

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

BHC, : NO. 97-20,555  
Petitioner :  
 :  
vs. : DOMESTIC RELATIONS SECTION  
 : Exceptions  
C LC, :  
Respondent :

OPINION AND ORDER

Before the Court are Respondent's exceptions to the Family Court Order of April 6, 2000 in which his request for modification of alimony was denied. Argument on the exceptions was heard July 21, 2000.

By Order dated September 21, 1999, this Court adopted the recommendation of the Master in his report on equitable distribution and alimony with respect to alimony, continuing alimony at the same level as the alimony pendente lite, \$2,001.00 per month. According to the Master's report, Petitioner was 71 years of age, retired and receiving social security of \$331.00 per month while Respondent was 65 years of age but continuing to work as a pilot earning \$5,480.00 per month net. By Petition dated October 12, 1999, Respondent requested a modification of the alimony award, indicating in his Petition that as of October 1, 1999 he had retired and would be receiving social security of \$1,292.00 per month. In the Family Court Order of April 6, 2000, the hearing officer noted that Respondent was receiving social security of \$1,292.00 per month, but based on testimony presented by Petitioner that Respondent voluntarily terminated his position, the hearing officer assessed Respondent with an earning capacity and continued the alimony payment at the original amount.

Although Respondent argues in his written exceptions that he did not voluntarily leave his position, the Court finds that even if he did voluntarily retire, since he is of retirement age and the matter involves alimony only, whether that retirement was voluntary or involuntary makes no difference. One of retirement age is entitled to retire and need not continue to work to support his or

her divorced spouse. McFadden v McFadden, 563 A.2d 180 (Pa. Super. 1989); Price v Price, 614 A.2d 1386 (Pa. Super. 1992). Respondent's actual social security income should have been considered by the hearing officer and his request for modification should have been granted.

Considering Petitioner's social security income of \$331.00 per month<sup>1</sup> and Respondent's social security income of \$1,292.00 per month, an award of alimony of \$400.00 per month is appropriate. Further, Respondent will be directed to continue to pay the premiums on the Southwestern Life Insurance Policy.

### ORDER

AND NOW, this 2<sup>nd</sup> day of November, 2000, for the foregoing reasons, Respondent's exceptions are hereby granted and effective October 12, 1999, Respondent shall pay to the Domestic Relations Office alimony of \$400.00 per month. Respondent shall continue to pay the premiums on the Southwestern Life Insurance Policy transferred to Plaintiff pursuant to the Order of September 21, 1999. As modified herein, the Order of September 21, 1999 shall continue in effect.

By the Court,

Dudley N. Anderson, Judge

cc: Family Court  
Barbra Hall, Domestic Relations  
Joy McCoy, Esq.  
Richard Callahan, Esq.  
Randi Dincher, Esq.  
Gary Weber, Esq.  
Hon. Dudley N. Anderson

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<sup>1</sup>Although in his memorandum in support of exceptions, filed October 18, 2000, Respondent argues that Petitioner's income has been increased upon Respondent's retirement, to 50% of Respondent's social security income, the Court is bound by the evidence presented at the hearing in Family Court on April 6, 2000 and as no transcript of that hearing has been prepared, by the findings of fact contained in the Order of that date. The Order of April 6, 2000 does not contain a finding that Petitioner's income has been increased.