

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

MT		:	
	Plaintiff	:	DOMESTIC RELATIONS
		:	NO. 12-20,782
vs.		:	PACSES CASE NO. 999113312
		:	
ST		:	
	Defendant	:	

ORDER

AND NOW, this 18th day of **October, 2012**, a hearing was held on October 5, 2012, with regard to Mother's Petition for Child Support filed on June 14, 2012¹. The Court notes that an Interim Order for Child Support was entered on July 24, 2012. Both parties appeared at the time of the hearing. Mother, MT, was represented by Christina Dinges, Esquire, and Father, ST, was represented by Mark Taylor, Esquire. The issues before the Court include child support, spousal support, mortgage contribution, and Mother's request that Father contribute to the extracurricular activities for the children.

The parties are the parents of three minor children: LT, born 8/2/95; LT, born 12/29/98; JT, born 3/9/01. The children reside primarily with Mother.

At the time that the Interim Order was entered in this matter on July 24, 2012, Mother was assessed an earning capacity of \$9.00 per hour. Both parties stipulated to the income figure for Mother and, therefore, Mother's monthly net income is determined by agreement to be \$1,411.12.

¹ The Court notes that both Lycoming County Family Court Hearing Officers were recused from this matter. A De Novo Hearing was therefore held before the Court rather than before a hearing officer.

Father is employed as a sales representative for Robert M. Sides Music Centers, Inc. Father is involved in outside sales and school sales. Father testified that he receives a \$350.00 base salary per week, plus commission on any income which he is able to generate for the business. Father's commission is calculated every month and paid to him. Father testified that there are no commissions being withheld and that his most current paystubs reflect all of the commissions that he is entitled to as of the date of the paystubs. Father testified that his income does fluctuate somewhat and that he tends to earn more during the first six months of the year versus the last six months of the year. This is due to school starting in the Fall and payments beginning for musical instruments in late December or early January. Father also testified that his income is lower this year than prior years which he attributes primarily to the cutting in school budgets and that music is the first thing normally to be cut. He believes he is making fewer sales because of this and school districts are not ordering musical items.

Father provided his paystub with a check date of September 27, 2012, which was marked as Father's Exhibit 4. Father also provided a paystub dated September 27, 2012, which evidenced his most recent commission check which is marked as Father's Exhibit 1. Father's total gross earnings (wages and commissions) as of September 27, 2012, total \$45,211.03. Father's mandatory deductions as of September 27, 2012, total \$6,206.79. Reducing Father's mandatory deductions from his gross income totals a net income of \$39,004.24. Dividing this figure by 20 weeks results in a bi-weekly income of \$1,950.21. Multiplying this figure by 26 weeks and dividing it by twelve months equals a monthly net income of \$4,225.45.

Pursuant to a statement Father received from the IRS after filing his 2011 taxes, Father was required to pay taxes in the amount of \$2,352.19 for under-withholding. Dividing this figure by 12 months results in a monthly figure of \$196.01². Reducing Father's monthly net income by the monthly tax obligation results in Father's monthly net income of \$4,029.44.

With Mother's net monthly income at \$1,411.12 and Father's monthly net income at \$4,029.44, the parties combined net monthly income is \$5,440.56. Total basic child support for three minor children at this income level is \$1,629.00 per month. Father's net monthly income is 74% of the parties' combined net monthly income. Mother's income is 26% of the parties' net monthly income. Father's child support obligation is, therefore, \$1,205.46 per month.

Father does not contest Mother's entitlement to spousal support. Spousal support is calculated by subtracting Mother's income of \$1,411.12 and Father's child support obligation of \$1,205.46 from Father's income of \$4,029.44. The difference of \$1,412.86 is multiplied by 30% for a spousal support obligation of \$423.86 per month.

Pursuant to the Interim Support Order entered in this case on July 24, 2012, Father was required to obtain health insurance on behalf of the minor children. Mother is required to contribute her proportionate share of the health insurance premiums paid by Father on behalf of the minor children. Father pays \$85.72 bi-weekly for health insurance for himself and the three minor children. Dividing this figure by 4 totals \$21.43 per person bi-weekly, resulting in a monthly figure per person of \$46.43. The

² Father, through his counsel, has represented to the Court that he never received the refund he originally anticipated receiving when he filed his 2011 return.

health insurance cost for the three children totals \$139.29 per month. Including Mother's spousal support, Mother's income is 34% of the parties' total income. After deducting from Father's income his spousal support obligation, Father's income is 66% of the parties' total income. Mother therefore owes \$47.35 per month for her proportionate share of the health insurance cost.

Wife has requested a mortgage contribution. Wife's income for mortgage contribution purposes is her earning capacity of \$1,411.12 per month plus the spousal support of \$423.86 per month plus child support of \$1,205.46 per month, for a total of \$3,040.44. One quarter of Wife's income is \$760.11. The parties stipulated that the mortgage is \$586.77 per month, the home equity is \$168.96 per month, the insurance is \$53.00 per month and the taxes are \$272.29 per month for a total of \$1,081.02. This results in an overage of \$320.91 per month. Awarding 50% of the overage yields a mortgage contribution of \$160.45 per month.

