \$2,261.07 shall be retained by Husband with set-off at the

percentage division.

16. PNC Bank Money Market Account ending in ***5896 with a separation date value of \$12,160.78 shall be retained by Husband with set-off at the percentage division.

Retirement Funds (including COLA, survivor's and pre-retirement benefits)

17. Husband's Iron Workers District Counsel Philadelphia & Vicinity Pension Fund shall be divided by the Cooper Formula using a 50% multiplier.
18. Husband's Locals 40, 316 & 417 Pension Fund shall be divided by the Cooper Formula using a 50% multiplier.
19. Husband's Iron Workers Local 11 Pension Fund shall be divided by the Cooper Formula using a 50% multiplier.
20. Wife's Lincoln Financial Christiana Care Health Services 403(b) Plan valued at \$19,931 shall be divided at the percentage division as of date of separation plus/minus gains and losses through distribution.
21. Wife's Lincoln Financial Christiana Care Health Services Defined Contribution Plan valued at \$28,522 shall be divided at the percentage division as of date of separation plus/minus gains and losses through distribution.
22. Wife's Optum Care Retirement Plan distributed at \$844 in July 2021 shall be credited to Wife with set-off.

23. Wife's Schwab IRA (ending in ***1050) with a separation date balance of \$5,258 was liquidated and shall be credited to Wife with set-off.
24. Husband's Schwab IRA (ending in ***2734) with a separation date balance of \$39,684 shall be divided at the percentage division as of date of separation plus/minus gains and losses through distribution.
25. Husband's Local 40 Topping Out Fund with a separation date balance of \$768 shall be divided at the percentage division as of date of separation plus/minus gains and losses through distribution.
26. Husband's Iron Workers 399 Annuity with a separation date balance of \$34,569 shall be divided at the percentage division as of date of separation plus/minus gains and losses through distribution.
27. Husband's Iron Workers 451 Annuity with a separation date balance of \$64,003 shall be divided at the percentage division as of date of separation plus/minus gains and losses through distribution.
28. Husband's Iron Workers 401 (Phila) Annuity with a separation date balance of \$51,081 shall be divided at the percentage division as of date of separation plus/minus gains and losses through distribution.
29. Husband's Iron Workers Local 11 Annuity with a separation date balance of \$1,619 shall be divided at the percentage division as of date of separation plus/minus gains and losses through distribution.

Life Insurance

30. Wife shall retain her employer provided life insurance policies with sole discretion in naming the beneficiaries.
31. Husband shall retain his employer provided Amalgamated Life Insurance policies with sole discretion in naming the beneficiaries.

Marital Personal Property

32. The parties amicably divided the marital personal property to their satisfaction.

Issues in Dispute

The parties identified the following issues as matters for trial at the ancillary hearing. The Court addresses each of these items as presented to the Court with relevant testimony related to these issues set forth below.

1. Value of Husband's 2010 Silverado Pickup. Husband testified that he purchased the truck from his employer for \$1,500 in part due to 282,000 in mileage and in part because the employer could not "gift it" to him. Husband provided no proof of how much was actually paid to his employer. Wife argues that the NADA clean trade-in value of the truck with 282,000 miles is \$8,875. Wife introduced an exhibit supporting Wife's position.²⁵ Husband

²⁵ Wife's Ex. 2.

did not introduce any exhibit challenging the NADA clean trade-in value as submitted by Wife. Rather, Husband testified as to his belief that his Silverado should be valued at his purchase price of \$1,500.

Husband's argument that the Court should value a marital asset at the purchase price rather than an appraised value is not persuasive. In this case, Husband received a vehicle worth \$8,875 for approximately 17% of its value. The difference between the price paid and the actual value of the vehicle is a benefit that accrued to Husband during the marriage and is a marital asset. The fact that Husband uses the vehicle for his transportation does not affect the value.

The Court in this case has valued each of the vehicles at the NADA clean trade-in level.²⁶ Wife had traded in a car at a price below clean trade-in, but was attributed with having received the higher value for property division. Equity supports using the reasonable and objective value of each vehicle as opposed to a purchase price between employer and employee.

²⁶ The Court recognizes that the AFDR form has a note that the Court generally uses NADA retail value. This judge does not find that the NADA retail value provides a fair prediction of what the parties would get by selling the vehicle to a willing third party buyer. Access to values on the internet have become the standard for buyers in negotiating their purchases. This judge generally uses the NADA clean trade-in value which is less than retail but greater than fair trade-in values unless specific testimony is introduced to support an alternative.

