

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

KIMBERLY LYONS, : NO. 85-20,875
Petitioner :
 : Domestic Relations Section
vs. : Exceptions
CHRISTOPHER MCKIBBEN, :
Respondent :

OPINION AND ORDER

Before the Court are Respondent's exceptions to the Family Court Order of January 28, 2000 in which Respondent was directed to pay child support to Petitioner. Argument on the exceptions was heard May 24, 2000.

In his exceptions Respondent contends the hearing officer erred in directing a lump sum payment for the period from October 25, 1999 through December 10, 1999, and in failing to consider his reduction in income as a result of his change in employment. The Court agrees with Respondent regarding the first exception but it is noted that the matter has already been taken care of administratively by the Domestic Relations Office. The matter will therefore not be addressed further by the Court.

With respect to the second exception, the hearing officer's failure to consider Respondent's reduction in income, the evidence before the hearing officer indicated that Respondent had quit his employment at Mowery Aluminum, where he had worked thirteen (13) years, because there was no health insurance or retirement benefits available there. Respondent instead became employed as a police officer for Muncy Township. Information available to the hearing officer indicated that Respondent earned \$1,832.00 per month from his employment at Mowery Aluminum but only \$708.00 per month from his employment at Muncy Township. The hearing officer reasoned that the difference in incomes was not such as would justify the change for health insurance benefits.

At the argument on exceptions, both parties offered testimony outside that received

by the hearing officer. Respondent indicated that the reason he earned only \$708.00 per month was that from June through November he was serving a probationary period and worked only part-time. He indicates now that he earns approximately \$22,000.00 per year and does not seek to change the Order after November, when he became employed full-time for Muncy Township. Petitioner indicates, however, that Respondent has self-employment as a contractor and has his own company, known as McKibben Construction. Respondent admits he could have earned additional monies through McKibben Construction, considering his part-time hours during that period of time, although he also contends he did not earn such monies. Considering this additional evidence, the Court finds that even if Respondent did not earn additional monies from his self-employment, he had the capacity to do so, and therefore is not entitled to any reduction in his child support.

ORDER

AND NOW, this day of May, 2000, for the foregoing reasons, the Order of January 28, 2000, as administratively adjusted by the Domestic Relations Office, is hereby affirmed.

By The Court,

Dudley N. Anderson, Judge

cc: Family Court
Domestic Relations Office (Barbra Hall)
Kimberly Lyons
955 Dutch Town Road
Muncy, PA 17756
Mark Taylor, Esq.
Gary Weber, Esq.