

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PA

D.E.W.,	:	
Plaintiff	:	
	:	
v.	:	No. 99-20,401
	:	PACES NO. 711102664
R.W.S.,	:	
Defendant	:	

OPINION and ORDER

This opinion addresses the Exceptions filed by Mother to the Master’s order of September 2, 2005, awarding Mother child support. The court finds no merit to Mother’s exceptions, other than those relating to the federal child dependency exemption, and the income it generated for both parties.

The previous support order, issued on June 15, 2002, grants Father the dependency exemption for all future years until further court order. Father claimed the exemption for the tax year 2003 and 2004. Mother believed, however, that despite the court order, she was entitled to claim the child because she had primary physical custody. Apparently, Mother filed an amended return or notified the IRS in some other fashion that the child resided with her. That resulted in Father receiving notice from the IRS in May 2005 that he must re-pay the \$1,779.08 refund he received due to his claiming the child in 2003. The Master appropriately gave Father a credit for the amount he must wrongly repay the IRS. However, while the Master correctly amortized the \$1,779.08 over a one-year period, reducing Father’s income by \$148.26 per month, she did not provide in her order that the credit ends after one year, as the credit will have been consumed at that point.

Although Mother did not initially claim the child on her 2004 tax return, she filed an amended 2004 return in February 2004, in which she claimed the child and stated that “someone else” had wrongfully claimed the child. The Master included the

refund Mother received in her calculation of Mother's monthly income.¹ However, the Master did not include Father's 2004 refund when calculating Father's monthly income.

At some point, the IRS will certainly discover that both parents have claimed the child, and it will take action accordingly. Should the IRS force either parent to repay his or her refund, that party may file a petition for modification, and will receive credit for the refund repayment.

In regard to future years, it is obvious that awarding the exemption to Father will generate the most money for the parties and the least money for the IRS; therefore, the court will again award him the exemption until further order of court.² If the court were convinced that Mother would comply with this order and not claim the child, the court would reduce her income in future tax years. As it is, the court believes she may continue to claim the child.³ Therefore, we will continue to assess her with the refund until she produces a signed IRS Release of Claim to Exemption for Child of Divorced or Separated Parents form. Certainly, Mother may file a petition for modification if and when she believes more income will be generated to the parties by awarding her the exemption.

Father's income is therefore calculated as follows: For the time period June 27, 2005 through June 27, 2006, Father's income is \$2178.15 per month from his employment, plus \$211 per month from his 2004 refund. The court will then subtract \$148.26 per month for having to repay the IRS the 2003 refund he was entitled to, for a total of \$2240.89 per month. From June 27, 2006 forward, Father's income shall not include the repayment reduction, and shall thus be set at \$2389.15 per month.

¹ But the Master included only the \$552 additional child tax credit. The entire \$1000 credit should have been included (\$448 child tax credit plus \$552 additional child tax credit).

² We note the IRS regulations permit Mother to continue to claim the child for earned income credit purposes, even though Father is granted the dependency exemption. This will continue to generate a generous tax refund for her.

³ The court explained to Mother that Pa.R.C.P. 1910.16-2(f) authorizes the court to award the exemption to the non-custodial parent; however, Mother continued to dispute that conclusion.

Mother's income is calculated as follows: \$1405.50 per month from her employment, and \$239.25 per month from her income tax refund of \$2872 (\$1871 earned income credit, \$448 child tax credit, and \$552 additional child tax credit, taken from her amended 1040X for 2004).

ORDER

AND NOW, this _____ day of November, 2005, for the reasons stated in the foregoing opinion, Mother's Exception #5 is granted and the remaining exceptions are dismissed. It is further ordered that:

1. For the time period of June 27, 2005 until June 27, 2006, Father's total child support obligation shall be \$428.24 per month, which includes a health insurance contribution from Mother of \$14.67 per month. Unreimbursed medical expenses shall be set at: 57.67 to Father, 42.33% to Mother.
2. For the time period commencing on June 27, 2006 and continuing until further order of court, Father's child support obligation shall be \$456.13 per month, which includes a health insurance contribution from Mother of \$14.13 per month. Unreimbursed medical expenses shall be set at: 59.23% to Father, 40.77% to Mother.
3. Father shall continue to receive the federal dependency exemption, as ordered in the June 15, 2002 support order, until further order of court. Mother shall execute a Release of Claim to Exemption for Child of Divorced or Separated Parents, IRS Form 8332, for Robert Straus, born August 13, 1993, on behalf of Richard W. Straus for all further support years, until further order of court.
4. In all other respects, the Master's order of September 2, 2005 is affirmed.

BY THE COURT,

Richard A. Gray, J.

cc: Dana Jacques, Esq., Law Clerk
Hon. Richard A. Gray
D.W.
R.S.
Domestic Relations (SF)
Family Court
Gary Weber, Esq.