

IN THE COURT OF COMMON PLEAS OF CARBON COUNTY, PENNSYLVANIA
DOMESTIC RELATIONS SECTION

SUSAN J. POST,
Plaintiff

Vs.

JOHN D. ANDERSON,
Defendant

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PACSES CASE NO. 202300986

DOMESTIC RELATIONS SECTION

Christine A. Holman, Esquire

Counsel for Plaintiff

Robert S. Frycklund, Esquire

Counsel for Defendant

MEMORANDUM OPINION

Matika, J. - August 30, 2022

On August 1, 2022, Appellant/Defendant, John D. Anderson (hereinafter "Defendant" or "Husband"), filed an appeal to the Pennsylvania Superior Court claiming that the Court erred when it issued its June 8, 2022, Order of Court, sustaining in part and overruling in part, Appellee/Plaintiff's, Susan J. Post (hereinafter "Plaintiff" or "Wife"), "Plaintiff's Exceptions to the Hearing Officer's Report Filed in the Domestic Relations Section Dated November 23, 2021." For the reason stated herein, this Court seeks affirmance of that decision from the Appellate Court.

FACTUAL AND PROCEDURAL BACKGROUND

The parties entered into a Property Settlement Agreement on December 29, 2020, which required Defendant to pay alimony in the amount of \$318 per month for a total of 72 months, inclusive of

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CARBON COUNTY
DOMESTIC RELATIONS OFFICE

the months he paid spousal support before the entry of the divorce decree. The Property Settlement Agreement, in relevant part, reads as follows: "Husband's obligation to alimony shall be non-modifiable **except** upon the reduction of Husband's employment Income or Wife's remarriage and/or cohabitation" Defendant filed a "Petition for Modification of Alimony" on June 15, 2021, based on the assertion that his current income should be used in the alimony calculation. Defendant's current income is lower than his income that was used to calculate alimony. A De Novo hearing was held on October 14, 2021 via conference call. (emphasis ours).

On November 22, 2021, the Hearing Officer issued her Report, recommending the alimony obligation be terminated. The Hearing Officer concluded that while Husband voluntarily decreased his income and was not entitled to the new income in the alimony calculation, by Husband filing the modification, it "opened the door" for Wife's current income to be used in the alimony calculation. Husband's income remained the same, but Wife's increased, and as a result, alimony was terminated. On November 23, 2021, the Domestic Relations Office issued an order to this effect, and sent notice of the right to file exceptions to the parties.

Wife filed timely exceptions to the Hearing Officer's Report on December 7, 2021. The Domestic Relations Office sent both parties notice of the scheduled argument on March 3, 2022, as well

as a briefing schedule. Plaintiff's brief was due February 16, 2022, and Defendant's brief was due February 26, 2022. The parties stipulated to forego oral argument and instead opted to only brief the exceptions. Neither party objected to the timeline for the scheduled argument or the briefing schedule. This Court issued an Order of Court on June 8, 2022, sustaining in part and overruling in part, Plaintiff's exceptions. The effect of the Order ultimately denied Defendant's motion for modification of his alimony obligation to Plaintiff.

Thereafter, on August 9, 2022, Husband filed his Notice of Appeal. Defendant subsequently filed a Motion for Reconsideration as well as concise statement of matter complained of on appeal. This Court entered a subsequent Order of Court on June 30, 2022, granting the Motion for Reconsideration in part to correct an error on the Carbon County Domestic Relations Order dated June 16, 2022¹, but denying that Motion in all other respects.

In this concise statement, Husband alleges four (4) errors by the Trial Court, namely that:

¹ The June 16, 2022, Domestic Relations Order was amended as follows:

1. The language "This Order for alimony is reinstated per the Property Settlement Agreement of the parties and will terminate on February 16, 2027 per the Property Settlement Agreement" under the heading "Other Conditions" shall be **REMOVED**;
2. The language "This Order shall expire 72 months from the effective date of the Property Settlement Agreement" shall **REPLACE** the above removed language under the heading "Other Conditions."

