

Noel V. Noel

Appeal from domestic relations hearing officer's dismissal of plaintiff's support action for plaintiff's failure to appear at conference; Pa.R.C.P. 1910.11(b); Pa.R.C.P. 1930.4(c).

1) Where the plaintiff appeared twice before a domestic relations hearing officer on a support complaint and the defendant twice failed to appear, and the defendant finally appeared at the third conference but the plaintiff did not because he was led to believe his appearance was unnecessary because he had already supplied all financial information, the officer erred in dismissing his complaint.

2) The purpose of Pa.R.C.P. 1910.11(b), which provides that a conference may proceed even if the defendant fails to appear, is to eliminate undue delay which prejudices the plaintiff's rights, and the plaintiff did not receive the benefit of that rule at either the first or the second conference, and under those circumstances, it was unjust for the officer to dismiss his complaint.

3) Local domestic relations practice regarding service of notice of domestic relations conferences should follow the requirements of Pa.R.C.P. 1930.4(c) in utilizing service by mail.

Bradley L. Griffie, Esquire, Counsel for the Plaintiff

Lynn Y. MacBride, Esquire, Counsel for the Defendant

MEMORANDUM OPINION AND ORDER OF COURT

HERMAN, J , October 8, 1998:

The plaintiff, David W. Noel, filed a complaint for support on or about, March 20, 1998. He is presently before the court on an appeal from an Order entered July 7, 1998, subsequent to a domestic relations conference dismissing his complaint. Subsequent to filing the appeal the parties were directed to appear for a hearing de novo on August 26, 1998. The parties were present their respective counsel and agreed on the record that the matters raised in the appeal could be resolved by a review of the record without any additional evidence. The court has had an opportunity to review the record and for the reasons that follow we hold that the Order entered July 7, 1998 dismissing the plaintiff's appeal was in error and the court will enter an Order directing the Domestic Relations Section to reinstate the plaintiff's appeal effective March 20, 1998.

BAR NEWS ITEM

Notice to the Bar

Effective January 1, 1999, the Superior Court will be issuing opinions containing a Universal Citation. This Citation will be as follows: *Jones v. Smith*, 1999 PA Super, 1. The second number is the Court-issued number of the opinion. Each opinion will also have numbered paragraphs, to be used for pinpoint citations, e.g., *Jones v. Smith*, 1999 PA Super 1, 15.

Citations to opinions that have not yet been issued an Atlantic 2d citation are to be to the Universal citation number. After the official citation has been issued, citation is to be only to the official citation, and not to the Universal Citation.

Joseph J. Mittleman
Executive Administrator
Superior Court of Pennsylvania

In reviewing the record we learn that the first conference on the plaintiff's complaint was scheduled for March 20, 1998. Counsel for the parties stipulated that the plaintiff appeared for the conference with counsel but that the defendant did not appear. The Domestic Relations Hearing Officer chose to continue the matter. The court entered another Order directing the parties to appear for a second conference on May 29, 1998. Again the plaintiff appeared, this time without counsel, but the defendant did not appear. Another Order was entered directing the parties to appear for a third conference on July 7, 1998. The plaintiff did not appear for the third conference but the defendant did finally appear. As a result of the plaintiff's failure to appear, the hearing officer recommended entry of the Order dismissing the plaintiff's complaint and such Order was entered on July 7, 1998.

The plaintiff argues there is no basis in law or fact for the dismissal of his complaint when he appeared on two occasions with all the required financial information prepared to proceed. He further argues that dismissal is unjust because he was led to believe he did not have to appear for the third conference. The defendant appears to take the position that since the first two conferences were continued by Order of Court and the plaintiff was ordered to appear a third time and failed to do so he should suffer dismissal. Much of the plaintiff's argument requires the court to consider some matters which may be outside the record. It is sufficient to note that Pa. R. Civ. P. 1910.11 (b) provides that the conference *may* proceed in the event the defendant fails to appear. We can only guess as to the reason why the hearing officer in this matter did not proceed to a conference under this provision at the first conference. Most likely, it was due to concern that appropriate notice was not given pursuant to Pa. R. Civ. P. 1930.4. We conjecture about this because any other unexplained failure to appear by the defendant would not be grounds to continue the case. Rule 1910.11(b) has as its purpose elimination of undue delay which would prejudice the rights of the plaintiff. The plaintiff in this case did not receive the benefit of this rule not only at the first conference ordered by the court but also the second. It is not surprising that the plaintiff would become frustrated under these circumstances and feel that further

attendance at this level would be futile. As noted previously this is contrary to the intent of the rules and we must correct the situation by vacating this court's Order of July 7, 1998 and reinstating the plaintiff's complaint effective March 20, 1998. The court notes in passing that cases such as this will continue to arise unless the rules of civil procedure regulating the conduct of the parties at the conference level are adhered to. As an example, the domestic relations bar is alerted to the fact that it appears the local practice does not follow the requirements Rule 1930.4 (c) in utilizing service by mail. The practical effect of this practice is to eliminate the follow up procedures available in Rules 1910.11(b) and 1910.13-1 to expedite the proceedings.

An appropriate Order of Court will be entered as part of this Memorandum Opinion.

ORDER OF COURT

NOW, this 8th day of October, 1998 the plaintiff's request for reinstatement of the complaint filed March 20, 1998 is GRANTED for the reasons stated in the attached Memorandum Opinion.