

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

JLH,		: NO. 04-20,117
	Petitioner	: PACSES NO. 956106127
		:
	vs.	:
		: DOMESTIC RELATIONS SECTION
ALH,		:
	Respondent	: Exceptions

OPINION AND ORDER

Before the Court are cross-exceptions to the Family Court Order of April 5, 2004. Argument on the exceptions was heard May 26, 2004.

In her exceptions, Respondent objects to the hearing officer's failure to note additional time periods she has with the children, the directive that she continue to provide medical insurance, and the form of the medical excuse presented by Petitioner. She also notes her income could change due to a change in tax refund next year, now that Petitioner has custody of the children. In his exceptions, Petitioner contends the hearing officer erred in failing to require Respondent to reimburse him for child care expenses he paid for even though the children were no longer in child care, in continuing to assess him an earning capacity, in the language respecting his ability to file a petition for modification in the future, and in requiring him to provide Respondent with a waiver of the tax exemptions for the children. These will be addressed seriatim.

With respect to the additional time periods Respondent has with the children, while both parties agree Respondent has time with the children other than that noted by the hearing officer, those periods are not overnight and thus, under the rules, do not require any consideration with respect to the amount of child support.

With respect to the directive that Respondent continue to provide medical insurance for the children, contained in Paragraph 5 of the Order, both parties agree such is in error, as Petitioner provides the children's medical insurance; Respondent provides their dental insurance. The order will therefore be modified accordingly.

With respect to the form of the medical excuse provided by Respondent, as explained at the argument, the hearing officer continued an earning capacity previously assessed to Petitioner, giving the excuse no weight, thus rendering this exception moot.

With respect to Respondent's contention her income will change as a result of a difference in her tax refund, based on the change of custody, such is more properly raised in a petition for modification. Since Respondent's incomes for purposes of the instant Order was based on a tax refund which contained a large earned income credit, and since Petitioner now has custody of all three children, Petitioner, rather than Respondent, will be getting the earned income credit and Respondent is thus correct that she will have a lower income next year.¹ Inasmuch as the instant Order is effective January 27, 2004, and the tax refund was averaged over a twelve-month period, Respondent may file for modification on the grounds of a change in tax refund as of January 27, 2005.

With respect to the issue of reimbursement for childcare expenses, although nothing in the order addresses the issue, at argument the parties indicated this exception refers to a childcare contribution which was contained in the order previously in effect, whereby Petitioner paid child support to Respondent. At the end of the school year in June 2003, Petitioner began providing childcare rather than sending the children to daycare. No petition for modification of the childcare contribution was filed by either party, however, and the childcare contribution continued to be assessed as part of the overall child support paid by Petitioner, until the order was suspended when Petitioner obtained primary custody of all three children and filed his complaint for support. Petitioner now seeks reimbursement. While a modification retroactive beyond the date of any petition may be sought where one party fails to report a change in circumstances, the other party must be unaware of the change and must file a petition to modify promptly upon learning of the change. Here, Petitioner obviously knew of the change in the childcare arrangements as he was the one providing the childcare. He cannot now seek modification when he could have filed a petition at the time.

With respect to the continuation of an earning capacity, since the medical excuse presented by Petitioner was nearly two years out-of-date, and in any event, too vague to support

¹ Likewise, Petitioner will have a higher income.

a finding that Petitioner is unable to work, the Court sees no error in the hearing officer's continuation of Respondent's earning capacity.

With respect to the language in the Order regarding Petitioner's ability to file a petition for modification, such is contained in Paragraph 8 of the Order and appears to refer only to his grounds for seeking modification of the award of the tax exemptions to Respondent, not to any other basis he may have for modification of the support award in general. The language is surplusage in any event, as Petitioner may file to modify the tax exemption award, as well as any other aspect of the Order, regardless of whether the Order provides for modification. In order to clarify the matter, however, the language will be deleted from the Order.

Finally, with respect to the award of the tax exemptions for the three children, the Court finds no error in awarding such to Respondent. An analysis of the parties' 2003 tax returns indicates an award of the exemptions to Respondent will increase Petitioner's tax liability by \$9 but save Respondent \$483. Were the exemptions to stay with Petitioner as primary custodian, he will save only \$9 while Respondent's tax liability will be increased by \$483. It should be noted that the earned income credit does not follow the exemptions, and therefore is not part of the consideration.² Further, while the child tax credit does follow the exemptions, neither party is able to claim a child tax credit based on income level.

ORDER

AND NOW, this 27th day of May 2004, for the foregoing reasons, the exceptions of both parties are hereby granted in part and denied in part. The Order of April 5, 2004, is hereby modified as follows:

1. Paragraph 5 is modified such that Angela Hart shall continue to obtain dental insurance coverage for the children, rather than medical insurance coverage, and further, supplemented to indicate Jeffrey Hart shall continue to obtain medical insurance coverage for the children.

² As noted above, Petitioner will still be able to claim a larger earned income credit next year, while Respondent will be unable to claim one at all, as such is based on custody and is not affected by the award of the exemptions to Respondent.

2. Paragraph 8 is modified to eliminate the last sentence of that Paragraph regarding the filing of a petition for modification.

As modified herein, the Order of April 5, 2004, is hereby affirmed.

BY THE COURT,

Dudley N. Anderson, Judge

cc: Family Court
Domestic Relations Section
JH
AH
Gary Weber, Esq.
Dana Jacques, Esq.
Hon. Dudley Anderson