

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PA

CHARLENE M. HORTON,	:	
Plaintiff	:	
	:	
v.	:	No. 95-21,875
	:	
DENNIS C. HORTON,	:	
Respondent	:	

OPINION AND ORDER

Charlene Horton has filed exceptions to the master's order of 12 October 1998, which addressed Dennis Horton's child support obligations retroactive to 11 April 1997. This order did not include any payment obligation for Mr. Horton in regard to child care expenses, which he had been paying throughout this period. Both parties agree that child care expenses should have been included in the order but were left out due to an error of the Family Court Hearing Officer. However, Mr. Horton argues that the exceptions should be dismissed because they are untimely filed.

On 6 November 1998, Mrs. Horton filed a Petition for Child Care Expenses, which asked for Mr. Horton to be assessed with one half of the child care expenses. On 5 January 1999, the Family Court Hearing Officer ordered Mr. Horton to pay child care expenses of \$23.74 per week, retroactive to 6 November 1998. The Domestic Relations Office then credited Mr. Horton with the amount he had paid for child care expenses for the period from 11 April 1997 through 12 October 1998. Mrs. Horton now asks this court to amend the 12 October 1998 order to include the annualized child care expenses of \$182.00 per month from 11 April 1997 through 12 October 1998, and to order the Domestic Relations Office to reinstate the child care obligation that had been improperly

credited to his account.

Mrs. Horton's exceptions should ordinarily be dismissed as untimely. However, the court will overlook this error and grant the exceptions in order to promote justice in this instance. The court has the discretion to do this under Pa.R.Civ.P. No. 126, which states:

The rules shall be liberally construed to secure the just, speedy and inexpensive determination of every action or proceeding to which they are applicable. The court at every stage of any such action or proceeding may disregard any error or defect of procedure which does not affect the substantial rights of the parties.

If Mrs. Horton was asking this court to now present Mr. Horton with this obligation and thus require him to amass the amount for child care expenses through the period in question, our decision might be otherwise. However, Mr. Horton has already paid his portion of the child care expenses, and has been *credited* with those payments. This amounts to a windfall for him, particularly as he expected all along to pay those expenses, and actually would have been required to pay them, had it not been for an omission in the 12 October 1998 order. Therefore, the equitable solution is to grant Mrs. Horton's exceptions.

ORDER

AND NOW, this _____ day of January, 1999, the exceptions filed by Charlene Horton to the order of 12 October 1998 are granted, and the court orders the following:

1. The 12 October 1998 order of the Family Court Hearing Officer is amended to include the annualized child care expense of \$182 per month for the time period of 11 April 1997 through 6 November 1998.
2. The Domestic Relations Office is ordered to reinstate Dennis Horton's obligation for one-half the child care expenses of \$182 per month from the time period of 11 April 1997 through 6 November 1998, which was credited to his account based upon the omission of child care expenses in the 12 October 1998 order.

BY THE COURT,

Clinton W. Smith, P.J.

cc: Dana Stuchell, Esq., Law Clerk
Clinton W. Smith, P.J.
Barbara Hall, Domestic Relations
Gerald SeEVERS, Esq.,
Jeffrey Yates, Esq.
Julie Pentico, Exq.
Gary Weber, Esq., Lycoming Reporter