

**IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA**

LN,	:	NO. 00-20,921
Petitioner	:	
	:	
vs.	:	DOMESTIC RELATIONS SECTION
	:	Exceptions
WD,	:	
Respondent	:	

OPINION AND ORDER

Before the Court are Respondent’s exceptions to the Family Court Order dated February 22, 2002, in which Respondent was directed to pay support to Petitioner for the support of the parties’ two (2) minor children. Argument on the exceptions was heard April 10, 2002.

In his exceptions, Respondent contends the hearing officer erred in assessing him with income from a tax refund, in assessing him an earning capacity during a period of time he was not working, and in making the Order retroactive to June 26, 2000. These exceptions will be addressed seriatim.

With respect to the federal income tax refund, Respondent contends such should not be considered as he did not actually receive it, because it was intercepted due to a child support arrearage. The fact that Respondent’s income tax refund was spent to pay his child support obligation does not remove it from the definition of income for the purposes of calculating his child support obligation. This exception will therefore be denied.

With respect to the assessment of an earning capacity during a time period when Respondent was not working, the hearing officer found that his failure to be working was a “self-imposed incapacity.” The Court agrees. It appears Respondent worked only sporadically from October 2000 through July 2001. Respondent indicated at argument that he was “moving around” during that period of time and the Court takes judicial notice of the custody issues which prompted that “moving

around.” Specifically, in October 2000, Respondent failed to return the children after a scheduled visit and for a period of several months after that evaded Petitioner’s attempts to regain custody of the children. Respondent left his residence in Florida and moved to Chicago in an attempt to keep the children from Petitioner. The Court will not reward Respondent’s conduct by excusing him from paying child support during this period of time. This exception will therefore also be denied.

Finally, with respect to the retroactivity of the Order, the effective date was based upon Petitioner’s filing of a complaint. That complaint was sent to Florida for enforcement, as Respondent resided in Florida at the time. No Order was established and the Court cannot speak to the reason therefor but in November 2000 Petitioner notified the Lycoming County Domestic Relations Office that Respondent may have returned to the local area. The Domestic Relations file shows numerous efforts to locate Respondent after that point in time and an initial conference was held in either April or May 2001, and a temporary Order entered May 16, 2001. Considering all of these circumstances, especially in light of Respondent’s attempts to elude Petitioner from October 2000 through July 2001, or at least some portion thereof, the Court sees no error in making the Order effective the date of the complaint.

ORDER

AND NOW, this 11<sup>th</sup> day of April, 2002, for the foregoing reasons, Defendant’s exceptions are hereby denied and the Order dated February 22, 2002 is hereby affirmed.

By the Court,

Dudley N. Anderson, Judge

cc: Family Court  
Domestic Relations  
Julie Pentico, Esq.  
WD  
Dana Jacques, Esq.