

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

WC	:	NO. 94-21,811
Plaintiff	:	
vs.	:	CIVIL ACTION - LAW
	:	IN DIVORCE
JC	:	
Defendant	:	RULE 1925(a) OPINION

Date: March 30, 2010

**OPINION IN SUPPORT OF THE ORDER
OF DECEMBER 29, 2009 IN COMPLIANCE WITH
RULE 1925(a) OF THE RULES OF APPELLATE PROCEDURE**

Appellant WC (hereinafter referred to as “Husband”) has appealed this Court’s December 29, 2009 Opinion and Order denying Husband’s Exceptions and granting in part Wife’s Cross-Exceptions to Family Court Hearing Officer’s May 18, 2009 Opinion and Order which directed modification of Husband’s alimony obligation.

Husband’s appeal should be denied and the Order of December 29, 2009 affirmed. The Court relies on its reasoning as explained by the Opinion and Order of December 29, 2009 in support thereof but will additionally briefly address its reasoning in the foregoing opinion.

Facts & Procedural History

Husband and Wife married in 1976. Within five years of the parties’ marriage, Wife was diagnosed with Multiple Sclerosis. By 1994, the year the parties separated, Wife walked with a cane and was receiving disability payments. As part of their Decree in Divorce, entered April 21, 1995, the parties entered into a marriage settlement agreement. The agreement directed that

Husband would be the primary custodian of the parties' three minor children. Husband retained the parties' marital residence where he still lives with his Wife and her child, both of whom he supports. The agreement did not envision child support, nor did Husband ever petition the Court for child support. The agreement did direct that once either the parties youngest child reached the age of emancipation or all the parties' children completed their education, whichever occurred later, alimony shall increase. The agreement specifically directs, "the amount of alimony payments shall be adjusted upward, but not downward, in an amount arrived at by mutual agreement of the parties or, if they fail to agree, by Order of Court." Recently, the parties' youngest child graduated from College, at which point, the parties could not agree on an increase. Accordingly, Wife filed a Petition to Modify Alimony on August 1, 2008.

After discovery, a hearing on the Petition to Modify Alimony was held on March 27, 2009 before Family Court Hearing Officer Diane Turner, Esquire, and on May 18, 2009, Hearing Officer Turner entered an Opinion and Order increasing Husband's alimony obligation by \$1,000 per month. On June 8, 2009, Husband filed Exceptions to the Hearing Officer's Order of May 18, 2009, and on June 16, 2009, Wife filed Cross-Exceptions. On November 3, 2009, a hearing on Husband's Exceptions and Wife's Cross-Exceptions was held before the Honorable Senior Judge William S. Kieser. On December 29, 2009, Senior Judge Kieser entered an Order denying Husband's Exceptions and granting in part Wife's Cross-Exceptions, from which Husband now appeals at Pennsylvania Superior Court docket number 171 MDA 2010.

On February 5, 2010, an Order was entered by the undersigned, the Honorable Judge Joy Reynolds McCoy now presiding over the Family Law division of the Lycoming County Court of Common Pleas, requiring Husband's attorney to file a Concise Statement of Matters Complained

of on Appeal pursuant to Rule 1925(b). The Statement was filed on February 26, 2010 and stated that:

1. The Trial Court erred in increasing the alimony award by 30% to offset anticipated tax increases when there was no evidence her taxes would have increased by 30%.
2. The Trial Court erred in failing to analyze the agreement as a whole and in improperly reevaluating allocation of assets and liabilities of the marriage.
3. The Trial Court erred in speculating what the agreement envisioned as no testimony or facts were given to support this conclusion.
4. The Trial Court failed to address Appellant's Exceptions to the Order and Decision of the Family Court Hearing Officer, as set forth:... [4a-4q rephrase and set forth Appellant's Exceptions to the Family Court Hearing Officer's order of May 18, 2009, to which this court heard argument and issued its order of December 29, 2009.]
5. The Trial Court erred in its statement of its opinion Plaintiff/Appellant counsels argument set forth at time of exception argument.

