WR,	:	IN THE COURT OF COMMON PLEAS OF
	:	LYCOMING COUNTY, PENNSYLVANIA
Plaintiff	:	
	:	
vs.	:	NO. 09-20, 865
	:	
BR,	:	CIVIL ACTION - DIVORCE
	:	
	:	
Defendant	:	

O P I N I O N & O R D E R

AND NOW, this **8th** Day of **January**, **2010**, after hearing argument December 10, 2009 on Husband's exceptions to the Family Court Hearing Officer's order of October 2, 2009 in which Wife was awarded alimony pendente lite in the above-captioned matter, the Court GRANTS Husband's first exception, DENIES Husband's second exception, and GRANTS Husband's third exception in part. Husband's fourth exception was withdrawn in his brief filed December 23, 2009.

At oral argument, Wife conceded that Husband correctly asserted that the Family Court Hearing Officer erred in basing its calculations on fifteen pay periods when in fact the pay stub utilized by the Family Court Hearing Officer reflected nineteen pay periods. Wife also stipulated that Husband has correctly recalculated the figures so that the APL payment owed to Wife is $553.51 per month.

Husband asserts that the Family Court Hearing Officer erred in awarding Wife APL at all as Wife did not present testimony establishing whether Wife needs the APL. We find Lycoming County precedent on this precise issue in the Honorable Judge Richard A. Gray's opinion in ***Voneida v. Voneida***, filed March 10, 2004 to case number 03-20, 439. On the very

same issue now presented, this Court found in 2004 that the trier of fact need not inquire whether a spouse needs APL, and, furthermore, that a spouses' need for APL need not be shown in order for an award of APL to be appropriate. The opinion in ***Voneida*** reasoned:

> As the Pennsylvania Superior Court stated in Terpak v. Terpak, 697 A.2d 1006 (Pa. Super. 1997), a court may not deviate from the guidelines on the ground that the child or spouse does not need the amount of money suggested by the guidelines. The trier of fact need not, and should not, consider in the first instance the actual expenses of the parties to determine the child's or spouse's reasonable needs. Instead, the court must assume initially that the guideline amount constitutes the amount necessary to meet the reasonable needs of the child or spouse. The court may then deviate from the guideline amount based upon the factors set forth in Rule 1910.16-5.

Voneida, at p.1.

Just as is the issue in ***Voneida***, in the case at hand Husband is not arguing that one of the deviation factors applies, but is instead making the general argument that because Wife did not present any testimony specifically as to her need for ALP, that APL ought not to be awarded. That assertion is not a proper basis for deviation and in fact, because the court must assume the rebuttable presumption, it is up to Husband to present testimony to the contrary.

We note that the Family Court Hearing Officer was directed by the Honorable Judge Richard N. Saxton, Specially Presiding, upon agreement of counsel for both parties after a conference regarding APL, to "compute alimony pendente lite pursuant to usual practice." The Family Court Hearing Office cannot now be said to have erred by following Lycoming County precedent on the matter of whether a showing of need is necessary for an award of APL.

Lycoming County Court's practice is consistent with the Pennsylvania Supreme Court's holding regarding the issue of considering a spouse's needs in awarding APL, including that which relates to high-income families: "Spousal support in all cases, regardless of income

level, is based on the formula in Rule 1910.16-4. Any deviation from this must be made pursuant to Rule 1910.16-5… While the reasonable needs of a child are paramount in a high-income child support matter, the reasonable needs of a spouse are not a proper consideration when calculating spousal support or APL." ***Mascaro v. Mascaro***, 803 A.2d 1186, 1195 (Pa. 2002).

As for Husband's third exception, the court grants his exception in part in that the Family Court Hearing Officer erred by not assessing the income from the corpus of Wife's separate estate consisting of $80,000 derived from inheritance. Therefore, this matter is remanded to the Family Court Hearing Officerh to determine the interest of the corpus and, if there is no interest, to assign an interest.

BY THE COURT,

Clinton W. Smith, Smith Judge

cc: Donald Martino, Esquire
Rebecca Reinhart, Esquire
Family Court (Attn: Diane Turner, Esquire)
Terra Koernig, Esquire
Gary Weber, Esquire
Judges