

LISSEFELD v. LISSEFELD, C.P. Franklin County Branch,
F.R. 1980 - 473-S

Support - Spousal Support - Adulterous Relationship - Balance of Equities

1. The Court will dismiss the petition for support of a needy plaintiff where the evidence shows; that the plaintiff commenced an adulterous relationship months before the defendant's adulterous relationship, persisted in the relationship while claiming support from the defendant, and declined to reconcile with defendant and move to his home near his place of employment.

David W. Rahausser, Assistant District Attorney, Attorney for the Commonwealth

Timothy S. Sponseller, Esq., Attorney for the Defendant

OPINION AND ORDER

KELLER, J., November 21, 1980:

This action for support was commenced under the Reciprocal Act by the plaintiff, Patti Lissefeld, filing her petition in the Family Court Division of the Court of Common Pleas of Lackawanna County. The plaintiff alleged marriage to the defendant, John Lissefeld, on November 28, 1970 at Newark, New Jersey; that she did not know whether the defendant was employed; that she was unemployed; that she was receiving Public Assistance in the amount of \$172.00 per month; and that she was asking for support for herself in the amount of "more than what I am getting from Welfare." The defendant appeared without counsel at a hearing on August 6, 1980, and the following facts were developed:

1. The defendant is John H. Lissefeld and he resides at Box 23, Shady Grove, Pennsylvania.

2. He was employed as a sawmill assembler by Frick Forest Products, Inc. from September 26, 1979 until March 1, 1980 when he was laid off due to lack of work. Prior to September 26, 1979 he had been employed by Georgia-Pacific in Williamsport, Maryland doing comparable work.

3. The defendant is receiving Unemployment Compensation in the amount of \$106.00 per week.

4. On March 14, 1979 while the defendant was residing in Martinsburg, West Virginia a complaint in divorce entered to No. 841 March Term 1979 in the Court of Common Pleas of

Lackawanna County was served upon him alleging as grounds for divorce cruel treatment and indignities. The plaintiff was Patti Marie Lissefeld a/k/e Pasqualina Lissefeld. The defendant has heard nothing further concerning the divorce proceeding, and has been unable to ascertain whether a Decree in Divorce was ever granted to the plaintiff herein.

5. To the knowledge of the defendant the plaintiff was last employed in June of 1978 as a domestic at Shawnee on the Delaware; there is nothing wrong with her; and no reason why she shouldn't work.

6. The defendant is under a support order he believes issued by this Court to pay the sum of \$105.00 per month for the support of three children by a prior marriage. He pays the \$105.00 per month as regularly as possible directly to his ex-wife for the support of an epileptic son, Jean Pierre Lissefeld, age 20; Robert Henry Lissefeld, age 18; and Theresa Lissefeld, age 17.

7. In addition to paying pursuant to the support order, when he can and in the amount he can, he also helps his ex-wife with the medical expenses for the epileptic son. The defendant's other expenses are rent of \$200.00 per month, heat \$29.00 per month, electricity \$15.00 per month, water \$40.00 per month, food \$30.00 per week, transportation \$10 per week, and clothing and other expenses \$30.00 per month. Due to the defendant's limited income he testified he is "going in the hole," and some months all of his bills are not paid.

8. For over two years the plaintiff has been living with another man.

9. The plaintiff and defendant separated in June 1978.

10. The defendant is seeking employment and has filed applications with several manufacturing firms in the area.

11. For approximately the last year and a half the defendant has been living with a woman. The defendant's friend is unemployed and receives no Public Assistance or Unemployment Compensation. The defendant is supporting her.

At the conclusion of the hearing an order was entered directing the transcription of the notes of testimony, and the forwarding of the same together with a copy of the order to the Family Court Division of the Court of Common Pleas of Lackawanna County with the request that additional information be provided specifically as to the monthly expenses of the plain-

LEGAL NOTICES, cont.