DISCUSSION

The court decides matters of alimony in its discretion, and decisions on issues of alimony shall not be disturbed unless the Court plainly abused that discretion. *Chaney v. Chaney*, 493 A.2d 1382, 1385 (Pa. Super 1985).

The Court relies on its opinion issued on December 29, 2009, which in part, relied on the well-settled law in Pennsylvania regarding the purpose of alimony. Husband's five complaints will be taken in order.

First, although Husband complains that the Court erred in increasing the alimony award by 30% to offset anticipated tax increases because there was no evidence her taxes would have increased by 30%, there was no evidence or argument presented by Husband to the contrary. At the time of the hearing to determine what increase in alimony Husband would be obligated to pay, Wife indicated that she needed an additional \$1,000.00 per month. She further indicated

that she would need to receive \$1,300.00 to net \$975.00 per month due to her tax bracket. N.T. March 27, 2009, p. 58.

Alimony is taxable income to the receiving spouse. The Hearing Officer determined, and the Court agrees, that Wife's reasonable needs increase by \$1,000.00. The Hearing Officer did not address in her opinion or order what additional taxes that Wife would owe after the order directing the increase in alimony. Thus, in order for Wife's reasonable needs to be provided for, Husband must provide for the increase in taxes that Wife must pay. The court finds that an additional \$300.00 per month is a sufficient and reasonable amount for Wife to receive to account for her increased tax obligation.

Husband's second complaint is meritless in that the Court did analyze the agreement as a whole and did not improperly reevaluate allocation of assets and liabilities of the marriage. Although the agreement was analyzed as a whole, the Court paid special attention in its opinion to the portion of the agreement that related to the parties' dispute. Specifically, the Court discussed, in pertinent part, the portion of the agreement which specified the limited instances in which a triggering event would cause modification of Husband's alimony obligation. Furthermore, the Court focused on the triggering event that the parties agree did occur, and upon which Wife filed for modification of alimony-Husband's alimony obligation shall increase upon the children's completion of their education triggered by the parties' youngest child graduating from college.

Husband's third complaint alleges that the Court speculated as to what the parties' agreement envisioned; the Court made no such speculation. In stating in the order of December 29, 2009 that the "agreement *seemed* to envision" the standard set forth in *Dalrymple v.*

Kilishek, 920 A.2d 1275 (Pa. Super. 2007), the Court was merely noting a coincidence in that the agreement provided for alimony only to be lowered upon Wife's gainful employment, which is exactly what the essence of alimony is noted as being in *Dalrymple*: "The purpose of alimony is... to ensure that the reasonable needs of the person who is unable to support himself or herself through appropriate employment, are met." In increasing the amount of Husband's alimony obligation, the Court relied solely upon the law, the language of the agreement, and their relation to the facts presented, merely noting the coincidental nature between the law and the language of the agreement.

The Court did not fail to address Husband's Exceptions to the Opinion and Order of the Family Court Hearing Officer. As stated in the Opinion and Order of December 29, 2009, the Court found that the Family Court Hearing Officer's decision to increase Husband's obligation to pay Wife alimony in the amount of \$1,000.00 per month was appropriate, notwithstanding the tax implications of such. This was determined given the Hearing Officer's, "well reasoned opinion... based upon the testimony presented at the hearing [which] methodically considers all the relevant alimony factors, except for the income tax consequences of increasing Wife's alimony." December 29, 2009 Order of the Honorable Judge Williams S. Kieser.

Hearing Officer Turner found, and it is uncontested that, Wife's abilities had been "significantly impaired" by March 27, 2009:

[S]he has a full time caregiver, she cannot drive, transfer from her bed to a chair, prepare her own meals, or write [or type]. A Hoyer lift must be employed to transfer Wife from her wheelchair to her bed and back. Caregivers move her from her bed to her wheelchair at 8:00 a.m. and from the chair to her bed at 9:00 p.m. Wife is required to rely upon a catheter and a colostomy. She is unable to bathe, dress herself, or brush her teeth without assistance. Wife is frequently required to call a caregiver to assist her during times when the caregivers would

not ordinarily be present, for example if one of her feet becomes twisted and she is unable to straighten it by herself.

