

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

YRR,	: NO. 88-21,139
Petitioner	:
	:
vs.	: DOMESTIC RELATIONS SECTION
	: Exceptions
CAB,	:
Respondent	:

OPINION AND ORDER

Before the Court are Respondent's exceptions to the Family Court Order dated January 15, 2002, entered in response to cross-Petitions for Modification, and providing for an amended amount of child support for the support of the parties' one (1) minor child. Argument on the exceptions was heard February 27, 2002.

In his exceptions, Respondent contends the hearing officer erred in determining that a period of inability to work on Petitioner's part was a "continuing and substantial change in circumstances", in not considering Petitioner's receipt of an equitable distribution award as income for purposes of calculating her child support obligation, in awarding the federal income tax exemption for the parties' child to Respondent for only the year 2001, and in failing to assess Petitioner an earning capacity of \$6.50 per hour. These will be addressed seriatim.

With respect to the first issue, Petitioner presented evidence that she was medically unable to work through the end of last year. The hearing officer therefore assessed her with zero income from the date of the first Petition, October 12, 2001, through January 1, 2002. Respondent contends that this period of time is not long enough to constitute a "substantial and continuing" change of circumstances. Further, Respondent asks the Court to specify the time period which would constitute a substantial and continuing change. The Court declines Respondent's invitation, as whether a change

in circumstances is “substantial and continuing” should be analyzed on a case by case basis. In the instant case, the Court finds no error in the hearing officer’s conclusion that the 2 ½ month period Petitioner went without income due to her medical inability to work does indeed constitute a substantial and continuing change.

With respect to the equitable distribution award, it appears Petitioner received \$8,000.00 from Jeffrey Robinson through the equitable distribution of their marital property. Respondent contends that should be considered income for purposes of the instant child support obligation. The Court does not agree. In Miller v Miller, 783 A.2d 832 (Pa. Super. 2001) the Superior Court determined that it is both illogical and inequitable to characterize marital assets or the proceeds from their sale as income. The Court reasoned that the definition of income in 23 Pa. C.S. Section 4302 addresses only monies received by a spouse from third parties, while monies received through an equitable distribution are simply returning to that party his or her property, or converting that property from one form to another (in the instant case, changing Petitioner’s interest in her former marital residence to cash).¹

With respect to Respondent’s contention the hearing officer erred in awarding him the federal income tax exemption for only year 2001, the Court agrees there is no logical reason to confine it to one year only. The exemption should be awarded to Respondent with the proviso that Petitioner may seek to regain the exemption at such time as the benefit of the award to Respondent becomes outweighed by the benefit of an award of the exemption to Petitioner.²

¹While the Miller case was between the two parties who were also parties to the equitable distribution, the fact that in the instant case Respondent is not a party to Petitioner’s equitable distribution does not change the characterization of the \$8,000.00.

²At argument, Petitioner contended that if Respondent is to receive the exemption, the tax effect of such should also be considered in setting his support obligation. The Court agrees. In the Order of January 15, 2002, the hearing officer indicated he was not considering a refund for either party. Although the piece meal litigation which is generated by an Order such as this is not favored by the Court, since the hearing officer has set the stage for a further modification, the Court will defer the issue of the increased income to Respondent as a result of the exemption award, leaving the issue to be addressed when the Family Court addresses the modification Petition which will surely be filed once the parties file their income tax returns for 2001.

Finally, with respect to the issue of Petitioner's earning capacity, the Order of January 15, 2002 indicates that such earning capacity was based upon a previous Order and the income finding therein. The Court finds no error in this methodology as Respondent has presented no evidence of any change from the prior Order, the \$6.50 per hour alleged to have been earned by Petitioner having been earned in the employment upon which her income finding was based.

ORDER

AND NOW, this 4th day of March, 2002, for the foregoing reasons, Respondent's exceptions are hereby granted in part and denied in part. The Order of January 15, 2002 is hereby modified with respect to paragraph 11 thereof, such that Form 8332, Release of Claim to Exemption for Child of Divorced or Separated Parents, shall be executed by Petitioner for tax year 2001 and each subsequent year, until modified by further Court Order, or upon agreement of the parties.

As modified herein, the Order of January 15, 2002 is hereby affirmed.

By the Court,

Dudley N. Anderson, Judge

cc: Family Court
 Domestic Relations
 YR
 William Miele, Esq.
 Gary Weber, Esq.
 Dana Jacques, Esq.
 Hon. Dudley N. Anderson