

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PA

K.R.,	:	
Plaintiff	:	
	:	
v.	:	No. 04-20,101
	:	PACES NO. 053106173
D.R.,	:	
Defendant	:	

OPINION and ORDER

The question before the court is how spousal support and alimony pendente lite should be calculated when the parties have a divided or split custody arrangement, with one or more children residing with each party.

Rule 1910.16-4(d)(2) states the court should “offset the obligor’s spousal and child support obligation with the obligee’s child support obligation and award the net difference to the obligee as spousal and child support.” It does not state, however, precisely how the obligor’s spousal support obligation should be calculated. The Master subtracted from Husband’s income Husband’s actual child support obligation of \$474.85, owed to Wife for the child in her care, as well as the direct support Husband provides to the child in his care, calculated in accordance with the guidelines as if that child were not living with him, which is \$293.15. The Master then deducted Wife’s income, and awarded Wife 30% of the difference.

Husband points to Rule 1910.16-4(a) Part IV, which gives the general formula for calculating spousal support or APL. This formula is as follows: From the obligor’s net monthly income is subtracted: (1) all the obligor’s child support obligations, as well as any spousal support, APL, and alimony obligations to former spouses who are not part of this action, (2) the obligor’s total child support obligation to the child or children in obligee’s care, and (3) the obligee’s net monthly income. The obligee is then awarded 30% of the final figure. This the formula used by the Master.

The problem, however, is that Rule 1910.16-4(a) Part IV states the general rule, whereas paragraph Rule 1910.16-4(d)(2) specifically addresses cases of divided or split custody. Although the initial language of Rule 1910.16-4(d)(2) is ambiguous as to how spousal support or APL should be calculated, that paragraph also provides a concrete example of how this is to be done. In the example, only the obligor's obligation to the child in the obligee's custody is subtracted. Husband argues this is merely a mistake, but the court declines to reach that conclusion. The court will not disregard the example calculation set forth in the rules.

Furthermore, the following paragraph, Rule 1910.16-4(d)(3), states that when the parties have a split or divided custody arrangement and the obligee's net income is 10% or less of the parties' combined net income, then "in calculating the spousal support or APL obligation, the court shall deduct from the obligor's income both the support owed for the child or children residing with the obligee, as well as the direct support the obligor provides to the child or children living with the obligor, calculated in accordance with the guidelines as if the child or children were not living with the obligor." In other words, Rule 1910.16-4(a) Part IV states the general rule, Rule 1910.16-4(d)(2) states an exception to the general rule, and 1910.16-4(d)(3) states an exception to the exception, in which cases the general rule should be applied. In the case before the court, Wife earns 10% or more of the parties' net income. Therefore, it is not an exception to the exception, and the general rule should not be applied.

For these reasons, the court finds the Master erred in deducting Husband's support obligation to the child in his care. We also note that, as counsel for Wife has pointed out, the Master, in calculating spousal support or APL in similar situations, has not deducted the obligor's obligation to the child in his care. See Ecker v. Ecker, Lyc. No. 02-21,172 and Stoy v. Stoy, Lyc. Co. No. 01-20,393.

ORDER

AND NOW, this _____ day of October, 2004, for the reasons stated in the foregoing opinion, Wife's Petition for Reconsideration, filed on September 23, 2004, is granted and it is ordered as follows:

1. Husband's spousal support obligation is \$136.59 per month.
2. In lieu of child support and spousal support, Husband shall pay the mortgage on the marital residence of \$800.00 per month, effective February 1, 2004.
3. Husband shall have a credit in the equitable distribution phase of this case of \$513.290 per month, effective February 1, 2004.
4. In all other respects the Master's order of April 5, 2004 is affirmed.

BY THE COURT,

Richard A. Gray, J.

cc: Dana Jacques, Esq., Law Clerk
Hon. Richard A. Gray
Christina Dinges, Esq.
Janice Yaw, Esq.
Domestic Relations (MR)
Family Court
Gary Weber, Esq.