

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

TSM,	:	NO. 98-21,005
Petitioner	:	
	:	
vs.	:	DOMESTIC RELATIONS SECTION
	:	Exceptions
CEH,	:	
Respondent	:	

OPINION AND ORDER

Before the Court are Respondent's exceptions to the Family Court Order of August 22, 2000, in which his request for modification to a prior support Order was denied. The hearing officer determined that Respondent had failed to show a material and substantial change of circumstances from those existing at the time of entry of the previous Order. Argument on the exceptions was heard November 15, 2000.

In the Order of August 22, 2000, the hearing officer determined that Respondent had previously been employed as a truck driver but lost that employment due to the loss of his CDL and that the loss of his CDL was occasioned by accumulation of points for speeding and log book fines. Considering such a voluntary loss of employment, Respondent was held to his prior earning capability. Respondent contends in his exceptions that he has new employment and is not making as much money as he had as a truck driver. Since the Court agrees that Respondent's speeding and log book fines were voluntary actions which led to the loss of his employment, the hearing officer's continuation of a earning capacity is appropriate.

Respondent also contends that he has custody of his son more than 50% of the time, pursuant to an Order entered September 22, 2000. While that Order was entered subsequent to the Family Court Order of August 22, 2000, both parties agreed at argument to consider any change occasioned

by such. The Court has reviewed the Order, however, and found that there is actually no change. The prior custody arrangement provided for the child to be with Respondent every weekend three (3) days out of seven (7), for a total of nine (9) days out of every three (3) weeks. The current Order provides for the child to be with Respondent four (4) days the first week, four (4) days the second week and one (1) day the third week, a total of nine (9) days out of every three (3) weeks. The prior arrangement for the summer was continued in the current Order. Respondent has thus failed to show a change of circumstances which would justify modification of the prior Order. It is noted that the prior Order does provide Respondent with a reduction in his support amount based upon his custody arrangements, which give him 44.66% of the children's time.

ORDER

AND NOW, this 21st day of November, 2000, for the foregoing reasons, Respondent's exceptions are hereby denied and the Order of August 22, 2000 is hereby affirmed.

By the Court,

Dudley N. Anderson, Judge

cc: TM
Pat Thorne, Esq.
Family Court
Domestic Relations
Gary Weber, Esq.
Hon. Dudley N. Anderson