nonworking parent's contribution to the welfare of a child. Our Supreme Court did not intend to create a *per se* rule that the custodian parent was obligated to work in all cases." 251 Pa. Super. at 112, 113, 380 A. 2d at 402, 403.

The Superior Court added that before a trial court can expect a nurturing parent to seek outside employment and contribute financially it must balance several factors, including the age and maturity of the child; the availability and adequacy of others who might assist the custodian-parent; and the adequacy of available financial resources if the custodian-parent does remain in the home. The court emphasized that, "while not dispositive, the custodian-parent's perception that the welfare of the child is served by having a parent at home is to be accorded significant weight in the court's calculation of its support order." 251 Pa. Super. at 114, 380 A. 2d at 403.

A similar conclusion was reached three years ago in *Commonwealth ex rel. Levinson v. Levinson*, 99 Mont. L.R. (C.P. Montgomery County, 1975). The court held that *Conway v. Dana* did not require a custodial mother of children ages 6 and 12 to go to work to support them because she was already fulfilling her responsibility to her children by working to raise them in a proper home environment. If she left the home to work, a baby sitter would have to be hired to perform her motherly function.

Though the father's son is not a subject of these proceedings, we believe that it is in his best interest to have his mother stay with him. If we were required to balance the contentions here, whether a mother should stay at home with her three year old child or a father should contribute to the support of his daughters who are in college (and it is impossible to do both), we would conclude that the former is more exacting than the latter. *Commonwealth ex rel. Ulmer v. Somerville*, 200 Pa. Super. 640, 190 A. 2d 182 (1963).

ORDER OF COURT

NOW, January 12th, 1979, the prayers of the complaints are denied. Costs shall be paid by the Plaintiffs.

ELHUFF v. WASHINGTON TOWNSHIP MUNICIPAL AUTHORITY, C.P. Franklin County Branch, Eq. Doc. Vol. 7, Page 165

Equity - Preliminary Objections - Municipal Authorities Act of 1945, Section 4-B(h) - Motion to Strike - Reasonable Rates - Demurrer

1. A preliminary objection in the nature of a motion to strike will be granted where an action is brought on the equity side of the court under Section 4-B(h) of the Municipal Authorities Act of 1945, 53 P.S. Sect. 306, for relief as to the propriety of sewage fees fixed by a township municipal authority.

2. Under the foregoing circumstances suit should be properly brought on the law side of the court.

3. A complaint which avers that a water meter is read incorrectly and that the party is consequently overbilled is sufficient to state a cause of action under the "reasonableness of services" clause of Section 4-B(h) of the Municpal Authorities Act of 1945.

4. A motion for more specific pleading will be granted where the party fails to state on what dates he made requests to a township municipal authority questioning his charges.

Donald L. Kornfield, Esq., Attorney for Plaintiff

Jan G. Sulcove, Esq., Attorney for Defendant

OPINION AND ORDER

KELLER, J., January 22, 1979:

This action was commenced by the filing of a complaint in equity on July 10, 1978, and service of the same upon defendant on July 28, 1978. Preliminary objections in the nature of a petition raising a question of jurisdiction, a demurrer, a motion to strike, and a motion for a more specific complaint were filed on August 16, 1978.

First, it should be noted that plaintiff concedes points 1 and 2 of the defendant's motion to strike, and agrees to correct the caption and that the attorney's fee claimed should be deleted.

The defendant raises the issue of lack of equitable jurisdiction. With this contention, we must agree. The plaintiff brings this action pursuant to Section 4-B (h) of the Pennsylvania Municipal Authorities Act of 1945, 53 P.S. 306, claiming that the defendant's water rates are not uniform and, therefore, in violation of Section 4-B (h) of the Act. Section 4-B (h) gives every authority the power to fix, alter, and charge rates that are reasonable and uniform. The section further provides:

"Any person questioning the reasonableness and the

> uniformity of any rate fixed by any authority... may bring suit against the Authority in the court of common pleas of the county wherein the project is located.... The Court of Common Pleas shall have *exclusive jurisdiction* to determine all such questions involving rates or service." (Emphasis ours).

The question whether equitable jurisdiction may be invoked in a proceeding under this section was squarely decided by Justice Jones in *Calabrese v. Collier Township Municipal Authority*, 430 Pa. 289 (1965), where it was held that a court of common pleas sitting in equity lacked jurisdiction to entertain an action for relief as to sewage fees fixed by the township municipal authority and brought under Section 4-B (h). Justice Jones, speaking for the Supreme Court held:

> "The statute provides an *exclusive* remedy for passing upon the reasonableness of the rates of a municipal authority by proceeding before a tribunal to which it has given *exclusive* jurisdiction to determine such questions. Such tribunal is not a court of common pleas sitting as a chancery court, as appellees urge, but a common law court of common pleas." Supra, p. 297.

See also *South Union Township Sewage Authority v. Kozares*, 13 Cmwlth. 353 (1977), and *Tornetta v. Plymouth Township Municipal Authority*, 31 Cmwlth. 353 (1977).

