

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

NORMA EDKIN

Appellee

v.

WILLIAM EDKIN

Appellant

IN THE SUPERIOR COURT OF
PENNSYLVANIA

No. 2025 MDA 2012

Appeal from the Order Entered November 14, 2012
In the Court of Common Pleas of Lancaster County
Domestic Relations at No(s): 2001-00569

BEFORE: PANELLA, J., MUNDY, J., and PLATT, J.*

MEMORANDUM BY MUNDY, J.:

FILED DECEMBER 23, 2013

Appellant, William Edkin (Husband), appeals from the November 14, 2012 order reinstating Husband's obligation to pay Appellee (Wife) alimony pendent lite (APL) during the pendency of his appeal of the parties' divorce case.¹ After careful review, we affirm.

The pertinent factual and procedural history follows. The parties were married on June 13, 1981, and separated on or about February 7, 2001, after Wife filed a divorce complaint on January 2, 2001. Therein, Wife raised

* Retired Senior Judge assigned to the Superior Court.

¹ Husband purports to appeal from the October 22, 2012 order. However, the order was not filed until October 23, 2012 and notice was sent on October 24, 2012. The order was an interim order made permanent after 20 days, November 14, 2012, when neither party requested a hearing. **See** Pa.R.C.P. 1910.11(h). We have revised the caption to reflect the proper date of the final order. The parties divorce case is on appeal before this court at 1561 MDA 2012 and has been listed consecutively herewith.

various economic claims including APL. On February 9, 2001, Wife filed a complaint for child support, spousal support and APL with the Lancaster County Domestic Relations Office. Subsequently, Husband was ordered to pay child support and APL to Wife. During the ensuing years, Husband's APL obligation varied through a number of modifications. On July 2, 2012, the trial court entered an order addressing multiple issues raised by the parties in connection with the most recent petitions for modification filed on February 25, 2010, July 6, 2010 and July 15, 2010. The order provided *inter alia* as follows.

Effective July 6, 2010, the support is modified to Five Thousand Seventy-Three and 58/100 Dollars (\$5,073.58) per month payable as follows: \$4,673.58 current support ([APL]) and \$400.00 toward arrears for the support of [Wife]. ...

Effective March 8, 2012, the Order is placed on an arrears only basis. The parties' divorce is complete and [Wife] is presently incarcerated. Arrears shall be paid at the rate of \$1,000.00 per month until paid in full, whereupon the Order is terminated.

Memorandum Opinion and Order, 7/2/12, at 8-9.

A final decree in the parties' divorce was entered on August 10, 2012. Husband filed an appeal in that case on August 28, 2012. On September 13, 2012, Wife filed a petition to reinstate the APL award, citing changed circumstances, including her release from incarceration and the pendency of the divorce appeal. Following a Domestic Relations conference, the Domestic Relations Officer (DRO) filed a recommended order reinstating the

APL award at the levels in effect from July 6, 2010 to March 8, 2012.² The parties were advised they had until November 14, 2012, to request a hearing *de novo* before the court of common pleas.³ Husband did not request a *de novo* hearing and filed the instant notice of appeal on November 14, 2012.⁴

On appeal, Husband raises the following issue.

Did the [trial] court err in entering its order dated October 22, 2012, awarding APL to wife in the amount of \$4,673.50 per month?

Husband's Brief at 4.

We initially address Wife's contention that the November 14, 2012 APL order is interlocutory and therefore not appealable. Wife cites ***Fried v. Fried***, 501 A.2d 211 (Pa. 1985) and ***O'Brien v. O'Brien***, 519 A.2d 511 (Pa. Super. 1987) for the proposition that APL orders are interlocutory and therefore not immediately appealable. Wife's Brief at 5, 10. In those cases, however, the appeals from the collateral interlocutory orders were taken before the trial courts had made final determinations on the economic claims

² Lancaster County follows the domestic relations hearing procedures set forth in Pa.R.C.P. 1910.11.

³ The October 23, 2012 order was served on the parties on October 24, 2012, thus November 14, 2012 is actually 21 days from the effective date of the order, one day beyond the 20 days prescribed by Rule 1910.11 before the order became final. Accordingly, we conclude Husband's appeal is not premature as suggested by Wife. **See** Wife's Brief at 10.

