

**IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY,  
PENNSYLVANIA**

<b>CFP,</b>		:	<b>NO. 14-21,281</b>
	<b>Plaintiff</b>	:	
		:	
<b>vs.</b>		:	
		:	
<b>REP, JR.,</b>		:	
	<b>Defendant</b>	:	<b>IN DIVORCE</b>

**ORDER**

**AND NOW**, this 15<sup>th</sup> day of **March, 2017**, this Order is entered after argument held on January 5, 2017, regarding Wife’s Petition for Contempt filed September 9, 2016, and Husband’s Answer to Petition for Contempt filed on September 16, 2016. Present at the hearings were Husband, REP, Jr., with his counsel LeRoy Smigel, Esquire, and Randall Pajovich, Esquire, and Wife’s counsel, John C. Howett, Jr., Esquire, and Trisha Hoover Jasper, Esquire. Counsel for the parties agreed that testimony was unnecessary and that they would rely on oral argument to state their respective positions.

On September 6, 2014, the parties signed a property settlement agreement. Among other things, under the headline entitled “Alimony Agreement,” the agreement stated, “Regardless of her marital and/or employment status, CFP will receive \$145,000 annually from REP, Jr., in monthly payments of \$12,083.33, until she reaches the age of 65 (3/6/2022).” Shortly thereafter, Husband began making payments in amounts substantially similar to the amounts outlined in the agreement. Payments were made, with certain adjustments at times by agreement of the parties, from November, 2014, through August, 2015. After Wife did not receive the agreed-upon payment in

September, 2015, she filed a Praecipe for Alimony Pendente Lite on September 8, 2015. On September 28, 2015, a conference was held, after which an Order was entered in the amount of \$2,845 per month, plus arrearages and adjustments for Husband's bonus. The APL Order was entered without prejudice to Wife to file a petition to enforce the Agreement, which was subsequently filed on September 30, 2015.

Hearings were held on December 1, 2015, and February 12, 2016, regarding Wife's Petition to Enforce Property Settlement Agreement. On June 22, 2016, this Court entered an Order finding that the Agreement was valid and enforceable. On July 15, 2016, Husband filed a Notice of Appeal from the Order granting Wife's Petition to Enforce Property Settlement Agreement entered on June 22, 2016. On July 19, 2016, Wife filed a Motion to Quash Appeal Pursuant to Pa.R.A.P. 1972, on the basis that the June 22, 2016, Order was interlocutory and not a final order as defined under Pa.R.A.P. 341(b). On July 22, 2016, Husband filed an Application to Amend Order to Include Statement Specified in 42 Pa.C.S. §702(b) pursuant to Pa.R.C.P. 312. On August 1, 2016, Wife filed an Answer to Defendant's Application to Amend Order and, after careful consideration, this Court Denied Husband's request. On September 2, 2016, the Superior Court granted Wife's Motion to Quash. On September 9, 2016, Wife filed a Petition for Contempt of the September 6, 2014, Agreement and Order of Court Dated June 22, 2016, for Failure to Make Payments as Required by the Agreement and Order, which is the subject of this Order.

Wife is seeking an Order requiring Husband to immediately pay the amount of his alleged arrears, as well as to resume the full monthly payment obligation contained in

the September 6, 2014, Agreement. At the time of filing the Contempt Petition in September 2016, Wife calculated the arrears as \$91,929.07, which represented 23 months at the agreed upon amount of \$12,083.33 along with the addition of statutory interest, and credited Husband for payments made for nine months pursuant to the Agreement, payments made pursuant to the APL Order and other payments made on Wife's behalf,. At the argument on January 5, 2017, counsel for Wife presented a document calculating the additional arrears through December of 2016.

This case is further complicated by the fact that there are competing interests in proceeding with the finalization of the divorce. Husband argues that, even if the agreement is found to be valid, he is not obligated to pay alimony in the amount stated until after a divorce decree is signed. Husband holds steadfast to his belief that the Court's Order of June 22, 2016, will be overturned on appeal. However, Husband is unable to appeal the Court's Order until a final divorce decree is entered. Husband blames Wife for stalling the divorce proceeding, indicating that Wife has not taken any steps, including sending Husband an Affidavit of Consent and a Waiver of Notice, to finalize the divorce. Wife, on the other hand, argues that Husband has no incentives to get the divorce signed, particularly if the alimony is not required to be paid until after the decree is signed. As the alimony is scheduled to end on a date certain (Wife's 65<sup>th</sup> birthday), each month that the decree is not signed is one less month Husband would have to pay alimony to Wife.

