NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

JASON AMATO Appellant v. KRISTEN AMATO	: IN THE SUPERIOR COURT OF PENNSYLVANIA : No. 1424 EDA 2021

Appeal from the Order Entered June 10, 2021
In the Court of Common Pleas of Montgomery County Domestic Relations
at No(s): 2020-13808

BEFORE: BOWES, J., STABILE, J., and McLAUGHLIN, J.

MEMORANDUM BY McLAUGHLIN, J.: **FILED AUGUST 3, 2022**

Jason Amato ("Father") appeals the order awarding child support to Kristen Amato ("Mother").[1] He claims the court erred in denying his exceptions, which challenged the calculation of his income. We affirm.

The trial court set forth the factual and procedural history of this case, which we incorporate herein. Trial Court Opinion, filed Dec. 28, 2021 ("1925(a) Op."), at 1-8. We will provide a brief summary.

Father and Mother were married in April 2017 and separated in August 2020. In September 2020, Mother filed a Complaint for Support, seeking child

---

[1] Father appealed both the child support order and the alimony pendente lite ("APL") order. This Court issued a Rule to Show Cause, as APL generally is not appealable until resolution of all economic claims in a divorce action. Father filed a response, acknowledging the APL portion of the order was interlocutory and only the child support order was appealable. Accordingly, this Court entered an order stating that "<u>only</u> the portion of the order with regard to <u>child support</u> will be referred to the panel assigned to decide the merits of this appeal." Order, filed Sept. 3, 2021 (emphasis in original).

support and APL. After a hearing, the Support Hearing Officer set Mother's net monthly income at $3,866.27 and set the net monthly income for Father, who owns a business, at $7,911.23. The Hearing Officer based Father's income on his 2020 payroll detail report, his bank account statements, his testimony, and "add-backs" from the 2019 tax return for Father's business. During the hearing, the Hearing Officer heard Father's testimony that he funneled certain personal expenses through his business. The Hearing Officer thus included as gross income for Father the following: (1) $28,262 based on his 2020 payroll; (2) $36,650 based on 2020 distributions; (3) $29,330 based on depreciations from his 2019 Tax Return; and (4) $5,450 based on half of his auto expenses from his 2019 Tax Return. The hearing officer denied a reverse mortgage deviation. She further found that, effective December 1, 2020, childcare expenses consisted of $145 per week. The Hearing Officer directed Father to pay child support in the amount of $945.01 per month, plus costs for medical insurance provided by Mother, costs for childcare, and APL.

Father filed exceptions to the report, which the trial court denied. In denying the exceptions, the trial court made the following conclusions:

> 1. It was not an error to deny the mortgage deviation adjustment as the deviation is not mandatory, the marital residence was a pre-marital property, titled in Father's name only (such that Mother would only be able to claim a percentage of the increase in value of the property during the marriage), and Father was effectively maintaining his own marital asset by contributing to the mortgage expense;
>
> 2. It was not an error to include the $145 weekly child care expense as both parties were held to full time earnings and

> the cost of $145 a week, effective December 1, 2020, had a fairly de minimis impact on the overall support award;
>
> 3. With respect to Father's income, the undersigned found that it was "incredulous" that Father's business could gross $762,412 but his W-2 Income only reflected a mere $15,300; reviewing the exhibits and transcript demonstrated that Father used the corporate bank account for both personal and business expenses; and thus, it was not an error by the Officer to include certain addbacks to Father's income;
>
> 4. It was also not an error for the Officer to add back depreciation, despite Father's claim that depreciation was depleted by 2019 and would not carry over, given that Father was significantly incredulous with respect to his overall income and finances;
>
> 5. Finally, it was not an error to exclude the theoretical tax consequences of the added back income as these tax implications were fictitious (given that Father had not even filed his 2020 tax return), and upon review of his 2019 tax return, he paid a mere $ 161 dollars in federal taxes as the sole owner of a business that grossed $762,412.37.

1925(a) Op. at 7-8 (footnotes and citation omitted). Father timely appealed.

Father raises the following issues:

> A. Whether the [trial] court abused its discretion and committed an error of law in assessing marital income and assets resulting in an unjustifiable support order and distribution in violation of the divorce code and common law?
>
> B. Did the trial court err in rejecting the Father's credibility of witness and evidence?

Father's Br. at 6 (suggested answers and unnecessary capitalization omitted).

