

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

EDGAR H. FRANK, SR., :
Plaintiff :
 : **No. 97-21,703**
vs. :
 :
JOHANNA R. FRANK, :
Defendant :

OPINION AND ORDER

This matter came before the Court on the defendant's exceptions to the Master's Order dated October 19, 2000 and docketed October 27, 2000. The relevant facts are as follows:

The parties are the parents of three children. Under previous orders, Dr. Frank was paying spousal support to Ms. Frank and child support for the parties' three children who are in the primary custody of Ms. Frank. On May 19, 1999, Dr. Frank filed a Petition for Modification of both the child support and spousal support obligation because of a change in his net income. A hearing was held on November 5, 1999, but no order was entered after that hearing.

Dr. Frank filed a Petition for Modification of Child Support on June 19, 2000 based on the oldest child, Edgar Jr., becoming emancipated. Dr. Frank requested that any modification be retroactive to January 12, 2000, the alleged date that Edgar Jr. became emancipated. A hearing was held on this Petition on August 4, 2000. At or after this hearing, the Master realized that no order had been entered on the petition filed May 19, 1999. Therefore, in his Order dated October 19, 2000, the Master addressed both petitions.

On November 2, 2000, Ms. Frank filed exceptions to the Master's Order. In her exceptions, Ms. Frank contends the Master erred in his determination of Dr. Frank's income because he deducted "alimony" from the income before determining Dr. Frank's child support obligation when Dr. Frank was not paying alimony to Ms. Frank as the parties were not divorced. Ms. Frank also asserts the Master failed to determine the amount of alimony pendente lite Dr. Frank would owe Ms. Frank for the the time periods of May 19, 1999 through December 31, 1999, January 1, 2000 through April 11, 2000 and from April 11, 2000 until further order of court.

Counsel for Dr. Frank conceded the Master erred in deducting alimony in calculating Dr. Frank's income. However, counsel argued the Court could not modify the spousal support because Ms. Frank did not file a cross-petition for a modification of spousal support and Ms. Frank's exceptions do not address spousal support, but alimony pendente lite.

Initially, the Court rejects the plaintiff's argument that the defendant had to file a cross-petition for modification of spousal support. The Court notes that Dr. Frank's petition of May 19, 1999 addresses both child support and spousal support. Although the petition filed June 19, 2000 only addresses child support, any change in child support would necessitate a change in spousal support because spousal support is determined by reducing the obligor's income by his child support obligation and taking 30% of the difference.

The Court also rejects the plaintiff's argument that the defendant has not raised any issue with the amount of spousal support because the defendant used the term

alimony pendente lite in her exceptions. It is apparent from the defendant's exceptions that she wished to challenge the Master's failure to address the amount of support Dr. Frank would be obligated to pay her. Moreover, the Court believes Dr. Frank's position is contrary to the interests of justice in this case and places form over substance. Finally, it was the plaintiff's deduction of 'alimony' on his 1999 federal income tax return which caused confusion on the part of the Master and resulted in the failure to address spousal support.

In her first exception, Ms. Frank claims the Master erred in calculating Dr. Frank's child support obligation for the time period of May 19, 1999 through December 31, 1999. The parties agree the Master improperly deducted Dr. Frank's support obligation to Ms. Frank prior to determining his child support obligation. Therefore, this exception will be GRANTED and the Court will re-determine Dr. Frank's income and his child support obligation for this time period.

Dr. Frank's 1999 federal income tax return shows he had wages in the amount of \$121,688, \$17,141 in capital gain and \$2,000 in other income from FCC Allenwood. The parties agreed that marital interest and dividends should not be included in calculating Dr. Frank's income. Therefore, the interest and dividend figures are \$1,789 and \$1,390, respectively, and not the amounts listed on Dr. Frank's tax return. Adding these sums yield a gross yearly income of \$139,702. From this total, the Court deducted \$4,501 for FICA, \$1,909 for medicare, \$6,174 for state and local taxes and \$41,969.97 for

federal income taxes.¹ Therefore, Dr. Frank's yearly net income was \$85,138.03 and his monthly net income was \$7,094.84.

With Dr. Frank's monthly net income of \$7094.84 and Ms. Frank's monthly net income/earning capacity of \$750, the parties' combined monthly net income was \$7,844.84 for the time period of May 19, 1999 through December 31, 1999. The total basic child support obligation for three minor children when the parties' have a combined monthly net income of \$7,844.84 would be \$2,084 plus 13.13% of the income above \$7,196. After making the necessary calculations, the total child support obligation would be \$2,169.19.

