IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

SLD,	:	NO. 14 – 21,644
Petitioner	:	PACSES NO. 942115048
	:	
vs.	:	
	:	DOMESTIC RELATIONS SECTION
CD,	:	
Respondent	:	Exceptions

OPINION AND ORDER

Before the Court are Petitioner's exceptions to the Family Court Order of March 13, 2015. Argument on the exceptions was heard July 7, 2015.

After a hearing on March 9, 2015, the Family Court Hearing Officer calculated Respondent's income from each of two jobs and determined that Petitioner was entitled to nurturing parent status for only four months after separation and thereafter should be assessed with a minimum wage earning capacity. The Hearing Officer directed the payment of child and spousal support for Petitioner and the parties' two minor children, in amounts ranging from approximately $6000 per month to $2500 per month, based on Respondent's change in employment overlapping with changes in the cost of health insurance and changes in Petitioner's earning capacity. Credits were also given for certain direct payments made by Respondent on Petitioner's behalf after the petition for support was filed.

In her exceptions, Petitioner contends the Hearing Officer erred (1) in allowing certain credits, (2) in refusing to grant Petitioner nurturing parent status, (3) in finding that the parties would have difficulty meeting expenses unless Petitioner works (related to the nurturing parent doctrine), (4) in limiting the duration of the spousal support, (5) in not assessing Respondent income as a result of an excess of reimbursement for per diem and mileage over actual expenses, (6) in deducting health insurance costs from Respondent's income in calculating support, (7) in requiring Petitioner to contribute to the cost of health insurance, and (8) by disregarding the intent of the Divorce Code to mitigate harm to children. Each of these contentions will be addressed in turn.

(1) Credits allowed against support – The hearing officer allowed Respondent a credit for the following payments made after the petition was filed by Petitioner:

1. $4000 paid directly to Petitioner
2. 3 mortgage payments
3. 3 sewer payments for the marital residence
4. A payment to PPL for the marital residence
5. 3 payments on the jeep driven by Petitioner

Petitioner contends credit for all but the mortgage payments should have been deferred until equitable distribution. The hearing officer allowed the credits for the sewer payments, electric bill and car payments because "the expenses for the marital residence and the car she is driving are her responsibility". While the court agrees that the sewer bill and electric bill are expenses which should be paid by the person incurring them, and thus Respondent should get credit for making those payments on Petitioner's behalf, it does seem the car payment could be deferred until equitable distribution. The car is a marital asset and the payment increases the equity in that asset. Therefore, this exception will be granted to that limited extent.[1]

(2) Nurturing Parent Status – Petitioner is not currently employed and requested nurturing parent status (which would have prevented the assessment of an earning capacity), but the hearing officer denied that request after reviewing the relevant factors. Most significant among those factors appears to be that both Respondent and his parents (who apparently testified at the hearing) are available to provide care free of charge while Petitioner worked, and that Petitioner is not actually planning to stay home with the children but, rather, plans to attend college full time beginning in August. The hearing officer also noted that the parties have "large expenses", and surmised that "both parties may have difficulty meeting their expenses unless Mother works."[2]

Petitioner contends that since the now-completed tax return shows that Respondent actually earned much more than the $14,707 per month considered by the hearing officer, the matter should be remanded so the hearing officer can reconsider whether Respondent's income

[1] The court finds it unnecessary to address the credit for $4000 paid directly to Petitioner; the hearing officer noted the payment was undisputed and Petitioner has offered no reason why Respondent should not be given credit.
[2] As stated above, this conclusion is also alleged to be in error, and will be addressed supra.

alone would be sufficient to meet all expenses.[3] During that period of time (Respondent changed employment and subsequently earned $6,100 per month), however, Petitioner had been assessed no earning capacity.[4] Thus, application of the doctrine would have no practical effect; the increased income would be of no moment. More important, however, the court believes the other factors are determinative, and the availability of resources is of minimal significance.[5] The hearing officer applied the factors appropriately and the court finds no error in her refusal of nurturing parent status.

(3) Speculating on additional expenses - Petitioner argues that the hearing officer should not have speculated "on additional expenses Father may have" and in concluding that "both parties may have difficulty meeting their expenses unless Mother works." This "speculation" addressed expenses of the entire family, not just Respondent, and amounted to reference to "utilities, food, gas, clothing, and all the other expenses incurred by everyone". The hearing officer did not try to estimate such, but merely noted that such were not included in the expenses she was considering to determine whether the parties had sufficient income from Respondent's employment alone to meet all needs in both households. The court finds consideration of such things as utilities, food, gas and clothing hardly "speculation". In any event, as noted above, the availability of resources to meet expenses is less of a factor than the facts that Petitioner plans to attend college rather than stay home with the children, and that others are available to provide care free of charge. No error is presented here.

