

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

DOC, : NO. 92-21,184
Petitioner :
vs. : Domestic Relations Section
 : Exceptions
JL, :
Respondent :

OPINION AND ORDER

Before the Court are Petitioner's exceptions to the Family Court Order of August 9, 1999 in which Respondent was directed to pay to Petitioner child support but also in which her request for contribution to a private school expense, an occupational therapy expense, and a child care expense was denied. Argument on the exceptions was heard January 5, 2000.

Although Petitioner filed twenty-eight (28) exceptions, they may be reduced to seven (7) issues: Respondent's income, Petitioner's earning capacity, a deviation above the guidelines which was denied, the child care expense, the occupational therapy expense, the private school tuition, and the amount of the arrearage payment. These will be addressed in order.

First, Petitioner contends the hearing officer erred in failing to fully consider Respondent's overtime income. Because Respondent testified that he worked significantly more than average overtime in the first few months of 1998¹,

¹It is noted that the hearing officer heard testimony on May 21, 1998 and July 7, 1998, on Petitioner's request for

the hearing officer considered Respondent's 1997 annual income and added a \$1,500.00 raise² which he received in 1998 plus an income tax refund for 1997, received in 1998. Analysis of Respondent's pay stubs, however, indicates that this method does not fully consider his 1998 overtime income. According to the pay stub for pay period ending March 20, 1998, the year-to-date figures on which cover seven (7) bi-weekly pay periods, Respondent had through that date a total gross income of \$16,569.79. Considering his regular salary at that time of \$1,775.20 bi-weekly, he would have had without overtime a gross income of \$12,426.40. He therefore earned \$4,143.39 overtime income or \$591.91 per pay period. The year-to-date figures on the pay stub for pay period ending June 12, 1998 show a total gross income through that date of \$29,483.72. Since he received his raise in mid-May, for eleven (11) of those thirteen (13) pay periods he earned \$1,775.20 per pay period and for two (2) of those pay periods he earned \$1,916.80, for a total of \$23,360.80 without overtime income. He thus earned \$6,122.92 overtime income in those thirteen (13) pay periods and subtracting the overtime income earned through March 20, 1998, he earned \$1,979.53 in the last six (6) pay periods during that time, or \$329.92 per pay period. He thus did earn significantly more overtime income during the beginning of the year than during the

modification which was filed February 10, 1998. The Order in this matter was not issued by the Family Court hearing officer until August 9, 1999 after a significant delay waiting for certain documentation and briefs, which were completed in February 1999.

²The testimony indicates, however, that the raise was actually \$3,000.00 per year.

second quarter of the year, as he testified. It appears appropriate to use the \$329.92 per pay period gross overtime income and add such to his regular salary in calculating his support obligation. Through May 15, 1998 he had a bi-weekly net income of \$1,291.89 to which is added \$203.56 for overtime pay³ for a total bi-weekly net of \$1,495.45 or \$3,240.00 per month. Adding the \$115.00 per month average 1997 tax refund gives him a monthly net income of \$3,355.00. After May 15, 1998, his bi-weekly net income is \$1,381.31 and considering the overtime of \$203.56 he has a bi-weekly total net income of \$1,584.87 or \$3,434.00 per month. Adding the \$115.00 per month average tax refund provides him with a monthly net income of \$3,548.00.

Second, Petitioner contends the hearing officer erred in assessing her an earning capacity of \$1,177.00 per month, based upon her income as found in the previous Order. The hearing officer found that Petitioner was capable of working full-time and could earn \$16,000.00 to \$25,000.00 per year (which represents an hourly rate of \$8-\$12). A monthly net income of \$1,177.00 translates to an annual gross income of approximately \$17,655.00. Considering the Petitioner's experience, education and work history, the Court finds no error in assessing an earning capacity of \$1,177.00 per month net.

Third, Petitioner contends the hearing officer should have deviated above the guidelines based upon Respondent's reduced expenses. She contends his expenses are reduced

³The overtime pay check shows 38.3% withholding for taxes and retirement pay and therefore \$329.92 gross provides him with a \$203.56 net bi-weekly overtime income.

inasmuch as he does not have a mortgage payment (it is noted that Respondent testified that he does pay a monthly payment to his great aunt toward money which was borrowed from his uncle for the purpose of building his home, although there is no recorded mortgage), and is single and supports no one other than himself. A party's reduced living expenses are not a basis for deviation above the guidelines. Young v Muthersbaugh, 609 A.2d 1381 (Pa. Super. 1992).

