

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PA

D.D.S.,	:	
Plaintiff	:	
	:	
v.	:	No. 02-20,978
	:	
C.P.S.,	:	
Defendant	:	

OPINION and ORDER

This opinion addresses the Exceptions filed by both parties to the Master’s order of April 27, 2005, awarding alimony pendente lite to Wife.

Both parties object to the border/renter income assessed to them. Although it is true both parties have individuals residing with them, the actual circumstances are very different. Husband’s “tenant” is a woman who lives in his home, along with her minor son.¹ The woman pays no money to Husband, but does contribute to household expenses such as food for herself, her son, and Husband. She also contributes to household supplies and general upkeep on the residence. N.T., pp. 22-26. However, the money is also spent on the needs of the child. Husband repeatedly mentioned the figure of \$350 per month, which is the approximate amount the child receives as a derivative benefit from the death of his father. However, Husband clearly testified that this amount is not “in stone,” N.T. p. 23, and that the amount actually spent varies. N.T., 24. Husband referred to the arrangement as a “household one type situation,” N.T. p. 25, and also a “whole family situation, the whole three of us over there.” N.T. p. 26. Under these circumstances, the court finds the money is not rent. Rather, the financial situation is more like that of two roommates (or paramours) sharing living expenses. Therefore, no income will be assessed to Husband.

¹ Husband denied having a sexual relationship with this woman.

Wife's situation, however, is very different. She clearly testified she receives \$200 per month from a border, and \$200 per month from each of two of her sons. N.T. pp. 36, 50-51. This appears to be a semi-formal rental arrangement, which justifies the inclusion as income. Wife's attorney has argued that if this money is added to her income, expenses entailed by the border and sons, such as food, should also be subtracted. The court would ordinarily do this; however, Wife never testified as to any such expenses. Therefore, the court cannot find the Master erred in including \$600 per month as income to Wife.

Husband also requested a deviation due to the amount of marital debt he has paid. The court finds no error in the Master's decision not to grant a deviation and leave the matter for equitable distribution instead.

Wife has filed an exception to her income, arguing that with her recent raise, she will now be paying taxes. The court will grant this exception and reduce her income by the amount of estimated taxes she will owe. Mother's income is therefore adjusted to \$1857 per month.

Wife has also filed an exception to the Master's decision to subtract from Husband's income the farm loss he experienced in 2004. The court has reviewed Schedule F of his 2004 tax return, and will add back into his income \$31 (for depreciation) and \$1,639 (for mortgage)².

Wife also argues the Master deducted the farm loss twice. The court has reviewed Husband's tax return, and determined that although the wording of the decision is somewhat confusing, the Master did not deduct the farm loss twice.

Father's income is therefore determined as follows: \$43,101.54 per year from his employment (Enduracare and Heritage, taken from his 2004 W-2), minus farm loss

² The court must assume this is some type of debt payment relating to the farm. In support cases, individuals are not generally permitted to deduct such payments from their income, because the payments represent an increase in the business equity.

of \$6514, plus tax refund of \$2774, for a total of \$39,371 per year or \$3280.13 per month.

With Mother's income at \$1857 per month and Father's income at \$3280.13 per month, APL is \$569.25 per month. Mother's percentage of the health insurance is \$28.73, for a total APL obligation of \$540.52 per month.

ORDER

AND NOW, this _____ day of August, 2005, for the reasons stated in the foregoing opinion, Husband's Exception #3 is granted, and Husband's Exceptions #2, #4, and #6 are dismissed. Husband's Exceptions #1 and #5 have been withdrawn. Wife's Exception #1 is granted, Wife's Exception #2 is dismissed, and Wife's Exception #3 (incorrectly labeled #2) is partially granted. It is further ordered that:

1. Husband's alimony pendente lite obligation shall be set at \$540.52 per month.
2. Unreimbursed medical expenses shall be 36.15% to Wife, 63.85% to Husband.
3. In all other respects, the Master's order of April 27, 2005 is affirmed.

BY THE COURT,

Richard A. Gray, J.

cc: Dana Jacques, Esq., Law Clerk
Hon. Richard A. Gray
Bradley Hillman, Esq.
Frances Crouse, Esq.
216 S. Main St., Athens PA 18810
Domestic Relations (SF)
Family Court
Gary Weber, Esq.