

ANNETTE C. KELLER, NOW ANNETTE C. PINE, v. ANTHONY W. KELLER
Court of Common Pleas of the 39th Judicial District of Pennsylvania,
Franklin County Branch
No. 2004-910, PACSES No. 935106794

Support Appeal; Review of Alimony Pendente Lite Award

1. The Pennsylvania Support Guidelines set forth the amount of support which a spouse or parent should pay on the basis of both parties' net monthly incomes as defined in Rule 1910.16-2 and the number of persons being supported. Pa R.C.P. 1916-1(a)(1).
2. There is no need to consider the actual expenses of the parties in order to establish the reasonable needs of a spouse, as the primary emphasis is on net income and earning capacity. See Terpak v. Terpak, 697 A.2d 1006 (Pa. Super. 1997).
3. The respective incomes of the parties is a proper factor for determination, as the purpose of APL is to sustain the dependent spouse on an equal basis with the other spouse during pending litigation.
4. The guidelines also contain a rebuttable presumption that the amount of the award determined from the guidelines is the correct amount of support to be awarded. The presumption shall be rebutted if the trier of fact makes a written finding, or a specific finding on the record, that an award in the amount determined from the guidelines would be unjust or inappropriate. Pa R.C.P. 1910.16-1 (d).

Appearances:

Janice M. Hawbaker, Esq., *Counsel for Plaintiff*

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

OPINION

Van Horn, J., November 5, 2007

Statement of the Case

Annette C. Keller (hereinafter "Wife") and Anthony W. Keller (hereinafter "Husband") were married on August 23, 1986, and separated on May 8, 2007. Following the separation, Wife filed a Complaint for spousal support and child support for the parties' son Austin on May 31, 2007 with the Franklin County Domestic Relations Section. On June 25, 2007, Husband filed his own Complaint, seeking support in the form of Alimony Pendente Lite ("APL"). Following a support conference held on June 28, 2007 with the Franklin County Domestic Relations Section, a Final Order of Court was issued on August 7, 2007. Husband's total child support obligation was calculated to be \$698.21. An APL off-set in the amount of \$349.06 was properly considered pursuant to the Pennsylvania Support Guidelines, Pa R.C.P. 1910.16-4 (e). Therefore, Husband is currently paying \$349.15 in child support for Austin, who resides with Wife. This amount is based on a determined monthly net income of \$3,181.79 for Husband and a monthly net income of \$3,356.33 for Wife. The net income amounts were calculated after considering the APL off-set.

Wife filed an appeal, requesting that Husband be held to a full-time earning capacity. In her pre-trial memorandum, Wife submitted that Husband has chosen not to work full-time, and requested that his earning capacity be considered equal to hers according to Pa.R.C.P. 1910.16-2 (d)(4). Wife has since retreated from this position after hearing Husband's testimony that his employment is in fact full-time, despite time periods throughout the year in which business slows down.

In his pre-trial memorandum for the appeal hearing, Husband submitted that his earnings are actually lower than the determined \$3,181.79. Husband requested that his net income be recalculated to consider his business expenses, in accord with his most recent 2006 Federal Income Tax return. Specifically, Husband disputes two of the add-backs, namely the small tools and supplies, that the Domestic Relations officer considered in determining his income. Additionally, Husband asks the Court to remove the amount added to his income for the insurance coverage benefit he is receiving from Wife, as Husband submits that he has obtained his own insurance coverage.

An appeal hearing was held before this Court on November 5, 2007. Based on Husband's testimony that he is comfortable with his current income and does not feel the need to solicit additional work, the Court questioned whether Husband actually needed the APL that had been awarded to him. At the Court's request, the parties submitted additional memos detailing their positions on the APL award. After considering the pre-trial memorandums for the appeal hearing, the arguments, the additional memos addressing the parties' positions on the APL award, and the law, this case is ripe for decision.

Discussion

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There are three issues before the Court: (1) Whether Husband is entitled to the award of Alimony Pendente Lite; (2) Whether Domestic Relations erred in adding back amounts for small tools and supplies when calculating Husband's income; and (3) Whether Husband should receive a credit for his health insurance coverage.

