

In our opinion Husband should be given the opportunity to demonstrate his good faith by proceeding promptly with his action in divorce and for equitable distribution of marital property. During that time period the court should simply defer acting on Husband's petition to dismiss the partition action, and retain jurisdiction of both proceedings. Then, if Husband fails to pursue his cause of action with reasonable diligence the Court will entertain a motion either to hold a hearing on the petition to dismiss and responsive answer or if appropriate dismiss the petition. For the guidance of the parties and their counsel, it would appear appropriate to expect Husband's motion for the appointment of a Master to be filed within two weeks of the date of this order and in the absence of unusual or unforeseen circumstances for all proceedings before the Master to be concluded within 90 days of the date of this order.

#### ORDER OF COURT

NOW, this 19th day of April, 1984, all proceedings in the partition action of Joan Marie Federline vs. Bernard L. Federline, Jr. are stayed until further Order of Court. Judicial action on the petition of Bernard L. Federline, Jr. to dismiss the said partition action is deferred pursuant to the Opinion attached hereto. Jurisdiction is herewith retained.

Exceptions are granted the Plaintiff and the Defendant.

MITCHELL V. MITCHELL, C.P. Franklin County Branch, F.R. 1979-1170S

#### *Support Order - Res Judicata - Changed Circumstances*

1. An initial support order is res judicata and is subject to further modification only upon a showing of subsequent material changes in conditions and circumstances.
2. Consideration of a request to modify a pre-existing support Petition is appropriate only where a written Petition, cross petition or answer with counterclaim is before the review officer.
3. Where defendant petitioned for a reduction in support and plaintiff did not file an answer with counter claim, plaintiff later petitioned for increased support and must rely on changed circumstances from the time of the last hearing.

*Kenneth E. Hankins, Jr., Esq.*, Counsel for Plaintiff  
*William H. Kaye, Esq.*, Counsel for Defendant

#### OPINION AND ORDER

KELLER, J., April 27, 1984:

On December 3, 1981, the Honorable George C. Eppinger entered an order directing the defendant, Lester J. Mitchell, to \$170.00 bi-weekly to the plaintiff, Shirley A. Mitchell, for the support of their three minor children; Lisa, age 16, Adam, age 13, and Lance, age 11. the support order was predicated upon Shirley A. Mitchell's net weekly income of \$244.00 and Lester J. Mitchell's net weekly income of \$326.00.

In August of 1983, the defendant petitioned the Court to modify the support order, alleging that Lisa had reached the age of majority and graduated from high school. At the office conference the defendant appeared in person but without counsel. The plaintiff appeared with her attorney, Kenneth E. Hankins, Jr.

On September 8, 1983, the Court's Hearing Officer, Robert Woods, granted the defendant's application to remove Lisa from the original support order but did not alter the amount of support defendant was required to pay. On September 12, 1983 the Court entered its order approving the Hearing Officer's recommendation. No appeal was taken from the September 12, 1983 order. However, on the same day Shirley Mitchell presented her petition to modify the 1981 order claiming significantly changed circumstances. Mrs. Mitchell sought an increase in the amount of her husband's weekly support payments.

Accepting the recommendation of the Domestic Relations Hearing Officer, the Court ordered the defendant to pay \$200.50 bi-weekly, an increase of \$30.50 over the requirement of the original 1981 support order. The defendant appealed and the case was scheduled for a de novo hearing before the Court on January 9, 1984. The evidence presented established that: (1) one of the three children was no longer entitled to support, (2) the defendant's net weekly income had increased by \$17.00 and, (3) the plaintiff's weekly income had increased by \$11.85. The evidence was marked closed and the case continued for argument.

The defendant, Lester J. Mitchell, contends:

(1) The plaintiff was required to assert all grounds for increased support in a written answer to his petition or a new petition, either at or before the time of the hearing on his petition to modify the 1981 order or before the final order was entered on September 12, 1983.

(2) By failing to file her own petition to modify or an answer with a counterclaim before September 12, 1983, Mrs. Mitchell is barred from reopening and relitigating the matter unless she can establish a material change in circumstances and conditions since the September 8th hearing.

(3) The plaintiff has failed to show a material change of circumstances. Therefore, the September 12, 1983 court order is a bar to relitigating any issue which was or could have been raised at the September 8th hearing.

Absent an appeal, an initial support order is res judicata and is subject to future modification only upon a showing of subsequent material changes in conditions and circumstances. *Commonwealth ex rel. Kreiner v. Scheidt*, 183 Pa. Super. 277, 131 A. 2d 147 (1957), *Commonwealth ex rel. Bassion v. Bassion*, 199 Pa. Super. 541, A. 2d 822 (1962). Although the party seeking modification has the burden of establishing a material change of circumstances, *Commonwealth ex rel. Burns v. Burns*, 251 Pa. Super. 393, 380 A. 2d 837 (1977), consideration of a request to modify a pre-existing support order is appropriate only where a written petition, cross petition or answer with a counterclaim setting forth the reasons for such a request is before the hearing officer. Pa. R.C.P. 1910.19 requires a petition for modification of support orders. One very valid reason for this rule is to give the opposing party notice of the claim and a fair opportunity to respond. In the case at bar, the plaintiff's petition for modification was not before the hearing officer on September 8, 1983. Thus, any evidence or arguments offered for increased support could not properly have been considered at that time. The plaintiff's only alternatives were either to appeal the September 12, 1983 court order or file a petition for modification after the September 8th hearing. As the record discloses, Mrs. Mitchell chose to pursue the latter course of action.



