

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

SLS	,	: NO. 13 – 20,984
	Petitioner	: PACSES NO. 107114116
		:
	vs.	:
		: DOMESTIC RELATIONS SECTION
DS	,	:
	Respondent	: Exceptions

OPINION AND ORDER

Before the Court are Petitioner’s exceptions to the Family Court Order of November 18, 2016. Argument on the exceptions was heard January 31, 2017.

The parties are the parents of two children and each party has custody of one child. For purposes of the instant exceptions, the history of this matter back to August 10, 2015 is relevant and the court quotes from the Family Court Order of July 21, 2016 regarding that history:

The child support order of August 10, 2015 sets forth three tiers of support, according to Mother’s changing earning capacities, pursuant to her testimony in anticipation of getting her LPN license reinstated. The support amounts were modified in a support order dated February 26, 2016, due to changes in Father’s income and the cost of the medical insurance.

Effective July 1, 2016, Mother was to be assessed a full time earning capacity of \$15.00 per hour as an LPN, and all support was to be terminated on that date.

Mother filed a petition for modification on May 11, 2016, alleging that she could not work a full-time job as a nurse because of “kidney problems, stomach ulcer, thyroid problems, hernia and ... masses in her ovaries”. After hearings (held in connection with equitable distribution proceedings) on June 30 and July 1, 2016,

and by Order of July 21, 2016, Mother's request for modification was denied. Again the court quotes from the Family Court Order of July 21, 2016:

At the hearings held on June 30, 2016 and July 1, 2016, Mother testified she hopes to be able to regain her LPN license in a couple of months. Her testimony on this issue was very confusing, and it is unclear exactly why she was delayed in regaining her license. She testified about many medical issues, but there was no medical testimony establishing her inability to work or to do the things she needed to do to regain her license.

Because of the significant drama in this case, fueled by both parties' hostility to one another, the Master cannot rely on Mother's testimony alone to assess her medical condition. Surprisingly, no medical testimony was presented, despite the frequency and ease of such testimony in support matters. Thus the Hearing Officer must conclude that no material and substantial change of circumstance has occurred, and the petition for modification is denied.

Mother did not file exceptions to this Order.

On September 22, 2016, Mother filed a Petition to Reopen Support and a hearing in Family Court was scheduled for November 17, 2016. On November 10, 2016 Father filed a Motion to Dismiss that petition, alleging that "there has not been a change in circumstances and all the issues being alleged by [Mother] are the same issues that have been litigated previously." After argument on November 15, 2016 before the Honorable Richard A. Gray, Judge Gray entered an Order of that date granting the motion in part and denying it in part, as follows:

At the Master's hearing scheduled for the 17th [Mother] may present testimony after a psychological or psychiatric nature establishing a new condition that arose after the July 1st hearing date. Medical testimony appears to be not new or different and therefore that testimony is precluded.

In accordance with Judge Gray's Order, the hearing officer framed the question before her as "whether Mother developed a condition after the last hearing date, July 1, 2016, which renders her unable to work." The hearing officer found that "Mother failed to establish any such condition" and therefore dismissed her petition to reopen.

In the instant exceptions, Mother contends the hearing officer erred in requiring her to show a change in circumstances and in failing to find such a change.

Initially, Mother argues that she need not show a change of circumstances as her petition was to reopen the support, not modify it. Setting aside the fact that Judge Gray's Order requires such a showing, this argument is in any event without merit. The support was terminated because of the underlying incomes/earning capacities. Any reinstatement of support necessarily would require finding a different income/earning capacity and thus in reality seeks a modification. Further, the court's interest in finality dictates that a petitioner in such instance must show a change in the circumstances, not just new evidence respecting the old circumstances. To hold otherwise would allow parties who were not satisfied with the result to simply withdraw their petition after an order was entered and file to reopen, presenting different evidence each time until they got the desired result. Such a procedure cannot be tolerated, for obvious reasons.

Mother also contends the hearing officer erred in failing to find changed circumstances. The hearing officer found that any post-traumatic stress disorder suffered by Mother "did not arise after July 1, 2016" and that seizures were also not a new medical condition. There is nothing in the record before this court

which indicates these findings are in error.¹ Mother's assertion, in paragraph 5 of her exceptions, that "Mother has to be catheterized and recently was hospitalized for a serious medical condition resulting from the condition", cannot be considered at this time as such is not contained in the record.²

Accordingly, the court enters the following:

ORDER

AND NOW, this day of January 2017, for the foregoing reasons, Petitioner's exceptions are hereby DENIED.

The Order of November 18, 2016, is hereby affirmed.

BY THE COURT,

Dudley N. Anderson, Judge

cc: Family Court
Domestic Relations Section
Janice Yaw, Esq.
Christina Dinges, Esq.
Gary Weber, Esq.
Hon. Dudley Anderson

¹ Mother indicated in her exceptions filing that she did not need a transcript and thus none was prepared.

² Mother filed a Petition to Reopen the Record on January 26, 2017, in which she alleges that she received a Social Security determination of disability on January 6, 2017, which determination is based on a urological problem. Mother alleges that she testified regarding this problem at the hearing on November 17, 2016, but since the court does not have a transcript of that hearing, that allegation remains just that, an allegation. The determination is thus not relevant to the issues discussed in the November 18, 2016 Order and, by separate order, the petition will be denied.