2. Husband's Bonus. Husband was paid a bonus after the date of separation but prior to the date of divorce. Wife introduced an exhibit showing that Husband was paid \$23,500 as of mid-December 2020 for the year's bonus.²⁷ Wife argues that the bonus was for the entire year. Separation occurred in June 2020 at the mid-point of the year. Consequently, Wife suggests that she should be awarded one-half of 50% of the bonus.²⁸

Husband opposes the request and argues that, since the bonus is paid at the discretion of the employer, Husband should retain the entire amount. Husband stated that the employer had leftover funds from the pandemic relief provided by the Government and shared it with the employees. Husband further stated that the bonus was determined based upon service to the company and profitability of the employer. Husband testified that it was the only bonus that he ever received. Husband did not contest that the payment was made during the marriage.

Wife's exhibit shows that Husband was paid \$23,500 as of December 16, 2020. The bonus was paid in December as the year ended. Absent some

²⁷ Wife's Ex. 3.

²⁸ The parties valued all assets as of the date of separation. Wife requested a share of bonus and vacation funds through the date of separation as well. The Court follows the parties' decision and Wife's request in valuing these assets as of the date of separation.

testimony that the bonus was based solely on Husband's post-separation efforts, Wife position that she is entitled to a share of 50% of the bonus is reasonable and correct under statute and precedent.²⁹ Husband's paystub for the bonus also shows that there was \$8,170.60 deducted for federal and state taxes, social security, and unemployment insurance. Wife is entitled to an equitable share of what Husband actually received from the bonus. Husband's bonus less the documented tax deductions totals \$15,328. Wife is entitled to an equitable share of the \$7,664 actually received by Husband as his net bonus during the period requested by Wife.

3. Husband's Vacation Fund. Wife argues that contributions to Husband's vacation fund(s) are after-tax wages of Husband that are divisible in ancillary cases. Husband was requested to document his vacation fund balance(s) as of the date of separation. Wife seeks to be awarded 100% of funds due to Husband's alleged failure to disclose the requested balances.

Husband argues his W-2 and pay stubs already account for this compensation and that the funds are taxable. The vacation funds received by Husband are incorporated into his pay rate and funds are paid out quarterly so, according to Husband, no significant funds accrue. Husband testified that he was not aware of any vacation balances because they were paid out

²⁹ 13 Del.C. § 1513(b); *See also, King v. Howard*, 158 A.3d 878 (Del. 2017).

periodically and taxed at the time of payment. When made aware of the issues, Husband sought copies of all statements of vacation funds from June 20, 2020 through August 20, 2021. Husband produced copies of all statements that he received.

Wife introduced an exhibit containing three statements on vacation funds.³⁰ The first fund is identified as “Union Building Trades FCU”. Husband testified that the benefit from one of his employers, but he could not remember which, is paid directly to the credit union. The statement shows a separation date balance of \$113.76.

The second document is identified as “Iron Workers Local 401 Participant Work History Detail Report” and shows contributions, but not balances, for each work period. The Iron Workers Local 401 statement shows contributions after, but not before separation.

The third fund is identified as “Iron Workers Local 11 Vacation Benefit” showing quarterly contributions by XLE Metals Corp. and checks to Husband from July 31, 2021 to December 31, 2021.

The only statement showing amounts held prior to the separation date is the Union Building Trades FCU which was not identified as a marital bank account. Therefore, the balance of \$113.76 in the Union Building account as

³⁰ Wife’s Ex. 4.

of separation is a marital asset subject to division.

4. Iron Workers 40, 361 & 417 Annuity Fund Statement. Wife claims that Husband's account had a balance of \$288,312.87 on December 31, 2020. Wife states that Husband took a \$25,000 distribution on October 30, 2020 from "Iron Workers Local" that reduced the balance. Wife asks that Husband be credited with receiving the \$25,000 and to add such amounts back to the account for property division.

Husband contests the claims as hollow and notes that the parties agree on the separation date value. Husband's proposed Wright Chart lists the value as \$313,313 as of the date of separation.

The parties' agreement as to the date of separation value of \$313,313 resolves this issue. There is no need to attribute Husband as having received \$25,000 as it will be reflected in the division of the fund at a time prior to the Husband's later distribution. Wife will receive her entitled share of the separation date balance plus and minus gains or losses thereon from that date.

