

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

SLD, : NO. 90-21,088
Petitioner :
: vs. : DOMESTIC RELATIONS SECTION
: Exceptions
DMB, :
Respondent :

OPINION AND ORDER

Before the Court are Respondent’s exceptions to the Family Court Order dated February 1, 2002, in which Respondent was directed to pay support to Petitioner for the support of the parties’ one (1) minor child. Argument on the exceptions was heard March 27, 2002.

In his exceptions, Respondent contends the hearing officer erred in failing to consider his obligation to support two (2) minor children in his home and in finding that he receives social security disability when in actuality he receives supplemental security income. These will be addressed in reverse order.

In the Order of February 1, 2002, the hearing officer indicates that Respondent testified to receiving social security disability. No transcript of the hearing has been prepared. The Court has reviewed the Domestic Relations Office’s file, however, and notes a letter from the Social Security Administration dated February 15, 2002, directed to the Domestic Relations Office and sent in response to the wage attachment received by the Administration, indicates that Respondent receives only supplemental security income. Since supplemental security income may not be considered as income for purposes of child support, while social security disability is considered income, this factual error could have a significant impact on Respondent’s Court ordered obligation. The Court notes, however, that the hearing officer found Respondent to have part time income from employment, which

he added to Respondent's social security income. Respondent's total income was found to be \$787.00. The Court cannot discern from the Order of February 1, 2002, whether the hearing officer found it appropriate to consider only Respondent's part-time income, rather than assessing him a full time capacity, because he was not capable of working more than part time, or, rather, because when considering the social security income, Respondent's income was above the minimum wage earning capacity in any event. Since it appears that Respondent is capable of working at least part time, the Court believes it appropriate to remand the matter for a further determination whether Respondent should be assessed a full time minimum wage earning capacity.

With respect to the two (2) children in Respondent's home, the Court agrees with Respondent that the hearing officer erred in failing to consider his obligation to support those children. The hearing officer indicated that he was refusing to consider such as Respondent's wife refused to provide her income. The hearing officer went on, however, to find that Petitioner's income was not relevant, based upon Respondent's minimal income. The same would be true of Respondent's wife's income. Since the matter is being remanded, however, the Court need not recalculate Respondent's obligation at this time.

ORDER

AND NOW, this 5th day of April, 2002, for the foregoing reasons, the Order of February 1, 2002 is hereby vacated and the matter is remanded for further hearing, to determine whether Respondent should be assessed a minimum wage earning capacity.

By the Court,

Dudley N. Anderson, Judge

cc: Family Court
Domestic Relations
SD