IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

JUDY M. LYNN, Petitioner	: NO. 91-21,250 :
vs.	: DOMESTIC RELATIONS SECTION : Exceptions
BRIAN L. COCHRAN, Respondent	:

OPINION AND ORDER

Before the Court are Respondent's exceptions to the Family Court Order of March 31, 2000, in which Respondent was directed to pay child support to Petitioner. Argument on the exceptions was heard August 30, 2000.

As Respondent is self-employed and presented no direct evidence of his income from that self-employment, the hearing officer found it necessary to analyze his profit and loss statement, as well as his testimony, to determine his income. Respondent raises ten (10) instances of alleged error in his written exception but at argument focused on four (4) particular items.

First, Respondent contends the hearing officer erred in including in his income the entire mortgage payment expense shown on the profit and loss statement. The testimony indicated that the mortgage payment expense included the mortgage on Respondent's rental property, the mortgage on his home, and a loan for "stuff for the garage". Notes of testimony, February 1, 2000 at 17-19. Respondent contends the interest on the business loan and the rental property mortgage should be deducted. After analyzing all documentation presented, however, it is impossible for the Court to determine what portion of the payments is attributable to said interest. The Court therefore finds no error in including the entire amount.

Second, Respondent contends the hearing officer erred in including a rental capacity. The evidence indicated that Respondent owns a duplex, receives $450.00 per

month rent from one (1) side but allows his brother to live in the other side rent free. Respondent, however, pays the entire mortgage payment. The hearing officer assessed Respondent with a "rental capacity" of $450.00 per month for the side in which Respondent's brother lives. Respondent argues that he should not be required to collect rent, just as he should not be required to work a second job. While the Court agrees that Respondent may rid himself of the property entirely and not be held to a rental earning capacity, the Court does not agree that he can let the property be used by someone else, foregoing the profit which he could use to help support his child. The Court therefore finds no error in the hearing officer's assessment of a rental capacity.

Third, Respondent contends the hearing officer erred in including race car winnings without deducting any expense. The Order indicates, however, that the hearing officer found the race car expenses are paid by the business and already deducted in calculating Respondent's income. The evidence supports this finding and therefore this contention is without merit.

Finally, Respondent contends the hearing officer erred in failing to deduct from his business income a fair wage attributable to his girlfriend who works in the business. Respondent presented no evidence of what a fair wage would be, nor did he present evidence regarding his girlfriend's hours of work or the tasks she performs. The Court therefore finds no error in the hearing officer's failure to deduct a fair wage as a business expense.

ORDER

AND NOW, this 13th day of September, 2000, for the foregoing reasons, Respondent's exceptions are hereby denied and the Order of March 31, 2000 is hereby affirmed.

By the Court,

Dudley N. Anderson, Judge