

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

TKE, : NO. 01-20,975
Petitioner :
: vs. : DOMESTIC RELATIONS SECTION
: Exceptions
EJE, :
Respondent :

OPINION AND ORDER

Before the Court are cross-exceptions to the Family Court Order dated October 1, 2001, in which Respondent was directed to pay child support and a mortgage contribution to Petitioner. Argument on the exceptions was heard November 28, 2001, at which time the Court directed the preparation of a transcript. That transcript was completed March 25, 2002.

In her exceptions, Petitioner contends the hearing officer erred in failing to order Respondent to continue her on his health insurance coverage, in assigning her a full time earning capacity, in applying a 25% reduction to a portion of the child care expense prior to apportioning responsibility for such, in the amount of the mortgage contribution, and in failing to provide for retroactivity. In his exceptions, Respondent contends simply that the hearing officer erred in failing to provide for a reduction of \$100.00 per month to account for the credit which results after consideration of direct payments made after the petition was filed but prior to the entry of an order. These will be addressed seriatim.

With respect to Petitioner’s desire to continue on Respondent’s health insurance, Respondent indicates that he is agreeable to such and it is noted that it is available to him at no cost, through his employment. The Order will therefore be amended accordingly.

With respect to Petitioner’s earning capacity, the hearing officer found that Petitioner had

worked eleven years with State Farm as a claims specialist and in March 2001, two (2) months prior to separation, she went to part time work with State Farm. The testimony indicates that Petitioner had indicated to Respondent a strong desire to reduce her working hours, and Respondent felt that perhaps allowing Petitioner to work only part time would reduce the stress in the marriage and save the marriage. Petitioner testified that she was able to return to full time employment if she chose to do so, but that she did not intend to do so. The hearing officer assessed Petitioner with a full time earning capacity, rather than consider her actual income from part time employment. Petitioner contends the hearing officer should have applied the Nurturing Parent Doctrine. The Court does not agree. Application of the Nurturing Parent Doctrine requires a finding that the emotional welfare of the children must be elevated above their economic welfare. To support such a finding, there must be testimony that having a parent stay at home with the children is necessary for the children's emotional welfare, or for other specific needs. Wasiolek v Wasiolek, 380 A.2d 400 (Pa. Super. 1977). No such testimony was presented in the instant matter, Petitioner simply stated that she and the children enjoyed their "stay home days." Additionally, consideration of the factors, that is, the age and maturity of the child (ren), the availability and adequacy of others to provide care, and the adequacy of available financial resources should a parent stay at home, do not support application of the Nurturing Parent Doctrine. Both children have been at school/daycare or with a sitter while Petitioner worked full time, the adequacy of this care was indicated to be excellent, and the testimony indicates that the parties are not able to continue to maintain two (2) households on their incomes with Petitioner working part time. The Court therefore finds no error in the hearing officer's assessment of a full time earning capacity to Petitioner.

With respect to reducing the daycare expense by 25%, the Court finds no error in that regard. Petitioner contends that her actual gross income is less than \$1,600.00 per month, the cut-off for application of the reduction, but that is incorrect.

With respect to the mortgage contribution, the Court does agree with Petitioner that such was calculated incorrectly. The hearing officer failed to add in the childcare contribution in calculating Petitioner's total income. Doing so gives Petitioner a total income of \$4,338.94 per month, 25% of which is \$1,084.74. This is \$18.18 per month less than the monthly mortgage/taxes/insurance

payment of \$1,102.92. Therefore Respondent's contribution should be \$9.09 per month, rather than \$34.93 per month. The Order will be adjusted accordingly.

With respect to the failure to list a retroactive date, again Petitioner is incorrect as the hearing officer did indeed list a date, making the Order effective the date of the Petition, July 12, 2001.

Finally, with respect to Respondent's contention the hearing officer erred in failing to allow for a reduction in his payment by \$100.00 per month, based upon a credit which results after applying his direct payments, the Court agrees. Although the hearing officer provided for a \$100.00 per month payment toward any arrearage, Respondent was given a credit of \$4,601.04 for direct payments made prior to the hearing and such far exceeds the Court ordered support amounts. The Order will therefore be supplemented to provide for such a monthly reduction until the credit is consumed and used in full.

ORDER

AND NOW, this 12th day of April, 2002, for the foregoing reasons, Petitioner's exceptions are hereby denied in part and granted in part and Respondent's exception is hereby granted. The Order of October 1, 2001 is hereby modified to provide for a mortgage contribution of \$9.09 per month. Further, based upon agreement of the parties which was conveyed to the Court at the time of argument, the mortgage contribution obligation shall cease as of September 30, 2001. The Order is further modified to provide that Respondent continue to carry both Petitioner and the children on the health insurance available to him through his employment, until further Order of Court. Finally, Respondent's monthly payment shall be reduced by \$100.00 per month until the credit referred to above is consumed.

As modified herein, the Order of October 1, 2001 is hereby affirmed.

By the Court,

Dudley N. Anderson, Judge

cc: Family Court