

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

KATHY MILLER (ZALER), : NO. 97-20,896  
Petitioner :  
 : Domestic Relations Section  
vs. : Exceptions  
DALE K. MILLER, :  
Respondent :

OPINION AND ORDER

Before the Court are Respondent's exceptions to the Family Court Order of December 29, 1999 in which Respondent was directed to pay to Petitioner child support for the support of the parties' one minor child. Argument on the exceptions was heard March 1, 2000.

In his first exception, Respondent contends the hearing officer erred in considering as income the \$5,000.00 received for the sale of his business in 1998. Respondent contends that the \$5,000.00 had been included as income on his 1998 tax return, specifically on Schedule C, and even including that \$5,000.00, he had an overall loss from the business. Examination of the tax return indicates that the \$5,000.00 sale proceeds was not included as income, however. The only income included on the Schedule C was Respondent's "share of income from game machines" of \$6,932.00 and income from "snacks served" of \$1,100.00, for a total income of \$8,032.00. The hearing officer considered the \$5,000.00 based on Respondent's testimony that he received approximately \$5,000.00 for the sale of his business. The Court finds no error in consideration of this figure.

In his second exception, Respondent contends the hearing officer erred in including the sale proceeds of \$5,000.00 as income in calculation of his support obligation inasmuch as the sale took place over one (1) year prior to Petitioner's request to reopen the child support. It appears that the previous Order in this matter suspended the child support obligation in 1997 and that Petitioner filed her request to reopen the matter August 31, 1999. Respondent sold the business in February 1998. The hearing officer averaged the \$5,000.00 over a twelve (12) month period beginning August 31, 1999 and included that average monthly amount in his

income for that twelve (12) month period. The Court does agree with Respondent that considering the fact that the business was sold approximately eighteen (18) months prior to Petitioner's request to reopen the matter, and considering that there was no support obligation in effect at the time of the sale of the business, the sale proceeds should not be considered income at this time.

Finally, in his third exception, Respondent contends the hearing officer erred in assessing him an earning capacity of \$750.00 per month. After a review of the Order and the hearing officer's findings, the Court finds no error in the assessment of an earning capacity in this matter.

Considering Petitioner's income of \$2,284.00 per month and Respondent's earning capacity of \$750.00 per month, the guidelines require a payment for the support of one (1) minor child in the amount of \$165.22 per month. The arrearage payment of \$50.00 per month directed by the hearing officer must be lowered to \$35.00 per month so as not to leave Respondent with less than \$550.00 income for his own living expenses. Further, the Order must be modified to provide that at the current time Respondent has no further obligation to contribute to medical expenses of the child, as he is already contributing the maximum amount allowed under the guidelines.

#### ORDER

AND NOW, this 3rd day of March, 2000, for the foregoing reasons, it is hereby ORDERED AND DIRECTED that the Family Court Order of December 29, 1999 be modified to provide for a payment for the support of the parties' one (1) minor child of \$165.22 per month, effective August 31, 1999. Respondent shall pay an additional \$35.00 per month toward the arrearage and at this time shall have no further obligation to contribute to the child's unreimbursed medical expenses.

As modified herein, the Order of December 29, 1999 is hereby affirmed.

By The Court,

Dudley N. Anderson, Judge