

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

JS		:	
	Plaintiff	:	DOMESTIC RELATIONS
		:	NO. 08-21,419
	vs.	:	PACSES CASE NO. 827110410
		:	
ES		:	
	Defendant	:	

ORDER

AND NOW, this 31st day of March, 2010, after a hearing was held on March 15, 2010, on Father’s request for the dependency exemption for the parties’ minor children filed on February 5, 2010, Father appeared with his counsel, Christina Dinges, Esquire, and Mother appeared with her counsel, John Smay, Esquire.

The parties are the parents of three minor children, MS, born March 22, 2002, MS, born June 24, 2003, and BS, born July 12, 2007. Father and Mother share physical custody of the children.

Both parties presented tax returns outlining the various scenarios in which they could file claiming none, one, two or three children and Mother claiming one, two or three children on their 2009 federal income tax returns. The proposed tax returns show the following anticipated federal returns for 2009:

	Mother	Father	Combined Refund
Mother claiming 0; Father claiming 3	\$453	\$8,945	\$9,398
Mother claiming 1; Father claiming 2	\$4,596	\$8,199	\$12,795
Mother claiming 2; Father claiming 1	\$7,740	\$5,042	\$12,782
Mother claiming 3; Father claiming 0	\$8,631	\$1,116	\$9,747

Pennsylvania Rule of Civil Procedure 1910.16-2(f) states “In order to maximize the total income available to the parties and children, the Court may, as justice and fairness required, award the federal child dependency tax exemption . . .” With Mother claiming one child and Father claiming two children, the refund is \$13.00 more than if Mother claims two children and Father claims one child. The amount of the refund, however, that each party will receive is more equalized when Mother claims two children and Father claims one child. The Court deems it to be the most just and fair for Mother to claim two children and Father to claim one child. Mother shall, therefore, be awarded the dependency exemption for MS and MS. Father shall be awarded the exemption for BS.

The change in the parties’ incomes as a result of the 2009 federal income tax refund requires a review to determine if a modification of child support is warranted. The most recent Court Order that was entered on September 14, 2009, is based upon an agreement reached by the parties for child support and does not indicate the monthly net incomes that were utilized. The Court must, therefore, determine the parties’ current monthly net incomes.

At the time of the hearing, Mother has recently quit her employment at Weis Markets. Her last day of work was February 8, 2010. Mother indicated that she was currently waiting to apply for unemployment. Mother’s 2009 W-2 showed that she had gross earnings totaling \$18,079.14. The taxes that were withheld total \$2,693.69. Mother’s total net earnings for 2009 are \$15,385.45 divided by 12 months equals a monthly net income of \$1,282.12.

Mother's 2009 federal income tax refund claiming one child will be \$7,740.00. Dividing this by 12 months, an additional \$645.00 shall be added to her income for a total monthly net income of \$1,927.12.

Father recently began employment with Universal Well Services. Father left his prior job to move back to the area to be closer to his children. Father's hourly wage at his current employment is \$14.00 an hour. This was the same hourly wage he was making at his prior employment out of the area.

At the time of the hearing, Father presented Defendant's Exhibit 5 which is his pay check dated March 3, 2010. Upon request of the Court, Father's counsel provided what the Court has marked as Defendant's Exhibit 6 which is a pay check dated March 19, 2010. Unfortunately, because Father has only recently begun his employment, he has only received a few paychecks. In the paycheck dated March 5, 2010, Father worked 68 regular time and one hour overtime. In the pay check dated March 19, 2010, Father worked 80 hours regular time and 10 hours overtime. The Court believes the fairest way to determine Father's average income based upon his short time with Universal Well Services Inc. is to average these two pays to determine an average net per pay. Father's total gross earnings on March 5, 2010, were \$973.00. His total tax deductions were \$161.41 for a net of \$811.59. Father's gross wages for the March 19, 2010, pay stub are \$1,340.50. Father's total tax withholdings are \$258.04 for a total net pay of \$1,082.46. The two net pays averaged together total \$947.02. Multiplying this by 26 weeks and dividing by 12 results in monthly net income of \$2,051.87.

Father's 2009 federal income tax return claiming one of the parties' minor children as a dependent will be \$5,042.00. Dividing this by 12 months, an additional \$420.16 shall be added to his income for a total monthly net income of \$2,472.03.

Neither party currently has medical insurance available to them through their employment. Father indicated that he may have health insurance available to him once he completes his probationary period with his employment. If Father obtains health insurance, he is to provide Domestic Relations with verification of the cost of the insurance.