May 18, 2009 Order of Family Court Hearing Officer Diane Turner, Esquire, pp. 4-5. See also N.T. March 27, 2009, p. 55. Wife, then, incurs additional expenses each month in maintenance of the property, which are required by her condition to be hired out. As was the financial circumstances of the parties on the date of the alimony hearing, the Hearing Officer determined that Wife's monthly expenses exceeded her income by \$1,150.00 per month. *Id.*, p. 5. The Court found that, given her condition, Wife's expenses were completely reasonable.

Furthermore, because it was very difficult for her to be transported and her current automobile, although being a handicapped van, is old and breaking and is not automatic, Wife wanted to purchase a handicap-accessible van with an automatic wheelchair lift, the estimated cost of which is \$51,597.00. *Id.*, p.6. See also N.T. March 27, 2009, pp. 50-51. She also wanted an elevator lift for her home so that she may regain access to her basement. She had had a stair lift to access the basement, but for several years her condition has prohibited her from continued use of even that equipment. N.T. March 27, 2009, p. 51. The elevator, including installation, is estimated at costing \$18,873.00. May 18, 2009 Order, Turner, p. 6. Wife would not be able to afford these additional expenses without an increase in alimony.

Husband argues that these two expenses are especially unreasonable. The Court disagrees. Husband recently purchased a Suburban for \$40,000.00, although he had already had a truck, a car, and a Kawasaki Mule. *Id.*, pp. 21-22, 25. Husband and his wife go on vacations, play golf regularly if not "as much as everybody thinks," and go out to dinner (although he had not figured eating out into his recreational and entertainment cost). *Id.*, pp. 25-29.

Husband bore a significant expense by paying for the parties' children's educations, yet Wife also gets joy out of paying for items the parties' children and grand-children need or want. Husband's mobility allows him to entertain himself by going on vacation and engaging in hobbies/sport. Wife, regrettably, can not engage in these activities. She requires an elevator to get into a van to go even limited distances to eat out or to go to a movie. Due to Wife's condition, her enjoyment must exist in her home as it is where she must overwhelmingly primarily make her life. Thus, a handicap-accessible van with an automatic wheelchair lift and an elevator lift for her home are reasonable expenses both of which Husband can afford to provide alimony for.

Last, Husband argues that the Court mischaracterized his argument in our opinion by stating, "the Court, although mandated by the agreement to increase alimony, should increase Wife's alimony by only one dollar because that was all that Wife needed and all that Husband could afford to pay." Upon review, the Court readily admits that such does not accurately portray Husband's argument. More accurately, Husband argued that although mandated by the agreement to increase Wife's alimony, Wife did not need any more alimony nor could Husband afford to pay any more alimony. Thus, he did not specifically argue that Wife needed one more dollar of support and all that Husband could afford to pay for support was one more dollar.

In that Wife's expenses exceed her income and her other assets are slowly dwindling, she requires more alimony to pay for her reasonable needs-more than just a nominal \$1.00 increase. The parties contracted for this possibility in the agreement they entered into at the time of their divorce. Husband is now obligated to pay for Wife's reasonable needs as long as he is able to do so. The evidence that the Hearing Officer relied on in making her decision indicated not only

that Wife's reasonable needs had increased, exceeding her monthly income and dwindling her savings, but that Husband was able to afford an increase in alimony which would allow for Wife's reasonable needs to be maintained. The Order of December 29, 2009 upholds the Hearing Officer's findings in her well-reasoned opinion and order of May 18, 2009 based upon the testimony presented to her on March 27, 2009. The Court, however, found that Wife's needs were proportionately slightly higher than the Hearing Officer directed because Wife would owe increased taxes on the additional alimony.

Accordingly, this Court believes that the Order of December 29, 2009, denying the Exceptions and granting, in part, the Cross-Exceptions, should be affirmed.

BY THE COURT,

Joy Reynolds McCoy, Judge

cc: Bradley S. Hillman, Esquire
Janice R. Yaw, Esquire
Gary L. Weber, Esquire – Lycoming Reporter
Judges
Family Court
Hearing Officer Diane Turner, Esquire
Hearing Officer Dana Jacques, Esquire
Terra Rose Koernig, Esquire