1. Whether this Court erred in improperly entering its Order of Court of June 8, 2022 by disregarding the statutory termination of its jurisdiction to do so **more than sixty (60) days** after the entry of its Order dated November 23, 2021 under Pennsylvania Rule of Civil Procedure No. 1910.12(h), despite having been timely and properly raised as an affirmative defense in both Mr. Anderson's responsive brief and subsequent motion for reconsideration.
2. Whether this Court erred in improperly disregarding Ms. Post's **failure to file exceptions to this Court's Order dated November 23, 2021**, as would have been necessary to challenge that Order in addition to the exceptions that she actually did file in opposition to the separate Report of the Hearing Officer which was actually dated one (1) day earlier, November 22, 2021, pursuant to Pennsylvania Rule of Civil Procedure **No. 1910.12(e)**, thereby depriving this Court of subject matter jurisdiction to review and modify the said Order.
3. [I]n partially sustaining "Plaintiff, Susan J. Post's Exceptions to the Report of the Hearing Officer Filed in the Domestic Relations Section Report Dated November 23 [sic], 2021," this Court improperly substituted its own judgement and acted beyond its judicial authority in setting aside the Hearing Officer's discretionary

findings, **stating without explanation or elaboration** that "[t]he Court finds" that "[t]he Hearing Officer erred in concluding the Alimony obligation is terminated effective June 15, 2021 when Defendant filed his Petition for Modification" and that "[t]he Hearing Officer erred in considering Plaintiff's increase in income."

4. The court committed an error of law, abused its discretion or otherwise ruled improperly in applying principles of equity and fairness to overrule the Hearing Officer's finding and interpret the parties' property settlement agreement in a way that is inconsistent with the clear and unambiguous terms of the agreement itself, and contrary to applicable precedent of this Court, by which it has previously held that **[a] property settlement agreement . . . is at its core a contract and is to interpreted in accordance with the law of contracts.**

To address Appellant's Concise Statement of Error Complained of on Appeal, the Court will address Issues #1 and 2 individually and #3 and 4 cumulatively.

LEGAL DISCUSSION

I. Sixty Day Time Frame of Rule 1910.12(h) .

Rule 1910.12(f) of the Pennsylvania Rules of Civil Procedure provides that: "[i]f exceptions are filed, the interim order shall continue in effect. The court shall hear argument on the exceptions

and enter an appropriate final order substantially in the form set forth in Rule 1910.27(e) within **sixty days** from the date of the filing of exceptions to the interim order. No motion for post-trial relief may be filed to the final order." See Pa.R.Civ.P. 1910.12(f). The Court acknowledges the rule, however, can not ascertain how Rule 1910.12(f) requires the reversal of the Court's Order on Plaintiff's Exceptions. The rules are silent as to the ramifications of a violation of 1910.12(f), nonetheless, this Court suspects that the rule does not contemplate that the remedy was to result in a windfall for the nonmoving party.

In the case *sub judice*, parties received notice of both argument and briefing schedule with dates outside the sixty-day allotment as provided for in Rule 1910.12(f). Neither party objected to the scheduling order and instead both parties complied by filing briefs before the court ordered due dates. Defendant's counsel waited until after the sixty days had past to file Defendant's Brief in Opposition of Exceptions, and ostentatiously raised the issue of the expiration of sixty days for argument and order regarding exceptions. Defendant has since raised this issue in both the Motion for Reconsideration and this Appeal.

Beyond providing the statute, Defendant did not provide the Court with any guidance via case law or statutory comments that sets out the repercussions for the Court's delay in entering an order on the exceptions. Further, Defendant failed to demonstrated

how he was harmed by the Court's Order being entered more than sixty days after the filing of exceptions. Therefore, the Court believes that because neither party was prejudice by the delay, that it was correct in issuing the Order of Court dated June 8, 2022.

