

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

MH, : NO. 00-20,770
Petitioner :
 :
vs. : DOMESTIC RELATIONS SECTION
 : Exceptions
KBH, :
Respondent :

OPINION AND ORDER

Before the Court are Petitioner's exceptions to the Family Court Order of November 1, 2000, in which her request for spousal support was denied. Argument on the exceptions was heard February 21, 2001. Petitioner's sole contention is that the hearing officer erred in finding she was not entitled to spousal support.

After reviewing the circumstances which led to Petitioner's vacation of the marital residence, and considering Petitioner's present living arrangements whereby she resides with a member of the opposite sex, the hearing officer found Petitioner not entitled to spousal support "on the basis that [Petitioner] is cohabiting with a member of the opposite sex." It thus appears the hearing officer did not consider any of Respondent's conduct in her decision. A spouse's right to support is not automatically terminated upon proof of that spouse's adultery, however. The conduct of the other spouse must also be considered in determining that issue under the circumstances. Commonwealth ex rel. Carmack v Carmack, 407 A.2d 1314 (Pa. Super. 1979). See also Schreiber v Schreiber, 454 A.2d 112 (Pa. Super. 1982) (Court must look not only at the wife's conduct in reviewing her right to support but also at all the circumstances present in each case). Thus, in the instant case, since there is evidence of misconduct on the part of the husband, the wife's misconduct does not automatically bar entitlement to spousal support. The matter must therefore be remanded for further consideration by

the hearing officer of all the circumstances presented.

ORDER

AND NOW, this 19th day of March, 2001, for the foregoing reasons, Petitioner's exceptions are hereby granted and the matter is hereby remanded for further consideration by the hearing officer consistent with the instant Opinion.

By the Court,

Dudley N. Anderson, Judge

cc: Family Court
Barb Hall, Domestic Relations
Janice Yaw, Esq.
Christina Dinges, Esq.
Gary Weber, Esq.
Hon. Dudley N. Anderson