

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

LJD,	:	NO. 97-21,257
Plaintiff	:	
	:	
vs.	:	CIVIL ACTION - Law
	:	In Divorce
FED,	:	
Defendant	:	Contempt/Petition for Enforcement

OPINION AND ORDER

Before the Court are Plaintiff's Petition for Contempt, filed May 31, 2000, amended Petition for Contempt, filed June 27, 2000, and Petition for Enforcement of the Agreement, also filed June 27, 2000. A hearing on the Petitions was held November 29, 2000.

By Order dated May 25, 1999, the Court approved an agreement of the parties entered January 22, 1998. In that Agreement, Defendant agreed, among other things,

to pay [Plaintiff] alimony and \$1,100 in arrearages as set forth below:

- a. The sum of \$25.00 per week, to be applied to arrearages until repayment is made in the amount of \$1,100.00; and,
- b. The sum of \$25.00 per week for alimony.

These payments will continue at this rate until the sum of \$1,100.00 in arrearages has been paid in full; thereafter, [Defendant] agrees to pay [Plaintiff] alimony as follows:

- a. The sum of \$35.00 per week for a period of two (2) years to begin upon completion of arrearages repayment.

Counsel stipulated that \$50.00 per week payments were made from the date of the agreement through May 29, 1998, by wage attachment. At that time, the end of May 1998, the parties reconciled and Defendant terminated the wage attachment. The parties separated again on or about December 4, 1998 and Defendant did not reinstate payments until after the Court entered the Order dated May 25, 1999, at which time he began making sporadic payments, mostly in the amount of \$35.00. Plaintiff seeks to hold Defendant in contempt for his failure to make the payments required by the agreement.

The controversy in the instant matter revolves around the period of time during which the parties were

reconciled. Defendant contends he should receive credit toward the \$1,100.00 arrearage for having deposited his pay checks into Plaintiff's checking account. Plaintiff contends the funds deposited into her checking account were used to pay living expenses, obligations of both she and Defendant, both joint obligations as well as separate obligations. She was never led to believe by Defendant that the arrearages were being paid by depositing these pay checks, and Defendant admits he never told Plaintiff he was making payments and it appears he did not even consider the matter himself. The Court finds Defendant's evidence on this matter totally insufficient to establish any credit for the pay checks deposited into Plaintiff's account during the parties' reconciliation period.

It appears that as of November 29, 2000, Defendant owes to Plaintiff the sum of \$1,965.00 under the first portion of the alimony agreement. The original \$1,100.00 arrearage was reduced to \$625.00 by May 29, 1998¹ but during the period from December 4, 1998 through November 29, 2000, a period of 104 weeks, at \$25.00 per week there accumulated an alimony arrearage of \$2,600.00, for a total of \$3,225.00. Counsel stipulated that Defendant had paid through November 29, 2000 the sum of \$880.00 as well as \$380.00 mailed to Plaintiff two (2) days before the hearing, on November 27, 2000. Allowing Defendant a credit toward the \$1,100.00 arrearage of \$25.00 of each payment made, the \$1,100.00 arrearage has been reduced to \$175.00.² The alimony arrearage, which had accumulated as of November 29, 2000 to \$2,600.00, has been reduced by Defendant's payments to \$1,790.00.³

Defendant offered no valid reason for failing to make the payments required by his agreement. Clearly, Defendant is in contempt of the Order of May 25, 1999, providing for such payments in accordance with the parties' agreement. Defendant will be required to make a purge payment, catching him up on the \$1,100.00 arrearage as well as the alimony arrearage which has accumulated as a result of his non-payment. Defendant will also be required to pay \$250.00 in attorney's fees.

With respect to the Petition for Enforcement of the Agreement, Plaintiff seeks to enforce an agreement dated May 19, 2000 which reads as follows:

On this day, I, FED, acknowledge that I owe my ex-wife, LJD, \$14,605.00 for my half of the debts that accumulated during the course of our marriage. This amount excludes monies previously Court Ordered by the Lycoming County Court House.

The agreement is then signed and dated by both parties. The Court does not interpret this document as an "agreement", simply an acknowledgment. There is nothing to enforce and therefore Plaintiff's request for Court

¹Nineteen (19) weeks at \$25.00 per week.

²Eighteen payments of \$25.00, or \$450.00 credit.

³\$880.00 plus \$380.00 less \$450.00, or \$810.00 credit.

enforcement at this time will be denied.

ORDER

AND NOW, this 2nd day of February, 2001, for the foregoing reasons, Plaintiff's Petition for Contempt is hereby granted. The Court finds beyond a reasonable doubt that Defendant is in contempt of the Order of May 25, 1999. The sanction of the Court shall be payment of counsel fees to the law firm of Lepley, Engelman and Yaw in the amount of \$250.00, to be paid by Defendant within thirty (30) days of the date of this Order.

In addition, Defendant shall pay a fine in the amount of \$500.00 and shall undergo incarceration in the Lycoming County Prison for a period of thirty (30) days. The fine and incarceration is suspended conditioned upon payment made by Defendant to Plaintiff in the amount of \$2,390.00⁴ within thirty (30) days of the date of this Order. Should incarceration be necessary, Defendant is work crew/work release eligible. Should Defendant fail to make his payment within thirty (30) days of the date of this Order, he is directed to report to the Lycoming County Prison at 9:00 a.m., Monday, March 5, 2001 to begin serving his sentence. The fine will then be payable to Plaintiff within sixty (60) days of that date, by May 5, 2001.

Plaintiff's Petition for Enforcement of the Agreement is hereby denied.

By the Court,

Dudley N. Anderson, Judge

⁴This sum comprises the \$1,965.00 arrearage, plus \$225.00 accumulated from November 29, 2000 to January 31, 2001, and \$200.00 which will accumulate if the arrears are not paid until the 30th day. If Defendant does make the required payment prior to the deadline, the payment may be adjusted accordingly.