

BRAD ELLER, : IN THE COURT OF COMMON PLEAS OF
 : LYCOMING COUNTY, PENNSYLVANIA
 Petitioner/Plaintiff : DOMESTIC RELATIONS SECTION
 :
 vs. : NO. 00-21,342
 :
 MONICA ELLER, :
 Respondent/Defendant : EXCEPTIONS

Date: June 15, 2001

OPINION and ORDER

Before the Court is Respondent Ms. Eller’s exception to the Family Court Order of October 10, 2000 in which Respondent was directed to pay child support to Petitioner for the parties’ three (3) minor children. The sum was calculated at \$184.00 per month. The hearing officer determined this amount by assigning Respondent a full time, minimum wage earning capacity. In her exceptions, Respondent contends the hearing officer erred when he gave her full time, minimum wage earning capacity. This due to the fact that Respondent is currently enrolled as a full time student at the Pennsylvania College of Technology, and was seeking an earning capacity of part time versus full time due to the fact that her schedule leaves no time for full time work.

In contrast Petitioner Mr. Eller’s cross-exception claims that the Family Court Hearing Officer erred in not assessing Respondent a higher earning capacity of \$8.50 per hour versus full time, minimum wage. Petitioners’ contention is that Respondent’s earning capacity is \$8.50 per hour due to her previously held employment, at Tura Frames, earning that amount, at the time of the last support Order.

Respondent subsequently terminated her employment, in order to spend more time with one of her children, with whom she had custody. Primary physical custody of this child is now with Petitioner Mr. Eller and Respondent is now pursuing her college education, expecting to receive a Bachelor of Science degree in nursing.

With respect to the Respondent's earning capacity, the hearing officer found that a full time student has a full time earning capacity versus part time earning capacity based on *Jann D. Marzzaco v. Joseph T. Marzzacco*, Docket No. 89-20,507.¹ Although the facts in *Marzzacco* differ somewhat from the present case, the results are analogous. "A non-divorced parent cannot decide to attend school without making provisions for support of his family and neither can a divorced parent. In *Marzzacco* the father's request is that his support obligation be put on hold for four years. This will not be permitted. To rule otherwise in view of the totality of the circumstances involved, this would lead to the improper result that the child would be denied a reasonable level of support while the father pursues his educational goals." (*Marzzacco v. Marzzacco*, Lyc. Cty. No. 89-20,507 (3/31/94, Kieser, J.)

Based on the Court's decision in *Marzzacco*, it is this Court's determination that both Respondent and Petitioner's exceptions be denied. Respondent being a full time student will continue having assigned to her a full time, minimum wage earning capacity. Furthermore, Respondent is required to pay Petitioner \$184.00 a month, plus \$16.00 per month in arrearages until paid in full.

¹ Additional cases, all fact specific to *Marzzacco* used in the Court's determination are as follows: *JB. v. LEK II*, (No. 00-20,656), *Schon v. Schon* (21 Lyc. 136), *Laws v. Laws* (758 A.2d 1226).

ORDER

For the foregoing reasons, the Family Court Order of October 10, 2000 is hereby affirmed that Respondent Ms. Eller, shall pay child support for three minor children, to Petitioner Mr. Eller, in the amount of \$184.00 per month, and \$16.00 per month on the arrearage, until the said arrearage is paid in full.

BY THE COURT:

William S. Kieser, Judge

cc: Randi Dincher, Esquire
William J. Miele, Esquire
Domestic Relations
Family Court
Judges
Suzanne R. Lovecchio, Law Clerk
Gary L. Weber, Esquire (Lycoming Reporter)