

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

CLF, : NO. 97-21,014
Petitioner :
 :
vs. : DOMESTIC RELATIONS SECTION
 : Exceptions
ESF, :
Respondent :

OPINION AND ORDER

Before the Court are Respondent’s exceptions to the Family Court Order of December 26, 2000 in which Respondent was directed to pay child support to Petitioner for the support of the parties’ two (2) minor children. Argument on the exceptions was heard April 25, 2001.

In his exceptions, Respondent contends the hearing officer erred in requiring him to pay support to Petitioner for the minor child, Jennifer, who is in his primary physical custody by Order dated October 16, 2000. Pursuant to that same Order, the parties’ other child, Ashley, is in the primary physical custody of Petitioner. The hearing officer found Jennifer is in a “shared custody arrangement” and, although providing Respondent with a 24% reduction, required Respondent to pay support to Petitioner for Jennifer. The Court finds the hearing officer did indeed err in this regard, considering the hearing officer’s other finding that Jennifer is in Respondent’s custody 54% of the time and in Petitioner’s custody 46% of the time. This is not a “shared arrangement”, which invokes application of the shared custody rules of the support guidelines. Rather, Petitioner should pay support to Respondent, with a reduction to consider that she has 46% of the child’s time.

Petitioner’s counsel argues that the hearing officer, while not following the rule, provided Petitioner with a deviation above the guidelines based on the fact that Respondent does not spend anytime with Ashley.¹ Counsel argues that the guidelines assume that the non-custodial parent will

¹The Order of December 26, 2000 contains no finding of fact regarding the amount of time spent by Ashley with either parent. The Court will accept for purposes of argument, however, Petitioner’s counsel’s contention in this regard.

have custody of the child for approximately 30% of the time and since Respondent has custody for none of Ashley's time, deviation is appropriate. The Court agrees that the rule indicates that the guidelines contemplate that the obligor has regular contact with his or her children and that he or she makes direct expenditures on their behalf. Pa. R.C.P. Rule 1910.16-4(c). The guidelines go on to provide for a deviation below the guideline amount when the obligor has custody of the child or children more than 40% of the time. The Court assumes that were it the legislature's intention to provide a deviation above the guideline amount when the obligor spends less than the contemplated amount of time with the children, the legislature would have specifically so stated. The Court believes that the situation wherein the non-custodial parent spends significantly less than 30% of the time with the child is common enough that it would have been contemplated by the legislature in enacting rule 1910.16. The Court will not interpret the rule to consider less time with the children when the rule clearly applies to only those situations where the obligor spends more time with the children.

Recalculating the support obligation, Respondent has an obligation to Petitioner for the support of Ashley in the amount of \$498.55 per month and Petitioner has an obligation to Respondent for the support of Jennifer in the amount of \$340.60 per month, for an overall obligation from Respondent to Petitioner of \$157.95 per month.

ORDER

AND NOW, this 26th day of April, 2001, for the foregoing reasons, the Order of December 26, 2000 is hereby modified to provide for a payment of \$157.95 per month. As modified herein, the Order of December 26, 2000 is hereby affirmed.

By the Court,

Dudley N. Anderson, Judge