5. Attorney's Fees and Costs Related to Husband's Retirement Accounts. Wife seeks an award of attorney's fees for the work incurred in attempting to get Husband to produce requested documents related to his vacation funds. Husband disagrees and argues that he produced all of the available

documents requested of and provided by his employers.

The Court recognizes that Wife suspects that there may be vacation funds from other Locals or employers, but Wife did not provide any admissible evidence for the Court to determine how much, if any, of the funds actually exist. Husband credibly testified that he sought all of the documents showing balances in accounts as of June 19, 2020 through August 20, 2021. Husband stated that he received three sets of documents and produced them in their entirety during discovery. Wife alleges that Husband intentionally concealed the documents. Husband testified that he complied in good faith. The Court can only decide matters based upon the evidence presented.

The inability to produce sufficient documentation for the Court to decide the extent of vacation funds that do or do not exist is directly related to the discovery conducted in this case. This petition was filed on May 26, 2021, and was served on June 26, 2021. The discovery cut-off date was January 24, 2022. There were seven months for the documents to be requested and produced prior to the discovery cutoff date.³¹ If there was a dispute concerning production of documents, a motion to compel should have been filed and the Court would have resolved it prior to trial. There were three months between

³¹ The Court notes that Wife's counsel substituted her appearance on January 4, 2022. Consequently, Wife's current counsel cannot be fully responsible for the failure to request documents prior to her entry of appearance.

the discovery cutoff date and trial to file a motion to compel. No motion to compel was filed. For all of these reasons, the Court finds that the request for attorney's fees to discover vacation funds should be denied.

6. Navient Student Loan Debt. Wife argues that at the time of separation, there was a balance of \$137,793.47 attributable to the parties' children. Wife paid \$52,027.00 at the time of refinance of her house. Wife seeks division of the amount that she paid and requests that any remaining payments on loans attributable to the parties' children to be divided "if, as, and when" paid.

Husband contests any division of this debt that was incurred without his knowledge. Husband further argues that the payment was contributed from the marital equity of the property Wife retained pursuant to the parties' agreement. Husband states that Wife retained the property that was in better condition than Husband's property. Husband retained the home that was in need of significant repairs that he needed to finance soon after separation.

The Court adopts Husband's position on this issue for the reasons stated in the analysis of statutory factor (10), below. Wife is assigned 100% of the marital portion of any student loan debt incurred solely in Wife's name.

7. Capital One Credit Card. Husband claims that he paid the outstanding balance of \$6,624.02 on this marital credit card in October 2020. Husband seeks to be credited with the slightly higher date of separation balance that

was required to be satisfied in order to refinance his home to accomplish the parties' overall agreement on distribution of the marital homes.

Wife claims that this debt was cleared/charged off in 2013. Husband paid off the debt even though it may have been past the statute of limitations.

The Court finds that Husband's position has merit and resolves the issue consistent with the exhibits and testimony at trial for the reasons set forth in the analysis of statutory factor (10), below.

8. IRS Obligations for 2017-2019. The parties are in agreement that Wife paid \$7,724 and Husband paid \$5,500 for a total of \$13,224. There is \$1,859 remaining to be paid. Wife will continue to pay \$250 per month and be responsible for the balance of the debt. In the process of verifying assets and debts, the IRS applied Wife's 2021 refund toward this debt.

The Court resolves this issue by including Husband's payment of \$5,500 in his column. Wife is credited both with the amount that she has paid and will pay to clear the account. To the extent that Wife's refund was applied to the obligation, Counsel shall jointly calculate any differences and adjust the payments accordingly.

Property Division Factors (13 Del.C. § 1513)

The Court retained jurisdiction over property division at the request of Wife. Delaware law requires that the court “equitably divide, distribute and assign the marital property between the parties without regard to marital misconduct, in such proportions as the Court deems just after considering” the following eleven statutory factors.³²

(1) The length of the marriage

The parties were married on June 7, 1997, separated on June 19, 2020, and divorced on August 20, 2021. The marriage lasted twenty-four years and two months.

(2) Any prior marriage of the party

Wife has one prior marriage. Husband has no prior marriages.

(3) The age, health, station, amount and sources of income, vocational skills, employability, estate, liabilities and needs of each of the parties

Wife is sixty-one years old and lives in Ocean View, Delaware, in one of the two former marital homes. Wife is in good physical and mental health. Wife is fully employed as a Nurse Practitioner earning approximately \$114,000 per year. Wife has two children from her previous marriage in addition to the two daughters from this marriage. Wife is able to meet her monthly expenses with her current income.