II. Notice Requirement of Rule 1910.12(e) .

Defendant argues that Plaintiff was required to file exceptions to both the Hearing Officer's Report Nov 22, 2021 and the Interim Order issued by the Domestic Relations office Nov 23, 2021. Defendant relies on Pa.R.Civ.P. 1910.12(e) arguing that Plaintiff is required to except to both the Report and the Order. This reliance however, is misplaced. The Pennsylvania Rule of Civil Procedure Rule 1910.12(e) states:

The court, without hearing the parties, shall enter an interim order consistent with the proposed order of the hearing officer. **Each party shall be provided, either in person at the time of the hearing or by mail, with a copy of the interim order and written notice that any party may, within twenty days after the date of receipt or the date of mailing of the order, whichever occurs first, file with the domestic relations section written exceptions to the report of the hearing officer and interim order.** Pa.R.Civ.P. 1910.12(e) (emphasis ours).

The purpose of Rule 1910.12(e), is to give notice to the parties of the interim order and that a report and recommendation has been authored by the Hearing Officer. Further, this notice advises that either party may file exceptions thereto within twenty days. This rule does not insinuate that exceptions **MUST** be filed

to **BOTH** the Hearing Officer's Report and the Court's Interim Order in order for the Court to hear argument before the Interim Order becomes a final order. The true rule that Defendant should seek for guidance on filing exceptions is found in Rule 1910.12 (f), which states:

Within twenty days after the date of receipt or the date of mailing of the report by of receipt or the date of mailing of the report by the hearing officer, whichever occurs first, **any party may file exceptions to the report or any part thereof**, to rulings on objections to evidence, to statements or findings of facts, to conclusions of law, **or** to any other matters occurring during the hearing. Each exception shall set forth a separate objection precisely and without discussion. Matters not covered by exceptions are deemed waived unless, prior to entry of the final order, leave is granted to file exceptions raising those matters. If exceptions are filed, any other party may file exceptions within twenty days of the date of service of the original exceptions. Pa.R.Civ.P. 1910.12(f) (emphasis ours).

In the instant case, Wife filed timely exceptions to the Hearing Officer's Report. She was not required to file an identical set of exceptions to the Interim Order issued by the Domestic Relations Office considering said order reiterated the Hearing Officer's Report nor necessarily include the words "and Interim Order" on those exceptions. This Court feels that Wife followed proper procedure for filing exceptions and did not need to duplicate those exceptions as a challenge to the Interim Order or even reference that it was to the Interim Order.

III. Court's Analysis and Reasoning.

Regarding Defendant's Issues #3 and 4 complained of, this Court is unable to understand the arguments set forth by Defendant's counsel that the Court did not give "**explanation or elaboration**" as to its conclusion for the Order dated June 8, 2022, and that the Court did not **analyze the Property Settlement Agreement under contract law**. The Order of Court dated June 8, 2022, under footnote 3, section III, IV, and V, explicitly explains in relevant part:

**III. Property Settlement Agreement Standards
Incorporated into Divorce Decrees**

. . . An alimony obligation that arises out of a settlement agreement, rather than a court order, **is governed by contract law**. A basic tenet of contract law is that when the language of a contract is clear and unambiguous its meaning must be determined by an examination of the content of the contract itself. The Court must construe the contract only as written and may not modify the plain meaning under the guise of interpretation, for the law does not assume that the language was chosen carelessly. *Stammerro v. Stammerro*, 889 A.2d 1251, 1258 (Pa.Super. 2005).

. . .

. . . **Thus, principles of contract law govern the Agreement.** . . . Husband's alimony payments can be modified only if there is a reduction of his employment income or Wife's remarriage and/or cohabitation with a person of the opposite sex who is not a member of the spouse's family within the degrees of consanguinity.

IV. Doctrine of Necessary Implication

. . . In absence of an express provision, the law will imply an agreement by the parties to a contract to do and perform those things that according to reason and justice they should do in order to carry out the purpose for which the contract was made and to refrain from doing

anything that would destroy or injure the other party's right to receive the fruits of the contract. *Stamirro, supra*.

. . .

