

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

AMH, : NO. 91-20,035
Petitioner :
 :
vs. :
 :
REG, : Domestic Relations Section
Respondent : Exceptions

AMS, : NO. 95-20,452
Petitioner :
 :
vs. :
 :
REG, : Domestic Relations Section
Respondent : Exceptions

OPINION AND ORDER

Before the Court are Respondent's exceptions to the Family Court Order dated June 9, 2003 in which Respondent was directed to pay support to each Petitioner. Argument on the exceptions was heard July 16, 2003.

In his exceptions, Respondent contends the hearing officer erred in the determination of his income, in the earning capacity assessed to Petitioner S, and in the deviation awarded. These will be addressed seriatim.

With respect to Respondent's income, the hearing officer based such on the wage verification which showed wages earned during the first quarter of 2003 as well as the last quarter of 2002, although only the first quarter of 2003 was actually used. In light of the document attached to Respondent's exceptions, it appears Respondent wishes to have the Court use the period of time encompassing the first 24 weeks of 2003, but the information regarding the 11 weeks of the second quarter in 2003 was not presented to the hearing officer. The hearing officer did have available Respondent's 2002 federal income tax return, however, and since Respondent's employment is seasonal, it appears the better course would have been to base his income on a yearly figure, rather than simply one quarter. The 2002 federal income tax

return shows a monthly net income of \$3,227.00. Since that figure includes his actual tax obligation, nothing further will be added for any refund.

With respect to the earning capacity assessed to Petitioner S, Respondent argues that she should be assessed a full time earning capacity. She was assessed a full-time minimum wage earning capacity and the Court finds no error in this regard.

Finally, with respect to the deviation awarded, although Respondent was given a 15% deviation in consideration of an unusual vehicle expense, he argues that the deviation was not great enough. In examining this issue, the Court concludes that simply awarding a 15% deviation on the support amount is not the preferred method in handling an employment related expense. Rather, the Court believes the actual expense should be deducted from Respondent's income and then the support obligation calculated based upon that reduced income. In the instant case, Respondent presents a vehicle expense based upon his having to travel extreme distances related to his employment as a drywall finisher. According to his 2002 federal income tax return, he traveled 32,162 miles in 2002, related to his job. The Court considers 50 miles per day to be a normal expense and therefore 12,500 miles (five days per week for 50 weeks) would be a normal travel expense. Since Respondent traveled 32,162 miles, it appears he had an above average expense related to 19,662 miles. At 36.5¢ per mile, his extra expense is calculated to be \$7,176.63. He realized a tax savings of \$1,485.00 from claiming the total vehicle expense, however.¹ Subtracting the tax savings from his unusual expense results in an expense to be considered of \$5,691.63, or \$474.00 per month. This amount is deducted from his income of \$3,227.00 per month to arrive at an income of purposes of child support of \$2,753.00 per month.

Considering AH's income of \$1,303.00 per month and Respondent's income of \$2,753.00 per month, the guidelines require for the support of one minor child the sum of \$538.89 per month. Considering AS's earning capacity of \$750.00 per month and Respondent's income of \$2,753.00 per month, the guidelines require a payment of \$556.42 per month. The

¹ This is calculated by considering that had he used the standard deduction of \$6,900.00 rather than his itemized deduction, his taxable income would be \$33,974.00 and his federal income tax would be \$4,596.00. After considering the child tax credit of \$600.00, his tax obligation would be \$3,996.00. Since his actual tax obligation was only \$2,511.00, using his itemized deductions, it is determined that he saved \$1,485.00 by claiming the truck expense.

Court notes that these reduced obligations provide Respondent with an additional \$236.00 per month for use in meeting his truck expenses.

ORDER

AND NOW, this 23rd day of July, 2003, for the foregoing reasons, Respondent's exceptions are hereby granted in part and denied in part. The Order of June 9, 2003 is hereby modified to provide for the payments as noted above, effective April 17, 2003. Further, the percentage responsibility for excess unreimbursed medical expenses is also modified such that Respondent shall be responsible for 67.87% of the excess unreimbursed medical expenses in 91-20,035 and AH shall be responsible for 32.13% of such, and Respondent shall be responsible for 78.59% of the excess unreimbursed medical expenses in No. 95-20,452 and AS shall be responsible for 21.41% of such.

As modified herein, the Order of June 9, 2003 is hereby affirmed.

By the Court,

Dudley N. Anderson, Judge

cc: Family Court
Domestic Relations
Jack Felix, Esq.
AS
RG
Dana Jacques, Esq.
Gary Weber, Esq.
Hon. Dudley N. Anderson