

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PA

DEBORAH A. FOWLER,	:	
Plaintiff	:	
	:	
v.	:	No. 02-21,159
	:	
STEVEN FOWLER,	:	
Defendant	:	

ORDER

In this case, the plaintiff has filed for a divorce¹ but has failed to execute an Affidavit of Consent. The defendant has asked the court to convert the spousal support plaintiff is receiving to alimony pendente lite, and then to terminate the APL because plaintiff is not moving forward on her divorce complaint.

While it clear the court may terminate APL when a plaintiff spouse receiving APL refuses to move forward with the divorce, there is no authority this court is aware of which permits us to convert spousal support to APL under these circumstances. To the contrary, the only such authority of which this court is aware permits the court to convert spousal support to alimony pendente lite upon the entry of a Divorce Decree, when there are unresolved economic issues. Desch v. Desch, 477 A.2d 883, 329 Pa. Super. 22 (Pa. Super. 1984). Conversion is permitted under that circumstance because once the divorce decree is entered the receiving party is no longer a spouse, and therefore has no right to receive spousal support. Such is not the case here. The plaintiff has a right to receive spousal support regardless of whether or not she consents to the divorce.

Moreover, spousal support and APL have entirely different purposes, and are derived from separate statutes. Spousal Support is derived from the “Support, Property and Contracts” Act, 23 Pa. C.S.A. §4321. The purpose of spousal support is to assure a

¹ Plaintiff included counts for Irretrievable Breakdown, Indignities, and Two-Year Separation.

reasonable living allowance to a spouse requiring support. The duty of providing spousal support arises out of the marital relationship itself, and terminates when the marriage ends. APL is derived from the Divorce Code, 23 Pa. C.S.A. §3702. Its purpose is to enable a dependent spouse to prosecute or defend the divorce action without being placed in financial disadvantage. The court cannot and will not blur the important distinctions between the two concepts.

The problematic situation at hand arises when a spouse who is receiving spousal support, and who has also filed a divorce complaint, refuses to file an Affidavit of Consent, instead choosing to sit back and collect spousal support as long as possible. To put an end to this hypocrisy, the court may force the plaintiff to make a decision one way or the other: either she wants a divorce or she does not. The court has the authority to give the plaintiff a choice between filing her Affidavit of Consent or suffer dismissal of the divorce complaint. Hoffman v. Hoffman, 504 A.2d 356 (Pa. Super. 1986). That is precisely what this court will do.

ORDER

AND NOW, this _____ day of October, 2003, Deborah A. Fowler shall have twenty days from the date of this order to file an Affidavit of Consent. If she does not do so, upon praecipe of the defendant, the complaint in divorce shall be dismissed.

BY THE COURT,

Clinton W. Smith, P.J.

cc: Dana Jacques, Esq., Law Clerk
Hon. Clinton W. Smith, P.J.
David Irwin, Esq.
Randi Dincher, Esq.
Gary Weber, Esq.