

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

SHEILA C. BURKHART, : NO. 92-21,423
Petitioner :
 :
 :
vs. : DOMESTIC RELATIONS SECTION
 : Exceptions
KEITH W. BURKHART, :
Respondent :

OPINION AND ORDER

Before the Court are Respondent's exceptions to the Family Court Order of July 11, 2000 in which Respondent's support obligation was lowered based upon a change in custody of one (1) of the parties' three (3) minor children. Argument on the exceptions was heard September 20, 2000.

In his first exception, Respondent contends the Order, which is retroactive to May 15th, should be retroactive to a date earlier than May 15th. He indicates in his exceptions that the parties' son, Keith moved into his residence on April 1, 2000 and that on April 5, 2000 he called the Domestic Relations Office and was instructed to send a copy of the Custody Order (the custody trial having been held April 5, 2000), and a hearing would be scheduled. The records of the Domestic Relations Office indicate that he called on April 11, 2000 and then mailed a letter to that office, received by that office on May 3, 2000. He was instructed by letter dated May 9, 2000 to come into the office to file a Petition to Modify but on May 15, 2000 Petitioner actually came in and filed the Petition. It does appear there may have been a misunderstanding on Respondent's part, and therefore, the Court will grant this exception and modify the retroactive date to May 3, 2000, when Respondent responded in the manner which he believed would trigger the modification.

Next, Respondent contends the support amount for the period from May 15th (now May 3rd) through June 30th, indicated in the Order to be \$986.84, should actually be \$980.84 as a math error has been made. Respondent is correct in this regard but in the Court's review of the matter, it appears that either amount is incorrect as the hearing

officer failed to consider the obligation Respondent has for Keith in his home and the fact that his obligation for Keith in his home and his obligation to Petitioner for the two (2) children in her home together exceed 50% of his income. Taking that into consideration, the guidelines require a child support payment for the two (2) minor children in Petitioner's care of \$922.67 per month from May 3, 2000 through June 30, 2000 and effective July 1, 2000 an obligation of \$922.58 per month.

In his third exception, Respondent contends the hearing officer erred in indicating that any credit from the retroactive reduction should be applied to his arrearage. Respondent contends he has no arrearage and requests that the credit be applied to his current support obligation. Respondent is correct inasmuch as the Order should have indicated that if Respondent has a credit rather than an arrearage, the payments should be reduced until the credit is consumed. The Domestic Relations records indicate, however, that although Respondent did have a credit as a result of the retroactive reduction, the wage attached payments have been less than the Court ordered payments and therefore that credit has been reduced to a balance of \$31.00 as of this date. The instant Order will provide Respondent with an additional credit, however, since the payment is being reduced further, and therefore the Order will indicate that a reasonable amount should be returned to Respondent from his wage attached payments until that credit is consumed.

Next, Respondent contends the hearing officer erred in requiring him to contribute to 100% of the children's excess unreimbursed medical expenses. Inasmuch as Petitioner has no income or earning capacity, however, Respondent is indeed responsible for 100% of those expenses.

Respondent also requests this Court to impose a ceiling on his obligation for medical expenses. Since such a ceiling requires a finding that the obligation would be excessively burdensome, it appears more appropriate for consideration of that request to be deferred until Respondent is actually being requested to contribute to such expenses.

Next, Respondent contends the hearing officer erred in failing to deduct the health insurance premium he pays to cover the children, from his support obligation. The rules require only Petitioner's share of that premium to be deducted and inasmuch as Petitioner has no income or earning capacity, she also has no obligation to contribute to the

premium.

Next, Respondent objects to paying the Court costs of \$33.50. This exception will not be addressed as the responsibility for the costs is properly assessed against Respondent.

Finally, Respondent objects to the wage attachment Order entered after entry of the Order of July 11, 2000, because the wage attachment Order requires a payment toward arrearages. It is noted the Domestic Relations Office has already modified the wage attachment Order to eliminate that requirement. This exception will therefore not be addressed further.

ORDER

AND NOW, this day of September, 2000 for the foregoing reasons, the Family Court Order of July 11, 2000 is hereby modified to provide for a payment of child support for the period from May 3, 2000 through June 30, 2000 of \$922.67 per month and, effective July 1, 2000, for a payment of \$922.58 per month. To the extent this creates a credit, the Domestic Relations Office is directed to return a reasonable amount to Respondent after receiving each wage-attached payment, until the credit is consumed.

As modified herein, the Order of July 11, 2000 is hereby affirmed.

By the Court,

Dudley N. Anderson, Judge