

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

M. A. (F.) C.,	:	NO. 05-21,399
Petitioner	:	PACSES NO. 989000832
	:	
vs.	:	
	:	DOMESTIC RELATIONS SECTION
R. E. F.,	:	
Respondent	:	Exceptions

**OPINION AND ORDER**

Before the Court are Petitioner's exceptions to the Family Court Order of April 18, 2007, which awarded two of the federal income tax exemptions for the children to Respondent. Argument on the exceptions was heard June 26, 2007.

The parties have three children and Respondent sought to have the tax exemptions for all three children awarded to him. The hearing officer awarded two of the exemptions to Respondent, determining that such was "the most beneficial award". Petitioner contends such was error, arguing that such does not maximize the income available to the respective households.<sup>1</sup>

The Rules of Civil Procedure allow for the awarding of the tax exemptions to the non-custodial parent, as follows:

(f) Dependency Tax Exemption. In order to maximize the total income available to the parties and children, the court may, as justice and fairness require, award the federal child dependency tax exemption to the non-custodial parent, or to either parent in cases of equally shared custody, and order the other party to execute the waiver required by the Internal Revenue Code, 26 U.S.C.A. § 152(e). The tax consequences resulting from an award of the child dependency exemption must be considered in calculating each party's income available for support.

Pa.R.C.P. 1910.16-2(f). Further, even before the rule was enacted, it had been decided that such an award was within the Court's purview, and that the primary purpose of such an

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<sup>1</sup> At argument, Petitioner indicated she was not pursuing the exception regarding Respondent's income, and that exception will therefore be deemed withdrawn.

allocation was to maximize the income available for the support of the minor children. Miller v. Miller, 744 A.2d 778 (Pa. Super. 1999).

Petitioner argues that the exemptions do have value to her, even though she reports no income on her tax return, as her husband does have income and their refund is significantly reduced if they cannot claim all three children. Respondent focuses on the wording “available to the parties” and argues that the Court should analyze the tax consequences of an award by ignoring the income of each party’s spouse. In his view, since Respondent has income to report and Petitioner does not, the exemptions should “naturally” be awarded to him. The Court believes, however, that this view fails to comport with the reality that a step-parent’s income contributes to the household, and thus to the support of the children, as much as a parent’s income. It seems to the Court that in order to maximize the income available to the parties *and children*, the tax consequences to each *household* should be considered.

In the instant case, the Court disagrees with the hearing officer that an award of two of the exemptions is the most beneficial award. A review of the information provided to the hearing officer indicates as follows:

<u>Petitioner</u>	<u>Refund</u>	<u>Respondent</u>	<u>Refund</u>	<u>Total Refunds</u>
3	\$7486	0	\$1108	\$8594
2	7112	1	2448	9560
1	4837	2	3780	8617

Thus, an award of only one of the exemptions to Respondent will provide the parties with the most benefit, by maximizing the income available for the support of the children.

Having determined that Respondent should be able to claim one of the children, it is necessary to recalculate each party’s income to set the appropriate amount of support. Petitioner receives Social Security Disability of \$635 per month, and according to her tax return, when she claims two children she receives an earned income credit of \$2,364, or \$197 per month, as well as a child tax credit of \$2,000, or \$167 per month. Petitioner’s total monthly net income is thus \$999. The hearing officer determined that Respondent has a monthly net income from employment of \$1,456. To determine his portion of the refund received by he and

his wife when they claim one of the three children,<sup>2</sup> the Court has looked to the return prepared by Respondent which shows only his information, as if married filing separately, which shows his income to be \$16,504, which is 55.5% of the total of \$29,729. Respondent and his wife owe \$330 less in tax when they claim one of the three children, \$183 of which would be attributable to Respondent's income. Since he had withheld, however, only \$96,<sup>3</sup> that amount will be considered in determining his portion of the refund. By claiming an additional child, Respondent receives a child tax credit of \$614 and an additional child tax credit of \$386, for a total refund attributable to Respondent, of \$1,096, or \$91 per month. His total monthly net income is thus \$1,547.

Considering Petitioner's income of \$999, Respondent's income of \$1,547 and the children's Social Security Derivative benefits of \$162, the guidelines suggest a payment for the support of three minor children of \$1054. After subtracting the derivative benefits, Respondent's portion of the balance of \$892 is \$541.98 (as his income is 60.76% of the parties' total income). As adding this to the total of his other obligations of \$730.67 would exceed 50% of his net income, however, the obligation in the instant case must be reduced proportionately. Doing so results in an obligation for the three minor children in this matter, of \$329.41.

### **ORDER**

AND NOW, this            day of July 2007, for the foregoing reasons, Petitioner's exceptions are granted in part and deemed withdrawn in part. The incomes cited in Paragraph 1 of the Order of April 18, 2007, are hereby modified in accordance with the foregoing, and the payment directed therein is modified to \$329.41 per month. The percentages of Paragraph 3 of that order are modified to 39.24% and 60.76%, respectively. Paragraph 8 of the Order shall be modified to eliminate the reference to the Release of Claim to Exemption for Kayla Fulp.

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<sup>2</sup> Respondent and his wife also claim an additional child who lives with them.

<sup>3</sup> This information is also available from the return showing Respondent as married filing separately.

As modified herein, the Order of April 18, 2007, is hereby affirmed.

BY THE COURT,

Dudley N. Anderson, Judge

cc: Family Court  
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