NOTICE IS HEREBY GIVEN pursuant to the provisions of the Act of Assembly of May 24, 1945, P.L. 967 and its amendments and supplements of intention to file with the Secretary of the Commonwealth of Pennsylvania at Harrisburg and with the Prothonotary of the Court of Common Pleas of Franklin County, Pennsylvania, on February 18, 1981, an application for a certificate for the conducting of a business under the assumed or fictitious name of WAYNESBORO YARN BASKET with its principal place of business at 13 North Church Street, Waynesboro, PA 17268. The name and address of the person owning or interested in said business is Wanda C. Pruszko, 11502 Orchard Road, Waynesboro, PA 17268.

Maxwell, Maxwell & Dick, Attorneys
Wayne Building
Waynesboro, PA 17268

(2-13-81)

NOTICE IS HEREBY GIVEN pursuant to the provisions of the Act of Assembly of May 24, 1945, P. L. 967 and its amendments and supplements of intention to file with the Secretary of the Commonwealth of Pennsylvania at Harrisburg and with the Prothonotary of the Court of Common Pleas of Franklin County, Pennsylvania, on or after Feb. 17, 1981, an application for a certificate for the conducting of a business under the assumed or fictitious name of FLOWERS BY PAUL-CORBETT with its principal place of business at 7251 Lincoln Way West, Box 291, St. Thomas, PA. 17252. The names and addresses of all persons owning or interested in said business are Richard C. Angle, 65 Meadowcreek Drive, Chambersburg, PA 17201 and William P. Lukehart, 65 Meadowcreek Drive, Chambersburg, PA 17201.

(2/13/81)

NOTICE is hereby given by McDOWELL INSURANCE, INC., a Pennsylvania business corporation with its registered office at 338 Lincoln Way East, Chambersburg, Pennsylvania, that Articles of Amendment, changing the aggregate number of shares which the corporation shall have authority to issue from forty thousand shares to one million shares and the par value of such stock from fifty (\$.50) cents a share to no par value were filed with the Department of State of the Commonwealth of Pennsylvania on December 26, 1980, under the provisions of the Business Corporation Law, Act of 1933, P.L. 364, as amended.

McDOWELL INSURANCE, INC.

Black and Davison, Attorneys
209 Lincoln Way East
Chambersburg, PA 17201

(2-13-81)

LEGAL NOTICES, cont.

IN THE COURT OF COMMON PLEAS
OF THE 39TH JUDICIAL DISTRICT
OF PENNSYLVANIA — FRANKLIN
COUNTY BRANCH

The following list of Trustees, Guardians of Minors, Guardians of Incompetents and Custodians Accounts will be presented to the Orphans' Court Division of the Court of Common Pleas, Franklin County, Pennsylvania for Confirmation on March 5, 1981.

BARKLEY First and final account, statement of proposed distribution and notice to the creditors of the Valley Bank & Trust Company, successor to National Valley Bank & Trust Company, successor to the Valley National Bank of Chambersburg, Trustee for Jane I. Barkley, under agreement of Trust dated November 17, 1961, reasons why distribution can not be made.

GLENN E. SHADLE
Clerk of Orphans' Court
of Franklin County, Pa.

(2-13-81, 2-20-81)

NOTICE IS HEREBY GIVEN pursuant to the provisions of the Act of Assembly of May 24, 1945, P. L. 967 and its amendments and supplements of intention to file with the Secretary of the Commonwealth of Pennsylvania at Harrisburg and with the Prothonotary of the Court of Common Pleas of Franklin County, Pennsylvania, on February 20, 1981, an application for a certificate for the conducting of a business under the assumed or fictitious name of A COUNTRY ROAD GIFT SHOP with its principal place of business at 6952 Lemar Road, Mercersburg, Pa. 17236. The names and addresses of all persons owning or interested in said business are John K. Gingrich and Evelyn H. Gingrich, 6952 Lemar Road, Mercersburg, Pa. 17236.

Wingerd and Long
14 North Main Street
Chambersburg, PA 17201

(2/13/81)

tiff, whether a divorce had been granted the plaintiff, whether the plaintiff was employable, whether the individual with whom the plaintiff is living may be providing support or partial support for her.

