

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

J.L.J.,	:	
Petitioner/Plaintiff	:	
	:	
v.	:	No. 05-20,123
	:	PACSES No. 645107034
K.R.T., JR.,	:	DOMESTIC RELATIONS SECTION
Respondent/Defendant	:	

OPINION AND ORDER

Before this Honorable Court, is the Petitioner/Plaintiff's January 13, 2006 Exceptions filed to the Family Court Hearing Officer's January 3, 2006 Order. She asserts that, the Family Court Hearing Officer incorrectly calculated the Respondent/Defendant's monthly net income, and that she erred when she only required the Respondent/Defendant to pay \$50.00 per month on arrears. These errors, the Petitioner/Plaintiff alleges, resulted in an incorrect spousal support/alimony pendente lite obligation assessment.

I. Background

The Petitioner/Plaintiff filed Complaints for spousal support on January 3, 2004 and alimony pendente lite on January 24, 2005. After the first hearing on this matter, (held February 8, 2005) the Respondent/Defendant volunteered to pay \$600.00 monthly for spousal support/alimony pendente lite, and the Master issued a Temporary Order reflecting this. This Temporary Order was in effect until the Master issued her January 3, 2006 Order. The January 3, 2006 Order directed the Respondent/Defendant pay, *inter alia*, the Petitioner/Plaintiff \$994.40 monthly, between January 14, 2005 and October 31, 2005, for spousal support/alimony pendente lite and \$639.94 monthly thereafter. The Order also directed the Respondent/Defendant to pay \$50.00 monthly on arrears. The Master's March 10, 2006 Remand Opinion highlighted an error in calculating the Respondent/Defendant's aforementioned support obligations; specifically, the

Master's January 3, 2006 Order mistakenly applied the 15% deviation applied in consideration of the Respondent/Defendant's medical expenses to his overall income instead of his actual support amount in accordance with Pa.R.C.P. No. 1910.16-5. Accordingly, the Master's Remand Opinion states the Respondent/Defendant's correct support obligations as \$994.40 monthly between January 14, 2005 and October 31, 2005, and \$692.86 monthly thereafter. For the following reasons, the Court AFFIRMS the Master's spousal support/alimony pendente lite assessment in her January 3, 2006 Order and subsequent correction in her March 10, 2006 Remand Opinion.

II. Discussion

The Petitioner/Plaintiff's January 13, 2006 Exceptions to the Master's January 3, 2006 Order contend that, the Master erred when calculating the Respondent/Defendant's support obligations; more specifically, the Petitioner/Plaintiff avers the following errors: (1) the Master erred when she failed to utilize the Respondent/Defendant's 2004 Federal Income Tax Return when she determined his net monthly income; (2) the Master erred when she relied on the Respondent/Defendant's Income Statement when determining his net monthly income for January 1, 2005 through June 30, 2005; (3) the Master erred when she subtracted taxes from the Respondent/Defendant's income because he did not pay taxes; (4) the Master erred when she reduced the Respondent/Defendant's income by 15% due to his medical expenses; and (5) the Master erred when she only required the Respondent/Defendant to pay \$50.00 monthly in arrears. For the following reasons, the Court disagrees with the Petitioner/Plaintiff's contentions.¹

¹ The Petitioner/Plaintiff's last Exception is a catch-all exception that, because of the foregoing alleged errors, the Master's spousal support/alimony pendente lite assessment is incorrect as a whole.

The Master did not err when she utilized the Respondent/Defendant's Income Statement instead of his Federal Income Tax Return when she calculated his net monthly income.

