

TLG,		: IN THE COURT OF COMMON PLEAS OF
		: LYCOMING COUNTY, PENNSYLVANIA
	Petitioner	:
		:
	vs.	: NO. 96-20,767
		: DOMESTIC RELATIONS SECTION
TAG,		:
		:
	Respondent	: Exceptions

OPINION AND ORDER

Before the Court are Respondent's exceptions to the Family Court Order of April 3, 2002. Argument on the exceptions was heard July 17, 2002.

What has turned out to be a convoluted mess, began innocently enough on March 24, 1999, when Petitioner filed a request to reopen child support and for spousal support, the previous court-ordered child support having been suspended when the parties reconciled and, indeed, married. Family Court entered an Order on June 10, 1999, exceptions were filed, and this Court entered an Order on August 11, 1999. Petitioner appealed to the Superior Court and by Order dated December 15, 2000, the issue of Respondent's earning capacity was remanded to Family Court. By Order dated February 8, 2001, an amended obligation was directed, and that Order was affirmed by this Court by Order dated March 6, 2001, which dismissed Respondent's exceptions for failure to pay for the transcript which had been deemed necessary.

Problems arose when four petitions for modification were filed while the original Order was on appeal. On August 11, 1999, Respondent filed a petition for modification indicating as a basis for review that his rental income had decreased as a result of his having moved into the property and that Petitioner had obtained employment. On October 8, 1999, Petitioner filed a

request for modification seeking to have Respondent's earning capacity increased. On March 21, 2000, Petitioner filed another request for modification, indicating Respondent was now employed. Finally, on November 8, 2000, Respondent filed a petition for modification, indicating he was off work due to a work-related injury. Each of these petitions was handled differently, causing only more confusion in the record. The petition of August 11, 1999, was heard by Family Court, but the resultant Order was vacated at the time of the exceptions argument, as a result of the pending appeal. The petition of October 8, 1999, was brought to the Court's attention as the result of a Motion for Discovery, and was deferred before any hearing was held. The petition of March 21, 2000, was heard in Family Court and an Order was entered. Since the matter of Respondent's employment was not the issue on appeal, the modification of the prior Order was considered within the Court's jurisdiction, and, on exceptions, the Family Court order was modified, but not vacated. Finally, the petition of November 8, 2000, was put on hold by the Domestic Relations Office and was not scheduled for hearing.

Once the Superior Court relinquished jurisdiction back to this Court, Family Court was directed to hold a hearing on the petitions of August 11, 1999, October 8, 1999, and November 8, 2000. The petitions were simply dismissed by the hearing officer who considered that they had been resolved by the Order of February 8, 2001. Since such was not the case, they were again remanded to Family Court by Order dated August 8, 2001. In the meantime, the parties had requested a hearing on claims of equitable distribution and alimony which had been raised in the divorce action, so the petitions were heard in conjunction with those claims, on November 7, 2001, January 23, 2002, and March 27, 2002. The hearing officer then entered

the Order currently under consideration on exceptions, that of April 3, 2002, addressing the petition of November 8, 2000.¹

In his exceptions, Respondent raises seven areas of alleged error.² The Court will address each in the order raised.

First, Respondent contends the hearing officer erred in failing to include in Petitioner's income her federal income tax refund. The Court agrees. A copy of Petitioner's 2000 return was introduced into evidence as Plaintiff's Exhibit K-2, and shows that Petitioner received a refund of \$4801.00. This refund should have been averaged over a 12-month period and \$400.00 added to her monthly net income in 2001.³

Next, Respondent contends the hearing officer erred in failing to assess Petitioner an earning capacity based upon the income she had when working two full-time jobs. Petitioner testified that she was working at Green's Family Market in 2000, began working at Wood Dining Service in December 2001, but was unable to continue both full-time jobs and thus left Green's after a month or a month and a half. She continues to work at Wood Dining Service. While the Court agrees that Petitioner's actual income during that 6-week period should be

¹ The Court notes that the petition of August 11, 1999, was not addressed in the April 3, 2002, Order, but since Respondent has not raised that issue in his exceptions, the matter is now considered resolved. The petition of October 8, 1999, is also considered resolved since the issue raised therein, Respondent's earning capacity, was addressed by the Order of February 8, 2001, which considered the matter retroactive to March 24, 1999.

