

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

MRF,	:	NO. 89-21,466
Petitioner	:	
	:	
vs.	:	DOMESTIC RELATIONS SECTION
	:	Exceptions
JLH,	:	
Respondent	:	

OPINION AND ORDER

Before the Court are Petitioner’s exceptions to the Family Court Order dated July 2, 2003 in which Respondent was directed to pay child support to Petitioner. Argument on the exceptions was heard August 27, 2003.

In her exceptions, Petitioner contends the hearing officer erred in the assessment of Respondent’s earning capacity, in the assessment of Petitioner’s earning capacity, in failing to order a lump sum payment on arrearages and in failing to direct the payment of interest on unpaid arrearages. These will be addressed seriatim.

With respect to the assessment of an earning capacity to Respondent, after finding Respondent unable to return to his prior employment as a laborer with New Columbia Joist Company, based upon a weight restriction of 25 lbs., the hearing officer assessed Respondent with an earning capacity of \$6.00 per hour and based upon the hearing officer’s conclusion that a wage of \$6.00 per hour “could be at various fast food establishments and locations which generally do not hire individuals on a full time basis”, assessed that hourly rate for only 20 hours per week. Petitioner argues there is no basis in the record to assess only a part-time earning capacity and the Court has to agree. Respondent should have been assessed with a 40 hour per week earning capacity.

At 40 hours per week earning \$6.00 per hour, Respondent would have a gross annual income of \$12,480.00. Considering his wife’s income in 2002 of \$16,236.00, Respondent and

his wife would have had a total annual gross income of \$28,716.00. Although on their federal income tax return they took three (3) children as exemptions, two (2) of those children are not Respondent's legal obligation and therefore Respondent's tax obligation should be calculated based upon only the child that belongs to Respondent. Calculating their tax in that way, Respondent's federal income tax is determined to be \$153.00.¹ Deducting \$955.00 social security and Medicare tax, \$125.00 local income tax, and \$350.00 state income tax results in an annual net income of \$10,897.00, which averages to \$908.00 per month. In 2003, Respondent's wife began new employment which put them in a higher tax bracket and after making similar calculations based upon Respondent's wife's new projected annual income of \$22,269.00, Respondent would have a monthly net income of \$877.00.²

In conjunction with calculating Respondent's correct earning capacity, the Court notes its recalculation of his wife's income. For 2002, the hearing officer found a net income of \$1,115.00 based upon her pay stubs. Her correct share of the income tax refund is calculated at \$183.00 per month, based on her annual gross income of \$16,236.00 which represents 40.88% of the income shown on the 2002 federal income tax return. The actual tax obligation was \$131.00 but would have been \$2,231.00 if they had taken tax benefits based on only one (1) child rather than three (3). The savings of \$2,100.00 is thus attributed to taking Respondent's wife's children as exemptions and she is to be attributed the entire savings of \$2,100.00. Respondent's wife's proportionate share of the tax of \$2,231.00 would be \$912.00 and since she had \$1,006.00 withheld, she would be entitled to a refund of \$94.00. Adding that to the \$2,100.00 in savings makes her refund \$2,194.00, or \$183.00 per month.³ In 2003,

¹ From the total gross income of \$28,716.00 the Court has deducted the standard deduction for a married couple of \$7,850.00 and three (3) exemptions, \$9,000.00, resulting in a taxable income of \$11,866.00. The tax on that amount would be \$1,188.00 and after taking a \$600.00 child tax credit, the tax liability would be \$588.00. Respondent and his wife would be entitled to an earned income credit of \$236.00, however, resulting in a total tax obligation of \$352.00. Respondent's proportionate share of that tax obligation is \$153.00.

² From their total gross income of \$34,749.00, the standard deduction for a married couple and three (3) exemptions would be deducted, resulting in a taxable income of \$17,899.00. The federal income tax on that amount is \$2,081.00 but the \$600.00 child tax credit lowers that obligation to \$1,481.00. Respondent's share of that obligation is \$530.00. His social security and Medicare tax is calculated at \$955.00, his local income tax at \$125.00 and his state income tax at \$350.00, resulting in an annual net income of \$10,520.00, which averages to \$877.00 per month.

³ It is noted that the same calculation applied to Respondent's income indicates that his share of the tax of \$2,231.00 would be \$1,319.00, he had only \$1,209.00 withheld and therefore owed \$110.00. When this \$110.00 is subtracted from his wife's refund of \$2,194.00, the result of \$2,084.00 shows the parties' actual tax refund.

Respondent's new employment provides her with an annual gross income of \$22,269.00. With three (3) children taken as exemptions, Respondent's wife would have no federal income tax obligation and after deducting \$1,704.00 for social security and Medicare tax and \$846.00 for state and local income tax, she would have an annual net income of \$19,719.00 or, \$1,643.00 per month.

With respect to the assessment of an earning capacity to Petitioner, considering that such was based on her prior employment and that she at this point has no reason she is unable to work in that type of employment, the Court finds no error in this regard. It does appear the hearing officer erred in simply deducting 20% for taxes, however, as Petitioner would not be responsible for federal income tax and in fact would have an earned income credit. At \$7.00 per hour, 40 hours per week, she would have an annual gross income of \$14,560.00. Deducting \$6,900.00 for the standard deduction for head of household, and \$9,000.00 for three (3) exemptions, Petitioner would have no federal tax and an earned income credit of \$3,918.00. Deducting her social security and Medicare tax of \$1,114.00, her local income tax of \$291.00, and her state income tax of \$408.00, would provide her with an annual net income of \$16,665.00, or \$1,389.00 per month.

