

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

T J. G

Plaintiff

v.

J E. G

Defendant

No. 17-20,487

PACES NO. 218116471

Before the Court are exceptions to the Order of May 19, 2017 awarding spousal support to T J. G (“Wife”). J E. G (Husband) challenges the Order on several grounds.¹

One reason Husband challenges the Order is that Husband contends that new evidence surfaced after the hearing proving wife to be in a relationship with someone. Preliminarily, the court notes that it cannot review the hearing officer’s finding based upon evidence that was not presented at the hearing. To the extent Husband believes he has uncovered evidence to nullify the obligation to pay support (as described in the Order), such as proving that the conduct of wife constitutes grounds for a fault divorce under 23 Pa. C.S.A. § 3301(a), Husband would need to file a modification based upon such new information. Such new evidence is not a reason for the Court to disturb the Hearing Officer’s findings based upon the evidence presented and conclusions of law.

Another reason Husband challenges the Order, is that Husband contends that Wife falsely stated she is unable to work when in fact she is physically able to work.² This challenge is without merit because “[w]hen offered the choice between having a physician testify or accept an

¹ Although not raised at argument, in the exceptions filed by Husband, Husband contends Wife is being investigated for food stamp fraud and that wife denies her excessive drug and alcohol habit. The relevancy of such information is questionable. Assuming for the sake of argument that such information was relevant, it is unclear whether the evidence was presented to the hearing officer. If it was, the Hearing Officer was free to believe or disbelieve such evidence in making credibility or other determinations. If the evidence was not presented, such evidence cannot be presented now and the Court would not find an error in disallowing such evidence had it been disallowed at the time of the hearing.

² Connected to this claim, Husband claimed that wife failed to produce evidence to show her income, failed to produce evidence concerning her disability. Since Wife was assigned a full time earning capacity, these objections do not provide reasons to challenge the spousal support award.

earning capacity, she [Wife] decided to accept an earning capacity.” Therefore any claims of disability were irrelevant because the Hearing Officer assigned Wife a full time earning capacity.

Another reason that Husband challenges the Order is because he believes it would cause him undue hardship. The amount of support is based Statewide Rule and Guidelines of the Supreme Court of Pennsylvania and there is a rebuttable presumption that the guidelines provide the correct amount. The Hearing Officer granted a deviation as to the length of the support obligation in Husband’s favor, providing that spousal support shall last no longer than twenty-three months. Husband has not set forth any factors to consider he is unduly burdened by this obligation as contemplated by the state guidelines set forth at 42 Pa. R.C.P. Rule 1910.16-3.

Lastly, Husband challenges the Order because his veteran’s disability compensation was counted in calculating his income. Husband’s challenge is without merit because veteran’s benefits are properly counted as income, such as temporary and permanent disability benefits, as contemplated by Rule 1910.16-2 and 23 Pa.C.S. § 4302. Husband states that the VA, IRS and US Bankruptcy Courts do not consider VA benefits as income. The Pennsylvania Superior court rejected a similar claim in Alexander v. Armstrong, 415 Pa. Super. 263, 269, 609 A.2d 183, 185 (Pa. Super. 1992). In that case, the Superior Court rejected as meritless the argument that since the Internal Revenue Code did not tax BAQ or VHA allowance as income it should not be considered as income for child support. Husband further notes that his veteran’s benefits cannot be garnished. However, in Rose v. Rose, 481 U.S. 619, 635, 107 S. Ct. 2029, 2039, 95 L.Ed.2d 599, 614 (1987) the United States Supreme Court indicated that while veteran’s benefits may not be garnished, a state may nonetheless require child support to be paid from such benefits.

Accordingly, the Court enters the following Order.

ORDER

AND NOW, this 27th day of **June 2017**, following argument on exceptions filed on June 6, 2017 by J E. G, it is ORDERED and DIRECTED that, for the following reasons, the exceptions are hereby DENIED and the Order of May 19, 2017 is hereby affirmed.

BY THE COURT,

June 27, 2017
Date

Richard A. Gray, J.

cc: J G
T G
Domestic Relations Office (JW)
Family Court