

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

JONI L. RITTER, Petitioner	: NO. 94-21,616 : : Domestic Relations Section
vs.	: Exceptions : :
JOHN M. RITTER, SR., Respondent	: : :

OPINION AND ORDER

Before the Court are Respondent's exceptions to the Family Court Order of May 2, 2000 which denied Respondent's request for modification of the Order of November 23, 1999. Argument on the exceptions was heard July 5, 2000.

Respondent contends the hearing officer erred in failing to find a material and substantial change of circumstance, i.e., a reduction in his income, in failing to consider the rent assistance and food stamps received by Petitioner as other income in the home and thus providing a deviation below the guidelines, and in failing to consider Petitioner's earned income credit tax refund. These will be addressed in order.

With respect to the alleged reduction of income, Respondent presented his 1999 personal federal income tax return as well as a comparison report comparing his 1999 personal federal income tax return with his 1998 personal federal income tax return. Respondent, who operates a parking lot sweeping business as an S Corporation, testified that his income decreased in 1999 from 1998 by approximately \$11,000.00 due to the loss in February 1999 of a contract with Wal-Mart which had provided gross receipts of \$2,000.00 per month. Respondent indicated that he did obtain two (2) additional contracts in approximately August 1999 but the total gross receipts from those two (2) contracts is only \$800.00 per month and such did not completely make up for the loss of the Wal-Mart contract. He further testified to an increase in fuel expense, an increase in insurance expense, and an increase in wage expense. None of this

testimony was rebutted by Petitioner. The hearing officer noted the lack of a corporate tax return and Respondent's indication that there was work available if he was able to work. A review of the transcript indicates that the corporate tax return was not available at the time of the hearing but was offered to be provided, which offer the hearing officer declined, and that the statement regarding the availability of work was made to a counselor to the effect that there is work available if Respondent is able to work without Petitioner's interference but that Respondent was having troubles in his business. At argument, Respondent's counsel offered the corporate tax return which is now available but Petitioner's counsel objected to having that document introduced into evidence at this time. Considering the unrebutted testimony regarding the decline in Respondent's business and the personal tax return showing his 1999 income, the Court believes that a reduction based upon Respondent's 1999 income is warranted.

Considering the 1999 tax return showing a distribution from the corporation of \$17,479.00, the federal tax liability of \$1,564.00 and the state tax liability of \$489.00, Respondent has a monthly net income of \$1,285.00.

With respect to Respondent's contention the Court should consider Petitioner's receipt of food stamps and rental assistance, the Court declines to do so. The guidelines do not allow consideration of public assistance as income and although Respondent is arguing that such should instead be considered as other income in the household upon which to base a deviation, similar to SSI, the Court does not believe the similarity between the food stamps and rental assistance and the SSI cash payments is such as to support a similar treatment. SSI payments are considered as additional income in the household only to the extent they exceed the expenses which they are intended to cover. Food stamps are available only for the purchase of food and rental assistance goes directly toward the payment of rent and therefore neither provide the recipient with additional cash as would an SSI payment. Moreover, in this case Petitioner has been assessed an earning capacity although she actually earns less. The food stamps and rent assistance are based on her actual earnings. If she earned as much as the capacity with which she is assessed, her food stamps and rent assistance would decrease.

Finally, with respect to the earned income credit, Petitioner testified that such was intercepted for payment of past due taxes which apparently were incurred either by the parties together or as a result of Respondent's business. The Court will therefore not treat that credit as additional income to Petitioner.

Therefore, considering Petitioner's earning capacity of \$750.00 per month and Respondent's income of \$1,285.00 per month and Respondent's partial custody of the three (3) children in Petitioner's primary custody, of 42.7%, Respondent has an obligation to Petitioner for the three (3) children in her custody of \$413.27 per month. Petitioner has an obligation to Respondent for the support of the child in his custody of \$180.00 per month. Respondent also has an obligation to Petitioner for spousal support of \$36.52 per month. Overall, therefore, Respondent has an obligation to Petitioner of \$269.79 per month.

According to the records of the Domestic Relations Office, Respondent's account is current and therefore the instant reduction, retroactive to November 30, 1999, will result in a credit of approximately \$3,000.00. Respondent's obligation to make payments to Petitioner will therefore be suspended until that credit is consumed in full. The Domestic Relations Office will be directed to notify Respondent when he should reinstate his payments in the above amounts.

### ORDER

AND NOW, this day of July, 2000, for the foregoing reasons the Order of November 23, 1999 is hereby modified to provide for a child support payment of \$233.27 per month and a spousal support payment of \$36.52 per month, retroactive to November 30, 1999. Respondent's obligation to make payments under this Order shall be suspended until the credit resulting from the retroactive effect of this Order is consumed in full. The Domestic Relations Office shall notify Respondent when payment should be reinstated.

With respect to excess unreimbursed medical expenses, the Order of March 11, 1999 is hereby modified, effective November 30, 1999, to provide that Respondent shall

be responsible for 63.14% of such and Petitioner shall be responsible for 36.86% of such.

As modified herein, the Orders of March 11, 1999 and November 23, 1999 are hereby affirmed.

By The Court,

Dudley N. Anderson, Judge

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