

IN THE SUPERIOR COURT OF WHITFIELD COUNTY  
STATE OF GEORGIA

LOIS E. BRADFORD,  
Plaintiff,

v.

WILLIAM BRADFORD,  
Defendant.

Civil Action No. 07-CI-1359-B

*Michelle Townes*  
CLERK OF SUPERIOR COURT

2007 SEP 24 AM 11:04

FILED & RECORDED  
WHITFIELD COUNTY, GA

**ORDER GRANTING PLAINTIFF'S PETITION  
FOR SEPARATE MAINTENANCE**

On May 18, 2007, Plaintiff, Lois E. Bradford filed this action for separate maintenance against her husband, William Bradford. Mr. Bradford, through his attorney and guardian ad litem, Robert Cowan, has voiced no objection to the relief sought so long as the Defendant's needs are provided for. This court held a hearing on the petition on July 9, 2007, in which Plaintiff's attorney, David L. McGuffey, Defendant's attorney and guardian ad litem, Robert Cowan, and Assistant Attorney General Michelle Townes all participated. Ms. Towns advised the court that the Georgia Department of Community Health, by and through the Office of the Attorney General, wished to intervene to object to the complaint to the extent that it seeks support in excess of the Medicaid Minimum Monthly Maintenance Needs Allowance set in Georgia. The parties had no objection to the intervention, and the court orally advised counsel that intervention would be granted. The court entered a written order granting the Department of Community Health's Motion to Intervene on July 13, 2007. Having considered all evidence and arguments presented, including the post-hearing briefs by the Plaintiff and the Intervenor, the court makes the following findings of fact, conclusions of law, and judgment thereon.

### **FINDINGS OF FACT**

The parties are legal residents of Whitfield County. They were married on June 14, 1963, and have two adult children. The parties have been living in a state of bona fide separation since January 2006 when the defendant, age 76, was institutionalized in the Fort Oglethorpe Nursing Home due to Alzheimer's disease and dementia. The plaintiff's monthly income is \$1,428.00 and the defendant's is \$4,355.90. The source of both parties' income is retirement income and social security benefits. In their forty-four-year marriage the parties have accumulated a jointly-owned residence with equity of approximately \$60,750; a checking account with a balance of \$6,512 and CDs of \$44,000. In addition the parties have household furniture and furnishings, a motor vehicle, and other personal effects. Mr. Bradford expects to apply for Medicaid to assist with his expenses. To avoid impoverishing Ms. Bradford current Medicaid regulations allow a transfer of assets from her husband of up to \$101,640 as the maximum default Community Spouse Resource Allowance. The assets owned by Mr. Bradford are less than that amount. The plaintiff's reasonable and necessary monthly living expenses are \$3,207.

### **CONCLUSIONS OF LAW**

This court has jurisdiction of the parties and subject-matter. This is an action for separate maintenance under O.C.G.A. § 19-6-4. Permanent alimony may be granted in a case of voluntary separation, and contemplation of divorce is not a necessary prerequisite for seeking separate support. O.C.G.A. § 19-6-4. In a traditional support case under O.C.G.A. § 19-6-1, alimony is an allowance out of one party's estate made for the support of the other party when living separately and is either temporary or permanent.

The court will consider evidence of the factual cause of the separation regardless of whether a divorce is sought or not. O.C.G.A. § 19-6-1(c) states that an alimony award to either party is authorized in accordance with the needs of the party and the ability of the other party to pay.

Under the Medicare Catastrophic Coverage Act, 42 U.S.C. §1396r-5, Mr. Bradford is an institutionalized spouse, and Mrs. Bradford is a "community spouse." Mr. Bradford has not yet applied for Medicaid but anticipates doing so in the near future. The Bradfords expect that Mr. Bradford will receive Medicaid to assist in the payment of his nursing home. Once eligibility for Medicaid is established, the Medicare Catastrophic Coverage Act provides for a portion of the institutionalized spouse's income to be diverted to the community spouse to avoid the impoverishment of the community spouse. This support allowable from the institutionalized to the community spouse is the Minimum Monthly Maintenance Needs Allowance (MMMNA). The MMMNA is set by the states, and Georgia's current MMMNA is \$2,541. The amount of the institutionalized spouse's income that exceeds the MMMNA is then paid to the nursing home as the "Patient Liability Amount."

Assuming Mr. Bradford applies for and receives Medicaid, then Mrs. Bradford would be entitled to a diversion of some of his income to bring her income, which is now \$1,428.00, up to the MMMNA amount. It is the Department of Community Health's position that she be awarded no more than this amount, \$1,113.00 per month, under this action for separate maintenance. As Mr. Bradford had not yet applied for Medicaid at the time Mrs. Bradford brought her petition for separate support, this court now grants her

petition for order of separate support under the traditional standard for domestic cases as provided in O.C.G.A. § 19-6-1.

The court finds that a support order is warranted in this case. Further, the Court finds that the mortgage on the marital residence, approximately \$70,000, exceeds the liquid resources available to the Plaintiff. The Court finds that a support order should be entered to prevent Plaintiff's impoverishment, and that the Defendant has the ability to pay. O.C.G.A. § 19-6-1.

The Defendant should therefore pay as spousal support to the Plaintiff \$2,099.70 of his monthly income.

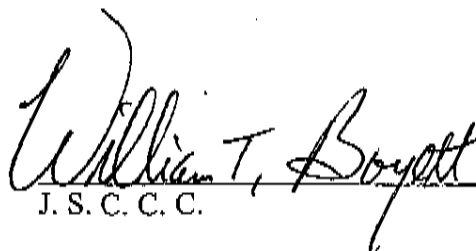
#### **JUDGMENT**

It is therefore ordered:

That the Defendant shall pay to the Plaintiff as support, for Plaintiff's sole benefit and support, an amount of the Defendant's monthly income equal to \$2099.70. It is the intent of this Order that said amount of Defendant's monthly income shall be allocated to the Plaintiff pursuant to this Order, including future cost of living adjustments, increases, and the like.

All of the marital assets are likewise awarded to Plaintiff.

This the 24<sup>th</sup> day of Sept. 2007.

  
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J. S. C. C. C.