Father's issues are related, and we will address them together.

Father first argues he proved the child support payments were "erroneously calculated given that the Court used an egregious earnings figure and failed to consider business and other deductions in deviation of the applicable statute and common law." ***Id.*** at 11. He claims the hearing officer and trial court had included in his income depreciation business equipment, without considering expenses that reduced his gross income.

He further claims the hearing officer included as income deductions from prior years, including tax deductions for depreciation and auto expenses. He claims the trial court erred in accepting the "officer's decision that the corporate debt and personal loans for the benefit of the company did not affect the Father's income and assets." ***Id.*** at 19. Father claims that the court's statement that his true income "appears intentionally designed to be a mystery and, in any other corporation, would never be tolerated," is biased and not based on facts. ***Id.*** Father maintains that the hearing was in February, before tax filing, and the court made "disparaging comments" that his taxes were not completed, even though Mother also had not completed her taxes. ***Id.*** at 21. Father further states that the trial court erred in denying a mortgage adjustment and in awarding costs for childcare expenses.[2]

---

[2] Father continues to make arguments regarding APL. However, as acknowledged in his response to the Rule to Show Cause, because a divorce decree has not been entered, the award of APL was an interlocutory order and we cannot review it at this time. Reply to Order to Show Cause, filed Aug. 31, 2021; ***see also Leister v. Leister***, 684 A.2d 192, 193 (Pa.Super. 1996) (*en banc*) (APL is not appealable until all economic issues have been resolved).

Father next contends the court erred in failing to weigh the evidence and "thereby render[ed] an unfair support obligation." Father's Br. at 25. He claims the court incorrectly assessed the property value, even though he presented credible evidence. He asserts "the Hearing Officer decided without justification to include a depreciation deduction in the sum of $29,330 from the Father's business as income to him," and "refused to accept testimony as to the source of the depreciation." ***Id.*** at 27. He claims the Hearing Officer also refused to review the tax returns in detail, which would have revealed that the equipment was old and had very little value. He claims the decision failed to consider the substantial corporate debt of the company, including approximately $430,000 in debt and personal loans Father allegedly took for the company.

He also claims the court charged Father with unrealized income without considering expenses that reduced that income. For example, he claims the court charged $26,650 for income for reimbursed expenses without considering the expense for interest paid on loans and mileage, which, he claimed, "directly impacted the [Father's] gross income." ***Id.*** at 31. He maintains the court "imputed excessive income" without adjusting for the higher taxes that would be owed. He further claims he submitted evidence that the depreciation was not fictional but rather necessary to perform its purpose. Father also claims the vehicle was used for transporting equipment and the reverse mortgage lien reduced the value of the home. He claims his evidence was uncontradicted.

We review support awards for an abuse of discretion. ***Spahr v. Spahr***, 869 A.2d 548, 551 (Pa.Super. 2005). "A finding that the court abused its discretion requires proof of more than a mere error in judgment, but rather evidence that the law was misapplied or overridden, or that the judgment was manifestly unreasonable or based on bias, ill will, prejudice or partiality." ***Id.*** (quoting ***Isralsky v. Isralsky***, 824 A.2d 1178, 1186 (Pa.Super. 2003)).

"Support orders 'must be fair, non-confiscatory and attendant to the circumstances of the parties.'" ***Id.*** at 552 (quoting ***Fennell v. Fennell***, 753 A.2d 866, 868 (Pa.Super. 2000). If a spouse owns a business, "the calculation of income for child support purposes must reflect the actual available financial resources of the . . . spouse." ***Id.*** (quoting ***Fitzgerald v. Kempf***, 805 A.2d 529, 532 (Pa.Super. 2002)). In addition, "all benefits flowing from corporate ownership must be considered in determining income available to calculate a support obligation." ***Id.*** (quoting ***Fennell***, 753 A.2d at 868) (emphasis omitted). "[T]he owner of a closely-held corporation cannot avoid a support obligation by sheltering income that should be available for support by manipulating salary, perquisites, corporate expenditures, and/or corporate distribution amounts." ***Id.*** (quoting ***Fennell***, 753 A.2d at 868).

