

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

BME, : NO. 01-20,297
Petitioner :
 :
vs. : DOMESTIC RELATIONS SECTION
 : Exceptions
GCE, :
Respondent :

OPINION AND ORDER

Before the Court are Petitioner's exceptions to the Family Court Order dated June 18, 2001 in which Respondent was directed to pay child support and alimony pendente lite to Petitioner. Argument on the exceptions was heard September 19, 2001.

In her exceptions, Petitioner contends the hearing officer erred in the calculation of Respondent's income in two (2) respects and in not providing for an upward deviation based upon additional income in Respondent's household. These exceptions will be addressed seriatim.

With respect to Respondent's income, Petitioner's first contention is that the hearing officer should have based a determination of Respondent's income on his 2000 federal income tax return, rather than annualizing the income and expenses presented for the first twenty-three (23) weeks of 2001. A comparison indicates that the figures are relatively close, however. The figure reached by the hearing officer with respect to Respondent's 2001 income, based upon the first twenty-three (23) weeks of such, is \$2,179.00 per month net (after adding back in the back tax payments which are not a direct business expense). A review of Respondent's 2000 federal income tax return, and a consideration of only his truck driving income, and recalculating his federal income tax based upon only that income, provides a monthly net income of \$2,371.00. Since the nature of Respondent's employment has changed, from driving both the truck and a bus to driving only the truck, the Court

finds no error in the hearing officer's use of the 2001 figures.

Next, Petitioner contends the hearing officer erred in deducting from Respondent's income the tax payments he is making toward 2000 federal income and self-employment taxes. Petitioner contends that should not be deducted inasmuch as the estimated taxes Respondent is paying toward his 2001 federal tax obligation are also being deducted. The Court does not agree. An additional tax obligation over and above one's withholding is just a legitimate consideration as is a tax refund. The Court will, however, consider the tax payments as a proper deduction for only a one-year period, from April 15, 2001 through April 15, 2002.

Finally, with respect to the contention the hearing officer should have deviated above the guidelines based upon the additional income in Respondent's household, Petitioner is referring to the fact that he lives with his girlfriend and shares expenses. Petitioner has indicated no extraordinary expense in her own regard which would allow for a consideration of an upward deviation, regardless of Respondent's financial situation. The Court therefore finds no error in the hearing officer's use of the guidelines without deviation.

As of April 15, 2002, considering Respondent's income of \$2,179.00 per month, the guidelines call for an alimony pendente lite payment of \$871.60 per month and a mortgage contribution of \$180.57 per month. ¹

ORDER

AND NOW, this 21st day of September, 2001, for the foregoing reasons, the Order of June 18, 2001 is hereby modified to provide for a mortgage contribution of \$193.62 per month, effective April 11, 2001 through June 21, 2001, and effective June 22, 2001, through April 14, 2002, a contribution of \$207.52 per month. Effective April 15, 2002, the alimony pendente lite

¹Although the hearing officer included both the mortgage payment and taxes, Rule 1910.16-6(e) indicates that the contribution to "a parties' mortgage" includes "first and subsequent mortgages, home equity loans and any other obligations incurred during the marriage which are secured by the marital residence". The taxes are therefore not considered in calculating a mortgage payment contribution. The contribution for previous time periods must also be recalculated, at \$193.62 per month, effective April 11, 2001 through June 21, 2001 and \$207.52 per month effective June 22, 2001 through April 14, 2002.

is modified to \$871.60 per month and the mortgage contribution is modified to a payment of \$180.57 per month.

As modified herein, the Order of June 18, 2001 is hereby affirmed.

By the Court,

Dudley N. Anderson, Judge

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