

Cook v. Cook, 2002-CV-5052-DV	11-4-2015	<p>The master was appointed to address equitable distribution, alimony, alimony pendente lite, counsel fees, costs and expenses. Wife did not appear at the master's hearing. Husband requested that Wife be awarded a portion of Husband's PSERS pension, the major marital asset "using the date of separation valuation of the pension". The master rejected Husband's request noting that significant amendments were made to the Pennsylvania Divorce Code by way of Act 2004-175 (hereafter "Act 175"), effective January 28, 2005. Act 175 mandated in 23 Pa.C.S.A. §3501(c)(1) and (2) that defined benefit pensions should be allocated between its marital and non-marital portions by use of a coverture fraction, as defined by the statute. The numerator of the coverture fraction is in all cases the number of months during which the parties were married and not finally separated during which the employee spouse worked to earn the benefit. If the court is effectuating a deferred distribution, the denominator of the coverture fraction is the number of months the employee spouse worked to earn the total benefit. If the court is effectuating an immediate offset distribution, the denominator of the coverture fraction is the number of months the employee spouse worked to earn the accrued benefit as of the date as close to the time of trial as reasonably possible. Moreover, the benefit to which the coverture fraction is applied is to include all post-separation enhancements except for enhancements arising from post-separation monetary contributions made by the employee-spouse. The Joint State Government Committee Comment of 2004 to Act 175 makes it clear that it specifically rejects the methodology advocated by Husband in this case in that it states "[n]ew subsection (c) seeks to reverse <i>Berrington v. Berrington</i>, 534 Pa. 393, 633 A.2d 859 (1993). . ."</p> <p>Husband cited the case of <i>Dasher v. Dasher</i>, 542 A.2d 164 (Pa.Super. 1988) in support of his position that the master should act contrary to 23 Pa.C.S.A. §3501(c)(1) and (2). <i>Dasher</i> did not address the valuation of pensions in divorce actions and, in any event, was decided long before the amendments to 23 Pa.C.S.A. §3501(c)(1) and (2). The main issue addressed by <i>Dasher</i> was "whether the trial court erred when it allowed interest on the distributive award made to one of the spouses for the period between separation and the entry of the decree of distribution." 542 A.2d 164. The Superior Court determined that the lower court had erred in awarding prejudgment interest reasoning as follows:</p> <p style="padding-left: 40px;">Contrary to the expressed belief of the trial court, prejudgment interest is not essential to correct economic disparity between the parties. The means for remedying economic disparity between spouses are contained within the provisions of the Divorce Code. If a court has availed itself of the means provided by statute, it will not be necessary to add prejudgment interest in order to achieve an equitable result between the parties. (emphasis added)</p> <p>542 A.2d 166. The <i>Dasher</i> Court instructs the lower court to look to the provisions of the Divorce Code to remedy economic disparity between spouses and to achieve an equitable result. The Divorce Code at 23 Pa.C.S.A. §3501(c)(1) and (2) clearly mandates the method to be used in valuing the marital portion of pension benefits.</p>
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