(4) Duration of Spousal Support – The hearing officer applied Pa.R.C.P. 1910.16-(c)(2) and considered the duration of the marriage from the date of marriage to the date of final separation. She also considered Lycoming County policy and limited the spousal support award to one-half the length of the marriage. This was not in error. She did err, however, in calculating the length of the marriage as she calculated the period of time based on a date of

[3] Since it was noted that the 2014 tax return had not yet been prepared at the time of the hearing, the hearing officer allowed the parties to seek modification retroactively once the return *had* been prepared. It appears from the record that Respondent has indeed filed such a petition, but based on a change in employment rather than the tax return. Both issues may be addressed at the hearing on that petition.

[4] Although denying nurturing parent status, the hearing officer allowed Petitioner a four-month "grace period" in which to find employment, assessing her no earning capacity during that time.

separation of November 23, 2015, although the Complaint alleges a date of separation of November 23, 2014, and the 2015 date cannot be accurate. The marriage was thus actually only 15 months long, from August 17, 2013, through November 23, 2014, and spousal support should be awarded for only seven and one-half months, rather than 15 months. Therefore, although Petitioner certainly did not argue that the duration of support should be shortened, her argument that it should not have been curtailed has no merit under the rules, and now that the court is faced with an obvious error, it is constrained to correct it.

(5) Excess of reimbursement for per diem and mileage over actual expenses – Although the hearing officer noted a reimbursement figure of over $17,000 and expenses of only $10,000, she did not consider the excess as income (noting that she was also not deducting a "hefty self-employment tax"), and Petitioner alleges error in this regard. As noted above, however, the hearing officer allowed the parties to seek modification retroactively once a 2014 tax return had been prepared. This exception is therefore premature and will not be addressed at this time. Should the issue remain after the modification petitions are heard, it will be addressed then.

(6) Deduction of health insurance costs from Respondent's income – According to Pa.R.C.P. 1910.16-6(b)(4), where one party pays for health insurance for the family and has more than 90% of the total income of the parties (and thus more than 90% of the responsibility to cover the cost), "the trier of fact may, as fairness requires, deduct part or all of the cost of the premiums" from that party's income in calculating support. Here, until Petitioner was assessed an earning capacity as of April 1, 2015, Respondent had 100% of the responsibility for premiums. The court finds no error in deducting the cost from his income in calculating support during that period.

(7) Requiring Petitioner to contribute to the cost of health insurance – Since Pa.R.C.P. 1910.16-6(b)(1) provides that the cost of the health insurance premium "*shall* be allocated between the parties in proportion to their net incomes", the court finds this contention without merit.

---

[5] Petitioner also argued that she should be assessed no earning capacity based on her plan to attend college full-time, but this is not a consideration in applying the nurturing parent doctrine. Petitioner has been advised to file a petition for modification to address that separate issue.

(8) Disregarding the intent of the Divorce Code to mitigate harm to children – Ordinarily, this sort of exception, which does not point to any specific error, would be dismissed without discussion. The court did inquire of counsel, however, as to the intent, and counsel's argument confirmed the court's suspicion that the exception merely summarized Petitioner's belief that the other errors (as alleged) led to such a result. Therefore, the court will simply note that it assumes that the support guidelines were drafted with the Divorce Code's intent in mind, and that any award of support which is in compliance with the rules *does* mitigate harm to children. After all, effective April 1, 2015, Petitioner will have available to her and the children $3577 per month (the support award plus her earning capacity) and Respondent will have available to himself and the children $2959 per month (his income less the support award less the health insurance premium). Petitioner's argument, that an injustice has been done, rings hollow.

ORDER

AND NOW, this 8th day of July 2015, for the foregoing reasons, Petitioner's exceptions are granted in part and denied in part. The credit of $10,334.57 shall be reduced to a credit of $8,255.61, reserving the claim for payment on the jeep for the time of equitable distribution.

As modified herein, the Order of March 13, 2015, is hereby affirmed.

BY THE COURT,

Dudley N. Anderson, Judge

cc: Family Court
Domestic Relations Section
Janice Yaw, Esq.
Graham Showalter, Esq., 36 South Third Street, Lewisburg, PA 17837
Gary Weber, Esq.
Hon. Dudley Anderson