With Mother's income at \$1,927.12 per month and Father's income at \$2,472.03 per month, the parties' combined total income is \$4,399.15. Total basic child support for three children at this income level is \$1,349.00. Father's income is 56.19% of the parties' total income, minus 20% shared custody deviation, which reduces his percentage to 36.19%, and results in a child support obligation of \$488.20 per month. However, if calculation of the child support obligation when the parties have shared physical custody results in the obligee receiving a larger share of the parties' combined income, the Court must adjust the support obligation so that the combined income is allocated equally between the households. With Mother's income at \$1,927.12 and Father's income at \$2,472.03 per month, the amount that Father must pay to Mother to equalize the parties' incomes is \$272.46.

On May 12, 2010, the new Pennsylvania Child Support Guidelines will come into effect and the total basic child support at the parties' income level will increase to \$1,506.00 per month. Father's 36.19% results in a child support obligation of \$545.02. Again, an award of child support in a shared physical custody case cannot provide more

income in the obligee's household that the obligor's household; therefore, the Court must equalize the parties' income. In order to equalize the parties' income, Father's child support obligation to Mother is \$272.46 per month.

Accordingly, it is here by ORDERED and DIRECTED as follows:

CHILD SUPPORT

Based upon the findings as set forth above, Father shall pay by check or money order to PA SCDU, P. O. Box 69110, Harrisburg, PA 17106-9110 for the support of MS, born March 22, 2002, MS, born June 24, 2003, and BS, born July 12, 2007, the sum of \$272.46 from February 5, 2010 and continuing until further order of court. The check or money order shall contain Defendant's social security number.

ARREARAGES

Father shall pay \$25.00 monthly on this Order for any past due support because of the retroactive affect of this Order and for any overdue support which has accrued prior to the entry of this Order.

BALANCE TO BE PAID BY DEFENDANT

Father shall be responsible for the payment of any balance remaining if his/her employer is unable to deduct the total amount of monthly payments made pursuant to this Order within fourteen days of the reduced payment to PA SCDU.

UNREIMBURSED MEDICAL

Beginning February 5, 2010, each parent shall be responsible for the first \$125.00 of unreimbursed medical expenses incurred for each child each calendar year. These amounts shall be prorated when an order comes into effect after January 1st. Medical

expenses do not include over-the-counter medications. Each parent is responsible for documenting his or her own expenses.

Once the annual threshold has been met, the parties agree that each party shall be responsible for 50% of all reasonably necessary medical services and supplies including, but not limited to, surgical, dental, optic, and orthodontic services incurred on behalf of MS, born March 22, 2002, MS, born June 24, 2003, and BS, born July 12, 2007, which are unreimbursed by insurance or Medicaid within thirty days of proof of such paid expenses presented by either party to the other.

Unreimbursed medical, dental, optic, and orthodontic expenses shall be determined after submission to both parties' insurance companies, if any, with documentation of payments or denial of payment to be presented to the Domestic Relations Office.

Any party seeking the assistance of the Domestic Relations Office in obtaining contribution to unreimbursed medical expenses from the other party must submit the request for contribution to that office no later than March 31st each year following the year in which the expense was incurred.

MEDICAL INSURANCE

Neither party has insurance available to them through their employer. If not already done so, the parties shall apply for government sponsored health insurance coverage for the children.

DEPENDENCY EXEMPTION

Based upon the findings set forth above, Mother is awarded the 2009 federal income tax dependency exemption for MS, born March 22, 2002, and MS, born June 24,

2003, and Father is awarded the 2009 federal income tax dependency exemption for BS, born July 12, 2007.

CONTINUING OBLIGATION

As long as the Domestic Relations Office has administrative responsibility, all parties are under a continuing obligation to report any material change in circumstances relevant to the level of support or the administration of the support order as specified on the Addendum to this Order, to both the Domestic Relations Office and all other parties in writing, within seven days of the change.

The provisions of the Addendum (form 3795), which is attached hereto, is made a part hereof and incorporated by reference as though set forth herein.

By the Court,

Joy Reynolds McCoy, Judge

JRM/jrr

cc. Christina Dinges, Esquire
John Smay, Esquire
Family Court
Domestic Relations
The Honorable Joy Reynolds McCoy
Gary Weber, Esquire
Terra Koernig, Esquire
Jerri Rook, Executive Secretary to The Honorable Joy Reynolds McCoy