

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

BRR, : NO. 99-21,683
Petitioner :
 :
vs. : DOMESTIC RELATIONS SECTION
 : Exceptions
ALR, JR., :
Respondent :

CR, : NO. 95-20,842
Petitioner :
 :
vs. : DOMESTIC RELATIONS SECTION
 : Exceptions
ALR, JR., :
Respondent :

OPINION AND ORDER

Before the Court are Petitioner BR exceptions to the Family Court Order dated November 20, 2000 in which Respondent’s spousal support obligation to Petitioner BR was lowered and Respondent’s child support obligation to CR was lowered. Argument on the exceptions was heard January 24, 2001.

The hearing on November 9, 2000 in Family Court was prompted by Respondent’s filing of a Petition for Modification, in which Petition he indicated as a basis for review that he no longer was going to work overtime, as such was no longer available to him. At the hearing, Respondent offered a letter he had written, indicating he was no longer going to be working overtime as he “ha[d] been notified by [his] employer that effective immediately there will be no overtime hours available due to a slow in work requests until further notice. I will now be working only my scheduled forty (40) hour work week.” The letter was signed by Respondent and by Larry Gardner, who was noted below his signature to be the terminal manager at Bulkmatic Transport Company. Petitioner BR counsel objected to introduction of the letter into evidence on the basis that such letter is hearsay. The objection was overruled and the letter was considered by the hearing officer who then calculated Respondent’s income on a forty (40) hour work week, whereas his previous

income contained overtime wages. The letter is dated October 4, 2000 and the Petition for Modification had been filed by Respondent on October 5, 2000. On November 9, 2000, no wage information was provided to show a lack of overtime in even the thirty (30) day period which had passed, let alone a significant history evidencing the alleged change.

In her exceptions, BR contends the hearing officer erred in considering the letter and recalculating Respondent's income based on only a forty (40) hour week. The Court agrees. The letter is clearly hearsay and should not have been admitted into evidence. No other evidence of any change in Respondent's income was introduced and therefore the hearing officer should have found no significant change in circumstances which would justify a review. The Petition for Modification should have been denied.¹

ORDER

AND NOW, this 26th day of January, 2001, for the foregoing reasons, Petitioner BR exceptions are hereby granted and the Family Court Order of November 20, 2000 is hereby modified to provide that Respondent's Petition for Modification is hereby denied. The previous Orders in this matter, dated June 26, 2000 and February 28, 2000, are hereby reinstated, retroactive to October 5, 2000.

By the Court,

Dudley N. Anderson, Judge

¹Based on the Court's holding, Petitioner BR other exceptions need not be addressed. The Court does note, however, that although the hearing officer found that Respondent is going to sell a property for \$68,000.00, the transcript indicates that the sale price is actually \$87,000.00. At argument, Petitioner BR counsel asked the Court to rectify this factual finding even though such has no immediate impact on the instant exceptions.