

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PA

V.B.,	:	
Plaintiff	:	
	:	
v.	:	No. 04-21,116
	:	PACES NO. 532106701
J.B.,	:	
Defendant	:	

OPINION and ORDER

This opinion addresses the Exceptions filed by Wife to the Master's order of October 12, 2004, awarding Wife child support and alimony pendente lite.

Wife objects to the Master's decision to subtract from Husband's income \$8372, which Husband reported as "meals and entertainment" on the couple's joint 2003 federal income tax return. Husband is a truck driver for Schneider Valley Farms. Without a transcript, the court cannot determine whether these expenses are legitimate or not. We also note that this deduction was reported on the couple's joint 2003 tax return, apparently with Wife's concurrence. Therefore, we will not disturb the Master's decision to deduct the \$8372.

Wife also objects to the Master's calculation of her income. Wife is a transcriptionist for the Work Center at Susquehanna Health Systems. Although Wife filled out Schedule C on the couple's return as if she were a contract worker, her W-2 states she is a "statutory employee," and thus her employer is required to deduct certain taxes from her earnings. Wife paid her own employee \$4321 to perform a portion of the work. The Master declined to subtract this sum from Wife's income because according to the IRS, substantially all the services of a statutory employee are to be performed personally by the employee.

The court disagrees with the Master's decision. It is not up to us to enforce the IRS tax code. If Mother is incorrectly classified as a statutory employee, this court is

not in a position to change or adjudicate that finding. We are simply interested in Wife's earnings and legitimate deductions. The Master does not question whether Wife actually paid \$4321 to the contract employee and since this payment was reported on the couple's joint 2003 federal income tax return, we assume Husband believed the amount was paid, as well. The court will therefore deduct the amount from Wife's income.

Wife next objects to the Master's treatment of the tax refund the couple received from their joint 2003 federal tax return. The Master proportioned the \$3185.00 refund according to the parties' income, and assessed Father with \$2708.00 and Mother with \$477.00. The court will grant this exception for two reasons. First, the refund was received before the parties were separated. Second, it is not a reasonable projection of each party's refund for the 2004 tax year, because Mother will be receiving a large refund as a result of the Earned Income Credit, and Father will be receiving a large refund due to his receiving the dependency exemptions for both children. Therefore, assessing Father with a large refund and Mother with a low refund is not fair to Father.

Perhaps the best way of proceeding would be to calculate the refund each party will be receiving in 2004; however, the court declines to do that as the calculation would be highly speculative and indeed impossible as we do not know which party is living in the marital residence, and thus whether Husband will be itemizing and deducting the mortgage interest, as was done in 2004. The parties are simply advised, therefore, to file for a modification of child support once their 2004 tax returns have been completed. In short, the court will not assign a refund for either party at this time.

Based upon the above changes, Father's monthly income is \$2170.52 and Mother's monthly income is \$723.42.

ORDER

AND NOW, this _____ day of November, 2004, for the reasons stated in the foregoing opinion, Mother's Exceptions #1, 3, 4, and 7 are granted and the remaining exceptions are dismissed. It is further ordered that:

1. For the time period of August 16, 2004 until August 29, 2004, APL shall be \$578.84 per month.
2. For the time period of August 30, 2004 and continuing until further order of court, child support shall be \$708.00 per month and APL shall be \$221.73 per month.
3. In all other respects, the Master's order of April 7, 2004 is affirmed.

BY THE COURT,

Richard A. Gray, J.

cc: Dana Jacques, Esq., Law Clerk
Hon. Richard A. Gray
Janice Yaw, Esq.
Jeffrey Yates, Esq.
Domestic Relations (JJ)
Family Court
Gary Weber, Esq.