This court lacks equitable jurisdiction and the suit should have been properly brought on the law side of the court. The defendant's preliminary objection is sustained, and this action shall be transferred to the law side of the court. *Falls Township Authority v. Penn Park Inc.*, 61 D&C 2d 533 (1972).

The defendant's demurrer states the complaint fails to state a cause of action because it failed to allege any facts upon which the court might find a violation of Subsection B (h) of Section 4 of the Act as it pertains to an alleged lack of uniformity of rates is not the question because plaintiff is being charged the same rate as other users and that the real issue is the method by which plaintiff is being charged under the established rate system.

We tend to agree that uniformity of rates is not the real issue. However, Section 4-B(h) of the Municipal Authorities Act covers not only uniformity of rates but also the reasonableness of the rate fixed and collected. "Any person questioning the *reasonableness*, or uniformity of any rate fixed by any Authority or the *adequacy, safety and reasonableness of the Authority's services*, including extensions thereof, may bring

suit. . ." (Emphasis ours). The complaint states that the meter is being read incorrectly and plaintiff is being overbilled. These and the other factual allegations in the complaint are sufficient to state a cause of action under the "reasonableness of services" included in Section 4-B (h). The factual allegations do state a cause of action under the Municipal Authorities Act Section 4-B(h) and the demurrer is dismissed.

The defendant alleges three circumstances where the complaint lacks specificity. The first deals with paragraph 5 of the complaint which states:

> "Defendant, despite repeated requests from Plaintiff, has in the past and continues in the present, to bill the Plaintiff for water use based upon a meter reading in one hundred gallon increments, thereby charging Plaintiff for water use greatly in excess of the actual use."

Defendant wants plaintiff to state the nature of the requests, when made, to whom, and the responses given.

Paragraph 5 is sufficient to apprise the defendant of the nature of the requests. When considered with reference to the allegation of paragraph 4, it says the plaintiff's meter was being read in increments of 100 gallons instead of 10 gallons, and that plaintiff was being overcharged. It appears clear to the court and should be to the defendant what the nature of the requests were. The plaintiff will be required to specify, to the best of his knowledge, the times he made the requests, to whom made, and what responses were given. The defendant's first Motion for More Specific Complaint is granted as herein modified.

The defendant's second motion for a more specific pleading seeks to have the plaintiff aver with more particularity the method by which plaintiff calculated his water usage as alleged in paragraph 6. This motion is denied for the manner of computation is an evidentiary matter which need not be pleaded. *Smith v. Allegheny County*, 397 Pa. 404 (1959). *Yazwiwski v. Yazwiwski*, 61 Lack. J. 119 (1959). The plaintiff will be required to prove at trial what his actual water use was, if relevant. The second motion will be denied.

The final motion for a more specific complaint alleges that plaintiff must inform the defendant with more particularity the basis upon which plaintiff makes his contention in paragraph 4 and 5 of the complaint that he was billed improperly. Paragraph 4 states that the meter should be read in increments of 10 gallons and pargraph 5 avers that defendant read the meter in increments of 100 gallons and that the plaintiff was being

READERS, PLEASE NOTE . . .

We expect to complete printing of the opinion pages for Bound Volume 2 by the end of April, 1979. Volume 3 of the advance sheets will probably commence on May 4, 1979. While it will probably be several months more before Bound Volume 2 is ready for distribution, we must now start to plan for the quantity to be prepared for binding. Subscribers in Franklin County who want **extra** copies of Bound Volume 2 should therefore immediately notify the managing editor. Persons outside Franklin County who want copies of Bound Volume 2 should get in touch with Geo. T. Bisel Company in Philadelphia.

overcharged. These two allegations read in conjunction with paragraph 7 of the complaint adequately inform the defendant of the basis of the plaintiff's claim that he was billed improperly. Any other information would be evidence. The plaintiff has pleaded sufficient factual allegations to enable the defendant to be cognizant of the basis of the plaintiff's improper billing allegation and the motion is dismissed.

ORDER OF COURT

NOW, this 22nd day of January, 1979:

1. This matter is ordered removed from the Equity side of this Court and transferred to the Law side.

2. The defendant's demurrer is dismissed.

3. The motions to strike are granted.

4. Motion for a more specific pleading No. 1 is granted; all other motions are denied.

Plaintiff is granted twenty (20) days from date hereof to file an amended complaint.

Exceptions are granted plaintiff and defendant.

VALLEY BANK AND TRUST CO. v. ROBERTS, C.P. Franklin County Branch, No. A.D. 1978-448

Evidence - Witnesses - Testimony - Self-incrimination

1. The privilege against self-incrimination is not confined to criminal cases alone and applies to witness as well as parties.

2. Whether the witness' answer would tend to incriminate him is to be determined by the trial judge inquiring as to whether a reasonable apprehension of such damage exists.

3. When the possibility of criminal prosecution is so remote, viz. minor nature of criminal act coupled with running of statute of limitations, there is no reasonable cause for a witness to fear incrimination.

Jan G. Sulcove, Esq., Attorney for Plaintiff

David C. Cleaver, Esq., Attorney for Defendant