

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PA

CAROL A. NEWCOMER,	:	
Plaintiff	:	
	:	
v.	:	NO. 92-20,406
	:	
WILLIAM K. NEWCOMER,	:	
Defendant	:	

OPINION
Issued Pursuant to Pa. R.A.P. 1925(a)

Defendant William Newcomer has appealed this court's order of 17 June 1999, granting the exceptions of Carol A. Newcomer to the Family Court Hearing Officer's order of 31 March 1999. Finding the Master had erred in denying Ms. Newcomer's petition to modify support, this court increased Mr. Newcomer's spousal support obligation. The reasons for the modification were: (1) an 11% reduction in Ms. Newcomer's income and (2) an increase in her medical expenses.

Mr. Newcomer contends this court made numerous errors, which boil down to three beefs. First, he complains that the court incorrectly concluded the Family Court Officer should not have denied Ms. Newcomer's petition for modification. The Master denied the petition based solely on his conclusion that Ms. Newcomer failed to show a material and substantial change of circumstances because, in his view, her income reduction of 11% was offset by her husband's support obligation increase of 4%.

It has been the policy of this county to entertain petitions for modification when a obligee's income decreases by 10%, and the Master's reasoning that such a decrease had not occurred simply because her husband's support obligation increased is unsound.

After all, spousal support is calculated based upon the income of both parties. To consider Mr. Newcomer's support obligation to Ms. Newcomer when calculating her income in order to determine the difference in their incomes is a circuitous and self-referential redundancy, to say the least. Neither the support guidelines nor this court's basic sense of justice permit a system of double accounting in the domestic relations realm.

Mr. Newcomer also complains the court made no finding that Ms. Newcomer's income change was a substantial continuing involuntary decrease. Such a finding was completely unnecessary, however, because the Master had already accepted her decrease in income. Master's report, p. 3. The Master merely believed that decrease should be offset by her increase in support.

Mr. Newcomer's primary beef, however, is that there was no factual basis upon which to arrive at the conclusion that Ms. Newcomer's medical expenses were recurring and reasonably predictable.¹ Naturally, it would have been helpful to this court if one of the parties had provided us with a transcript,² especially since the Master did not discuss the issue in his report due to his finding of no substantial change in income. Unfortunately, our antiquated but entrenched system of court reporting and the resultant high cost of transcription is a deterrent to many litigants already strained to their financial limits to pay attorney fees. Nonetheless, we do not believe a transcript was necessary in this case, for

¹ Under 42 Pa.C.S.A. 1910.16-6(c), whenever medical expenses are "recurring and can be reasonably predicted by the court at the time of establishment or modification of the support order," expenses above \$250 must be allocated between the parties in proportion to their respective incomes and the obligor's share added to his or her basic support obligation.

² Both parties filed exceptions to the report.

the following reasons.

First, this court was free to rely on the findings of the Honorable Nancy L. Butts, who in a previous opinion stated that Ms. Newcomer suffers from Epstein-Barr virus and is receiving social security as well as supplemental social security income for the disability. 6 July 1998 Opinion and Order, p. 4. These findings are supported by Ms. Newcomer's testimony at a previous hearing, where she explained that her illness sometimes prevents her from getting out of bed in the morning, that she has difficulty sitting for long periods of time, that she has severe pain, and that she sometimes becomes so mentally confused she cannot understand when others are speaking to her. 26 June 1997 N.T., pp. 50-51. Ms. Newcomer also testified that she requires medication to control her condition. Id. at 51. She stated, "I am on medication, and I'm monitored on a monthly or every three month basis by my physician." Id.

Based upon this testimony, Judge Butts found that a deviation from the support guidelines was justified due to Ms. Newcomer's medical expenses. Judge Butts wrote: "The Court would find, however, that Petitioner does have medical expenses of \$75 to \$80 per month for medicine that is not covered by insurance." 6 July 1998 Opinion and Order, p. 4. Judge Butts then added \$37.50 per month to Mr. Newcomer's support obligation, which represents "one half of Petitioner's medical expenses not covered by insurance." Id.

Judge Butts clearly found that Ms. Newcomer has recurring and reasonably predictable medical expenses. The sole question, then, is whether this court had enough evidence to conclude that the expenses had increased to \$197 per month.

At the argument on the exceptions the attorneys indicated they had agreed to allow Ms. Newcomer to introduce copies of two exhibits previously introduced at the Master's hearing.³ The first shows a long list of various prescriptions filled on a regular basis throughout 1997. The second shows a summary of her annual medical expenses. Although it is true the medication expenses were incurred in 1997, given Ms. Newcomer's serious medical condition and continuing need for medication it was not unreasonable to conclude that the expenses are recurring and reasonably predictable. If anything, the cost of the prescription medicine would probably have gone up in the intervening year.

Similarly, given Ms. Newcomer's previous testimony about physician visits and the severity of her condition, it is perfectly reasonable to conclude that she would need to visit her doctor six times a year at an average of \$39 per visit. Moreover any dentist called to testify would recommend that Ms. Newcomer, like everyone else except those with dentures, should visit a dentist once a year. The court also notes that there was no indication Mr. Newcomer had any evidence to challenge the figures presented by Ms. Newcomer.

Therefore, this court concluded that Ms. Newcomer's unreimbursed medical expenses averaged \$2367.01 per year, and assessed Mr. Newcomer his pro rata portion. The alternative would have been to send the parties back to the Master for another hearing and given the backlog in Lycoming County Family Court, that would have resulted in a substantial delay in the ultimate resolution of the issue, which appeared certain enough to this court.

³ The copies relied on by the court, which have become part of the record, contain the court's handwritten notes made during the argument.

Mr. Newcomer's final complaint is that when calculating his monthly support obligation the court failed to deduct the support being paid, as required by § 1910.16-2(c)(1). That section, however, states that in computing spousal support the court shall deduct the obligor's "child support obligations and any amounts of spousal support, alimony pendente lite or alimony being paid to former spouses." There is no indication whatsoever that Mr. Newcomer is paying child support or that he is paying any money to a former spouse.

BY THE COURT,

Clinton W. Smith, P.J.

cc: Dana Stuchell Jacques, Esq., Law Clerk
Hon. Clinton W. Smith
Ronald Travis, Esq.
David Irwin, Esq.
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