

DANIEL MORGAN, Plaintiff, v. SHERI MORGAN, Defendant  
Court of Common Pleas of the 39th Judicial District of Pennsylvania,  
Franklin County Branch  
Civil Action — Law, No.2007–1510

*Petition to Modify Alimony Pursuant to Property and Separation Agreement*

1. In addition to considering the factors set forth in 23 Pa.C.S. § 3701 of the Domestic Relations Code to determine whether alimony is necessary, the Court can order modification of an existing alimony award based on changes in the parties' circumstances. Teribery v. Teribery, 562 A.2d 33 (Pa.Super. 1986).
2. Moreover, in the present case, the parties entered into an Agreement in 2003 which, by its terms, provided for the opportunity for either party to move to increase, decrease, or terminate the modifiable portion of alimony following July 1, 2007.
3. The purpose of the alimony is not to reward one spouse, nor to punish the other, but rather to ensure that the reasonable needs of a party going through a divorce, who is unable to support himself/herself through appropriate employment, are met.
4. Alimony is a secondary remedy to bring about economic justice where it cannot be accomplished through an equitable distribution award or development of suitable employment skill. Nemoto v. Nemoto, 620 A.2d 1216 (Pa.Super. 1993).
5. There is no requirement that the supporting spouse pay alimony to ensure that the payee's lifestyle remains unchanged. Fexa v. Fexa, 578 A.2d 1314 (Pa.Super 2000).

Appearances:

Michael J. Connor, Esq., *Counsel for Plaintiff*

Michael B. Finucane, Esq., *Counsel for Defendant*

OPINION

Van Horn, J., November 5, 2007

Procedural History

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1. Daniel Morgan (hereinafter "Husband") and Sheri Morgan (hereinafter "Wife") were married on May 18, 1984.
2. Pursuant to a Judgment of Absolute Divorce, the parties were divorced on March 20, 2003 in the Circuit Court for Montgomery County, Maryland.
3. A Certified Copy of the Divorce Decree was filed on May 3, 2007, in the Court of Common Pleas of Franklin County, Pennsylvania.
4. Pursuant to the Judgment of Absolute Divorce, provisions of what amounted to a Property and

Separation Agreement (hereinafter "Agreement") were placed on the record by the parties in open court on March 18, 2003, and were incorporated, but not merged, into the Judgment of Divorce. A copy of the Agreement is attached to Husband's Petition as Exhibit "A."

5. Pursuant to the Agreement, Husband agreed to pay Wife \$5000.00 per month of non-modifiable alimony, payable on the first of each month through June 30, 2007.

6. Pursuant to the Agreement, starting July 1, 2007, \$1,000.00 of the alimony was to remain non-modifiable through 180 months, or 15 years, and either party could move to increase, decrease, or terminate the remaining \$4000.00 of modifiable alimony.

7. On May 4, 2007, Husband filed a Petition to Modify Alimony with this Court.

8. Within the Petition, Husband averred that it was the intention of the parties to have the alimony in the amount of \$5,000.00 remain non-modifiable until two of the parties' three children reach the age of majority, and once they did, it would be appropriate to request a Court to modify the alimony in accordance with the Agreement.

9. As of July 1, 2007, two of the parties' three children reached the age of majority.

10. A hearing on Husband's Petition to Modify Alimony was held in this Court beginning on August 16, 2007, and, due to an insufficiency in time allotted for the taking of evidence, the matter was continued and completed on September 24, 2007.

#### Discussion

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The issue before the Court is whether Husband should be awarded a modification of his alimony obligation. Although the Divorce Decree and Agreement were executed in Montgomery County, Maryland, the parties stipulated at the beginning of the hearing that Pennsylvania law would govern the present proceedings. This Court will rely on the factors set forth in 23 Pa.C.S. § 3701 of the Domestic Relations Code relating to alimony in guiding its decision.

In addition to considering the factors set forth in §3701 to determine whether alimony is necessary, the Court can order modification of an existing alimony award based on changes in the parties' circumstances. Teribery v. Teribery, 562 A.2d 33 (Pa.Super. 1986). Moreover, in the present case, the parties entered into an Agreement which, by its terms, provided for the opportunity for either party to move to increase, decrease, or terminate the remaining \$4,000 of modifiable alimony following July 1, 2007. Husband hopes to take advantage of that opportunity for modification, while Wife opposes and requests a significant increase to \$8,000 per month in addition to a contribution from Husband for the children's college expenses.

