

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PA

C.W.,	:	
Plaintiff	:	
	:	
v.	:	No. 00-21,878
	:	PACES NO. 314102912
K.W.	:	
Defendant	:	

OPINION and ORDER

This opinion addresses the Exceptions filed by both parties to the Master’s order of April 1, 2004 and amended order of April 15, 2004.

Mother objects to the Master’s failure to award her a contribution to her child care expenses. The parties have shared physical custody of one child. Since Father’s income is higher, Father pays support to Mother. The Master did not award a child care contribution, stating, “Because both parties have twenty-six (26) weeks per year of child care cost, there is no day care obligation.” The court agrees this is incorrect. Rule 1910.16-6(a) states that day care expenses shall be “allocated between the parties in proportion to their net incomes and obligor’s share added to his or her basic child support obligation.” The court can find no reason to apply the rule any differently in shared physical custody arrangements.¹

Mother’s daycare costs are \$35 per week during the school year and \$70 per week during the summer, which totals \$1120 per year for the 50% of the time Mother has custody. That is reduced by 25% to reflect the federal child care tax credit, to arrive at \$70 per month. Father’s proportionate share of that is \$44.51 a month.

The remaining issue is the child dependency exemption. Both parties have filed their 2003 tax returns, and both parties have claimed the child. In her order, the Master

¹ Of course, Father’s daycare expenses may also be considered in arriving at the total day care cost, since he is also considered a “custodial parent.” At argument, however, it appeared Father is not incurring any daycare expenses.

not only awarded Mother the exemption, but also ordered Father to amend his 2003 tax return. Father claims the court has no jurisdiction to order a party to amend his or her tax return, and the court is inclined to agree. However, Rule 1910.16-2 clearly states that the court may order Father to execute the waiver required by the Internal Revenue Code, and the court will do so. The court must assume Father will obey federal law and file an amended tax return, rather than risk the penalties imposed by the IRS.

At the argument on the exceptions, Father also objected to the Master's awarding the child dependency exemption for the year 2003 to Mother. The court must consider this issue waived, as it was not raised in Father's exceptions. However, even if the court were to permit Father to raise the issue at this time, the exception would still be dismissed, as the court finds the Master was correct in awarding the exemption to Mother, albeit for the wrong reason.

Rule 1910.16-2(f) states the court may award the federal child dependency exemption to the non-custodial party or in shared custody cases, to either parent, in order to "maximize the total income available to the parties and children." The Master awarded Mother the exemption because under that scenario, Mother would receive more child support than if Father were awarded the exemption. The court believes, however, that the purpose of the rule is not to maximize the child support, but to maximize the total amount of money available to the parties by minimizing the amount paid to the Internal Revenue Service. Mother receives a greater benefit from the tax exemption; therefore, it should be awarded to her because the parties' income is maximized, and it is assumed the child will benefit from the additional funds—no matter which parent receives the money. Of course, whoever receives the refund will have it added to their income for calculating child support, and therefore the support will be affected in some way. Increasing child support, however, is not the purpose of the rule. The court finds this is the case not only in shared physical custody cases, but in all support cases, as well.

ORDER

AND NOW, this _____ day of May, 2004, for the reasons stated in the foregoing opinion, the exception filed by the plaintiff is granted and the exception filed by the defendant is granted and it is hereby ordered as follows:

1. Father's child support obligation shall be increased by \$44.51 per month, to reflect his contribution to child care expenses.
2. Paragraph 1 of the Master's order is amended to state that C.W. shall have the child dependency exemption for the year 2003 and K.W. shall execute the waiver required by the Internal Revenue Code, 26 U.S.C.A. §152(e) within twenty days of the date of this order, and provide a copy to Cindy Westbrook.
3. In all other respects, the Master's order of April 1, 2004, as amended by the Master's order of April 15, 2004, is affirmed.

BY THE COURT,

Richard A. Gray, J.

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