

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

GLH,	: NO. 00-21,427
Plaintiff	:
	:
vs.	: CIVIL ACTION - Law
	: In Divorce
ALH,	:
Defendant	: Modification of Alimony Pendente Lite

OPINION AND ORDER

Before the Court is Plaintiff's Petition for Modification and Suspension of Alimony Pendente Lite filed May 15, 2001. A hearing on the Petition was held August 10, 2001.<sup>1</sup>

In response to Defendant's request for alimony pendente lite, filed October 18, 2000, an Order was entered on April 27, 2001, requiring Plaintiff to pay to Defendant alimony pendente lite of \$662.71 per month. This obligation was based on Plaintiff's income of \$2,716.77 per month and Defendant's income of \$1,060.00 per month. Plaintiff filed the instant Petition for modification on May 15, 2001, indicating as a basis for modification that she has been unable to work since April 10, 2001 and has had no income from employment based upon that disability.

Plaintiff presented testimony from her physician indicating that she indeed had a knee injury which prevented her from working as of April 10, 2001. She had knee surgery on June 20, 2001 and according to her physician, should refrain from employment for a period of three (3) months from that date. Her income from employment has thus indeed been suspended and the Court will consider such

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<sup>1</sup>The Court acknowledges that ordinarily a Petition such as the instant one is heard by a Family Court Hearing Officer. It appears the instant Petition filed on May 15, 2001 was not scheduled until July 10, 2001, for a hearing on July 17, 2001. For some reason, the Petition was then rescheduled for August 10, 2001. Considering the delay in hearing this matter, the Court chooses to exercise its original jurisdiction, rather than remand for rescheduling in Family Court.

as a proper basis for modification of the alimony pendente lite award.

Plaintiff also has income in the form of commissions as a former life insurance sales agent. In the Order of April 27, 2001, the hearing officer found Plaintiff's income from this source to be \$1,222.56 per month. Plaintiff presented four (4) monthly statements indicating that for the period from March 31, 2001 through July 31, 2001 she received an average of \$1,096.17 per month gross in these commissions.

Considering Defendant's monthly net income of \$1,060.00 and Plaintiff's monthly gross income of \$1,096.00, which considering just state and local taxes would be below Defendant's monthly net income, for the period from May 15, 2001<sup>2</sup> through September 20, 2001, the date Plaintiff's physician has indicated she may return to work,<sup>3</sup> Plaintiff's alimony pendente lite obligation should be suspended.

As of September 20, 2001, it is assumed Plaintiff will be able to return to work and the Court will assess her an earning capacity commensurate with her prior employment at Toys R Us. The hearing officer found she had a gross income for a period of seven (7) weeks of \$2,671.55. This would extrapolate to an annual income of \$19,845.00. Her annual income from the commissions is estimated at \$13,152.00 gross, for a total gross annual income of \$32,997.00. Federal income tax is estimated at \$3,866.00, social security tax on the employment income is estimated at \$1,518.00, self-employment tax on the commissions is estimated at \$1,972.00, and state and local income tax on all income is estimated at \$1,254.00. Plaintiff will thus have a net annual income of \$24,387.00, or a

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<sup>2</sup>The Court acknowledges that Plaintiff requests the modification be retroactive to April 10, 2001, the last date she worked. Her Petition was not filed until May 15, 2001, however. Plaintiff indicates she delayed filing the Petition as the original Order had not yet been entered. The Court does not believe the delay is appropriate and therefore will not extend the effect of this Order beyond the date of the Petition for Modification.

<sup>3</sup>While Plaintiff argues the modification/suspension of the alimony pendente lite obligation should continue indefinitely until she is able to return to work, in light of her physician's testimony that she should be able to work in three (3) months, the Court will reinstate the obligation as of that time. Should there occur a change in her physician's opinion, Plaintiff is free to file another Petition for Modification.

monthly net income of \$2,032.00. Considering this income/earning capacity, and Defendant's income of \$1,060.00 per month, Plaintiff's alimony pendente lite obligation is \$388.80 per month, effective September 20, 2001.

ORDER

AND NOW, this 31<sup>st</sup> day of August, 2001, for the foregoing reasons, Plaintiff's request for modification is hereby granted in part and denied in part. The Order of April 27, 2001 is hereby suspended, effective May 15, 2001, continuing through September 19, 2001. Effective September 20, 2001, the Order is modified to provide for a payment of \$388.80 per month. The arrearage payment provided for in the April 27, 2001 Order shall be reinstated as of September 20, 2001 as well.

By the Court,

Dudley N. Anderson, Judge

cc: Family Court  
Christopher Williams, Esq.  
William Miele, Esq.  
Gary Weber, Esq.  
Hon. Dudley N. Anderson