

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

DS,	:	NO. 03-20,921
Petitioner	:	
	:	
vs.	:	DOMESTIC RELATIONS SECTION
	:	Exceptions
DGS,	:	
Respondent	:	

OPINION AND ORDER

Before the Court are Petitioner’s exceptions to the Family Court Order dated August 4, 2003 in which Petitioner was directed to pay spousal support to Respondent and Respondent was directed to pay child support to Petitioner. Argument on the exceptions was heard September 24, 2003.

In his exceptions, Petitioner contends the hearing officer erred in the calculation of his income and in requiring him to continue to pay the mortgage, taxes, and insurance on the marital residence.¹

With respect to the issue of Petitioner’s income, Petitioner contends overtime is no longer available and that he presented evidence of that fact to the hearing officer but the hearing officer nevertheless based his income on a year-to-date pay stub which included a period of time wherein he still worked overtime. A review of the testimony presented at the hearing in Family Court indicates that Petitioner testified that his employer began automating in the middle of May and as a result he has “less hours, less opportunity for overtime.” N.T. July 29, 2003 @ 10. He went on, however, to also testify that he continues to work overtime, belying his contention that such was no longer available. In fact, as of the date of the hearing, he had just the previous week worked 54 hours, whereas his normal schedule was only 42

¹ In his written exceptions he also contends the hearing officer erred in failing to address the issue of awarding child support to Petitioner and in the amount of spousal support. Petitioner did not pursue these exceptions at argument.

hours. Even at the time of argument on September 24, 2003, Petitioner indicated that the previous week he had worked 50 hours. If Petitioner had been able to present pay stubs showing an actual decrease in the hours worked on a significantly consistent basis, a reduction in his child support may have been appropriate. By presenting inconsistent evidence, however, Petitioner did not support his claim and the Court finds no error in the hearing officer's use of the year-to-date figure.

With respect to the directive that Petitioner continue to pay the mortgage, taxes and insurance, the Court agrees with Petitioner that in the context of a child support Order, the hearing officer had no authority to direct Petitioner to continue to make the payment when neither party resides in the residence. Petitioner should seek relief in the context of the divorce action.

ORDER

AND NOW, this 26th day of September, 2003, for the foregoing reasons, Petitioner's exceptions are hereby granted in part and denied in part. The Order of August 4, 2003 is hereby modified to eliminate the directive that Petitioner continue to pay the mortgage, taxes and insurance. As modified herein, the Order of August 4, 2003 is hereby affirmed.

By the Court,

Dudley N. Anderson, Judge

cc: Family Court
Domestic Relations
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Hon. Dudley N. Anderson