

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

BHC, : NO. 97-20,555
Plaintiff :
 :
vs. :
 :
CC, :
Defendant :

OPINION IN SUPPORT OF ORDER DATED
SEPTEMBER 4, 2001 IN COMPLIANCE
WITH RULE 1925(A) OF
THE RULES OF APPELLATE PROCEDURE

Plaintiff has appealed from this Court’s Order of September 4, 2001, which denied her petition seeking to find Defendant in contempt for failing to pay her the sums due under the parties’ equitable distribution. Specifically, by Order dated September 21, 1999, Defendant was directed to pay to Plaintiff the sum of \$200,000.00 on October 21, 1999, and \$50,000.00 plus interest each six months thereafter until the principal sum of \$394,890.59 was paid in full.

There is no question Defendant has failed to make any of the required payments. Defendant maintains, however, as he has maintained throughout all proceedings involved in the divorce as well as a bankruptcy petition he filed, that he cannot pay the amount due. Defendant contends he is destitute and penniless and that other than his Social Security Retirement checks, which have been attached in connection with this debt, he has no source of income. Defendant further maintains he is in ill health and must rely on the good graces of others for his basic subsistence.

While Defendant admits the large sums involved in this matter did at one time exist, he contends they no longer do. He claims his present financial condition is a result of depression brought on by the dissolution of his marriage. He contends that in order to fight the depression, he

systematically withdrew money from his retirement account and spent it on trips and gambling junkets. The Court has been and continues to be suspicious of this explanation as Defendant has been unable to produce any documentary proof of these alleged spending excursions and there appears to be no prior history of gambling on Defendant's part. On the other hand, Plaintiff has been unable to refute, to any degree, the claims made by Defendant.

The Court recognizes the difficulty Plaintiff might have in proving the negative, but after a fairly exhaustive contempt hearing, the Court has reached the conclusion it is simply unsure as to what occurred following the parties' separation. Defendant appeared to show remorse; he testified with conviction and was persuasive. Of course, Defendant may very well have lied to the Court and may have the money secured in an account which cannot be found. At the conclusion of the hearings, however, the Court could not state with any degree of certainty that the events set forth by Defendant did not occur and, therefore, could not find Defendant's non-payment willful beyond a reasonable doubt. The petition for contempt was thus denied.

Date: March 5, 2002

By the Court,

Dudley N. Anderson, Judge

cc: Richard Callahan, Esq.
Randi Dincher, Esq.
Gary Weber, Esq.
Hon. Dudley N. Anderson