³² 13 Del. C. § 1313(a).

Husband is fifty-three years old. Husband works as an iron worker for unions in Delaware, Pennsylvania, New Jersey, and New York. Although Husband had an on-the-job injury that led to financial settlements, Husband continues to work assiduously in his position. There was no evidence introduced at trial suggesting that Husband's ability to work was seriously impaired by the industrial accidents. Husband earns between \$120,000 and \$150,000 per year depending upon the success of his employers. Husband is able to meet all of his expenses with his income.

(4) Whether the property award is in lieu of or in addition to alimony

Alimony was not sought in this case and is not appropriate as each party has sufficient income to meet their needs. Property Division is the only ancillary matter being decided in this case.

(5) The opportunity of each for future acquisitions of capital assets and income

Each party works at full capacity earning over \$100,000 annually. Wife has six additional years of work before she is eligible to receive full social security retirement. Husband has fourteen additional years of work before receiving full social security retirement. Husband testified that he is not sure how long he can continue as an iron worker based upon the physical demands of the job, but he works at full capacity at present. Husband has a greater ability and chance than Wife to acquire future assets through income.

(6) The contribution or dissipation of each party in the acquisition, preservation, depreciation or appreciation of the marital property, including the contribution of a party as homemaker, husband, or wife

Husband earned approximately 25% more than Wife during the marriage. Additionally, Husband deposited all of his settlement funds into a joint account which was used to pay the high school tuition for the parties' two daughters. Husband testified that he went to work in New York in order to earn more, and the commute resulted in long days.

Wife contributed to the acquisition of marital property through her employment as well as cleaning, food preparation, and child care that allowed Husband to work such long hours.

Neither party alleged waste of the marital assets although Husband takes issue with undefined spending by Wife. There was no evidence introduced to support Husband's claim.

Husband argues that he should be entitled to a 60/40 division of the marital estate in Husband's favor due to his contributions to the marital assets. While it is true that Husband contributed more in dollars to the marital estate, it is also true that Husband's contributions were made possible due to Wife's non-monetary contributions while she continued to work.

The application of this factor has been disputed over the years.³³ Traditionally, this factor has been used, sometimes exclusively, to value the non-wage earning spouse's contribution, relying heavily on the statutory phrase “including the contribution of a party as homemaker, husband, or wife”.³⁴ However, the language must be read as a whole.³⁵ The language referencing the “contribution or dissipation of each party” indicates that both parties' contributions must be

³³ See, e.g., *N.J.H. v. J.H.H.*, 2008 WL 5574752 (Del.Fam.Ct. Nov. 19, 2008); *JPK v. JDK*, 2011 WL 7789567 (Del.Fam.Ct. Oct. 25, 2011); *Schrader v. W.N.H.*, 2002 Del.Fam.Ct. LEXIS 88 (Del.Fam.Ct. July 22, 2022); *R.S. v. G.S.*, 2002 WL 32121309 (Del.Fam.Ct. Nov. 18, 2002); *A.L.H. v. D.H.*, 2002 WL 32121311 (Del.Fam.Ct. Oct. 30, 2022); *L. De M. v. R.L.*, 2006 WL 3197515 (Del.Fam.Ct. Aug. 30, 2006).

³⁴ *M. v. M.*, 321 A.2d 115, 119 (Del. 1974) (stating that “a proper legislative objective is to assure that contribution of [W]ife to prosperity of the union is justly credited to her” in order to receive “her fair share of any marital estate...[.]”); *Gregory J.M. v. Carolyn A.M.*, 442 A.2d 1373, 1376 (Del. 1982) (noting the Court should “consider the role of one of the parties as homemaker and the intangible contribution to the marriage of the party assuming that role...[.]”); *Glanden v. Quirk*, 128 A.3d 994, 1002 (Del. 2015) (ruling that the trial court did not abuse its discretion by awarding Wife a larger share of marital estate because of Husband's ability to earn more than Wife, Wife's equal contribution to the marriage by caring for the children, the household, and Husband's mother).

