

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

KRS, JR.,	: NO. 98-21,656
Petitioner	:
	:
vs.	: DOMESTIC RELATIONS SECTION
	: Exceptions
PAS,	:
Respondent	:

OPINION AND ORDER

Before the Court are cross exceptions to the Family Court Order of May 3, 2001 in which Petitioner was directed to pay alimony pendente lite to Respondent and Respondent was directed to pay child support, a contribution toward child care expenses, a contribution toward health insurance expenses, and a contribution toward private school tuition to Petitioner. Argument on the exceptions was heard June 20, 2001.

In her exceptions, Respondent contends the hearing officer erred in requiring her to contribute to a child care expense, in deducting 15% for federal taxes from Petitioner's disc jockey income, and in requiring her to contribute to the cost of private school tuition. In his exceptions, Petitioner contends the hearing officer erred in calculating Respondent's share of child care and health insurance expenses based on her proportionate share of the total net incomes before considering the alimony pendente lite award rather than after, and in awarding alimony pendente lite at all, contending an error in the finding of fact that Respondent did not hinder the discovery process and settlement of the matter. These exceptions will be addressed seriatim.

With respect to the contribution to child care expenses, Respondent basically raises a credibility issue, arguing that for five (5) to six (6) years prior to the parties' separation, Petitioner's mother provided child care free of charge, and Petitioner's indication she now charges him \$40.00

per week is thus less than credible. The hearing officer provided for a contribution based on the verification of payment provided by Petitioner's mother. While the Court agrees that the situation does raise some suspicions, the Court is not in a position to reverse the hearing officer's credibility determination.

With respect to the disc jockey income, the Court agrees that deducting 15% for taxes which are not actually paid is indeed error. Rather than \$134.17 per month income, Petitioner has \$158.00 per month income from this endeavor.

With respect to the requirement that Respondent contribute to the cost of the private school tuition, the Court finds no error in the hearing officer's assessment in consideration of the factors relevant to the decision.

With respect to Respondent's percentage share of the miscellaneous expenses added to the basic child support obligation, the Court agrees that the appropriate percentage of Respondent's income compared to the total income of the parties, is that after payment of alimony pendente lite rather than before payment of alimony pendente lite. The guidelines provide for consideration of the alimony pendente lite in setting the child support obligation and there is nothing in the guidelines, nor is there a logical distinction, which would allow use of a different percentage in setting Respondent's obligation for miscellaneous expenses.

Finally, with respect to the finding that Respondent did not hinder the discovery process and settlement and the hearing officer's consequent award of alimony pendente lite, after reviewing the Order, the Court finds no error in this regard. A review of the docket in this matter indicates the divorce complaint was not served by Petitioner until two (2) years after filing, in any event.

Recalculating Petitioner's disc jockey income at \$158.00 per month, resulting in a total monthly net income for him of \$2,827.00, the alimony pendente lite is recalculated at \$351.20 per month. The child support is therefore recalculated at \$621.26 per month, child care contribution at \$62.61 per month, health insurance contribution at \$33.91 per month, and private school tuition at \$203.24 per month. Respondent's overall obligation is thus \$569.82 per month.

ORDER

AND NOW, this 22<sup>nd</sup> day of June, 2001, for the foregoing reasons, the Family Court Order of May 3, 2001 is hereby modified to provide for a payment from Respondent to Petitioner of \$569.82 per month, allocated as noted above. The percentage contribution for the children's excess unreimbursed medical expenses is modified to provide that Petitioner be responsible for 51.84% of such and Respondent for 48.16% of such.

As modified herein, the Order of May 3, 2001 is hereby affirmed.

By the Court,

Dudley N. Anderson, Judge

cc: Family Court  
Domestic Relations  
Jeff Yates, Esq.  
Christina Dinges, Esq.  
Gary Weber, Esq.  
Hon. Dudley N. Anderson