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|---------------------|---|---------------------------------|
| MICHAEL DYMECK,     | : | IN THE COURT OF COMMON PLEAS OF |
|                     | : | LYCOMING COUNTY, PENNSYLVANIA   |
| Plaintiff           | : |                                 |
|                     | : |                                 |
| vs.                 | : | NO. 98-21,160                   |
|                     | : |                                 |
| CHARLENE A. DYMECK, | : |                                 |
|                     | : |                                 |
| Defendant           | : | PETITION FOR SPECIAL RELIEF     |

**OPINION AND ORDER**

We are asked to grant a Petition for Special Relief filed June 28, 1999, by Michael Dymeck (hereinafter “Petitioner”), Plaintiff/Petitioner in the above captioned matter. Specifically, Petitioner requests this Court enter an Order relieving him from the obligation to continue making alimony *pendente lite* (hereinafter “APL”) payments to Plaintiff/Respondent Charlene A. Dymeck (hereinafter “Respondent”).

Petitioner and Respondent were divorced by Decree filed May 27, 1999. Pursuant to Order of Court dated June 16, 1999, Petitioner is obligated to pay Respondent APL in the amount of \$202.80 per month. Petitioner requested termination of these APL payments, alleging that no further economic claims are pending for court review or litigation. Petition for Special Relief, paragraph 5.

At argument, Petitioner’s counsel informed the Court that the only remaining economic issue was the disposition of the home, which is the subject of a mortgage foreclosure and bankruptcy proceeding (filed by Respondent). Respondent’s counsel claimed there is still a question regarding division of the parties’ outstanding debt. Counsel suggested Petitioner request a Master’s hearing to resolve this remaining issue. When the Court pointed out that

Petitioner could not so proceed as the matter was stayed due to the bankruptcy proceeding, Counsel suggested Petitioner request a lift of stay.

This Court deferred decision in this case and requested Respondent's counsel prepare a stipulated listing of the marital debts, the date Respondent filed for bankruptcy and the debts listed in bankruptcy.

On September 7, 1999, this Court received a letter from Respondent's counsel with a list of the parties' marital debts. There is no indication that this list was stipulated to by Petitioner's counsel.<sup>1</sup> The letter also indicates the bankruptcy petition was filed July 2, 1999. Counsel attached copies of paperwork related to the proceeding, which includes a Motion for Relief from Stay filed by Williamsport National Bank in order that it might proceed with its mortgage foreclosure proceeding.

An award of APL is always in the control of the Court; the award may be modified or vacated by a change in circumstances. *Litmans v. Litmans*, 673 A.2d 382, 388 (Pa.Super. 1996), citing *Jeffrey v. Jeffrey*, 296 A.2d 873 (Pa.Super. 1972). "It is the burden of the party seeking to modify an order of support to show by competent evidence that a change of circumstances justifies a modification." *Litmans* at 388.

It would appear from the information received that the issue of outstanding marital debt has yet to be resolved. Respondent has not demonstrated any change in circumstances that warrant modification or vacation of the Order directing APL payments be

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<sup>1</sup> The letter indicates a copy of the letter was furnished to Respondent's counsel; we have received no communication from Petitioner's counsel to dispute the list of debts prepared by Respondent's counsel.

made. Petitioner's only course of action is to request appropriate relief from the bankruptcy court so that a Master's hearing may be held to determine the allocation of marital debt. Any such request should be joined by Respondent, inasmuch as Respondent's counsel suggested this solution at argument.

**ORDER**

*AND NOW*, this 11<sup>th</sup> day of October 1999, the Petition for Special Relief filed June 28, 1999, is DISMISSED.

BY THE COURT,

William S. Kieser, Judge

cc: Court Administrator  
Anthony D. Miele, Esquire  
Christina Dinges, Esquire  
Judges  
Nancy M. Snyder, Esquire  
Gary L. Weber, Esquire (Lycoming Reporter)

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