The trial court addressed Father's appellate claims, concluding it did not abuse its discretion. The court found it was not error for the hearing officer to provide add-backs to Father's income to determine his actual cash flow, reasoning that Father admitted to not maintaining separate personal and business accounts, confirmed he was the sole owner of the company, and

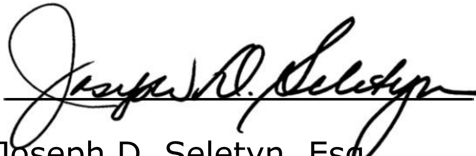
testified that many of his personal expenses were deducted from his business. 1925(a) Op. at 13-15.

It further found the officer did not err by adding back into Father's income the depreciation from the 2019 tax return, as depreciation is not automatically deducted from gross income for child support purposes. ***Id.*** at 15-19. The court also explained it was not error to add back to Father's income his expenses for interest and mileage, noting interest on loans was not included in the items that should be deducted from monthly gross income, the expenses were not *bona fide* expenses, and Father did not prove the expenses increased his business income or were utilized for the business. ***Id.*** at 19-22. The court concluded it was not an abuse of discretion not to consider the tax consequences of the income decisions, reasoning any future tax consequences were theoretical. ***Id.*** at 22-23. The court further concluded it did not err in including the childcare expenses as Mother did not have to agree to use Father's mother as a childcare provider, the record contained no information as to her availability, and the cost was *di minimis*. ***Id.*** at 23-25. Finally, the court found it did not err in denying a reverse mortgage deviation, as Father owned the house, which was pre-marital property. ***Id.*** at 25-26.

After review of the briefs, the record, the relevant law, and the well-written opinion of the Honorable Daniel J. Clifford, we conclude his opinion properly disposes of all of Father's issues. We therefore affirm on the basis of the trial court's opinion. ***Id.*** at 13-26.

Order affirmed.

Judgment Entered.



Joseph D. Seletyn, Esq.
Prothonotary

Date: 8/03/2022

IN THE COURT OF COMMON PLEAS OF MONTGOMERY COUNTY, PENNSYLVANIA
CIVIL ACTION - LAW

JASON AMATO **Plaintiff**	:	**NO. 2020-13808**
v.	:	**PACSES NO. 137300433**
KRISTEN AMATO **Defendant**	:	**1424 EDA 2021**

2020-13808-0057 12/28/2021 1:43 PM # 13367078
Rcpt#Z4170478 Fee:$0.00 Opinion
Main (Public)
MontCo Prothonotary

OPINION

Clifford, Daniel J. December 28, 2021

Appellant, Jason Amato, files this appeal from the Order entered by the undersigned in this support matter dated June 10, 2021.

FACTUAL AND PROCEDURAL HISTORY

Appellant is Jason Amato ("Father") and Appellee is Kristen Amato ("Mother"). The parties have one daughter, Kira K. Amato, born December 16, 2017. The parties were married on April 8, 2017 and separated on or about August of 2020.

On September 4, 2020, Mother filed a Complaint for Support. Her complaint sought support for herself, in the form of *Alimony Pendente Lite* ("APL"), and child support for the parties' minor child.

The parties were then scheduled for a remote teleconference before a Conference Officer at the Domestic Relations Office on October 22, 2020. Due to scheduling conflicts with Counsel, the Conference was continued to November 3, 2020.

Following the Conference, on November 3, 2021, an Interim Order was issued for Father to pay support in the amount of $156.85 per month on a weekly basis.[1] The Conference Officer indicated that the Interim Order consisted of $130.85 per month, allocated as $517.14 per month for basic support of one child plus $181.56 for medical coverage, less $567.85 for a reverse mortgage deviation.[2]

On November 25, 2020 Mother filed a Motion to Designate Case as Complex. By Order on December 1, 2020, the case was designated complex.[3] Father was directed to produce the following: (1) Copies of bank statements for any account in which he has an interest, both personal and business, from January 1, 2019 through the present date; and (2) Verification of business expenses from January 1, 2019 through the present date.[4] Thereafter, the parties were scheduled for a record hearing before Support Hearing Officer, Mindy A. Harris, Esquire, on February 23, 2021.[5]

At the hearing, the Officer found Mother's net monthly income to be $3,866.27 based on her paystubs submitted of record ending January 30, 2021 and the testimony provided.[6] No issues were raised with respect to Mother's income.

The Officer found Father's net monthly income to be $7,911.23.[7] The Officer indicated that Father did not produce his 2020 personal or corporate tax return, nor his 2020 Profit and Loss

---

1 *See* November 3, 2020 Interim Order of the Court—Unallocated.

