

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

JLR, : NO. 94-21,616
Petitioner :
:
vs. : DOMESTIC RELATIONS SECTION
: Exceptions
JMR, :
Respondent :

OPINION AND ORDER

Before the Court are Respondent’s exceptions to the Family Court Order dated January 15, 2002, in which he was directed to pay child support to Petitioner for the support of the two (2) minor children in her custody, after considering an offset of her obligation to him for the support of the two (2) minor children in his custody. Argument on the exceptions was heard March 13, 2002.

In his exceptions, Respondent contends the hearing officer erred in not crediting him with all joint tax liabilities he is responsible to pay and in not assessing Petitioner a full time earning capacity.¹

With respect to the hearing officer’s provision of credit for only part of the joint tax liabilities for which Respondent is responsible, the Court believes the hearing officer did err, but not in the manner alleged by Respondent.² At the hearing in Family Court, Respondent presented his most recent federal income tax return, which showed a refund of \$2,976.00. Respondent testified, however, that he did not receive the refund, that it was intercepted because of past due tax

1 At argument, Respondent withdrew his first written exception, that the hearing officer erred in not considering all of Petitioner’s income, as the source of income referred to, collection of donations for the World Trade Center Disaster Relief Fund, has since been actually given to the Relief Fund.

2 At argument, Respondent’s counsel sought to withdraw this exception after it became apparent the Court not only did not agree with her position, but in fact believed that none of the tax liability should have been considered by the hearing officer. The Court will not allow such maneuvering to prevent a fair result.

obligations. Respondent specifically testified to a balance due for a joint liability of \$3,385.32 and a balance due for a personal liability of \$2,055.13. The hearing officer engaged in what appears to be an attempt to consider only the marital liability.³ Respondent argues that the calculation does not provide full credit for all of the joint tax liability. While this may be true, although it is not clear from the calculation itself, the Court believes that none of the joint tax liability should be considered.

Although Respondent argues that the tax liability should be deducted from Respondent's income pursuant to the guidelines, the guidelines actually provide as follows:

Rule 1910.16-2. Support guidelines. Calculation of net income.

- ...
- (c) **Monthly Net Income.**
- (1) Unless otherwise provided in these rules, the Court shall deduct only the following items from monthly gross income to arrive at net income:
 - (A) Federal, state, local income taxes;
 - ...

This wording, which considers monthly gross income and seeks to arrive at monthly net income, implies that the federal, state, and local income taxes to be deducted are those taxes assessed on that particular gross income. The goal of the support guidelines is to base a party's child support obligation on his or her actual current net income/earning capacity. For example, although the guidelines provide for inclusion of an income tax refund, the guidelines also indicate that the income tax refund should not be included to the extent it was already factored into the party's tax obligation for purposes of arriving at his or her net income. Pa. R.C.P. Rule 1010.16-2(a)(note). In the instant matter, the tax liability sought by Respondent to be deducted from his income is for 1997 (the joint liability) and 1999 (the personal liability).⁴ The 1999 tax liability has already been considered in a previous Order, even though apparently Respondent has not paid it. The marital liability may be considered in the form of a request for credit in equitable distribution. In either case it is inappropriate

³ The actual calculation is not understandable.

⁴ Although Respondent did not argue the personal tax liability on exceptions, he did present such to the hearing officer for consideration.

to deduct such from Respondent's current income for purposes of his child support obligation.

With respect to the hearing officer's failure to assess Petitioner with an earning capacity, the Court agrees such a capacity should have been assessed. The hearing officer found Petitioner to have a monthly net income of \$663.00, based on working 25-30 hours per week at McDonalds. In a previous Order dated November 7, 2000, Petitioner was found to have a monthly net income of \$808.00 based upon working 36 hours per week at McDonalds. Initially, in an Order dated March 11, 1999, Petitioner was given a full time minimum wage earning capacity of \$750.00 per month based upon her working 25-30 hours per week at McDonalds. Petitioner presented no reason why these prior capacities should be lowered and the Court believes the hearing officer erred in doing so. The Court believes it would be appropriate to continue Petitioner's prior capacity of \$808.00 per month.

Considering Petitioner's earning capacity of \$808.00 per month net and her income tax refund of \$238.00 per month, she has a total monthly net income of \$1,046.00. Considering Respondent's income from employment of \$1,422.00 per month net⁵ and his refund averaging \$248.00 per month, Respondent has a monthly net income of \$1,670.00. Considering that each party has custody of two (2) of the four (4) minor children, Respondent has an overall obligation to Petitioner of \$207.96 per month. His spousal support obligation is then calculated at \$20.40 per month.

ORDER

AND NOW, this 19th day of March, 2002, for the foregoing reasons, Respondent's exceptions are hereby granted in part and denied in part. The Order of January 15, 2002 is hereby modified to provide for a child support payment of \$207.96 per month and a spousal support payment of \$20.40 per month. The parties' responsibility for excess unreimbursed medical expenses is hereby modified such that Petitioner shall be responsible for 38.51% of such and Respondent shall be responsible for 61.49% of

⁵ Although in the transcript the hearing officer indicated that Respondent's \$1,000.00 bonus would have to be backed out of his income to calculate his child support obligation, a review of the pay stub upon which Respondent's income was based indicates that that deduction was not made. The Court wishes to note that such a deduction, if made, would be inappropriate.

such.

As modified herein, the Order of January 15, 2002 is hereby affirmed.

By the Court,

Dudley N. Anderson, Judge

cc: Family Court
Domestic Relations
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Hon. Dudley N. Anderson