

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

P.A.Y.,	:	
Petitioner/Plaintiff	:	
	:	
v.	:	No. 05-21,605
	:	PACSES No. 468107863
B.I.P.,	:	DOMESTIC RELATIONS SECTION
Respondent/Defendant	:	

OPINION AND ORDER

Before this Honorable Court, is the Respondent/Defendant's March 13, 2006 Exceptions filed to the Family Court Hearing Officer's Order of March 3, 2006. He asserts that, the Family Court Hearing Officer committed two overarching errors from which the other alleged errors flow. Specifically, the Respondent/Defendant contends that, the earning capacity the Officer assessed him was too high, and that, the Officer should have deviated from the support guidelines due to his mental health issues. These two errors, the Respondent/Defendant alleges, resulted in incorrect assessments of support obligations, assessment of his share of health insurance and day care costs, and arrears assessment.

Background

The Respondent/Defendant is self-employed and owns his own business. The Respondent/Defendant's parents own the building in which his business is located; they also own the apartment above the business where the Respondent/Defendant resides. The Respondent/Defendant does not pay the \$850.00 monthly rent for the business, nor does he pay the \$250.00 monthly rent for the apartment.

At the February 28, 2006 hearing on the Petitioner/Plaintiff's Complaint for child support, the Respondent/Defendant submitted his 2003 and 2004 tax returns and his 2005 end of the year statement. These documents showed that the Respondent/Defendant suffered a loss of

\$183.00 in 2003, an adjusted gross income of \$5,545.00 in 2004, and a loss of \$9,774.87 in 2005.

The Respondent/Defendant received a Liberal Arts Associate Degree in 1993/1994. During his two years at college, the Defendant had two different jobs, one with IBM Manufacturing, and another with the Duchess' Parks department earning \$8.00/hour and \$6.50/hour respectively. The Respondent/Defendant has maintained his current employment status for the past ten years (10).

In her March 3, 2006 Order, the Family Court Hearing Officer assessed the Defendant an \$8.00/hour earning capacity, or \$1,209.03 net monthly income (after deducting taxes). Because the Petitioner/Plaintiff's net monthly income is \$2,691.18, the Respondent/Defendant's monthly support obligation is 31% of \$3,900.21, or \$238.08. Additionally, the Officer assessed the Respondent/Defendant with his share of the child's health insurance and day care expenses (\$109.39/monthly and \$62.87/monthly respectively) bringing his total support obligation to \$410.34 monthly. This amount is for December 5, 2005 through January 26, 2006; thereafter, under the new support guidelines, the Respondent/Defendant's support obligation is \$429.87/monthly.

Discussion

“When actual earnings do not reflect earning capacity, the trial court is free to investigate a variety of sources to determine a party's true wealth.” *DeMasi v. DeMasi*, 366 Pa. Super. 19, 33, 530 A.2d 871, 878 (1987). The *DeMasi* case dealt with assessing the Appellant obligor an earning capacity based on his income, plus perquisites derived from part ownership of his medical corporation. *DeMasi*, 366 Pa. Super 19, 530 A.2d 871 (1987). In *DeMasi*, the Court reasoned that, the perquisites the Appellant father received (e.g. contributions to a pension plan,

automobile expenses, and entertainment expenses) were akin to income, and therefore, should be treated as such. *Id.*

Similar to the obligor in *DeMasi*, the Respondent/Defendant's actual income does not reflect his true wealth. Although the Respondent/Defendant's business has operated at a loss for two of the last three years, he pays no rent for the business or his apartment; as a result, the Respondent/Defendant's true wealth is more than his tax returns and end of the year statement indicate. Accordingly, the Court does not find the Family Court Hearing Officer's assessment of \$8.00/hour unreasonable and defers to her findings regarding the Respondent/Defendant's earning capacity.

Lastly, the Respondent/Defendant contends that, the Family Court Hearing Officer should have deviated from the support guidelines because of his mental health issues. Pa.R.C.P. No. 1910.16-5(b)(6), permits the trier of fact to deviate from the support guidelines in consideration of several factors, including certain medical expenses. Here, the Family Court Hearing Officer considered the Respondent/Defendant's mental health issues¹, but evidently did not consider these issues significant enough to justify a deviation from the support guidelines. The Court does not find the Officer's failure to deviate from the support guidelines unreasonable, nor was any evidence presented to the contrary; therefore, the Court defers to the Officer's decision.

¹ See, Family Court Hearing Officer's Order of March 1 2006, p.4.

ORDER

AND NOW, this _____ day of April 2006, for the reasons set forth above, it is ORDERED and DIRECTED that the Exceptions filed by the Respondent/Defendant to the Family Court's order of March 3, 2006 are DISMISSED and the Officer's Order is AFFIRMED.

By the Court,

Nancy L. Butts, Judge

cc: John L. McLaughlin, Esq.
P.A.Y.
Family Court
Domestic Relations (MR)
Hon. Nancy L. Butts
Judges
Gary L. Weber, Esq.
Laura R. Burd, Law Clerk