

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

TDB,	:	NO. 00-21,066
Petitioner	:	
	:	
vs.	:	DOMESTIC RELATIONS SECTION
	:	Exceptions
BKB,	:	
Respondent	:	

OPINION AND ORDER

Before the Court are Petitioner’s exceptions to the Family Court Order of February 21, 2001 in which his Petition for Modification of Alimony Pendente Lite was denied and Respondent was directed to pay child support to him for the support of the parties’ one (1) minor child. Argument on the exceptions was heard May 2, 2001, at which time a transcript was ordered. That transcript was completed and the matter is now ripe for decision.

In his exceptions, Petitioner contends the hearing officer erred in calculating his income on the basis of the first forty-six (46) weeks of 2000 even though Petitioner presented evidence that he had a significant decrease in income due to a cut in overtime, the hearing officer erred in calculating Respondent’s income based on the twenty-seven (27) weeks prior to December 11, 2000 because she had had an increase in her income over the year 2000, the hearing officer erred in determining that the W-2’s of each party showed their income to be not significantly different than the incomes found on December 11, 2000,¹ and the hearing officer erred in failing to provide for reimbursement for child care. These will be addressed seriatim.

With respect to Petitioner’s income, the Court agrees with Petitioner that inasmuch as he

¹Respondent’s request for alimony pendente lite was initially heard December 11, 2000 and an Order was entered that date. Petitioner’s request for modification sought a review of that Order.

presented credible evidence that he had suffered a significant decrease in income as a result of company policy to eliminate overtime in his department, the hearing officer should have considered that reduced income and provided relief. Petitioner presented testimony that the correctional facility at which he is employed made it known to employees on or about November 14, 2000 that overtime was being eliminated in his department, and provided a earnings data statement broken down by quarters showing a significant reduction in income during the fourth quarter as a result of a complete lack of overtime, compared to significant overtime in the previous three (3) quarters. The hearing officer stated during the hearing that he would not consider any evidence of the reduction of income as a result of a cut in overtime but did not provide any reason. He indicated to the parties at the time of the hearing that he would base the Order on incomes as determined by their W-2's. The parties submitted their W-2's but the hearing officer found them to not differ significantly from the incomes found on December 11th. Respondent has raised this issue in his exceptions and the W-2 supports his contention in the first regard that he has suffered a reduction in income as it does show a significant decrease in his income from that found on December 11th. The W-2 shows a monthly net income of \$2,474.00, after consideration of taxes, 5% mandatory retirement and union dues. The December 11, 2000 Order found Petitioner to have a monthly net income of \$3,099.00. The earnings data statement shows gross earnings during the fourth quarter of \$9,205.60, or 20.34% of the total earned that year. Deducting 20.34% of his taxes shown on his W-2, 5% retirement, and union dues for the quarter, results in Petitioner having a monthly net income during the fourth quarter of 2000 of \$2,004.00. The pay stub provided at the February 21, 2001 hearing shows a monthly net income of \$2,204.00.² The Court sees no reason to not grant Petitioner's request for modification for alimony pendente lite and base his support obligations on his current income of \$2,204.00 per month.

With respect to Respondent's income, although Petitioner contends the evidence showed that such had increased over the year, a review of the transcript indicates no such evidence and therefore

²It is assumed that the W-2 results in a lower monthly net income as the federal taxes are probably higher as a result of the earlier overtime putting Petitioner in a higher tax bracket.

her W-2 income of \$1,393.00 per month will be used to calculate her support obligation.³

With respect to Petitioner's contention the hearing officer erred in finding the W-2 incomes to be not significantly different than those found on December 11, 2000, the Court has already addressed this issue, agreeing with Petitioner that his W-2 income is significantly less.

Finally, with respect to the child care issue, Petitioner did request a contribution to child care and presented evidence that he pays an average of \$30.00 per week. He does pay a varying amount depending on Respondent's shift, which changes from time to time, and her availability to provide care for the child. The hearing officer should have provided for some contribution, even if the exact amount is not capable of calculation. The Court will provide for a contribution based on the \$30.00 per week average and require Petitioner to submit quarterly verifications of amounts actually paid so that the Domestic Relations Office can provide for an appropriate adjustment on a quarterly basis.

Considering Petitioner's income of \$2,204.00 per month net and Respondent's income of \$1,393.00 per month net, the guidelines require an alimony pendente lite payment of \$324.40 per month. Considering that payment, the guidelines require a child support payment from Respondent to Petitioner of \$341.41 per month. The overall obligation owing from Respondent to Petitioner is thus \$17.01 per month. The child care at \$30.00 per week, or \$1,560.00 per year is reduced by the 25% tax credit factor to \$1,170.00 per year, of which \$558.68 is Respondent's share. This adds an additional \$46.56 per month to her child support obligation.

ORDER

AND NOW, this 1st day of June, 2001, for the foregoing reasons, Petitioner's exceptions are hereby granted in part and the Family Court Order of February 21, 2001 is hereby modified to provide that Respondent pay to the Domestic Relations Office for the support of one (1) minor child the sum of \$63.57 per month. This is an offset of her child support obligation of \$341.40 per month

³This figure was calculated by deducting taxes, the retirement as shown on the W-2, and the same union dues paid by Petitioner, as it is assumed that Respondent, who works for the same employer, also pays such dues.

and her child care contribution of \$46.56 per month against Petitioner's alimony pendente lite obligation to Respondent of \$324.40 per month.

Petitioner shall provide to the Domestic Relations Office verification of the actual child care expense incurred from January 29, 2001 through March 31, 2001, within ten (10) days of this date he shall provide verification of the actual child care expense incurred for each quarter by the 10th of the month following the end of the quarter. The Domestic Relations Office shall make any required adjustments upon receipt of these verifications.

Petitioner shall be responsible for 52.25% of the child's excess unreimbursed medical expenses and Respondent shall be responsible for 47.75% of such.

These modifications shall be effective January 29, 2001, the date of Respondent's Petition for Modification. The child support obligation provided for in the Order of February 21, 2001 as amended by Order dated March 7, 2001⁴ is affirmed with respect to the period from December 11, 2000 through January 29, 2001.

By the Court,

Dudley N. Anderson, Judge

cc: Family Court
Domestic Relations
Howard Langdon, Esq.
Janice Yaw, Esq.
Gary Weber, Esq.
Hon. Dudley N. Anderson

⁴The Order was amended inasmuch as the February 21, 2001 required Respondent to pay Petitioner but it should have required Petitioner to pay Respondent. The amended Order corrected this error.