

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

CARLA JO SULLIVAN,	: NO. 91-20,548
Petitioner	:
	:
vs.	: DOMESTIC RELATIONS SECTION
	: Exceptions
RONALD W. POLCYN, JR.,	:
Respondent	:

OPINION AND ORDER

Before the Court are Petitioner’s exceptions to the Family Court Order dated April 4, 2002, in which Respondent’s obligation for child support was suspended. Argument on the exceptions was heard July 3, 2002.

The hearing officer suspended Respondent’s child support obligation based upon a determination that since each child receives \$73.00 per month Social Security Disability based on Respondent’s claim, and since Respondent’s only income is \$623.00 per month Social Security Disability, the children’s payments exceed Respondent’s obligation. The hearing officer declined to assess Respondent an earning capacity over and above his receipt of Social Security Disability. In her exceptions, Petitioner contends the hearing officer erred in failing to assess an earning capacity to Respondent and in suspending the support obligation because there was no change in circumstances from those which existed at the time of the previous order. Since the Court agrees with Petitioner with respect to her second contention, the first will not be addressed.

A review of the history of this matter indicates that Respondent’s child support obligation for two minor children had previously been suspended based upon his disability and his receipt of Social Security Disability payments. Petitioner filed to reopen the matter in the fall of 2001 claiming that Respondent had begun to work. A hearing was scheduled for November 8, 2001, and in anticipation of that hearing, the parties entered into a stipulation on November 5, 2001, which stipulation required Respondent to pay \$76.00 per week, retroactive to September 28, 2001, but deferring actual payments until November 26, 2001. There is no dispute that Respondent was receiving Social

Security Disability and was not working at the time of the November 5, 2001, stipulation. For a reason which is not clear on the record, the Domestic Relations Office entered an administrative Order on November 21, 2001, suspending the support obligation because Respondent was no longer employed. Petitioner filed an objection to the suspension, but at about the same time, Respondent wrote a letter to the Domestic Relations Office indicating that he was back to work and requesting that the \$76.00 per week Order be reinstated. The Order was reinstated and Petitioner withdrew her objections. Respondent then filed the instant Petition to Suspend his child support obligation in February 2002.

A review of the transcript indicates that Respondent has indeed failed to show a change in circumstances from those existing at the time of the November 5, 2001, stipulation. At that time, Respondent was receiving Social Security Disability, was not working, but anticipated that he would be working. At the time of the hearing, Respondent was receiving Social Security Disability and was not working, but was anticipating that with medication, which he planned to obtain in the near future,¹ it was a “good possibility” that he would be able to go back to work. N.T., April 4, 2002, at p. 4. The Court notes that although at argument Respondent indicated as a “change in circumstances” that at the time of the stipulation he thought he could work but he found that he could not, Respondent voluntarily left both of the positions he was able to obtain. He was not asked to leave and apparently did an adequate job.

Since Respondent failed to show a change in circumstances from those which existed at the time of the November 5, 2001, stipulation, his request to suspend his child support obligation should have been denied.

¹ At argument it was indicated that Respondent is currently taking the medication, such having been prescribed by Dr. Ramos, who he began seeing within the last month.

ORDER

AND NOW, this 5th day of July, 2002, for the foregoing reasons, Petitioner's exceptions are hereby GRANTED and the Order of April 4, 2002 is hereby vacated and the previous child support Order is hereby reinstated, retroactive to February 25, 2002.

By the Court,

Dudley N. Anderson, Judge

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