

EDWARD L. FIESTER,

Plaintiff

vs.

TAMMY L. FIESTER,

Defendant

: IN THE COURT OF COMMON PLEAS OF  
: LYCOMING COUNTY, PENNSYLVANIA  
: DOMESTIC RELATIONS SECTION

:

: NO. 03-21,398  
: PACES NO. 896105907  
: CIVIL ACTION - LAW

:

: SUPPORT ORDER

*Date: August 16, 2004*

**OPINION and ORDER**

This Order is entered after a hearing and testimony having been received on May 7, 2004 with regard to Plaintiff Edward L. Fiester's Request for child support filed on October 24, 2003 and APL filed on October 13, 2003. Both parties appeared with their attorneys, Michael G. Leonard, Esquire and Janice R. Yaw, Esquire, respectively.

**Findings of Fact**

Defendant, Tammy L. Fiester (hereafter referred to as "Wife") left the marriage in August of 2003. At the time of separation, Wife was employed as a manager for Sovereign Bank's Lycoming Mall branch. She continues to be employed by Sovereign Bank in that capacity.

At the time of separation Plaintiff, Edward L. Fiester (hereafter referred to as "Husband") was employed by the Fleetwood Corporation in Paxinos, Pennsylvania where he worked in the construction of recreational vehicles. Husband was employed at the hourly rate of \$12.68 per hour. In order to receive these wages, however, Husband was required to travel nearly two hours per day to and from work in a 1988 GMC pickup truck with very high mileage.

When Wife left the marriage, Husband assumed nearly full custody of the nine-year-old child, Justin, who is the subject of this Order.

Husband, in an attempt to be more available to care for the needs of his nine-year-old son, Justin, sought and obtained local employment with Superior Homes, Inc., a division of Muncy Homes, Inc., with plant facilities located in the Muncy-Hughesville area. This was a reasonable change of employment and not a voluntary reduction of income. Thereafter, the efforts made by Husband to secure available and suitable employment constituted reasonable efforts to mitigate the effect of his decreased income. Husband began his employment with Superior Homes on November 16, 2003, at the rate of \$10.40 per hour.

Acknowledging those voluntary reductions in income will not ordinarily work to reduce a parent's support obligation under Pa.R.C.P. 1910.16-2(d)(1), the Court nevertheless finds that Husband's change in employment was reasonable under the circumstances and that it was not done to diminish Husband's support obligation. To the contrary, the Court is convinced that Husband made the change because he believed that it was in the best interest of his child to do so.

Husband was unable to maintain the mortgage payments on the family home so he moved into an apartment located within walking distance of Justin's school, Ashkar Elementary School in Hughesville. One of the reasons Husband changed his employment was so he would be able to pick Justin up after school.

Superior Homes unexpectedly laid off husband on January 24, 2004. He is currently receiving \$219.00 per week in Unemployment Compensation Benefits. Husband testified that he has not sought alternative full-time employment because he expects to be called

back to Superior Homes in the near future and needs to make sure that he is available when that call comes. According to Husband, full time employment with Superior Homes is the best long-term employment opportunity that will permit him to earn competitive wages and still permit him to parent his son. The Court finds this testimony credible and reasonable.

Documents provided by Wife indicate that she pays for health insurance coverage for both her and Justin. The premium for Justin is \$42.63 per month. Husband does not have health insurance coverage while he is on layoff status.

Given the above-referenced factual findings, the Court enters the following Orders, which cover the various time periods, and claims at issue in these proceedings. *First*, the Order addresses Husband's claim for APL from the date of his filing for it on October 13, 2003 to October 24, 2003, the date that he filed for Child Support. *Second*, the Order addresses the period from October 24, 2003 through November 15, 2003, his final date of employment with Fleetwood Corporation prior to starting his new job with Superior Homes. *Third*, the period of November 16, 2003 through December 31, 2003. *Fourth*, January 1 through January 24, 2004 the date of his involuntary layoff from Superior Homes. And finally, the period of January 24, 2004 and continuing through the present.

