

|                            |   |                                 |
|----------------------------|---|---------------------------------|
| JACQUELINE A. HOUSEWEART,  | : | IN THE COURT OF COMMON PLEAS OF |
|                            | : | LYCOMING COUNTY, PENNSYLVANIA   |
| Plaintiff                  | : |                                 |
|                            | : |                                 |
| vs.                        | : | NO. 88-20,243                   |
|                            | : |                                 |
| ROBERT E. HOUSEWEART, SR., | : |                                 |
|                            | : |                                 |
| Defendant                  | : | EXCEPTIONS                      |

**Date: August 17, 2000**

**OPINION and ORDER**

The matter presently before the Court concerns Exceptions to the Master's Report and Order of April 28, 2000. The Exceptions were filed May 17, 2000, by Defendant Robert E. Houseweart, Sr. The case was before the Master for mandatory review of child support payments for Defendant's three minor children, who are in the primary physical custody of their mother, Plaintiff Jacqueline A. Houseweart. Hearing was held April 19, 2000, at which time Plaintiff testified that she was no longer working, due to a medical disability. The Master found Plaintiff had neither income nor earning capacity, and determined that Defendant was responsible for 100% of the monthly child support, in the amount of \$622.07. This amount was reduced to \$482.35, after application of the Multiple Family Formula in consideration of the minor child of Defendant and his girlfriend Patricia Shaffer. However, the amount was still considerably more than the \$100.00 monthly Defendant had previously paid for child support.

Defendant raises four issues. First, he objects to the amount of support he has been ordered to pay because his net weekly income is \$178.70 per week; if Domestic Relations takes \$120.57 per week, he is left with \$58.00 a week "for everything." See Exception 1.

Second, he claims the Master erred in considering the income of his girlfriend Patricia Shaffer (now his wife), as she can no longer work because of health problems. Third, Defendant claims the Master erred in not considering his bills. Fourth, Defendant claims the Master erred in utilizing his entire tax refund in consideration of his income, when \$1,487.00 was “earned income” for his daughter Cheyenne and should not have been counted. With respect to these claims, Defendant claims he brought the documents to the Master’s hearing which he was instructed to bring, but that no one looked at them.

At argument held June 28, 2000, Defendant also raised as factors the amount he pays in health insurance for his minor children, as well as the fact that he believes that as he gets the children six (6) months out of the year -- twice a week and every other weekend -- his child support obligation should be reduced accordingly. Questioned by the Court, Defendant explained he has the children Wednesdays for four hours after school, Thursday for four (4) hours after school, then every other Friday after school until Sunday evening. Defendant offered no information regarding holidays or summer vacation.

The Court notes that neither party has requested a transcript of the Master’s hearing. Accordingly, disposition of the Exceptions before the Court must be made according to the facts as set forth in the Master’s Order.

After consideration of Defendant’s Exceptions and argument presented in support of those Exceptions, the Court determines that Defendant’s Exceptions must be denied for the following reasons:

***Calculation of the Support Obligation:*** There is no error in the Master’s calculations of Defendant’s income and child support obligation. We believe Defendant may

not understand that only the following may be deducted from gross income to arrive at the “net” income: federal, state and local income taxes; FICA payments and non-voluntary retirement payments; union dues; alimony paid to the other party. Pa.R.C.P. No. 1910.16-2(c). Other deductions from his paycheck, which Defendant may have authorized, are not eligible for consideration.

At argument, Defendant also questioned why his health insurance premiums for the children were not considered. The rules do provide that payment of health insurance premiums for the children may impact upon the amount of support Defendant is obligated to pay. Pa.R.C.P. 1910.16-6(b). However, the Master based her determination upon the information available to her at the hearing. As the Master indicated in the Order, no paperwork was presented to show the cost of insurance for any of the three children (Order at (unnumbered) p. 2); the information presented to the Master shows only that Defendant was paying his own premium and also indicates what the cost of health insurance *would* be for the children. If Defendant can now show he is paying health insurance, he may file for modification of the Order.

***The Master’s Use of Patricia Shaefer’s Income/Earning Capacity:*** As stated *supra*, the Master applied the Multiple Family Formula, to Defendant’s benefit, to give him a deviation/reduction in his child support obligation pursuant to Pa.R.C.P. 1910.16-7 (Support Guidelines, Award of Child Support When there Are Multiple Families). In so doing, she properly considered Patricia Shaffer’s income/earning capacity of \$750.00, which was determined based upon the information available to the Master at the time of the hearing. If

Defendant feels his current household income should now be recalculated because of changed circumstances, he must file a petition to modify the child support order.

***Failure to Consider Defendant's Bills:*** In determining support payments, “in most cases...a party’s living expenses are not relevant in determining his or her support obligation.” Pa.R.C.P. 1910.16-1, Explanatory Comment B1. Generally, the amount of support to be awarded is based in large part upon the parties’ monthly net income, which is arrived at according to Rule 1910.16-2, discussed *supra*. Then, based upon the income figure, the Master determines the parties’ obligations with guidance from the Basic Child Support Schedule found under Rule 1910.16-3. The rules do provide reasons which may be considered to allow for a deviation from the schedule; these reasons include *unusual* needs and *unusual* fixed obligations. Rule 1910.16-5(b)(1) (emphasis supplied). Here, the Master indicated in her Order that Defendant stated at the hearing he had no extraordinary expense. Order of April 28, 2000, (unnumbered) p. 2. Accordingly, the Master correctly allowed no reduction in child support for Defendant’s normal monthly bills.

***The Tax Refund:*** The Master did not err in utilizing Defendant’s entire tax refund in determining his monthly income. For purposes of determining monthly gross income, income tax refunds are to be included. Pa.R.C.P. 1910.16-2(a)(8). No differentiation is made in the rule to except a refund based on the earned income credit, nor do the rules provide any exception to including tax refunds as income based upon the reason the refund was given.

***Impact of the Child Custody Arrangement:*** Nothing in the Master’s Order indicates this issue was raised at the Master’s hearing. Moreover, it was not raised in Defendant’s Exceptions. Matters not covered by Exceptions are deemed waived.

The rules do provide that if the children spend 40 percent or more of their time with Defendant, calculated by the amount of overnights the children spend with him during the year, a rebuttable presumption *may* exist that he be entitled to a reduction in his basic support obligation. Pa.R.C.P. 1910.16-4(c)(1). However, the obligation should be reduced only if the parent spends an unusual amount of time with the children, or where unique financial needs can be demonstrated. *Anzalone v. Anzalone*, 673 A.2d 377 (Pa.Super. 1996). Determining whether the obligation should be reduced requires specific factual findings regarding the amount of time actually spent with the children on a regular basis, whether that amount of time is unusual, and whether additional significant expenses are incurred as a result of the custody arrangement; an arbitrary mathematical formula may not be used. *Ibid*. Accordingly, if Defendant wishes to have his support obligation reduced for this reason, he must file a petition to modify the support Order and be prepared to present evidence as indicated. However, there is no basis to find error by the Master.

**ORDER**

Defendant's Exceptions filed May 17, 2000, are HEREBY DENIED.

BY THE COURT:

William S. Kieser, Judge

cc: Court Administrator  
Jacqueline A. Houseweart  
Townhouse Apt. 103; 565 Memorial Avenue; Williamsport, PA 17701  
Robert E. Houseweart, Sr.  
330 Center Street, #2; Williamsport, PA 17701  
Judges  
Nancy M. Snyder, Esquire  
Gary L. Weber, Esquire (Lycoming Reporter)