Husband argues that the language in the Agreement (the validity and enforceability of which he disputes and plans to address with the appellate court at the

appropriate time) on which Wife is basing her Petition for Contempt is entitled “Alimony Agreement,” and therefore Wife is not entitled to those payments unless and until a divorce decree is entered pursuant to 23 Pa.C.S. §3701(a). Husband avers that he is not, and cannot be, in contempt of the Agreement dated September 6, 2014, because he has made all required payments pursuant to the APL Order dated September 28, 2015, and no further payments are due to Wife at this time. Husband points to the fact that the section of the document he signed is entitled “Alimony Agreement” and under the Divorce Code, “alimony is not available until after the divorce decree is signed” and any attempt by the Court to order alimony before the entry of the divorce decree is premature. DeMasi v. DeMasi, 597 A.2d 101, 104 (Pa. Super. 1991).

Wife counters Husband’s argument by citing 23 Pa.C.S. §3701(f), which states “[w]henver the court approves an agreement for the payment of alimony voluntarily entered into between the parties, the agreement shall constitute the order of the court and may be enforced as provided in section 3703 (relating to enforcement of arrearages).” Wife’s position is that the parties entered into an agreement which was found to be valid and enforceable by the Court, and Husband has no right to ignore the Order of June 22, 2016. Wife argues that the heading of the section is entitled “Alimony Agreement,” but the language merely describes an ongoing payment Husband is obligated to make and points to the fact that Husband did initially perform on the Agreement by making payments to Wife for nine months after it was signed. This Court finds that Wife’s reliance on 23 Pa.C.S. §3701(f) is applicable in light of its ruling that

the document signed by the parties is a valid and enforceable agreement and Husband will be required to pay the amount he agreed to, but not *until* the parties are divorced.

As this Court discussed in its Order of June 22, 2016, the Court must give plain meaning to a clear and unambiguous contract provision unless doing so would be contrary to a clearly expressed public policy. Prudential Prop. & Cas. Ins. Co. v. Colbert, 813 A.2d 737, 750 (Pa. 2002). The intent of the parties to a written contract is to be regarded as being embodied within the writing itself; furthermore, when the words are clear and unambiguous, the intent is to be discovered only from the express language of the agreement. Willison v. Consolidation Coal Co., 637 A.2d 979, 982 (Pa. 1994). This concept emphasizes just how narrow the Court's role is as interpreter of a contract: "Courts in interpreting a contract do not assume that its language was chosen carelessly." Stewart, 498 Pa. at 51, 444 A.2d at 662 (*quoting Moore v. Stevens Coal Co.*, 315 Pa. 564, 568, 173 A. 661, 662 (1934)). In this instance, the parties titled the section "Alimony Agreement." The language below the heading did not indicate that the payments were to begin immediately, or at any time prior to a divorce decree being entered. The parties agreed to an amount and duration of alimony payments pursuant to 23 Pa.C.S. §3701(f) rather than allowing the Court to make the determination of the appropriateness of alimony pursuant to 23 Pa.C.S. § 3701(a). The Agreement termed these payments "alimony" and by definition alimony is not available until after a final divorce decree is entered. In the absence of any evidence to the contrary, the Court is bound by the unambiguous language of this particular section of the agreement. The

obligation of Husband to pay Wife shall not begin until the final divorce decree is entered.

This Court recognizes that Husband did, immediately after the signing of the document, begin to make payments that closely resembled his obligation under the terms of the Agreement. The payments made by Husband to Wife during the course of their separation, and prior to the entry of the Order for APL, are deemed a gift to Wife so that she could reestablish herself in a new state, as per paragraph 2 of Husband's Answer to Plaintiff's Petition for Contempt. Therefore, Husband is not entitled to any type of credit against the payments he previously paid to Wife against his alimony obligation which will commence upon the entry of a final divorce decree.

After careful consideration of Wife's Petition for Contempt, Husband's Answer thereto, and the oral arguments of counsel on January 5, 2017, and for all of the foregoing reasons, Wife's Petition for Contempt is hereby **DENIED**.

By the Court,

Joy Reynolds McCoy, Judge