

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

SRW, : NO. 02-20,008
Petitioner :
: vs. : DOMESTIC RELATIONS SECTION
: Exceptions
JLW, :
Respondent :

OPINION AND ORDER

Before the Court are Respondent’s exceptions to the Family Court Order dated April 17, 2003 in which Respondent was directed to pay child support to Petitioner. Argument on the exceptions was heard June 11, 2003.

In her exceptions, Respondent contends the hearing officer erred in using only Petitioner’s pay stub to calculate his income, in failing to consider the military allotment he received in lieu of child support, in assessing her an earning capacity based on her previous employment, and in failing to grant a deviation in the child support amount.¹ These will be addressed seriatim.

With respect to the determination of Petitioner’s income and the use of the pay stub, Respondent argues that use of the pay stub presented, for pay period ending March 15, 2003, did not consider a significant enough period of time to incorporate Petitioner’s overtime income, and argues that the Rule requires the use of at least six months, where possible. Petitioner agreed to provide this Court with his 2002 W-2 and his current pay stub and both parties agreed to the Court’s recalculation of Petitioner’s income based upon these two documents. The 2002 W-2, which is determined to cover a period of 27 weeks, shows a monthly net income of \$1,910.00 and after consideration of monthly union dues of \$32.00, results in a monthly net

¹ At argument, Respondent withdrew her exception which alleged error in the determination of her income during the period when she was employed by the Air Force.

income for purposes of support of \$1,878.00. The pay stub provided by Petitioner, for pay period ending May 24, 2003, paid on June 6, 2003 is determined to cover a period of 24 weeks and shows a monthly net income of \$1,855.00. The weighted average of these two is \$1,867.00 per month.² Adding Petitioner's income tax refunds averaging \$293.00 per month results in Petitioner having a monthly net income for purposes of child support of \$2,160.00.

With respect to the military allotment, it appears Respondent did receive credit for those payments received from the allotment and no further discussion is necessary.

With respect to the assessment of an earning capacity, Respondent argues that since she has left her employment and is now attending school, she should be assessed only a minimum wage earning capacity. The Court believes the hearing officer adequately addressed this issue in his Opinion in support of the Order, and finds no merit in Respondent's argument.

Finally, with respect to Respondent's contention regarding a deviation, specifically Respondent alleges that since she has custody of the children during the summer for a period of approximately eight weeks, the support should either be suspended or a deviation allowed. As the hearing officer correctly noted, however, under the rules Respondent does not qualify for a deviation. While Respondent may argue to this Court that the rules are "absurd", both this Court and counsel are bound by those rules unless and until they are changed.

Considering Petitioner's income of \$2,160.00, and the incomes for Respondent as set out in the Family Court Order for the various time periods discussed, for the time period from February 3, 2003 through March 10, 2003 Respondent's child support obligation is calculated at \$429.96 per month, from March 10, 2003 through April 4, 2003, at \$774.90 per month, from April 4, 2003 through April 13, 2003, at \$429.96 per month, and effective April 13, 2003, at \$438.84 per month.

ORDER

² Although the hearing officer calculated a monthly net income of \$2,050.00 based upon the pay stub about which Respondent complains, that calculation was in error as the year-to-date figures on that pay stub covered seven bi-weekly periods, or 14 weeks and it appears the hearing officer used only three months in making his calculation.

AND NOW, this 13th day of June, 2003, for the foregoing reasons, Respondent's exceptions are hereby granted in part and denied in part. The Order dated April 17, 2003 is hereby modified to provide for child support payments in accordance with the above, and to modify the percentage responsibility for excess unreimbursed medical expenses in accordance with the parties' respective net incomes as calculated herein.

As modified herein, the Order of April 17, 2003 is hereby affirmed.

By the Court,

Dudley N. Anderson, Judge

cc: Family Court
Domestic Relations
SW
Janice Yaw, Esq.
Gary Weber, Esq.
Dana Jacques, Esq.
Hon. Dudley N. Anderson