

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

LAUREN A. BALLIET, : NO. 91-20,801
Petitioner :
 :
 :
vs. : DOMESTIC RELATIONS SECTION
 : Exceptions
NOEL T. FERARI, :
Respondent :

OPINION AND ORDER

Before the Court are Respondent's exceptions to the Family Court Order of July 28, 2000 in which Respondent was directed to pay child support for the parties' two (2) minor children. Argument on the exceptions was heard September 13, 2000, at which time Respondent requested the preparation of a transcript. That transcript has been prepared and the exceptions are now ripe for decision.

In his first exception, Respondent contends the hearing officer erred in calculating his income from Vassallo Surveying. A review of the documentation presented at the Family Court hearing indicates that the hearing officer used only three (3) of the four (4) pay stubs from that employment which were presented at the hearing, averaging those three (3) net pays. As those three (3) pay periods were for 21 ½ hours, 17 hours and 26 ½ hours, and the pay stub omitted from the average was for 8 hours, by omitting that 8 hour pay period, the hearing officer calculated a bi-weekly net of \$142.00, rather than \$120.00. Respondent contends all four (4) pay periods must be averaged to come up with his income from this second job. A review of the transcript indicates that Respondent testified that he had worked at Vassallo engineering on a part-time basis (in addition to his full-time job as a fireman) for approximately eight (8) weeks and that he had thus far averaged eight (8) hours per week. There was no indication that the eight (8) hour bi-weekly pay period was out of the ordinary, and in fact all four (4) pay periods show an average of approximately nine (9) hours per week. It does appear, therefore, that all four (4) pay stubs

should be considered and Respondent should be assessed with an income of \$120.00 bi-weekly from this second job, rather than \$142.00.¹

In his second exception, Respondent contends Petitioner's earning capacity, assessed in 1998 based upon her employment at the Post Office which she voluntarily terminated, should be increased based upon the increases awarded to postal workers since that time. Respondent admits, however, that no evidence in support of this contention was offered at the hearing in Family Court. The exception will therefore not be considered further.

Similarly, in his third exception, Respondent contends Petitioner's business will be expanding in the near future and therefore requests the Court assess Petitioner a higher earning capacity at this time, but, again, Respondent presented no evidence of Petitioner's earning capacity based upon the anticipated expansion. The Court will therefore not consider this exception either.

At argument, Respondent moved to amend his exceptions to include his allegation that the hearing officer erred in her calculation of his income as a fireman. The Court granted that oral motion to amend his exceptions but after reviewing the pay stub, finds no error in the hearing officer's calculation of \$2,242.50 per month.

Considering Petitioner's earning capacity of \$2,245.00 per month and Respondent's income of \$2,499.00 per month (\$2,242.00 from his primary employment, \$180.00 from his secondary employment² and his tax refund averaging to \$77.00 per month), the guidelines suggest a payment for the support of two (2) minor children of \$676.48 per month. Applying the 10% deviation granted by the hearing officer, Respondent's obligation is reduced to \$608.84 per month.

¹The Court notes it may instead have been simply an oversight on the hearing officer's part as the fourth paystub was copied on a separate sheet of paper.

²\$120.00 bi-weekly for 36 weeks, averaged over 12 months.

ORDER

AND NOW, this day of October, 2000, for the foregoing reasons, the Family Court Order of July 28, 2000 is hereby modified to provide for a support payment of \$608.84 per month. As modified herein, the Order of July 28, 2000 is hereby affirmed.

By the Court,

Dudley N. Anderson, Judge

cc: Lauren Balliet, RR 3, Box 392-A, Watsontown, PA 17777
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Family Court
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Hon. Dudley N. Anderson