

**IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA**

SR, : NO. 01-20,473  
Petitioner :  
 :  
vs. : DOMESTIC RELATIONS SECTION  
 : Exceptions  
LR, :  
Respondent :

OPINION AND ORDER

Before the Court are Petitioner's exceptions to the Family Court Order of July 23, 2001 in which her request for spousal support was denied for her failure to show entitlement to such. Argument on the exceptions was heard January 30, 2002.

In her exceptions, Petitioner contends the hearing officer erred in finding she was not entitled to spousal support, specifically that the wrong burden of proof was applied. The Court agrees.

The hearing officer found that although Respondent left the marital residence while Petitioner remained, if Respondent had been seeking spousal support from Petitioner, he would determine that Respondent had adequate legal cause for leaving. He therefore found Petitioner was not entitled to spousal support. Since Petitioner remained in the marital residence, however, she is entitled to support until it is proven that her conduct constitutes grounds for a fault divorce. Hoffman v Hoffman, 762 A.2d 766 (Pa. Super. 2000). Further, Respondent bears the burden of proving such conduct on Petitioner's part by clear and convincing evidence. *Id.* The hearing officer therefore did indeed apply the wrong standard.

A review of the transcript indicates that Respondent has not shown conduct on Petitioner's part which constitutes grounds for a fault divorce. Although he showed that the parties' marital relationship had deteriorated severely, and that he felt frustrated by the situation in the household, he

did not show that his life had become unduly burdensome and that Petitioner was guilty of indignities, such as would constitute grounds for a divorce. The Court therefore finds Respondent has failed to prove a defense to Petitioner's entitlement to spousal support and the matter must be remanded for a hearing to determine the amount of such.

ORDER

AND NOW, this 30<sup>th</sup> day of January, 2002, for the foregoing reasons, Petitioner's exceptions are hereby granted. The Order of July 23, 2001 is hereby vacated and the matter is remanded for further proceedings to determine the parties' incomes and set an appropriate level of spousal support.

By the Court,

Dudley N. Anderson, Judge

cc: Family Court  
Domestic Relations  
Janice Yaw, Esq.  
William Miele, Esq.  
Gary Weber, Esq.  
Hon. Dudley N. Anderson