

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

DRA-N, : NO. 94-21,824  
Petitioner :  
 :  
vs. : DOMESTIC RELATIONS SECTION  
 : Exceptions  
LNK, :  
Respondent :

OPINION AND ORDER

Before the Court are Respondent’s exceptions to the Family Court Order dated August 30, 2001, in which his request for modification of his child support obligation was denied. Argument on the exceptions was heard October 24, 2001, at which time the Court directed the preparation of a transcript. That transcript was completed March 25, 2002.

In his exceptions, Respondent contends the hearing officer erred in assessing him an earning capacity based upon prior employment which he no longer has, and in failing to assess Petitioner with a full time earning capacity even though she works only part-time.

With respect to Respondent’s earning capacity, it appears Respondent is currently employed by Unlimited Service, earning \$400.00 per week gross. He was employed in 2000, January through October at Krauss Funeral Home, earning approximately \$30,000.00 annually. According to Respondent’s testimony, he left Krauss Funeral Home in order to take a job at a funeral home owned by Service Corporation International, where he expected to earn more money. Approximately one (1) month after Respondent began that employment, Service Corporation International sold the funeral home to new owners, who then fired Respondent. Respondent indicated that one of the reasons he was fired was because of his bad credit record. The hearing officer indicated that he did not understand what a bad credit record had “to do with the performance of a job as a funeral director” and assessed Respondent an earning capacity based upon his employment prior to working at Krauss

Funeral Home, when he earned \$40,000.00 per year. Whether the hearing officer understands the reasoning of a prospective employer cannot support the assessment of an earning capacity where it appears the obligor lost his employment through no fault of his own. Respondent continues to work in the funeral industry and has found apparently the only employment in that industry available to him at this time. The Court believes, after a review of the transcript, that Respondent did not voluntarily leave his employment and that he has attempted to maintain suitable employment commensurate with his training and abilities. His support obligation should therefore be based on his actual income at this time.

According to Respondent's pay stubs, he earns \$400.00 per week gross. This translates to an annual gross income of \$20,800.00. Reviewing his 2000 joint federal income tax return and adding the \$20,800.00 to his wife's income, would provide them with a total gross income of \$74,520.00. The job related expenses of his wife, along with state and local income taxes paid as well as the charitable contribution, provide them with an itemized deduction estimated at \$8,414.00, making their taxable income \$60,306.00. The federal tax is estimated at \$10,939.00 and Respondent's proportionate share of that tax is estimated at \$3,053.00. His state tax (2.6% in New York) is estimated at \$541.00, the disability tax at \$31.00 and his social security and medicare tax at \$1,591.00. Respondent will thus have an annual net income of \$15,584.00, or \$1,299.00 per month. This is significantly lower than the \$1,665.00 upon which the prior Order (dated December 12, 1996, entered in Clearfield County) is based, justifying a review.

With respect to Petitioner's earning capacity, a review of the transcript indicates Petitioner works 39 hours bi-weekly for the Jersey Shore Area School District and 20 hours bi-weekly in another position. No evidence was presented that Petitioner has available to her any more hours with the school district and she did present evidence that although she has post high school training in the floral/florist business, part-time work is not available to her in that field. The Court notes the hearing officer did not actually reach the issue of Petitioner's earning capacity, having denied Respondent's request for a review. In an Order dated March 5, 2001, however, the incomes/earning capacities of both parties were reviewed, Petitioner was found to be working the same number of hours in the same positions and the income calculated for purposes of the child support obligation was based upon that actual work. No further earning capacity was assessed at that time. The Court notes no exceptions

were filed to the Order of March 5, 2001, and the Court finds no error in any event, in using Petitioner's actual income for purposes of Respondent's child support obligation.

According to Petitioner's 2000 W-2, she has a monthly net income of \$756.00. Her 2000 federal tax return indicates that her portion of the refund averages to \$48.00 per month, giving her a total monthly net income of \$804.00<sup>1</sup>. Considering Petitioner's income of \$804.00 per month and Respondent's income of \$1,299.00 per month, the guidelines require a payment for the support of two (2) minor children of \$442.00 per month.

### ORDER

AND NOW, this 11<sup>th</sup> day of April, 2002, for the foregoing reasons, Respondent's exceptions are hereby granted in part and denied in part. The Order of August 30, 2001 is hereby vacated and the Order of March 5, 2001 is hereby modified to provide for a payment of \$442.00 per month, effective April 2, 2001 and an additional \$100.00 per month toward the arrearage. The percentage responsibility for excess unreimbursed medical expenses is also modified such that Petitioner shall be responsible for 38.23% of such and Respondent shall be responsible for 61.77% of such.

As modified herein, the Order of March 5, 2001 is hereby continued in effect.

By the Court,

Dudley N. Anderson, Judge

cc: Family Court  
Domestic Relations  
Leroy Keiler, Esq.  
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Dana Jacques, Esq.  
Gary Weber, Esq.  
Hon. Dudley N. Anderson

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<sup>1</sup>Although in the Order of March 5, 2001, Petitioner was found to have a monthly net income of \$936.66, it appears that such figure is mistaken and should have been \$780.00. The hearing officer found her total annual gross income to be \$12,488.80. He then reduced that amount by 25% for taxes, arriving at a monthly net income of \$936.66. Actually, the reduction by 25% for taxes would result in an annual net income of \$9,366.60. Once that figure is divided by twelve (12) months, a monthly net income of \$780.55 results.