

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

CK,	:	NO. 02-21,043
Petitioner	:	
	:	
vs.	:	DOMESTIC RELATIONS SECTION
	:	Exceptions
GEK,	:	
Respondent	:	

OPINION AND ORDER

Before the Court are Petitioner’s exceptions to the Family Court Order dated October 2, 2002, in which Petitioner’s request for spousal support was denied. Argument on the exceptions was heard January 8, 2003.

In her exceptions, Petitioner contends the hearing officer erred in failing to find an agreement to separate, in finding that Petitioner did not have adequate legal cause for leaving the marital residence, and in applying a standard of “clear and convincing evidence”.

The hearing officer determined that Petitioner had “not shown by clear and convincing evidence that she had “legal cause” to vacate the marital residence. She failed to present any creditable evidence that Mr. K was having an affair either with Ms. F or Ms. S or any other female.” Apparently the hearing officer applied a standard of “clear and convincing evidence” because he focused on whether Petitioner had shown adultery, the proof of which is required by clear and convincing evidence. It is clear from a reading of the transcript, however, that Petitioner was seeking not to prove adultery on Respondent’s part, but simply to prove that she had adequate legal cause to leave the marital residence. Such requires proof by a preponderance of the evidence.

The Court does not believe the difference in the burden of proof is of any significance in the instant case, however. The hearing officer seems to have focused on whether Petitioner could show that Respondent was having an affair. A reading of the transcript indicates that

Petitioner was simply attempting to show, and in the Court's opinion, did show, that Respondent continued to have a relationship with another woman, even if it was not to the extent of an affair, after it had become clear to him that that behavior was causing a problem in the marriage. It further appears to the Court that the behavior complained of, striking up friendships with other women and not including his wife in those friendships, would be objectionable to anyone of normal sensitivities. The Court thus finds Petitioner had adequate legal cause for leaving the residence and is therefore entitled to spousal support.

With respect to Petitioner's contention the hearing officer should have found an agreement to leave based on Petitioner's testimony that Respondent indicated to her "this is my house, you can get out," while noting Respondent denied saying that to Petitioner, it also appears even if he did say it, it was in response to Petitioner asking him to leave the house, which was owned by Respondent prior to the marriage. Such a statement, if made, would not constitute an agreement to separate.

Since the Court has found Petitioner is entitled to spousal support, the matter must be remanded for a determination of the amount of such.

ORDER

AND NOW, this 10th day of January, 2003, for the foregoing reasons, Petitioner's exceptions are hereby granted in part and denied in part. The matter is remanded to Family Court for further hearing to determine the amount of spousal support to be paid by Respondent.

By the Court,

Dudley N. Anderson, Judge

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

