

DEANNA L. EWING,
Plaintiff

vs.

JOSHUA M. EWING, SR.,
Defendant

: IN THE COURT OF COMMON PLEAS OF
: LYCOMING COUNTY, PENNSYLVANIA
: DOMESTIC RELATIONS SECTION
:
: NO. 91-21,866
:
:
: CHILD SUPPORT

Date: August 12, 2004

OPINION and ORDER

The matter before the Court is to determine the appropriate income attributable to Father/Respondent, Joshua M. Ewing, Sr. for support purposes. This matter comes to the Court for hearing after the March 5, 2003 Order of the Honorable Dudley N. Anderson was appealed to the Pennsylvania Superior Court. The Superior Court entered an Order on February 27, 2004 remanding the case for the trial court to determine whether or not Father had mitigated his lost income through the efforts he made to obtain employment after a prior “voluntary” termination and, if so, whether such warranted a reduction in support.

The Court is satisfied that the efforts made by Father following his voluntary termination do permit a reduction in his support obligation. The Court notes that he made substantial efforts to attempt to mitigate his lost income. Father obtained part-time employment and sought all employment that was available. Unfortunately, it is an economic reality that in our community well-paying jobs like Father’s former one are not readily available. This is a far too-common occurrence in our community, but one that is well recognized. Nevertheless, Father did make efforts to obtain employment to the best of his ability through temporary agencies and otherwise. The Court believes the income he was actually able to earn, commencing in October 2002, should be utilized to calculate his support

obligation from that date forward. Prior to October 2002, his income from his previous employment, which was voluntarily terminated, should be used to calculate his support obligation.

Accordingly, the following is a statement as to the income and resultant support obligations applicable in this case.

Prior to October 1, 2002

Father's monthly net income earning capacity for this period has been determined to be \$2,193. Mother's, Deanna Ewing, income has been determined to be \$1,344.83. The total income of the parties is \$3,537.83. According to the Support Guidelines, that results in a child support obligation of \$1329. Father's income makes up 62% of the parties total income, while Mother's makes up 38%. Accordingly, that results in a support obligation of \$823.98 for Father and \$505.02 for Mother.

Father is married and has two children he must support that are not the subject of this Opinion and Order. Pursuant to Pa.R.C.P. 1910.16-7(b), the Court must determine whether Father's basic support obligations exceed fifty percent of his monthly net income. Father's income is \$2,193. Father's Wife's income is \$2,549. Their total income is \$4,742, which results in a support obligation of \$1,285. Father's income makes up 53.75% of the parties' total income; Father's Wife's income makes up 46.25%. That results in a support obligation of \$594.31 for the Father and \$690.69 for the Father's Wife.

Father's total child support obligation is \$1,418.29. His child support obligation exceeds 50% of his income and a proportionate reduction shall be made ($\$2,193/2 = \$1,096.50$). Father shall receive a reduction resulting in a total support obligation for the period prior to October 1, 2002 in the amount of \$637.02.

October 1, 2002 to December 31, 2002

Father's monthly net income is determined to be \$1,551. Father made \$1,548 at Manpower, Inc; \$1,096.90 at Your Building Center; \$87.03 at Pennsylvania State University; and received \$13,023 in unemployment compensation for a total of \$15,754.93. Dividing by three results in a monthly net income of \$1,551. Mother's income is \$1,344.83. The parties' total income is \$2,895.83, which results in a total child support obligation of \$1230. Father's income makes up 53.56% of the parties' total income, while Mother's makes up 46.44%. Accordingly, that results in a support obligation of \$658.79 for the Father and \$571.21 for the Mother.

As would apply to his second family, Father's income is \$1,551. Father's Wife's income is \$2,549. Their total income is \$4,100, which results in a support obligation of \$1,153. Father's income makes up 37.83% of the parties' total income; Father's Wife's income makes up 62.17%. That results in a support obligation of \$436.18 for Father and \$716.82 for Father's Wife.

Father's total basic child support obligation is \$1,094.97. His child support obligation exceeds 50% of his income and a proportionate reduction shall be made ($\$1,551 / 2 = \775.50). Father shall receive a reduction resulting in a total support obligation for the period of October 1, 2002 to December 31, 2002 in the amount of \$466.56.

The Year 2003

Father's monthly net income is determined to be \$2,201.63. Father made \$6,300 at Federal Express; \$3,895.55 at DePasquale Staffing; \$3,120 at RoTech Healthcare, Inc.; \$281.45 at Pennsylvania State University; \$3,948 at Manpower, Inc.; \$7,762.87 in the form of a withdrawal from his retirement account; and received \$6,300 in unemployment

compensation for a total of \$26,419. Dividing by twelve results in a monthly net income of \$2,201.63. The Court is cognizant of the fact that tax definitions of income are not controlling with regard to defining income for support purposes. *Darby v. Darby*, 686 A.2d 1346, 1348-49 (Pa. Super. 1996), *app. denied*, 790 A.2d 281 (Pa. 2002). However, the Domestic Relations Code includes within its definition of income “all forms of retirement.” 23 Pa.C.S.A. §4302. As the \$7,762.87 was a withdrawal from his retirement account, it must be included as part of Father’s income. Mother’s income is \$1,344.83. The parties’ total income is \$3,546.46, which results in a total child support obligation of \$1329. Father’s income makes up 62.08% of the parties total income, while Mother’s makes up 37.92%. Accordingly, that results in a support obligation of \$825.04 for the Father and \$503.96 for the Mother.

