

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

LEE A. LAUGHLIN,	:	
Petitioner/Defendant	:	
	:	
v.	:	No. 04-21,326
	:	PACSES No. 877106814
KEVIN P. LAUGHLIN,	:	DOMESTIC RELATIONS SECTION
Respondent/Plaintiff	:	

OPINION AND ORDER

Before this Honorable Court, is the Respondent/Plaintiff's August 23, 2006 Exceptions filed to the Family Court Hearing Officer's August 22, 2006 Order. He asserts that, the Family Court Hearing Officer erred when she awarded alimony pendente lite (hereinafter "APL") retroactive to February 8, 2006 (the date the Petitioner/Defendant voided, as was her right, the property settlement agreement between the parties) as opposed to June 30, 2006 (the date the Petitioner/Defendant petitioned for modification of alimony pendente lite); for the following reasons, the Court agrees with the Petitioner/Defendant and affirms the Master's August 22, 2006 Order.

Background

In November 2004, the Court entered an Order directing the Respondent/Plaintiff to pay APL and child support to the Petitioner/Defendant. In January 2006, the Master conducted a hearing on the Respondent/Plaintiff's Petition to Modify Support. At the time of said hearing, the Master dictated an Order regarding the parties' property settlement agreement. Significantly, paragraph four (4) of said Order provided that spousal support and APL terminated effective that date (January 30, 2006). That same day, the Respondent/Plaintiff filed for a Modification of Support. Shortly thereafter, on February 8, 2006, the Petitioner/Defendant, as was her right,

declared the parties' property settlement agreement null and void. After the hearing on the Respondent/Defendant's Petition to Modify Support, the Master issued an Interim Order calculating APL retroactive to January 30, 2006 but deferring awarding APL pending further litigation/hearings. After another Master's hearing on August 17, 2006, the Master issued a Final Order regarding APL. This Order awarded the Petitioner/Defendant alimony pendente lite retroactive to February 8, 2006 (the date the Petitioner/Defendant voided, as was her right, the property settlement agreement between the parties). The Master provided two explanations for her decision. First, the Master stated that it was her recollection that the parties intended the November 2004 support Order to remain in effect if the parties' property settlement agreement was voided. Second, the Master stated that the Respondent/Plaintiff waived his right to argue, at the August 17, 2006 hearing on his January 30, 2006 Petition to Modify Support, that the only petition before the Master was the Petitioner/Defendant's Petition, which she filed eight (8) days later on June 30, 2006, when he failed to raise any objection to the Master addressing the APL issue at the June 22, 2006 hearing also on his Petition to Modify Support.

Although both parties agree that the alimony pendente lite award in place prior to January 30, 2006 can be modified, the appropriate retroactive date remains contentious and is the instant matter before the Court. Specifically, the Petitioner/Defendant contends that alimony pendente lite can be made retroactive to the date that she voided the property settlement agreement, February 8, 2006. Conversely, the Respondent/Defendant contends that alimony pendente lite can only be made retroactive, pursuant to Pa.R.C.P. No. 1910.17(a), to the date that the Petitioner/Defendant filed for modification, June 30, 2006. Moreover, the Respondent/Defendant argues that, the Court's January 30, 2006 Order regarding the parties property settlement agreement, which terminates APL immediately, is still enforceable and

cannot, under 42 Pa.C.S. § 5505, be modified.

Discussion

The Court finds the Respondent/Defendant's reliance on the aforementioned statutory provisions misplaced and is obligated to agree with the Master's decision. First, Pa.R.C.P. 1910.17(a) states, "[a]n order of support shall be effective from the date of the filing of the complaint or petition for modification." Here, the Respondent/Plaintiff filed a Petition for Modification of Support on January 30, 2006 and the Master's June 29, 2006 Interim Order correctly calculated APL retroactive to that date; however, said Order did not account for the parties' property settlement agreement which terminated APL or the Petitioner/Defendant's February 8, 2006 decision to void said agreement. Therefore, the Master's August 22, 2006 Order correctly awarded APL retroactive to February 8, 2006 - the earliest date possible after the Defendant filed his Petition to Modify Support on January 30, 2006. In other words, the Master, under Pa.R.C.P. No. 1910.17(a), could make APL retroactive to January 30, 2006; however, because the parties, on that date, agreed to terminate APL, the earliest date after January 30, 2006 that the Master could retroactively award APL was the date the parties' agreement to terminate APL was voided, February 8, 2006.

Second, although the Respondent/Plaintiff correctly highlights that the Court's January 30, 2006 Order regarding the parties' property settlement agreement was never vacated, this fact is immaterial because, when the Petitioner/Defendant voided the parties' property settlement agreement, the Order based on said agreement became moot; therefore, the Court need not reach the issue of the applicability of 42 Pa.C.S.A. § 5505.

ORDER

AND NOW, this _____ day of October 2006, the Court hereby DENIES the Respondent/Plaintiff's Exceptions and hereby AFFIRMS the Master's August 22, 2006 Order.

By the Court,

Nancy L. Butts, Judge

xc: Joy R. McCoy, Esq.
Janice Ramin Yaw, Esq.
Family Court
Domestic Relations (MR)
Hon. Nancy L. Butts
Judges
Gary L. Weber, Esq. (Lycoming Reporter)
Laura R. Burd, Esq. (Law Clerk)