

Strait v. Strait

BEVERLY J. STRAIT, Plaintiff, v. RONALD L. STRAIT, Defendant  
Court of Common Pleas of the 39th Judicial District of Pennsylvania,  
Franklin County Branch  
No. 2004-713

*Spousal support, Earning Capacity/Income, Alimony Pendente Lite, Health Insurance Coverage*

1. To determine the issue of spousal support, the following calculation must be done: (1) To obtain the parties' respective net annual incomes, we must deduct only those items listed in Pa.R.C.P. 1910.16-2(c) from their gross annual incomes. (2) To determine the parties' monthly net income, we divide their respective annual net incomes by twelve. (3) Application of the relevant formula set forth in Pa.R.C.P. 1910.16-4(a) results in a preliminary amount of monthly spousal support. (4) Further, Pa.R.C.P. 1910.16-6 provides for additional adjustment of this amount for those expenses enumerated in Pa.R.C.P. 1910.16-6, which are childcare expenses, health insurance premiums, unreimbursed medical expenses, private school tuition, and mortgage payments.

2. Where the parties' respective net incomes approximate each other and where the Plaintiff chooses not to obtain health insurance through her employer who makes it available to her at reasonable cost and where Defendant does not carry health insurance, even on himself, because of the prohibitive cost, neither party will be required to bear the cost of health insurance for the other party.

Appearances:

Galen R. Waltz, Esq., *Counsel for Plaintiff*

Martha B. Walker, Esq., *Counsel for Defendant*

OPINION

Walsh, J., July 13, 2005

Background

On or about July 30, 2004, Plaintiff Beverly J. Strait filed a Complaint for Support. A Domestic Relations Office Conference was initially scheduled for September 8, 2004. Plaintiff's counsel at the time sought a continuance and the matter was ultimately heard on October 8, 2004. The Domestic Relations Office issued an administrative Order dated October 8, 2004 dismissing Plaintiff's Complaint for Support without prejudice due to "after doing the support calculations, there is no monetary amount to award for spousal support." The Order was signed by the Honorable Carol L. Van Horn. On October 15, 2004, the Plaintiff demanded a hearing citing the following reasons: "The income of my husband is understated. He is self-employed as a realtor and his 2003 income was substantially higher than he presented for 2004 to the hearing officer. My income was overstated. I work all the hours my place of employment is open for business. I am not able to emotionally work a second job at this time." Thereafter, on October 21, 2004, Plaintiff filed a second Demand for a Hearing stating her objections to the Order as recommended as follows: "At the support conference, husband represented that he paid for health coverage for wife. The wife has discovered that her coverage had been canceled by husband without warning effective September 1, 2004, prior to the date of the support conference in this case. The wife needs alimony to pay for the coverage she has lost." By Order dated October 22, 2004, the matter was set for evidentiary hearing on December 22, 2004.

At the request of Plaintiff's new counsel, the matter was then continued from December 22, 2004

to February 16, 2005. At the request of Plaintiff's counsel, the matter was once again continued from February 16, 2005 to April 13, 2005. For reasons not apparent in the case file, the evidentiary hearing was then rescheduled from April 13, 2005 to June 8, 2005 on which date the evidentiary hearing actually was finally held. Evidence at the hearing established that each continuance, both of the Domestic Relations Office Conference and of the evidentiary hearing, was sought by Plaintiff and that none of the continuances were sought by Defendant.

