

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PA

D.L.,	:	
Plaintiff	:	
	:	
v.	:	No. 05-20,952
	:	PACES NO. 706107521
N.L.,	:	
Defendant	:	

OPINION and ORDER

This opinion addresses the Exceptions filed by the defendant to the Master’s order of August 31, 2005, awarding Wife spousal support. Husband has challenged the Master’s assessment of zero for Wife’s earning capacity.

Wife is thirty-four years old, with a twelfth grade education. She was last employed in May 2003 at Road Scholar, where she sustained a back injury. Wife testified that she possesses a slip from a doctor permitting her to return to light duty work. She received this document in May 2005, when she demanded a return-to-work slip because Husband told her if she did not obtain employment the marriage was over. Wife further testified her doctor declined to issue such a slip, as did another doctor at the same practice. However, their superior physician wrote the slip. Since that time Wife has attempted to find only one position, for which she was not hired. Road Scholar also will not hire her back. Wife further testified she is not able to work at this time due to constant pain in her left leg, which gives out unexpectedly when she is walking. She also testified that she is “down a couple of days” when she attempts even normal activity. She is on multiple medications including a muscle relaxer and a second medication for flare ups.

The Master found Wife to be credible in her testimony that she is not able to work at this time. The Master found persuasive the fact that Wife was unable to hold gainful employment for more than two years prior to the parties’ separation, that

Husband did not contradict her litany of unsuccessful back treatments, and that Husband did not dispute Wife's description of how she obtained a return-to-work slip.

The court accepts the findings of fact made by the Master. However, the practice in Lycoming County has been and still is that an individual claiming an inability to work based on physical ailments must present some type of medical evidence to establish a physical disability. The court believes this to be sound policy. During the time this court presided over Domestic Relations exceptions we have seen numerous claims of physical inability to work, and we cannot remember a litigant who was not required to present medical testimony or some type of written medical documentation in order to receive a zero earning capacity. The sole exception to this is Supplemental Security Income recipients, for which a prior determination of disability has already been made by the Social Security Administration. *See* our opinion and order in Bellitto v. Algarin, Lyc. Co. No. 93-20,727.

Wife presented no medical testimony or medical documentation regarding her physical inability to work. In fact, her testimony established the existence of a document issued by a physician indicating she is able to work at a light duty job. Thus the court must find that as a matter of law, Wife has not met her burden of establishing a physical inability to work. The court will therefore assign her a minimum wage earning capacity and adjust the spousal support accordingly.

ORDER

AND NOW, this _____ day of December, 2005, after argument, the Exceptions filed by the defendant to the Master's order of August 31, 2005 are granted and it is ordered that spousal support shall be set at \$890.98 per month. In all other respects, the Master's order of August 31, 2005 is affirmed.

BY THE COURT,

Richard A. Gray, J.

cc: Michael Morrone, Esq.
Christina Dinges, Esq.
Domestic Relations Office (MR)
Family Court
Gary Weber, Esq.