

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

MS,	: NO. 01-20,230
Petitioner	:
	:
vs.	: DOMESTIC RELATIONS SECTION
	: Exceptions
MCP,	:
Respondent	:
*****	
MR,	: NO. 86-21,629
Petitioner	:
	:
vs.	: DOMESTIC RELATIONS SECTION
	: Exceptions
MCP,	:
Respondent	:

OPINION AND ORDER

Before the Court are Respondent’s exceptions<sup>1</sup> to the Family Court Order dated April 16, 2002, in which Respondent was directed to pay child support to each Petitioner. Argument on the exceptions was heard June 12, 2002.

In his exceptions, Respondent contends the hearing officer erred in assessing him an earning capacity, in including in his income the earned income credit he received, and in modifying the Order previously entered to No. 86-21,629 even though the Petitioner in that matter did not appear. These will be addressed seriatim.

With respect to his earning capacity, Respondent contends that since at the time of the hearing he was laid off from employment through no fault of his own, he should had been assessed no earning capacity. A review of the history in this matter indicates that Respondent holds no one job for very

long. In the Order dated January 3, 2001, entered to No. 86-21,629, Respondent was found to have been a self-employed logger at the time of the hearing in November 2000, previously having worked for a period of seven (7) months at Lycoming Supply and prior to that having worked for one (1) year with Fred Hamm Disposal Company. Respondent was assessed an earning capacity based upon his employment at Lycoming Supply. At the time of the hearing in the instant matter, Respondent was found to have been most recently employed at Robert Feister Corp. for approximately 3 ½ months and prior to that for Mechtly Concrete for 2 ½ to 3 months. The Court finds no error in the hearing officer's assessment of an earning capacity, considering this spotty employment history.

With respect to the earned income credit, Respondent argues that since the hearing officer indicated that he would have to file an amended return and not claim the child for purposes of an earned income credit, inasmuch as the child's mother had claimed the child, he should not be assessed with income from the earned income credit. The Court agrees that if Respondent actually does not receive the credit, he should not be assessed with the income. Since he did receive the credit, however, until he files an amended return and has to repay the money, no change is necessary. Should Respondent file an amended return and provide verification of repayment of the earned income credit, he may file a Petition for modification at that time.

Finally, with respect to Respondent's argument that since Petitioner MR did not appear, the Order entered in that matter should not have been reviewed, the Court agrees. The Family Court Order dated April 16, 2002 will therefore be amended to eliminate the increase in support awarded to Petitioner Romig.

### ORDER

AND NOW, this 17<sup>th</sup> day of June, 2002, for the foregoing reasons, Respondent's exceptions are hereby granted in part and denied in part. The Order dated April 16, 2002 is hereby amended to eliminate numbered paragraphs 2 and 5, thus continuing in effect the previous Order in No. 86-21,

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<sup>1</sup> At argument, Petitioner MS withdrew her exceptions.

629.

As amended, herein, the Order of April 16, 2002 is hereby affirmed.

By the Court,

Dudley N. Anderson, Judge

cc: Family Court  
Domestic Relations  
Christina Dinges, Esq.  
MR  
Gary Weber, Esq.  
Dana Jacques, Esq.  
Hon. Dudley N. Anderson