⁴ Husband and the trial court have complied with Pa.R.A.P. 1925.

in the respective divorce cases. **See Fried, supra** at 215; **O'Brien, supra** at 512. Therefore, finality had not been achieved in those cases. Instantly, the APL order was entered after a final order was entered on all outstanding issues. Accordingly, the October 23, 2012 order, made final on November 14, 2012, is a final appealable order.

Husband contends the trial court was "divested of jurisdiction to act further in the divorce matter" after he filed an appeal from the trial court's final decree. Husband's Brief at 7.

Preliminarily, we observe: "Subject matter jurisdiction relates to the competency of a court to hear and decide the type of controversy presented. Jurisdiction is a matter of substantive law. 42 Pa.C.S. § 931(a) (defining the unlimited original jurisdiction of the courts of common pleas)." **Commonwealth v. Bethea**, 574 Pa. 100, 113, 828 A.2d 1066, 1074 (2003), *cert. denied*, 540 U.S. 1118, 124 S.Ct. 1065, 157 L.Ed.2d 911 (2004). "The trial court has jurisdiction if it is competent to hear or determine controversies of the general nature of the matter involved *sub judice*. Jurisdiction lies if the court had power to enter upon the inquiry, not whether it might ultimately decide that it could not give relief in the particular case." **Drafto Corp. v. National Fuel Gas Distribution Corp.**, 806 A.2d 9, 11 (Pa. Super. 2002) (quoting **Aronson v. Sprint Spectrum, L.P.**, 767 A.2d 564, 568 (Pa.Super.2001), *appeal denied*, 566 Pa. 632, 781 A.2d 137 (2001)).

Issues pertaining to jurisdiction are pure questions of law, and an appellate court's scope of review is plenary. Questions of law are subject to a *de novo* standard of review. Any issue going to the subject matter jurisdiction of a court or administrative tribunal to act in a particular matter is an issue the

parties cannot waive by agreement or stipulation, estoppel, or waiver. In other words, the parties or the court *sua sponte* can raise a challenge to subject matter jurisdiction at any time.

Robert Half Intern., Inc. v. Marlton Technologies, Inc., 902 A.2d 519, 524–25 (Pa. Super. 2006) (en banc).

Silver v. Pinskey, 982 A.2d 284 (Pa. Super. 2009).⁵

In support of his position, Husband cites Pa.R.A.P. 1701 (providing that after the filing of an appeal a trial court may no longer proceed in the underlying matter, subject to enumerated exceptions). This Court, however, has clearly held that reinstatement of an APL award during the pendency of an appeal of a final order in a divorce case, where otherwise justified, is proper. **Haentjens v. Haentjens**, 860 A.2d 1056, 1060 (Pa. Super. 2004) (approving the trial court’s reinstatement of APL award pending appeal).

[W]hile APL typically ends at the award of the divorce decree, which also should be the point at which equitable distribution has been determined, if an appeal is pending on matters of equitable distribution, despite the entry of the decree, APL will continue throughout the appeal process *and any remand* until a final Order has been entered.

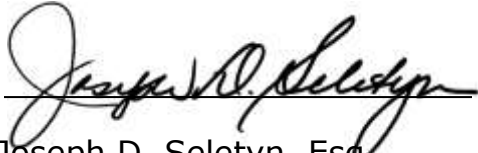
⁵ To the extent Husband challenges non-jurisdictional issues, to wit, whether Wife waived her right to seek reinstatement and whether the APL award lacked a factual basis, the issues are waived since Husband did not preserve them by seeking a hearing *de novo*. “Issues not raised in the lower court cannot be raised for the first time on appeal and are considered waived. Pa.R.A.P. 302(a).” **Green v. Green**, 69 A.3d 282, 286 (Pa. Super. 2013).

Id. at 1062 (Pa. Super. 2004), *quoting DeMasi v. DeMasi*, 597 A.2d 101, 104 (Pa. Super. 1991); **see also Balicki v. Balicki**, 4 A.3d 654, 665-666 (Pa. Super. 2010) (holding wife could not appeal trial court's termination of her APL when trial court reinstated APL order after husband appealed divorce decree).

For these reasons, we conclude the trial court did not lack authority to reinstate the APL order. Accordingly, we affirm trial court's November 14, 2012 order reinstating Husband's APL obligation to Wife.

Order affirmed.

Judgment Entered.

A handwritten signature in black ink, appearing to read "Joseph D. Seletyn", written over a horizontal line.

Joseph D. Seletyn, Esq.
Prothonotary

Date: 12/23/2013