

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

AJH,	: NO. 01-20,419
Petitioner	:
	:
vs.	: DOMESTIC RELATIONS SECTION
	: Exceptions
MWH, SR.,	:
Respondent	:

OPINION AND ORDER

Before the Court are cross-exceptions to the Family Court Order dated June 22, 2001 in which Respondent was directed to pay child support and alimony pendente lite to Petitioner. After preparation of a transcript of the hearing in Family Court, argument was heard December 19, 2001.

In his exceptions, Respondent contends the hearing officer erred in assessing him an earning capacity, in reducing Petitioner's income/earning capacity to zero during a period of time she was unable to work, in the calculation of the child support and alimony pendente lite award itself, and in failing to consider that he has shared custody of the children. In her exceptions, Petitioner contends the hearing officer erred in failing to require Respondent to contribute to the arrearages. These issues will be addressed seriatim.

First, with respect to Respondent's earning capacity, noting that Respondent had been previously employed through the Finishing/Drywall Union but had left that employment to start his own business, and determining from Respondent's exhibits that he now earns less on his own, the hearing officer assessed Respondent an earning capacity of \$2,000.00 per month net, "based upon his actual expenses" and "also based upon the fact that Mr. Haines testified that he is presently only working 20 to 25 hours per week." Respondent contends the hearing officer should have based his support obligations on his actual income. It appears the hearing officer did so to a certain extent, although the

explanation in the Order focuses on the expenses testified to by Respondent, rather than the income received by him. When the income itself is considered in conjunction with the hours Respondent is working, 25 to 30 hours per week¹, the \$2,000.00 per month assessed by the hearing officer is fairly accurate. Respondent earned \$7,174.05 in the first 4 ½ months of 2001, or \$1,594.00 per month gross. If he worked only 25 hours per week, an income of \$2,550.00 per month could be earned working 40 hours per week. This would provide him an annual gross income of \$30,609.00 and after consideration of federal income tax, social security and medicare tax and state and local tax, Respondent would have an annual net income of \$23,590.00 or a monthly net income of \$1,966.00. Since Respondent is not working full time, but does have the capability to do so, the Court finds no error in the hearing officer's assessment of an earning capacity of \$2,000.00 per month net.

With respect to Petitioner's income/earning capacity, the hearing officer found Petitioner unable to work based upon the testimony and documentation presented and for a certain period of time, from the date she last received payment for sick time and/or vacation, through the time she was to return to work, Respondent's obligation was based upon Petitioner having a \$0.00 income. Respondent contends the hearing officer erred in this regard, specifically arguing that Petitioner's injury, a broken arm suffered as a result of a roller skating accident, was incurred as a result of her own conduct. Apparently, Respondent seeks to liken Petitioner's inability to work to a "voluntary quit". Since Petitioner, a nurses aide, presented sufficient documentation indicating that she was not able to work due to the injury, the Court finds no error in the hearing officer's consideration of that fact and Respondent's increased obligation during that time.

Respondent also contends that consideration should not have been afforded to Petitioner's injury because such did not constitute a substantial and continuing change. The injury occurred April 7, 2001, Petitioner was able to use sick time and vacation time to be paid through May 25, 2001, and returned to work October 9, 2001. The Court finds that such does constitute a substantial and

¹Although the hearing officer stated in his Order that Respondent testified to working 20 to 25 hours per week, on page 18 of the transcript Respondent actually testified that he works 25 to 30 hours per week. N.T. May 24, 2001 at page 18.

continuing change worthy of consideration.

With respect to Respondent's contention the hearing officer erred in the calculation of child support and alimony pendente lite, the Court finds that such was calculated in accordance with the guidelines with one (1) exception, respecting the shared custody, to be discussed hereinafter.

With respect to the calculation of child support based upon shared custody, the Court agrees with Respondent that such was miscalculated inasmuch as the hearing officer failed to adjust Respondent's obligation so that the child support paid to Petitioner did not result in her household having more income than his. Rule 1910.16-4 (c)(2). Rather than child support of \$397.13 per month, Respondent should pay \$314.32 per month. Respondent's alimony pendente lite obligation is then recalculated at \$94.30 per month.²

With respect to the arrearage, the hearing officer did fail to require Respondent to make a monthly payment toward such and the Court will therefore include such a payment in its Order.

²During the time Petitioner was unable to work and had a \$0.00 income, no adjustment is necessary.

ORDER

AND NOW, this 8th day of January, 2002, for the foregoing reasons, Respondent's exceptions are denied in part and granted in part. Petitioner's exceptions are hereby granted.

The Order of June 22, 2001 is hereby modified to provide for a child support payment of \$314.32 per month and an alimony pendente lite payment of \$94.30 per month, effective March 30, 2001 through May 25, 2001 and then again effective October 9, 2001. Respondent shall pay an additional \$50.00 per month toward the arrearage created by the retroactive effect of this Order.

As modified herein, the Order of June 22, 2001 is hereby affirmed.

By the Court,

Dudley N. Anderson, Judge

cc: Family Court
 Domestic Relations
 Christina Dinges, Esq.
 William Miele, Esq.
 Gary Weber, Esq.
 Hon. Dudley N. Anderson