Pursuant to the order of this Court a deposition of the plaintiff was taken on September 2, 1980, and transcribed by the Chief Official Court Stenographer for the 45th Judicial District, and the transcript forwarded to the Domestic Relations Division of this Court. From the deposition and attached exhibit it can be found:

1. The plaintiff is currently receiving treatment from the Community Mental Health/Mental Retardation Center of Greater Scranton and the staff psychiatrist concluded as of May 20, 1980 that she was unable to be gainfully employed due to her current mental status.

2. She has lived with a male friend for a period of two years as of September 22, 1980. She and her friend share living expenses which include rent of \$150.00 per month, electricity of \$45.00 per month, telephone bill of \$19.00 per month, gas bill of \$100.00 per month, and water and sewerage of \$13.00 per month. No other expenses were identified.

3. The plaintiff's friend was as of the date of the deposition between jobs, but receiving regular checks in an amount unknown to her.

4. She did not complete the divorce proceeding she had commenced against the defendant because she did not have the funds necessary to pay her private counsel, and the defendant was unwilling to pay one-half of the cost of the divorce. The parties are, therefore, still married.

5. The plaintiff was not as of the date of the deposition employed, and had not been employed since 1974 when she injured her back, with the exception of working as a domestic one day a week for several months in 1978.

6. The plaintiff was not living with her friend prior to the separation of the parties. She commenced her relationship with her friend three months after the separation.

7. Contrary to the defendant's testimony he did not commence contributing to the support of his children by his prior marriage until plaintiff urged him to do so, and he was threatened with incarceration.

8. The plaintiff is not claiming any amount of the support for herself. The Department of Public Welfare is requiring her to make the claim.

9. The plaintiff just wants out of the marriage.

10. When the defendant left the plaintiff he left in the company of Linda Thomas.

The defendant appeared at a hearing on October 15, 1980 with counsel, and testified:

1. Beginning in May 1978 the plaintiff abused the defendant verbally; would not keep the house clean; had eight to ten dogs; threw food on the floor; publicly accused the defendant of not getting her pregnant; called him a lazy bastard and a no-good f--er; went away at night; threatened him with a knife; and threw things such as ashtrays and food at him.

2. The defendant left the plaintiff and moved to Martinsburg, West Virginia on June 17, 1978. He informed the plaintiff of his whereabouts three days after he left.

3. Linda Thomas was a neighbor of the parties in Scranton and he did not leave his wife for or with Linda Thomas. He left alone.

4. After the defendant was in Martinsburg for three months he contacted the plaintiff and they agreed to meet to see if they could reconcile. The defendant sent money to the plaintiff to come by bus to the meeting place. Plaintiff stated she did not want to leave Scranton; she did not want to go to Martinsburg, and she did not want to give up her Welfare.

5. In June of 1978 the defendant was not employed and the plaintiff was working one day per week, but she did not stay home when she was not working. The defendant did do some of the housework.

6. The defendant took employment with Frick Forest Products, Inc. on September 26, 1979, and moved to Shady Grove from Martinsburg in November 1979. Frick Forest Products, Inc. has now gone bankrupt.

7. The defendant is now receiving Unemployment Compensation of \$123.00 per week.

8. The defendant's ladyfriend has been living with him since February 1979, but prior to that date he did not live with

anyone.

On the basis of the evidence presented we find as facts:

1. The parties are married.

2. The plaintiff is unemployed and currently unemployable.

3. The defendant is receiving Unemployment Compensation in the amount of \$123.00 per week.

4. The plaintiff is receiving Public Assistance.

5. The defendant left the plaintiff and the marital home on June 17, 1978.

6. In September 1978 the defendant sought to reconcile with the plaintiff and to have her come live with him in Martinsburg, West Virginia, and the plaintiff refused to reconcile.

