IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

MLB,	: NO. 05-21,671	
Petitioner		: PACSES NO. 594107918
		:
vs.		:
		: DOMESTIC RELATIONS SECTION
SSC,	:	
Respondent		: Exceptions

OPINION AND ORDER

Before the Court are Respondent's exceptions to the Family Court Order of November 29, 2007. Argument on the exceptions was heard April 22, 2008. Respondent raises three areas of concern: the failure to deduct taxes from his rental income, the failure to deduct the entire mortgage payment from his rental receipts, and the failure to assess Petitioner an earning capacity. These will be addressed seriatim.

With respect to the calculation of Respondent's income from rental properties, Respondent contends the hearing officer erred by not deducting income taxes from such income. The hearing officer did deduct income taxes in calculating Respondent's net income however,[1] and thus this contention is without merit.[2]

With respect to the mortgage payment, Respondent contends the entire payment, of principal and interest, should have been deducted from rental receipts in calculating his rental income. Only the interest was deducted and the Court finds this to be correct. Deduction of principal payments would serve to allow Respondent to accumulate income at the expense of

---

[1]See page 10 of the Family Court Hearing Officer's Order of November 29, 2007, wherein it is stated: "Adding together Mr. C's net rental income from the Williamsport real estate of $3,403.08 and Mr. C's net monthly income from the Lewisburg real estate in the amount of $2,069.20, Mr. C is found to have net monthly rental income in the amount of $5,472.28. *A tax liability of 15% is estimated for this income*." (Emphasis added.)

[2] As it appears Respondent paid 9.58% federal income tax on his total income as shown on his federal income tax return, and as he would have paid state income tax on the rental income of 3.07%, the estimation of 15% was actually generous. Further, the hearing officer deducted an additional $1,794 federal income tax once Respondent's total monthly net income from salary and rental income was determined, even though both of those components had already been subjected to a deduction of taxes, of 20% and 15% respectively. It can be argued that this additional deduction should not have been given, but as Petitioner did not complain, the Court will not disturb this calculation.

his obligation to support his child. Respondent argues that failure to deduct principal payments at this time will result in "double-dipping" when the properties are sold, as he fears the gain will then be included in income for support purposes, but should the properties be sold in the future, any gain attributable to pay-down on the mortgage would *not* be considered income for support purposes as it has already been included.

Finally, with respect to Petitioner's earning capacity, Respondent seeks to continue a previous earning capacity assessed to Petitioner, as a teacher. Petitioner earned her bachelor's degree in 2001 and became certified to teach in 2005. Since that time she has worked as a substitute teacher nearly every day, and the hearing officer found that she "has made substantial effort to find employment since the parties separated and has been working … on a fairly consistent basis." On that ground, the hearing officer calculated Respondent's support obligation based on Petitioner's actual income from substitute teaching. Respondent argues that under the Lycoming County case of Neff v. Neff, No. 99-20,062 (Gray, J. October 13, 2005), Petitioner should continue to be assessed an earning capacity. This argument is without merit. In Neff, Mrs. Neff was granted relief from a previously assessed earning capacity as she showed that she had made a substantial effort but had been unable to find a job commensurate with the capacity previously assigned her. Apparently, Respondent is relying on the four-year period between the assignment of that earning capacity and the granting of relief. That reliance is misplaced. First, the Court in Neff noted that although the earning capacity was assigned in August 2001, Mrs. Neff did not petition the Court for modification until December 2004, the petition which brought the matter before it. Neff cannot, therefore be read for the proposition that a four-year period is required. Second, Petitioner herein became certified to teach and began searching for employment as a teacher in 2005[3], and the hearing in this matter was conducted to November 2007. Therefore, Petitioner's search has gone on for at least two, and possible three, years. The Court agrees with the hearing officer that this is not a case of willful failure to find employment commensurate with one's abilities. The discontinuation of an earning capacity was therefore appropriate.

[3] When in 2005 she became certified is not clear from the record.

ORDER

AND NOW, this 23rd day of April 2008, for the foregoing reasons, Respondent's exceptions are hereby DENIED.

The Order of November 29, 2007, is hereby affirmed.

BY THE COURT,

Dudley N. Anderson, Judge

cc: Family Court
Domestic Relations Section
Christina Dinges, Esq.
William Miele, Esq.
Gary Weber, Esq.
Hon. Dudley Anderson