

**IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PA**

M.H.	:	
Plaintiff	:	
	:	
v.	:	No. 02-20,703
	:	PACES NO. 849104500
S.H.,	:	
Defendant	:	

**OPINION and ORDER**

This opinion addresses the Exceptions filed by both parties to the Master’s order of March 10, 2004, assessing Father with child support and spousal support.

Mother’s first exception relates to the Master’s failure to order a mortgage contribution pursuant to Pa.R.C.P. 1916-16(e). The Master did not do so because the rule only applies when the party residing in the marital residence is paying the mortgage, whereas in this case, Mother was residing in the residence and Father was paying the mortgage. While it is true Father is the one who physically made the mortgage payments,<sup>1</sup> Father received credit for those payments, which was deducted from his support obligation. Therefore, Mother was actually “paying” the mortgage because she received that much less for support each month. A mortgage contribution will therefore be ordered until April 1, 2004, when Father began residing in the marital residence.

Mother’s next exception relates to the Master’s failure to include in the order the parties’ previous stipulation that Father will continue to cover his step-daughter Katie on his insurance in exchange for a credit against his child support obligation. Both parties agreed to this at argument; therefore, this provision will be included in the order, and Father will receive a credit of \$17.33 per month.

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<sup>1</sup> Because Father owns the home and the mortgage is in his name.

Mother's next exception relates to the Master's failure to require Father to pay 100% of Mother's unreimbursed medical expenses. Father had requested a cap on these expenses, and the Master declined to do that "without an idea of the total cost either monthly or annually." However, the Master suspended Father's obligation to pay Mother's unreimbursed medical expenses pending a future order, "after more medical documents are received by the Master and/or Domestic Relations Section consuming the whole year of 2003." The court finds no error in this regard, as it was unclear at the time of the hearing exactly which medical expenses would be paid by Father's insurance. Furthermore, it appears that a cap on Mother's expenses may be appropriate once the evidence of her expenses is received; therefore, a suspension of Father's obligation at this point is reasonable.

Mother's final exception relates to the Master's refusal to consider contact lenses a necessary medical expense. Mother purchased eyeglasses in the amount of \$301.53 and contacts in the amount of \$161.00. No medical evidence supported the need for contacts. Therefore, the Master awarded her the cost of the glasses, but did not require Father to pay for the contacts. The court finds no error in this regard.

Father's first and fifth exceptions relate to the Master's failure to take into account his purported daycare expenses of \$433 per month. As the Master's order was silent as to this issue, the court could not determine whether the Master rejected Father's testimony regarding his daycare expenses, or whether the Master forgot to include the daycare expenses when fashioning the order. The court therefore requested the Master to clarify her position on the issue, and the Master duly issued an order on May 20, 2004, which makes it clear that the Master rejected Father's testimony on the issue. The court will not disturb the Master's assessment of credibility.

Father's next exception states that Mother should be assessed income based upon debt forgiveness she is receiving due to her disability. The court disagrees. Although Mother's credit card payments have been suspended because of the credit

protection plan Mother signed up for, the principal has not been forgiven. Moreover, it is highly questionable whether this sort of debt forgiveness, which is essentially an insurance arrangement, would be considered income even if it entailed forgiveness of the principal.

Father's next exception also relates to Mother's income. Mother's earning capacity has been zero since the first order entered, on June 14, 2002, due to her medical conditions. The Social Security Administration has found that she is under a disability, that she is unable to perform sustained work activities in an ordinary work setting on a regular and continuing basis, and that there are no jobs existing in significant numbers which she can perform. Therefore, this exception will be dismissed.

Father's next exception is a general one, stating the Master erred in determining child support and spousal support effective January 1, 2004 to the present. As the court could find no specific error in the Master's calculations, this exception will be dismissed.

Father's next exception relates to the Master's allocating the order between child and spousal support beginning January 1, 2004. While it is true that previous orders in this case have been unallocated, that was based upon the agreement of the parties, and Mother currently wants the order to be allocated because it makes a difference to her SSI award. And while it is true that Rule 1910.16(f) appears to envision that support orders will normally be unallocated, the practice in this county has been to allocate orders, absent a good reason not to. Therefore, this court will not disturb the Master's discretionary decision to allocate, given the social security issue.

Father's next exception relates to the Master's failure to require Mother to pay the first \$250.00 of unreimbursed medical expenses for the children. As the parties have shared physical custody, it would be inappropriate for Mother to have to pay the first \$250. Rather, all the children's unreimbursed medical expenses should be shared

according to the parents' income percentages. With Mother's income at zero, that means Father must pay all the unreimbursed medical expenses. Since the order currently states that the custodial party is responsible for the first \$250 of unreimbursed medical expenses, the order will be amended accordingly.