1. **October 13, 2003 to October 24, 2003 (APL)**

With Husband's income at \$1,673.65 and Wife's income at \$2,233.43, Husband is awarded \$167.94/month in APL based upon the following calculations. ( $\$2,233.43 - \$1,673.65 = \$559.78 \times .30 = \$167.64$ .) The parties' net monthly income was calculated by utilizing the

information provided in Husband's 1040X Amended Tax Return and Wife's 1040 Tax Return as follows:

Mrs. Fiester's Income (2003):

Adjusted Gross Income (Line 7,1040)	\$32,942.00
Federal Tax (Line 60, 1040)	\$ 2,369.00
Social Security (Gross x .0620)	\$ 2,042.40
Medicare Tax (Gross x .0145)	\$ 477.66
State Tax (Gross x .0280)	\$ 922.38
Local Tax (Gross x .01)	\$ 329.42
Net Income for 2003	\$26,801.14
Net Monthly Income 2003	\$ 2,233.43

Mr. Fiester's Income (2003):

Adjusted Gross Income (Line 1, 1040X)	\$24,141.00 <sup>1</sup>
Federal Tax (Line 10, 1040X)	\$1,293.00
Social Security (Gross x .0620)	\$1,496.75
Medicare Tax (Gross x .0145)	\$ 350.04
State Tax (Gross x .0280)	\$ 675.95
Local Tax (Gross x .01)	\$ 241.41
Net Income for 2003	\$20,083.85
Net Monthly income 2003	\$ 1,673.65

2. **October 24, 2003 to November 15, 2003 (APL and Child Support)**

Pursuant to 1910.16-4(e) the Court makes the following calculations:

Husband's Income: \$1673.65      Wife's Income: \$2,233.43  
Child Support

Total Income: \$3,907.08  
Husband's Share: 42.84%  
Wife's Share: 57.16%

---

<sup>1</sup> Husband obtained income from three "under the table" construction jobs. The Court is convinced that he testified truthfully regarding his profit and expenses on these jobs and rejects Wife's contention that any expenses for which a receipt is not produced should be counted as income. The evidence indicates that Wife handled the family finances and that she prepared the family tax returns during the course of the marriage. She will not now be permitted to object to accounting irregularities.

Medical Insurance: \$42.63  
Husband's Share: \$18.26  
Wife's Share: \$24.37

Guideline Child Support Amount: \$768  
Husband's Obligation: \$329.01  
Wife's Obligation: \$438.99  
Wife's Obligation minus Medical Insurance: \$420.73

APL

Wife's Income minus child support obligation: \$1,794.44  
Total minus Husband's income: \$120.79  
Total x 30%: \$36.24  
APL: \$36.24

Wife's Child Support Obligation: \$420.73  
Wife's APL Obligation: \$36.24

3. **November 16, 2003 to December 31, 2003 (APL and Child Support)**

Pursuant to 1910.16-4(e), the Court makes the following calculations:

Husband's Income: \$1,042.17      Wife's Income: \$2,233.43  
Child Support

Total Income: \$3,275.60.  
Husband's Share: 31.82%  
Wife's Share: 68.18%

Medical Insurance: \$42.63  
Husband's Share: \$13.56  
Wife's Share: \$29.07

Guideline Child Support Amount: \$693  
Husband's Obligation: \$220.51  
Wife's Obligation: \$472.49  
Wife's Obligation minus Medical Insurance: \$458.93

APL

Wife's Income minus child support obligation: \$1,760.94  
Total minus Husband's income: \$718.77  
Total x 30%: \$215.63

APL: \$215.63

Wife's Child Support Obligation: \$458.93

Wife's APL Obligation: \$215.63

**4. January 1, 2004 to January 24, 2004 (APL and Child Support)**

Pursuant to 1910.16-4(e), the Court makes the following calculations:

Husband's Income: \$1,065.67      Wife's Income: \$2,517.18  
Child Support

Total Income: \$3,582.85

Husband's Share: 29.74%

Wife's Share: 70.26%

Medical Insurance: \$42.63

Husband's Share: \$12.68

Wife's Share: \$29.95

Guideline Child Support Amount: \$768

Husband's Obligation: \$228.40

Wife's Obligation: \$539.60

Wife's Obligation minus Medical Insurance: \$526.92

APL

Wife's Income minus child support obligation: \$1,977.58

Total minus Husband's income: \$911.91

Total x 30%: \$237.57

APL: \$237.57

Wife's Child Support Obligation: \$526.92

Wife's APL Obligation: \$237.57

**5. January 24,2004 and Continuing (APL and Child Support)**

Pursuant to 1910.16-4(e), the Court makes the following calculations:

Husband's Income: \$806.65      Wife's Income: \$2,517.18  
Child Support

Total Income: \$3,323.83

Husband's Share: 24.27%  
Wife's Share: 75.73%

Medical Insurance: \$42.63  
Husband's Share: \$10.35  
Wife's Share: \$32.28

Guideline Child Support Amount: \$693  
Husband's Obligation: \$168.19  
Wife's Obligation: \$524.81  
Wife's Obligation minus Medical Insurance: \$514.46

