

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

TLH,	:	NO. 00-20,971
Petitioner	:	
	:	
vs.	:	DOMESTIC RELATIONS SECTION
	:	Exceptions
RAH,	:	
Respondent	:	

OPINION AND ORDER

Before the Court are cross exceptions to the Family Court Order dated November 5, 2003, in which Respondent was directed to pay child support to Petitioner. Argument on the exceptions was heard December 31, 2003.

In her exceptions, Petitioner contends the hearing officer erred in decreasing her support retroactively and in his exceptions, Respondent contends the hearing officer erred in failing to decrease his support prior to the effective date of the decrease provided for by the hearing officer, and in failing to award the tax exemption to Respondent.

With respect to the issue of retroactivity, although the hearing officer cited Kelleher v Bush, 832 A.2d 483 (Pa. Super. 2003), and Maddas v Dehaas, 816 A.2d 234 (Pa. Super. 2003), for the proposition that modification retroactive beyond the date of the Petition for Modification may be made only where arrears are at issue and in the instant matter Respondent does not owe arrears, the hearing officer nevertheless reduced Respondent's support obligation retroactive to August 1, 2002 even though the Petition was not filed until August 19, 2003, based upon a finding that Petitioner failed to report an increase in her income. While the Court finds it difficult to comprehend the Superior Court's reasoning in this matter, the cases do indeed prohibit retroactive modification of a support obligation where there is no arrearage at the time a Petition for Modification is filed. Kelleher v Bush, *supra.*; Maddas v Dehaas, *supra.*;

see also Maue v Gilbert, 2003 Pa. Super. Lexus 4469 (filed December 10, 2003). It seems extremely unfair to a payor in Respondent's position, one who has paid his support faithfully and has no arrearage, that he would be unable to seek retroactive modification based on a failure of the payee to report an increase in income, whereas on the other hand, a payor who has an arrearage because of his failure to make timely regular support payments, may indeed seek the retroactive modification. Nevertheless, the Court is constrained to follow the Superior Court's rule in this matter. The Court finds therefore that the hearing officer did err in modifying the support obligation retroactively beyond the date of Respondent's Petition.

With respect to the tax exemption, it appears the matter was not raised in Family Court and therefore this will be addressed no further.

ORDER

AND NOW, this 8th day of January, 2004, for the foregoing reasons, the Order of November 5, 2003 is hereby modified to eliminate paragraph #1 and #3 of that Order, and to modify paragraphs 2, 4 and 6 as follows:

1. Paragraph #2 shall be modified to provide for an effective date of August 19, 2003 rather than February 1, 2003.
2. Paragraph #4 shall be modified to provide for the time period of August 19, 2003 through September 3, 2003, rather than February 1, 2003 through September 3, 2003.
3. Paragraph #6 shall be modified to provide for an effective date of August 19, 2003, rather than August 1, 2002.

As modified herein, the Order of November 5, 2003 is hereby affirmed.

By the Court,

Dudley N. Anderson, Judge

cc: Family Court
Domestic Relations Office
Janice Yaw, Esq.
William Miele, Esq.
Dana Jacques, Esq.
Gary Weber, Esq.
Hon. Dudley N. Anderson