Dr. Frank would be responsible for his proportionate share of that total child support obligation. His proportionate share is determined by dividing his monthly net income by the parties' combined monthly net income to arrive at a proportionate share of 90.44%. Multiplying the total child support obligation of \$2,169.19 times .9044 results in Dr. Frank having a monthly child support obligation of \$1961.82 for three minor children.

Ms. Frank, however, is responsible for her proportionate share of the health and dental insurance premiums paid by Dr. Frank. The total health insurance premium is \$116.53 per month. Ms. Frank's proportionate share is 9.56% or \$11.14 per month. Subtracting that amount from the child support obligation of \$1961.82 results in an adjusted child support obligation of \$1950.68 for the time period of May 19, 1999 through December 31, 1999.

¹The 1999 tax rates for a married individual filing separately were \$20,216.25 plus 36% of the amount over \$79,275.

Ms. Frank's second exception is the Master erred in determining Dr. Frank's income for the purpose of calculating alimony pendente lite for the time period of May 19, 1999 through December 31, 1999. As previously discussed, the Master incorrectly determined Dr. Frank's income for this time period. Despite the fact that counsel for Ms. Frank incorrectly used the term alimony pendente lite instead of spousal support, the Court finds the Master erred in his calculation of Dr. Frank's income and in failing to determine the amount of spousal support Dr. Frank would be obligated to pay Ms. Frank.

To determine Dr. Frank's support obligation to Ms. Frank, the Court must first deduct Ms. Frank's income from Dr. Frank's income, which results in a difference of \$6,344.84. Next, the Court must deduct Dr. Frank's child support obligation. His child support obligation for this time period is \$1,950.68. Therefore, the difference is \$4394.16. Multiplying this figure by .30 results in a spousal support award of \$1,318.25.

Ms. Frank's third allegation is the Master erred in failing to determine Dr. Frank's support obligation to Ms. Frank for the time periods of January 1, 2000 through April 11, 2000 and from April 11, 2000 until further order of court. From January 1, 2000 through April 11, 2000, Dr. Frank's monthly net income was \$8,174 and Ms. Frank's income/earning capacity was \$750, which results in a difference of \$7,424. From this amount the Court must deduct Dr. Frank's child support obligation of \$2,217.34. The difference is \$5,206.66. Multiplying this amount by .30 results in a spousal support award of \$1,562 per month for January 1, 2000 through April 11, 2000.

After April 11, 2000, Dr. Frank's monthly net income was still \$8,174, but his child support obligation decreased to \$1,881.75 due to the emancipation of Edgar Jr. As

previously stated, the difference between the parties' incomes is \$7424. From this amount the Court must deduct Dr. Frank's child support obligation of \$1881.75. The difference is \$5,542.25. Multiplying this amount by .30 results in a spousal support award of \$1,662.68 from April 11, 2000 until further order of court.

Ms. Frank next asserts the Master erred when he made the modification of child support based on the petition filed June 19, 2000 retroactive to April 11, 2000. This Court cannot agree. Edgar Jr. celebrated his eighteenth birthday in December 1999, but he was still in high school. Dr. Frank believed Edgar Jr. would finish high school in June 2000. However, Dr. Frank was unaware, and Ms. Frank did not make him aware, that Edgar Jr. dropped out of high school on April 11, 2000. Since Edgar Jr. was eighteen years of age and no longer attending high school, the Master found he was emancipated as of that date. The Court finds no error in this determination. See Crawford v. Crawford, 429 Pa.Super. 540, 551, 633 A.2d 155,160 (1993)(parent's support obligation generally ceases when the child reaches 18 or graduates from high school, whichever comes later); Hanson v. Hanson, 425 Pa.Super. 508, 512, 625 A.2d 1212, 1214 (1993)(unless child has mental or physical condition which renders him incapable of self support, a parent is not required to support his adult child).

The Court has already adjusted Ms. Frank's proportionate share of the health insurance premium. Therefore, Ms. Frank's fifth exception has already been granted.

Ms. Frank next contends the Master erred when he failed to order Dr. Frank to make a lump sum payment of any and all arrearages. This Court cannot agree. If Dr.

Frank continued to pay spousal support in accordance with the Order dated March 3, 1999, there would be an arrearage of \$4,267.10. Dr. Frank also would have a child support arrearage of \$3,674.17.² Therefore, it appears that Dr. Frank's total arrears would be at least \$7,941.27. The Court finds it would be unreasonable to require Dr. Frank to pay such a large amount in a lump sum. Instead, Dr. Frank shall pay an additional \$350 per month toward the arrears.³ In the event the parties reach equitable distribution prior to the arrearage being paid in full, the Master may order Dr. Frank to pay the remaining arrearage in a lump sum from his share of the marital assets.

