

**IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA**

WLB, : NO. 00-21,567  
Petitioner :  
 :  
vs. : DOMESTIC RELATIONS SECTION  
 : Exceptions  
HSS, :  
Respondent :

OPINION AND ORDER

Before the Court are Respondent's exceptions to the Family Court Order dated February 9, 2001, in which Respondent was directed to pay child support to Petitioner for the parties' one (1) minor child. Argument on the exceptions was heard May 23, 2001.

In his exceptions, Respondent contends the hearing officer erred in establishing his income/earning capacity, in failing to deviate downward based on mother's reduced living expenses, and in establishing the effective date of the Order.<sup>1</sup> None of these exceptions has merit.

With respect to Respondent's income/earning capacity, the hearing officer found that Respondent had worked full time as a truck driver until July 7, 2000, and then began his own construction company, that he was paid \$3,603.81 from that company from July 2000 through December 2000 and that he now works part-time as a truck driver until his company becomes more profitable. The hearing officer averaged his full-time truck driver income earned during the first half of the year with his business income earned during the second half of the year. Apparently Respondent seeks to have his support Order based on his income from his business alone, which he contends

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<sup>1</sup>In his written exceptions, Respondent also contends the hearing officer should have assessed Petitioner with a higher earning capacity but inasmuch as Respondent did not pursue this matter at argument, the Court will not address it further.

operated as a loss and thus gave him no income, thereby eliminating any support obligation altogether. Actually, inasmuch as Respondent had established an earning capacity as a truck driver, and would have been able to continue in that capacity, the hearing officer could have, and perhaps should have, assessed Respondent a full-time truck driver earning capacity. Instead, she gave Respondent in effect a part-time truck driver earning capacity, allowing him to devote half of the year to his construction company, which he indicates in any event is seasonal. Petitioner does not argue for a full-time truck driver earning capacity and therefore the Court will not disturb the hearing officer's assessment, which appears appropriate under the circumstances.

With respect to Respondent's argument the hearing officer should have deviated downward because Petitioner lives with her father and brother and therefore has reduced living expenses, such is not an appropriate factor for deviation. The Court also notes that father has reduced living expenses as he pays no mortgage and his wife's father pays for their car insurance.

Finally, with respect to the effective date, the hearing officer provided for the Order to become effective the date of Petitioner's Petition, October 12, 2000. It appears that after that Petition was filed, the parties attended a conference in the Domestic Relations Office and at that time entered into an agreement, which included no retroactivity or arrearage. Within one (1) week of entering that agreement, Petitioner requested of the Domestic Relations Office that a hearing be held on the complaint as she learned that the information provided at the conference had not been entirely accurate. Considering the circumstances, the Court finds no error in providing for retroactivity to the date of the original Petition.

#### ORDER

AND NOW, this 25<sup>th</sup> day of May, 2001, for the foregoing reasons, Respondent's exceptions are hereby denied and the Order of February 9, 2001 is hereby affirmed.

By the Court,

Dudley N. Anderson, Judge