The Respondent/Defendant's self-owned appliance service business was thriving until he fell ill with cancer in late 2003. After this, and several more serious health diagnoses in 2004, the Respondent/Defendant's business suffered significant losses. As a result, the Master found that the Respondent/Defendant's Federal Income Tax returns were not a fair and accurate assessment of his actual income and instead utilized an Income Statement, prepared by the Respondent/Defendant's CPA, to determine the Respondent/Defendant's income; the Court disagrees with the Petitioner/Plaintiff's contention that this approach was improper. The Pennsylvania Superior Court has held that, in "computing income available for support when the payor owns his own business, income must reflect actual available financial resources and not the often times fictional financial picture which develops as the result of depreciation deductions taken against . . . income as permitted by the federal income tax laws. Otherwise put, "*cash flow*" ought to be considered and not federally taxed income." *Heisey v. Heisey*, 430 Pa. Super. 16, 19 633 A.2d 211, 212 (1993) citing, *McAuliffe v. McAuliffe*, 418 Pa. Super. 39, 43, 613 A.2d 20, 22 (1992) (emphasis added). Accordingly, the Court DENIES the Petitioner/Plaintiff's Exceptions 1(a) and (b).

The Master did not err when she deducted taxes from the Respondent/Defendant's net monthly income.

The Respondent/Defendant showed a loss of over \$200,000.00 on his 2004 tax returns; therefore, he suffered no tax consequences. Despite this, the Petitioner/Plaintiff argues, the Master wrongly deducted taxes from the Respondent/Defendant's net monthly income. The Master did deduct 20% from the Respondent/Defendant's net monthly income for self-

employment, state, and local taxes; this is consistent with Lycoming County policy that, in the interest of consistency and fairness, deducts 20% for the aforementioned taxes, from the monthly income of business owners, even where the payor will not pay taxes. The Court does not find that the Master abused her discretion when employing this policy and deducting 20% for taxes from the Respondent/Defendant's net monthly income; accordingly, the Petitioner/Plaintiff's Exception 1(c) is DENIES.

The Master did not err when she reduced the Respondent/Defendant's support obligation by 15% due to his medical expenses.

The Respondent/Defendant was diagnosed with bladder, prostate, colon, and mouth cancer in 20003-2004. During that same time, he underwent 13 surgeries and numerous office visits, laboratory tests, and therapy sessions. The Master found it crucial that the Respondent/Defendant maintain his health insurance coverage and continue to take the numerous prescriptions medications prescribed for his various illnesses. The cost for the Respondent/Defendant to maintain these expenses amounts to over \$600.00 monthly; this is more than 10% of his net monthly income. When a party's health care costs exceed 10% of their monthly income, it is the policy of the Masters to deviate 15% of that party's *support obligation*, not their income. The Master mistakenly deviated from the Respondent/Defendant's income in her January 3, 2006 Order; however, she corrected this error in her March 10, 2006 Remand Opinion. Because the Court does not find the Master's 15% deviation from the Respondent/Defendant's support obligation an abuse of discretion, the Petitioner/Plaintiff's Exception (1)(d) is DENIED.

The Master did not err when she only required the Respondent/Defendant to pay \$50.00 monthly in arrears.

The amount a payor shall be assessed regarding arrears is within the discretion of the Family Court Hearing Officer. Here, the Court does not find that the Master's decision to direct the Respondent/Defendant to pay \$50.00 monthly in arrears is an abuse of her discretion; therefore, the Petitioner/Plaintiff's Demurrer (2) is DENIED.

ORDER

AND NOW, this _____ day of March 2006, for the reasons set forth above, it is ORDERED and DIRECTED that the Petitioner/Plaintiff's Exceptions filed to the Family Court Hearing Officer's January 3, 2006 Order are DENIED. It is further ORDERED and DIRECTED that the Respondent/Defendant's Exceptions filed to the Family Court Hearing Officer's January 4, 2006 Order are resolved as follows:

1. The Family Court Hearing Officer's January 3, 2006 Order is AMENDED to reflect the correct the Respondent/Defendant's correct monthly support/alimony pendente lite obligation in accordance with the Master's March 10, 2006 Remand Opinion which is \$994.40 monthly between January 14, 2005 and October 31, 2005, and \$692.86 monthly thereafter.

By the Court,

Nancy L. Butts, Judge

cc: Christina L. Dinges, Esq.
Joy McCoy, Esq.
Family Court
Domestic Relations (SF)
Gary L. Weber, Esq.
Hon. Nancy L. Butts
Judges
Laura R. Burd, Law Clerk