2 *See Id.*

3 *See* December 1, 2020 Order.

4 *See Id.*

5 Montgomery County observes Pennsylvania Rule of Civil Procedure 1910.12. *Office. Conference. Hearing. Record. Exceptions Order.* in addressing support exceptions.

6 *See* March 1, 2021 Order; *See Also* February 23, 2021 Notes of Testimony, Pgs. 5-6.

7 *See* March 1, 2021 Order.

statement for his corporation, which grossed $762,412 in 2019.[8] Father's income was therefore based from his 2020 Payroll Details Report, his bank account statements, his testimony, and add-backs from the 2019 corporate tax return. Specifically, the Officer included as gross income for Father: (1) $28,626 based on his 2020 Payroll; (2) $36,650 based on 2020 distributions; (3) $29,330 based on depreciations from his 2019 Tax Return; and (4) $5,450 based on half of his auto expenses from his 2019 Tax Return.[9] The Officer also found that, effective December 1, 2020, child care expenses consisted of $145 per week.[10]

Based on these findings, the Officer directed Father to pay child support and APL for a total of $2,006.32 per month, effective September 4, 2020.[11]

In support of the Officer's findings and recommendation, Father testified at the hearing that he has been an owner of his company since 2012 (and currently is the sole owner).[12] Father testified to paying at least two of his employees $1,000 to $1,300 a week each (totaling roughly from $52,000 to $67,600 annually) while only paying himself about $15,300 for the year.[13] When the Officer questioned why he was paying the other people more than he was paying himself, Father testified that he takes a "distribution that is essentially a payment for costs that we had

---

[8] *See Id.*

[9] *See Id.*

[10] *See Id.*

[11] *See Id.* The Officer's Report included separate calculations for a total of four time periods including: December 1, 2020 through September 14, 2021 forward (to account for child care costs); Mother no longer paying for Father's insurance (beginning January 1, 2021); custody being modified such that Father had 6 out of 14 overnights (also beginning January 1, 2021); and custody being modified again for a shared schedule on a 50/50 basis (beginning September 14, 2021).

[12] *See* February 23, 2021 NOT at Pg. 16.

[13] *See Id.* at 17-18. Notably, one of the individuals receiving in excess of $50,000 is a relative of Father.

incurred at the personal level that was not being reimbursed by Delta…"[14] In effect, Father claimed that he is only paying himself what could not otherwise be expensed through his business.

The Officer elicited testimony from Father based on his corporate tax return.[15] Father testified that despite having everything the business does completed on location, he deducts automobile expenses for both his and Mother's vehicles.[16] Notably, Father admitted that upon the personal joint accounts being shut down in, he has "had to use the[sic], the [business] account for personal expenses."[17]

When the Officer questioned Father on how the loans he took out were used, Father claimed that they were "personal loans" used for the business.[18]

With respect to the expense reimbursement of $36,650 that Father received, Father was questioned on what he was actually being reimbursed for.[19] Father responded that it was for "mileage" and the interest on the "personal loans."[20] Father then clarified that only $13,903 of the expense reimbursement was allegedly used for the mileage and interest components.[21]

---

14 *See Id.* at 19.

15 *See Id.* at 22.

16 *See Id.*

17 *See Id.* at 26.

18 *See Id.* at 26-27; 32-34

19 *See Id.* at 39.

20 *See Id.*

21 *See Id.* at 41.

On cross examination, Father acknowledged that there were many uses of his business account that would appear personal in nature including, but not limited to, the following:

1. Legal fees for a divorce attorney and property dispute attorney, neither of which gave legal advice related to running a business;[22]

2. Compensating employees for various food purchases, including compensating himself for pizza purchases on his way home from work in Bridgeport (while the business is located in Newark, Delaware);[23]

3. Father's personal CVS prescriptions for his skin issues;[24]

4. Father's personal car and home insurance;[25]

5. Approximately $3,809 worth of Wawa purchases;[26]
6. Personal Carpet installations for the marital home;[27]

7. Groceries from Giant for a total of $876 during 2020 (due to not having a "personal" account at the time).[28]

The crux of Father's testimony as to why some of these personal expenses were being paid from his business account could be summed up through the following exchange:

> HEARING OFFICER: So why are you paying for your prescriptions out of the business account?
>
> MR. AMATO: A lot of times, it was, I was down here or I was told that we don't have any money so that's why, I mean, it, it wasn't a super high number that I really thought about, but yeah you know, ***that, that is a personal expense that, that technically was being put through the company.*** [Emphasis added]
>
> *See* February 23, 2021 NOT at Pg. 58.

