IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PA

GLENN L. YODER,	:	
Plaintiff	:	
	:	
v.	:	No. 97-21,175
	:	PACES NO. 291100232
DAWN P. YODER,	:	
Defendant	:	

OPINION and ORDER

Mr. Yoder has brought this petition requesting to modify the alimony awarded to Mrs. Yoder based on the fact that she has become employed. A review of the record convinces this court that the alimony award was based upon the mistaken belief that Mrs. Yoder was unable to work. Therefore, her alimony should be terminated.

The Master's Report of December 2, 1999, which granted alimony to Mrs. Yoder, was issued after an equitable distribution hearing held on August 4, 1999. In the Master's Report, the Master states Mrs. Yoder testified she had not worked since the parties' separation, on July 21, 1997. (Master's Report issued December 2, 1999, p. 5.) The Master also states Ms. Yoder testified she cannot be gainfully employed due to her medical problems. *Id.* The Master also refers to an Alimony Pendente Lite hearing, held one year earlier, at which Mrs. Yoder presented medical testimony that she could not be gainfully employed at that time in any job. And finally, the Master reiterates that at the APL hearing it was found that Mrs. Yoder was unemployed and did not have an earning capacity; she was therefore awarded APL in the amount of $776.00 per month. *Id.*, p. 4. Not coincidentally, the Master awarded her exactly that same amount in alimony, which was to continue for two years.

Notwithstanding her strong representations of her inability to work, Ms. Yoder began working on August 17, 1999—a mere thirteen days after the equitable distribution hearing. Unfortunately, Ms. Yoder failed to share the good news of her miraculous recovery with the Domestic Relations Office. She was found in contempt on March 8, 2000, and her APL was subsequently reduced.

A court is permitted to modify or terminate an award of alimony upon "changed circumstances of either party of a substantial continuing nature." 23 Pa.C.S.A. Section 1701(e). At the time of the alimony award, Mrs. Yoder was deemed unable to work. Her entrance into the work force therefore constitutes a changed circumstance of a substantial continuing nature.

As to whether the alimony award should be changed, the purpose of alimony is to ensure that the reasonable needs of a person who is unable to support him or herself through appropriate employment are met. Nemoto v. Nemoto, 620 A.2d 1216 (Pa. Super. 1993). At the time of the hearing, it appeared Mrs. Yoder could not work at all. Now she earns more than her alimony award.[1] Therefore, there is no reason to continue the award.

The next question is when the alimony termination should be effective. Mr. Yoder argues the date should be August 17, 1999, when Mrs. Yoder began working. Although that would make perfect sense, the statute clearly states, "Any further Order shall apply only to payments accruing subsequent to the Petition for the requested relief. Re-marriage of the party receiving Alimony shall terminate the award of Alimony." 23 Pa.C.S.A. Section 3701(e). The court does not believe it has the authority to violate the

[1] As of January 1, 2000, Ms. Yoder had a net monthly income of $875.44.

clear wording of the statute. The case cited by Mr. Yoder, Purdue v. Purdue, 580 A.2d 1146 (1990), does not convince us otherwise. That case involved an APL award, which is governed by different rules. The Support Guidelines, which apply to APL or spousal support (see Rule 1910.1(a)) state that an order of support shall be effective "from the date of the filing of the complaint unless the order specifies otherwise." Rule 1910.17(a). This rule clearly leaves room for the court to determine when the order should become effective. Moreover, 23 Pa.C.S.A. Section 3702, which governs APL, does not restrict the application of the order to the date the petition was filed. And finally, it is worth noting that an obligee receiving APL has a continuing obligation to notify the domestic relations office upon any material change in circumstances. Rule 1910.17(b).

Alimony, however, is an entirely different matter. First, the alimony statute specifically states that a modification order shall apply only to payments accruing after the petition has been filed. 23 Pa.C.S.A. Section 3507(d). Second, there is no corresponding rule in the Guidelines giving the court wiggle room on the issue. Third, there is no obligation for the recipient of alimony to report a change in circumstances. And lastly, since the statute creates an exception for marriage of the recipient, we must apply the doctrine "expressio unius est exclusio alterius," or the mention of one thing in a statute implies the exclusion of others not expressed. Young v. Workmen's Compensation Appeal Bd., 395 A.2d 317 (1978). Therefore, we must conclude that for some reason—the wisdom of which escapes this court—the legislature intended to restrict the application of alimony changes to the date the petition was filed, with the only exception being marriage of the recipient.

O R D E R

AND NOW, this _____ day of March, 2002, Mr. Yoder's alimony obligation is terminated, effective June 6, 2001. The court notes that Mr. Yoder has accumulated an arrearage due to incorrect invoicing by the Domestic Relations Office. The Domestic Relations Office is directed to re-calculate the arrearage based on the termination date of June 6, 2001, and Mr. Yoder shall continue to pay $776.00 per month until the arrearage has been satisfied.

BY THE COURT,

_____
Clinton W. Smith, P.J.

cc: Dana Jacques, Esq.
Hon. Clinton W. Smith
Janice Yaw, Esq.
Ronald Travis, Esq.
Gerald Seevers, Esq.
Domestic Relations Office
Gary Weber, Esq.