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 purpoe 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.

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Support - Prior Agreement - Decrease in Amount

1. Where parties had entered into a property settlement agreement prior to divorce providing for support payments by defendant and thereafter stipulated to a court order providing for support "until further order of court", the court may reduce the amount of support below the amount in the original agreement.

2. Where a contractual agreement is merged into a court order, the agreement takes the identity of a court order and its separate identity ceases.

3. Reference to the parties earnings is one indication that the parties intend that changes in economic circumstances might be grounds for changing a court order.

Kenneth Lee Rotz, Esquire, Counsel for Plaintiff

David C. Cleaver, Esquire, Counsel for Defendant

OPINION AND ORDER

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

Sally Lohman and Jacob Miller were formerly married. They had two sons, Jacob R., born March 26, 1963, and Tobey K., born December 1, 1967. Before they were divorced in 1979, they executed an agreement to settle their rights respecting marital property, financial obligations and the custody and support of the children. Subparagraph 5(b) of that agreement provided:

> Husband hereby agrees to pay the sum of $110.00 per week for the support of the two minor children commencing May 1, 1979, and continuing weekly thereafter until such time as the parties modify or terminate this agreement.

Subparagraph 5(c) continued:

> Beginning December 31, 1985, husband shall pay the sum of $55.00 per week if Tobey enrolls in an institution of higher learning and continue such payments until Tobey graduates or December 31, 1989, whichever occurs first.

After they were divorced, the parties amended the agreement mentioned above by deleting paragraph 5(c) and substituting the following provisions:

> Jacob's support obligation for his children shall cease on December 1, 1985, the anniversary of Tobey's eighteenth birthday. Since Tobey will have the benefit of the trust fund for education purposes referred to above, there will be no need for Jacob to continue his support obligation beyond Tobey's eighteenth birthday.

In all other respects, the agreement of May 21, 1979, is ratified and confirmed.

When defendant fell behind in the monthly payments, Sally filed a complaint under our support laws seeking support in the amount of $110.00 per week. At the hearing on December 11, 1980, this court ordered defendant to pay $110.00 per week plus 50¢ service charge "until further order of the court" for the support of the two children commencing December 15, 1980. Before the order was signed by Judge Keller of our court, he inquired of both parties whether the order presented him by stipulation was the one they wanted him to sign. Both responded it was. The mother said she understood her entitlements and the father said he understood what was required of him under the order. Both parties were represented by counsel.

Defendant, Jacob Miller, filed a petition to modify the December 11, 1980, order, on September 6, 1983. He alleged that circumstances had changed. Jacob R. Miller, one of the children, was 21 and in college. Following a conference, a Domestic Relations hearing officer proposed that the order be reduced to $72.00 per week for the support of Tobey only. The plaintiff, now Sally Lohman, appealed.

In this appeal, the amount of the modification is not in dispute. The question is whether the court has the authority to decrease it in the first place. Relying on the holdings of *Millstein v. Millstein,* Pa. Super. , 457 A.2d 1291 (1983) and *Brown v. Brown,* 495 Pa. 635, 435 A.2d 859 (1981), Sally says we may not. Those cases are cited for the proposition that where a separation agreement covers all aspects of the economic relations of the parties, in a proceeding to modify an order, a court may not reduce the amount to be paid below the amount agreed upon. *Millstein,* at 1294 and 1297.

However, this case is like *Tokach v. Tockach,* Pa. Super. , 474 A.2d 41 (1983), and *Dodd v. Dodd,* Franklin Co. L.J. (F.R. 1981 - 234-S, March 14, 1984), slip op. In *Tokach,* at A.2d

43, the court decided that where the contractual agreement is merged into the court's order, the agreement takes the identity of a court order and the contract as a separate entity ceases to exist. In the concurring opinion, Judge Cavanaugh pointed out that reference to defendant's earnings in setting the amount of the order evidenced the parties' intent that changes in economic status might precipitate changes in husband's support obligation. *Id.,* at 43.

In *Dodd,* a case where a separation agreement did not cover all aspects of the economic relationships of the parties and child support was to be determined by stipulation and agreement, we said:

> In that stipulation and agreement the parties provided that the support agreed upon should continue "until further order of the court." That the stipulation and agreement might be subject to a further order is reflected in the stating of the relative incomes of the parties, suggesting, so it seems, that should the incomes go up or down, a change in the order would be warranted."

Id., at slip op. 2.

Considering that the parties stipulated to their respective weekly incomes and agreed that the support order of December 11, 1980, should continue "until further order of the court," we grant defendant's petition to modify. The use of that phrase within the stipulated support order "is undoubtedly a recognition or reference to the reserved power of the court to modify or change the order." *Whitman v. Whitman,* 430 P.2d 802, 805 (S.Ct. Okla. 1967).

ORDER OF COURT

October 1, 1984, the appeal of Sally Lohman from the order made by Hearing Officer on October 26, 1983, and approved by the court on November 1, 1983, is dismissed. Our order of November 1, 1983, is affirmed and shall remain in full force and effect.

All other costs having been paid, any costs connected with this appeal shall be paid by the defendant.