

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

KELLY SUE BROWN,	:	
Plaintiff	:	
	:	
v.	:	No. 03-20,363
	:	
CHRISTOPHER R. BROWN,	:	
Defendant	:	

**OPINION and ORDER**

This case addresses Exceptions filed to the Master’s order of May 2, 2003, granting Wife child support of \$347.48 per month and alimony pendente lite of \$165.06 per month. The parties have shared physical custody of their two children, and as a result, the method the Master used in calculating Husband’s payments came into question. The issues the court finds worthy of discussion are addressed in this opinion.

**A. Wife’s Income**

The Master assessed Wife with an earning capacity, which included salary and tips, as a waitress at her father’s restaurant. The court finds no problem with the basic assessment of \$1,134.55 per month. However, the Master also added to her income a federal tax refund she received based upon her 2002 tax return, and deducted from her income 20% for applicable federal, state, and local taxes. We find this to be error, because the tax refund Wife received was based upon different employment, and that particular tax refund is unlikely to reoccur in the year 2003. The court finds it more appropriate to calculate what her actual tax liability will be for 2003. With social security, state, and local taxes at 12%, her tax liability would be \$136.15. Her federal tax liability would be zero, and she would receive an earned income tax credit of \$2489

(\$207.42 per month).<sup>1</sup> Therefore, Wife's income is calculated to be \$1205.82 per month.

### **B. Child Support and APL**

The primary issue in this case is how to calculate APL in shared custody situations. With Wife at \$1205.82 per month and Husband at \$2048.98 per month, the total child support obligation would be \$998 per month. Husband's proportion of that is 63%, minus 20% due to the shared physical custody. Husband's child support obligation is therefore \$429.14 per month, minus Wife's contribution for health insurance (\$65.80), for a total child support obligation of \$363.34 per month.

Wife claims this is unfair because Husband is paying only 43% of the child support when he has the children 50% of the time. However, Wife ignores the fact that the extra 20% is allocated toward the expenses of maintaining the children when they are in Husband's care. That, of course, is the theory behind a child support reduction in shared physical custody cases: Husband's increased time with the children will result in increased expenses for Husband and decreased expenses for Wife.

Regarding the APL calculation, the Master calculated APL by subtracting Husband's child support obligation of \$363.34 per month from the difference in the parties' income and awarding Wife 30% of that figure. The Master then went on to note that Wife now had more income than Husband, when the child support and APL were added to Wife's income and subtracted from Husband's income. The Master then went on to equalize the parties' incomes by reducing the child support and APL proportionally.

The problem with that method is the Master was apparently following Rule 1910.16-4(c)(2), which directs the court to equalize the incomes if the parties share

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<sup>1</sup> In calculating this refund, the court used one of the children as her dependent.

custody equally. However, a review of the language of the rule indicates that equalization should be performed “If application of the formula in Part II results in obligee receiving a larger share of the parties’ income . . . .” Part II refers to child support calculation in shared physical custody cases. It does not apply to APL. In this case, calculation of child support does not result in Wife receiving a larger share of the parties’ income. Therefore, we must find that the Master’s method was wrong.

Nonetheless, it is disturbing that Wife would end up with more of the parties’ income in a shared physical custody situation. However, after close examination of the APL section of the Guidelines (Rule 1910.16-4(a)(Part IV), as well as the logic and purpose behind the Rule, the court finds that the problem occurs in subtracting Husband’s *reduced* child support obligation from the difference in the parties income, rather than what the child support obligation is calculated to be before the reduction. As stated earlier, the theory behind the reduction is that Husband is spending the extra 20% on the children, because they are in his care 50% of the time. Therefore, it is unfair to Husband to deduct only his reduced child support obligation from his income in calculating APL, since his actual obligation, as well as the amount of money he spends on the children, is actually higher. Therefore, the court will subtract the \$628.74 from the difference in the parties’ income, which reflects Husband’s actual child support obligation based upon his 63% percentage of the parties’ total income. In doing so, we will arrive at Husband’s actual income after child expenses are deducted.

With that new child support figure, the difference in the parties’ income is \$214.42, and the APL award is \$64.33 per month. The court also happily notes that this change results in an equalization of the parties’ income, which seems fair and just under the circumstances. That gives the court confidence that the method we have used is indeed the correct one, although the method is not explicitly stated in the Guidelines.

**C. Husband's Tax Refund**

Wife has complained because Husband produced no copy of his federal income tax return at the hearing. Apparently, this is frequently a problem at hearings, resulting in some unfairness because if no tax return is produced, no tax refund can be assessed as part of a person's income. It is also clear that many times the person in question is not trying to pull something over on the court, but merely has not yet filed his or her return at the time of the hearing. The court will address this situation by ordering Husband to submit a copy of his 2002 federal income tax return to Domestic Relations as soon as it is filed, and by giving Domestic Relations the authority to issue an administrative order making any adjustment to Husband's income retroactive to March 25, 2003, the date Wife's petition was filed.

**ORDER**

AND NOW, this \_\_\_\_\_ day of July, 2003, the Master's order of May 14, 2003 is modified as follows: (1) Child support is set at \$363.34 per month, (2) APL is set at \$64.33 per month, and (3) Christopher R. Brown shall be responsible for 63% of any and all unreimbursed medical expenses and Kelly S. Brown shall be responsible for 37% of any and all unreimbursed medical expenses. It is further ordered that Christopher R. Brown shall submit a copy of his federal income tax return to Domestic Relations, along with a copy of this order, within ten days of the date he files the return. Domestic Relations is then authorized to issue an administrative order modifying Mr. Brown's obligations due to any tax refund shown on the return, and making the modification retroactive to March 25, 2003. Mr. Brown shall also submit a copy of the tax return to opposing counsel within ten days of filing the return.

All exceptions not addressed in this opinion are denied.

BY THE COURT,

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Clinton W. Smith, P.J.

cc: Dana Jacques, Esq., Law Clerk  
Hon. Clinton W. Smith  
Janice Yaw, Esq.  
William Miele, Esq.  
Gerald Seevers, Esq.  
Domestic Relations  
Gary Weber, Esq., Lycoming Reporter