

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PA

MARK R. STEINBACHER,	:	
Plaintiff	:	
	:	
v.	:	No. 02-20,225
	:	PACES No. 056104264
DIANE M. STEINBACHER,	:	
Defendant	:	

OPINION and ORDER

This matter comes before the court on Exceptions to the Master’s order of April 7, 2003. All exceptions have been withdrawn except for two: (1) Wife complains that Husband should be assessed a higher earning capacity, and (2) Husband complains that the Master ordered him to reimburse Wife for the higher child support and spousal support payments she will be making during Husband’s period of disability, in the event he receives a personal injury settlement.

Regarding Husband’s earning capacity, Wife’s chief complaint is that at Husband’s current job, he only works 35-40 hours per week. In her exceptions, Wife characterizes this as “part-time,” which is certainly not the case. The court finds nothing inappropriate in assessing Husband’s earning capacity based upon his current job, and we note that Wife did not raise this argument after the previous order was issued, even though Husband was working at the same job.

Regarding the automatic re-payment scheme the Master established, the court believes it is better to wait until Husband actually receives money from a personal injury lawsuit¹ to determine how it should be used for child support and spousal support purposes. In all likelihood, Wife will be entitled to reimbursement for the increased spousal support and child support payments she made while Husband was not working,

¹ At the time of the hearing, Husband had not yet even filed a personal injury lawsuit.

if Husband receives an award or settlement. However, to lock the court into making such a determination at this time is not the wisest choice of action. It would be far better to wait and see if Husband actually receives an award or settlement, and then determine how it is to be used for child support and spousal support, based on the parties' circumstances at that time.

Although this resolves the parties' exceptions, the court is compelled to alter the spousal support obligation, based upon our opinion in the case of *Brown v. Brown*, Docket #03-20,363, a copy of which is attached. In that opinion, we set forth the proper method of calculating spousal support or alimony pendente lite in the event of shared physical custody cases. Following the formula established in *Brown*, the spousal support is set at \$464.82 during the time Husband is off work due to his injury, and \$64.50 once Husband returns to work.

ORDER

AND NOW, this _____ day of July, 2003, for the reasons stated in the foregoing opinion, the Exceptions filed to the Master's report of April 7, 2003 are disposed of as follows: Husband's Exceptions are dismissed and Wife's Exception is granted.

It is further ordered that:

- (1) Spousal support for the time period of February 13, 2003 until Mark Steinbacher returns to gainful employment is set at \$464.82 per month. The net result of the spousal support obligation, the child support obligation, and the health insurance obligation for this period of time is \$1135.82 per month.
- (2) Spousal support for the time Mark Steinbacher is released by his physician to return to gainful employment is set at \$64.50 per month. The net result of the spousal support obligation, the child support obligation, and the health insurance obligation once Mr. Steinbacher returns to employment is \$485.32 per month.
- (3) Mark Steinbacher is ordered to advise Diane Steinbacher, in writing, of his receipt of a personal injury award or settlement, within five days of receiving the award. The notice shall include the total amount of the award.

In all other respects, the Master's order of April 7, 2003 is affirmed.

BY THE COURT,

Clinton W. Smith, P.J.

cc: Dana Jacques, Esq., Law Clerk
Hon. Clinton W. Smith
Joy McCoy, Esq. (with attachment)
Michael Groulx, Esq. (with attachment)
Family Court
Domestic Relations (SMF)
Gary Weber, Esq.