

FICTITIOUS NAME NOTICE

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, April 24, 1985, an application for a certificate for the conducting of a business under the name of Dave's Tavern, with its principal place of business at 404 South Main Street, Chambersburg, Pennsylvania. The names and addresses of the persons owning or interested in said business are Gary L. Carter of 488 East Washington Street, Chambersburg, PA 17201, and Jack A. Goulding of 1063 South Fifth Street, Chambersburg, PA 17201.

Patrick J. Redding, Esquire
3 North Second Street
Chambersburg, Pa 17201

5-3-85

NOTICE

A Bankruptcy Judge Search Committee has been appointed to make recommendations to the Judicial Council of the Third Circuit concerning two full-term appointments for United States bankruptcy judge for the Middle District of Pennsylvania. The Search Committee is composed of: James M. Howley, Esquire; Thomas Wood, Esquire; Smith Barton Gephart, Esquire; John H. Doran, Esquire; and Mrs. Elsie Swenson.

Any qualified persons wishing to be considered for appointment should contact:

Bankruptcy Judge Search Committee
c/o William R. Slate, II, Esquire
Third Circuit Executive
Room 20716 U.S. Courthouse
601 Market Street
Philadelphia, PA 19106

to receive a copy of the appropriate application materials. Phone # 215-597-0718.

The position of bankruptcy judge is a fourteen-year appointment, carrying a present salary of \$68,400 per annum. Applicants must be admitted to practice before the highest court of at least one state, or the District of Columbia, and must be in good standing in every other bar of which they are members. All qualified candidates will be considered equally and without regard to race, sex, religious affiliation or national origin.

Completed applications should be received in the Circuit Executive's office by May 17, 1985.

5-3-85

In the context of the Pennsylvania No-Fault Act, residence is one of the requirements to establish the priorities listed in Section 204. While Danny may remain in the "legal custody" of the county, he surely did not live in the home of the county. He lived with his father.

An argument was made that such residence was temporary because he had lived with his mother, was with his father at the time of the accident, then went back to his mother after the accident. There is no question that all the parties, mother, father, Danny, the county youth agency and the court intended that Danny should be residing with his father at the time of the accident.

Under all of these circumstances we find that his residence was with his father and his father's insurance company, U.S.F.&G. is liable for the no-fault benefits.

ORDER OF COURT

September 28, 1984, on the question of liability, we find in favor of Jesse Daniel Smetzer, plaintiff, and against United States Fidelity and Guaranty Company. We find in favor of Commercial Union Assurance Companies and the County of Franklin.

Trial on the issue of damages shall be set on motion of one of the parties if the matter cannot be resolved between them. Costs shall be paid by United States Fidelity and Guaranty Company.

EICHELBERGER v. EICHELBERGER, C.P. Franklin County
Branch, No. F.R. 1983 - 600

Divorce - Alimony Pendente Lite - Counsel Fees

1. The purpose of alimony pendente lite is to ensure that a financially dependent spouse will be able to defend an action in divorce.
2. In making the award the court is to consider the husband's ability to pay, the separate estate and income of the wife, and the general situation of the parties.
3. An award for alimony pendente lite exceeding one-third of the

husband's income will not be overturned in that the one-third rule is a guideline.

4. An interim award of counsel fees is permissible to enable a financially dependent spouse to defend the action.

Forest N. Myers, Esquire, Counsel for Plaintiff

Courtney J. Graham, Esquire, Counsel for Defendant

Richard J. Walsh, Esquire, Master

OPINION AND ORDER

EPPINGER, P.J., October 1, 1984:

Linn Eichelberger filed an action in divorce against his wife, Helen Eichelberger, on September 9, 1983. Helen filed an answer and counterclaim. A Master was appointed to resolve the matters of alimony pendente lite, counsel fees, and expenses.

The Master determined that Helen was entitled to \$525 per month in alimony pendente lite (reduced by any amount of support paid monthly by Linn pursuant to court order of December 7, 1983) and \$1650 in counsel fees and expenses. Linn excepts to the award arguing that the Master's report is contrary to the weight of the evidence, that the Master erred in failing to consider Helen's ability to find employment, her reasons for leaving marital residence, and in finding that Linn's testimony was contradictory and not credible. Linn also believes that the award of alimony pendente lite is contrary to law because it exceeds one-third of his monthly income, and that the award of counsel fees is in error because it is premature and the Master failed to consider Helen's separate estate. After reviewing the record and his findings, we approve the Master's recommendations.