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## LEGAL NOTICES, cont.

NOTICE IS HEREBY GIVEN, pursuant to the provisions of the Fictitious Name Act, Act No. 1982-295, of the intention to file, with the Department of State of the Commonwealth of Pennsylvania, on August 1, 1984, an application for a certificate for the conducting of a business under the assumed or fictitious name of Gourmet Cellar, with its principal place of business at 111 West King Street, Waynesboro, PA 17268. The names and addresses(es) or the person(s) owning or interested in said business is (are) Thomas A. Leighty 111 West King Street, Waynesboro, PA 17268.  
8/3/84

NOTICE IS HEREBY GIVEN, pursuant to the provisions of the Fictitious Name Act, Act No. 1982-295, of the filing, with the Department of State of the Commonwealth of Pennsylvania, on July 16, 1984, of an application for a certificate for the conducting of a business under the assumed or fictitious name of J R RENTALS, with its principal place of business at 8197 Ft. McCord Road, Chambersburg, Pennsylvania 17201. The names and addresses of the persons owning or interested in said business are Raymond L. Wingert and Janice S. Wingert, 8197 Ft. McCord Road, Chambersburg, Pennsylvania 17201.  
8/3/84

NOTICE IS HEREBY GIVEN, pursuant to the provisions of the Fictitious Name Act, Act No. 1982-295, of the filing, with the Department of State of the Commonwealth of Pennsylvania, on July 10, 1984, an application for a certificate for the conducting of a business under the assumed or fictitious name of Professional Management Software, with its principal place of business at 9974 Molly Pitcher Highway, P.O. Box 695, Shippensburg, PA 17257. The name(s) and addresses(es) or the person(s) owning or interested in said business is (are) Forest N. Myers, 12 South Penn Street, Shippensburg, PA 17257.  
Forest N. Myers,  
Attorney  
8/3/84

## NOTICE

NOTICE IS HEREBY GIVEN that Articles of Incorporation were filed on June 18, 1984 with the Department of State, Commonwealth of Pennsylvania at Harrisburg, Pennsylvania and a Certificate of Incorporation was issued on said date to a business corporation organized under the Business Corporation Law of the

## LEGAL NOTICES, cont.

Commonwealth of Pennsylvania approved May 5, 1933, P.L. 364, as amended. The name of the corporation is: PARK HEIGHTS ASSOCIATION, INC. The purpose or purposes of the corporation are that it shall have unlimited power to engage in and do any lawful acts concerning any and all lawful business for which corporations may be formed under the Pennsylvania Business Corporation Law of 1933, as amended. Forest N. Myers, Esquire  
P.O. Box 695  
Shippensburg, PA 17257  
8/3/84

### Payment of Annual Attorney Registration Fee

**Rule 219 of the Pennsylvania Rules of Disciplinary Enforcement provides that on or before July 1 of each year all attorneys are required by this rule to file the attorney registration form and pay the annual fee if active status is desired. Because of a delay in printing of the forms, the mailing was late. While the date for payment has been extended to August 1, 1984, no grace period will be permitted beyond that date. Consequently, failure to comply by that date will be deemed a request for transfer to inactive status (Rule 219(f) (1) P.A.R.D.E.).**

**The Disciplinary Board of the Supreme Court of Pennsylvania**  
8/3/84

### Disciplinary Board Notice

**The Disciplinary Board of the Supreme Court of Pennsylvania is presently interviewing applicants for the position of Chief Disciplinary Counsel to be located in Harrisburg. The position involves supervision of the Board's District Offices and personnel, and supervision of investigations and prosecution of disciplinary matters. All duly qualified applicants for this position are requested to send a detailed resume and salary requirements by September 10, 1984 to John M. Elliot, Esq., Chairman of Search Committee, The Disciplinary Board, Commerce Building, 300 N. Second Street, Harrisburg, PA 17101.**  
8/3/84

Defendant's final set of preliminary objections is a motion for a more specific complaint. As discussed earlier, plaintiff must allege in more detail the business of Cambridge Wreckers and the nature of its "inventory."

Defendant also argues that it is necessary for plaintiff to plead the date upon which Cambridge actually made payment for the Corvette. Once again, since this is a material fact central to the dispute as to which party has priority, we agree that plaintiff must include this information in its amended complaint. *Price*, supra, at 522; Pa.R.C.P. 1019 (a).

## ORDER OF COURT

April 5, 1984, the defendant's demurrer stating that plaintiff does not allege facts from which it could be found that the Corvette is part of the inventory of Cambridge is treated as a motion for more specific complaint and is granted; the demurrer stating that plaintiff has not alleged facts to disprove the existence of a purchase money security interest in the car is denied.

The defendant's motion to strike Count II of the complaint and the motion for a more specific complaint are granted.

The plaintiff is given 20 days from this date to file an amended complaint.

FEDERLINE V. FEDERLINE, C.P., Franklin County Branch,  
F.R. 1983-840  
*Equity - Partition - Divorce Code - Marital Property Platek v. Platek 454 A.2d 1059 (1982)*

1. The Court's power to direct a Partition of property is qualified by its duty to divide marital property in an equitable manner.

2. The Superior Court in *Platek v. Platek* clearly demonstrates its intention to advance the legislative intent of the Divorce Code by favoring equitable distribution in cases to which the Code applies over the equal division mandated by partition.