

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

MEL,	:	NO. 93-20,474
Petitioner	:	
	:	
vs.	:	DOMESTIC RELATIONS SECTION
	:	Exceptions
DL,	:	
Respondent	:	

OPINION AND ORDER

Before the Court are Respondent's exceptions to the Family Court Order dated January 28, 2001, in which Respondent's Petition for Modification of child support and alimony was denied.¹ Argument on the exceptions was held July 18, 2001. At the conclusion of argument, counsel agreed to provide the Court with a stipulation regarding the parties' incomes at the time of a property settlement agreement entered into in 1995. That information was not received in a timely manner and the Court entered an Order dated September 4, 2001 dismissing the exceptions. Respondent's counsel has requested the Court reopen the matter, providing copies of letters between counsel indicating that the delay was for the most part caused by Petitioner's counsel failing to respond to Respondent's proffer of a stipulation in a timely manner. The Court will therefore vacate the Order of September 4, 2001 and consider the exceptions on their merits.

In his exceptions, Respondent simply contends the hearing officer erred in failing to consider how the economic circumstances of the parties have changed since the date of the property settlement

¹The Order actually addressed only his request for modification of alimony. His modification of child support had, by the time of the hearing on October 17, 2000, been addressed administratively by the Domestic Relations Office. An Order was entered October 4, 2000 terminating his child support obligation as the youngest of the minor children had become emancipated as of September 27, 2000.

agreement. It does appear from the Order that the hearing officer simply referred to the guidelines for spousal support. Rather than remand the matter for further consideration of the relevant factors, however, counsel agreed the Court could consider the circumstances and enter an appropriate Order. In order to do so, the Court requested of counsel a stipulation, as noted above, regarding the parties' incomes at the time of the property settlement agreement in July 1995.

It appears that in 1995 Respondent had a monthly net income of \$14,435.00. He testified in October 2000 that his income has remained fairly consistent over the years but that as of October 1, 2000 he was no longer receiving income from Wexford. The hearing officer found his current income to be approximately \$11,000.00, which finding of fact has not been contested by either party. Respondent testified that he is now paying college expenses for the children, but the Court does not consider such to be a change in circumstance as the fact of that payment was considered in the property settlement agreement, wherein Respondent agreed to be totally responsible for such costs. Respondent also testified that he is now giving his mother \$800.00 per month but, since such is a voluntary payment and does not come before an alimony obligation, the Court will also not consider that payment.

Petitioner had an income of approximately \$300.00-\$624.00 per month at the time of the property settlement agreement. She has since then graduated in December 1999 with a Bachelor's Degree in Early Childhood Education and although she is not employed in that field, is currently working as a personal care attendant earning \$2,010.00 per month net. The hearing officer assessed her an earning capacity of \$2,000.00 per month net and this finding of fact has also not been contested by either party.

Considering the increase in Petitioner's income/earning capacity and the decrease in Respondent's income, the Court believes that a reduction in the alimony is appropriate and will reduce Respondent's alimony obligation to \$2,000.00 per month.

ORDER

AND NOW, this 18th day of September, 2001, for the foregoing reasons, the Order of September 4, 2001 is hereby vacated and the Order of January 28, 2001 is hereby modified to provide for an alimony payment of \$2,000.00 per month, retroactive to November 8, 2000.²

By the Court,

Dudley N. Anderson, Judge

cc: Family Court
Domestic Relations
Brad Hillman, Esq.
Marc Drier, Esq.
Gary Weber, Esq.
Hon. Dudley N. Anderson

²Although the Petition was filed in July 2000, the parties' agreement indicates that the amount of alimony cannot be decreased during a six (6) year period, beginning November 8, 1994.