

**IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA**

<b>K.S.,</b>	:	
<b>Petitioner/Plaintiff</b>	:	
	:	
<b>v.</b>	:	<b>No. 03-20,950</b>
	:	<b>PACSES No. 772105633</b>
<b>T.P.,</b>	:	<b>DOMESTICS RELATIONS SECTIONS</b>
<b>Respondent/Defendant</b>	:	

**OPINION AND ORDER**

Before this Honorable Court, is the Petitioner/Plaintiff's and the Respondent/Defendant's January 19, 2006 Exceptions filed to the Family Court Hearing Officer's January 4, 2006 Order. The Court will address the parties' Exceptions in turn.

***Exceptions of the Petitioner/Plaintiff***

The Petitioner/Plaintiff asserts that, the Family Court Hearing Officer erred in not assessing the Respondent/Defendant with a higher earning capacity because, as an owner of his own business, he could earn more than an employee of a similar business.

The Respondent/Defendant has been the owner and only employee of a small landscaping business for ten (10) years. He estimates that he makes approximately \$11.00 per hour or, just under \$20,000.00 net income per year.

At the July 26, 2005 and September 1, 2005 hearings on this matter, several witnesses for both parties testified on the issue of earning capacity as it relates to landscaping business owners. The following is a brief summary of that testimony:

<b>Witness</b>	<b>Experience</b>	<b>Yearly Income</b>	<b>Number of Employees</b>	<b>Pay rate for Hourly Employees</b>
1	10 years	\$20,000-\$25,000 per year	2	\$10.00 per hour
2	30 years	\$36,400 per year	3	\$10.00 per hour
3	15 years	\$50,000-\$60,000 per year	8-12	\$8.00-\$12.50 per hour
4	25 years	\$15,000-\$20,000 per year	12-14	\$7.50-\$12.00 per hour
5	n/a	not provided	45-55	\$9.25-\$10.25 per hour
<i>Average</i>		<i>\$35,350.00 per year</i>		<i>\$10.95 per hour</i>

In consideration of the above noted figures, and the Respondent/Defendant's own testimony that he earned about \$11.00 per hour, the Family Court Hearing Officer assessed the Respondent/Defendant with an earning capacity of \$11.00 per hour.

The Court finds that, based on the testimony regarding earning capacity and, additional testimony from two landscapers that, based on the Respondent/Defendant's skill set and experience, they would hire him at about \$10.00 per hour, the Family Court Hearing Officer's finding that the Respondent/Defendant should be assessed an earning capacity of \$11.00 per hour, is reasonable; as such, the Court AFFIRMS that assessment.

***Exceptions of the Respondent/Defendant***

The Respondent/Defendant asserts that, the Family Court Hearing Officer erred when she ordered the Respondent/Defendant to contribute to both preschool and babysitting expenses when no verification of said expenditures was offered at the hearing on this matter. The Respondent/Defendant also asserts that the Family Court Hearing Officer erred when she made the January 4, 2006 Order retroactive to the May 18, 2005 because the Petitioner/Plaintiff did not allege she incurred any childcare expenses before September 2005. Lastly, the Respondent/Defendant asserts that the Family Court Hearing Officer erred when she made the

January 4, 2006 Order retroactive to May 8, 2005 because it should have been retroactive to the date the action was commenced, July 22, 2004.

First, the Respondent/Defendant's last exception to the Family Court Hearing Officer's January 4, 2006 Order has been addressed by an Amended Order issued January 12, 2006; that Amended Order makes the January 4, 2006 Order retroactive to July 22, 2004.

Second the Respondent/Defendant correctly states that he should not be responsible for childcare expenses retroactive to May 18, 2005 because the Petitioner/Plaintiff did not incur said expenses until September 2005; therefore, the Family Court Hearing Officer's January 4, 2006 Order is AMENDED to reflect the correct date.

Lastly, the Court recognizes that "reasonable child care expenses paid by either parent, if necessary to maintain employment or appropriate education in pursuit of income, shall be allocated between the parties in proportion to their net incomes and added to his and her basic support obligation," Pa.R.C.P. No. 1910.16-6(a); however, the petitioner must provide verification of said expenses in order to assure accurate and legitimate assessments. *See*, Pa.R.C.P. No. 1910.11(c). In the instant matter, there is no evidence that the Petitioner/Plaintiff provided the Family Court Hearing Officer with verification of her childcare expenses; therefore, the Respondent/Defendant is not responsible for said expenses *until and unless* said verification is provided. If said verification is provided, the Respondent/Defendant will then be responsible for his proportionate share of childcare expenses.

### **ORDER**

**AND NOW**, this \_\_\_\_\_ day of February 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 4, 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 4, 2006 Order is AMENDED to reflect the correct retroactive date, September 2005, regarding the Respondent/Defendant's obligation as to child care expenses and
2. The Respondent/Defendant is not responsible for childcare expenses *until and unless* verification of said expenses is provided; at that time, the Respondent/Defendant will be responsible for his proportionate share of childcare expenses.

By the Court,

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Nancy L. Butts, Judge

cc: William J. Miele, Esq.  
Rita Alexyn, Esq.  
Family Court  
Domestic Relations (MR)  
Gary L. Weber, Esq.