

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

FLH,	:	NO. 97-20,881
Plaintiff	:	
	:	
vs.	:	CIVIL ACTION - Law
	:	In Divorce
	:	
LDH,	:	APL Exceptions
Defendant	:	

OPINION AND ORDER

Before the Court are Defendant's exceptions to the Family Court Order of April 3, 2000, in which Plaintiff's obligation to pay Defendant alimony pendente lite was suspended. Argument on the exceptions was heard December 4, 2000.

There was previously in place in this matter an Order dated November 19, 1997 requiring Plaintiff to pay to Defendant alimony pendente lite of \$629.20 per month, based on Plaintiff's income of \$2,526.00 per month and Defendant's income of \$953.00 per month. Plaintiff filed a Petition for Modification of that Order on September 10, 1999, indicating as a basis for modification that he is no longer able to work at a full pace "due to his back problems". After a hearing, the Family Court Officer found "based on Dr. Parker's letter," which was referred to at the hearing in Family Court, that Plaintiff now has a half-time earning capacity of \$1,262.50 per month. Considering that earning capacity and Defendant's current income of \$1,672.00 per month, the hearing officer suspended Plaintiff's obligation to pay alimony pendente lite. Defendant contends in her exceptions that the finding is not supported by the evidence and that the hearing officer erred in suspending her alimony pendente lite based on that finding.

A review of the transcript supports Defendant's position. While Plaintiff circulated¹ a letter from Frank W. Parker, DO, indicating that Plaintiff has been progressively less active due to fatigue and back pain, has recently stated that he has not been able to work any more than four (4) hours daily due to these problems, that a physical examination and x-ray reports of his back confirm the limitation, and that he, Dr. Parker, feels that Plaintiff is indeed limited physically to fewer working hours than when he was first seen two (2) years ago, (approximately September 1997), Plaintiff himself testified that he works more than four (4) hours a day. N.T., January 14, 2000 at 6. When asked whether his recent income was lower than his previous income he indicated "I don't know." Id. When asked his plans for the future, Plaintiff indicated he was "shutting down my business because it's the next thing to insanity to try and keep it going, and I'm going to Alaska, I am going into the ministry, which I should have been in a long time ago." Id. at 7-8. It is interesting to note that Plaintiff indicated the same plans in November 1997, at the time of the original alimony pendente lite hearing.²

The Court also notes Plaintiff's testimony in 1997 that since the parties' separation, he no longer worked as much because he did not feel like it. Plaintiff admitted on January 14, 2000 that although he had a letter from his physician in December 1997 indicating that he could not work at a full pace due to his medical condition, his income in 1998 did not decrease from his income in 1997. Id. at 23. Throughout the entire January 14, 2000 hearing, Plaintiff's testimony was evasive and vague. He presented no credible evidence that he has suffered a reduction in income, tax returns notwithstanding, nor any legitimate reason for such a reduction.

Upon consideration of the entire record, the Court finds the hearing officer did indeed err in finding that Plaintiff has legitimately suffered a reduction in income and in suspending his alimony pendente lite.

¹The transcript indicates that the document was never actually introduced into evidence.

²Plaintiff appeared in Court on December 28, 2000, yet to have moved to Alaska.

ORDER

AND NOW, this day of January, 2001, for the foregoing reasons the Order of April 3, 2000 is hereby modified, Plaintiff's obligation to pay alimony pendente lite to Defendant is hereby reinstated, and effective September 10, 1999, considering Plaintiff's earning capacity of \$2,526.00 per month and Defendant's income of \$1,072.00 per month, Plaintiff shall pay to Defendant alimony pendente lite of \$341.60 per month. Plaintiff shall pay an additional \$60.00 per month toward the arrearage created by the retroactive effect of this Order and/or any arrearage which remains from the previous Order.

By the Court,

Dudley N. Anderson, Judge

cc: Family Court
 Pat Thorne, Esq.
 Frank McNaughton, Esq.
 Gary Weber, Esq.
 Hon. Dudley N. Anderson