

**IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA**

AS, : NO. 88-21,256  
Petitioner :  
 :  
vs. : DOMESTIC RELATIONS SECTION  
 : Exceptions  
DM, :  
Respondent :

OPINION AND ORDER

Before the Court are Respondent's exceptions to the Family Court Order dated July 24, 2000, in which Respondent was directed to pay child support for the support of the parties' one (1) minor child. Argument on the exceptions was heard September 27, 2000.

First, Respondent contends the hearing officer erred in computing his income. Specifically, Respondent argues that the figures included for capital gains from the sale of property and other gains are incorrect for two reasons: (1) they include recaptured depreciation, which depreciation was not allowable as a deduction for purposes of calculating child support at the time the depreciation was taken, and (2) they consider equity built by the pay down of the mortgage although the mortgage payment principal is also not an allowable deduction for purposes of calculating child support. With respect to the mortgage pay down, since such is not considered in calculating a capital gain, Respondent's argument is without merit. With respect to the recapture of depreciation, however, a review of Respondent's federal income tax return indicates that although no depreciation recapture was included on Schedule D, Form 4797 (reporting sales of business property) does reflect add back of depreciation. Therefore, to the extent of that depreciation, Respondent is correct and his income should be adjusted to remove that added back depreciation. Form 4797 shows a total of \$2,952.00 recaptured depreciation, one-half (1/2) of which is \$1,476.00, which averages to \$123.00 per month.

Second, Respondent contends the hearing officer erred in not requiring Petitioner to meet the first \$250.00 per year of the child's medical expenses. Inasmuch as this requirement is in accordance with the guidelines, the Order will be amended to reflect such.

Finally, Respondent contends the hearing officer erred in not directing Petitioner to file a release of claim to exemption in order for him to claim the minor child as an exemption on his federal income tax return. Petitioner agreed at argument that Respondent should be awarded the exemption as such provides her with no tax benefit. The Court will therefore direct Petitioner to provide Respondent with a release of claim to exemption for tax year 2000, and Respondent's child support obligation will be recalculated based upon the additional income he will receive from the tax benefit, effective January 1, 2001.

Considering Petitioner's earning capacity of \$1,543.00 per month and Respondent's income of \$4,111.00 per month (\$4,234.00 per month found by the hearing officer less \$123.00 per month attributable to added back depreciation), the guidelines require a payment for the support of one (1) minor child in the amount of \$739.00 per month. Effective January 1, 2001, recalculating Respondent's federal tax liability at \$6,005.00 (after considering an additional exemption), his child tax credit at \$2,500.00 and therefore his refund at \$4,209.00, attributing to him one-half (1/2) of such and averaging such over a twelve (12) month period, for an additional \$59.00 per month, Respondent will have an income of \$4,170.00 per month. Considering that income and Petitioner's earning capacity, the guidelines suggest a payment of \$748.00 per month.

#### ORDER

AND NOW, this 17<sup>th</sup> day of November, 2000, for the foregoing reasons, the Family Court Order of July 24, 2000 is hereby modified to provide that Respondent pay for the support of the parties' one (1) minor child, the sum of \$739.00 per month through December 31, 2000 and effective January 1, 2001 the sum of \$748.00 per month. Respondent's percentage responsibility toward medical expenses shall be modified such that Respondent shall be responsible for 72.71% of such through the end of this year and for 72.99% of such effective January 1, 2001. Petitioner is responsible for the first \$250.00 of unreimbursed medical expenses per calendar year incurred on

behalf of the child, before requesting contribution from Respondent.

Finally, Petitioner is directed to execute a release of claim to exemption, allowing Respondent to claim the child as an exemption on his federal income tax return, by January 31, 2001 for tax year 2000, and by the 31<sup>st</sup> of January each year thereafter for the preceding tax year, until further agreement of the parties or Order of Court.

As modified herein, the Order of July 24, 2000 is hereby affirmed.

By the Court,

Dudley N. Anderson, Judge

cc: AS

Janice Yaw, Esq.  
Family Court  
Barbra Hall, Domestic Relations  
Gary Weber, Esq.  
Hon. Dudley N. Anderson