

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PA

BRENDA FAYE SWANN,	:	
Petitioner	:	
	:	
v.	:	No. 95-21,659
	:	
JAMES D. SWANN, JR.	:	
Respondent	:	

OPINION AND ORDER

James D. Swann has filed a Petition to Bond Alimony Pendente Lite and Brenda Faye Swann has filed a Petition for Change of Venue and Counterclaim. Argument was held on these motions on 14 January 1999, with both parties participating pro se by telephone. This opinion and order address both of these matters.

1. Petition to Bond Alimony Pendente Lite

On 3 November 1998, the Hon. Dudley Anderson entered an order denying Mr. Swann's request to terminate Alimony Pendente Lite (APL) while the issue of alimony is on appeal. At the argument Mr. Swann asked this court to permit him to "bond" the APL payments, which essentially amounts to putting the funds in escrow until the appeal is decided. Mr. Swann argued that he should be allowed to do this because he felt Mrs. Swann was not entitled to permanent alimony. This petition will be denied for the same reason stated in the 3 November 1998 order: APL is allowable throughout the entire appeal process. APL does not depend on the final determination of the issue on appeal.

2. Motion for Modification of Transportation Provision

Mr. Swann has asked this court to modify the custody order that requires him to pay for the airfare of the children for the purpose of visitation with him. This motion will be denied, as there is no convincing evidence that the airfare from Texas to Florida is significantly greater than the airfare from Pennsylvania to Florida, and because Mr. Swann is still in a more superior financial position than Mrs. Swann.

3. Motion for Change of Venue

Mrs. Swann has requested a change of venue because both of the parties and the minor children have moved from this area. This motion will be denied; the court will retain jurisdiction until all matters have been decided by the appellate courts.

4. Modification of Custody Order

During argument Mrs. Swann indicated that she would like various changes to be made to the custody order. This court refused to turn the argument into a full-blown custody hearing. Therefore, this motion will be denied.

5. Motions for Contempt

Mrs. Swann contends that Mr. Swann has violated the custody order currently in effect. Specifically, she argued that he did not ensure that the children were flown to Texas two weeks before the start of school. This motion will be denied, as Mr. Swann fully and

satisfactory explained why the children did not arrive in Texas until July 29, 1998 (one day after Mrs. Swann arrived there). The court finds Mr. Swann's testimony to be fully credible.

Mrs. Swann also contended that Mr. Swann should be held in contempt for failing to return the children to Texas in time to begin school after the Christmas vacation and that as a result, the children missed two days of school. Mr. Swann testified that he had tried for an entire month to obtain tickets to fly the children back in time, but was unsuccessful. Again, the court believes the testimony of Mr. Swann and thus this motion for contempt will also be denied.

Mrs. Swann next contended that Mr. Swann should be held in contempt for not returning the children to Texas in time to begin school after their Thanksgiving 1998 vacation and that as a result, the children missed three days of school. Mr. Swann offered no justification for this failure. Although he stated that he could not obtain tickets to a flight that would get the children to Texas on time, it is evident that he waited far too long to begin his attempt to buy tickets. Therefore, he will be held in contempt on this issue.

From the testimony during argument, it is clear that transportation is becoming a major problem. It is unacceptable for the children to continue to miss school days because Mr. Swann cannot obtain air flights that get them to Texas in time to begin school after vacations. Therefore, as a sanction for the contempt the court will modify the custody order currently in effect to state that from this date forward Mr. Swann may exercise visitation with the children only if he presents to Mrs. Swann, in advance, a round-trip plane ticket for each of the children. Should Mr. Swann choose to pick the children up or return them by car, he may do so but if he fails to return the children on time again, he is subjecting himself to a

contempt proceeding.

6. Equitable Distribution Payment

according to the Master's equitable distribution order of 12 November 1997, Mr. Swann was to pay Mrs. Swann an amount equal to 45% of the marital debt once the final decree of divorce was signed. The decree was signed on 2 October 1998, yet Mr. Swann as not yet made this payment. Because the Master's order did not state a time by which the payment was to be made, this court will not find Mr. Swann in contempt. However, Mr. Swann will be ordered to make the payment within 60 days of the date of this order.

ORDER

AND NOW, this _____ day of January, 1999, after argument, the court issues the following order:

1. The petition to bond alimony pendente lite filed by Mr. Swann is dismissed.
2. Mr. Swann's motion to modify the custody order in regard to payment for transportation of the children is denied.
3. Mrs. Swann's motion for change of venue is denied.
4. Mrs. Swann's motion to modify the custody order is denied.
5. Mrs. Swann's motions for contempt are all denied except for the motion relating to Mr. Swann's failure to return the children to Texas on time after the Thanksgiving 1998 visitation with him. As a sanction, the custody order of 13 April 1997 is modified to include the following provision: "If Mr. Swann requests the children to fly to his home in Florida for his visitation periods, Mr. Swann must first present to Mrs. Swann a copy of the round-trip airline tickets showing that the children will be returned to Texas in the time specified in this custody order. If Mr. Swann chooses to transport the children by car, he must ensure that the children are returned to Texas in time."

6. Mr. Swann is ordered to pay to Mrs. Swann, within 60 days of this order, 45% of the marital debt, as stated in the Master's Report dated 12 November 1997.

BY THE COURT,

Clinton W. Smith, P.J.

cc: James Swann
P.O. Box 9725, Ft. Lauderdale, FL 33310
Brenda Swann
P.O. Box 916, Tenaha, TX 75974
Family Court