

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

ES, : NO. 91-21,429  
Petitioner :  
 :  
vs. : DOMESTIC RELATIONS SECTION  
 : Exceptions  
RP, :  
Respondent :

**OPINION AND ORDER**

Before the Court are Respondent's exceptions to the Family Court Order of November 16, 2000 in which Respondent was directed to pay child support to Petitioner for the support of one (1) of the two (2) minor children in Petitioner's custody, and to Lycoming Children and Youth for the support of the other of the two (2) minor children, in the custody of Children and Youth. Argument on the exceptions was heard January 17, 2001. At that time, Respondent was given the opportunity to submit the information which he alleged was submitted to the Domestic Relations Office in Riverside County, California. The Court has received no information to date.

In his first exception, Respondent contends that since the last hearing on June 29, 2000, Respondent has lost the employment upon which his child support obligation has been based. Respondent was informed at argument that such is more properly the subject of a Petition for Modification, rather than exceptions.

In his second exception, Respondent requests the Court review Petitioner's income information to determine the accuracy of the hearing officer's finding respecting her income. A review of that information indicates that the findings are accurate.

In his third exception, Respondent contends the hearing officer erred in assessing his wife a minimum wage earning capacity inasmuch as with three (3) children, ages 7, 3, and 1, any child care

expense would exceed such an earning capacity. At argument, Petitioner agreed that Respondent's wife should not be assessed an earning capacity in light of the situation.

In his fourth exception, Respondent contends the hearing officer erred in finding he waived all rights to contest the inclusion of overtime in his income by failing to provide the requested information. At the hearing, the hearing officer had requested Respondent to provide a copy of his latest year-to-date pay stub, a copy of his 1999 federal income tax return, and a copy of the Power of Attorney which had been executed to allow his wife to act on his behalf. Although Respondent provided a copy of the Power of Attorney, he did not provide the pay stub or tax return. Respondent contends that he did provide such to the Riverside County, California Domestic Relations Office. The Domestic Relations Office in Lycoming County has indicated that nothing was received other than the Power of Attorney. This Court gave Respondent the benefit of the doubt and allowed him to resubmit to this Court the documents which were allegedly submitted to Riverside County. As noted above, nothing has been received by this Court or the Domestic Relations Office of Lycoming County. This exception will therefore not be addressed further.

In his fifth exception, Respondent raises an issue regarding his arrearage and the communication between the Riverside County and Lycoming County Offices of Domestic Relations. The issue is not appropriately addressed by this Court in exceptions.

In his sixth exception, Respondent contends the Order should not be retroactive to the date of the Petition. He complains of the length of time which passed from the date of the hearing until entry of the Order, from June 29, 2000 through November 16, 2000. While the Court agrees that such is an inordinate amount of time, the retroactivity of the Order will not be modified. It is noted that Petitioner played no part in the delay.

In his seventh exception, Respondent contends the hearing officer erred in requiring him to contribute to the children's unreimbursed medical expenses. With respect to the child in Petitioner's custody, Respondent is correct as Petitioner indicates that she testified at the hearing in Family Court that she was not seeking contribution to the child's medical expenses. With respect to the child in the custody of Children and Youth, however, requiring Respondent to contribute to that child's medical

expenses is appropriate.

Finally, in his eighth exception, Respondent requests this Court suspend his child support obligation until he finds further employment. Again, such is more properly the subject of a Petition for Modification, although since Respondent lost his job through his own fault, it is highly unlikely that any relief will be granted.

Recalculating Petitioner's income from unemployment compensation to consider 15% federal income tax which was not considered by the hearing officer (apparently overlooked) Petitioner has a monthly net income of \$1,019.00 from unemployment compensation. Considering that income and Respondent's income of \$2,414.00 per month, Respondent has an obligation for the support of the minor child in Petitioner's custody of \$495.05 per month and for the child in the custody of Children and Youth of \$495.05 per month.<sup>1</sup>

Considering Petitioner's earning capacity/income from her prior employment, of \$1,411.00 per month and Respondent's income of \$2,414.00 per month, the guidelines require a payment for the support of the child in Petitioner's custody of \$473.33 per month and for the child in the custody of Children and Youth of \$473.33 per month.

Considering Respondent's wife's lack of earning capacity or income and Respondent's income of \$2,414.00 per month, the guidelines suggest an obligation for the three (3) children in his home of \$954.00 per month. As Respondent's obligations exceed 50% of his income, such must be reduced proportionately. With respect to his obligation when Petitioner is receiving unemployment compensation, such is reduced to \$307.38 per month for the child in Petitioner's custody, as well as the child in the custody of Children and Youth. With respect to his obligation when Petitioner is assessed with an income/earning capacity from employment, such is reduced to \$300.58 per month for the child in Petitioner's custody as well as the child in the custody of Children and Youth.

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<sup>1</sup>Although the hearing officer calculated the obligation for two (2) children and then divided such in half, that method of calculation is contrary to the guidelines. A separate obligation must be calculated for each child. See Rule 1910.16-7(2).

ORDER

AND NOW, this 7<sup>th</sup> day of February, 20001, for the foregoing reasons, the Order of November 16, 2000 is hereby modified as follows:

1. Paragraph 1 of the Order of November 16, 2000 is modified with respect to the amounts such that Respondent shall pay \$307.38 per month to Petitioner and \$307.38 per month to the Department of Children and Youth.
2. Paragraph 3 of the Order of November 16, 2000 is modified with respect to the amounts such that Respondent shall pay \$300.58 per month to Petitioner and \$358.00 to the Department of Children and Youth.
3. Paragraph 5 of the Order of November 16, 2000 is hereby modified to provide that Petitioner shall be responsible for the unreimbursed medical expenses of the child in her custody, upon agreement of the parties.
4. Paragraph 6 of the Order of November 16, 2000 shall be modified to provide that each party shall contribute to the unreimbursed medical expenses of the child in the custody of the Department of Children and Youth in proportion to their respective net incomes.

As modified herein, the Order of November 16, 2000 is hereby affirmed.

By the Court,

Dudley N. Anderson, Judge