

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

EM, : NO. 03-20,703  
Plaintiff :  
: vs. : PROTECTION FROM ABUSE  
: Motion to Vacate Support Provisions  
DAM, :  
Defendant :

OPINION AND ORDER

Before the Court is Defendant’s Motion to Vacate Support Provisions of the Final Protection from Abuse Order, filed May 29, 2003, seeking to vacate certain provisions of the parties’ agreement, contained in the Protection from Abuse Order filed May 7, 2003. A hearing on the motion was held June 2, 2003.

In the Protection from Abuse Order, entered by agreement of the parties May 7, 2003, the parties agreed, among other things, that Defendant would pay Plaintiff’s monthly mortgage payment, that Plaintiff would provide Defendant with \$400.00 per month toward the mortgage payment, that Plaintiff would pay the car payment and utilities at the marital residence, that Defendant would pay the CCCS Loan and the WNB Bank Loan, that their joint income tax refund would be distributed to Defendant’s mother and Plaintiff and, finally, that Defendant would pay to Plaintiff \$1,200.00 for out-of-pocket losses. This \$1,200.00 was to be paid in the form of \$200.00 credits against Plaintiff’s obligation to provide Defendant with \$400.00 per month toward the mortgage payment, for six months.

Section 6108 of the Protection from Abuse Act provides, in pertinent part, as follows:

- (a) General rule. – The Court may grant any protection order or approve any consent agreement to bring about a cessation of abuse of the Plaintiff or minor children. The Order or agreement may include:

...

- (5) After a hearing in accordance with Section 6107(a), directing the Defendant to pay financial support to those persons the Defendant has a duty to support, requiring the Defendant, under Sections 4324 (relating to inclusion of medical support) and 4326 (relating to mandatory inclusion of child medical support), to provide health coverage for the minor child and spouse, directing the Defendant to pay all of the unreimbursed medical expenses of a spouse or minor child of the Defendant to the provider or to the Plaintiff when he or she has paid for the medical treatment, and directing the Defendant to make or continue to make rent or mortgage payments on the residence of the Plaintiff to the extent that the Defendant has a duty to support the Plaintiff or other dependent household members. The support Order shall be temporary, and any beneficiary of the Order must file a complaint for support under the provisions of Chapters 43 (relating to support matters generally) and 45 (relating to reciprocal enforcement of support Orders) within two weeks of the date of the issuance of the Protection Order. If a complaint for support is not filed, that portion of the Protection Order requiring the Defendant to pay support is void. When there is a subsequent ruling on a complaint for support, the portion of the Protection Order requiring the Defendant to pay support expires.

...

23 Pa. C.S. Section 6108 (a)(5). The Court notes the mandatory language of this Section requires the Plaintiff to file a Complaint for Support based on the statute's mandate that the Support Order "shall be temporary". The provision for payment of a party's mortgage is included in the statute's definition of "support".<sup>1</sup> Although Plaintiff filed a Complaint for Support through the Domestic Relations Section on June 4, 2003, she did not file within two weeks of May 7, 2003, the date of issuance of the Protection from Abuse Order. Defendant's Motion is well founded, therefore, and the support provisions of the parties' Protection from Abuse Order will be considered void.

The Court notes the requirement that Plaintiff pay the car payment and utilities at the

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<sup>1</sup> The Defendant may be directed to make the mortgage payment "to the extent that the Defendant has a duty to support the Plaintiff." 23 Pa.C.S. Section 6108(a)(5) (emphasis added).

residence and that Defendant pay the CCCS Loan and the WNB Bank Loan (assuming neither is the mortgage), as well as the requirement Defendant pay \$1,200 to Plaintiff as compensation for out-of-pocket losses, are not rendered void by Plaintiff's failure to file a Complaint for Support.

These provisions may be subject to potential credits in equitable distribution, however. Further, since the payment of the \$1,200.00 for out-of-pocket losses was to have been made through reduction of Plaintiff's contribution to the mortgage, and since that contribution is being eliminated along with Defendant's requirement to pay the mortgage payment, Defendant remains obligated to pay the \$1,200.00 directly to Plaintiff.

Finally, the Court notes Plaintiff has the option to request contribution to the mortgage payment coincident with her request for spousal support through the Domestic Relations Office.

#### ORDER

AND NOW, this 2<sup>nd</sup> day of July, 2003, for the foregoing reasons, Defendant's Motion to Vacate Support Provisions is hereby granted in part and the Protection from Abuse Order entered May 7, 2003 is hereby modified to eliminate the requirement that Defendant pay Plaintiff's monthly mortgage payment until further Order of Court. The requirement that Plaintiff provide Defendant with \$200.00 per month for the next six months and then \$400.00 per month beginning in November 2003 is also hereby vacated. Finally, the provision that payment of the \$1,200.00 is to be made by crediting Plaintiff's contribution to the mortgage payment is also eliminated.

As modified herein, the Order of May 7, 2003 continues in effect.

By the Court,

Dudley N. Anderson, Judge

cc: Janice Yaw, Esq.  
Joseph Campagna, Esq.  
EM  
Gary Weber, Esq.  
Hon. Dudley N. Anderson