In the instant matter, Husband should not be allowed to evade the spirit or abuse the terms of the agreement by unilaterally and voluntarily reducing his income. To do so would destroy Wife's rights to receive the fruits of her bargained-for agreement.

V. Analysis of Plaintiff's Exceptions

The Court analyzes this matter using a two-prong approach. The first prong is to view the alimony award un the law of contractual agreements in Pennsylvania. .

. .

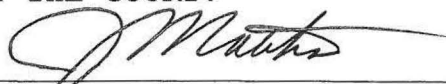
. . .

This notwithstanding, we believe the third and fourth reason for which Appellant challenges the Order have been fully and comprehensively addressed in said Order of Court of June 8, 2022, which not only addresses the modification of the Property Settlement Agreement under contract law, but which also provides in-depth explanation and elaboration of the reasoning for the Court's conclusion. Because these issues have been addressed in the Order of Court of June 8, 2022, a copy of that Order has been attached and marked as Appendix A to this Opinion for the Court's reference and convenience. The reasoning therein, we believe, fully and comprehensively explains why Husband is not entitled to a reduction in his alimony obligation because he did not establish

a basis to do so under the terms of the Property Settlement Agreement.

Accordingly, we respectfully request that the Order of Court of June 8, 2022, be affirmed on appeal.

BY THE COURT:

A handwritten signature in black ink, appearing to read "J. Matika", written over a horizontal line.

Joseph J. Matika, J.

APPENDIX A

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IN THE COURT OF COMMON PLEAS OF CARBON COUNTY, PENNSYLVANIA
DOMESTIC RELATIONS SECTION

JUN 09 2022

SUSAN J. POST,
Plaintiff

CARBON COUNTY
DOMESTIC RELATIONS OFFICE

Vs.

PACSES CASE NO. 202300986

JOHN D. ANDERSON,
Defendant

DOMESTIC RELATIONS SECTION

Christine A. Holman, Esquire

Counsel for Plaintiff

Robert S. Frycklund, Esquire

Counsel for Defendant

ORDER OF COURT

AND NOW, this 8th day of June, 2022, upon consideration of the "Plaintiff's Exceptions to the Report of the Hearing Officer Filed in the Domestic Relations Section Dated November 23, 2021," filed December 7, 2021 by Plaintiff, Susan J. Post, along with briefs lodged to support thereof or in opposition thereto, it is hereby

ORDERED and DECREED that Plaintiff's Exceptions are **SUSTAINED in part and OVERRULED in part**¹ and that alimony shall be reinstated to reflect the parameters of the Property Settlement Agreement incorporated but not merged into the parties Divorce Decree dated

¹ The Court finds that exceptions #1 and 3 shall be **Sustained** and Exception #2 shall be **Overruled**.

Exceptions Sustained are as follows:

1. The Hearing Officer erred in concluding the Alimony obligation is terminated effective June 15, 2021 when Defendant filed his Petition for Modification.
3. The Hearing Officer erred in considering Plaintiff's increase in income.

February 16, 2021.² This order applies retroactively to June 15, 2021, the date in which Defendant filed his Petition for Modification.³ The Carbon County Domestic Relations Section shall

² The Property Settlement Agreement executed on December 29, 2020, states the relevant alimony award as follows:

[H]usband shall continue to pay Wife spousal support prior to the entry of a divorce decree, and alimony after the entry of the divorce decree in the amount of **Three Hundred Eighteen Dollars (\$318.00) per month, for a total combined period of six (6) years, or seventy-two (72) months.**

³ I. Summary of the Hearing Officer's Findings

The parties married on August 11, 1991. On November 18, 2019, Defendant filed a complaint in divorce. On December 29, 2020, the parties, represented by counsel, entered into a Property Settlement Agreement (herein after "Agreement"). The Agreement encompassed comprehensive language which included Husband's alimony payment to Wife, and the terms of the post-divorce alimony as follows:

"VIII. ALIMONY, ALIMONY PENDENTE LITE, SUPPORT, COUNSEL FEES AND COSTS

Both parties acknowledge and agree that there currently exists an Order of spousal support through the Domestic Relations Section of Carbon County, Pennsylvania, at Docket No. 38DR19, PACSES Case No. 738117875. Specifically, the current Order provide that Husband is to pay Wife spousal support in the amount of Three Hundred Eighteen Dollars (\$318.00) per month.

