

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

JML, : NO. 01-21,414
Petitioner :
:
vs. :
:
YRL, : Domestic Relations Section
Respondent : Exceptions

OPINION AND ORDER

Before the Court are cross exceptions to the Family Court Order dated January 3, 2003 in which Defendant was directed to pay child and spousal support to Petitioner. Argument on the exceptions was heard February 19, 2003. In her exceptions, Petitioner contends the hearing officer erred in the determination of Respondent’s income and in his exceptions, Respondent contends the hearing officer erred in failing to deviate from the guidelines based upon SSI received by Petitioner.¹

With respect to Respondent’s income, after noting Respondent’s previous employment with Horizon/Sprint and that Respondent terminated such employment in July 2002, the hearing officer based Respondent’s child support obligation on his current employment through DePasquale Temps, finding a monthly net income of \$1,868.18. Petitioner argues that Respondent should have been assessed an earning capacity based upon his previous employment at Horizon/Sprint. The Court finds it unnecessary to examine the reason behind Respondent’s change of employment as a wage verification provided to the Domestic Relations Office, as well as a pay stub introduced into evidence at the hearing, both show a monthly net income of \$1,888.00. Although Petitioner argues the year-to-date figures on the final pay stub should be divided by seven months based upon Respondent’s testimony that he left the employment at the end of July, if the Court is to include the final pay for

¹ Respondent’s written exceptions also allege error in the determination of Respondent’s income but at argument, Respondent’s counsel indicated this was a “boiler plate” exception, which she did not wish to pursue in

period ending August 11, 2002, apparently a commission check, the Court must also exclude the pay for period ending December 30, 2001, the overall effect of which would actually lower Respondent's average monthly net income earned during the seven month period. The Court therefore finds no error in the hearing officer's use of the income currently earned by Respondent.

With respect to SSI received by Petitioner, the hearing officer referenced the current state of the law on the matter, as contained in Landis v Landis, 691 A.2d 939 (Pa. Super. 1997), which allows consideration of SSI as "other income in the household", providing a basis for deviation below the guidelines, but then distinguished Landis from the facts in the instant matter. Specifically, the hearing officer determined that a parent's SSI is not "other income in the household," even though the SSI in Landis was considered other income in the household, as the SSI in Landis was that of a child.

Although the hearing officer gives no reason for making this distinction, the Court believes that such a distinction is indeed correct. In Landis, the SSI used to provide a basis for deviation was only that portion of each payment over and above the child's medical needs which resulted from the child's disability, which was used to meet household expenses. In Landis, the child's mother had her own income or earning capacity with which to meet her own needs as well as to provide her proportionate share of the child's needs. The SSI received by the child, was therefore, to the extent it exceeded the child's medical expenses, actually extra income in the household. When the SSI payment is received by a parent, however, as in the instant matter, that parent has no other income or earning capacity to meet his or her needs and all of the SSI is necessary to simply meet the needs of the parent, leaving nothing extra for the parent to meet the child's needs.² To deviate below the guidelines and provide less support from the non-custodial parent where the custodial parent does not have enough money to contribute even his or her share would not be in the child's best interest. The Court therefore finds no error in the hearing officer's refusal to deviate from the guidelines based upon Petitioner's SSI.

ORDER

the instant matter.

² In making this conclusion, the Court notes that from experience with SSI payments received by parents in child support cases, the amount typically does not exceed the \$550.00 floor set by the guidelines as necessary to meet a parent's reasonable needs.

AND NOW, this 11th day of March, 2003, for the foregoing reasons, the exceptions filed by both parties are hereby denied and the Order of January 3, 2003, is hereby affirmed.

By the Court,

Hon. Dudley N. Anderson

cc: Family Court
Domestic Relations
Randi Dincher, Esq.
Janice Yaw, Esq.
Gary Weber, Esq.
Dana Jacques, Esq.
Hon. Dudley N. Anderson