

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

ATM,	:	NO. 88-20,603
Petitioner	:	
	:	
vs.	:	DOMESTIC RELATIONS SECTION
	:	Exceptions
JEM, JR.,	:	
Respondent	:	

OPINION AND ORDER

Before the Court are Petitioner's exceptions to the Family Court Order dated May 30, 2002 in which Respondent was directed to pay spousal support to Petitioner. Argument on the exceptions was heard December 18, 2002.

In her exceptions Petitioner contends the hearing officer erred in assessing her an earning capacity rather than considering that the business she presently operates is operating at a loss, in failing to consider the tax effect of the support Order, in failing to award support equal to the expenses presented by Petitioner, in failing to award support in accordance with the guidelines, and in not requiring Respondent to contribute to the cost of Petitioner's health insurance. These will be address seriatim.

With respect to Petitioner's earning capacity, although Petitioner presented evidence that she is currently operating a business at a loss, after review of the testimony and relevant case law, the Court finds no error in the hearing officer's assessment of an earning capacity based upon Petitioner's abilities and previous work history.

With respect to tax effect of the instant support obligation, Petitioner contends the hearing officer should consider the tax effect in calculating Respondent's tax obligation and thus his net income and set the support award based upon that net income. This argument is

circuitous as the supposed higher support obligation will result in even lower taxes, and thus a higher income and then an even higher support obligation, and so on and so forth. The Court believes the formula provided by the guidelines considers the tax effect of the award, as the supporting legislation indicates that such an award of spousal support is deductible by the payor and taxable to the payee. Without any specific directions provided in the guidelines, the Court will not venture on the circuitous route suggested by Petitioner.

With respect to Petitioner's contention the hearing officer should have awarded more support, to meet the expenses presented by her, the Court notes the Melzer analysis engaged in by the hearing officer has been rendered inappropriate by the Supreme Court's recent decision in Mascaro v Mascaro, 803 A.2d 1186 (Pa. 2002). In Mascaro, the Court held that with respect to spousal support, the guidelines apply, rather than Melzer. The exception indicating that Petitioner's expenses are reasonable is thus misplaced, as such an analysis is no longer appropriate.

With respect to her exception contending the hearing officer should have applied the guidelines, considering Mascaro, the Court agrees. The Court also finds further that Petitioner presented no evidence which would justify a deviation from the guidelines and therefore will set the support Order in accordance with the guideline formula.

Finally, with respect to the contention Respondent should have been required to contribute to the cost of Petitioner's health insurance, Petitioner's request is not covered by Rule 1910.16-6(b) as that rule applies only to health insurance provided by one party for the benefit of the other party and/or the parties' children. In the instant matter, Petitioner is providing health insurance for herself. While Section 3702 of the Domestic Relations Code does give the Court authority to provide for the maintenance of health insurance for the benefit of a dependent spouse, the Court finds that the support award in the instant matter sufficiently provides for Petitioner such that she can pay the \$180.00 per month herself from her spousal support.

Considering Petitioner's earning capacity of \$1,667.00 per month and Respondent's monthly net income of \$15,404.00, the guidelines suggest a spousal support payment of \$5,494.80 per month.

ORDER

AND NOW, this 8th day of January, 2003, for the foregoing reasons, Plaintiff's exceptions are hereby granted in part and denied in part. The Order of May 30, 2002 is hereby modified to provide for a payment of spousal support, effective March 9, 2002, in the amount of \$5,494.80 per month. Assuming Respondent has paid the \$7,893.54 as directed in the Order of May 30, 2002, he shall receive a credit against the arrearage resulting from the retroactive effect of this Order, and shall pay an additional \$500.00 per month toward any remaining arrearage until such is paid in full.

As modified herein, the Order of May 30, 2002 is hereby affirmed.

By the Court,

Dudley N. Anderson, Judge

cc: Family Court
Domestic Relations
Christina Dinges, Esq.
JM, Jr.
Dana Jacques, Esq.
Gary Weber, Esq.
Hon. Dudley N. Anderson