

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

TJB, : NO. 01-20,581
Petitioner :
 :
vs. : DOMESTIC RELATIONS SECTION
 : Exceptions
MB, :
Respondent :

OPINION AND ORDER

Before the Court are cross-exceptions to the Family Court Order dated June 13, 2001 in which Respondent was directed to pay child and spousal support to Petitioner. Argument on the exceptions was heard September 19, 2001 at which time both counsel requested the preparation of a transcript. That transcript was completed November 14, 2001.

In her exceptions Petitioner contends the hearing officer erred in the calculation of spousal support during the period of time she anticipated being off work, and in failing to order a contribution to the mortgage payment. In his exceptions, Respondent contends the hearing officer erred in determining his income, specifically in failing to deduct certain business expenses.¹ These issues will be addressed seriatim.

With respect to the calculation of spousal support, the hearing officer found that Petitioner planned to be off work for a period of four (4) to twelve (12) weeks to care for one of the children, assigned a zero income during that period of time, but awarded the same amount of spousal support as has been awarded for the prior period of time in which Petitioner had income from employment, and then calculated the child support based upon that spousal support award. The Court agrees with

¹At argument, Respondent withdrew his third exception, which contested the hearing officer's finding of entitlement to spousal support.

Petitioner that the correct method would have been to calculate both the child support and spousal support based upon the zero income. The recalculation will be made, in conjunction with the adjustment to Respondent's income, discussed hereafter.

With respect to the contribution to her mortgage payment, Petitioner contends she requested such a contribution and presented the relevant information but the hearing officer failed to order a contribution. Again, the Court agrees. A review of the transcript indicates Petitioner testified to a mortgage payment of \$734.93 per month and taxes of \$564.00 and \$362.00 per year. She did not present any evidence of her home owner's insurance expense. Her total monthly payment for the mortgage and taxes averages to \$812.00 and thus a contribution to such would have been appropriate. The Court will calculate the contribution in connection with recalculation of the support obligation.

With respect to Respondent's income, the hearing officer noted that Respondent works out of town and has a lengthy commute, in connection with his employment through the Plumbers and Pipe Fitters Union, but since he did not "submit any business expenses for consideration", the hearing officer failed to provide for an adjustment for such. A review of the transcript indicates that Respondent did testify that he spent \$125.00 per week for gasoline and that he bought his lunch and dinner on the road. The parties' 2000 tax return was also provided to the Court, including the itemization of Respondent's employment related expenses. From that tax return it is possible to determine a reasonable deduction for both mileage and food. The tax return shows a vehicle expense of \$9,065.00. As Respondent testified that he did not keep receipts for gasoline but simply took a deduction based on mileage, that expense, at \$.32 per mile, represents 28,328 miles, or 544 miles per week. At 15 miles to the gallon and \$1.50 per gallon, it is estimated that Respondent spent an average of \$54.00 per week for gasoline. The Court will deduct \$20.00 per week, representing the average expenditure, and allow a deduction of \$34.00 per week from Respondent's monthly net income, for the extra expense. With respect to food, the tax return shows \$60.00 per week average was spent for meals, only 50% of which was allowed as a tax deduction. \$30.00 per week appears appropriate to allow as an extra expense for food. The Court will therefore deduct \$147.00 per month for gasoline and \$130.00 per month for food, reducing Respondent's monthly net income to

\$3,352.00.

Considering Petitioner's income of \$1,021.00 per month and Respondent's income of \$3,362.00 per month, for the period from April 20, 2001 through June 21, 2001, the guidelines require a payment for the support of four (4) minor children of \$1,195.91 per month. Respondent's health insurance contribution is calculated at \$33.24 per month, his child care contribution is calculated at \$179.50 per month, and his spousal support obligation is calculated at \$279.90. For the period of June 21, 2001 through Petitioner's return to work, Respondent's child support obligation is calculated at \$1,306.00 per month, his health insurance contribution at \$43.33 per month, and his spousal support obligation at \$603.90 per month.

The mortgage contribution is calculated at \$66.38 per month for the period of April 20, 2001 through June 21, 2001, representing one-half ($\frac{1}{2}$) of the excess of the mortgage and taxes (\$812.00 per month) over 25% of Petitioner's income, including support (\$677.25 per month). For the period of June 21, 2001 through Petitioner's return to work, the mortgage contribution is calculated at \$161.88 per month.

ORDER

AND NOW, this 26th day of November, 2001, for the foregoing reasons, the Family Court Order dated June 13, 2001 is hereby modified in accordance with the above calculations. Further, Respondent's contribution to excess unreimbursed medical expenses is modified to 76.71% of such from April 20, 2001 through June 21, 2001 and also effective upon Petitioner's return to work.

As modified herein, the Order of June 12, 2001 is hereby affirmed.

By the Court,

Dudley N. Anderson, Judge

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