

SMB, : IN THE COURT OF COMMON PLEAS  
Plaintiff : OF LYCOMING COUNTY,  
 :  
 : CASE NO. 07-21,665  
 :  
 vs. :  
 :  
 CFB, :  
Defendant : Petition for Special Relief

**OPINION AND ORDER**

By Order of Court dated February 12, 2009, the parties were divorced and the Property and Settlement Agreement entered into between the parties on record on February 12, 2009 was incorporated by reference into the Decree. Said Property and Settlement Agreement divided the assets and debts of the parties and concluded the divorce proceedings.

By Order of Court dated September 21, 2010 and upon agreement of the parties, legal and physical custody was determined with respect to the two minor children of the parties.

By Petition for Special Relief filed on February 8, 2011, Plaintiff requested that the Court allow her to claim the minor children as dependency exemptions on her income tax return. Plaintiff alleges that she is working fulltime and believes it would be beneficial for her to be awarded the Federal income tax dependency exemption for the minor children. By Order of Court dated February 11, 2011, an argument was scheduled for March 15, 2011 to address the sole issue of whether the Court has jurisdiction to entertain Plaintiff's Petition.

Petitioner argues that despite her terming the Petition as a Petition for Special Relief, it is in fact a Petition requesting the Court to assign the dependency exemption pursuant to Rule 1910.16-2 (f) of the Pennsylvania Rules of Civil Procedure. This particular statutory provision is known as the Dependency Tax Exemption Section of the Support Guidelines. It provides 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).

Defendant asserts, however, that because there is no pending support action or support Order, Rule 1910.16-2 (f) is inapplicable. Defendant argues that § 152 (e) (1) of the Federal Tax Code, which sets forth the general rule that the custodial parent is entitled to the dependency exemptions, applies. 26 U.S.C.A. § 152 (e) (1).<sup>1</sup> Defendant also relies on the cases of Miller v. Miller, 744 A.2d 778 (Pa. Super. 1999) and May v. May, 837 A.2d 566 (Pa. Super. 2003).

In Miller, the Court concluded that the Divorce Code permitted the Court to use its equitable powers to allocate the dependency exemption to non-custodial parents. 744 A.2d at 785. The Court noted that the primary purpose of the allocation was to maximize the income available for the support of the minor children, reasoning that increased tax savings would mean increased financial resources that could be utilized for the children’s benefit. Id. Relying on the stated policies of the Divorce Code which include mitigating the harm to children caused by the legal dissolution of the marriage and effectuating economic justice between the parties, the Court specifically held that the dependency exemption was an

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<sup>1</sup> At the time of the Miller and May cases, section 152 (e)(1) of the Federal Tax Code, 26 U.S.C.A. § 152 (e) (1) set forth the general rule that the custodial parent is entitled to the dependency exemption. Miller v. Miller, 744 A.2d 778, 784 (Pa. Super. 1999). The Federal Tax Code, however, was amended in 2004 so that the general rule in favor of the custodial parent is now in section 152(c)(4)(B)(i) and the exceptions to the general rule are found in section 152(e).

economic claim related to the divorce and that the trial court could fairly and expeditiously resolve this claim “during divorce proceedings.” Id. at 786.

The Miller case, however, was decided prior to the enactment of the Dependency Tax Exemption Section of the Support Guidelines.

The Dependency Tax Exemption Section of the Support Guidelines, which was added on October 30, 2001, apparently codified the Court’s decision in Miller. See May v. May, 837 A.2d 566, 569 (Pa. Super. 2003).

In reviewing the applicable policies related to the dependency tax exemption and the reasoning of the Court in Miller, this Court agrees with Defendant’s position that because there is no pending action for support and no existing Support Order, it is without jurisdiction to apply the dependency tax exemption provision.

The primary purpose of allocating the dependency tax exemption is to maximize income available for child support. Miller, 744 A.2d at 785; May, 837 A.2d at 569. If there is no existing child support obligation or pending child support action, that purpose cannot be effectuated.

Another purpose of the dependency tax exemption is to provide an incentive for timely payment of child support which promotes the best interest of the children who are the subjects of the Support Order. May, 837 A.2d at 570. Again, if there is no Support Order, this purpose cannot be effectuated.

As the Miller Court specifically noted, the dependency exemption is an economic claim related to the divorce and the trial court can fairly and expeditiously resolve the claim “during divorce proceedings.” In this particular case, there is no pending divorce proceeding.

The Dependency Tax Exemption Section is part and parcel of the Support Guidelines. The stated purpose of the exemption is to maximize the total income available for the support of the minor children. Clearly, the intent of the

Pennsylvania Supreme Court in promulgating the Rule was to authorize the Court to award the exemption only in those circumstances where there was an existing child support Order or pending child support action.

Finally, the Court notes that it would be a burden and waste of judicial resources to make the calculations necessary to determine which parent should be entitled to the tax exemption in the absence of a support action. The Miller Court noted that the purpose behind Congress enacting the general rule in favor of the custodial parent was to alleviate the burden which had been placed on the Internal Revenue Service (I.R.S.) in making the determination of which parent should be able to claim the exemption. Miller, 744 A.2d at 784. While it may make sense for the Court to be burdened with such determinations when there is an ongoing support action where the Court will already be making determinations regarding the incomes of the parents and there will be some benefit to the children, it makes no sense for the Court to be micromanaging the parents' tax filings without a support action when there already are rules in place in the Tax Code.

**ORDER**

**AND NOW**, this \_\_\_\_ day of April 2011 following an argument and for the reasons set forth in the foregoing Opinion, Plaintiff's Petition for Special Relief filed on February 8, 2011 is **DENIED**.

BY THE COURT

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Marc F. Lovecchio, Judge

cc: Christina Dinges, Esquire  
Melody Protasio, Esquire  
Gary Weber, Esquire (Lycoming Reporter)  
Work File