

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

TONI M. RASH,	:	
Petitioner/Plaintiff	:	
	:	
v.	:	No. 06-20,460
	:	PACSES No. 881108213
THOMAS F. RASH,	:	DOMESTIC RELATIONS SECTION
Respondent/Defendant	:	

OPINION AND ORDER

Before this Honorable Court, is the Respondent/Defendant's August 18, 2006 Exceptions filed to the Family Court Master's Order of August 7, 2006. Specifically, the Respondent/Defendant contends that, although no support was awarded because the parties' incomes are equivalent, the Master's determination that the Petitioner/Plaintiff is nonetheless entitled to support is an error because the Petitioner/Plaintiff engaged in conduct which precludes such an entitlement (i.e. adultery).

Background

On August 1, 2006, the Master held a hearing on the Petitioner/Plaintiff's April 20, 2006 Complaint for Spousal Support. The transcript of said hearing reveals that, after being married for just over five years, the Petitioner/Plaintiff voluntarily left the marital residence to escape the escalating abuse she sustained at the hands of her stepson which, the Respondent/Defendant was aware of, but did little to prevent. The transcript of the hearing also reveals that, a short time after leaving the marital residence, the Petitioner/Plaintiff began dating another man and that her relationship with this man became sexual¹ in July 2005.

¹ At the August 1, 2006 hearing, the Petitioner/Plaintiff admitted to performing oral sex on her boyfriend sometime in July 2005.

On August 7, 2006, the Master ruled that, although the Petitioner/Plaintiff is entitled to support, no support would issue because the parties' earning capacities are equivalent. The Master's Order fails to address the Petitioner/Plaintiff's confessed infidelity and instead bases her finding that the Petitioner/Plaintiff is entitled to support on the fact that "she [the Petitioner/Plaintiff] cannot be expected to remain in a residence where she is physically abused and, because the abuse is not the fault of the Respondent/Defendant, the Petitioner/Plaintiff's entitlement to support is not extinguished."

Discussion

"... [I]n an action for support and maintenance following a nonconsensual, voluntary withdrawal of one party from the common abode, ... it is not necessary for the party who left the common abode to present grounds for leaving his/her spouse which would entitle said spouse (i.e. the spouse who left the common abode) to a divorce in order for said spouse to procure an order of support; instead, said spouse need only show, by sufficient evidence, a reasonable cause that would justify his/her voluntary withdrawal from the common domicile." *Commonwealth ex rel. Halderman v. Halderman*, 230 Pa. Super. 125, 128, 326 A.2d 908, 910 (Pa. Super. Ct. 1974) (citations omitted). However, if the obligor spouse (i.e. the spouse who remained in the common domicile) can show, by clear and convincing evidence, that the spouse who left the residence and is currently seeking support committed an act(s) that provide grounds for divorce, the support obligation is extinguished. *Id.* and *Roach v. Roach*, 337 Pa. Super. 440, 487 A.2d 27 (Pa. Super. Ct. 1985).

Here, although the transcript from the August 1, 2006 Master's hearing clearly reveals that the Petitioner/Plaintiff had adequate grounds to withdrawal from the marital residence (i.e. physical abuse), that same transcript, with similar clarity, reveals that the Petitioner/Plaintiff

committed adultery² and, because adultery is grounds for divorce (*see*, 23 Pa.C.S.A. § 3301(a)(2)), the Respondent/Defendant is exempt from paying spousal support. Accordingly, this Court finds that Master erred when she found that the Petitioner/Plaintiff is entitled to spousal support.³

ORDER

AND NOW, this 12th day of December 2006, the Court hereby GRANTS the Respondent/Defendant's August 18, 2006 Exceptions thereby REVERSING the Master's August 7, 2006 Order. Consequently, it is hereby ORDERED and DIRECTED that the Petitioner/Plaintiff is not, at this time, entitled to spousal support.

By the Court,

Kenneth D. Brown, Judge

xc: Chris M. Williams, Esq.
Toni M. Rash, R 816 Clark Street, Williamsport, PA 17701
Family Court
Domestic Relations (MR)
Hon. Kenneth D. Brown
Judges
Laura R. Burd, Law Clerk
Gary L. Weber, Esq.

² Black's Law Dictionary defines adultery as "voluntary sexual intercourse between a married person and a person other than the offender's spouse." BLACK'S LAW DICTIONARY (7th ed. 1999). Although the Pennsylvania Divorce Code does not define sexual intercourse in the context of adultery, the Pennsylvania Crimes Code does: ". . . intercourse per os or per anus. . ." 18 Pa.C.S.A. § 3101. Therefore, this Court finds that the Petitioner/Plaintiff's admitted sexual intercourse in June 2006 (i.e. oral sex) constitutes "sexual intercourse" and, consequently, constitutes adultery.

³ The Court's instant decision does not apply to any possible claims the Petitioner/Plaintiff may have for alimony pendente lite as the standards that dictate her entitlement (or lack thereof) to APL differ from those governing spousal support.