Father's final exception relates to the fact that he received no discount on child support even though he was awarded shared physical custody, nor did the Master adjust the support obligation to ensure that neither party receives a larger share of the parties' combined income. Under Rule 1910.16-4(c)(3), these two shared physical custody adjustments do not apply if the obligee's income is 10% or less of the parties' combined income. As a result, Mother receives more of Father's income than he does.<sup>2</sup>

Father has compellingly argued that although the Master correctly calculated the support obligation, and correctly applied Rule 1910.16-4(c)(3), the result is simply not equitable. Under the unique circumstance of this case, the court is inclined to agree. Father is paying Mother more than he retains for himself, and in addition is paying all the health insurance costs for both parties and the children, along with all the unreimbursed medical expenses for both parties and the children. Moreover, he has shared physical custody of the children, and therefore is responsible for the direct costs of supporting them half the time. Child support awards must be fair, nonconfiscatory, and attendant to the circumstances of the parties. Haselrig v. Haselrig, 840 A.2d 338, (Pa. Super. 2003). This is one of the rare cases where the court believes the support obligation as calculated in strict conformance with the guidelines is unfair, and therefore we will adjust the support to ensure that Father is not paying more to Mother than he retains for himself.

For the time period September 5, 2003 through December 31, 2004, Father's child support obligation is \$986, his spousal support obligation is \$656.50, and his

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<sup>2</sup> In addition, Mother receives SSI and child support for another child in her custody.

mortgage contribution is \$198.73. That results in \$508.12 more in Mother's household, and therefore Father's support will be reduced by \$254.06, which results in an unallocated support obligation of \$1587.17. Subtracting a credit for in-kind payments of \$945.16 (including \$17.33 for health insurance for Mother's other child) results in an unallocated payment of \$642.01 per month.

For the time period of January 14, 2004 through March 31, 2004, Father's child support is \$969, his spousal support is \$648.59, and his mortgage contribution is \$201.84. That results in \$507.88 more to Mother than to Father, and therefore the support will be reduced by \$253.94, for a total support obligation of \$1363.65 plus \$201.84 mortgage contribution. The support obligation is allocated as follows: \$818.19 for child support and \$545.46 for spousal support. Father has a credit of \$945.16 for in-kind payments. The allocation of the support after applying the credit results in a child support obligation of \$251.10 and a spousal support obligation of \$167.39.

For the time period beginning on April 1, 2004, Father's child support obligation is \$969 and his spousal support obligation is \$648.59, which results in a total support obligation of \$1617.59, with \$104.20 more going to Mother than Father. Therefore, \$52.10 will be subtracted from Father's support, which after allocation results in a child support obligation of \$939.29 and a spousal support obligation of \$626.20.

## ORDER

AND NOW, this \_\_\_\_\_ day of June, 2004, for the reasons stated in the foregoing opinion, Father's exception #8 is granted and Mother's exceptions #1 and #2 are granted. The remaining exceptions are dismissed. It is ordered that:

1. For the time period September 5, 2003 through December 31, 2004: Father's unallocated support obligation is \$1587.17 per month. Taking into account his in-kind payments of \$945.16 per month, Father's unallocated support is \$642.01 per month.
2. For the time period of January 14, 2004 through March 31, 2004: Father's child support is \$818.19 per month for child support, \$545.46 per month for spousal support, and \$201.84 per month for mortgage contribution. Taking into account his in-kind payments of \$945.16 per month, Father's child support obligation is \$251.10 per month, his spousal support obligation is \$167.39 per month, and his mortgage contribution is \$201.84 per month.
3. For the time period beginning on April 1, 2004 and continuing until further order of court: Father's child support obligation is \$939.29 per month and his spousal support obligation is \$626.20 per month.
4. Beginning September 5, 2003, Father shall be responsible for 100% of the children's unreimbursed medical expenses and 100% of all reasonably necessary medical services and supplies, including, but no limited to, surgical, dental, optic and orthodontic services which are unreimbursed by insurance or Medicaid.
5. Father shall continue to cover his step-daughter Katie on his insurance until the parties are divorced, and will continue to receive a credit for that cost so long as the child is covered under his insurance.
6. In all other respects, the Master's order of March 10, 2004 is affirmed.

BY THE COURT,

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Richard A. Gray, J.

cc: Dana Jacques, Esq., Law Clerk  
Hon. Richard A. Gray  
Christina Dinges, Esq.  
Joy McCoy, Esq.  
Domestic Relations (RW)  
Family Court  
Gary Weber, Esq.