

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

L.L.L.,	:	
Plaintiff/Appellee	:	
	:	
v.	:	No. 06-20,279
	:	CIVIL DIVISION
B.K.L.,	:	
Defendant/Appellant	:	

OPINION AND ORDER

Before this Honorable Court, is the Petitioner/Plaintiff's May 31, 2006 Exceptions filed to the Family Court Hearing Officer's May 23, 2006 Order. Specifically, the Petitioner/Plaintiff raises two issues in her Exceptions: (1) the Master erred when she treated the \$6,433.00 the Respondent/Defendant withdrew from his IRA as marital property for equitable distribution purposes as opposed to treating said monies as income to be utilized when calculating support as the Petitioner/Plaintiff had requested and (2) the Master should not have awarded the Respondent/Defendant Alimony Pendente Lite (hereinafter "APL").

The Master did not abuse her discretion when she opted to treat the Respondent/Defendant's IRA withdraw as marital property

It is within the Master's discretion to treat the \$6,433.00 the Respondent/Defendant withdrew from his IRA as either marital property or income, the Petitioner/Plaintiff must show that the Master somehow abused her discretion when she opted to treat said monies as marital property and not income which, at the September 11, 2006 hearing, the Petitioner/Plaintiff failed to do. Both parties requested the Master treat these monies in a particular manner, and although the Master's Order fails to explain her rationale for electing one option over the other, the Court does not find that her decision, or her lack of explanation for said decision, amounts to an abuse of discretion.

The Master erred when she ordered the Petitioner/Plaintiff to pay APL

The Petitioner/Plaintiff contends that, because the Respondent/Defendant supports himself and his girlfriend, did not seek equitable distribution or long-term alimony prior to petitioning for the entry of the divorce decree, and did not challenge the entry of divorce, he is not entitled to APL. The Respondent/Defendant counters that he did seek economic relief prior to the entry of the divorce decree and, because he is currently challenging the entry of divorce, there are still issue being litigating entitling him to APL.

First, it is important to understand the facts leading up to the instant APL dispute. In February 2006, the Petitioner/Plaintiff filed for divorce under §3301(d) of the Divorce Code and, as permitted by the Pennsylvania Rules of Civil Procedure, her Affidavit of Two Year Separation and Notice of Intent to Request Entry of Divorce Decree. The Respondent/Defendant's attorney accepted the aforementioned documents in early March 2006 and filed a Petition/Counterclaim for Alimony Pendente Lite. Soon thereafter, the Respondent/Defendant filed his Counter-affidavit of Two Year Separation that indicated he did not consent to the entry of the divorce until all outstanding economic issues were resolved; however, he did not thereafter and prior to the Petitioner/Plaintiff's late March attempt to have the divorce entered, assert any economic claims (other than his early March claim for APL) as directed to do so in the Petitioner/Plaintiff's Notice of Intent to Request Entry of Divorce Decree – it was not until May 4, 2006, after the Petitioner/Plaintiff had petitioned the Court for entry of the divorce, that the Respondent/Defendant filed a Counterclaim/Petition for Economic Relief. This Court, finding that the Respondent/Defendant had failed to preserve his claims for economic relief, entered the divorce on May 8, 2006; the Respondent/Defendant immediately appealed the entry of the divorce.

Section 3103 of the Divorce Code defines APL as “temporary support granted to a spouse during the pendency of a divorce.” A divorce was entered on May 8, 2006 and unless and until the entry of said divorce is vacated, there is no pendency of proceedings warranting the payment of APL.

ORDER

AND NOW, this _____ day of September 2006, the Court hereby **ORDERS** and **DIRECTS** as follows:

1. the Petitioner/Plaintiff’s first two exceptions regarding the Respondent/Defendant’s IRA withdraw are hereby **DENIED** and
2. the Petitioner/Plaintiff’s remaining exceptions regarding terminating APL are hereby **GRANTED**; accordingly, the Master’s May 22, 2006 Order requiring the Petitioner/Plaintiff to pay the Respondent/Defendant APL is hereby **VACATED** effective May 8, 2006.

By the Court,

Nancy L. Butts, Judge

xc: William J. Miele, Esq.
Janice R. Yaw, Esq.
Family Court
Domestic Relations (MR)
Honorable Nancy L. Butts
Laura R. Burd, Esq. (Law Clerk)
Gary L. Weber, Esq.