

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

SEG, : NO. 02-20,367
Petitioner :
: vs. : DOMESTIC RELATIONS SECTION
: Exceptions
TLG, :
Respondent :

OPINION AND ORDER

Before the Court are Petitioner’s exceptions to the Family Court Order dated June 18, 2002 in which her request for spousal support was denied. Argument on the exceptions was heard August 28, 2002, at which time it was determined that a transcript would be necessary for resolution of the exceptions. That transcript was completed October 3, 2002.

The hearing officer denied Petitioner’s request for spousal support based upon a determination that Petitioner forced Respondent to leave the marital residence by filing a Protection From Abuse action and was therefore not entitled to spousal support. In her exceptions, Petitioner contends the hearing officer applied the wrong standard in her determination, and erred in failing to consider the parties’ agreement.

The Court agrees with Petitioner that simply filing a Protection From Abuse action does not eliminate one’s entitlement to spousal support. If a petitioner is able to show adequate legal cause for having filed the action and excluding the other spouse from the home, he or she may be entitled to spousal support. In so concluding, the Court deems Petitioner’s actions in filing a Protection From Abuse action as constructively leaving the marriage, and thus presenting a situation analogous to when a Petitioner leaves the marital residence, in which situation she must show adequate legal cause for

having done so.

A review of the transcript, however, indicates that Petitioner has not demonstrated adequate legal cause for having filed the Protection From Abuse action. It appears from the testimony of both parties that the marriage was simply an unhappy marriage in which both parties argued with each other, mostly over money problems. The Court notes that the residence in which the parties lived was Petitioner's separate property and that Respondent had his own home, which he continued to maintain even though he resided with Petitioner after their marriage. Petitioner had suggested to Respondent several times in the past that he leave the residence but he had not done so. The Court cannot help but conclude that by filing the Protection From Abuse action, Petitioner was simply seeking to exclude Respondent from her residence and she would not have been able to justify a finding of abuse within the meaning of the Protection From Abuse Act. It is noteworthy that no findings of fact were made, the Order having been entered upon agreement of the parties.

With respect to Petitioner's contention the Court should have considered that agreement of the parties, contained in the Protection From Abuse Order, wherein Respondent agreed to leave the residence, the Court will not take such an agreement so far as to imply an agreement to separate. Protection From Abuse Orders are often stipulated to in an effort to avoid protracted litigation and the possible application of the Brady Indicator, preventing one from possessing firearms. The Court does not believe that anyone agreeing to entry of a Protection From Abuse Order even considers the possibility that he or she is thereby admitting the other parties' entitlement to spousal support. The Court will therefore not read such consideration into these Orders.

Accordingly, although the hearing officer did indeed apply the wrong standard, her disposition of the matter appears appropriate.

ORDER

AND NOW, this 14th day of October, 2002, for the foregoing reasons, Petitioner's exceptions are hereby denied and the Order of June 18, 2002 is hereby affirmed.

By the Court,

Dudley N. Anderson, Judge

cc: Janice Yaw, Esq.
Garth Everett, Esq.
Family Court
Domestic Relations
Gary Weber, Esq.
Dana Jacques, Esq.
Hon. Dudley N. Anderson