It is apparent after argument and a thorough review of the record, as required in *Rorabaugh v. Rorabaugh*, 302 Pa. Super. 1, 11, 448 A.2d 64, 69 (1982), that Linn, age 42, and Helen, age 53, were married on March 29, 1974. Linn is employed as a truck driver with North and South Lines, Inc., earning \$30,500 and \$26,000 in 1982 and 1983 respectively. His earnings were diminished somewhat in late 1983 and early 1984 due to a hernia operation from which he has recuperated. In addition to his earnings, Linn resides



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in the marital home, making mortgage and other related payments and has about \$800 in a checking account. Helen, on the other hand, worked 25 years as a seamstress for the J. Schoeneman Company but had to leave in 1977 because of rheumatoid arthritis causing inflammation and numbness in her hands and arms. She couldn't make her units. She also suffers from glaucoma, hypertension, anxiety depression, and pre-cordial chest pain. Helen currently receives \$93 per month from occasional but regular domestic work and \$30 per month from a rental property jointly owned by a former spouse. She has no savings, renter's insurance, or retirement plan. She is entitled to \$80 per week in spousal support pursuant to our court order which at the time of the Master's hearing was in arrears \$949.70.

While we are to make an independent review of the evidence, the Master's findings are to be accorded the fullest consideration. *Rorabaugh*, supra, at 11, 69. And here the Master's findings are supported by the record and evidence.

The award of alimony pendente lite in the amount of \$525 per month was reasonable. The purpose of alimony pendente lite is to ensure that a financially dependent spouse will be able to defend an action in divorce. *Remick v. Remick*, Pa. Super. , 456 A.2d 163, 170 (1983). In making the award the court is to consider the husband's ability to pay, the separate estate and income of the wife, and the general situation of the parties. *Young v. Young*, 274 Pa. Super. 298, 303, 418 A.2d 415, 417 (1980). Considering her medical history, Helen is essentially unemployable, except for occasional domestic work, while Linn is employed full-time and has a disposable monthly income in excess of \$1500. This award places both parties on a more equal par in pursuing this action. *Young*, supra, at 303, 417.

Linn argues that the amount of the award is in violation of court decision that an award of alimony pendente lite should not "substantially" exceed one-third of the husband's income and property. *Wechsler v. Wechsler*, 242 Pa. Super. 356, 364, 363 A.2d 1307, 1312 (1976). This is a guide and the award need not be reversed absent an abuse of discretion. *Id.* Accordingly, we find this award was reasonable and appropriate.

The record supports the Master's conclusion that Linn's testimony was not credible. This was one factor to be considered along

with other evidence. A Master has the benefit of observing a witness' demeanor in light of all the testimony and is in the best position to judge the credibility of a particular witness. *Rorabaugh*, supra, at 11, 69. Neither do we find error in the Master's refusal to consider the circumstances under which Helen left the marital residence. That is not a proper consideration in the award of alimony pendente lite. See *Young*, supra, at 302-3, 417.

As to counsel fees, Linn argues that the award is premature and fails to consider Helen's separate estate. Since the purpose of the award of counsel fees is to enable the financially dependent spouse to defend the action, not permitting an interim award would defeat this purpose. *Fried v. Fried*, Pa. Super. , 473 A.2d 1087, 1088 (1984). Further, the Master did consider Helen's separate estate, rental property jointly owned with her former husband. The \$30 monthly income earned from this source only demonstrates the disparity between the parties' available resources and supports the award of counsel fees.

Finding no error in the Master's findings of fact or conclusions, we accept his recommendations.

ORDER OF COURT

October 1, upon consideration of the Master's Report, the exceptions of the plaintiff, Linn H. Eichelberger, are dismissed. It is ordered that plaintiff pay alimony pendente lite to the defendant, Helen R. Eichelberger, in the amount of \$525 per month, that amount to be reduced by \$80 per week only for each week that the plaintiff actually pays support to the defendant in the amount of \$80 per week pursuant to order of court dated December 7, 1983. This award of alimony pendente lite is retroactive to September 28, 1983, pursuant to order of court dated February 23, 1984.

It is further ordered that plaintiff pay counsel fees and costs in the amount of \$1,650.

LOHMAN v. MILLER, C.P. Franklin County Branch, F.R. 1979 - 338

Support - Prior Agreement - Decrease in Amount