As would apply to his second family, Father’s income is \$2,201.63. Father’s Wife’s income is \$2,549. Their total income is \$4,750.63, which results in a support obligation of \$1,285. Father’s income makes up 46.34% of the parties’ total income; Father’s Wife’s income makes up 53.66%. That results in a support obligation of \$595.47 for the Father and \$689.53 for the Father’s Wife.

Father’s total basic child support obligation is \$1,420.51. His child support obligation exceeds 50% of his income and a proportionate reduction shall be made ($\$2,201.63 / 2 = \1100.82). Father shall receive a reduction resulting in a total support obligation for the year 2003 in the amount of \$639.32.

The Year 2004 (currently)

Father’s monthly net income is determined to be \$1,534.91. Father makes \$354.21/week at RoTech Healthcare, Inc. ($\$354.21 \times 52 = \$18,418.92 / 12 = \$1,534.91$).

Mother's income is \$1,344.83. The parties' total income is \$2,879.74, which results in a total child support obligation of \$1,230. Father's income makes up 53.3% of the parties total income, while Mother's makes up 46.7%. Accordingly, that results in a support obligation of \$655.59 for Father and \$574.41 for Mother.

As would apply to his second family, Father's income is \$1534.91. Father's Wife's income is \$2,549. Their total income is \$4,083.91, which results in a support obligation of \$1153. Father's income makes up 37.58% of the parties' total income; Father's Wife's income makes up 62.42%. That results in a support obligation of \$433.30 for Father and \$719.70 for Father's Wife.

Father's total basic child support obligation is \$1,088.89. His child support obligation exceeds 50% of his income and a proportionate reduction shall be made ($\$1534.91/2 = \$1,105.37$). Father shall receive a reduction resulting in a total support obligation for the year 2004 in the amount of \$462.06.

ORDER

1. Based on the above findings and calculations Joshua Ewing shall pay by check or money order to PA SCDU, P.O. Box 69110, Harrisburg, PA, 17106-9110, the following amounts effective May 1, 2002:

- a. Child support in the amount of \$637.02/month for the period prior to October 1, 2002.
- b. Child support in the amount of \$466.56/month for the period of October 1, 2002 to December 31, 2002.
- c. Child support in the amount of \$639.32/month for the year 2003.

d. Child support in the amount of \$462.06/month for the year 2004 and continuing until further Order of Court.

The check or money order shall contain Mr. Ewing's social security number.

2. Beginning May 1, 2002, each parent shall be responsible for the first \$125 of un-reimbursed medical expenses incurred for each child during the calendar year. Medical expenses do not include over-the-counter medications.

3. Mr. Ewing shall be responsible for 53.3 % and Deanna Ewing shall be responsible for 46.7% of all reasonably necessary medical services and supplies, including, but not limited to, surgical, dental, optic, and orthodontic services incurred on behalf Kelsey, Joshua, Paige, and Courtney Ewing, which are unreimbursed by insurance or Medicaid within thirty (30) days of proof of such paid expense presented by Deanna Ewing to Joshua Ewing or Joshua Ewing to Deanna Ewing.

4. Unreimbursed medical, dental, optic, and orthodontic expenses shall be determined after submission to both parties insurance companies, if any, with documentation of payments or denial of payment to be presented to the Domestic Relations Section.

5. Mr. Ewing shall be responsible for the payment of any balance remaining if his employer is unable to deduct the total amount of child support, childcare costs, and arrearages pursuant to this Order within fourteen (14) days of the reduced payment to PA SCDU.

6. Be advised that you have the right to file exceptions to this Order, in accordance with the attached Notice.

Lycoming County Local Rule L1910.10C provides that filing exceptions to a Proposed Order of Support shall not affect the obligation of payment pending review by the

Court on exceptions; that is, the obligation to pay support continues even if exceptions are filed.

As long as the Domestic Relations Office has administrative responsibility, **all parties** are under a continuing obligation **to report any material change in circumstances** relevant to the level of support or the administration of the Support Order as specified on the **Addendum** to this Order, **to both the Domestic Relations Office and all other parties: in writing within seven (7) days** of the change.

The provisions of Addendum (Form 3795), which is attached hereto, is made a part hereof and incorporated by reference as though set forth herein.

BY THE COURT:

William S. Kieser, Judge

cc: Marc S. Drier, Esquire
Christina Dinges, Esquire
Judges
Christian J. Kalas, Esquire
Gary L. Weber, Esquire (Lycoming Reporter)
Domestic Relations