

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

LMP,	:	NO. 03-20,805
Petitioner	:	
	:	
vs.	:	DOMESTIC RELATIONS SECTION
	:	Exceptions
DJP,	:	
Respondent	:	

OPINION AND ORDER

Before the Court are Petitioner's exceptions to the Family Court Order dated July 27, 2003 in which Respondent was directed to pay child and spousal support. Argument on the exceptions was heard October 22, 2003.

In her exceptions, Petitioner contends the hearing officer erred in the calculation of Respondent's income/earning capacity and in the assessment of an earning capacity to Petitioner.¹

With respect to the calculation of Respondent's income/earning capacity, the hearing officer based his calculation on Respondent's 2002 W-2. Petitioner contends an amount was deducted for retirement contributions, which includes a voluntary contribution to a 401K. It appears from an examination of the pay stub presented at argument, considered by the Court upon agreement of both counsel, that Petitioner is correct. From the percentages shown on the pay stub, it is possible to determine that of the \$2,646.76 deducted from Respondent's gross income in calculating his net income for purposes of child support, only \$613.71 represents mandatory retirement contributions. Adding back the remainder results in a monthly net income of \$3,308.00, rather than the income found by the hearing officer of \$3,139.00.

With respect to Petitioner's earning capacity, the hearing officer assessed an earning capacity based upon the labor and industry statistics which indicated an experienced dental

¹ In her written exceptions, Petitioner also alleges error with respect to the failure of the hearing officer to

assistant would earn \$27,630.00 per year gross. The hearing officer then deducted 20% for taxes to arrive at a net monthly earning capacity of \$1,842.00. Since Petitioner does have the capacity to work full-time but since her current part-time employment provides her with an extraordinarily high income for the hours she works, a realistic assessment of an earning capacity would consider her current income and simply assess a further capacity of 25 hours per week to supplement the 15 hours per week she currently works. Since Petitioner testified she earned \$8.00 per hour in her last full-time job as a dental assistant, at 25 hours per week earning \$8.00 per hour, Petitioner could possibly earn an additional \$10,400.00. Adding this to the \$18,200.00 she currently earns, Petitioner would have a total full-time earning capacity of \$28,600.00. This is quite similar to the \$27,630.00 per year she was assessed by the hearing officer. It does appear, however, that the hearing officer over estimated her tax liability and when the actual tax liability is considered, Petitioner's monthly net income/earning capacity would be \$2,131.00, rather than the \$1,842.00 assessed by the hearing officer.

If the Court considers Petitioner's earning capacity of \$2,131.00 per month and Respondent's earning capacity/income of \$3,308.00 per month, the guidelines suggest a payment of child support of \$865.47 per month and spousal support of \$93.60 per month. This totals \$959.07 per month, which is actually \$18.95 per month less than the amounts ordered by the hearing officer. Without addressing the issue of whether the Court should lower the support obligation since Respondent did not file exceptions, the Court simply notes the amount to be de minimis and therefore the Order will not be disturbed.

ORDER

AND NOW, this 23rd day of October, 2003, for the foregoing reasons, Petitioner's exceptions are hereby denied and the Order of July 22, 2003 is hereby affirmed.

award a mortgage contribution, but at argument this exception was withdrawn.

By the Court,

Dudley N. Anderson, Judge

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