The parties hereby agree that effective as of the date of the execution of the within Property Settlement Agreement by both parties, Husband shall continue to pay Wife spousal support prior to the entry of a divorce decree, and alimony after the entry of the divorce decree in the amount of Three Hundred Eighteen Dollars (\$318.00) per month, for a total combined period of six (6) years, or seventy-two (72) months. Credit shall be applied for all prior payments of spousal support from Husband to Wife in connection with the said PACSES Case No. 738117875. The parties agree that the Carbon County Domestic Relations Section shall adjust and/or modify the current Order of Court or issue a new order to reflect the terms of the within agreement. Husband's obligation to pay said monthly alimony to Wife shall be filed and docketed as a formal agreement with, and payable through, the Carbon County Domestic Relations Section as post-divorce alimony upon entry of a divorce decree until termination immediately following the seventy-second (72nd) month of spousal support and/or alimony payments as set forth hereinabove.

Husband's obligation to alimony shall be non-modifiable except upon the reduction of Husband's employment income or Wife's remarriage and/or cohabitation with a person of the opposite sex

who is not a member of the spouse's family thin the degrees of consanguinity, and shall terminate upon the death of either party.

Husband's wages shall continue to be subject to wage attachment throughout Husband's spousal support and/or alimony obligations. The parties further agree that should Husband fail to comply with is spousal support and/or alimony obligations set forth herein, subsequent arrearages and payments shall be added to Husband's spousal support and/or alimony obligations, as determined by the Carbon County Domestic Relations Section."

The Agreement was incorporated, but not merged, into the parties' divorce decree, entered on February 16, 2021.

On June 15, 2021, Husband filed a Petition for Modification of Support Order in which a Domestic Relations Conference was held and Order of Court entered on July 27, 2021, whereby Husband's Petition was dismissed. A De Novo hearing held on October 14, 2021, then addressed Husband's request to lower his alimony because of his decrease in income. On November 23, 2021, the Hearing Officer entered her proposed findings of fact and conclusions of law which terminated Wife's alimony award and made the Order retroactively effective to June 15, 2021. The Hearing Officer's recommended denial of Husband's Petition to modify support is based on the following findings of fact:

¶ 6 One of the main issues on appeal is whether Husband's current (lower) income should be used in the calculation, or whether his prior income should be used.

¶ 7 Plaintiff is currently employed as a Notary Public She earns \$21.00 per hour and works between 45-50 hours each week

¶ 10 . . . At separation, Husband was working at a Dollar General Store as a Merchandiser, earning about \$53,700 annually.

¶ 13 Plaintiff's prior employment . . . she earned \$16.00 per hour, working 35 hours per week. She left this job because she was offered a better position with higher wages at her current job

¶ 18 Defendant worked full time until July of 2020, when he needed knee surgery.

¶ 19 When he had knee surgery, he went out on short term medical leave and was receiving short term disability. The short-term disability stopped in December of 2020.

¶ 20 Upon the ending of the short-term disability period, Defendant testified that he, "was expected to return to work or quit; and (he) decided to quit."

¶ 23 Defendant testified that currently, he cannot be on his feet long term or bend his knees repeatedly, both of which were responsibilities required of him at his merchandizing job with Dollar General, "because (he) had to lift heavy packages."

¶ 24 Defendant testified that he tried to find a job where he would not be on his feet all day which would also provide him with needed health insurance benefits.

¶ 25 Defendant took a job driving a school bus . . . where he earns \$26.00 per hour working five (5) hours a day (25 hours per week) Monday through Friday and is then off from work for two (2) months in the summer when school is not in session. . . .

¶ 29 Defendant testified that when he signed the property settlement agreement in December of 2020 in the presence of the Plaintiff he, "did not inform her that (he) was not then working and had gone out on short-term disability."