1. Whether Husband is entitled to the award of Alimony Pendente Lite

Husband relies heavily on the statutory support guidelines within Pa R.C.P. 1910.16 to support his position that he is not only entitled to APL but that it should be recomputed, along with his child support obligation, following the requested reduction in his earning capacity.

The Pennsylvania Support Guidelines set forth the amount of support which a spouse or parent should pay on the basis of both parties' net monthly incomes as defined in Rule 1910.16-2 and the number of persons being supported. Pa R.C.P. 1916-1(a)(1). These guidelines were properly followed by the Franklin County Domestic Relations Section in determining Husband's child support obligation, as well as the APL award.

The guidelines also contain a rebuttable presumption that the amount of the award determined from the guidelines is the correct amount of support to be awarded. The presumption shall be rebutted if the trier of fact makes a written finding, or a specific finding on the record, that an award in the amount determined from the guidelines would be unjust or inappropriate. Pa R.C.P. 1910.16-1 (d). Husband also cites Pa R.C. P. 1910.16-4 (e), which explains the offset method concerning non-custodial parent's obligation for support of the child and the custodial parent's obligation for APL. These guidelines were also properly followed by the Franklin County Domestic Relations Section.

Husband cites Terpak v. Terpak, 697 A.2d 1006 (Pa. Super. 1997) to assert that there is no need to consider the actual expenses of the parties in order to establish the reasonable needs of a spouse, but that the primary emphasis is on the net income and earning capacities of the parties. "The trier of fact must assume initially that the guideline amount constitutes the amount necessary to meet the reasonable needs of the child [or spouse]." Id. at 1007. Husband points out that his income is less than Wife's, as it was during their marriage, and adds that it will be decreased even more after his child support payments, making his economic status even less equivalent to Wife's while litigation is pending. Wife argues that Husband did not demonstrate any need for support throughout his testimony at the appeal hearing, and also points out that Husband is present living with his girlfriend, in her home.

After reviewing additional case law and the factors that are considered when issuing an award of APL, the majority of cases rely heavily on a proper application of the guidelines as well as the relative incomes of the parties. The respective incomes of the parties is a proper factor for determination, as the

purpose of APL is to sustain the dependent spouse on an equal basis with the other spouse during pending litigation. And although Husband lives with his girlfriend, there was no testimony or evidence to suggest that his income is supplemented in any way by hers. Therefore, based on the previous findings of the Domestic Relations Office, the statutes, and lack of factors to consider beyond the parties' finances from case law, the Court finds it appropriate to continue the award of APL, despite Husband's testimony that he is comfortable with his current income.

2. Whether Domestic Relations erred in adding back amounts for small tools and supplies when calculating Husband's income

Husband's memo suggests that the Domestic Relations Officer should not have added back certain amounts that Husband categorizes as business expenses in calculating his total income. Specifically, Husband disputes the amounts added back for what are categorized as "small tools," itemized in Husband's Exhibit 3, and "supplies," itemized in Exhibit 4.

With respect to the small tools, there are four (4) payees listed and Husband testified as to the purchases made: 1) S&S Electric – drills, attachments, and right angle drills; 2) R.B. Wholesale – lift used for working on cars; 3) Cummings – a variety of hand tools; and 4) Sandy Marsh – Husband could not recall what was purchased from Ms. Marsh. The total amount was calculated to be \$4,025.39, half of which was added back by Domestic Relations. Husband asserts that the total amount should be considered business expenses and therefore, excluded from the calculation of his income. After considering Husband's testimony with respect to the small tools and their relevance to his business, A&K Industries, the Court will allow for a deduction of the tools purchased from S&S Electric, in the amount of \$239.38, and those purchased from Cummings in the amount of \$536.01, for a total deduction of \$775.39. The other two items, namely the lift used for Husband's auto hobby and the amount paid to Sandy Marsh for which Husband could not recall, will not be excluded from Husband's income calculation. With the Court's new calculations, the resulting figure to be added back to Husband's income from the small tools will be \$3,250.00 as opposed to the fractioned amount of \$2,012.50 that Domestic Relations used in its calculation.

