

IN THE COURT OF COMMON PLEAS OF UNION COUNTY, PA

K.H.,	:	
Plaintiff	:	
	:	
v.	:	No. 2003-00208
	:	PACES NO. 643105805
L.H.,	:	
Defendant	:	

OPINION and ORDER

This opinion addresses the Exceptions filed by both parties to the Master’s order of March 21, 2005, awarding child support and alimony pendente lite. At issue are the earning capacities of Father and Mother.

Father owns two businesses: a hauling service and a tree trimming service. A review of the transcript confirms the Master’s conclusion that neither party had any idea how much money the businesses were earning or a sound opinion of the true profit picture. Wife was in charge of the bookkeeping, which was questionable at best. However, Husband’s method of informing her what figures to write in the books was equally inadequate. Moreover, a hefty part of the business income was paid in cash, and as the business account shows little to no cash being withdrawn, the court concludes that cash was removed before the deposits were made. Mother testified that she gave Father between \$1000 and \$1500 in cash each week. N.T. p. 31.

For all these reasons, it is clear the parties’ income tax returns do not reflect the actual income or profit of the businesses. In fact, Husband testified that in preparing the 2003 tax return he asked Wife what the business income for the year was and she replied, “Pick a number.” N.T., p. 22. The Master correctly did not rely on the income tax return presented to her to establish Father’s income. Instead, she elected to look at the actual income available to the parties, by looking at the actual money spent by the parties. That analysis makes sense under the unique circumstances of this case.

Virtually all the family's household expenses were paid directly out of money from the business account. The Master closely inspected the business account check register from October 25, 2003 through May 7, 2004, when the family was intact. The Master calculated the household bills and expenses that were paid during this time and arrived at a monthly average of \$2508.23, which she used as Husband's earning capacity.

Husband challenges that assessment, arguing that some of the money the couple spent during that time came from a line of credit. However, Husband introduced no evidence supporting this allegation, nor did he testify to the existence of a line of credit. In fact, Husband testified that all personal expenses were paid with money that came out of the businesses, that no money was borrowed to pay personal expenses, and that he had no other sources of income other than the businesses. N.T. pp. 10-11. Wife also testified she was not borrowing any money to pay the bills. N.T. p. 30-31.

When questioned by Husband's counsel about the supposed line of credit, Wife testified, "There was a line of credit on the business account, but I didn't access it." N.T. p. 49. When further questioned on the issue, she testified that at some point, after Husband took over the task of depositing the money, Husband told her they were into the line of credit, but she had no knowledge about it and didn't know whether to believe him or not. The passages addressing this possible line of credit, N.T., pp. 48-51, are so confusing and convoluted that the court cannot conclude a line of credit was available for Wife to spend. Moreover, the court questions why, if the line of credit was being used, Husband never mentioned it in his own testimony, nor did he present any financial documentation to show its existence. Therefore, Husband's exception will be dismissed.

Wife objects to the Master's decision not to include a \$500 per month land payment the couple made to Husband's parents during the time period in question. The Master declined to do so because at the time of the hearing Husband was no longer

making the land payments. Because the Master calculated the average monthly expenses paid from October 25, 2003 through May 7, 2004, and because the land payment was made each month during this period of time, the court will grant this exception and raise Husband's earning capacity \$500 per month to \$3008.23. This is a logical conclusion utilizing the Master's methodology for reconstructing income.

Wife objects to the Master's assignment to her of an earning capacity of \$800 per month during the time she home schooled the couple's two teenage children. Wife home schooled the children from 1999 until March 22, 2005, when the undersigned ordered the two children to be enrolled in public school. Husband argues that assigning Wife an earning capacity was appropriate because of the extremely poor quality of the home schooling she provided. From presiding over the custody proceedings in this case the court believes Husband is correct regarding the quality of the home schooling. However, we cannot ignore the fact that both parents agreed to the home schooling, and that Husband never challenged the adequacy of the home schooling during the time it was being performed. Therefore, the court will grant this exception.

Beginning on March 23, 2005, the court will assign Mother an earning capacity of full time minimum wage, \$750 per month, for the following reasons. Wife was married to Husband when she was fourteen. She has an eighth grade education, but has obtained her GED. In their 28+ years of marriage, she worked outside the home for one-half day, twenty-eight years ago, at a sewing factory. She has some bookkeeping and computer skills, but nothing very marketable. In short, she is a classic minimum wage earner.

ORDER

AND NOW, this _____ day of December, 2005, for the reasons stated in the foregoing opinion, Wife's Exceptions #1 and #3 are granted and the remaining Exceptions are denied. Father's Exceptions are denied. It is further ordered that:

1. For the time period of June 18, 2004 through September 17, 2004, with Father's income at \$3008.23 and Mother's income at zero, Father's child support obligation shall be \$961, Father's APL obligation shall be \$543.12 per month, and Father's mortgage contribution shall be \$219.07 per month. It is noted the court has deviated downward on the APL so that Father's support does not exceed one-half his income. Health insurance expenses and unreimbursed medical expenses shall be 100% to Father, 0% to Mother.
2. For the time period of September 18, 2004 through March 23, 2005, support shall be the same as paragraph #1; however, there shall be no mortgage contribution.
3. For the time period of March 24, 2005 and continuing until further order of court, with Father's income at \$3008.23 and Mother's income at \$750, Father's child support obligation shall be \$860 per month, and Father's APL obligation shall be \$419.47 per month. Health insurance expenses and unreimbursed health insurance expenses shall be 80% to Husband, 20% to Wife.
4. Husband is further ordered to obtain health insurance for Wife. Wife shall be responsible for 20% of the cost.
5. The Domestic Relations Office may adjust the support through an administrative order, to account for Wife's health insurance contribution obligations for herself and the children, when Husband provides the proper documentation to the Domestic Relations Office.
6. In all other respects, the Master's order of March 21, 2005 is affirmed.

BY THE COURT,

Richard A. Gray, J.

cc: Janice Yaw, Esq.
Robin Martin, Esq.
Snyder County Domestic Relations
Lycoming County Family Court Office