³⁵ *Division of Family Services v. O'Bryan*, 164 A.3d 58, 62 n.17-18 (Del. 2017) (stating that a “fundamental rule of statutory construction” is reading a “statute as a whole”); *Salzberg v. Sciabacucchi*, 227 A.3d 102, 117 (Del. 2020) (citing *Grimes v. Alteon Inc.*, 804 A.2d 256, 265 n.35 (Del. 2002)) (interpreting a statute requires each section be construed “in connection” with every other section to “produce a harmonious whole.”).

considered in evaluating this factor. In this case, both parties contributed equally to the formation of the marital estate.

(7) *The value of the property set apart to each party*

The parties have been cooperative in dividing most of the marital estate by agreement. Wife is retaining the Ocean View home. Husband is retaining the house in Townsend, Delaware, which was the second former marital home. Husband is retaining his Silverado truck and Wife is retaining her post-separation acquired vehicle. Husband is retaining three bank accounts totaling approximately \$34,000 which will result in funds having to be transferred to Wife in reconciliation. All retirement funds are being divided. Qualified Domestic Relations Orders (“QDROs”) have been filed with the Court.

(8) *The economic circumstances of each party at the time the division of property is to become effective, including the desirability of awarding the family home or the right to live therein for reasonable periods to the party with whom any children of the marriage will live*

Husband claims that he has incurred over \$40,000 in expenses for the Townsend house since separation. Wife has not had the same home-related costs but is the primary obligor on approximately \$50,000 in student loans for the parties’ children. Each party has retained one of the marital homes. The economic circumstances of each party is relatively equal.

(9) *Whether the property was acquired by gift, except those gifts excluded by paragraph (b)(1) of this section*

None of the marital assets were acquired by gift.

(10) *The debts of the parties*

The parties have substantial debt acquired during the marriage. Many of the debts are not in dispute: Capital One (-6811) at \$5,673, TD Bank (-3686) at \$5,599, BHG (-9560) at \$2,907, and IRS obligations of \$15,083.

The parties differ on two debts. The first is a Capital One (-4858) paid off by Husband post-separation at \$6,624. Husband testified that Wife used this credit card exclusively during the marriage. Husband claims that he was unaware of any balance on the card until he tried to refinance the Townsend home to remove Wife's name from the mortgage loan. Husband introduced an exhibit indicating that the date of separation balance on the credit card was \$7,079.04.³⁶ Wife testified that she made a payment but could not recall how much she had paid. Husband stated that the only payment he made was the final payoff balance of \$6,624. Husband testified that he was required to pay the balance in order for the refinancing on the Townsend home to close. It was uncontested that the payment appeared on the settlement sheet for the refinancing. Husband's exhibit from Capital One indicated that final payment was received on October 30, 2020, and that the account balance was zero.

³⁶ Husband's Ex. 13.

Wife contests consideration of this claim. Wife introduced a letter from Equifax updating its credit report and indicating that while the account was closed in February 2014, the last payment was made in October 2020.³⁷ In considering the exhibits, the Court gives greater weight to the document from the credit card company than to the Equifax letter. The Equifax letter is a correction of a credit statement on the Equifax site. The Capital One statement is a more reliable statement of the amount owed at the date of separation. The Court will consider the payment each party made to clear this debt. Wife receives credit for paying \$455 and Husband receives a credit for paying \$6,624.

The second contested debt is owed to Navient for four school loans, two of which were for children of this marriage. The total marital indebtedness to Navient consists of the loans for the parties' children which was \$137,793.47 as of the separation date.³⁸ Wife introduced an exhibit showing that on June 7, 2021, she paid \$52,027 toward one of the loans in connection with the refinancing of her home.³⁹ Wife seeks credit for the payment and requests that Husband pay for the remainder on a 50% basis "if, as, and when" payment is due. Husband contests.

³⁷ Wife's Ex. 7.

³⁸ Wife's total indebtedness for all four of her children was \$206,303.01 as of November 25, 2021.

³⁹ Wife's Ex. 6.

The Navient loan has two similarities to the Capital One credit card debt. The first similarity is that there was balance owed on the date of separation. The second is that it was paid off at closing on the refinancing of the homes. The differences, however, are more substantial.

The greatest difference is shown in Wife's testimony concerning the loan. Wife testified that she was the sole obligor on the school loan(s) and, significantly, that she never told Husband about the loans for which she had applied. Wife took out the loans for all four of her children (thereby showing her dedication to the children's education), but never disclosed it to Husband. Similarly, Wife testified that the children of this marriage never discussed their loans with Father. Considering that Mother had obligated herself to over \$200,000 in school loans without discussing any of it with Father is troubling. It is a reasonable assumption that the failure to disclose the substantial loans was related to the financial disputes that the spouses had during the marriage.

