

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

S R, : NO. 97-21,702
Petitioner :
 :
vs. : DOMESTIC RELATIONS SECTION
 : Exceptions
DP, :
Respondent :

OPINION AND ORDER

Before the Court are Petitioner’s exceptions to the Family Court Order of September 1, 2000, as amended by Order dated September 8, 2000, in which the hearing officer granted Petitioner’s request to have the dependency exemption for the children returned to her, but not until the tax year 2001. Argument on the exceptions was heard November 1, 2000. Petitioner contends the hearing officer should have awarded her the exemption for tax year 2000 as well.

In his Order dated September 1, 2000 the hearing officer noted that Petitioner was requesting the dependency exemptions be returned to her, previously awarded to Respondent, based on the fact that she had recently returned to work. The hearing officer then noted that “during the year of 2000, it would continue to be to the advantage of Mr. P to continue to have the tax exemption of the three (3) minor children.” The Order does not go on to indicate why it would be to Respondent’s advantage, by specifically indicating the tax dollars saved by awarding the exemptions to him rather than to Petitioner. Inasmuch as the exemptions are to be awarded to the non-custodial parent only when doing so would provide a greater income available for child support, considering the circumstances of both parties, it is necessary to specifically analyze each party’s tax benefit prior to determining who should be able to claim the exemptions. Further, the Court believes that when both parties are working, the actual tax returns must be presented in order to make a proper analysis.

In the instant matter, although Petitioner’s 1999 federal income tax return was introduced into evidence, Respondent’s was not. Both parties have income in 2000. Therefore, the hearing officer

should have received into evidence both tax returns as well as present income information in order to estimate their future tax liability and the potential tax savings realized by each by claiming the exemptions. It appears a remand is necessary to consider the appropriate information.

As a general rule, the party seeking the exemptions from the other party will have the burden of proof. Here, the exemptions had been awarded to Respondent in a previous Order and Petitioner was seeking to regain them. She therefore had the burden of proof. She cannot be expected to have control over Respondent's tax return, however, and the record should have been held open for such. The Court will not simply dismiss the matter, however, as the procedures prior to this Opinion have not been well-defined and fault cannot properly be placed with Petitioner.

ORDER

AND NOW, this 8th day of November, 2000 for the foregoing reasons, the matter is hereby remanded to Family Court for presentation of the appropriate tax information as well as wage information for year 2000 and for re-calculation of the appropriate child support amount, if necessary, based on the actual award of the exemptions.

By the Court,

Dudley N. Anderson, Judge

cc: Family Court
Barbra Hall, Domestic Relations
William Miele, Esq.
Michael Morrone, Esq.
Gary Weber, Esq.
Hon. Dudley N. Anderson