

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

RDN, : NO. 84-20,241
Petitioner :
 :
 :
vs. : DOMESTIC RELATIONS SECTION
 : Exceptions
MJH, :
Respondent :

OPINION AND ORDER

Before the Court are Respondent’s exceptions to the Family Court Order dated May 14, 2003 in which Respondent was directed to pay child support to Petitioner. Argument on the exceptions was heard June 25, 2003.

In his exceptions, Respondent contends the hearing officer erred in the calculation of his income and in the proportion of his tax refund attributed to him.

With respect to Respondent’s income, the previous Order was based upon Respondent’s income from self-employment through Federal Express. At the time of the instant hearing, Respondent is now employed by JEM Pro Services. The hearing officer found Respondent left Federal Express to return to employment at Grumman, where he had previously been employed and had been recalled, but after leaving Federal Express, Grumman declared bankruptcy and the job was no longer available. Respondent therefore began his current employment at JEM Pro Services. Although the hearing officer found Respondent changed employment through no fault of his own, and did not find a “voluntary quit”, she nevertheless based Respondent’s income on his 2002 federal income tax return, which showed income from Grumman, unemployment compensation, and income from Federal Express. The Court sees no logic in using these three sources of income, when Respondent is currently employed and there has been no finding that his current employment is anything but commensurate with his earning capacity. The hearing officer gave as the reason for using the tax return that his current employment is “going to be

seasonable employment". In his exceptions Respondent contends his employment is not seasonal and a review of the transcript of the hearing supports Respondent's contention. There was no evidence presented that Respondent's employment is seasonal. The Court believes that basing his income on his current employment is appropriate and has determined from his hourly rate and his testimony that he will be working 40 hours per week that he will have a monthly net income of \$1,320.00. This figure is arrived at by projecting a gross annual income of \$18,720.00 (\$9.00 per hour, 40 hours per week, 52 weeks per year) and calculating his federal tax at \$731.00, by subtracting the standard deduction for a married couple and two exemptions. Social security and Medicare tax is calculated at \$1,432.00, state tax at \$524.00 and local tax at \$187.00. Since Respondent's actual tax obligation is calculated, no refund is appropriate. It is noted Respondent is not entitled to any earned income credit. Further, his tax obligation is calculated without consideration of his wife's children.

Respondent also contends the hearing officer erred in the portion of the federal income tax return attributed to him, contending that the size of the refund is larger because of his wife's children. As calculated above, the Court does not consider the effect of his wife's children and therefore this exception is deemed moot.

At argument, Petitioner presented her 2002 federal income tax return and indicated that she did not receive as large a refund as the hearing officer considered, as she was notified by the IRS of an error in her return. It also appears the hearing officer incorrectly included in her husband's income some of the refund which should have been attributed to Petitioner. The hearing officer determined that since the refund was deposited into a joint account, it should be attributed to the party simply in proportion to that spouse's income with the other spouse, without considering the actual tax obligation. Again, the Court finds no logic in this method, as disposition of the funds does not affect their characterization as income in the context of a support obligation.

Petitioner's portion of the refund is recalculated by determining that her husband had income from employment of \$25,920.00, from his business of \$3,442.00, and half the interest income of \$12.00, for a total annual income of \$29,374.00. Subtracting one-half his self-employment tax gives him an adjusted gross income of \$29,131.00. Petitioner and her husband

had a total adjusted gross income of \$65,967.00, resulting in her husband's percentage being 44.16. Petitioner and her husband would have a taxable income of \$50,569.00, if they claimed two exemptions and their itemized deduction, and their tax would be \$8,258.00. Their actual tax, a result of claiming Petitioner's children, of \$4,922.00, means that \$3,336.00 in savings is attributed to using the children for exemptions and the child tax credit. Petitioner's percent of the tax without considering the children is calculated at \$4,611.00 and subtracting the benefit of \$3,336.00 results in Petitioner's actual tax obligation being \$1,275.00. She had \$4,025.00 withheld and therefore her refund is \$2,750.00, or \$229.00 per month. Adding this to her income from employment of \$2,243.00 provides her with a total monthly net income for purposes of child support of \$2,472.00.

Considering Petitioner's income of \$2,472.00 per month and Respondent's income of \$1,320.00 per month, the guidelines require a payment for the support of three minor children of \$441.00 per month and for the support of two minor children of \$378.00 per month. Further, Respondent's contribution to the health insurance cost is calculated at \$40.71 per month for the period of time when he has a support obligation for three children, and \$30.52 per month thereafter.

ORDER

AND NOW, this 1st day of July, 2003, for the foregoing reasons, the Order of May 14, 2003 is hereby modified to provide for a child support obligation, effective April 2, 2003 and continuing through June 6, 2003, of \$441.00 per month plus an additional \$40.71 per month toward the health insurance expense. Effective June 7, 2003, Respondent's obligation is modified to \$378.00 per month plus an additional \$30.52 per month toward the health insurance expense. The percentage responsibility for excess unreimbursed medical expenses is also modified such that Respondent shall be responsible for 34.81% of such and Petitioner shall be responsible for 65.19% of such.

As modified herein, the Order of May 14, 2003 is hereby affirmed.

By the Court,

Dudley N. Anderson, Judge

cc: Family Court
Domestic Relations Office
RN
MH
Michael Groulx, Esq.
Gary Weber, Esq.
Dana Jacques, Esq.
Hon. Dudley N. Anderson