

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

NM,		: NO. 03-20,252
	Petitioner	:
		:
	vs.	:
		: DOMESTIC RELATIONS SECTION
MJM,		:
	Respondent	: Exceptions

**OPINION AND ORDER**

Before the Court are Petitioner's exceptions to the Family Court Order of June 3, 2003, which dismissed her request for modification for failure to show a material and substantial change in circumstances. Argument on the exceptions was heard July 30, 2003.

Petitioner contends the hearing officer should have held a hearing on the original complaint for support, rather than conducting a modification review, and that in calculating Respondent's rental income, should not have deducted the entire mortgage payment from the rents received.

With respect to the question whether the proceeding should have been conducted as a hearing on the original complaint for support or as a modification review, the Court notes a conference was held in the Domestic Relations Office in response to Petitioner's filing of a Complaint for Support, on March 26, 2003. At that time, Petitioner raised the issue of Respondent's rental income but no findings were made by the conferencing officer and the support amount did not consider any rental income. An Order was nevertheless entered upon agreement of the parties. By letter dated April 4, 2003, Petitioner's counsel requested a hearing

in Family Court to address the rental income issue. The Domestic Relations Officer indicated in response that a petition for modification would have to be filed. Such a petition was filed and a hearing was scheduled in Family Court on that petition, and held on June 3, 2003. At that hearing, the hearing officer found that a request for hearing had not been made within ten days of the conference order and therefore the matter must proceed as a petition for modification, resulting in Petitioner having to show that the rental income constituted a material and substantial change in circumstances before it could be considered.<sup>1</sup> The Court believes, however, that since Petitioner's counsel's letter was dated nine days from the date of the conference Order, it should have been considered timely. The Court will therefore consider the rental income without first determining whether it constitutes a material and substantial change in circumstances.

With respect to the calculation itself, the Court agrees that the entire mortgage payment should not have been deducted. Upon stipulation of counsel at argument, the Court has been provided with a Statement of Account dated August 5, 2003, issued by GMAC Mortgage, revealing that in 2002, Respondent paid interest of \$4,506.50, property taxes of \$756.28, hazard insurance of \$219.00 and mortgage insurance of \$281.64, or a total of \$5,763.42, or \$480.28 per month. Since he received \$500.00 per month rent, his profit, which is to be considered income for purposes of child support, is \$19.72 per month. His total monthly net income is thus \$1739.72 and his child support obligation is recalculated at \$369.27 per month. Since he was directed to pay \$366.39 per month, however, the recalculation results in an

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<sup>1</sup> The hearing Officer then went on to find a rental income of \$9.56 per month, and concluded that such did not constitute a substantial and material change in circumstances.

increase of only \$2.88 per month and the Court will not require the Domestic Relations Office to undertake any further paperwork to effectuate a change of such insignificant proportions.

ORDER

AND NOW, this 13<sup>th</sup> day of August, 2003, for the foregoing reasons, Petitioner's Exceptions are hereby DENIED and the Order of June 3, 2003, is hereby affirmed.

BY THE COURT,

Dudley N. Anderson, Judge

cc: Family Court  
Domestic Relations Section  
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Hon. Dudley Anderson