### Evidence

At the hearing, the parties reached the following Stipulation: "Computing an average of the ten (10) most recent bi-weekly pay periods, the Defendant has been working 35.35 hours per week; and the first eight (8) pay periods she was paid at the rate of \$11.80 per hour and the last two (2) pay periods the Plaintiff was paid at the rate of \$12.50 per hour." The testimonial and documentary evidence at the hearing established additional matters. The Plaintiff is an orthodontic assistant and has been employed as such for a little over nine (9) years. She currently works part-time, approximately sixteen (16) days per month and she testified that she has no opportunity through her current employer to go to full-time employment. She testified credibly that as of last August, her psychologist, Jeffrey Lensbower, advised her not to seek more than her part-time employment because of the then state of her mental health. She further testified credibly that about four (4) months prior to the hearing, she asked her employer if he had full-time employment available for her. The Court infers, from the totality of the Defendant's testimony with respect to full-time employment, that she appeared to have been ready, willing and able to accept full-time employment from her current employer as recently as four (4) months ago, despite her earlier testimony that Mr. Lensbower advised against it. Parenthetically, the Court notes that the Plaintiff produced no written reports from her counselor; that she testified without objection as to her medical diagnosis and that such evidence, though inadmissible, was not objected to. See Collins v. Cooper, 746 A.2d 615, 2000 Pa. Super 22, for the proposition that a lay witness may not testify to the existence or non-existence of a disease or disorder. Also, see Commonwealth v. Neal, 713 A.2d 657 for the proposition that the Court, as a fact finder, may disregard inadmissible evidence.

There was substantial evidence regarding certain accounts and certain joint accounts and both deposits to and withdrawals made from those accounts. The Court believes that evidence was not material to any matter under consideration by the Court. Further, even if the evidence were deemed to be material, the evidence suggests that both parties had access to the accounts for the purposes of deposits and withdrawals and we are inclined to agree with Defendant's counsel that evidence regarding such is more germane to matters of equitable distribution than it is to matters of spousal support.

Mr. Strait testified that the parties separated in April 2004 and between the date of separation and the date that Plaintiff filed a Complaint for Support he continued to pay certain matters on her behalf including a \$587.00 per month mortgage payment. He testified without contradiction that he paid all automobile insurance for the Plaintiff, for their son, Jeremy, and for himself, that he made his wife's car payment of about \$600.00 per month and that he paid the Plaintiff's health insurance at the rate of about \$600.00 per month. Defendant/Husband testified that he has worked as a realtor for approximately four and one-half (4-1/2) years and that his income fluctuates simply because of the nature of that business. He testified and he produced exhibits including tax returns establishing that his business income for calendar year 2002 was \$27,667.00. His business income for calendar year 2003 was \$48,000.00 and that was because of the sale that year of a commercial building for which he received a commission of \$40,000.00. Defendant/Husband's business income for calendar year 2004 was \$5,962.00. He testified that an extrapolation of his business income for the first four (4) months of 2005 projects a \$12,000.00 business income this year. Finally, Defendant/Husband produced evidence of very substantial expenses that he pays to his employer ReMax for things like advertising expenses and use of office staff, many of which expenses appear to be standard in that industry. The Defendant testified that at the Domestic Relations hearing, he was prepared to stipulate, based on fluctuating income over the years from the real estate business, to a \$35,000.00 annual income and he maintained that position at the evidentiary hearing. We will ascribe to the Defendant an income of \$35,000.00 annually.

Because Plaintiff is able to work 40 hours per week and because she has a demonstrated earning capacity of \$12.50 per hour, the Plaintiff will be ascribed an annual earning capacity of \$26,000.00.

Considering the balance of the evidence, the parties' respective net monthly incomes are determined to be as follows:

1. To obtain the parties' respective net annual incomes, we must deduct only those items listed in Pa.R.C.P. 1910.16-2(c) from their gross annual incomes.

a. For Defendant, we must deduct the sum of \$3654.96 (federal income taxes), \$1106.04 (state income taxes), \$350.04 (local income taxes), \$2169.96 (F.I.C.A. taxes), and \$507.48 (Medicare taxes), or a total of \$7788.48, from \$35,000 (gross annual income). It appears Defendant does not pay union dues, alimony, alimony pendente lite, or child support. Thus, Defendant's net annual income is \$27,211.52 (\$35,000 - \$7788.48).

b. For Plaintiff, we must deduct the sum of \$2304.96 (federal income taxes), \$821.64 (state income taxes), \$260.04 (local income taxes), \$1611.96 (F.I.C.A. taxes), and \$377.04 (Medicare taxes), or a total of \$5375.64 from \$26,000 (gross annual income). It appears Plaintiff does not pay union dues, alimony, alimony pendente lite, or child support. Thus, Plaintiff's net annual income is \$20,624.36 (\$26,000 - \$5375.64).

