

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

CJL,	:	NO. 00-20,250
Petitioner	:	
	:	
vs.	:	DOMESTIC RELATIONS SECTION
	:	Exceptions
PAL,	:	
Respondent	:	

OPINION AND ORDER

Before the Court are cross-exceptions to the Family Court Order entered November 6, 2000, in which Respondent was directed to pay child support to Petitioner, after considering Petitioner's offsetting obligation to Respondent for the one (1) minor child in Respondent's custody. Argument on the exceptions was heard February 7, 2001.

In her exceptions, Petitioner contends the hearing officer erred in determining Petitioner's earning capacity, in determining Respondent's income, in awarding to Petitioner only a portion of the daycare expense for the minor child, O, and in requiring Petitioner to contribute to a portion of the expense for the mortgage, taxes and insurance on the marital residence, in which Respondent resides. In his exceptions, Respondent contends the mortgage payment credit was calculated incorrectly. These will be addressed seriatim.

With respect to Petitioner's earning capacity and Respondent's income, Petitioner argues that inasmuch as the hearing officer accepted Respondent's explanation that he reduced his hours to care for the minor child in his custody, she should not have assessed Petitioner an earning capacity based on full time work since Petitioner works only three (3) days per week because, according to Petitioner, she cannot work any more than that due to her responsibilities to the minor children in her custody. Petitioner fails to recognize that the reduction in Respondent's income was a matter of

reducing his overtime to the point where he works now only slightly more than forty (40) hours per week, and by assessing Petitioner at forty (40) hours, the parties are actually being treated equally.

Petitioner also argues that since her three-days-per-week employment provides her with more income than the \$750.00 per month earning capacity she was previously assessed, she should not have been assessed an additional earning capacity higher than the amount she actually makes. The earning capacity of \$750.00 per month assessed in a prior Order had two (2) components, however: (1) the ability to work full-time (2) earning at least \$5.25 per hour (minimum wage). Since Petitioner was previously assessed the capacity to work full-time, the Court finds no error in the hearing officer's assessment of a forty (40) hour week. Further, the fact that Petitioner earns \$8.00 per hour gross, rather than \$5.25 per hour, does not require the Court to base the earning capacity on only \$5.25 per hour, as such was a minimum capacity. The Court will therefore not disturb the hearing officer's findings regarding the parties' respective net income/earning capacities.

With respect to the daycare expense for O, Petitioner introduced evidence that she pays \$83.00 per week for O to attend Bostley's Pre-School/Daycare during the three (3) days per week she works. The hearing officer referenced a prior Order which found that the child, B had attended Messiah Lutheran Pre-School at a cost of \$68.00 per month. The hearing officer then indicated that since Petitioner gave no reasonable explanation why O had to attend a pre-school which was so expensive compared to the pre-school attended by B, she allowed only \$68.00 per month for O's pre-school/daycare expense. Petitioner did explain why it was not feasible for O to be cared for by the private babysitter caring for B, who is now in kindergarten, after school. The Court believes no explanation regarding Messiah Lutheran Pre-School was necessary as it appears that such was for 2 ½ hours per day only three (3) days per week, which is not comparable to the nine (9) hour days required for O's daycare while Petitioner is working. The Court thus finds that the hearing officer did err in limiting the pre-school/daycare expense for O, as such appears to be a reasonable amount and reasonably necessary for Petitioner to maintain employment.

Finally, with respect to the mortgage contribution, the hearing officer referenced Rule 1910.16-6 (e) and provided Respondent a credit for half of the excess of the mortgage payment, taxes and insurance over 25% of Respondent's income. Rule 1910.16-6 (e) applies to obligees only,

however. The hearing officer did err in allowing Respondent a credit for these payments.¹

ORDER

AND NOW, this 9th day of February, 2001, for the foregoing reasons, the Order of November 6, 2000 is hereby modified to provide that Respondent pay for the support of the four (4) minor children in Petitioner's custody, considering the obligation Petitioner owes to Respondent for the one (1) minor child in his custody, the sum of \$994.76 per month plus \$96.30 per month contribution to B's daycare expense, \$35.88 per month contribution to Nathan's private school expense and \$266.69 per month contribution to O's pre school/daycare expense. Respondent shall receive a credit of \$13.20 per month for Petitioner's required contribution to the medical insurance expense, for an overall payment to Petitioner of \$1,390.52 per month. The alimony pendente lite obligation of \$313.53 per month shall continue as provided for in the Order of November 6, 2000.

As modified herein, the Order of November 6, 2000 is hereby affirmed.

By the Court,

Dudley N. Anderson, Judge

cc: Joy McCoy, Esq.
Janice Yaw, Esq.
Family Court
Domestic Relations
Gary Weber, Esq.
Hon. Dudley N. Anderson

¹In light of this ruling, the Court finds it unnecessary to address Respondent's exceptions which simply object to the method of calculation of the mortgage payment credit.