¶ 31 Defendant testified that he was, "released by (his) doctor to return to work with no conditions."

The Hearing Officer's recommended denial of Husband's Petition to modify support is based on the following conclusions of law:

¶ 1 The terms of the parties' property settlement agreement that permit the alimony obligation to be modified which state, "upon a reduction in Husband's Income," are solely for the purpose of allowing the case to return to the Domestic Relations Section for a modification. . . .

¶ 3 Plaintiff has a job which provides her with a higher income than she had at the time she signed the property settlement agreement. Plaintiff's current wages must therefore be utilized as a matter of law. Counsel for Plaintiff argues that Plaintiff's former (lower) income from a prior job must be utilized. The Hearing Officer disagrees with this contention and believes that **once the door is opened for a modification, the pendulum can swing either way** and current incomes may be utilized pursuant to the dictates of the Guidelines and current law, unless there is clear language in the parties' marital settlement agreement dictating otherwise.

¶ 4 Defendant voluntarily quit his job . . . when his short term disability ran out and **he was released to go back to work without any conditions**. Defendant then **voluntarily changed occupations**

¶ 6 The PA Support Guidelines clearly state that, "When either party **voluntarily assumes a lower paying job, quits a job, leaves employment, changes occupations** or changes employment status to pursue an education, or is fired for cause, **there generally will be no effect on the support obligation**. Pa.R.Civ.P. 1910.16-2. (emphasis added by the Hearing Officer).

¶ 7 The burden at this point then shifts to the Defendant to convince the Court that he quit his prior job and switched occupations for good cause. The Hearing Officer finds that the Defendant did not sustain his burden of proof that: (1) he was unable to perform at his former job when his short-term disability

benefits expired and he was expected to return to work; nor that (2) his health condition dictated at that time he switch occupations to become a school bus driver.

¶ 8 The Hearing Officer asked the Conference Officer to calculate a Guideline support order based on Plaintiff's current income and imputing Defendant at an earning capacity of \$53,000 per year, which was his income prior to voluntarily quitting his job at Dollar General.

¶ 10 Utilizing Plaintiff's current wages based upon the paystub she submitted to Domestic Relations on October 18, 2021, and imputing Defendant at his former job which he voluntarily quit when his short-term disability ended, Plaintiff's monthly net income is \$2,997.27 and Defendant's monthly net income is \$3,470.04. Utilizing these incomes, the Guidelines indicate there should be no obligation for support for the Plaintiff.

¶ 11 The alimony obligation is terminated effective June 15, 2021, when Defendant filed his petition for modification.

II. Standard of Review of Hearing Officer's Report

Regarding the trial court's ability to review the Hearing Officer's Report, it is within the province of the trial court to weigh the evidence and decide credibility and this court will not reverse those determinations so long as they are supported by the evidence. The courts are also aware that a [Hearing Officer]'s report and recommendation, although only advisory, is to be given the fullest consideration, particularly on the question of credibility of witnesses, because the [Hearing Officer] has the opportunity to observe and assess the behavior and demeanor of the parties. *Trapasso v. Trapasso*, 268 A.3d 444 (Pa. Super. 2021) (internal citations omitted).

III. Property Settlement Agreement Standards Incorporated into Divorce Decrees

Marital settlement agreements are "private undertakings between two parties, each having responded to the 'give and take' of negotiations and bargained consideration." *Brower v. Brower*, 604 A.2d 726, 731 (Pa. 1992). A marital support agreement incorporated but not merged into the divorce decree survives the decree and is enforceable at law or equity. An alimony obligation that arises out of a settlement agreement, rather than a court order, is governed by contract law. A basic tenet of contract law is that when the language of a contract is clear and unambiguous its meaning must be determined by an examination of the content of the contract itself. The Court must construe the contract only as written and may not modify the plain meaning under the guise of interpretation, for the law does not assume that the language was chosen carelessly. *Stammerro v. Stammerro*, 889 A.2d 1251, 1258 (Pa. Super. 2005) (internal citations omitted).

