

**IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY,
PENNSYLVANIA**

MS,	Plaintiff	:	NO. 10-20,828
		:	
		:	
vs.		:	
		:	
TS,	Defendant	:	IN DIVORCE

OPINION & ORDER

AND NOW, this 16th Day of **March, 2012**, this order is entered after argument regarding Wife’s Objection to Jurisdiction filed January 24, 2012. Present for the argument held on March 12, 2012, was counsel for Wife, Melody L. Protasio, Esquire and counsel for Husband, Norman M. Lubin, Esquire.

Background

This case originally came before the Court on November 10, 2011 in the form of a Petition to Interpret Agreement filed by Wife. The Court ultimately found that the parties had bargained away child support obligations; which is against public policy. On November 15, 2011 the Court issued an order voiding two provisions of the property settlement agreement. On December 15, 2011 Husband appealed the Court’s decision.

The issues currently on appeal are:

1. The Trial Court erred in ruling that the Defendant/Appellee’s Petition to Interpret the parties Property Settlement Agreement was properly before the Court.

2. The Trial Court erred in failing to properly interpret the Property Settlement Agreement by failing to apply appropriate contract law principles.
3. The Trial Court erred in failing to consider the entire scheme of the Property Settlement Agreement by focusing on one provision and striking that provision.
4. The Trial Court erred in relieving Defendant/Appellee of a contractual obligation in which she voluntarily entered.

Subsequent to the appeal Husband filed for child support; Wife filed the petition currently before the Court arguing that the Court was without jurisdiction to hear the support matter.¹

The issue is whether the Court has jurisdiction to proceed with the support matter or if the Court is divested of jurisdiction due to the pending appeal.

Analysis

Pennsylvania Rules of Appellate Procedure Rule 1701. Effect of Appeal Generally:

(a) General rule. Except as otherwise prescribed by these rules, after an appeal is taken or review of a quasijudicial order is sought, the trial court or other government unit may no longer proceed further in the matter.

(b) Authority of a trial court or agency after appeal. After an appeal is taken or review of a quasijudicial order is sought, the trial court or other government unit may:

(1) Take such action as may be necessary to preserve the status quo, correct formal errors in papers relating to the matter, cause the record to be transcribed, approved, filed and transmitted, grant leave to appeal in forma pauperis, grant supersedeas, and take other action permitted or required by these rules or otherwise ancillary to the appeal or petition for review proceeding.

(2) Enforce any order entered in the matter, unless the effect of the order has been superseded as prescribed in this chapter.

¹ A support hearing was originally scheduled for January 30, 2012. After the filing of objections the support hearing was continued pending determination of the objections.

....

(c) Limited to matters in dispute. Where only a particular item, claim or assessment adjudged in the matter is involved in an appeal, or in a petition for review proceeding relating to a quasijudicial order, the appeal or petition for review proceeding shall operate to prevent the trial court or other government unit from proceeding further with only such item, claim or assessment, unless otherwise ordered by the trial court or other government unit or by the appellate court or a judge thereof as necessary to preserve the rights of the appellant.

Wife argues that the Court lacks the jurisdiction to hear the support matter because the pending appeal directly relates to Husband’s support claim. Husband argues that pursuant to the *Pennsylvania Rules of Appellate Procedure* the Court retains jurisdiction and directed the Court to *Fortune/Forsythe v. Fortune*, 508 A.2d 1205 (Pa. Super. 1986).

In *Fortune* the Superior Court held that the trial court retains jurisdiction of matters ancillary to the pending appeal. *Fortune* at 1210. The Superior Court looked at the relationship between the appeal and the current petition to determine if the current petition was related or ancillary to the appeal. *Id.* In the current case while the issue of support is not directly stated in the issues on appeal it is directly related to the issues on appeal. This Court invalidated provisions of the agreement that directly dealt with Wife’s child support obligations; Husband’s support claim is more than ancillary to the pending appeal. Pursuant to Rule 1701 when a claim is involved in the appeal the trial court may no longer take action; the trial court may act if it is “necessary to preserve the rights of the appellant.” Pa. R.A.P. 1701 (c). The Court lacks jurisdiction to hear Father’s support claim. In order to preserve Husband’s rights and maintain the support retroactive to the

date of the filing of the support action in the event that Husband would be eligible for child support, the Court will Stay Husband's Petition for Child's Support.

Therefore, Wife's Objection to Jurisdiction is hereby **GRANTED**. Husband's Petition for Child Support is Stayed pending the appeal.

BY THE COURT,

Joy Reynolds McCoy, Judge

JRM/frs