² Although the written exceptions contain 14 numbered paragraphs, one issue was withdrawn from consideration at argument and the remaining are simply duplications.

³ Since the Order addresses Respondent's obligation retroactive to October 10, 2000, Petitioner's income from 2000, including her 1999 refund, will be used for the time periods through February 1, 2001.

considered since the support obligation is being reviewed during that period of time, the Court does not agree with the assessment of an earning capacity. It has never been the policy of the Court to hold anyone to more than one full-time job.

Next, respondent contends the hearing officer erred in calculating his rental income. The Court agrees. The hearing officer failed to deduct mortgage payments or taxes, calling these payments “normal expenses” which “would not be utilized to reduce the income from the rent.” In the Order of June 10, 1999, wherein the issue of Respondent’s rental income was originally addressed, the mortgage payment,⁴ taxes, insurance and repair expenses were deducted in calculating the net rental income. Except for the repair expense, which was not substantiated by Respondent, the same expenses should be deducted in calculating Respondent’s current rental income.⁵ Since Respondent now lives in half the property, half the mortgage expense, half the taxes and half the insurance expense (as found in the Order of June 10, 1999, since no updated figures were provided by Respondent at the latest hearings) should be deducted from the rental income of \$400.00 per month. Doing so results in a net rental income of \$201.56 per month.

Next, respondent contends the hearing officer erred in considering Respondent’s receipt of Worker’s Compensation retroactive to October 10, 2000, arguing that although Respondent

⁴ While the Court does not agree that the entire mortgage payment should be deducted in calculating rental income, as only the interest portion may be considered an expense, no exceptions were filed to the June 10, 1999, Order, objecting to such a deduction. The Court will therefore continue to calculate Respondent’s rental income consistent with the previous Order.

⁵ While in the instant Order the hearing officer deducted 25% for taxes, it appears from the Order of June 10, 1999, that Respondent pays no taxes on the rental income after consideration of a depreciation expense.

was injured October 10, 2000, he did not actually receive any payments until November 2000. Respondent himself testified, however, that the payments he did receive were retroactive to October 11, 2000. The hearing officer therefore did not err in this regard.⁶

Next, Respondent contends the hearing officer erred in awarding spousal support since the parties were divorced by decree dated April 9, 2002. Respondent fails to recognize the Order was entered April 3, 2002, prior to entry of the decree.

Next, Respondent contends the hearing officer erred in calculating a monthly income from worker's compensation of \$1682.68, indicating that, considering the weekly payment of \$388.31, the monthly income should be \$1553.24. Respondent fails to recognize there are 4.345 weeks in a month, not 4.

Finally, Respondent contends the award of \$1891.28 per month child support⁷ "does not accurately reflect the children's needs and is excess (sic) for most children similarly situated in Lycoming County." Respondent refers the Court to Dellantonio vs. Dellantonio, 53 D&C 4th 188 (2001). Dellantonio involved parties whose incomes took the issue of child support beyond the guidelines, however, necessitating a Melzer analysis to determine the reasonable needs of the children. In the instant case, the combined income of the parties does not go

⁶ Actually, the Court does find an error in providing for a modification retroactive to the date of Respondent's injury, inasmuch as the petition for modification was not filed until nearly a month later, but Petitioner has not excepted to the retroactivity and the Court will therefore not address it.

⁷ Respondent received a worker's compensation commutation payment of \$75,000.00, less attorney's fees. The high support amounts are based on that payment, averaged over a 12-month period, extending for that same 12-month period.

beyond the guidelines and since Respondent has not shown any reason to deviate below those guidelines, the Court finds an award based on the guidelines to be appropriate.

