

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

ELAINE M. MCGEE, : NO. 90-21,321

Petitioner

: Domestic Relations Section

vs. : Exceptions

KENNETH M. GIBBS, :

Respondent

OPINION AND ORDER

Before the Court are Respondent's exceptions to the Family Court Order of May 2, 2000, in which Respondent's request for modification was denied based upon the hearing officer's perception that the Court lacked jurisdiction considering Respondent's appeal of the previous Order for support. Argument on the exceptions was heard June 14, 2000.

This Court entered an Order on February 11, 2000, addressing exceptions to a prior Family Court Order, and providing for certain child support payments. By notice of appeal filed March 10, 2000, Respondent has appealed that Order to the Superior Court of Pennsylvania. On March 17, 2000 Respondent filed a petition to modify child support based upon his employment situation. He then filed, on March 20, 2000, a petition for modification of child support based upon a change in custody which was effectuated after a custody trial on March 17, 2000. Also that date, he filed a counter petition for child support based upon the change in custody. The hearing officer refers only to the petition filed March 17, 2000 and takes no apparent notice of the other two petitions. While the Court agrees the petition filed March 17, 2000, which addresses Respondent's employment and income, raises issues which are on appeal and therefore the Court is without jurisdiction to hear such, the Court does not agree that the petition for modification based upon a change in custody also cannot be heard. Pennsylvania Rule of Appellate Procedure 1701(c) allows the Court to entertain issues which are not involved in the pending appeal. As the change from primary custody with one (1) party to equally shared custody is not an issue on appeal, this Court

does have jurisdiction to modify the prior Order based on the change in custody alone. The incomes as found by this Court's Order of February 11, 2000 must be considered in providing for the modification based on the change in custody.

As the counter petition for child support filed March 20, 2000 is necessarily based on a finding that the incomes are other than that found by this Court in its Order of February 11, 2000, however, the Court is also without jurisdiction to hear that counter petition.

At argument, the parties stipulated to this Court simply making the calculation rather than remanding the matter.

Considering Petitioner's income of \$1,577.00 per month and Respondent's income of \$3,193.00 per month, effective March 20, 2000 through July 2, 2000, Respondent has an obligation for the support of the parties' one (1) minor child, considering his equal shared custody arrangement, of \$419.92 per month. Effective July 3, 2000, considering Petitioner's income of \$1,577.00 per month and Respondent's income of \$2,363.00 per month, Respondent has an obligation of \$309.96 per month. The child care contribution is not being calculated at this time as there may be a change in the child care amount based upon the change in the custody arrangements and therefore both parties will be directed to provide verification of their child care expenses on or after March 20, 2000 to the Domestic Relations Office and the Domestic Relations Office will thereafter modify the child care contribution contained in the Order of February 11, 2000.

ORDER

AND NOW, this 10th day of June, 2000, for the foregoing reasons, the Order of February 11, 2000 is hereby modified with respect to Petitioner Elaine McGee, in accordance with the calculations noted above. Both Petitioner Elaine McGee and Respondent are directed to provide to the Domestic Relations Office verification of any child care expense incurred after March 20, 2000 and the Domestic Relations Office is thereafter directed to provide for an appropriate adjustment to the child care contribution Ordered by this Court on February 11, 2000.

As modified herein, the Order of February 11, 2000 shall continue in effect.

The petition for modification filed March 17, 2000 and the counter petition for support filed March 20, 2000 are hereby deferred pending appeal.

By The Court,

Dudley N. Anderson, Judge

cc: Domestic Relations Office
Family Court
Elaine McGee, 112 McNamee Road, Trout Run, PA 17771
Patricia Bowman, Esq.
Janice R. Yaw, Esq.
Gary Weber, Esq.
Hon. Dudley N. Anderson