

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

DEBORAH A. FOWLER,	:	
Plaintiff	:	CIVIL ACTION – LAW-SUPPORT
	:	
v.	:	PACSES NO. 349104690
	:	
STEVEN J. FOWLER,	:	No.: 02-21,047
Defendant	:	

OPINION AND ORDER

Before the Court are the exceptions filed by the parties in this matter to the Family Court Hearing Officer Order dated October 9, 2002 and filed October 17, 2002. Plaintiff filed an exception on October 23, 2002 alleging that the Hearing Officer had erred by denying her an award of spousal support. Defendant filed exceptions on October 25, 2002, alleging that the Hearing Officer had erred when he determined Defendant’s monthly net income, when he failed to credit Defendant with \$1000 in direct payments made to the Plaintiff after their separation, when he failed to provide for a downward deviation in child support on the basis of the Defendant’s obligation for a student loan to the Plaintiff’s daughter from a previous relationship, and when he limited the Defendant’s ability to claim the parties’ child as a tax exemption to the year 2002 only.

The Court will address these issues in seriatim.

SPOUSAL SUPPORT

The Order of the Family Court Hearing Officer (FCHO) makes an explicit finding that “the parties are mutually at fault with regard to the separation.” Order of the Family Court Hearing Officer, filed October 11, 2002, p. 7. However, the FCHO

then goes on to find that “Mr. Fowler would not have left the marital residence but for the request of Ms. Fowler that he do so.” Id. These findings mandate directly opposite conclusions as to whether Wife is entitled to spousal support.

The rule regarding spousal support is that “[a] dependent spouse is entitled to support until it is proven that the conduct of the dependent spouse constitutes grounds for a fault divorce. The party seeking to nullify the obligation bears the burden of proving the conduct claimed by clear and convincing evidence.” Hoffman v. Hoffman, 762 A.2d 766, (Pa.Super. 2000), citing Crawford v. Crawford, 633 A.2d 155, 429 Pa.Super. 540 (1993). Where one spouse leaves the marital residence without the consent of the other or, as here, where one spouse leaves the marital residence upon the request of the other, and would not have left but for that request, then spousal support will be denied unless there is “adequate legal cause” for the spouse requesting support to have withdrawn from the marital home. Brotzman-Smith v. Smith, 650 A.2d 471, 437 Pa.Super. 509 (1994). “A voluntary withdrawal . . . without adequate legal reason defeats her right to support.” McKolanis v. McKolanis, 644 A.2d 1256, 435 Pa.Super. 103 (1994) citing Rock v. Rock, 560 A.2d 199, 385 Pa.Super. 126 (1989). “Adequate legal cause” has not been specifically defined. However, a

spouse who over a period of time suffers psychological oppression may be harmed as much as a spouse who suffers physical injury. The law must recognize this harm and not force the oppressed spouse to remain in the unhappy environment in order to be entitled to support. On the other hand, the law should not impose on a spouse the duty of support where his or her mate departs the marital residence maliciously or casually on whim or caprice. Id., citing Clendenning v. Clendenning, 572 A.2d 18, 392 Pa.Super. 33 (1990). See also McKolanis, supra.

Further, “mere allegations that cohabitation is unbearable, unsupported by facts or reasons, is not sufficient” to show adequate legal cause. Id., citing Martin v. Martin, 423 A.2d 6, 282 Pa.Super. 484 (1980) quoting Commonwealth ex. rel. Lipschultz v. Lipschultz, 117 A.2d 793, 179 Pa.Super. 527 (1955).

To summarize, a dependent wife is entitled to support unless it is shown by the husband that the wife’s conduct amounts to grounds for a fault divorce. Here, the allegations of the parties seem to amount to allegations of indignities such that his or her condition is intolerable and his or her life is burdensome so that leaving the marital residence was justified. In proving indignities, however, so that Wife is not entitled to support, Husband must prove not only “a course of conduct by the other side which made (his) life intolerable and his condition burdensome, but also that (he) was an injured and innocent spouse.” Crawford, id., citing Beaver v. Beaver, 460 A.2d 305, 313 Pa.Super. 552 (1983). See also Jayne v. Jayne, 663 A.2d 169, 443 Pa.Super. 664 (1995).

