

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

CR,	:	NO. 97-21,065
Petitioner	:	
	:	
vs.	:	DOMESTIC RELATIONS SECTION
	:	Exceptions
TR,	:	
Respondent	:	

OPINION AND ORDER

Before the Court are Petitioner's exceptions to the Family Court Order dated July 26, 2001 in which Respondent was directed to pay child support, alimony pendente lite, and child care costs to Petitioner. Argument on the exceptions was heard October 3, 2001, at which time Petitioner requested preparation of a transcript. The transcript was filed December 11, 2001 and the matter is now ripe for decision.

Petitioner's written exceptions were filed pro se and are somewhat unclear but at argument, counsel for Petitioner appeared and indicated objections to three (3) areas: the fact that the hearing officer deducted Respondent's business expenses in calculating his income, the fact that the hearing officer considered all of Petitioner's income tax refund when she actually received only part of it, and the fact that Petitioner was assessed an earning capacity by the hearing officer, although she is a full time student working part time. These issues will be addressed seriatim.

With respect to the business expenses, a review of the record indicates that Respondent presented evidence his business expenses for tools are a necessary and mandatory requirement of his employment. The Court therefore finds no error in the hearing officer's consideration of such.

With respect to Petitioner's tax refund, a review of the record indicates Petitioner presented no evidence that she did not receive the complete refund and the Court may therefore not consider

such at this time.

Finally, with respect to Petitioner's earning capacity, the hearing officer questioned Petitioner concerning her previous employment and was informed by Petitioner that she most recently had been employed as a mortgage broker working on commission, but previously worked for City Financial earning \$1,180.00 per month net (indeed, this income formed the basis of the previous child support Order, entered November 22, 1999). Petitioner testified that she left her latest employment and was at the time of the hearing entering classes at Penn College, working toward a degree as a legal assistant. Petitioner indicated that she had "no idea" what she could expect to earn upon graduation as a legal assistant. Petitioner thus presented no evidence that the educational pursuits she had undertaken would indeed improve her economic condition and benefit her children.

Petitioner's counsel referred the Court to the Lycoming County case of Martin v Martin, No. 92-21,329, filed October 31, 1994, for the proposition that a parent may leave employment to seek higher education and have that considered in the form of a lower earning capacity during that period of time. Petitioner's counsel's reliance on Martin is misplaced, however, as that decision was limited to the unique facts of that case, and indeed the Court noted:

its decision is based on the particular facts and circumstances of the instant case. The Court's decision in this case should not be interpreted as announcing a general rule that any time a dependent spouse with young children ceases employment in order to pursue education on a full time basis, that spouse's earning capacity for spousal support and child support purposes will be reduced accordingly.

Martin v Martin, supra. Considering Petitioner's previous income/earning capacity and the lack of evidence that she will improve such by her educational pursuit, the Court finds no error in the hearing officer's continuation of the prior earning capacity.

ORDER

AND NOW, this 3rd day of January, 2002, for the foregoing reasons, Petitioner's exceptions are hereby denied and the Family Court Order dated July 26, 2001 is hereby affirmed.

By the Court,

Dudley N. Anderson, Judge

cc: Janice Yaw, Esq.
TR
Family Court
Domestic Relations
Gary Weber, Esq.
Hon. Dudley N. Anderson