

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

MDH, : NO. 00-21,589  
Petitioner :  
 :  
vs. : DOMESTIC RELATIONS SECTION  
 : Exceptions  
MDD, :  
Respondent :

OPINION AND ORDER

Before the Court are Petitioner's exceptions to the Family Court Order of May 23, 2001 in which Respondent was directed to pay child support to Petitioner. Argument on the exceptions was heard September 12, 2001.

Petitioner contends the hearing officer erred in providing Respondent a credit for a Northumberland County arrearage, in not considering an annuity Respondent cashed in 2000, and in not considering an additional tax refund he would have had had he not cashed in the annuity (in conjunction with not considering the annuity as income for child support purposes).<sup>1</sup> These will be addressed seriatim.

The instant matter was initiated by a Petition filed by Petitioner on October 17, 2000. Previously, the child support in this matter had been governed by Northumberland County Orders and inasmuch as Respondent previously had primary custody of the child, the Northumberland County Order in effect at the time required Petitioner to pay child support to Respondent. By Order dated November 3, 2000, issued in Northumberland County, Petitioner's child support obligation to Respondent was suspended, effective March 20, 2000, based upon a situation involving equal

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<sup>1</sup>At argument, Petitioner withdrew her fourth written exception.

custody of the child and approximately equal incomes, upon agreement of the parties. It appeared there remained an issue with respect to the arrearage and the matter was set for hearing in February 2001. Once Petitioner's October 17, 2000 Petition was scheduled for a hearing in Lycoming County, however, Northumberland County entered an Order dated January 19, 2001 transferring the matter to Lycoming County, and the February 2001 hearing in Northumberland County was canceled. Upon issuance of the November 3, 2000 Order, the Domestic Relations Office in Northumberland County suspended Petitioner's child support obligation to Respondent and based upon the retroactive effect of that suspension, back to March 20, 2000, credited her account with an adjustment of \$1,967.14. In his Order of May 23, 2001, the hearing officer considered this amount as the arrearage existing at the time the matter was suspended by Northumberland County and looked at it as having been expunged from the records. Seeking to give Respondent a credit for the arrearage owed to him by Petitioner at the suspension of that case, the hearing officer provided Respondent in the instant matter with a credit in that amount. Petitioner is correct in her exception that this credit should not have been provided as the amount referred to by the hearing officer was not the arrearage, but a retroactive adjustment based upon the retroactive suspension of Petitioner's obligation, and furthermore, no expungement of any arrearage took place. The matter was transferred from Northumberland County to Lycoming County but the arrearages on the PACSES system remained on the system and the Domestic Relations Office of Lycoming County has applied the arrearage owed by Petitioner to Respondent to any retroactive arrearage owed by Respondent to Petitioner in the instant matter. The \$1,967.14 credit provided to Petitioner was contained in the arrearage on the system at the time of transfer. The credit given by the hearing officer in the instant matter must therefore be vacated and the matter of applying the arrearage in the Northumberland County case as a credit to any arrearage in the Lycoming County case has been and will be handled by the Domestic Relations Office through the PACSES system. To the extent Respondent was contesting the amount of the \$1,967.14 credit in the hearing on May 17, 2001, such issue is not appropriately raised before the Courts of Lycoming County. Exceptions to the transfer Order of January 19, 2001, which noted the amount of the arrearage at the time of the transfer, is the appropriate avenue of relief for Respondent. He indicated to the Court at argument that he did not

take exceptions to that Order as he did not receive it. That also is a matter to be addressed by the Northumberland County Courts, in the form of exceptions Nunc pro tunc.

Next, Petitioner contends the hearing officer erred in not considering as part of Respondent's income an annuity he cashed in during 2000. The Order of May 23, 2001 does not mention such an annuity but Petitioner points out that Respondent's federal income tax return, which was introduced into evidence at the hearing in Family Court as Defendant's Exhibit 7, shows on line 16 the sum of \$10,117.00, representing pensions and annuities received during the year. While the Court agrees that the issue should have been addressed and was not, the Court does not agree with Petitioner that the entire \$10,117.00 is necessarily considered income for purposes of child support. Once the issue was brought before the Master, further information was necessary, such as the amount Respondent paid into the annuity and any tax considerations. Only the gain is to be considered as income for child support purposes. The matter will therefore be remanded for that further investigation.

Finally, Petitioner contends the hearing officer erred in deducting the taxes on the annuity if the annuity is not to be considered as income for child support purposes. In light of the remand, this issue will not be addressed at this time.

#### ORDER

AND NOW, this 18<sup>th</sup> day of September, 2001, for the foregoing reasons, the Order of May 23, 2001 is hereby modified to eliminate the credit provided for in paragraph #6 of said Order Application of the arrearage in the Northumberland County case to the arrearage in the Lycoming County case shall be handled administratively by the Domestic Relations Office.

The issue of the annuity is hereby remanded to Family Court for further proceedings consistent with the instant Opinion.

As modified herein, the Order of May 23, 2001 is hereby affirmed pending further hearing in Family Court.

By the Court,

Dudley N. Anderson, Judge

cc: Family Court  
Domestic Relations  
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Hon. Dudley N. Anderson