Mother requests that Father be required to contribute to the extracurricular expenses of the children. Mother testified to the following extracurricular activities:

<u>Lauren:</u>	Dance including recitals	\$163.33 per month
	Viola	\$120.00 per month
	Piano	\$40.00 per month
		\$323.33 Total per month

<u>Julia:</u>	Gymnastics:	
	Assessment fee	\$91.66 per month
	Gym fee	\$166.93 per month average
		\$247.00 per month – Summer
		\$187.00 per month – School year
	Miscellaneous (music, leotards, meet fees)	\$41.66 per month
		\$300.25 Total per month

Lindsey:

Voice lessons (\$80 per week)	\$86.66 per month
	\$86.66 Total per month

Pursuant to Rule 1910.16-60, a Court may allocate expenditures for certain “needs” of the children that are deemed “reasonable”. Mother has indicated to the Court that she cannot continue to afford to pay the children’s expenses on her own. All of the activities that the children are involved in as listed above were activities that they were involved in prior to the parties’ separation except for Lindsey’s voice lessons which started after the parties’ separation. Mother indicated she believes it is important for the children to continue in their activities as this is the only stability that the children currently have. Mother testified that the girls’ lives have been turned upside down since their Father left a year ago. Mother testified that she does owe a balance to the gym for Julia’s gymnastics. Mother testified that she did not pay during the months of June and July, 2011, while Father was still residing in the residence and the parties had not yet separated, she did not pay the gym fee because she did not have the money to do so. At that point in time, she chose to pay the parties’ real estate taxes rather than pay the gym fee. There have been no fees paid on the daughter’s gym fee since 2011.

The total yearly expense for the children’s activities is \$8,522.88 or \$710.24 per month. This amounts to 16.8% of the parties’ combined monthly income. The Court would note, however, that the parties’ combined monthly net income is a fictitious figure in light of the fact that Mother does not earn an amount equal to the earning capacity that has been established for her.

During a child’s life, parents sacrifice many things in order to enable their children to participate in activities such as the T children do. It is clear from the

testimony that the total expense of the extracurricular activities of the girls was more than, even when the parties were together as a couple, they could afford. This is demonstrated by the fact that the gym fees had not been paid for several months prior to the parties' separation because, as Mother stated, she could not afford to pay them. It is clear to the Court that the activity expenses for the children were above the parents' means while together; therefore, the Court does not find the expenses reasonable now that the parties are separated. The Court will not, therefore, order Father to contribute to the extracurricular activities.

ACCORDINGLY, IT IS HEREBY ORDERED AND DIRECTED AS FOLLOWS:

CHILD SUPPORT: Based upon the findings set forth above, Father shall pay for support of LT, born 8/2/95; LT, born 12/29/98; JT, born 3/9/01, the sum of \$1,205.46 per month commencing June 14, 2012, until further order of court.

SPOUSAL SUPPORT: Based upon the findings set forth above, Father shall for the support of MT the sum of \$423.86 per month commencing June 14, 2012, until further order of court.

MORTGAGE CONTRIBUTION: Based upon the findings set forth above, Father shall pay a mortgage contribution in the sum of \$160.45 per month commencing June 14, 2012, until further order of court.

HEALTH INSURANCE PREMIUM: Based upon the findings set forth above, Mother shall pay to Father \$47.35 per month for her proportionate share of the health insurance cost for the three children.

TOTAL PAYMENTS: As stated above, Father shall pay child support of \$1,205.46, spousal support of \$423.86, and a mortgage contribution of \$160.45, minus Mother's payment of \$47.35 to Father for health insurance. This results in a total payment from Father to Mother of \$1,742.42 per month. This shall be wage attached. Any advance of additional payments may be directing by issuing a check or money order to PASCDU, P. O. Box 69110, Harrisburg, Pennsylvania 17106-9110. The check or money order shall contain Father's social security number.

ARREARAGES: Father shall pay \$189.00 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 payment of any balance remaining if his employer is unable to deduct the total amount of monthly payments made pursuant to this Order within fourteen (14) days of reduced payment to PASCDU.

UNREIMBURSED MEDICAL EXPENSES: Commencing June 14, 2012, Mother shall be responsible for the first \$250.00 of unreimbursed medical expenses incurred per child during the calendar year, and Mother shall be responsible for the first \$250.00 of her own unreimbursed medical expenses incurred for herself during the calendar year. This amount shall be prorated when an order comes into affect after January 1st. Medical expenses do not include over-the-counter medications. Once the \$250.00 threshold has been met, each party shall be responsible for his or her proportionate share of any additional unreimbursed medical expenses based upon his or

her proportionate share of their combined net monthly income. Therefore, Father shall be responsible for 66% and Mother shall be responsible for 34% of all reasonable and necessary medical services and supplies, including, but not limited to, surgical, dental, optic and orthodontic services incurred on behalf of the children and Mother, which are unreimbursed by insurance or Medicaid within thirty (30) days of proof of such paid expenses.

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

MEDICAL INSURANCE: Father shall continue to obtain medical insurance coverage for the children so long as medical coverage can be obtained by him at a reasonable cost. Reasonable cost is defined as a monthly medical insurance premium of 5% or less of Father's net monthly income as found above. If the cost of medical insurance premiums is, or increases to an amount, in excess of 5% of the net monthly income, either party may provide documentation showing this to the Domestic Relations Office of Lycoming County and request an administrative adjustment eliminating the medical insurance coverage provision of this Order.

NEW CASE: Father shall pay Court costs in the amount of \$52.00 to the Lycoming County Domestic Relations Office.

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 (7) 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