

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

GMH,	:	NO. 01-21,190
Petitioner	:	
	:	
vs.	:	DOMESTIC RELATIONS SECTION
	:	Exceptions
RAH,	:	
Respondent	:	

OPINION AND ORDER

Before the Court are cross-exceptions to the Family Court Order dated November 29, 2001 in which Respondent was directed to pay child support to Petitioner for the support of the parties' one (1) minor child. Argument on the exceptions was heard January 23, 2002.

In her exceptions, Respondent contends the hearing officer erred in assessing her an earning capacity based upon her previous employment as a licensed practical nurse and in awarding child support to Petitioner, contending the child resides not with Petitioner but with an older sibling. In his exceptions, Petitioner contends the hearing officer should have assessed Respondent with a higher earning capacity.

With respect to Respondent's earning capacity, the hearing officer based such upon her previous employment as a licensed practical nurse, earning \$10.00 per hour, based upon Respondent's testimony that she voluntarily left that employment in order to pursue her interest in managing a bar. Respondent testified that the bar showed no profit and in fact was losing money. The Court finds no error in the hearing officer's assessment of an earning capacity based upon Respondent's previous employment, which she could have continued had she chosen to do so. Although Petitioner contends Respondent should be assessed an earning capacity higher than \$10.00

per hour, a review of the record does not support this request.¹

With respect to Respondent's contention Petitioner should not be awarded child support as the child resides with an older sibling, it appears the child and an older sibling reside in Petitioner's residence, that Petitioner works in New Jersey during the week and is home on weekends and that Petitioner pays all of the expenses of the residence. The Court finds no error in the award of child support to Petitioner under these circumstances.

ORDER

AND NOW this 24th day of January, 2002, for the foregoing reasons both exceptions are hereby denied and the Order of November 29, 2001 is hereby affirmed.

By the Court,

Dudley N. Anderson, Judge

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

¹It is noted that Petitioner has filed a Petition to reopen the record to introduce evidence that Respondent previously earned more than \$10.00 per hour as a licensed practical nurse; that hearing is scheduled before the Honorable Clinton W. Smith on February 7, 2002. This Court's decision is based on the record before it.