

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

JEAN MYERS,
Petitioner

: NO. 96-21,360

vs.

: Domestic Relations Section

MICHAEL MYERS,
Respondent

:

OPINION IN SUPPORT OF ORDER IN
COMPLIANCE WITH RULE 1925(A) OF
THE RULES OF APPELLATE PROCEDURE

Petitioner has appealed this Court's Order of June 9, 1999,¹ which Order reversed the Family Court Officer's assessment of an earning capacity for Respondent and directed a child support payment based upon Respondent's actual income.

This reversal was based on the lack of a finding by the Hearing Officer that Respondent had voluntarily left the previous employment upon which she based the earning capacity.

Petitioner contends in her statement of matters complained of on appeal that the Court erred (1) in reversing the Hearing Officer's decision without a transcript to review, (2) in failing to apply the appropriate standard of review where the Hearing Officer made a finding of lack of credibility against Respondent, and (3) in setting a support amount based upon testimony not permitted to be heard before the Court during argument on exceptions. These contentions will be addressed seriatim.

With respect to the lack of a transcript, no exceptions were taken to any of the Family Court Hearing Officer's findings, only to the conclusions based upon those findings. Further, the Order itself contains sufficient findings of fact upon which the Court was able to set an appropriate Support Order. A transcript was not needed.

¹The Notice of Appeal indicates that Petitioner is appealing from the Order entered June 17, 1999, which Order denied her request for reconsideration, but from her statement of matters complained of on appeal, it is obvious that she is actually appealing the Order of June 9, 1999.

With respect to the appropriate standard of review in light of the Hearing Officer's finding of lack of credibility against Respondent, the Court notes that we did not disturb this finding nor make an independent finding of credibility. The Hearing Officer made no finding regarding Respondent's reason for leaving his prior employment and this omission prompted the Court's reversal, unrelated to any finding of credibility.

Finally, on the evidence issue, the support amount was based on Respondent's current income as found by the Hearing Officer; the Court did not rely on any testimony which may have been presented during the exceptions argument.

In sum, the Hearing Officer's assessment of an earning capacity was reversed by this Court because that assessment was not supported by the Hearing Officer's findings.

Dated: _____

By the Court,

Dudley N. Anderson, Judge

cc: Brad Hillman, Esq.
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Hon. Dudley N. Anderson