

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

VICKI C. PROBST,
Petitioner

: NO. 00-20,080

vs.

: Domestic Relations Section
: Exceptions

DAVID L. PROBST,
Respondent

:

OPINION AND ORDER

Before the Court are Respondent's exceptions to the Family Court Order of May 11, 2000, in which Respondent was directed to pay to Petitioner child support and spousal support, as well as an additional amount toward a mortgage payment. Argument on the exceptions was heard July 5, 2000.

Respondent contends the hearing officer erred in applying a 20% deviation to the child and spousal support based upon the mortgage payments, in failing to provide Respondent with credit toward the child and spousal support for paying mortgage payments in the past, in failing to provide for credit in equitable distribution for paying the mortgage payment, in adding a tax refund to his income, and in the calculation of the spousal support by failing to consider the increased child support. These will be addressed in order.

With respect to the 20% deviation provided by the hearing officer for the mortgage payment, the Court agrees with Respondent that such was in error considering the guidelines provide a specific formula for a mortgage contribution when the mortgage payments exceed 25% of the Petitioner's net income, considering the child and spousal support award. In the instant matter, although the hearing officer referenced the rule, he sidestepped it by basing a 20% deviation on the mortgage payments as an "unusual fixed obligation." Considering the specific rule which addresses contributions toward mortgage payments, the Court does not believe the legislature intended that mortgages

be considered unusual fixed obligations which support a deviation over and above the specific contribution provided by the rule. The contribution will therefore be recalculated by this Court.

Next, with respect to the lack of credit for mortgage payments, the Court agrees that since Respondent has been paying the mortgages¹, the homeowner's insurance and real estate taxes, he should be provided credit against the child and spousal support obligation since the guidelines assume that such expenses will be paid by the person living in the residence, in this case the Petitioner. Since there is no complete record of those payments, Respondent will be directed to provide verification of his payments made during the relevant time period to the Domestic Relations Office and that office will provide him with credit against his arrearage. With respect to the contention the hearing officer should have ordered a credit in equitable distribution, as credit will be provided against the child and spousal support, this exception will not be addressed further.

Next, with respect to the tax refund, it appears the hearing officer erred by adding the federal income tax refund of \$4,590.00 to Respondent's gross income, which necessarily included that \$4,590.00. Respondent has not specifically raised this issue, apparently not picking up the mistake, but contends in his exception that he did not receive the entire \$4,590.00 refund as such was intercepted in part by the IRS. It appears from the Exhibit introduced at argument, which introduction was requested by the Court, that Respondent received only \$2,100.00 after the intercept. It also appears from that document, however, that the intercept was based on payroll taxes owed by Respondent's father's business. It appears Respondent's father allows Respondent to claim the loss from the business on Respondent's tax return in order to save him tax dollars. Had Respondent not claimed the loss, his federal income tax liability would have been \$1,826.00. By claiming the loss but then having the refund intercepted for payroll taxes, Respondent's tax liability is \$2,490.00. Respondent's child support obligation should not be affected by this consequence of using his father's business as a tax write-

¹It appears there are three (3) mortgages on the marital residence.

off. The Court will therefore not add the \$4,590.00 federal tax refund as did the hearing officer, but will subtract \$1,826.00 from his gross income, thus considering a portion of the tax refund but without considering the loss or its tax effects. Respondent's monthly net income is, therefore, \$3,471.00.

Finally, with respect to the formula for spousal support, since the Court is not upholding the 20% deviation, the exception is deemed moot.

Considering Petitioner's income of \$2,040.00 per month and Respondent's income of \$3,471.00 per month, the guidelines require a child support payment for the parties' one (1) minor child of \$627.97 per month plus a contribution toward health insurance of \$55.33 per month. A spousal support obligation is therefore calculated at \$224.31 per month. The mortgage payment contribution is calculated at \$89.67 per month, representing 50% of the excess mortgage payments, totaling \$916.23 per month, over 25% of Petitioner's monthly income (including child and spousal support) of \$2,947.61 per month, which is \$736.90 per month.

ORDER

AND NOW, this day of July, 2000, for the foregoing reasons the Order of May 11, 2000 is hereby modified to provide, effective January 19, 2000, for a child support payment of \$683.30 per month (which includes a contribution toward health insurance of \$55.33 per month), a spousal support payment of \$224.31 per month and a mortgage contribution of \$89.67 per month. The Order is also modified with respect to percentage responsibility for excess unreimbursed medical expenses such that Petitioner shall be responsible for 37.02% of such and Respondent shall be responsible for 62.98% of such.

Respondent shall provide to the Domestic Relations Officer verification of all mortgage payments, homeowner's insurance premiums and real estate taxes for the marital residence which he has paid during the period of time covered by the instant Order and the Domestic Relations Office shall provide him with credit against his obligations as directed herein. A copy of the verifications provided to the Domestic

Relations Office shall also be provided by Respondent to Petitioner's counsel.

As modified herein, the Order of May 11, 2000 is hereby affirmed.

By The Court,

Dudley N. Anderson, Judge

cc: Family Court
Barbra Hall, Domestic Relations Office
Patricia Bowman, Esq.
Janice Yaw, Esq.
Gary Weber, Esq.
Hon. Dudley N. Anderson