

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

ELB, : NO. 93-20,017  
Petitioner :  
 :  
vs. : DOMESTIC RELATIONS SECTION  
 : Exceptions  
JRB, :  
Respondent :

OPINION AND ORDER

Before the Court are Respondent’s exceptions to the Family Court Order dated October 9, 2001, in which Respondent was directed to pay child support to Petitioner for the support of the parties’ two (2) minor children. Argument on the exceptions was heard February 27, 2002, at which time Respondent requested the preparation of a transcript. That transcript was completed and provided to the Court on May 10, 2002.

In his exceptions, Respondent contends Lycoming County is not the proper venue for this matter, Petitioner lied about the circumstances under which she left her prior employment, the Family Court hearing officer erred in assessing his wife a minimum wage earning capacity, the hearing officer erred in failing to give any consideration for the daycare expense he has for the two (2) children in his home, and the hearing officer erred in failing to provide him with credit for payments made prior to entry of the Order. These will be addressed seriatim.

With respect to the issue of venue, the Court agrees with Respondent that inasmuch as Petitioner resides in Northumberland County and Respondent resides in Texas, appropriate venue for this matter is now in Northumberland County. Respondent did not raise this issue before the Family Court, however, and therefore that Order will not be vacated, but the matter will be transferred to Northumberland County in conjunction with issuance of the instant Order on exceptions.

With respect to Respondent's contention Petitioner lied with respect to circumstances surrounding the termination of her prior employment, a review of the transcript indicates that Respondent presented no evidence that Petitioner's statements were false. Although he indicates that he now has such evidence, as such was not raised before the Family Court, the Court cannot consider such at this time. Respondent remains free, however, to file a Petition for Reconsideration of the matter in Family Court.

With respect to the minimum wage earning capacity assessed to Respondent's wife, Respondent contends such is in error as she is a full-time college student and medically unable to work. Although at the hearing Respondent testified that his wife fell and broke her leg, had surgery for the break, and currently attends physical rehabilitation at the hospital, he also indicates that she returned to college and attends full-time. He did not present any evidence that his wife is medically unable to work. The Court therefore finds no fault with the hearing officer's assessment of a minimum wage earning capacity. The Court does note, however, that in assessing such an earning capacity, the hearing officer did err in adding the entire tax refund to that earning capacity. Since the actual tax liability is considered in assessing the earning capacity, any refund of federal taxes paid should not be added to that earning capacity, but rather, only the earned income credit should be considered. An examination of the income tax return filed by Respondent and his wife indicates that his wife's proportionate share of that earned income credit is \$743.00, which averages to \$62.00 per month. Her total income/earning capacity is thus \$812.00 per month. Respondent's obligation for the two (2) children in his home is therefore calculated at \$693.00 per month.

With respect to the daycare expense, Respondent did present evidence that he pays \$249.80 per week for childcare for the two (2) children in his home, such childcare being necessary because he is working and his wife is at school full-time. Respondent's proportionate share of that childcare is \$787.00 per month. Since his child support obligations and his childcare expense leave him with less than \$550.00 per month, a further reduction is required. The appropriate reduction factor is calculated by dividing \$1,610.00, the excess of Respondent's income over \$550.00 per month, by \$2,162.00, the total of Respondent's obligations. Once that factor is applied to the guideline

obligation of \$682.00 per month, a reduced obligation of \$508.00 per month results.

Finally, with respect to credit for payments made prior to entry of the Order, it appears that such credit is automatically given through the PACSES system.

ORDER

AND NOW, this 17<sup>th</sup> day of May, 2002, for the foregoing reasons, Respondent's exceptions are hereby granted in part and denied in part. The Order dated October 9, 2001 is hereby modified to provide for a payment of \$508.00 per month.

As modified herein, the Order of October 9, 2001 is hereby affirmed.

This matter is hereby transferred to Northumberland County and the Domestic Relations Office is directed to take the steps necessary to effectuate such a transfer.

By the Court,

Dudley N. Anderson, Judge

cc: Domestic Relations Office  
Family Court  
EB  
JB  
Dana Jacques, Esq.  
Gary Weber, Esq.  
Hon. Dudley N. Anderson