

KATHLEEN E. SHIFFLET,	:	IN THE COURT OF COMMON PLEAS OF
	:	LYCOMING COUNTY, PENNSYLVANIA
Plaintiff/Appellee	:	
	:	
vs.	:	NO. 06-20,293
	:	
CLAIR L. GETGEN, Jr.,	:	
	:	
Defendant/Appellant	:	1925(a) OPINION

Date: May 26, 2006

**OPINION IN SUPPORT OF THE ORDER OF MARCH 10, 2006 IN COMPLIANCE
WITH RULE 1925(a) OF THE RULES OF APPELLATE PROCEDURE**

Defendant Clair L. Getgen, Jr. (hereafter “Getgen”) has appealed a final Protection from Abuse Order that was entered on March 10, 2006. The order was entered as a consent order based upon the agreement of the parties. Both parties appeared personally for the hearing scheduled for that date. Plaintiff Kathleen E. Shifflet (hereafter “Shifflet”) was unrepresented. Christian D. Frey, Esquire represented Getgen.

One of the terms of the order completely evicted and excluded Getgen from the residence located at 525 South Pine Run Road, Linden, Pennsylvania until March 31, 2006. As of April 1, 2006, Shifflet was to return exclusive occupancy to Getgen. The term further directed that, “From April 1, 2006 forward, the parties shall equally share the mortgage, taxes, and insurance obligations associated with the South Pine Run Road property.”

Getgen has taken exception to the last requirement of that term. On April 7, 2006, Getgen filed a notice of appeal. On May 3, 2006, Getgen filed a Concise Statement of Matters Complained of on Appeal. In it, Getgen raises three issues. They are:

- (1) The trial court abused its discretion in requiring the Defendant to pay one-half the mortgage obligation of Plaintiff.

- (2) The trial court erred as a matter of law in requiring the Defendant to pay one-half of the mortgage obligation of Plaintiff.
- (3) The provisions of the trial court's order that require Defendant to pay one-half of the mortgage obligation of Plaintiff is contrary to the Co-Owner's Agreement that the parties contracted for; therefore, the provisions of the trial court's order requiring Defendant to pay one-half of the mortgage obligation of Plaintiff is violative of the Defendant's freedom to contract.

The court finds the issues raised in Getgen's statement of matters to be without merit.

The mortgage payment term was a term in an agreed upon order entered into by stipulation of the parties. Getgen was represented by counsel at the time he agreed to the entry of the final protection from abuse order containing the mortgage payment term. He entered into the order knowingly and voluntarily. Getgen was free not to agree to this mortgage payment term, but he chose to agree. The agreement to enter this order acts as a modification of the co-owners agreement (whatever that was) which is referenced in Getgen's concise statement. (See above (3)). It also appeared to this court that this provision was agreed upon by Getgen in return for Shifflet surrendering her right to possession of the premises which she had enjoyed under the prior temporary order filed March 2, 2006.

Furthermore, the Protection from Abuse Act, 23 Pa.C.S.A. § 6101, et seq., certainly contemplates the entry of such relief. Section 6108(a)(5) of the Act provides that the court may direct the defendant to pay financial support where he has the duty to support, including a direction to make or continue to make rent or mortgage payments on the residence of the plaintiff. Further, under subparagraph (a)(10) of Section 6108, the court may grant any other appropriate relief sought by the plaintiff as a payment to provide a residence for Shifflet. Granted the mortgage payment obligation imposed on Getgen does not qualify under

subparagraph (a)(5) of the act after April 1, 2006, since after that date Shifflet agreed to permit Getgen to assume possession of the South Pine Run Road property. Nevertheless, the mortgage payment term does address a mortgage obligation of the parties, and was relief desired by Shifflet as well as Getgen. The provision was appropriate relief which this court had the authority to grant under § 6108(a)(10).

Accordingly, Getgen's appeal should be dismissed and the final protection from abuse order affirmed.

BY THE COURT,

William S. Kieser, Judge

cc: Christian D. Frey, Esquire
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Judges
Christian Kalas, Esquire
Gary L. Weber, Esquire (Lycoming Reporter)