

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

GH,		: NO. 00-21,427
Plaintiff	:	
	:	
vs.	:	CIVIL ACTION LAW - In Divorce
	:	Exceptions
AH,	:	
Defendant	:	

OPINION AND ORDER

Before the Court are Defendant's exceptions to the Family Court Order dated January 2, 2002 in which Plaintiff's alimony pendente lite obligation was lowered. Argument on the exceptions was heard February 4, 2002, at which time both counsel agreed to Plaintiff's submission of her W-2 from Sears and her 1099 from Penn Treaty. Those documents have been received and the matter is thus ripe for decision.

In his exceptions, Defendant contends the hearing officer erred in calculating Plaintiff's income from Sears, in basing her alimony pendente lite obligation on an average of her income from Toys-R-Us, Sears, and Penn Treaty, in calculating her Sears income by averaging the year to date figures over a period of twelve (12) weeks rather than ten (10) weeks, in using her net income since she claims no exceptions for purposes of federal tax, in averaging her Penn Treaty income over a period of twelve (12) months rather than eleven (11) months, and in setting an arrearage payment at only \$25.00 per week. These will be addressed seriatim.

To resolve the issue of Plaintiff's income from Sears, counsel agreed to the submission of a W-2. That document shows that Plaintiff received \$3,816.91 in 2001.

With respect to the averaging of Plaintiff's income from Toys-R-Us, Sears and Penn Treaty, the Court agrees with Defendant that in the instant case, using such an average is inappropriate.

Plaintiff was employed at Toys-R-Us in the beginning of 2001, did not work for a period of approximately five (5) months due to a knee injury, and then became employed at Sears for the remaining months of 2001. She received commissions through Penn Treaty during the course of the entire year. Since the hearing officer did not have the November figures for Penn Treaty income available, she decided to average the entire year's income. It is noted that by Order dated August 31, 2001, Plaintiff's alimony pendente lite obligation had been suspended based upon the knee injury and Plaintiff's consequent inability to work, from May 15th through September 19th. The income she received in 2001 should therefore not be averaged over the entire year, which includes this period of suspension. Since Plaintiff did not return to Toys-R-Us but instead became employed at Sears, her alimony pendente lite obligation should now be based on her Sears income.

With respect to Defendant's contention the Sears income should be averaged over a period of ten (10) weeks rather than twelve (12) weeks, again, the Court agrees. The Order of January 2, 2002 indicates that Plaintiff explained the first two (2) weeks of her employment at Sears were a training period during which she worked part-time. She thereafter became employed full time on a commission basis and it appears appropriate to base her income for purposes of her alimony pendente lite obligation on the income she receives working full time earning commissions.

Defendant's contention the hearing officer erred in basing Plaintiff's income on her pay stubs has been rendered moot by the submission of the W-2. Her obligation will be based on her net income as determined by calculating her annual projected gross income and deducting the actual tax obligation.

Defendant's allegation of error with respect to the Penn Treaty income has also been rendered moot by the submission of a 1099 which shows a total annual income from Penn Treaty of \$11,808.32.

Finally, the argument the arrearage payment should be higher will be deferred as it is noted the parties will soon revisit the Court for purposes of a contempt proceeding. The arrearage payment will be addressed in conjunction with a resolution of the contempt petition.

Considering Plaintiff's income from Sears of \$3,816.91 but deducting her gross income for the first two (2) weeks of \$354.40, resulting in an income of \$3,462.51 for ten (10) weeks, the Court

projects an annual gross income from Sears of \$18,005.00. Adding her Penn Treaty income of \$11,808.00, results in Plaintiff having a projected annual income from both sources of \$29,813.00. Self-employment tax on the Penn Treaty income is calculated at \$1,668.00. Federal income tax after consideration of the standard deduction for a single person, one (1) exemption, deduction for one-half (½) the self-employment tax and for a payment of \$50.00 alimony, is calculated at \$3,221.00. State and local tax is calculated at \$1,133.00, and social security and medicare tax on the Sears income is calculated at \$1,377.00. Plaintiff will thus have a net annual income of \$22,414.00, or a monthly net income of \$1,868.00. Considering Defendant's income of \$1,075.00 per month, Plaintiff's alimony pendente lite obligation is calculated at \$317.20 per month.

ORDER

AND NOW, this 19th day of February, 2002, for the foregoing reasons, Defendant's exceptions are hereby granted in part and the Order of January 2, 2002 is hereby modified to provide for an alimony pendente lite payment of \$317.20 per month. As modified herein, the Order of January 2, 2002 is hereby affirmed.

By the Court,

Dudley N. Anderson, Judge

cc: Family Court
Christopher Williams, Esq.
William Miele, Esq.
Gary Weber, Esq.
Dana Jacques, Esq.
Hon. Dudley N. Anderson