Considering Petitioner's income from Green's and her 1999 tax refund, of \$985.55 per month, and Respondent's income from worker's compensation, his military pension and his rental income, of \$2862.24 per month, from October 10, 2000, through December 14, 2000, the guidelines require a payment of support for three children of \$953.64 per month. Respondent should be credited with \$22.97 per month for his payment of health and dental insurance, resulting in a net payment of \$930.67 per month. Spousal support is then calculated at \$283.81 per month.⁸ Effective December 15, 2000, Petitioner's additional income from Wood Dining Service, of \$1090.63 per month, gives her a monthly net income of \$2076.18. For the period of December 15, 2000, through January 31, 2001, the guidelines thus require a payment of support for three children of \$899.66 per month. Respondent should be credited with \$37.70 per month for his payment of health and dental insurance, resulting in a net payment of \$861.96 per month. Spousal support is not appropriate. As of February 1, 2001, Petitioner's income should be based on her income from Wood Dining Service and her 2000 tax refund, and is found to be \$1490.00 per month. For the period of February 1, 2001, through February 1, 2002, the guidelines thus require a payment of support for three children of \$927.94 per month. Respondent should be credited with \$30.71 per month for his payment of health and dental insurance, resulting in a net payment of \$897.23 per month. Spousal support

⁸ While previous Orders also provided for a mortgage contribution, and a contribution of \$13.10 per month would be appropriate in conjunction with the support calculated for this time period, the hearing officer failed to include such a contribution, and Petitioner did not except to this oversight. The Court will therefore also not include a mortgage contribution.

is then calculated at \$142.50 per month. Effective February 1, 2002, Respondent's income is based on his worker's compensation commutation payment averaged over a twelve-month period, of \$5625.00 per month, in addition to his military pension and rental income, giving him a net monthly income of \$6804.56. For the period of February 1, 2002, though February 1, 2003, the guidelines thus require a payment of support for three children of \$1858.12 per month. Respondent should be credited with \$16.11 per month for his payment of health and dental insurance, resulting in a net payment of \$1842.01 per month. Spousal support is then calculated at \$1041.77 per month. Finally, effective February 1, 2003,⁹ Respondent's income will include (at least based on the facts before the Court at this time) only his military pension and his rental income, and will total \$1180.00 per month. Thus, effective February 1, 2003, the guidelines require a payment of support for three children of \$463.16 per month. Respondent should be credited with \$50.06 per month for his payment of health and dental insurance, resulting in a net payment of \$413.10 per month. Spousal support is not appropriate.

One final issue remains to be addressed. In this Court's Order of February 21, 2001, Petitioner was directed to provide verification of a child care expense to which she had testified, within ten days. The award of a child care contribution contained in that Order was contingent upon Petitioner providing the verification. The records of the Domestic Relations Office indicate that the verification was never provided. The child care contribution was collected by the Domestic Relations Office nevertheless, however, from March 21, 2000,

⁹ The Court recognizes the folly of providing for a payment which will not be effective until February 1, 2003, some six months from now, as surely another petition for modification is on its way: at argument Respondent's counsel indicated that Respondent is now working again. It is necessary, however, as the addition into Respondent's income of his worker's compensation commutation payment is for only twelve months.

through October 10, 2000, when it ended simply because the subsequent Order, that of April 3, 2002, did not provide for a specific contribution, indicating only that Respondent should contribute to the expense if there was one. The Court will therefore direct that the child care contributions collected be backed-out of the arrearage.

ORDER

AND NOW, this 22nd day of July, 2002, for the foregoing reasons, the Order of April 3, 2002, is hereby modified to provide for the payments of child and spousal support as delineated in the foregoing opinion. Each party's percentage responsibility for excess unreimbursed medical expenses is modified accordingly. Respondent is directed to pay \$300.00 per month toward the arrearage, which payment shall be lowered to \$50.00 per month effective February 1, 2003. The Domestic Relations Office is directed to back out child care contributions of \$164.00 per month from March 21, 2000, through May 29, 2000, \$116.00 per month from May 30, 2000, through June 22, 2000, and \$164.00 per month from June 23, 2000, through October 9, 2000.

As modified herein, the Order of April 3, 2002, is hereby affirmed.

BY THE COURT,

Dudley N. Anderson, Judge

cc: Family Court
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Hon. Dudley Anderson