

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

KL,		: NO. 10 – 20,112
	Petitioner	: PACSES NO. 958111885
		:
	vs.	:
		: DOMESTIC RELATIONS SECTION
RL,		:
	Respondent	: Exceptions

OPINION AND ORDER

Before the Court are Respondent's exceptions to the Family Court Order of November 8, 2010. Argument on the exceptions was heard January 18, 2011.

In the Order of November 8, 2010, Respondent was directed to pay to Petitioner child support and alimony pendente lite, as well as a contribution toward an extraordinary expense. In his exceptions, Respondent contends the hearing officer erred in directing the payment toward the extraordinary expense, in failing to consider his payment of the mortgage on the marital residence, in failing to consider other income in Petitioner's household and in requiring a large arrearage payment. These issues will be addressed seriatim.

With respect to the contribution toward the extraordinary expense, the hearing officer considered the \$150 monthly payment Petitioner makes to her mother for sleeping in the residence when the children are there, necessary for the children's welfare, and required Respondent to contribute to such. She determined the amount by looking to the guidelines regarding payment of child care expenses. The Court agrees with the determination to treat the expense as an extraordinary expense, and finds no fault in the determination of the amount. Respondent's contention that the payment should have been verified is without merit as Petitioner's testimony that she pays such to her mother was unrefuted at the hearing. Respondent's contention that the payment should not have been considered a child care expense because it is not for the purpose of maintaining employment or education is misplaced, as the hearing officer did not consider it a child care expense, but, rather, an extraordinary

expense.¹ Finally, Respondent's contention that the expense should have first been reduced by the federal child care tax credit available is also without merit; the payment would not be considered by the IRS as childcare and therefore the credit would not be available.

With respect to Respondent's contention the hearing officer should have given him a downward adjustment due to his payment of the mortgage on the marital residence, the Court agrees. Pa.R.C.P. 1910.16-6(e) allows the Court to make "an appropriate downward adjustment" when the payment exceeds 25% of Respondent's monthly net income (after deducting amounts of child support and alimony pendente lite). Here, Respondent's income after payment of child support and alimony pendente lite is \$2731.² 25% of such is \$682.75. The mortgage payment of \$864.89 exceeds that by \$164.14. Under the circumstances, the Court will deduct this entire amount from the alimony pendente lite payment.³

With respect to Respondent's request for a downward deviation based on other income in Petitioner's household, Respondent refers to allegations that Petitioner resides with her boyfriend and that he pays all of the household expenses. These allegations are not contained in the record before this Court, however, and therefore, the Court cannot consider the matter further.

Finally, with respect to the request for a lower arrearage payment, the Court has considered that a significant portion of Respondent's income is from a performance bonus which was received early in 2010 and that in all likelihood, he no longer has that available to him and a high arrearage payment would constitute a hardship. Therefore, the Court will lower the arrearage payment slightly to \$50 per month.

ORDER

AND NOW, this 20th day of January 2011, for the foregoing reasons, Respondent's exceptions are hereby granted in part and denied in part. The Order of November 8, 2010, is

¹ She simply looked to the childcare expense rule to calculate an appropriate contribution.

² \$4558 less \$964 child support, less \$120 extraordinary expense contribution, less \$743 APL, = \$2731.

³ It should be noted that the lower APL payment also lowers Petitioner's contribution to the health, dental and vision insurance premiums paid by Respondent on her behalf, to \$24.54 per month.

hereby modified to provide for a payment of alimony pendente lite of \$555.23 per month,⁴ effective November 4, 2010, and an arrearage payment of \$50 per month.

As modified herein, the Order of November 8, 2010, is hereby affirmed.

BY THE COURT,

Dudley N. Anderson, Judge

cc: Family Court
Domestic Relations Section (MR)
Brian Bluth, Esq.
Andrew Lyons, Esq., 51 N. Third Street, Lewisburg, PA 17837
Gary Weber, Esq.
Hon. Dudley Anderson

⁴ This is calculated by subtracting from the original payment of \$743.91 the mortgage adjustment of \$164.14, and then further subtracting the health insurance contribution of \$24.54.