

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

DRB, JR.,	: NO. 95-21,243
Petitioner	:
	:
vs.	: DOMESTIC RELATIONS SECTION
	: Exceptions
SGS,	:
Respondent	:

OPINION AND ORDER

Before the Court are Petitioner’s exceptions to the Family Court Order dated February 18, 2003 in which Respondent was directed to pay child support to Petitioner. The Order was entered after a review of the matter based on Petitioner’s request for review, and the result of the review lowered Respondent’s child support obligation. In his exceptions, Petitioner contends the hearing officer erred in failing to assess Respondent with an earning capacity higher than her actual earnings. Argument on the exceptions was heard April 9, 2003.

The prior Order in this matter, dated October 15, 1995, required Respondent to pay \$252.00 per month for the support of the parties’ minor child based upon Respondent having a monthly net income of \$1,125.00. Upon review of the matter at this time, the hearing officer found Respondent’s income to be \$793.00 per month, based upon part-time employment. The hearing officer also found that Respondent was planning to return to college where she is currently working on an associate’s degree. Her child support obligation was set at \$188.00 per month, based upon her reduced income, and Prtitioner contends she should have been assessed an earning capacity based upon her ability to work as a manager and a nurse’s aid. While the transcript of the hearing indicates that no evidence of Respondent’s prior employment was presented at the hearing in Family Court, Respondent did indicate at argument in this matter that she was previously the manager at a Little Caesar’s Pizza

Restaurant and also worked as a nurses' aid. The notes from the Domestic Relations file indicate that at the time of the October 5, 1995 Order, Respondent worked two jobs and earned \$1,125.00 per month from both jobs combined.

The Court agrees with Petitioner that the hearing officer erred. While the Court is unable at this time to conclude that Respondent should have been assessed a higher earning capacity, the Court does believe an error was made in failing to make further inquiry into Respondent's earning capacity. As was indicated in Kersey v Jefferson, 791 A.2d 419 (Pa. Super. 2002), the voluntary choice to forego current employment in order to further one's education is an employment decision that should be treated no differently than a decision to change jobs and salary, which decision requires an obligor to establish that the voluntary change in employment which resulted in a reduction of income was not made for the purpose of avoiding a child support obligation and that a reduction in support is warranted based upon the obligor's efforts to mitigate any income loss. See also Grimes v Grimes, 596 A.2d 240 (Pa. Super. 1991). In other words, an obligor must present evidence as to why he or she voluntarily left the prior employment and also as to why the acceptance of a lower paying job is necessary. Absent a justifiable reduction in income, an earning capacity must be assessed based upon one's age, education, training, health, work experience, earning's history and childcare responsibilities. Grimes, supra. In the instant case, absolutely no inquiry was made by the hearing officer into Respondent's earning capacity, nor the reasons for her choice to return to school or her ability to continue working and earning an income similar to that previously earned. The matter must be remanded, therefore, to address this issue.¹

¹ The Court also notes that although the evidence indicated Respondent has a four-year-old child at home, no consideration of her obligation to this child was mentioned in the Order of February 18, 2003. Upon remand, even though the issue has not been raised in exceptions by Respondent, the hearing officer should consider the effect this obligation has on Respondent's obligation to the Petitioner in the instant matter. The Court believes that such consideration is required so as to insure that all children involved in this matter receive fair and equal treatment, as

ORDER

AND NOW, this 14th day of April, 2003, for the foregoing reasons, the Order of February 18, 2003 is hereby vacated and the matter is remanded for further hearing to address the issue of Respondent's income and a possible higher earning capacity, as well as to consider her obligation to her child at home.

By the Court,

Dudley N. Anderson, Judge

cc: Family Court
Domestic Relations
Rick Gahr, Esq.
SS
Dana Jacques, Esq.
Gary Weber, Esq.
Hon. Dudley N. Anderson

required by the guidelines.