

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

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|------------|------------------------------|
| JPS, | : NO. 97-21,033 |
| Petitioner | : |
| | : |
| vs. | : DOMESTIC RELATIONS SECTION |
| | : Exceptions |
| LAL, | : |
| Respondent | : |

OPINION AND ORDER

Before the Court are cross-exceptions to the Family Court Order of August 8, 2000 in which Respondent was directed to pay child support to Petitioner. Argument on the exceptions was heard December 13, 2000.

In her exceptions, Respondent contends the hearing officer erred in failing to add interest/investment income earned by Petitioner to Petitioner's monthly net income and in failing to indicate which parent is responsible for the first \$250.00 per year in unreimbursed medical expenses.¹ In his exceptions, Petitioner contends the hearing officer erred in allowing Respondent to maintain the federal income tax dependency exemption for the child and in computing his income. These will be addressed seriatim.

With respect to Respondent's contention the hearing officer erred in failing to add interest/investment income earned by Petitioner to Petitioner's monthly net income, the Court agrees. Petitioner indicated in his testimony that he had investment income from joint accounts and his 1999 federal income tax return, introduced into evidence at the hearing in Family Court, shows \$17.00 earned from an account at the West Branch Credit Union and \$660.00 earned from an account with

¹The Order indicates that the "custodial parent" shall be responsible for such but the parties have equal shared physical custody.

Merrill Lynch. Therefore, \$338.50 per year should have been added to Petitioner's income.

With respect to indicating which parent is responsible for the first \$250.00 in unreimbursed medical expenses, it is noted the hearing officer's Order provides for the "custodial" parent to assume responsibility for such. The Rule provides for payment of the first \$250.00 per calendar year per child of unreimbursed medical expenses to be covered by the "obligee" Pa. R.C.P. 1910.16-6(c). In the instant case, Petitioner is the obligee and therefore the Order will be amended accordingly.

With respect to the dependency exemption, Petitioner indicates in his exceptions that the parties had an agreement which was contradicted by the Family Court officer's Order, but a review of the transcript reveals no such agreement.

Finally, with respect to Petitioner's contention the hearing officer erred in computing his income, two (2) matters may be involved. First, with respect to the fact he was assessed an earning capacity based upon prior employment, rather than considering his actual income from his current self-employment, the Court agrees with the hearing officer's assessment. Petitioner's testimony indicates that he had previously been self-employed, had sold that business in March 1997, and as a result of a two (2) year non-competition clause in the agreement of sale, had worked as an employee of other companies for a two (2) year period earning \$38,000.00 per year, which was increased in September 1998 to \$42,000.00 per year. In March 1999 he left that employment to again become self-employed, operating his current business, New Millennium Computing, Inc. Petitioner's testimony indicates no basis for leaving his employment with Keystone Building Products other than his desire to again go into business for himself. Petitioner is free to make that choice, but as his prior employment demonstrates a capacity to earn more than his self-employment provides, that capacity is appropriately used for purposes of determining his child support obligation.

In calculating Petitioner's net income, however, the Court does find an error in the hearing officer's calculations. The hearing officer calculated Petitioner's federal tax liability by considering his wife's 1999 income and adding such to Petitioner's earning capacity. This is an error as the hearing officer had also found, which is supported by the evidence, that Petitioner's wife is no longer employed. Petitioner will therefore not be in the higher tax bracket and his federal tax liability will be less. In addition, the hearing officer added his tax refund (or at least his proportionate share thereof)

to his monthly net income. Since the hearing officer had calculated his actual federal tax liability, addition of a tax refund was incorrect.

The Court has recalculated Petitioner's income as follows: \$42,000.00 earning capacity plus one-half (1/2) (based on the accounts being joint accounts) of \$677.00 interest/investment income, for an annual gross income of \$42,338.50. Considering the same standard deductions and three (3) exemptions², Petitioner's federal tax liability will be \$3,799.00³. Petitioner's social security obligation⁴ is calculated at \$3,213.00, his state tax obligation on the earnings and investments income is calculated at \$1,185.00 and his local tax obligation on his earnings is calculated at \$420.00. Petitioner therefore has a total annual net income of \$33,721.50 for a monthly net income of \$2,810.00.

Considering Petitioner's income of \$2,810.00 per month and Respondent's income of \$3,091.00 per month, and also considering the shared physical custody arrangement, the guidelines provide for a payment of child support from Respondent to Petitioner of \$140.50 per month.

ORDER

AND NOW, this 8th day of January, 2001, for the foregoing reasons, the Order of August 8, 2000 is hereby modified to provide for a payment of \$140.50 per month. Petitioner shall be responsible for 47.62% of any excess unreimbursed medical expenses and Respondent shall be responsible for 52.38% of such. Petitioner shall be responsible for the first \$250.00 per calendar year of unreimbursed medical expenses for the child.

As modified herein, the Order of August 8, 2000 is hereby affirmed.

²The testimony indicates Petitioner and his wife adopted a child in 2000.

³99.21% of the total income of \$42,677.00 is that of Petitioner and therefore 99.21% of the federal tax liability of \$3,829.00 is calculated to be Petitioners.

⁴Although Petitioner is currently self-employed, this earning capacity is based on employment and therefore a social security obligation is calculated, rather than a self-employment tax obligation.

By the Court,

Dudley N. Anderson, Judge

cc: Family Court
Domestic Relations
Janice Yaw, Esq.
Joy McCoy, Esq.
Gary Weber, Esq.
Hon. Dudley N. Anderson