

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

BH,		: NO.10 – 21,249
	Petitioner	: PACSES NO. 778113403
		:
	vs.	:
		: DOMESTIC RELATIONS SECTION
RH,		:
	Respondent	: Exceptions

OPINION AND ORDER

Before the Court are Petitioner's exceptions to the Family Court Order of September 7, 2012. Argument on the exceptions was heard November 27, 2012.

Petitioner raises two issues: the hearing officer's use of a single paystub to calculate Respondent's monthly net income, and her method of calculating the mortgage contribution. After review of the evidence and rules of civil procedure, the court finds no fault with respect to the income calculation, but does agree with Petitioner that the mortgage contribution was calculated incorrectly.

Based on Respondent's testimony that his hours had been cut as of the end of April 2012, the hearing officer used the paystub dated September 1, 2012, which showed 31.5 hours worked that previous week. Petitioner argues that at least a six-month average should have been used rather than a single paystub. Ordinarily the court would agree with that argument and use the year to date from April to September, but in this case there was evidence in the form of a letter from Respondent's employer that Respondent is and has been subject to a partial layoff and that he has worked many 32 hour weeks since April 2012. In light of that evidence, the court finds no error in the use of the 31.5 hour paystub.

Respondent lives in the marital home and requested a mortgage contribution from Petitioner. In calculating such, the hearing officer deducted from Respondent's income his full child support obligation, rather than only what he actually pays to Petitioner. (The parties share custody equally and the suggested guideline payment from Respondent to Petitioner was therefore reduced.) Respondent argues such was proper as that method considers the obligation he has to the children when they are in his home, as well as his support of them in Petitioner's home. The rules of civil procedure appear to require including *all* available income in the mortgage calculation, however, rather than focusing on only what is available after consideration of the children's support, as Rule 1910.16-6(e) directs that in calculating a mortgage contribution to an obligee who lives in the home, the court is to consider the obligee's income, *including* all amounts of spousal support, apl and child support. Pa.R.C.P. 1910.16-6(e)(emphasis added). Therefore, when the rule directs that in calculating a contribution to an obligor the court deduct any amounts of spousal support, apl and child support the obligor is *paying*, the court finds the rule is to be interpreted literally, and only what the obligor is actually paying is to be deducted.¹ This amount is not available to him to pay the mortgage, while the amount designated for the children's support while in his home (the adjustment based on custody) *is* available to him for that purpose. This makes sense, as providing a home is part of support.

Therefore, deducting the payment of \$575.81 (\$561.23 basic support plus \$14.58 child care) from his income of \$2,525.07 leaves Respondent with

¹ Looking at it from the other direction, if the court were to adopt the hearing officer's logic, a contribution to an obligee would be calculated by considering only the obligee's income and *not* including any amounts of child support received. The rule is clearly to the contrary.

\$1949.26 available to pay the mortgage and related expenses. 25% of that income is \$487.32. The mortgage and related expenses of \$911.81 exceed that amount by \$424.49, and Petitioner's one-half share is thus calculated at \$212.25. Deducting that contribution from Respondent's payment results in an overall payment of \$363.56 per month.

ORDER

AND NOW, this 27th day of November 2012, for the foregoing reasons, Petitioner's exceptions are granted in part and denied in part. The Order of September 7, 2012, is hereby modified to provide for a mortgage contribution of \$212.25 per month, resulting in an overall payment from Respondent to Petitioner of \$363.56, effective July 23, 2012. The arrearage payment is also adjusted to \$36.36 per month

As modified herein, the Order of September 7, 2012, is hereby affirmed.

BY THE COURT,

Dudley N. Anderson, Judge

cc: Family Court
Domestic Relations Section (JS)
Christina Dinges, Esq.
Lori Rexroth, Esq.
Gary Weber, Esq.
Hon. Dudley Anderson