

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

DANIEL M. LOCKARD, II,	:	
Plaintiff	:	
	:	
v.	:	No. 02-20,726
	:	
NANCY A. LOCKARD,	:	
Defendant	:	

**OPINION and ORDER**

This matter comes before the court on Exceptions to the Family Court Hearing Officer's order of May 20, 2003, awarding Wife \$474.41 per month alimony pendente lite. The issue is how to calculate APL when the parties' children are residing with the party obligated to pay APL and the non-custodial party is paying child support pursuant to an order issued in another state.

Under the Guidelines, Rule 1910.16-4 states that in this situation, the amount of spousal support [or APL] is calculated "by offsetting the non-custodial parent's obligation for support of the children and the custodial parent's obligation of spousal support, and awarding the net difference to the non-custodial parent as spousal support." The Guidelines go on to give an example of this calculation. In that example, APL is determined by following four steps: (1) APL is calculated as if the parties had no children, (2) The parties' net incomes are re-computed assuming the payment of spousal support, (3) Child support is determined according to the Guidelines, based upon the recomputed net incomes, and (4) The non-custodial parent's child support obligation is subtracted from the original support obligation determined in step one.

The Master blindly followed this example, ignoring the fact that Wife is already paying child support pursuant to an order in Illinois. The effect of the Master's award is that Wife is assessed child support twice: once in Illinois, and once in Pennsylvania.

Obviously, the offset method offered in the Guideline example is meant to avoid two separate payments: one from Husband to Wife, and one from Wife to Husband. It provides a method for money to exchange hands once, rather than twice. However, when there is already an order directing child support in another state, no offset is warranted. There will be two exchanges of money, and that cannot be helped. The correct method under the circumstances presented in this case is to simply order APL, since child support is already being paid pursuant to the Illinois order.

Husband claims the court must follow the literal language of the Rule. We disagree, because the Rule assumes that both child support and APL will be determined and paid pursuant to Pennsylvania court orders, which is usually the case. That is not the case here, however, and it makes no sense to calculate APL using a fictitious child support obligation, while ignoring the actual child support obligation. To do that would be to assess Wife with two payments of child support: one from Illinois and one from Pennsylvania. That is surely not the intent of the Rule.

One alternative the court has considered, but rejected, is to offset the APL award by the difference between the lower child support award in Illinois and the higher child support award Pennsylvania would ordinarily order. However, to do that would be to impose Pennsylvania's idea of appropriate child support, when child support is not the issue. APL is the issue, and Pennsylvania has a perfect right to determine APL however it deems appropriate. Pennsylvania has determined that when the obligee is not the custodial parent, APL is awarded by multiplying the difference between the parties' incomes by 40%. Pennsylvania has no right, however, to determine the amount of child support, as that has already properly been done by Illinois.

Husband believes this is a harsh result, and perhaps he is right. But any harshness is due solely to the fact that Illinois has ordered lower child support than Pennsylvania would have ordered, and that is not something under this court's control.

**ORDER**

AND NOW, this \_\_\_\_\_ day of June, 2003, the respondent's Exception filed to the Master's Report of May 20, 2003 is granted and it is ordered that Daniel M. Lockard, II, shall pay directly to Nancy A. Lockard alimony pendente lite in the amount of \$835.38 per month. In all other respects, the order of May 20, 2003 is affirmed.

BY THE COURT,

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Clinton W. Smith, P.J.

cc: Dana Jacques, Esq., Law Clerk  
Hon. Clinton W. Smith  
Bradley Hillman, Esq.  
Patricia Bowman, Esq.  
Gerald Seevers, Esq.  
Gary Weber, Esq.