Fourth, Petitioner contends the hearing officer erred in denying her request for a contribution to child care. It is noted that in the previous Order, issued prior to Petitioner's request for modification, although Petitioner had requested a contribution to a child care expense of \$84.00 per week, Respondent was directed to contribute one-half of only \$50.00 per week, the hearing officer having found that \$84.00 per week was an unreasonable fee where the child attended only 3 ½ hours per day. At that time, Petitioner was working full time. At the time of the hearings in 1998, Petitioner testified to working approximately thirty (30) hours per week and the hearing officer found that her schedule was flexible enough that the \$56.00 per week she testified to paying during the school year, where the child arrives at 3:50 p.m. and is there until only 5:15 p.m. at the latest, one hour and twenty-five minutes per day at the most, was not reasonable and necessary for her to maintain employment and therefore denied her request for contribution at all. While the Court agrees that during the school year Respondent should not be obligated to contribute to this expense as it does not appear necessary for Petitioner to maintain her employment, during the summer it appears Petitioner must pay \$95.00 per week for child care

which is necessary for her to maintain employment and therefore Respondent should have been directed to contribute to the summer day care expense. Considering Judge Butts' directive in her Order of July 3, 1997, that Petitioner provide documentation of all child care expenses she has actually incurred and that Respondent contribute his directed share only after receiving such documentation, for the summer of 2000 and hereafter, Petitioner will be directed to provide verification to the Domestic Relations Office and Respondent at the end of June, the end of July, and the end of August, for her summer day care expense and Respondent will be directed to reimburse Petitioner his proportionate share within ten (10) days after receipt of such documentation. For the summer of 1998 and the summer of 1999, Petitioner will be directed to provide verification of her actual expense incurred and Respondent will be directed to reimburse Petitioner for his share (50% in 1998 and 75% in 1999, pursuant to the guidelines in effect at each respective time).

Fifth, Petitioner contends the hearing officer erred in failing to require Respondent to contribute to the child's occupational therapy expense. After a review of the testimony, it appears that Petitioner did not adequately support her request for a contribution to this expense as reasonably necessary and, in addition, she has failed to provide Respondent with copies of bills for the treatment, even after a specific request for such. The Court finds no error in the hearing officer's failure to require Respondent to contribute to this expense.

Sixth, Petitioner contends the hearing officer erred in failing to require Respondent to contribute to the private

school expense. In the previous Order, Petitioner's request for contribution to this expense was denied as the Court found that the expense was not reasonably necessary and that it was not a reasonable expectation of the parents. The finding that the expense is not a reasonable expectation of the parents may not be changed at this time as the parents' financial means have not significantly changed. Although Petitioner argues that there has been a change in the reasonable needs of the child, indicating that the extent of the child's learning disability was not fully known at the time of the previous hearing, having been revealed through further testing since that time, Petitioner still has failed to establish that the private school expense is necessary as she failed to present any evidence whatsoever that the child's needs cannot be met in a public school setting free of charge. The Court thus finds no error in the hearing officer's failure to require a contribution from Respondent for this expense.

Finally, Petitioner contends the hearing officer erred in requiring Respondent to make a payment of only \$100.00 per month toward the arrearage, considering the significant length of time which has passed and the significant retroactive effect of the Order. The previous obligation of \$376.00 per month was raised by the hearing officer to \$440.00 per month effective February 1998 through the end of March 1999, an increase of \$64.00 per month for that thirteen (13) month period for a total arrearage of \$832.00. Effective April 1, 1999, the hearing officer raised the support obligation to \$606.00 per month, an increase of \$230.00 per month for a four (4) month period from April to August for a total arrearage of \$920.00, thus creating a

total arrearage from February 1998 through August 1999 of approximately \$1,752.00. It therefore does appear that the arrearage payment of \$100.00 per month is perhaps a bit low and it is noted that this Court is increasing somewhat the support obligations retroactive to February 1998. The arrearage payment will therefore be set at \$200.00 per month to consider the increase.

Considering Petitioner's earning capacity of \$1,177.00 per month and from February 10, 1998 through May 14, 1998 Respondent's income of \$3,355.00 per month, the guidelines require a payment for the support of one (1) minor child in amount of \$469.70 per month. Effective May 15, 1998, considering Respondent's increased income of \$3,548.00 per month, the guidelines require a payment of \$496.72 per month. Effective April 1, 1999, the guidelines require a support payment of \$667.08 per month.

ORDER

AND NOW, this day of February, 2000, for the foregoing reasons, it is hereby ORDERED AND DIRECTED that the Family Court Order of August 9, 1999 is hereby modified to provide for child support of \$469.70 per month effective February 10, 1998 through May 14, 1998, \$496.72 per month effective May 15, 1998 through March 31, 1999, and effective April 1, 1999, \$667.08 per month. With respect to child care expenses, for the summers of 1998 and 1999 Petitioner shall submit to the Domestic Relations Office and Respondent copies of receipts for child care she incurred during the child's summer school vacation which was necessary for Petitioner to maintain employment. Within thirty (30) days of receipt of

that documentation, Respondent shall pay directly to Petitioner one-half of her 1998 summer expense and 75% of her 1999 summer expense. With respect to child care expenses during 2000 and hereafter, Respondent shall contribute to 75% of Petitioner's child care expense incurred during the summers, which child care is necessary for Petitioner to maintain employment. Petitioner shall provide documentation to the Domestic Relations Office and Respondent at the end of June, the end of July, and the end of August and within ten (10) days of receipt of such documentation, Respondent shall pay directly to Petitioner 75% of the expense incurred.

With respect to excess unreimbursed medical expenses of the child, at this time Respondent shall be responsible for 75% of such and Petitioner shall be responsible for 25% of such.

Respondent shall pay an additional \$200.00 per month toward the arrearage created by the retroactive effect of this Order.

As modified herein, the Order of August 9, 1999 is hereby affirmed.

By The Court,

Dudley N. Anderson, Judge