

THELMA BRUNSON,	:	IN THE COURT OF COMMON PLEAS OF
	:	LYCOMING COUNTY, PENNSYLVANIA
Petitioner	:	
	:	
vs.	:	NO. 03-20,270
	:	DOMESTIC RELATIONS SECTION
MACK DUNCAN, JR.,	:	
	:	
Respondent	:	EXCEPTIONS

Date: September 7, 2004

OPINION and ORDER

Before the Court are the Exceptions of Respondent Mack Duncan, Jr. filed July 6, 2004. The Exceptions were filed in response to the Family Court Hearing Officer's order dated June 7, 2004, which found that Duncan owed \$13,615.38 in arrearages on his child support obligation. The matter was before the Hearing Officer on remand from the trial court.

In an Order dated August 13, 2003, the Honorable Dudley N. Anderson vacated an Order dated May 6, 2003 that registered a Georgia child support order in Pennsylvania and found that Duncan owed \$15,000 in arrearage on the child support order. Duncan had filed exceptions to the May 6, 2003 Order arguing that the Hearing Officer failed to give him credit toward his support obligation for payments and property transfers he made to Petitioner Thelma Brunson. Judge Anderson ruled that the parties' property, which was held jointly when their divorce decree was entered, became owned by the parties as tenants in common, each owning a 50% interest. Therefore, Judge Anderson concluded that Duncan had provided something of value to Brunson and the child when he transferred his 50% interest in the former marital property to Brunson without consideration and when he assumed Brunson's fifty percent

obligation on the joint debts. As such, Judge Anderson determined that Duncan should be given credit towards his support obligation. Judge Anderson stated that:

The Court cannot turn a blind eye to the injustice which would result, however, if Petitioner [(Brunson)] were to collect the full amount of arrearages after having received the benefit of Respondent's [(Duncan)] efforts. The matter will thus be remanded for further hearing, at which Respondent may present evidence of the net value of the property transferred, as well as the sums paid on joint debts, for which he should receive 50% credit toward the arrearage in this matter.

Brunson v. Duncan, No. 03-270, 2 (Lycoming Cty. August 14, 2004). Pursuant to Judge Anderson's prior Order, a hearing was held before the Family Court Hearing Officer on March 11, 2004.

The Family Court Hearing Officer did not give Duncan a credit for any of his asserted transfers and payments. The Hearing Officer determined that the wire transfers made from May 1993 until December 1993, totaling \$7,400, were gifts for which no credit toward the child support obligation would be given. As would relate to the marital residence, the Hearing Officer determined that the evidence presented by Duncan regarding the value of the home and the amount owed on the home was insufficient and that without such information she could not determine the one half amount that was transferred and thereby give credit to Duncan. With respect to the various debt obligations (credit card and credit union), the Hearing Officer would not entertain any evidence regarding a credit for payment of Brunson's share of the debt. The Hearing Officer stated that there was no evidence indicating the amount owed on these obligations at the time the parties separated or at the time the parties were divorced and there was no indication as to who made the charges. The Hearing Officer also refused to give a credit to Duncan for transferring the parties 1985 Volvo to Brunson. Despite

this, the Hearing Officer was able to calculate a credit of \$955.18 for the transfer of the vehicle. The Hearing Officer did find that Duncan had made some payments toward his arrearage. This resulted in a determination of an arrearage amount of \$13,615.38.

Duncan asserts that the Hearing Officer failed to abide by Judge Anderson's directive upon remand. Duncan asserts in his exceptions that the Hearing Officer erred in not giving him a credit for the money he gave and the property he transferred to Brunson. Because of this failure, Duncan asserts that the Hearing Officer erred in determining an arrearage of \$13,615.38 and that there is an outstanding child support payment, because if the credits are applied there is no arrearage.

The Court finds that the Hearing Officer erred in failing to give Duncan any credit toward his child support obligation. In doing so, the Hearing Officer improperly rejected Judge Anderson's prior determinations and instead entered into a determination that any payment made by Duncan to Brunson was a gift or a payment Brunson should have received under a non-existing equitable distribution order to offset the value of Duncan's pension, which he is now receiving. Judge Anderson determined that the money given by Duncan to Brunson, the property transferred to her, and the payment of joint debts was to be credited toward the child support obligation. The Hearing Officer was charged on remand to take evidence to determine the amount that was involved in these payments and the value of the property that was transferred.

As such, it was error for the Hearing Officer to determine that the wire transfers were gifts. The Hearing Officer determined the value of those transfers to be \$7,400. Therefore, Duncan shall receive a credit for those transfers in the amount of \$7,400. The same

is true for the transfer of the parties' automobile. The Hearing Officer erred in not giving Duncan a credit for this transfer. Duncan presented enough evidence for the Hearing Officer to calculate the credit he would receive for the transfer of the vehicle. Duncan shall receive a credit in the amount of \$955.18.

As to the transfer of the marital residence, the Court cannot say that the Hearing Officer erred in not giving Duncan a credit. Duncan bore the burden of establishing the value of his interest in the residence as of the date of transfer. The Hearing Officer heard and viewed the testimony presented by Duncan as to the value of the residence and the debt still owed on it. The Hearing Officer determined that this evidence was neither credible nor sufficient to establish a value for the residence as of the date of transfer. The Court will not disturb this determination. As Duncan did not carry his burden on this issue, he does not get a credit for the transfer of the marital residence.

On the issue of the debt obligations, the Hearing Officer erred in refusing to entertain giving Duncan a credit for payment of Brunson's share of the debt. If Duncan did make payments on Brunson's share of the joint debt, then he is entitled to a credit per Judge Anderson's prior determination. The case will be remanded to the Hearing Officer for a hearing to determine the amount Duncan paid on of Brunson's share of the joint debt obligations.

ORDER

It is hereby ORDERED that the Exceptions of Respondent Mack Duncan, Jr. filed July 6, 2004 are GRANTED IN PART and DENIED IN PART.

The Exceptions are GRANTED in that the Family Court Hearing Officer erred in not giving Duncan a credit for the wire transfers he made to Thelma Brunson from May 1993 until December 1993. Duncan is entitled to a credit in the amount of \$7,400 for this.

The Exceptions are GRANTED in that the Family Court Hearing Officer erred in not giving him a credit for the transfer of the parties' 1985 Volvo to Brunson. Duncan shall receive a credit in the amount of \$955.18 for this.

The Exceptions are GRANTED in that the Family Court Hearing Officer erred in refusing to consider giving Duncan a credit for payment of Brunson's share of the joint credit debt. The matter shall be remanded for a hearing to determine the amount Duncan paid on Brunson's share of the joint debt obligations.

The Exceptions are DENIED in that the Family Court Hearing Officer did not err in not giving Duncan a credit for the transfer of the marital residence.

BY THE COURT:

William S. Kieser, Judge

cc: Christina Dinges, Esquire
Bradley S. Hillman, Esquire
Domestic Relations
Family Court
Judges
Christian J. Kalas, Esquire
Gary L. Weber, Esquire (Lycoming Reporter)