---

[22] *See Id.* at 49. Father cites to this as a one-time anomaly but proceeded to pay these legal fees on multiple occasions.

[23] *See Id.* at 53-54.

[24] *See Id.* at 57-58

[25] *See Id.* at 61.

[26] *See Id.* at 61-62.

[27] *See Id.* at 63.

[28] *See Id.* at 70.

After Father admitted to these personal expenses being funneled through his business, the Officer indicated that since many of them were "not a business expense, [they wouldn't] get deduced from the business income."[29]

Father's testimony as to why he was paying for many of his personal expenses through the business, including food purchases, was that the policies of his corporation allowed him to do so—policies for a corporation of which Father is currently the sole owner of.[30] Additionally, Father took issue with classifying the expenses as "personal" despite admitting to the fact numerous times on the record:

> MR. HIGHLANDS: So you've had Delta paying all these personal expenses throughout the course of 2020. Correct?
>
> MR. AMOTO: I don't know why you keep saying personal. ***I guess it's a point of view things***. I mean, I think based on what we've discussed... [Emphasis added]
>
> HEARING OFFICER: Okay, Mr. Amato, Mr. Amato
>
> MR. AMATO: Yes, ma'am.
>
> HEARING OFFICER: If it's not specifically related to the business, it's a personal expense. So work done on the house, carpet replacement, things like that are personal expenses because they have nothing to do with the business. Understood?
>
> MR. AMATO: Yes, ma'am.
>
> *See* February 23, 2021 NOT at Pg. 67.

Father filed Exceptions on March 10, 2021 raising four (4) exceptions as follows: the Officer's calculation of Father's income, the inclusion of child care costs, the Officer's failing to

---

[29] *See Id.* at 64.

[30] *See Id.* at 41-42; 62.

include a reverse mortgage deviation, and the issuance of the APL award.[31] The undersigned then issued an Order and Briefing Schedule on Father's support exceptions on April 7, 2021.[32]

Father's Exceptions were argued before the undersigned on May 12, 2021, via Zoom, and the Order subject to this appeal was filed on June 10, 2021.

In sum, the undersigned's Order contained the following findings, *inter alia*, pertaining to Father's Exceptions:

1. It was not an error to deny the mortgage deviation adjustment as the deviation is not mandatory, the marital residence was a pre-marital property, titled in Father's name only (such that Mother would only be able to claim a percentage of the increase in value of the property during the marriage), and Father was effectively maintaining his own marital asset by contributing to the mortgage expense;[33]

2. It was not an error to include the $145 weekly child care expense as both parties were held to full time earnings and the cost of $145 a week, effective December 1, 2020, had a fairly *de minimis* impact on the overall support award;[34]

3. With respect to Father's income, the undersigned found that it was "incredulous" that Father's business could gross $762,412 but his W-2 Income only reflected a mere $15,300; reviewing the exhibits and transcript demonstrated that Father used the corporate bank account for both personal and business expenses; and thus, it was not an error by the Officer to include certain addbacks to Father's income;[35]

4. It was also not an error for the Officer to add back depreciation, despite Father's claim that depreciation was depleted by 2019 and would not carry over, given that Father was significantly incredulous with respect to his overall income and finances;[36]

5. Finally, it was not an error to exclude the theoretical tax consequences of the added back income as these tax implications were fictitious (given that Father had not even filed his 2020 tax return), and upon review of his 2019 tax return, he paid a

---

[31] *See* March 10, 2021 Father's Exceptions to Recommendation of the Hearing Officer in Support.

[32] *See* April 7, 2021 Order and Briefing Schedule.

[33] *See* June 10, 2021 Memorandum and Order at Sections 5-11.

[34] *See Id.*, at Sections 12-15.

[35] *See Id.*, at Sections 16-29.

[36] *See Id.*, at Sections 30-31.