Wife apparently made payments on the loans for all of her children during marriage, and it is likely that she wished to ensure that all of her children had the same benefit, *albeit* without Husband's knowledge.

Husband had paid for the parties' two children to attend a private high school with funds from his settlements, and Husband expected that they would get their own funding for college. Husband was adamant that no one ever discussed any of

the school loans with him.

This differs substantially from the Capital One credit card as the testimony was clear that Wife was the primary, if not sole, user of the credit card taken out in Husband's name. Wife was fully aware of the marital balance on the card as opposed to Wife's intentional concealment of the school loans until discovery in this property division case.

Secondly, Wife's testimony was that the payment came out of the equity in her home. This differs from the Capital One credit card debt which the testimony indicated was required to be cleared in order for the refinancing to occur on the Townsend home. If Wife were the sole user of the credit card, Wife knew of the debt but failed to clear it. Had Wife paid the entire debt, she would receive full credit on payment of the marital debt. However, Wife only paid \$455 and Husband was required to pay the balance of \$6,624. Collectability of the debt by the bank was a non-issue in this case as Wife made a payment on the debt, thereby acknowledging that it was due. Further, the testimony indicated that it was a requirement for Husband to pay the balance of the marital debt incurred by Wife (presumably for marital expenses) for Husband to refinance the Townsend home in his name as the parties agreed.

Third, unlike the Capital One credit card debt, the student loans remain active. There was no testimony indicating that paying any of the loans in full was a

requirement to fulfill the parties' agreement on the houses. In fact, three of the four loans appear to remain active. The children of this marriage are approaching independent adulthood and may be able to make payments toward the debts that provided for their education. Requiring Husband to pay debts for which he was never informed, much less agreed, is not equitable.

For these reasons, the Court will not consider Wife's post-separation payment on one of the Navient school loans in this property division, and will not consider the balances on the other student loans in the reconciliation of the division of marital property. Wife shall be assigned 100% of the marital balance on the school loans for the parties' children.

(11) Tax consequences

There are no tax consequences on the property division portion of this case.

CONCLUSION

The Court considers each of the factors as a whole in deciding the division of the marital estate. In this case, virtually every factor has the same weight. Husband requests a 60/40 division in his favor while Wife seeks equal division of the marital estate. Based upon consideration of all eleven property division factors, the Court will divide the marital estate 50% to Husband and 50% to Wife. This division is equitable in light of each party's current situation and future prospects.

The Wright Chart, attached as Exhibit A hereto, identifies the marital assets and to which party each asset is assigned. For the non-retirement assets, there is a total of \$68,461 in assets. Husband has control of \$52,419 and Wife controls \$8,477. Each party should have \$30,448. Therefore, Husband owes Wife \$21,971 in assets. With respect to the marital debts, there is a total of (\$36,341). Wife is assigned (\$18,618) and Husband is assigned (\$17,723). Each party should have (\$18,171). Therefore, Husband owes Wife \$448 to equalize the debts. **In summary, Husband owes Wife a total of \$22,418 to effectuate the 50/50 division of the non-retirement assets.** Husband shall make payment to Wife within six months.

The parties have done an outstanding job with respect to their retirement funds having amassed nearly \$560,000 to plan for their future. The retirement funds will also be divided 50/50 so that each person will have the same benefit as they approach their retirement age. All retirement funds shall be divided at the amounts agreed by the parties and shown on the Wright Chart with gains and losses thereon as of the separation date. For purposes of clarity, all survivor benefits, cost of living increases, and pre-retirement benefits afforded by a plan shall be included in the division. Counsel has provided most of the QDROs to the Court for the funds to be divided. In the interest of simplicity, the parties may adjust their QDROs. If they so choose, the only fund to be divided disproportionately would be the Iron Workers 40, 361 & 417 Annuity Funds (shown in blue on the Wright Chart) in order to equalize

the assets.

The parties shall cooperate and promptly provide Counsel with all information needed to complete the QDROs within 60 days of the date of this Order.

