

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

LISA A. DEUEL, : NO. 95-21,608
Petitioner :
 : Domestic Relations Section
vs. : Exceptions
GEORGE H. WHALEY, JR., :
Respondent :

OPINION AND ORDER

Before the Court are Respondent's exceptions to the Family Court Order of November 12, 1999, in which Respondent was directed to pay child support to Petitioner. Argument on the exceptions was heard February 16, 2000, at which time Respondent requested the preparation of a transcript. The transcript was completed May 12, 2000.

Respondent contends the hearing officer erred in assessing him an earning capacity of \$10.00 per hour, indicating that he is currently earning \$8.00 per hour. A review of the testimony shows that at the time of the hearing on November 2, 1999, Respondent was not employed and had not been employed since September 13, 1999. He testified that he left a previous job to work for himself. N.T. November 2, 1999 at 4. Respondent also testified that he had previously been employed by D & M Contractors, off and on since 1990-91, and had earned \$10.00 per hour. He also testified to having worked for Certa-Pro Painters from May through August 1999 and had left that employment to work for someone else. N.T. at 8. Overall, Respondent presented a picture of various jobs, moving from one job to another and back again and the only evidence of his income was that at D & M Contractors, for whom it seems he worked the most, he had earned \$10.00 per hour. The Court finds no error in the hearing officer's assessment of an earning capacity of \$10.00 per hour.

Respondent also contends the hearing officer erred in failing to consider two (2) other minor children for whom he is "financially" responsible. At the hearing, Respondent testified that he has two (2) other children "to care for" but also admitted that "now that I lost my apartment they're back and forth

with their mother for the most part.” N.T. at 10. Respondent also testified that he “ha[d] custody of them, I don’t have to pay support for them.” N.T. at 11. He testified that the children were not with him on a full-time basis. N.T. at 11. Respondent was unable to indicate where the children’s mother worked or her income. Petitioner’s counsel questioned Respondent regarding an allegation that the mother received welfare for both children and in fact the children were not residing with Respondent. The hearing officer allowed Respondent three (3) days in which to provide verification of his claim of support of the children, along with verification of the mother’s employment and income. Respondent failed to provide any verification in either regard. The Court finds no error in the hearing officer’s failure to consider Respondent’s alleged obligation to these children.

ORDER

AND NOW, this day of May, 2000, for the foregoing reasons Respondent’s exceptions are hereby denied and the Order of November 12, 1999 is hereby affirmed.

By The Court,

Dudley N. Anderson, Judge

cc: Domestic Relations Office (Barbra Hall)
Family Court
Elizabeth Sutliff, Esq.
William Miele, Esq.
Gary Weber, Esq.
Hon. Dudley N. Anderson