2. To determine the parties' monthly net income we divide their respective annual net income by twelve.

a. Defendant's monthly net income is \$2267.63 (\$27,211.52 divided by 12).

b. Plaintiff's monthly net income is \$1718.70 (\$20,624.36 divided by 12).

Application of the formula set forth in Pa.R.C.P. 1910.16-4(a), Part IV, Spousal Support or APL (without dependent children), causes us to multiply the difference in the parties' net monthly income, \$548.93 (i.e., \$2267.63 less \$1718.70) by 40% thus arriving at a preliminary amount of monthly spousal support of \$219.58. Further, Pa.R.C.P. 1910.16-6 provides for additional adjustment of this amount for those expenses enumerated in Pa.R.C.P. 1910.16-6, which are childcare expenses, health insurance premiums, unreimbursed medical expenses, private school tuition, and mortgage payments.<sup>[1]</sup> In this case, childcare expenses, private school tuition and mortgage payments are not in issue. Plaintiff produced exhibits related to unreimbursed medical expenses at Chambersburg Hospital and CVS Pharmacy. See Pet'r Ex. 2 and Pet'r Ex. 3. However, it appears from the record that Plaintiff is not seeking reimbursement from Defendant for these expenses. Therefore, the Court shall not consider them in making this computation. Thus, the only adjustment at issue in this matter under Pa.R.C.P. 1910.16-6 would be for health care premiums. The evidence provides that Defendant is not paying health insurance premiums for anyone, including himself, due to the cost and thus is uninsured. Plaintiff testified that health care through her employer would cost her \$102 per paycheck, or bi-weekly, and that since she cannot afford that amount she is not currently enrolled in the health care plan. She too is uninsured. Since neither party is paying a health insurance premium, there is no adjustment due under Pa.R.C.P. 1910.16-6. Thus, the total amount of monthly supported owed by Defendant to Plaintiff is \$219.58.

### Conclusions

1. Issues properly relegated to the Master will be handled in that venue and not addressed in the context of this complaint for alimony *pendente lite*.

2. Defendant will be ascribed an income of \$35,000.00, pursuant to his offer, upon evidence that the average over the prior three years of his business income is approximately \$27,500.00.

3. Plaintiff will be ascribed an earning capacity (i.e., income) of \$26,000.00 based upon a 40 hour work week and a demonstrated earning capacity of \$12.50 per hour.

4. Where the parties' respective net incomes approximate each other and where the Plaintiff chooses not to obtain health insurance through her employer who makes it available to her at reasonable cost and where Defendant does not carry health insurance, even on himself, because of the prohibitive cost, neither party will be required to bear the cost of health insurance for the other party.

5. Defendant shall pay to Plaintiff alimony *pendente lite* in the amount of \$219.58 per month, effective September 8, 2004, the date Plaintiff filed for support. Defendant shall pay an additional \$50.00 per month on the arrearages and shall pay 57% of Plaintiff's medical bills not covered by health insurance.

### ORDER OF COURT

July 13, 2005, upon consideration of the record of these proceedings, the testimony and exhibits of the parties, the arguments and post-hearing submissions of the parties and the law, it is ordered that the

matter be returned to the domestic relations office for the generation of a new PASCES order consistent with the foregoing opinion.

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[1] This corresponds to line 30 in the form at Pa.R.C.P. 1910.16-4(a), *Part IV, Spousal Support or APL* (without dependent children).