> mere $161 dollars in federal taxes as the sole owner of a business that grossed $762,412.[37]

Accordingly, the undersigned denied Father's Exceptions, as the Officer thoroughly considered all the evidence in making her Recommendation and Order, and directed that the March 1, 2021 Support Hearing Officer's Order remain in full force and effect.

Father then filed the instant appeal on July 9, 2021. On July 22, 2021, the undersigned issued an Order directing Father to file and serve a Concise Statement of Errors Complained of on Appeal. On August 9, 2021, Father filed of record his Concise Statement and properly served the undersigned and opposing counsel.

ISSUES

Pursuant to Pennsylvania Rule of Appellate Procedure 1925(a)(2)(i), Father raised the following issues in his Concise Statement of Errors Complained of on Appeal:[38]

1. The Court erred by conducting a *de novo* review of the evidence and testimony (by reviewing the transcript of the hearing officer before the hearing officer) and overriding the conclusions of the hearing officer regarding credibility—and specifically regarding the payment of personal expenses—without Father having the benefit to offer any testimony regarding the Court's unilateral conclusions, thus substituting its judgement for that of the hearing officer, who actually conducted the record hearing. [Footnote omitted]. A hearing officer's report and recommendation is to be given the fullest consideration, particularly in credibility, because the hearing officer has had the opportunity to observe and determine the credibility. [Citation omitted].

2. The Court made factual errors in its *de novo* review of the record, including that Father did not maintain separate personal and business accounts, and that the Father was the sole owner of the company since 2012, both of which are incorrect, and which erroneous assumption was the basis for much of the Court's conclusion regarding the issue of personal expenses. [Footnote omitted].

3. The Court erred by adding back $29,330 of depreciation reported on the 2019 corporate tax return to calculate Father's income, which she did with no testimony by Father on

[37] *See Id.*, at Sections 32-35.

[38] It is worth noting that each of Father's errors complained, save for the first 2, are near exact copies of the Exceptions filed by his then counsel on March 10, 2021—begging the question as to whether Father is actually seeking to have a proverbial "second bite at the apple" for review of each of his exceptions via the pending appeal.

this issue whatsoever. [Citation omitted]. Further, the depreciation deduction was depleted in 2019 (as evidenced on the tax return admitted as an exhibit) and there will be no depreciation deduction for 2020.

4. The Court erred by including $36,650 of expense reimbursements in Father's income without deducting the out-of-pocket expense for interest paid on loans ($6,775) and mileage ($7,128), thus overstating Father's income by $13,903.

5. The Court erred by imputing Father with additional income as set forth above in paragraphs 3-4 but not imputing Father with the taxes due on that additional income, thus artificially inflating his income significantly. [Citation omitted].

6. The Court erred by directing Father to pay his proportional share of the child's daycare expense where Mother enrolled the childcare over Father's objection due to COVID; where the parties share legal custody; and where Father's mother was willing to continue to care of the child at no cost as she has done since the child was born.

7. The Court erred by failing to include a reverse mortgage deviation despite the fact that Mother did not object to the deviation.

STANDARD OF REVIEW

The undersigned's standard of review in reviewing a Support Hearing Officer's recommendation and interim order is broad.

The standard of review, as a trial court, in reviewing the recommendation and order of a support master (Support Hearing Officer) has been thoughtfully analyzed and set forth by the Pennsylvania Superior Court in Goodman v. Goodman, 375 Pa. Super. 504, 544 A.2d 1033 (1988) as follows:

> "We first note that the findings of the DRHO were only advisory and not in any way binding on the trial court. *See* Pa. R.C.P. 1912, sections (d) (hearing officer shall file report containing recommendation with respect to entry of an order), (f) (absent exceptions, court shall review report and, if approved, enter a final order), and (g) (following argument on exceptions, court shall enter appropriate order. Because of the procedure followed under this Rule involves, 'in essence substantially a master's hearing, akin to a master's hearing in divorce, the cases addressing the use of a divorce master's report and recommendation are apposite to actions for support under this rule.' *See*, e.g. McBride v. McBride, 335 Pa. Super. 296, 484 A.2d 141 (1984). While such a report is to be given the fullest consideration, especially with regard to the credibility of witnesses, a trial court is required to review the report to determine if the recommendations are appropriate. *See* Reed v. Reed, 354 Pa. Super. 284, 511 A.2d

> 874 (1986). It is the sole province and the responsibility of the court to set an award of support, however much it may choose to utilize a master's report."[39]

With the foregoing mandate in mind, the undersigned carefully reviewed the record, briefs and oral argument and found that the Support Hearing Officer filed an excellent report and recommendation, in conformity with all of the testimony offered at the record hearing before her.

