IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

KM,		: NO. 11 – 21,427
	Petitioner	: PACSES NO. 172112867
		:
vs.		:
		: DOMESTIC RELATIONS SECTION
CM,		:
	Respondent	: Exceptions

OPINION AND ORDER

Before the Court are cross-exceptions to the Family Court Order of March 27, 2012. Argument on the exceptions was heard May 15, 2012.

The parties were married in 2008 and recently separated. They are the parents of one child, C, born October 25, 2008. On February 28, 2012, Petitioner filed a request for child and spousal support and after a hearing on March 19, 2012, the hearing officer granted Petitioner's request for spousal support but denied her request for child support. Petitioner takes exception to the denial of child support, and Respondent raises multiple contentions of error.

The hearing officer denied Petitioner's request for child support based on her conclusion that Petitioner was in violation of Pennsylvania's relocation statute, 23 Pa.C.S. Section 5337(b), as she had removed the child from Pennsylvania and "fled" to another state. Without deciding whether violating the relocation statute is grounds for denying child support, the court will enter an award of child support based on its judicial notice of the Order of the Honorable Richard A. Gray, entered May 10, 2012, in which he found that Pennsylvania lacks jurisdiction over the custody of C as he had not resided in the Commonwealth for at least six

months prior to his removal. Without jurisdiction, this court cannot find Petitioner in violation of the relocation statute and cannot, therefore, deny child support on that basis.

Respondent contends first that the hearing officer erred in finding Petitioner entitled to spousal support. The court agrees. The hearing officer's determination was based on her conclusion that Petitioner demonstrated "adequate legal cause" for leaving by showing that she left "to avoid the physical confrontations". The hearing officer also found, however, that "both parties engaged in violence toward the other." The court believes that where both parties are equally at fault in creating the situation, neither is entitled to spousal support from the other. *See* Jayne v. Jayne, 663 A.2d 169 (Pa. Super. 1995), citing Vajda v. Vajda, 487 A.2d 409 (1985) (holding that where there is nearly equal contribution by the parties to the marital discord, a divorce will not be granted in favor of either spouse). In Jayne, the Superior Court reversed the trial court's award of an indignities divorce to Wife, finding that she was just as responsible as Husband for their marital discord. While the instant case involves entitlement to spousal support rather than entitlement to a fault divorce, the considerations are similar enough to justify application of the principle. Therefore, the award of spousal support will be vacated.

Next, Respondent contends the hearing officer erred in her determination of his income, Specifically, he argues that inclusion of his bonus in the three month period of income considered is not representative as he is uncertain when he will receive another bonus. It appears the hearing officer included the bonus in his annual gross income, however, and did not restrict the consideration to a three-month period. The court finds no error in this method and will therefore deny this exception.

Next, Respondent contends the hearing officer erred in assessing Petitioner a minimum wage earning capacity, arguing that she has a higher earning capacity based on her previous work as an exotic dancer. Petitioner asserts she gave up that line of work when the parties' child was born. This court accepts that decision as responsible parenting, and thus finds assessment of a minimum wage earning capacity appropriate.

Finally,[1] Respondent contends the Hearing Officer erred in awarding spousal support for 18 months, arguing that they were separated for much of the marriage. Since this court is vacating the award of spousal support in its entirety, this exception is moot.

Considering Petitioner's earning capacity of $1122 per month and Respondent's income of $5593 per month, the guidelines require a payment for the support of one child in the amount of $922.13 per month. Petitioner's share of the health insurance premium is $52.43 per month and therefore, a payment of $869.70 will be directed.

ORDER

AND NOW, this 17th day of May 2012, for the foregoing reasons, Petitioner's exceptions are hereby granted and Respondent's exceptions are granted in part and denied in part. The Order of March 27, 2012, is hereby modified to eliminate the obligation to pay spousal support and require the payment of child support in the amount of $869.70 per month. The payment toward arrears shall be modified to $80 per month. Paragraph 5 of the Order, which addresses unreimbursed medical expenses, shall be modified to require Respondent's contribution toward medical expenses of the child rather than those of Petitioner. The

[1] While Respondent also contended the effective date of the order is in error as he paid all bills until Petitioner left, he withdrew this exception when it was pointed out at argument that the effective date preceded Petitioner's departure by only two days. (Apparently Petitioner filed for support before the incident she alleged led to separation.)

percentage responsibility for those expenses shall be modified such that Petitioner shall be responsible for 17% of such and Respondent shall be responsible for 83% of such. Finally, the directive to continue to obtain medical insurance shall be amended to apply only to coverage for the child.

As modified herein, the Order of March 27, 2012, is hereby affirmed.

BY THE COURT,

Dudley N. Anderson, Judge