With respect to the supplies, the Court first points out a discrepancy in the total amount listed on Husband's Exhibit 4 report at \$5,618.82, and the amount listed on Husband's 2006 Tax Return, Schedule C, line 22 at \$5,827.00 (also Husband's Exhibit 1). For purposes of this opinion, the Court will use the amount listed on Schedule C, \$5,827.00, half of which was added back to Husband's income for a total of \$2,913.50. The itemized list of supplies includes some items that the Court finds questionable, as there was no testimony regarding their purpose or use in Husband's business and no documentation regarding their specific use. Therefore, the Court finds that Domestic Relations did not err in adding back half of Husband's supplies when calculating his income.

Moreover, based on testimony offered at the appeal hearing as well as the memos submitted by the parties, the Court will order that an additional \$900 be added as annual income for Husband's snow removal work and other odd job earnings throughout the year.

3. Whether Husband should receive a credit for his health insurance coverage

The final issue to be resolved between the parties concerns Husband's health insurance coverage. As the situation stands now based on information provided after the hearing and confirmed in a conference with counsel for the parties, Wife has insurance coverage available for the entire family through her employment and continues to include Husband under her insurance coverage, as they are still married. Wife objects to Husband being given any sort of credit for obtaining his own insurance, as she alleges that the information he provided to counsel to serve as proof of his coverage is inaccurate and invalid. Husband represents that he has obtained his own health insurance coverage through his girlfriend's employer, Lady Moon Farms, and submitted a letter documenting the same (Husband's Exhibit 2). The letter provides that the coverage is effective November 11, 2007 and lists the monthly premium payments. Husband submits that the health insurance premium paid by Wife should be deleted from his income calculation.

Due to the fact that Husband is not an employee of Lady Moon Farms and instead is reportedly receiving coverage through the company as a member of his girlfriend's household, the Court finds this coverage to be tenuous at best. Due to the fact that Wife is obligated to provide insurance coverage for Husband throughout these proceedings, the Court will not give Husband credit if he chooses to pay double coverage for himself.

Conclusion

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Based on the previous findings of the Domestic Relations Office, and after consideration of the relevant statutes and case law, the Court determines that Husband is entitled to an award of APL throughout the remainder of these proceedings. The Court also determines that Domestic Relations did not err in adding back to Husband's income an amount equal to one-half of his business supplies. Moreover, an additional \$900 will be added as annual income for Husband's snow removal work and other odd job earnings throughout the year.

With respect to the small tools, the Court will allow a deduction for two items from the small tools list to be applied in the amount of \$775.39, representing the amounts spent at S&S Electric and Cummings, as these are deemed to be proper business expenses and should therefore be excluded from the income calculation. This amount will be subtracted from the total of \$4,025.39, leaving an amount of \$3,250.00 to be added to Husband's gross income, as opposed to \$2,012.50 as calculated by Domestic Relations. Finally, the Court will not credit Husband for obtaining his own health insurance coverage, as the Court finds this coverage to be supplemental to the presently sufficient coverage provided through Wife's employer.

ORDER OF COURT

Now this 5th day of November, 2007, upon consideration of Wife's Support Appeal, memos submitted by counsel and a hearing, it is hereby ordered as follows:

1. Husband shall continue to receive support in the form of Alimony Pendente Lite, pursuant to the Order from the Franklin County Domestic Relations Section dated August 7, 2007.
2. The amount to be added back to Husband's income representing the small tools used for his business will be \$3250.00 as opposed to \$2012.50 as previously ordered by Domestic Relations.
3. An amount of \$900.00 will be added to Husband's income, representing the earnings received from additional jobs and services he completes throughout the year.
4. Husband will not receive a credit for obtaining his own health insurance coverage.
5. All other calculations on which the August 7, 2007, Order is based not otherwise inconsistent with this Order are hereby affirmed.

This case is remanded to Domestic Relations to calculate the award of Alimony Pendente Lite, as well as Husband's child support obligation consistent with the findings of this opinion.