In this case, the findings of the Family Court Hearing Officer are first, that the parties were at mutual fault regarding the separation, and second, that the husband would not have left the marital residence but for the request of the wife who now seeks spousal support. If we assume that the parties are at mutual fault, then Husband cannot be an “innocent and injured spouse” and therefore cannot meet his burden of showing that Wife is not entitled to spousal support. King v. King, 568 A.2d 627, 390 Pa.Super. 226 (1989). On the other hand, if we assume that the separation is the fault of the Wife, occurring as a result of her request that he leave the residence, then Wife is not entitled to spousal support, because she is without

adequate legal cause to request the separation. Since it is not clear from the cold record which situation exists, this issue must be remanded to the FCHO. The FCHO has the opportunity to observe demeanor and determine credibility, and the FCHO should make a specific finding on this issue.

DETERMINATION OF HUSBAND'S MONTHLY NET INCOME

At the time of the hearing before the Family Court Hearing Officer, Husband provided as proof of his income a “year-to-date paystub through September 27, 2002, which is the first thirty-nine (39) weeks.” Order of the Family Court Hearing Officer, *id.*, at page 4. The Hearing Officer then used that information to calculate a net monthly income for Husband. Husband now asserts that this was an error since he is paid bi-weekly, as he testified at the hearing before the Family Court Hearing Officer, *Id.* at 28. This Court agrees that an error has occurred in the calculation of Husband's monthly net income and remands this issue to the FCHO for a determination of the correct monthly net income based on Husband's bi-weekly pay.

DIRECT PAYMENTS AFTER SEPARATION

Husband next claims that the Family Court Hearing Officer erred when he failed to credit Husband with \$1000 in direct payments made to Wife after the separation of the parties. This issue is not addressed in the Order of the Family Court Hearing Officer. However, it appears from the record that Husband was paying the household bills from the time of the parties' separation to the time of the

conference with Domestic Relations and had provided Wife with \$1000 for this purpose. Transcript of hearing before Family Court Hearing Officer, October 3, 2002, p. 33 – 34. The Court remands this issue to the FCHO for a finding as to whether this \$1000 was paid, and, if so, for what purpose. If there is a finding that the \$1000 was paid from Husband to Wife and if it is concluded that Wife is entitled to spousal support, then this money should be credited to Husband against any spousal support payments.

REQUESTED STUDENT LOAN DEVIATION

Husband next asserts that the Family Court Hearing Officer erred when he failed to provide a downward deviation of support as a result of Husband's obligation to pay a student loan for the benefit of Wife's daughter from a prior relationship. Husband has cited Hicks v. Kubit, 758 A.2d 202 (Pa.Super. 2000) in support of his position. Importantly, Hicks is a case that discusses not support obligations but allocations of marital debt. It holds that "because a debt is characterized as marital is not necessarily determinative of which party is liable for its satisfaction . . . nomenclature does not determine the ultimate distribution of either assets or liabilities." Id. It is clear from the record that Husband acquired this debt voluntarily and in his name only, even though it was a loan for the purpose of educating Wife's daughter from a prior relationship. It should not offset any child support for Husband's child, but should be instead considered in the equitable distribution of assets between the parties.

LIMITATION OF TAX EXEMPTION FOR CHILD TO 2002

The Court initially notes that when the exemption issue was presented to the Family Court Hearing Master, it addressed only the question of which parent should be authorized to claim the minor child as an exemption on the 2002 federal income tax return. The Family Court Hearing Officer resolved this question by authorized Husband to take the exemption for 2002. Husband now seeks to expand his award of the exemption to all future years. This Court will not assign error where the only question presented to the FCHO was limited to the 2002 tax return. However, it is illogical to limit exemption to only one year. Husband will therefore be awarded the exemption for the minor child unless and until Wife petitions in a future year and shows evidence that she should properly be awarded the exemption.

ORDER

AND NOW, this ____ day of June, 2003, based upon the foregoing analysis, the Court DENIES the exceptions filed by the Defendant to the extent that he requests a downward deviation in his support obligation because of his obligation to pay a student loan debt which benefits the Plaintiff's daughter and GRANTS the exceptions filed by the Defendant to the extent that his authorization to claim the minor child a tax exemption is extended indefinitely until and unless the Plaintiff should petition for a change in a future tax year. The exceptions filed by the Plaintiff with respect to spousal support and by the Defendant with respect to the determination of his monthly net income and his request for credit for direct payments made to the Plaintiff after their separation are REMANDED to the Family

Court Hearing Officer so that specific findings can be made on these issues, as outlined above. The Family Court Hearing Officer is directed to take any further testimony and receive any additional evidence he deems necessary to make his determinations.

By the Court,

Nancy L. Butts, Judge J.

xc: Family Court
 Joy McCoy, Esquire
 Randi Dincher, Esquire
 Honorable Nancy L. Butts, Judge
 Gary Weber, Esquire
 Diane L. Turner, Esquire