

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

LMS, : NO. 00-21,767
Petitioner :
 :
vs. : DOMESTIC RELATIONS SECTION
 : Exceptions
RTS, :
Respondent :

OPINION AND ORDER

Before the Court are cross-exceptions to the Family Court Order dated May 8, 2001 in which Respondent was directed to pay spousal support to Petitioner. Argument on the exceptions was heard September 12, 2001.

In his exceptions, Respondent first contends the hearing officer erred in assessing him an earning capacity in addition to considering his income from trusts and gifts. Evidence presented at the hearing indicated that Respondent had left long term employment in 1996 or 1997 because he no longer needed money from employment, inasmuch as he receives significant sums from trusts funds and in the form of gifts from his parents. He worked approximately eight (8) weeks in 2000 but left that job also because he did not need the money. The hearing officer assessed him an earning capacity based upon his previous employment and Respondent now argues that because he did not work for a significant period during the latter years of the parties' marriage, now that Petitioner has left the marriage he should not be required to pay support based upon an income over and above what the parties enjoyed during the marriage. The Court agrees. Inasmuch as this matter involves spousal support only, and Respondent did indeed not work for a significant period of time during the parties' marriage, a situation which apparently both were comfortable with and it appearing they would have been able to more than adequately support a comfortable life style, Respondent should not be

required to now work in order to pay a higher spousal support payment to Petitioner.

Next, Respondent contends the hearing officer erred in awarding spousal support at all. While the hearing officer found that Respondent was not raising an entitlement issue, it appears from a transcript of the hearing that Respondent actually did wish to raise an entitlement issue but was not able to clearly communicate that to the Court, in part because Petitioner's counsel prevented the issue from being fully explored. While Respondent did indicate "yes" to the statement "you are not questioning her entitlement to spousal support, you are just questioning the amount", N.T. May 3, 2001, page 19, he went on to say the parties had been having marital difficulties for about two (2) years, had attended marriage counseling, and that Petitioner chose to discontinue the counseling and moved out of the residence. He testified that Petitioner "when she was living in my house, ... was entitled to half of anything I have, anything I am about to get and anything that I own." N.T. at page 21. He stated "I am not contesting the fact that she's my wife and I am here to help." N.T. at page 22. "If she's decided to leave my house and doesn't want to submit as my wife, that's her prerogative. I don't have a problem with that. But she's not going to take my checkbook with her. Either she's going to live in my house and she's going to be my wife and she's entitled to half of everything I have or she can go out and do her own thing and I can kick in a little bit to help until we either reconcile or divorce." He then later stated he wanted to defend himself as far as what he was going to give her. N.T. at page 23. "I've never contested that she's still my wife, we are still legally married, I'm responsible for it." *Id.* At that point, it should have raised a question in the hearing officer's mind whether Respondent actually understood the issue of entitlement and actually knew what he was saying when he indicated he was not contesting entitlement. Petitioner's counsel, however, changed the subject by raising the issue of the gifts from respondent's parents and the matter was explored no further. The Court believes it should have been explored further and therefore will remand the matter for further hearing on the issue of entitlement.

Next, Respondent contends the hearing officer erred in including the gifts from his parents as income. The Court does not agree. Based on Humphreys v DeRoss, 737 A.2d 775 (Pa. Super. 1999), the Court believes gifts are income for purposes of support.

Next, Respondent contends the hearing officer erred in including in his income monies he

receives from a revocable trust. To the extent Respondent is arguing that since the trust is revocable, the monies may not be received in the future, such does not remove them from consideration for purposes of the spousal support obligation. Should the trust distributions be revoked in the future, Respondent may simply file a Petition for Modification.

Finally, Respondent contends the hearing officer erred in holding the hearing when he was not represented, because he came to the hearing thinking the parties had reached an agreement and that no hearing would actually be held. Respondent did not ask for a continuance, although he did indicate that he thought the parties had reached an agreement and that they were there to “finish it up.” Without a request for a continuance, the Court cannot find the hearing officer erred in failing to grant one.

In her exceptions, Petitioner contends the hearing officer erred in the amount of Respondent’s earning capacity. Since the Court has herein determined that no earning capacity at all should have been assessed, this exception is rendered moot.

ORDER

AND NOW, this 14th day of September, 2001, for the foregoing reasons, the Order of May 8, 2001 is hereby temporarily vacated. The matter is remanded to the Family Court office for a further hearing on the issue of entitlement. Should the hearing officer find entitlement, the Order may be reinstated but any exceptions thereto may focus only on the issue of entitlement. Should the hearing officer find no entitlement, the Petition should be dismissed.

By the Court,

Dudley N. Anderson, Judge

cc: Family Court
Domestic Relations
Janice Yaw, Esq.
Joy McCoy, Esq.