

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

YC, : NO. 01-20,499
Petitioner :
: vs. : DOMESTIC RELATIONS SECTION
: Exceptions
MRC, :
Respondent :

OPINION AND ORDER

Before the Court are Respondent’s exceptions to the Family Court Order dated December 18, 2001, in which Respondent was directed to pay child support and spousal support to Petitioner. Argument on the exceptions was heard March 27, 2002.

In his exceptions, Respondent contends the hearing officer erred in finding Petitioner entitled to spousal support, in the assessment of Petitioner’s earning capacity, in the calculation of his net income, and in failing to provide him with credit for direct payments made prior to entry of the Order. These will be addressed seriatim.

With respect to the issue of entitlement, it appears there is no dispute the marriage dissolved because of Respondent’s homosexuality, his decision to no longer repress that identity, and Petitioner’s unwillingness to accept Respondent’s sexual identity and continue with the marriage. It also appears there is no argument from either party that the sexual identity of one’s marital partner is crucial to the marriage relationship. McKolanis v McKolanis, 435 A.2d 103 (Pa. Super. 1994). Respondent contends, however, that Petitioner knew of his homosexuality before they married and therefore may not justify a separation on the grounds that she cannot accept such at this time. The hearing officer found that Petitioner did not know of Respondent’s homosexuality at the time of the marriage. While the Court believes that such a conclusion is not entirely supported by the record, it

appears that other considerations support the hearing officer's conclusion in any event.

Respondent testified that the parties discussed his sexual identity prior to their marriage, including during their pre-marital counseling. He also indicated, however, that when they met, he thought he had been "healed of it" and went into the marriage assuming it was no longer a part of his life. N.T., July 19, 2001, @ 44. This testimony appears to have been bolstered by a question from Petitioner's counsel, asking Respondent whether Petitioner demanded assurances from him at the time of the marriage that he would not act on any type of homosexual urges. Respondent's testimony implies that Petitioner did indeed demand such assurances and directly indicates that he gave her such assurances. Thus, while it appears that Petitioner did indeed know something of Respondent's sexual identity conflict at the time of the marriage, it also appears Respondent did not at that time ask her to accept such but indicated to her that it would not interfere with their marriage. When he changed his position, and sought to allow his sexual identity to more freely express itself, Petitioner was justified in considering the marriage relationship broken. The Court therefore finds no error in the hearing officer's determination that Petitioner is entitled to spousal support.¹

With respect to Petitioner's earning capacity, the Court notes Petitioner was assessed a full time earning capacity at the hourly rate of \$6.50. Respondent contends the hourly rate should be higher, based upon her age, educational background, and sellable job skills. From the testimony it appears Petitioner received her Bachelor of Arts in Art History but was never employed using that degree. She worked full time during the first three (3) years of marriage as a seamstress in the costume industry but after the first child was born in 1985, stayed home except for a few part time jobs, specifically catering and working at a fabric warehouse. Petitioner testified that in these jobs she earned from \$5.00 to \$5.50 per hour. The Court does not believe that this evidence provides any basis to assess her an earning capacity higher than the \$6.50 per hour with which she was assessed.

With respect to Respondent's income, Respondent contends the hearing officer erred in failing

¹Respondent also contends in his allegation of error with respect to the entitlement issue that Petitioner's revelation of his homosexuality to his employer, The Saint James Episcopal Church, caused him to lose his employment. The Court sees this not as an issue of entitlement, but, rather, an issue of earning capacity. Respondent has not been assessed an earning capacity based upon his former employment, however, and therefore the Court sees no issue in this regard.

to deduct any income taxes from his gross income in arriving at his net income. Petitioner's counsel indicated no disagreement with that allegation and it does appear the hearing officer applied a 20% tax rate in calculating Petitioner's net earning capacity, but failed to apply any tax rate to Respondent's gross income. His disability retirement pay from the church is therefore \$1,194.00 per month net, rather than \$1,493.00 per month, his settlement pay is \$2,953.00 per month net, rather than \$3,691.26 per month, and the average monthly resettlement allowance payment is \$398.00 per month net, rather than \$497.67 per month.

Finally, with respect to the request for credit for payments made directly to Petitioner prior to entry of an Order, at argument Petitioner's counsel agreed that such credit should be given. It is noted that such credit was provided for in an interim Order entered prior to the final Order, but apparently was inadvertently omitted from the final Order.

For the period from April 20, 2001 through June 30, 2001, considering Petitioner's earning capacity of \$845.00 per month and Respondent's income of \$4,147.00 per month, and considering the reduction of Respondent's obligation for the two (2) minor children who spend three (3) overnights per week with him, the guidelines suggest a child support obligation of \$1,385.00. Spousal support is then calculated at \$805.00 per month.² Effective July 1, 2001 through December 31, 2001, considering Petitioner's earning capacity of \$845.00 per month and Respondent's income of \$1,194.00 per month, and also allowing for a reduction for the two (2) youngest children, the guidelines suggest a child support payment of \$506.00 per month and no spousal support payment. Effective January 1, 2002 through December 31, 2002, considering Petitioner's earning capacity of \$845.00 per month and Respondent's income of \$1,592.00 per month, again considering a reduction for the two (2) youngest children, the guidelines suggest a child support payment of \$670.00 per month and a spousal support payment of \$23.00 per month. Effective January 1, 2003, no longer considering in Respondent's income the resettlement allowance averaged over the twelve (12) month period from January 1, 2002 through December 31, 2002, the child support payment reverts to

²Although this is higher, not lower, than the spousal support Ordered during this period of time by the Family Court Order, the Court notes that the Family Court Hearing Officer incorrectly calculated the spousal support obligation during this time period, due to an error in arithmetic.

\$506.00 per month and the spousal support payment ceases.

ORDER

AND NOW, this 10th day of April, 2002, for the foregoing reasons, Respondent's exceptions are hereby granted in part and denied in part. The Family Court Order dated December 18, 2001 is hereby modified in accordance with the above calculations. In addition, Respondent shall be provided a credit against any arrearage, in the amount of \$2,052.45 for payments made by him directly to Petitioner prior to entry of an Order. Should there remain an arrearage after such credit is applied, Respondent shall pay an additional \$50.00 per month toward that arrearage. The percentage responsibility for excess unreimbursed medical expenses shall be modified in accordance with the parties' corrected net incomes.

As modified herein, the Order of December 18, 2001 is hereby affirmed.

By the Court,

Dudley N. Anderson, Judge

cc: Family Court
Domestic Relations
Sean Roman, Esq.
Ronald Travis, Esq.
Dana Jacques, Esq.
Gary Weber, Esq.
Hon. Dudley N. Anderson