With respect to the failure to order a lump sum payment on arrearages, or to provide for interest, Petitioner argues that Respondent has had income during this period of time but has not paid any child support, resulting in a significant arrearage, but only \$50.00 per month was ordered on the arrearage. The Court will increase that amount to \$100.00 per month, and, in addition, will provide for an additional \$500.00 to be paid on or before November 1, 2003, and another \$500.00 to be paid on or before January 1, 2004.

The child support obligation will be calculated for the following periods: from July 27, 2002, the date of Respondent's Petition, through October 31, 2002; from November 1, 2002, at which time Respondent was able to return to work, through December 31, 2002; from January 1, 2003, at which time Respondent's wife began new employment with a significantly higher income, through January 26, 2003; from January 27, 2003, at which time Respondent stopped receiving disability income through April 25, 2003; and from April 26, 2003, at which time Respondent began receiving unemployment compensation, and continuing until further Order of Court.

For the time period from July 27, 2002 through October 31, 2002, considering Petitioner's income of \$1,389.00 per month and Respondent's income of \$1,064.00 per month, the guidelines suggest a payment for the support of two (2) minor children of \$358.75 per month. Considering Respondent's wife's income of \$1,298.00 per month, the guidelines suggest a payment for the support of one (1) minor child of \$247.78 per month. As the total of these obligations exceeds one-half ($\frac{1}{2}$) of Respondent's monthly net income, and in fact reduces his monthly net income below \$550.00, Respondent's obligation to Petitioner must be adjusted proportionately so as not to take Respondent below the \$550.00 per month limit. Doing so reduces his obligation to Petitioner to \$304.02 per month. For the time period from November 1, 2002 through December 31, 2002, considering Petitioner's income of \$1,389.00 per month and Respondent's combination of income and earning capacity totaling \$1,972.00 per month, the guidelines suggest a payment for the support of two (2) minor children of \$592.57 per month. Considering Respondent's wife's income of \$1,298.00 per month, the guidelines suggest a payment for the support of one (1) minor child of \$416.14 per month. As the total of these obligations exceeds one-half ($\frac{1}{2}$) of Respondent's monthly net income, his obligation to Petitioner must be adjusted and doing so results in an obligation of \$579.23 per month. For the period from January 1, 2003 through January 26, 2003, considering Petitioner's monthly net income of \$1,389.00 and Respondent's monthly net income and earning capacity combined totaling \$1,941.00, the guidelines suggest a payment for the support of two (2) minor children of \$585.23 per month. Considering Respondent's wife's income of \$1,643.00 per month, the guidelines suggest a payment for the support of one (1) minor child of \$385.08 per month. No reduction is required as the total of these obligations does not exceed one-half ($\frac{1}{2}$) of Respondent's monthly net income. For the time period from January 27, 2003 through April 25, 2003, considering Petitioner's monthly net income of \$1,389.00 and Respondent's earning capacity of \$877.00 per month, the guidelines suggest a payment for the support of two (2) minor children of \$295.28 per month. Considering Respondent's wife's income of \$1,643.00 per month, the guidelines suggest a payment for the support of one (1) minor child of \$202.54 per month. As the total of these two obligations results in Respondent having less than \$550.00 per month income, his obligation to Petitioner must be reduced and doing so results in an obligation of \$193.96 per month. Effective April 26, 2003 and continuing until further Order

of Court, considering Petitioner's income of \$1,389.00 per month and Respondent's income from unemployment compensation of \$1,694.00 per month, the guidelines suggest a payment for the support of two (2) minor children of \$532.47 per month. Considering Respondent's wife's income of \$1,643.00 per month, the guidelines suggest a payment for the support of one (1) minor child of \$351.77 per month. As the total of these obligations exceeds one-half (1/2) of Respondent's monthly net income, his obligation to Petitioner must be reduced proportionately. Doing so results in an obligation to Petitioner of \$510.04 per month.

Petitioner's obligation toward the health insurance coverage carried by Respondent's wife is calculated as follows: For the period from July 27, 2002 through October 31, 2002, \$19.98 per month. For the period from November 1, 2002 through December 31, 2002, \$14.59 per month. For the period from January 1, 2003 through January 26, 2003, \$14.72 per month. For the period from January 27, 2003 through April 25, 2003, \$21.63 per month. Effective April 26, 2003, \$15.90 per month.

ORDER

AND NOW this 5th day of September, 2003, for the foregoing reasons, Petitioner's exceptions are hereby granted in part and denied in part. The Order dated July 2, 2003 is hereby modified in accordance with the foregoing. The parties' responsibility for excess unreimbursed medical expenses shall also be modified to comport with the incomes as found herein. The Court notes specifically for the period effective April 26, 2003 and continuing until further Order of Court, Respondent shall be responsible for 54.95% of the excess unreimbursed medical expenses of the children and Petitioner shall be responsible for 45.05% of such.

Finally, the arrearage payment is modified to \$100.00 per month and in addition, Respondent shall pay the sum of \$500.00 per month toward the arrearages on or before November 1, 2003 and another \$500.00 toward the arrearages on or before January 1, 2004. These payments are in addition to the \$100.00 per month arrearage payment, as well as Respondent's regular support obligation.

As modified herein, the Order of July 2, 2003 is hereby affirmed.

By the Court,

Dudley N. Anderson, Judge

cc: Family Court
Domestic Relations
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JH
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Hon. Dudley N. Anderson