

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

JLN, : NO. 00-21,583  
Petitioner :  
 :  
vs. : DOMESTIC RELATIONS SECTION  
 : Exceptions  
DLC, :  
Respondent :

OPINION AND ORDER

Before the Court are Respondent's exceptions to the Family Court Order dated August 30, 2001, in which Respondent was directed to pay child support to Petitioner for the support of the parties' one (1) minor child. Argument on the exceptions was heard November 28, 2001.

In his exceptions, Respondent contends the hearing officer erred in the assessment of his earning capacity, in ordering a contribution to child care without the proper verification, in not providing for credit for payments made since the petition was filed, and in failing to award him the tax exemption for the child. These will be addressed in order.

With respect to Respondent's earning capacity, although Respondent is self-employed, doing business as C & C Tree Service, and provided documentation of his income from that self-employment, the hearing officer assessed him an earning capacity of \$10.00 per hour as a Type 2 Climber. Respondent contends he should not have been assessed an earning capacity at all, and even if he is to be assessed an earning capacity that it should be at the rate of \$8.86 per hour, which he last earned through employment with another company, and then even if it is to be \$10.00 per hour, it should not be for 40 hours per week year round. After a review of the transcript, noting Respondent's testimony that he pays someone \$10.00 per hour doing work as a Type 2 Climber, that he himself is qualified to do such work and that he himself is worth \$10.00 per hour at this time,

having earned \$8.86 per hour seven years ago, the Court finds no error in the assessment of an earning capacity of \$10.00 per hour, in spite of the documentation of a significantly lesser income, in the form of self-serving ledger sheets. With respect to the seasonal issue, although Respondent did testify that the tree business is “seasonal work”, Respondent failed to present a sufficient basis upon which to make an accurate assessment of the duration of his employment. Without such a basis, the Court would be left to guess whether tree work is done in the winter or summer, or for how many months. Further, there was testimony regarding other sources of income to supplement Respondent’s tree business work and therefore the Court believes, since such were not specifically included in calculating his income, that the supplemental sources average out his income consistent with the \$10.00 per hour figure. The Court will therefore affirm the hearing officer’s assessment of Respondent’s earning capacity of \$1,300.00 per month, and the \$92.75 tax refund, attributable to an earned income credit, for a total monthly net income of \$1,392.75.

With respect to the child care, Respondent is correct that Petitioner did not provide the appropriate verification at the hearing in Family Court. A review of the transcript indicates she was directed to provide the proper verification to the Domestic Relations Office following the hearing. At argument, Petitioner indicated that she did provide that verification to the Domestic Relations Office but the Domestic Relations Officer could not find the verification form in the file. Petitioner was directed to provide such to the Court within ten days, and indeed has provided the proper verification, a copy of which has been provided to Respondent’s counsel. This issue will therefore be addressed no further.

With respect to the request for credit, the Court notes that not only does the Order of August 30, 2001 fail to indicate he should receive credit for any payments made, it also fails to set an effective date. The Order will therefore be amended appropriately.

Finally, with respect to the tax exemption, upon agreement of the parties, Respondent shall be awarded the tax exemption until a change in circumstances, brought to the Court’s attention through an appropriate petition, would support a return of the exemption to Petitioner.

ORDER

AND NOW, this 30<sup>th</sup> day of November, 2001, for the foregoing reasons, the Family Court Order of August 30, 2001 is hereby modified to provide that the payment therein is effective July 16, 2001. Further, Respondent should receive credit for any payments of child support made to Petitioner after that date, upon verification of such payments to the Domestic Relations Office.

Petitioner shall sign the appropriate waiver form to allow Respondent to claim the child as an exemption on his federal income tax return for tax year 2001 and all future years until modified by further Court Order.

As modified, the Order of August 30, 2001 is hereby affirmed.

By the Court,

Dudley N. Anderson, Judge

cc: Family Court  
Domestic Relations  
James Protasio, Esq.  
Julie Pentico, Esq.  
Gary Weber, Esq.  
Hon. Dudley N. Anderson