

The Family Court of the State of Delaware



FELICE GLENNON KERR
JUDGE

NEW CASTLE COUNTY COURTHOUSE
500 N. KING STREET, SUITE 9400
WILMINGTON, DELAWARE 19801-3732

January 4, 2017

R. S.

LETTER DECISION AND ORDER

David C. Gagne Esq.
Giordano DelCollo Werb & Gagne LLC
5315 Limestone Road
Wilmington DE 19808

Re: R. S. v. W. E.
(Ancillary Matters - Alimony)
File No.: CN10-05981, Petition No.: 15-35162

Dear Ms. S. and Counsel:

An Ancillary Hearing was held on January 4, 2017. Present for the Hearing was R. S. ("Wife") in representation of herself and W. E. ("Husband") with his attorney, David C. Gagne, Esquire ("Counsel"). As the parties consented to all matters pertaining to property division, the only matter left for decision was that of alimony.

At the outset of the Hearing, Husband's Counsel made a Motion *in Limine* that Wife be precluded from presenting evidence relating to her income or her monthly expenses. Counsel explained that Wife had not provided Husband with any documentation relating to her income or expenses. The only documentation provided to Husband was a profit loss statement prepared by her accountant with no supporting documentation. When questioned in Court, Wife stated that her accountant prepared the profit loss statement and that she thought she had provided Husband with all of the documentation that she was required to provide. Wife acknowledged that she did not provide any documentation of her expenses or a list of her expenses to husband's counsel. The First Request for Production of Documents requested in paragraph 3, "Updated list of monthly expenses with underlying documentation." The second Request for Production of Documents requested in paragraph 12, "All documents supporting each and every monthly current expenses you wish to have the Court consider in calculating alimony. For any expense you believe will change, has changed, or may change, please provide documentation to substantiate that fact."

When asked by the Court how she intended to prove her need for alimony, Wife indicated that she would testify as to her expenses which she knows. While Wife may or may not be able to testify as to all her monthly expenses, she still did not comply with the Request for Production of Documents although an Order was entered compelling compliance.

Husband filed a Motion to Compel the production of documents in June of 2016. At that point in time, Wife was represented by an attorney, and Wife's attorney responded to the Motion indicating that Wife was gathering the required documentation. The Court Granted Husband's Motion to Compel on June 10, 2016, and ordered that all documentation be provided by July 8, 2016. On August 17, 2016, Husband filed a second Motion to Compel stating that Wife had not provided documentation as ordered by the Court. The Court denied this Motion based on representations by Wife's attorney denying that the documentation was not provided and believing that the documents had been supplied after the filing of the second Motion to Compel and before the Response to the Second Motion to Compel was filed. Wife's attorney withdrew on September 2, 2016.

Additionally, the need to provide documentation was discussed at the Ancillary Hearing on November 10, 2016. Prior to that hearing Wife was to provide a list of her current monthly expenses in form set forth in page 9 and 10 of the Rule 16(c) financial report. Wife did not do so. The Court recognizes that Wife is currently unrepresented but Wife was represented when the two Motions to Compel was filed and Wife is not totally relieved of basic obligations due to her *pro se* status. The Court cannot intervene to the point that the Court would essentially be representing Wife to the detriment of Husband.

Pursuant to 13 DEL. C. § 1512, the Court may award alimony to a dependent party.¹ While the court can alleviate the prejudice to Husband in Wife's failure to

¹ Pursuant to 13 Del. C. § 1512:

- (a) The Court may award interim alimony to a dependent party during the pendency of an action for divorce or annulment.
- (b) A party may be awarded alimony only if he or she is a dependent party after consideration of all relevant factors contained in subsection (c) of this section in that he or she:
 - (1) Is dependent upon the other party for support and the other party is not contractually or otherwise obligated to provide that support after the entry of a decree of divorce or annulment;
 - (2) Lacks sufficient property, including any award of marital property made by the Court, to provide for his or her reasonable needs; and
 - (3) Is unable to support himself or herself through appropriate employment or is the custodian of a child whose condition or circumstances make it appropriate that he or she may not be required to seek employment.
- (c) The alimony order shall be in such amount and for such time as the Court deems just, without regard to marital misconduct, after consideration of all relevant factors, including, but not limited to:
 - (1) The financial resources of the party seeking alimony, including the marital or separate property apportioned to him or her, and his or her ability to meet all or part of his or her reasonable needs independently;

provide supporting documentation for her profit and loss statement by either attributing Wife with her gross receipts or attributing Wife with income from the Wage and Labor Survey, the same cannot be done for her expenses. Husband is severely prejudiced by Wife's failure to provide documentation pursuant to the Requests on her expenses. Husband would have been able to prepare for questions regarding her expenses had the documents been provided. Wife did not even provide a bare list of expenses to Husband's counsel or to the Court in the pretrial. If there were a lesser sanction which would address Wife's failure without prejudice the Court would enter the lesser sanction. However, there is no lesser sanction.

Thus, the Court cannot permit Wife to testify as to her expenses. Without evidence as to Wife's monthly expenses, dependency cannot be established as Wife's reasonable needs cannot be determined. Wife was informed by the Court at the pretrial conference that she needed to provide the opposing party with certain documentation. In addition, two Motions to Compel were filed against Wife during a time when Wife was represented by Counsel. Therefore, the Court finds that Wife was aware that she needed to produce documentation relating to her income and expenses but failed to do so.

As the Court cannot determine Wife's reasonable needs, the Court will set alimony at \$00.00 per month. Wife may file to modify this alimony award upon a showing of a real and substantial change in circumstances.² The Court went forward regarding the taking of evidence concerning child support as the Court had previously consolidated child support with the ancillary matters. While the two matters were consolidated for hearing purposes, child support shall be by separate Order as this makes modification more efficient in the future.

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- (2) The time necessary and expense required to acquire sufficient education or training to enable the party seeking alimony to find appropriate employment;
 - (3) The standard of living established during the marriage;
 - (4) The age, physical and emotional condition of both parties;
 - (6) Any financial or other contribution made by either party to the education, training, vocational skills, career or earning capacity of the other party;
 - (7) The ability of the other party to meet his or her needs while paying alimony;
 - (8) Tax consequences;
 - (9) Whether either party has forgone or postponed economic, education or other employment opportunities during the course of the marriage; and
 - (10) Any other factor which the Court expressly finds is just and appropriate to consider.

² 13 Del. C. § 1519(a)(4) states in pertinent part:

- (a) A decree or separate order entered under § 1518 of this title may be modified or terminated only as follows:
 - (4) Alimony or any other relief awarded only upon a showing of real and substantial change of circumstances.

ORDER

Husband is hereby ordered to pay alimony to Wife in the amount of \$00.00 monthly.

IT IS SO ORDERED this 4th day of **January, 2017**.

Very truly yours,

Felice Glennon Kerr, Judge

FGK/sml

Date emailed: 1-5-17