

SUSAN C. WINGERD, Plaintiff,
v. RANDALL L. WINGERD, Defendant
Court of Common Pleas of the 39th Judicial District of Pennsylvania,
Franklin County Branch
2003-55

Alimony pendente lite; Support appeal

1. Alimony pendente lite is alimony or maintenance "pending litigation" and is payable during the pendency of a divorce proceeding so as to enable a dependent spouse to proceed with or defend against the action.
2. A petition for modification or termination of an existing support order shall specifically aver the material and substantial change in circumstances upon which the petition is based. Pa.R.C.P. 1910.19(a).
3. A "material and substantial change in circumstances" does not have to be an economic change in circumstances.

Appearances:

Carol A. Redding, Esq., Counsel for Plaintiff

Stephen D. Kulla, Esq., Counsel for Defendant

OPINION

Van Horn, J., June 8, 2004

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Background

1. On January 22, 2003, Susan C. Wingerd (hereinafter "Wife") filed a Complaint for Alimony Pendente Lite (hereinafter "APL").
2. On March 24, 2003, an Order was entered granting Wife \$487.37 per month for APL.
3. On April 10, 2003, Randall L. Wingerd (hereinafter "Husband") filed an appeal to the Court's Order of March 24, 2003.
4. On August 13, 2003, the Court's Order of March 24, 2003 was modified by agreement of the parties such that Wife now received \$225.00 per month for APL.
5. On January 9, 2004, Wife filed for a modification of the support order.
6. On March 1, 2004, the Petition to Modify was dismissed without prejudice due to the circumstances not warranting an upward modification.
7. On April 6, 2004, Wife filed an appeal to the Court's Order of March 1, 2004, and a new Petition for Modification.
8. On April 20, 2004, the second Petition to Modify was dismissed without prejudice with the notation that the circumstances did not warrant an upward modification of the support order.
9. On May 12, 2004, Wife filed an appeal to the Court's Order of April 20, 2004.

10. On May 19, 2004, a hearing was held at which counsel agreed to present their positions in writing regarding the issue of whether a request for a modification in the APL award could be granted.

11. The parties have stipulated that if a modification is granted, the incomes reflected in the original March 24, 2004 Order and other terms and conditions contained therein, would remain the same for purposes of calculating a new APL award.

Discussion

The issue before the Court is whether a recipient of APL, who has stipulated to an Order in her favor, can request an upward modification of said Order, absent a change in economic circumstances.

Rule 1910.19(a) addresses support modifications and states, "[a] petition for modification or termination of an existing support order shall specifically aver the material and substantial change in circumstances upon which the petition is based." Pa.R.C.P. 1910.19(a). "'[APL]' just the same as 'maintenance and support' may be modified or vacated by change in circumstances." Jeffery v. Jeffery, 296 A.2d 873 (1972).

Husband interprets the above to mean that Wife cannot ask for a modification in APL without averring an economic change in circumstances. Nowhere in the above language, nor in any case law cited by Husband, is petitioner limited to requesting a modification based only on a change in economic circumstances. Rather, to request a modification, the petitioner may aver any "material and substantial change in circumstances." Pa.R.C.P. 1910.19(a).

Furthermore, Husband claims that because the parties entered into the agreement independently and submitted the agreement to the Court for approval, the parties should be bound by the agreement. In support of this argument, Husband cites Reighard v. Reighard, 42 Pa.D.&C.3d 356 (Lehigh 1985), which says that an agreement regarding alimony, which was voluntarily entered, may not be modified.

First, Reighard is a Common Pleas decision and thus not binding on this Court. Second, because the purposes of alimony and APL are different, the Court does not find Reighard persuasive. The Court does agree with Reighard that agreements between parties should generally be enforced; however, if the Court were to enforce the present agreement the purpose of APL would not be met. APL is "alimony or maintenance 'pending litigation' and is payable during the pendency of a divorce proceeding so as to enable a dependent spouse to proceed with or defend against the action." Jayne v. Jayne, 663 A.2d 169, 176 (Pa. Super 1995), citing Heilbron v. Heilbron, 27 A. (1893) (citations omitted).

At the time Wife agreed to modify the original order awarding her APL, she was under the impression that the parties' property issues would be settled promptly and thus she was not in need of a significant amount of APL. Husband's counsel, at the time the parties agreed to modify the first order awarding Wife APL, represented that her office was holding monies in an amount sufficient to begin and possibly settle the marital property issues pending in this matter and that such resolution would be prompt, thus avoiding the necessity for extensive litigation. However, because Husband has taken no steps since that time to resolve the marital property issues, Wife is now in need of funds to move the divorce forward.

Wife contends that the change in circumstances contemplated by Pa.R.C.P 1910.19(a) need not be a change in economic circumstances, but rather that her change in circumstances supports a modification. Her change in circumstances came about when Husband did not follow through with his end of the agreement, thus putting Wife at an economic disadvantage to now move forward with the divorce.

The Court agrees that Wife has sufficiently averred a material and substantial change in circumstances upon which her petition for modification is based.

Conclusion

A petition for a modification of APL "shall specifically aver the material and substantial change in circumstances upon which the petition is based." Pa.R.C.P. 1910.19(a).

The Court finds that Wife has sufficiently stated her change in circumstances in that she agreed to a reduction in APL only after being told that everything was in line to resolve the matter quickly and now, a year later, Husband has done nothing to move the case forward, thus making it necessary for her to have funds to move the divorce forward herself.

ORDER OF COURT

And now this 8th day of June, 2004, upon consideration of Wife's Appeal from the Dismissal of her Petition

to Modify APL, letters submitted by counsel, and the relevant law, it is hereby ordered that Wife is entitled to a modification of the Order of August 13, 2003, with an effective date of April 20, 2004, and this case is remanded to the Domestic Relations division of this Court for entry of an Order in accordance with this Opinion.