Ms. Frank's final exception is the Master erred when calculating Dr. Frank's child support obligation for the time period January 1, 2000 through April 11, 2000 and April 11, 2000 until further order of court. This Court cannot agree. Although the Master inadvertently deducted Dr. Frank's support obligation to Ms. Frank in determining his net monthly income for the period May 19, 1999 through December 31, 1999, because the Master thought the parties were divorced and Dr. Frank was paying alimony, the Master did not make this error on the other time periods because Dr. Frank's support obligation to

²From May 19, 1999 through December 31, 1999, Dr. Frank paid \$14,461.74 in child support. Under this decision, Dr. Frank's child support obligation for this time period was \$14,409.67. Therefore, Dr. Frank would be entitled to a credit of \$52.07 for this time period. The Master found that Dr. Frank was in arrears in the amounts of \$908.70 for January 1, 2000 through April 11, 2000 and \$2,817.54 for April 11, 2000 through November 1, 2000. Adding the arrearage amounts and subtracting the credit from that amount yields a net child support arrearage through November 1, 2000 of \$7,941.27. If Dr. Frank has not been paying child support in accordance with the Master's decision docketed October 27, 2000, the arrearage would be even greater.

³The Court believes arrived at the \$350 figure by taking roughly 10% of the total monthly support obligation.

Ms. Frank was not listed on the pay stub used to calculate Dr. Frank's monthly net income in 2000. The only items the Master deducted were the usual taxes and F.I.C.A. amounts, which are permissible deductions from gross income to arrive at net income. Pa.R.Civ.P. 1910.16-2(c), 42 Pa.C.S.A.

Based on the above discussion, it is ORDERED and DIRECTED as follows:

ORDER

AND NOW, this ____ day of March, 2001, the Court GRANTS Ms. Frank's exceptions with respect to the amount of child support obligation for the time period of May 19, 1999 through December 31, 1999 and the exceptions with respect to spousal support for all the relevant times periods. The Court DENIES Ms. Frank's exceptions with respect to the child support obligation for the time periods January 1, 2000 through April 11, 2000 and April 11, 2000 until further order of court and the exception regarding the retroactive date of April 11, 2000 as the date of Edgar Jr.'s emancipation.

1. For the time period of **May 19, 1999 through December 31, 1999** Edgar H. Frank, Sr. shall pay to Johanna R. Frank child support for three minor children in the amount of **\$1,950.68** per month.

2. For the time period of **May 19, 1999 through December 31, 1999** Edgar H. Frank, Sr. shall pay to Johann R. Frank spousal support in the amount of **\$1,318.25** per month.

3. For the time period of **January 1, 2000 through April 11, 2000,**

Edgar H. Frank, Sr. shall pay to Johanna R. Frank child support for three children in the amount of **\$2,217.34** per month.

4. For the time period of **January 1, 2000 through April 11, 2000**, Edgar H. Frank, Sr. shall pay to Johanna R. Frank spousal support in the amount of **\$1,562.00** per month.

5. For the time period of **April 11, 2000 until further order of court**, Edgar H. Frank shall pay to Johanna R. Frank child support for two minor children in the amount of **\$1,881.76** per month.

6. For the time period of **April 11, 2000 until further order of court**, Edgar H. Frank shall pay to Johanna R. Frank spousal support in the amount of **\$1,662.68** per month.

7. Edgar H. Frank, Sr. shall **pay an additional \$350 per month toward the arrearage**. In the event the parties reach equitable distribution prior to the arrearage being paid in full, the Master may order Dr. Frank to pay the remaining arrearage in a lump sum from his share of the marital assets.

8. In regard to unreimbursed medical expenses, for the time period of **May 19, 1999 through December 31, 1999**, Johanna Frank shall be responsible for payment of **10%** of **any and all unreimbursed medical expenses** and Edgar H. Frank, Sr. would be responsible for payment of **90%** of **any and all unreimbursed medical expenses**.

9. For the time period commencing **January 1, 2000 and until further**

order of court, Johanna Frank shall be responsible for payment of **8%** of **any and all unreimbursed medical expenses** and Edgar H. Frank, Sr. would be responsible for payment of **92%** of **any and all unreimbursed medical expenses**.

By The Court,

Kenneth D. Brown

cc: Janice Yaw, Esquire
William Miele, Esquire
Family Court
Work file
Law clerk