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## Monthly Disability Payments Not Considered Marital Property

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*Special to the Legal*

In 2011, the Pennsylvania Supreme Court decided the case of *Focht v. Focht*, 32 A.3d 668 (Pa. 2011), which resolved prior conflicting case law on the issue of whether an award or settlement proceeds from a personal injury claim, lottery winnings, or workers' compensation that arose during marriage but received after separation should be considered marital property for purposes of equitable distribution in a divorce matter.

In the *Focht* case, Justin Focht was injured during the parties' marriage and received a settlement related thereto after the parties separated. In deciding whether the settlement proceeds were marital property subject to equitable distribution, the Pennsylvania Supreme Court focused on the interpretation of the word "accrued" and Subsection 3501(a)(8) of the Pennsylvania Divorce Code.

Because *Focht's* cause of action accrued during the marriage, the Pennsylvania Supreme Court held that the settlement proceeds were marital property subject to equitable distribution. The Supreme Court closely analyzed its former decision in *Drake v. Drake*, 725 A.2d 717, 722 (Pa.1999).



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The *Drake* case pertained to a commutation agreement regarding the husband's disability. The Supreme Court concluded in the *Drake* case that the "husband's claim 'accrued' not when the commutation agreement was entered and commutation award was actually granted, but rather as of the effective date of husband's partial disability, which is when his right to seek commutation of his earnings arose."

Recently, another wrinkle along this line of cases arose in the Pennsylvania Superior Court case of *Yuhas v. Yuhas*, 79 A.3d 700 (Pa. Super. 2013). In *Yuhas*, the Superior Court (en banc) was faced with an issue of first impression because of the unique facts contained therein. According to the opinion, Dr. Thomas Richard Yuhas, a board-certified vascular surgeon,

underwent surgery for carpal tunnel syndrome prior to the parties separating. Because of the surgery, Yuhas was no longer able to operate because of, among other things, numbness in his hand.

Shortly after the parties' marriage, a disability income policy was issued to Yuhas. A number of the premiums paid toward the policy were paid from the parties' personal funds and many of the premiums were paid through Yuhas' medical practice. Yuhas applied for benefits under the policy and received a retroactive lump sum as well as monthly disability checks. The monthly disability checks are contingent upon "proof of husband's continuing disability, i.e., his inability to work at his former occupation as a surgeon." Initially, Yuhas had to renew his right to receive the monthly benefits every six months, but was later required to renew the same annually. The parties agreed that the lump sum retroactive payment received by Yuhas was marital property but disagreed whether the monthly payments were marital property subject to equitable distribution or income to Yuhas and not subject to equitable distribution.

A master's hearing was held, after Mary Kathryn Nentwig Yuhas filed a divorce complaint, and the master

determined that all of Thomas Yuhas' monthly disability benefits were marital property. The master based her determination on the *Drake* decision, according to the opinion. After Thomas Yuhas filed exceptions to the master's decision, the trial court sustained the husband's exception "to the master's report concerning the characterization of the monthly disability payments" and found that "any monthly disability insurance payments received by [husband] starting on the date of the first six-month renewal after the parties' separation ... are income but not marital property."

The trial court also relied on the *Drake* decision, citing that the court in *Drake* directed that the trial court must "look only to the timing of the right to receive" the payments. The trial court stated: "Here, husband's disability payments 'are not guaranteed but renewable every six months.' Therefore, husband's right to receive disability payments terminates and re-accrues, if at all, every six months." The case was then remanded by the trial court to the master for additional proceedings. After the remanded hearing before the master, the master issued a supplemental report incorporating the trial court's directive that the monthly disability payments be deemed income and not marital property. Mary Yuhas then filed exceptions to the master's supplemental report, which the trial court overruled. She filed the instant appeal thereafter, questioning "whether the trial court erred in concluding that the disability payments received by husband after the date of separation should not be considered marital property."

Distinguishing the present case from the decisions in *Focht* and *Drake*, the Superior Court concluded that the trial

court's "decision to identify husband's monthly disability benefit that he received after separation as nonmarital property is in concert with the language of the Divorce Code and case law," and affirmed the trial court.

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On appeal, Mary Yuhas argued that Thomas Yuhas' right to receive the disability payments accrued when he became disabled prior to the parties' separation, which renders the payments marital property. The Superior Court focused its analysis on the *Focht* and *Drake* decisions as well as Section 3501(a) of the Divorce Code in addressing Mary Yuhas' argument. As a reminder, Section 3501(a) of the Divorce Code provides, in part: "Marital property does not include: (1) property acquired prior to marriage ... (4) property acquired after final separation until the date of divorce ... (8) any payment received as a result of an award or settlement for any cause of action or claim which accrued prior to the marriage or after the date of final separation regardless of when the payment was received." According to the opinion, the Superior Court found that the present case "does not fall within the confines of Subsection (a)(8), because it does not

arise from an injury that leads to a right to institute a suit for damages." The Superior Court also held that the present case is distinguishable from *Focht* and *Drake*, since both of those cases involved lump sum payments and not "monthly payments that are contingent upon proof of continuing disability." The Superior Court found that "if any accrual, i.e., the existence of an enforceable right, comes to fruition, it is conditioned each year on husband's submission and the insurance company's actions on that submission." Therefore, the Superior Court affirmed the trial court's decision.

There was a lengthy dissent to the opinion that stated that the disability policy is akin to a life insurance policy and that the focus should be on the timing of when the policy was acquired/purchased. The dissent stated that since the policy in the present case was purchased during the marriage, the disability payments therefrom should be considered marital property subject to distribution.

This case is important for family law practitioners because it covers an issue just outside of the string of cases pertaining to situations where there is a receipt of funds after the parties separate related to an incident during marriage. However, in this case, the fact that the right to the continuing receipt of the funds is contingent on an ongoing renewal affected the consideration of when the accrual of said right exists. This was uncharted territory. There is now guidance in such circumstances. •