

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

CDH,	:	NO. 03-20,093
Petitioner	:	
	:	
vs.	:	DOMESTIC RELATIONS SECTION
	:	Exceptions
DLH,	:	
Respondent	:	

OPINION AND ORDER

Before the Court are Respondent's exceptions to the Family Court Order dated September 22, 2003 in which Respondent was directed to pay child and spousal support to Petitioner. Argument on the exceptions was heard October 29, 2003, at which time Respondent requested the preparation of a transcript. That transcript was completed on December 1, 2003 but a balance due for preparation of the transcript was not paid until the end of January 2004. The transcript was at that time provided to the Court and the matter is now ripe for decision.

In his exceptions, Respondent contends the hearing officer erred in assessing Petitioner with only a minimum wage earning capacity and in finding Petitioner entitled to spousal support.

With respect to the assessment of an earning capacity, evidence introduced at the Family Court hearing indicates Petitioner has a license as a cosmetologist and has worked as such in the past. Her previous employment was in Florida where she had an established clientele. She has recently obtained employment at JC Pennys Salon earning \$5.15 per hour. The Court finds no error in the hearing officer's assessment of an earning capacity commensurate with Petitioner's current employment, considering the necessity to build up a clientele in her field of work, before being able to increase her earning capacity.

With respect to the issue of entitlement to spousal support, it is well settled that the obligation of support continues until it is shown that the conduct of the dependent spouse

provides a ground for divorce. Roach v Roach, 487 A.2d 27 (Pa. Super. 1985). Moreover, the conduct claimed to nullify the obligation of support must be proven by clear and convincing evidence. Id. A review of the transcript in this matter indicates that Respondent has failed to provide evidence of any conduct on Petitioner's part, which would provide him a ground for divorce. The Court therefore finds no error in the hearing officer's determination that Petitioner is entitled to spousal support.

ORDER

AND NOW, this 4th day of February, 2004, for the foregoing reasons, Respondent's exceptions are hereby denied and the Order dated September 22, 2003 is hereby affirmed.

By the Court,

Dudley N. Anderson, Judge

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