Furthermore, it is well-recognized that absent fraud, misrepresentation or duress, spouses should be bound by the terms of their agreements. The terms of a marital settlement agreement cannot be modified by a court in the absence of a specific provision in the agreement providing for judicial modification. *Stammerro, supra*. (internal citations omitted).

In the instant matter, the parties voluntarily entered into the Agreement, each with the advice of independent counsel. The Agreement was incorporated but not merged into the divorce decree. Thus, principles of contract law govern the Agreement. See *Stammerro, supra*. Under the express terms of the alimony provision, Husband's alimony payments can be modified only if there is a reduction of his employment income or Wife's remarriage and/or cohabitation with a person of the opposite sex who is not a member of the spouse's family within the degrees of consanguinity.

IV. Doctrine of Necessary Implication

A similar requirement has been developed in common law called the "doctrine of necessary implication," which states: In the absence of an express provision, the law will imply an agreement by the parties to a contract to do and perform those things that according to reason and justice they should do in order to carry out the purpose for which the contract was made and to refrain from doing anything that would destroy or injure the other party's right to receive the fruits of the contract. *Stammerro v. Stammerro*, 889 A.2d 1251, 1259 (Pa.Super. 2005) (internal citations omitted).

"Courts employ the doctrine of necessary implication as a means of avoiding injustice by inferring contract provisions that reflect the parties' silent intent." "In the absence of an express term, the doctrine of necessary implication may act to imply a requirement necessitated by reason and justice without which the intent of the parties is frustrated." *Stammerro, supra*. (internal citations omitted).

In the instant matter, Husband should not be allowed to evade the spirit or abuse the terms of the agreement by unilaterally and voluntarily reducing his income. To do so would destroy Wife's rights to receive the fruits of her bargained-for agreement.

V. Analysis of Plaintiff's Exceptions

The Court analyzes this matter using a two-prong approach. The first prong is to view the alimony award under the law of contractual agreements in Pennsylvania. Once the first prong has been satisfied, then the second prong removes the alimony award from the bounds of contract law and further calculates a new alimony award under the factors set for in the Divorce Code 23 P.C.S.A §3701.

The first prong analyzes the circumstances under which an award of alimony may be adjusted within the terms of the Property Settlement Agreement. By the parties entering into the Agreement, they have **AGREED** to Wife receiving an alimony award at a set amount for a set duration of time. The parties further **AGREE** that the only way to change the award is if there is a reduction of Husband's employment income Husband subsequently filed a Petition for Modification because he claimed to have had a reduction in employment income. This petition prompted a hearing in which the Hearing Officer found that "the reduction of husband's employment income" was voluntary and thus did not warrant a new calculation for alimony using his lower current employment income. The Hearing Officer concluded that Husband's income shall be maintained as the earning capacity in effect upon entering into the Property Settlement Agreement. In accordance with Paragraph VIII of the Agreement, Husband's obligation is

adjust and/or modify the current Order of Court or issue a new order to reflect the terms of the Property Settlement Agreement including any arrearages Defendant may owe to Plaintiff.

BY THE COURT:



Joseph J. Matika, J.

non-modifiable. Thus, there was no further inquiry into the alimony calculation that the parties had **AGREED** to, the analysis should have ceased there; no further calculations based upon wife's increased income should have occurred.

Accordingly, the Hearing Officer's calculation which implemented Wife's new employment income is error. Based upon the first prong analysis, the Court does not get to the second prong. Since Husband voluntarily reduced his employment income, it did not warrant a new alimony calculation and the Agreement remains in full effect. This Court follows the doctrine of necessary implication and finds that using Wife's new employment income in a new calculation inherently destroys the agreed upon bargain executed by the parties. If it were intended to allow for Wife's income to have an effect on the Agreement, then those terms would be reflected in said Agreement. Finally, Since the Court does not reach the second prong and therefore, no factor analysis is required, the parties are bound by their Agreement.