At the time of divorce, the parties did not have a stable standard of living based on income. They had accumulated debt of approximately \$475,000, the majority of which was to be repaid, in accordance with the Agreement, through the sale or refinancing of the parties' family home by August of 2003. Unfortunately a sale or refinancing of the home did not occur until the following August of 2004. Husband testified that, although unemployed at the time of the divorce, he attempted to make payments on the mortgage and other debts that were outstanding at the time, with no contributions from Wife, in addition to his monthly child support and alimony obligations. As a result, Husband fell far behind on his alimony and child support payments, as he was making unexpected mortgage payments in order to keep the house from going into foreclosure. The house was eventually sold by a court-appointed trustee and Husband was ordered to use his share of the proceeds to pay the alimony and child support arrearages that had accrued between the time of the divorce and the sale of the home. Proceeds of the sale also went towards paying off two mortgages on the home, but remaining marital debt still existed in the amount of \$133,000, which Husband assumed.

Since the time of separation and divorce until recently, Husband continued to struggle to keep up with his support obligations as well as managing the additional debts remaining from the marriage. He testified that he had to request a loan from his parents and more recently from his girlfriend in order to meet his various monthly expenses, and is still working towards paying them back as well. As of February, 2007, Husband became employed as a Senior Director in Tax Planning at Tyco Electronics, earning a salary of \$225,000.00 per year. In addition to alimony and child support obligations, Husband is responsible for three-fourths of the children's college expenses, based on the cost to attend the University of Maryland. Two of the parties' three children are presently attending private colleges: Rosalie Danielle Morgan is

attending Sweet Briar in Virginia and Thomas Anthony Morgan is attending St. John's in New York. Husband testified that he fully intends to meet this obligation of contributing to the children's college education and could do so if his alimony payments were reduced to \$1,000.00 per month. Husband also submits that he will "catch up" on payments for the college tuition obligation for the parties' children that are delinquent.

Conversely, since the time of separation and divorce, Wife has made no attempts to secure employment and instead has chosen to pursue her personal educational goals by enrolling in a Ph.D. program in nursing at Catholic University in Washington, D.C. Husband argues that the purpose of the initial alimony award of \$5,000 per month was to give Wife sufficient time to get back into the workforce and to become self-supporting. The Court believes that Wife has not acted reasonably in having relied on alimony to support herself for a period in excess of four years and choosing to not be gainfully employed in her field of nursing which is a field of great opportunity and demand.

In lieu of pursuing gainful employment, Wife used her resources to enroll in a Ph.D. program that kept her away from home for up to 16 hours per day on some coursework days. The Court cannot reconcile this fact with Wife's testimony that one of the main reasons she has chosen not to work is that she must be present at home to tend to the needs of the parties' 17-year-old son Charlie who is autistic. Moreover, Wife's mother is presently living with her and the children and has been able to aid in Charlie's care while Wife attends classes at least three times a week. Wife testified that she has made no effort to obtain employment over the last five years and, at this time, she does not accept any responsibility for the financial support of her children.

Additionally, the Court finds that Wife has not acted reasonably with respect to her lifestyle. She used the proceeds from the sale of the family home towards the purchase of a new home, for which she paid \$600,000. Wife has chosen to use her resources, presumably the alimony and loans from her mother, to pursue a higher education with the goal of doing grant work from home. Even if Wife achieves this goal, she still would not be able to support the expenses she has chosen to incur.

The purpose of the alimony is not to reward one spouse, nor to punish the other, but rather to ensure that the reasonable needs of a party going through a divorce, who is unable to support herself through appropriate employment, are met. Alimony is a secondary remedy to bring about economic justice where it cannot be accomplished through an equitable distribution award or development of suitable employment skill. Nemoto v. Nemoto, 620 A.2d 1216 (Pa.Super. 1993). There is no requirement that the supporting spouse pay alimony to ensure that the payee's lifestyle remains unchanged. Fexa v. Fexa, 578 A.2d 1314 (Pa.Super 2000).

### Conclusion

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More than four years have lapsed since the date of divorce, and more than five and one-half years have lapsed since the date of separation. During that time, Husband struggled financially but managed to meet his support obligations with the exception of the year in which the family home was being sold. Husband is seemingly back on track with a successful employment opportunity and able to honor his obligation of contributing to his children's college education. On the other hand, Wife has made no actual progress towards becoming self-supporting since the time of the divorce and instead has been relying on support payments, as well as the help of her mother, in order to pursue a Doctorate degree in Nursing. The Court believes that Husband has fulfilled his support obligation with respect to Wife over the past five years and will grant his Petition for Modification.

### ORDER OF COURT

And now this fifth day of November, 2007, after hearing and upon consideration of arguments presented, it is hereby ordered as follows:

1. Alimony is reduced to \$1,000 per month, effective July 1, 2007.

2. Alimony paid to Defendant from July 1, 2007, to date in excess of \$1,000 per month shall be treated as credit towards future alimony owed to Wife at the rate of \$1,000 per month through June 1, 2022.

3. Husband remains under obligation for a portion of the children's college expenses and he shall make payments directly to their educational institutions upon written notice by Defendant of the college tuition and related expenses of the bills as they come due.