

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

RW,		: NO. 09 – 21,315
	Petitioner	: PACSES NO. 349110368
		:
	vs.	:
		: DOMESTIC RELATIONS SECTION
CW,		:
	Respondent	: Exceptions

OPINION AND ORDER

Before the Court are Respondent’s exceptions to the Family Court Orders of January 14, 2013 and February 28, 2013.¹ Argument on the exceptions was heard May 14, 2013. Although Respondent had requested a transcript and had paid the deposit therefor, and the transcript had been prepared, Respondent had not paid the balance due and the transcript had therefore not been forwarded to the court. At the argument, Respondent decided he wished for the court to consider the transcript and therefore he did pay the balance due that day. The transcript was forwarded to the court on May 21, 2013, and the matter is now ripe for decision.

In his exceptions, Respondent contends the hearing officer erred in (1) concluding that Petitioner’s termination from employment was based on his behavior, (2) concluding that Petitioner had no way other than email to contact Respondent, (3) finding that Respondent testified that he had threatened to have Petitioner arrested if she came on his property, (4) failing to conclude that Petitioner’s actions alone resulted in her being fired, (5) requiring Respondent to pay the entire amount of the medical insurance premiums, and (6) not allowing Respondent to claim an earned income credit for the children on his tax return and therefore finding that both exemptions should be awarded to Petitioner. These issues will be addressed seriatim.

First, Respondent contends the hearing officer erred in attributing Petitioner’s termination from her employment to Respondent’s behavior. Specifically, the hearing officer found that Respondent had contacted Petitioner’s employer through email, informed them that

he had been receiving harassing emails from Petitioner, and threatened that he would take legal action against them if they did not stop Petitioner from using her work-related email to contact him. The hearing officer also found that Respondent had his wife call Petitioner's employer and complain about the emails from Petitioner. Since the hearing officer determined that Respondent was aware that Petitioner's employer had a policy against using their email for personal reasons and that he knew that action would be taken against Petitioner, even if he did not know that she would be fired, and since she also determined that the employer had "turned a blind eye" to personal use of email by the employees and that it was really the threat of litigation from Respondent which led to the termination, she concluded it was Respondent's actions which led to Petitioner's termination. After reviewing the testimony, the court finds this determination to be supported by the record. Although Respondent argues in his exceptions that the hearing officer would not accept certain proffered evidence of a text from Petitioner to Respondent, it appears the hearing officer did consider such evidence. N.T. January 10 and February 21, 2013, at 123. Respondent also argues that the employer "reviewed all the lengthy Emails" and then fired Petitioner due to their harassing nature, but the transcript shows otherwise: the employer responded to the initial email from Respondent by asking whether Petitioner's emails contained spam and he responded "No spam just keeps threatening to take me to court over child custody agreement and everything else I do. Clearly not work related." *Id.* at 59. This evidence belies Respondent's assertion that the employer reviewed the emails and there is no other evidence in the record which would support such a finding. Finally, Respondent contends he did not have his wife contact Petitioner's employer, but instead the employer contacted him at work and he told them to call his wife and provided them with her phone number. There is no evidence of this contention in the record; indeed, Respondent stated at the hearing that his wife called IT at Susquehanna Health, "to get this harassment to stop". *Id.* at 57, and 63. None of Respondent's challenges to the hearing officer's finding in this regard is supported by the evidence and the court will not disturb such finding.

¹ An interim order was entered January 14, 2013, as the parties did not have correctly completed tax returns and the exemptions had been requested by Respondent. The matter was rescheduled and at the second hearing, the parties presented their tax returns. The second order addresses only issues not addressed in the first order.

Next, Respondent contends the hearing officer erred in concluding that Petitioner had no way other than email to contact Respondent, arguing that she has “my wife’s phone number, my parents’ phone number, my personal Email address” and that she used Facebook and cell phones to contact him. As did the hearing officer, the court finds that having Respondent’s wife’s or parents’ phone numbers does not constitute a method of contacting Respondent, and there is no evidence in the record concerning Facebook, personal email² or cell phone use other than that Respondent had blocked Petitioner from calling or texting his cell phone. *Id.* at 70. The hearing officer’s conclusion was therefore justified.

Next, Respondent contends the hearing officer erred in finding that Respondent testified that he had threatened to have Petitioner arrested if she came on his property. Respondent is not correct in this regard. While Respondent did not testify to that effect, and Petitioner did, *Id.* at 69, the hearing officer found *not* that Respondent so testified but that “[t]estimony also establishes that he had threatened to have Ms. Wilson arrested if she appeared at his property”. The hearing officer was clearly referring to Petitioner’s testimony, not Respondent’s. This contention of error is without merit.

Next, Respondent contends the hearing officer erred in failing to conclude that Petitioner’s actions alone resulted in her being fired, arguing that “a text a month before” indicted that “she was already in process of getting fired” and that said text “clearly states that she was doing this behavior intentionally to get fired to make child support go up”. The text to which Respondent refers was reviewed by the hearing officer and although it does contain the words “I’ll probably get fired soon so child support will go up”, the court agrees with the hearing officer’s conclusion that such does not support a finding that Petitioner acted with the intent of being fired. This contention is therefore also without merit.

Next, Respondent contends the hearing officer erred in requiring Respondent to pay the entire amount of the medical insurance premiums. In the Order of January 14, 2013, the hearing officer stated “[t]he children are currently uninsured.” She then directed Respondent to obtain medical insurance for the children, but did not direct that Petitioner contribute to the cost

² Actually, Respondent testified that he gets his email only through his phone, and did not mention any difference between work email or personal email, stating that the phone “goes off” in the middle of the night sometimes and during work. N.T., January 10 and February 21, 2013, at 61.

of such. Respondent is correct that Petitioner should have been directed to contribute to the health insurance premium once coverage is obtained. The Domestic Relations Office will be directed to make the appropriate adjustment once Respondent obtains coverage and evidence of the cost is provided to that office.

Finally, Respondent contends the hearing officer erred in not allowing Respondent to claim an earned income credit for the children on his tax return and therefore finding that both exemptions should be awarded to Petitioner. Respondent claims in his exceptions that he has his children “a total of six months per year” and that he “legally qualif[ies] to be able to claim them under this credit”. The testimony established that in 2012, the children were not with Respondent more than half the time as required for the credit, however. *Id.* at 84 and 97. Therefore, the hearing officer correctly concluded that Respondent would not be entitled to the earned income credit for 2012, and in awarding both exemptions to Petitioner based on the resulting refunds.

ORDER

AND NOW, this 23rd day of May 2013, for the foregoing reasons, Respondent’s Exceptions to the Orders of January 14 and February 28, 2013, are hereby DENIED.

The Order of February 28, 2013, shall be supplemented to include a directive that Petitioner contribute her proportionate share of any medical insurance premium paid by Respondent for the children’s health insurance coverage. Respondent shall provide the relevant information to the Domestic Relations Office and that office shall make the appropriate adjustment, retroactive to the date of coverage.

As supplemented herein, the Order of February 28, 2013 is hereby affirmed.

BY THE COURT,

cc: Family Court
Domestic Relations Section
RW
CW
Gary Weber, Esq.
Hon. Dudley Anderson

Dudley N. Anderson, Judge