

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

DLK,	:	NO. 88-20,406
Petitioner	:	
	:	
vs.	:	DOMESTIC RELATIONS SECTION
	:	Exceptions
RLK,	:	
Respondent	:	

OPINION AND ORDER

Before the Court are cross-exceptions to the Family Court Order dated October 1, 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 December 19, 2001, at which time Petitioner's counsel requested the preparation of a transcript. That transcript was completed and the matter is now ripe for decision.

In his exceptions, Respondent contends the hearing officer erred in failing to specifically terminate his obligation to contribute to a child care expense which no longer exists and to specifically credit him for child care contributions made after the expense no longer existed, and also contends the hearing officer erred in requiring him to contribute to the support of the parties' elder minor child after she turns 18. At argument, Respondent's exceptions were resolved by stipulation inasmuch as both counsel agreed Respondent's obligation to contribute to child care should be terminated effective the date the child care terminated¹ and that Respondent should receive credit for any contributions to child care made after the child care expense is suspended. Further, Respondent agreed to continue to pay child support for the parties' elder child at this time, as both counsel agreed he may seek a review

¹That date is not part of the record.

of that in the future, without establishing a change in circumstances.

In her exceptions, Petitioner contends the hearing officer erred in not including in Respondent's income interest income which is shown on his federal tax return, in not including in his income any profit from the sale of real estate, and in not including in his income the value of the apartment and utilities provided by his employer. These will be addressed seriatim.

With respect to the interest shown on Respondent's income tax return, that tax return was submitted after the hearing and from the return itself it is not possible to discern whether the account at M&T Bank which produced the \$561.00 in interest income is held solely in Respondent's name or jointly with his wife or solely in his wife's name. Since this matter must be remanded, that issue will be subject to further evidence upon remand as well.

With respect to the profit from the sale of real estate, a review of the transcript indicates Petitioner questioned the hearing officer regarding potential income from the sale of a house but was informed by the hearing officer that such would be considered income only if the house was received as an inheritance. This is an incorrect statement of the law and it appears Petitioner was not given the opportunity to present evidence that Respondent may have additional income from such a source. The matter will therefore be remanded for further evidence on this issue.

Finally, with respect to consideration as income of the housing provided by Respondent's employer, although the hearing officer indicated that the value of that housing should be included as income, he did not inquire further or seek any evidence on the point. Since Respondent did admit to receiving such a benefit, further investigation should have been made. This matter will therefore also be subject to further evidence upon remand.

ORDER

AND NOW, this 18th day of January, 2002, for the foregoing reasons, the Order of October 1, 2001, is hereby modified to indicate that the child care contribution required by the previous Order is hereby suspended, effective the date that child care expense ended, as determined upon remand. Respondent shall receive credit for any child care contributions made after that date.

The matter is hereby remanded for further hearing in accordance with the foregoing Opinion.

By the Court,

Dudley N. Anderson, Judge

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