APL

Wife's Income minus child support obligation: \$1,992.37  
Total minus Husband's income: \$1185.72  
Total x 30%: \$355.72  
APL: \$355.72

Wife's Child Support Obligation: \$514.46  
Wife's APL Obligation: \$355.72

ACCORDINGLY, it is hereby ORDERED and DIRECTED as follows:

**ORDER**

1. Based upon above factual findings and calculations Mrs. Fiester shall pay by check or money order to PA SCDU, P.O. Box 69110, Harrisburg, PA 17106-9110, the following amounts effective October 13, 2003:
  - a. APL in the amount of \$167.94/month for the period of October 13, 2003 to October 24, 2003.
  - b. Child support in the amount of \$420.73/month for the period of October 24, 2003 to November 15, 2003. APL in the amount of \$36.24/month for this period.

- c. Child support in the amount of \$458.93/month for the period of November 16, 2003 to December 31, 2003. APL in the amount of \$215.63/month for this period.
- d. Child support in the amount of \$526.92/month for the period of January 1, 2004 to January 24, 2004. APL in the amount of \$237.57/month for this period.
- e. Child support in the amount of \$514.46/month for the period of January 24, 2004 and continuing. APL in the amount of \$355.72/month for this period.

The check or money order shall contain Mrs. Fiester's social security number.

2. Beginning October 13, 2003, 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. Fiester shall be responsible for .4643 percent and Mrs. Fiester shall be responsible for .5356 percent of all reasonable necessary medical services and supplies, including, but not limited to, surgical, dental, optic, and orthodontic services incurred on behalf of Justin Fiester, which are un-reimbursed by insurance or Medicaid within thirty (30) days of proof of such paid expense presented by Mr. Fiester to Mrs. Fiester or Mrs. Fiester to Mr. Fiester. The above referenced percentages have been arrived at by determining the average percentage of income for child support purposes as stated above.



4. Un-reimbursed 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. It is hereby Ordered and Directed that Mrs. Fiester shall continue to maintain medical insurance coverage for the child covered under this Order.

6. It is hereby Ordered and Directed that Mrs. Fiester shall provide health insurance for Mr. Fiester, pursuant to Title 23, Sec. 3702. Upon proof of coverage for Mr. Fiester and the cost of said coverage, Domestic Relations shall adjust this Order administratively.

7. Within thirty (30) days after the entry of an Order requiring a person to provide health insurance coverage, written proof of that health care coverage has been obtained or that application for coverage has been made must be documented and sent to the Domestic Relations Section and each Plaintiff. Proof of coverage shall consist of at a minimum;

- a. Name of the health care coverage provider,
- b. Any applicable identification numbers,
- c. Any cards evidencing coverage,
- d. The address to which claims should be made,
- e. A description of any restrictions on usage such as prior approval for hospital admissions and the manner for obtaining approval,
- f. A copy of the benefit booklet or coverage contract,
- g. A description of all deductibles and co-payments,
- h. Five (5) copies of any claim forms,

- i. Date coverage began,
- j. Costs of coverage to (Plaintiff/Defendant) per (week/bi-weekly/bi-monthly/monthly) paycheck,
- k. Names of all individuals covered by the insurance.

The above information shall be provided to the DOMESTIC RELATIONS SECTION and Husband as soon as they are received from Mrs. Fiester's employer.

8. Mr. Fiester shall comply with the insurers existing claim procedures and present to the insurer one of the following documents;

- a. Copy of the Court Order,
- b. A release signed by the insured permitting Mr. Fiester to communicate directly with the insurer.

9. Mrs. Fiester shall sign a release permitting Mr. Fiester to communicate directly with the insurance provider.

10. Mrs. Fiester shall pay \$250.00 monthly on this Order for any past due support to the retroactive effect of this Order and for any overdue support which has accrued prior to the entry of this Order.

11. Mrs. Fiester shall pay Court costs in the amount of \$38.50 to Domestic Relations Section within thirty (30) days of the date of this Order.

12. Mrs. Fiester shall be responsible for the payment of any balance remaining if her employer is unable to deduct the total amount of child support, child care costs, and arrearages pursuant to this Order within fourteen (14) days of the reduced payment to PA SCDU.

13. 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: Michael G. Leonard, Esquire  
Janice R. Yaw, Esquire  
Domestic Relations  
Family Court (2)  
Judges  
Christian J. Kalas, Esquire  
Gary L. Weber, Esquire (Lycoming Reporter)