The Court cannot close out this case without commenting on the work of Counsel. Each party was well represented in a respectful and highly competent manner. The parties may not realize the difficulty involved in presenting a case to the Court. Sometimes one party gets fewer of their requests granted than the other party and might feel shortchanged. This is a reality in a case where the Court must make decisions based on the admissible evidence, statutory requirements, and controlling case law. The parties have chosen well and their attorneys made excellent presentations. The Court is grateful.

THIS IS A FINAL ORDER.

IT IS SO ORDERED this 4th day of **May 2022**.

Michael W. Arrington

MICHAEL W. ARRINGTON

Judge

Attachment – Wright Chart

Date E-mailed to Counsel: 5/4/2022

B----- v. B----- (21-13537)**ASSETS**

	Total	Wife	Husband
xxxxxx B---- H----- C----, Ocean View		✓	
xxx M----- L----, Townsend			✓
2008 Cadillac		✓	
2020 Jeep Cherokee			✓
1969 Camaro			to be sold
2010 Volvo XC60 (traded-in)	\$5,525	\$5,525	
2010 Chevy Silverado Pickup	\$8,875		\$8,875
PNC Bank Money Market (-5896)	\$12,161		\$12,161
DEXSTA (-8595)	\$14,250		\$14,250
Husband's Bonus	\$7,764		\$7,764
Husband's Vacation Fund	\$114		\$114
Louviers FCU (-2004-01)	\$106	\$106	
PNC Checking (-4397)	\$8,604		\$8,604
M&T Bank (-4713)	\$19	\$19	
PNC Checking (-0042)	\$651		\$651
M&T Bank (-2204)	\$2,827	\$2,827	
Total Assets	\$60,896	\$8,477	\$52,419
Division Asset Percentage		50%	50%
Proportionate Share of Assets		\$30,448	\$30,448
Needed to Equalize Assets		\$21,971	(\$21,971)

DEBTS

	Total	Wife	Husband
Capital One (-6811)	\$5,673	\$5,673	
TD Bank (-3686)	\$5,599		\$5,599
BHG (-9560)	\$2,907	\$2,907	
Navient (student loans)	\$0	\$0	
IRS (J) 2017-2019	\$15,083	\$9,583	\$5,500
Capital One (-4858)	\$7,079	\$455	\$6,624
Total Debts	\$36,341	\$18,618	\$17,723
Division Debt Percentage		50%	50%
Proportionate Share of Debt		(\$18,171)	(\$18,171)
Needed to Equalize Debt		\$448	(\$448)
Total Equity	\$32,120	(\$10,141)	\$34,696
Division Percentage		50%	50%
per %		\$12,277	\$12,277
Needed to Equalize		\$22,418	(\$22,418)

RETIREMENT FUNDS

	Total	Wife	Husband	Valuation Date
Iron Workers District (Phila) Pension Fund				50% of marital portion
Locals 40, 362 & 417 Pension Fund				50% of marital portion
Iron Workers Local 11 Pension Fund				50% of marital portion
Lincoln Financial CCHS 403(b)	\$19,931	\$19,931		+/- gains/losses DOS
Lincoln Financial CCHS Defined Contribution	\$28,522	\$28,522		+/- gains/losses DOS
Schwab IRA (-2734)	\$39,684		\$39,684	+/- gains/losses DOS
Optum Care Retirement Plan	\$844	\$844		(no QDRO required)
Schwab IRA (-1050)	\$5,258	\$5,258		(no QDRO required)
Local 40 Topping Out Fund	\$768		\$768	+/- gains/losses DOS
Iron Workers 399 Annuity	\$34,569		\$34,569	+/- gains/losses DOS
Iron Workers 451 Annuity	\$64,003		\$64,003	+/- gains/losses DOS
Iron Workers 401 Annuity (Phila)	\$51,081		\$51,081	+/- gains/losses DOS
Iron Workers 40, 361 & 417 Annuity	\$313,313	\$225,241	\$88,072	+/- gains/losses DOS
Iron Workers Local 11 Annuity Fund	\$1,619		\$1,619	+/- gains/losses DOS
	\$559,592	\$279,796	\$279,796	
Division Percentage		50.0%	50.0%	
per %		\$279,796	\$279,796	
Needed to Equalize		\$0	(\$0)	

NOTE: The parties may choose to divide each account equally as of the date of separation plus and minus gains and losses thereon with Wife paying Husband 50% of the Optum Care Retirement and Schwab IRA (-1050) accounts. Alternatively, the parties may adjust the one QDRO with the Iron Workers 40, 361 & 417 Annuity as shown in blue above.