

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

KJH,	:	NO. 01-20,041
Petitioner	:	NO. 01-20,140
	:	
vs.	:	CIVIL ACTION - Law
	:	In-Divorce
JEH,	:	
Respondent	:	DOMESTIC RELATIONS SECTION
	:	Exceptions

OPINION AND ORDER

Before the Court are Respondent's exceptions to the Family Court Order dated March 2, 2001 in which Respondent was directed to pay child support and spousal support to Petitioner. Argument on the exceptions was heard June 20, 2001.¹

In his exceptions, Respondent contends the hearing officer erred in assessing Petitioner only a minimum wage earning capacity and in not deviating below the guidelines based upon Petitioner's reduced living expenses.²

With respect to Petitioner's earning capacity, the hearing officer found that although Petitioner has a high school education, she last worked in February 1981 as a unit clerk at the Williamsport

¹Although the Family Court Order of March 2, 2001 is captioned "temporary Order", indicating that the parties stipulated to defer a decision on whether Respondent's severance pay was income for purposes of support or an asset distributable in the divorce proceedings, at argument counsel for Petitioner conceded that the severance pay is income for purposes of support. There should be no issue raised at equitable distribution, therefore, regarding Respondent's severance pay as an asset. The Court notes that even had Petitioner's counsel failed to agree that the severance pay is income at this time, the Court would have instructed the hearing officer to require a choice be made at the time of the support Order. Deferring the issue is not appropriate.

²Respondent's third written exception was withdrawn at argument.

Hospital. The hearing officer thus assessed her a minimum wage earning capacity. Respondent argues that since Respondent testified that a unit clerk at the Williamsport Hospital makes \$8.50-\$11.50 per hour, Petitioner should have been assessed with an earning capacity based on that wage. There was no evidence, however, that Petitioner herself, with her lack of a work history for the past twenty (20) years, could indeed be employed in that capacity at that hospital at this time. The Court finds that the hearing officer did not err in assessing Petitioner a minimum wage earning capacity, considering the circumstances.

With respect to Respondent's argument the hearing officer should have deviated below the guidelines based on Petitioner's reduced living expenses, the Court does not agree. Under the guidelines, the Court may not deviate below the guidelines on the ground that the child or spouse does not need that amount of money. In Ball v Minnick, 648 A.2d 1192 (Pa. 1994), the Court held that the factor for deviation of "standard of living" was not intended to justify the downward modification of the guideline figures absent of showing of special needs and/or circumstances, i.e. unusual obligations of the obligor which limit his or her ability to pay the guideline amount. See also Terpak v Terpak, 697 A.2d 1006 (Pa. Super. 1997) (applying Ball v Minnick's holding to spousal support as well as child support).

The Court does find, however, that a remand of this case is necessary as the hearing officer used the guidelines formula in calculating spousal support, contrary to the recent holding of Mascaro v Mascaro, 764 A.2d 1085 (Pa. Super. 2000). In that case, the Superior Court concluded that the guidelines are not designed to calculate spousal support in high income families where after tax income exceeds \$15,000.00 per month, and upheld a Melzer award which was less than the presumptive minimum amount of support, which would have been awarded if the guidelines had been applicable.³

³The Court notes, in addition, that in calculating child support, the hearing officer failed to calculate the presumptive minimum and apply Melzer to determine whether any additional support would be appropriate. Granted, the income above \$15,000.00 to be analyzed under Melzer in this case is only \$188.56, but the guidelines do require a calculation of a presumptive minimum and then a further Melzer analysis, rather than simply applying the chart of proportional expenditures (which, the Court notes, are no longer in effect) based on the highest possible combined income level.

Based on incomes as found by the hearing officer, the combined amount equaling \$15,188.56 per month, the presumptive minimum amount of child support for two (2) children is \$2,800.00 per month. The matter must be remanded to the hearing officer for application of Melzer to the income of \$188.56 per month with respect to child support, and for a Melzer analysis of the reasonable needs of Petitioner separate from the parties' children in calculating an appropriate spousal support award for the time period after February 1, 2001.

ORDER

AND NOW, this 22nd day of June, 2001, the matter is hereby remanded to the Family Court Hearing Officer for further hearing at which the parties may present evidence of their expenses in order that a Melzer analysis may be performed, consistent with the foregoing Opinion.

By the Court,

Dudley N. Anderson, Judge

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