7. In September 1978 the plaintiff commenced an adulterous relationship which has continued to September 2, 1980.

8. There is no evidence that the defendant connived or condoned the plaintiff's adultery.

9. The defendant commenced an adulterous relationship in February 1979, and it has continued to October 15, 1980.

10. There is no evidence that the plaintiff connived or condoned the defendant's adultery.

The defendant contends that due to the prior adultery of the plaintiff, she has forfeited her right to demand support from him despite the fact that he subsequently also entered into an adulterous relationship.

We have considered the cases of *Helman v. Helman*, 246 Pa. Super. 536, 371 A. 2d 1964 (1977), *Commonwealth ex rel. D'Andrea v. D'Andrea*, Pa. Super. , 396 A. 2d 765 (1978), and *Commonwealth ex rel. Carmack v. Carmack*, Pa. Super. , 407 A. 2d 1314 (1978) as requested by counsel for the parties. Recognizing the rule that support laws are not promulgated for the purpose of rewarding a spouse's good behavior, we believe it remains the responsibility of the Court to balance the equities in determining whether a financially capable spouse shall be required to contribute to the support of a needy spouse.

While this Court utterly disapproves of any adulterous relationship, it is our conclusion that in the case at bar a balancing of the equities requires the petition of the plaintiff to be dismissed for:

1. She commenced her relationship months before the defendant commenced his relationship.

2. She has persisted in the relationship while claiming support from the defendant.

3. She declined to reconcile with the defendant and move to his home near his place of employment.

ORDER OF COURT

NOW, this 21st day of November, 1980, the petition of Patti Lissefeld for support is dismissed.

Exceptions are granted the plaintiff.

Costs to be paid by the County of Franklin.

WALIZER v. GLARE CONTROL OF WAYNESBORO, INC.,
C.P. Franklin County Branch, A.D. 1980 - 274

Assumpsit - Oral Employment Contract - Permanent Employment

1. In the absence of a specific restriction, either statutory or contractual, an "at will" contract of employment may be terminated at any time by either party to the contract for any reason or for no reason.

2. The burden is on the plaintiff to overcome the presumption that a contract was terminable at will in the absence of a specific agreement as to tenure of employment.

3. The term "permanent employment" in an oral contract of employment does not show an intention of the parties to create anything more than "at will" contract of employment.

William S. Dick, Esq., Counsel for Plaintiff

Robert P. Shoemaker, Esq., Counsel for Defendant

OPINION AND ORDER

KELLER, J., November 28, 1980:

This action in assumpsit was commenced by the filing of a complaint on September 18, 1980, and service upon the defendant on September 23, 1980. The plaintiff inter alia alleges in his complaint:

1. In paragraph 3 that the plaintiff and defendant's President on August 27, 1979 agreed to an oral contract of employment under which the plaintiff agreed to discontinue his then existing employment at an hourly rate of \$6.25 per hour, and come to work for the defendant at defendant's place of business "as a permanent employee and the Defendant agreed to guarantee to the Plaintiff a 40-hour work week at the hourly rate of \$6.25 per hour and provide full Blue Cross/Blue Shield medical insurance."

2. The plaintiff discontinued his prior employment on September 3, 1979; commenced his work for the defendant on September 10, 1979; and performed all work required of him.

3. On January 2, 1980 the President of the defendant informed the plaintiff that he was "laid off."

4. The plaintiff informed the President of the defendant on January 2, 1980 and numerous times thereafter that he was ready and willing to perform under the employment contract, but the defendant prevented him from doing so until the date of the filing of the complaint.

5. The plaintiff claims \$9,958.00 to be due him consisting of \$250.00 per week from January 2, 1980 until the date of the filing of the complaint (37 weeks), plus the cost to him of Blue Cross/Blue Shield medical insurance premiums.

On October 13, 1980 defendant filed preliminary objections in the nature of a demurrer on the grounds that the plaintiff failed to allege in his complaint that the plaintiff's employment by the defendant was for any specific period of time.

Briefs were submitted and arguments heard on November 6, 1980, and the matter is now ripe for disposition.

The only allegation concerning the terms of the contract of employment alleged by the plaintiff appears in paragraph 3:

"On August 27, 1979, the Plaintiff and the Defendant by its