As required by Goodman, the undersigned gave the fullest consideration to the Officer's Report. The Report was reviewed to determine if the recommendations are appropriate and found that they were.

This Court also gives great deference to the factfinder's findings. In coming to her findings, the factfinder's assessment of the credibility of the parties is paramount because it is the factfinder that sees and hears the witnesses testify. It is not this Court's function to substitute its judgment for that of the Hearing Officer.[40]

For these reasons, in applying the aforementioned law, the undersigned found that the Support Hearing Officer's Order was "appropriate" and proceeded to deny Father's Exceptions.

The Pennsylvania Superior Court is now called upon to review the undersigned's Order based on the undersigned's reasoning as set forth above. The standard of review, in child support cases, is set forth in Isralsky v. Isralsky, 824 A.2d 1178 (Pa. Super. Ct. 2003) as follows:

> The amount of a support order is largely within the discretion of the trial court, whose judgment should not be disturbed on appeal absent a clear abuse of discretion. An abuse of discretion is not merely an error of judgment, but rather a misapplication of the law or an unreasonable exercise of judgment. A finding that the trial court abused its discretion must rest upon a showing by clear and convincing evidence, and the trial court will be upheld on any valid ground. For our purposes, "an abuse of discretion requires proof of more than a mere error of judgment, but rather that the law was

---

[39] The subsections of Rule 1912 have changed slightly but the procedure remains the same.

[40] *See* Gutteridge v. J3 Energy Grp., Inc., 165 A.3d 908, 916 (Pa. Super. Ct. 2017) (en banc) ("In a non-jury trial, the factfinder is free to believe all, part or none of the evidence and a [reviewing court] will not disturb the trial court's credibility determinations.")

> misapplied or overridden, or that the judgment was manifestly unreasonable or based on bias, ill will, prejudice or partiality."[41]

It is submitted that, in exercising its scope of review as set forth in Goodman, this Court's finding was appropriate and not an abuse of discretion (meaning that the law was not misapplied or overridden or that the judgment was manifestly unreasonable based on bias, ill will, prejudice or partiality).

Accordingly, it is respectfully suggested that the undersigned's Order should be affirmed.

ANALYSIS

I. This Court Conducted a Proper Review of the Record Hearing Consistent with Pennsylvania's Rules of Civil Procedure on the Review of Child Support Exceptions

In his first error complained of, Father claims that this court conducted a "*De Novo*" review of the evidence and testimony provided before the hearing officer, overriding her conclusions and substituting its judgement for that of the officer.

At first glance, Father's error is misplaced as there was no *de novo* proceeding before the undersigned and the Hearing Officer's Order was upheld in its entirety. A d*e novo* hearing would be trying the matter "anew," as if the matter had not been heard before, no decision had previously been made, and a retrial was conducted.[42] However, this court does not conduct a *de novo* hearing on support exceptions as the Montgomery County Court observes Pennsylvania Rule of Civil procedure 1910.12. *Office Conference. Hearing. Record. Exceptions Order.*, which provides the following:

> "(d) The hearing officer shall receive evidence, hear argument, and not later than 20 days after the close of the record, file with the court a report

---

[41] *See* Isralsky at 1186 (quoting Portugal v Portugal, 798 A.2d. 246, 249 (Pa. Super. Ct. (2002)).

[42] *See De Novo,* BLACK'S LAW DICTIONARY (11th ed. 2019); *De Novo* Review, BLACK'S LAW DICTIONARY (11th ed. 2019)

containing a recommendation with respect to the entry of an order of support...

(e) The court, without hearing the parties, shall enter an interim order consistent with the proposed order of the hearing officer. Each party shall be provided, either in person at the time of the hearing or by mail, with a copy of the interim order and written notice that any party may, within twenty days after the date of receipt or the date of mailing of the order, whichever occurs first, file with the domestic relations section written exceptions to the report of the hearing officer and interim order.

...

(h) If exceptions are filed, the interim order shall continue in effect. The court shall hear ***argument*** on the exceptions and enter an appropriate final order substantially in the form set forth in Rule 1910.27(e) within sixty days from the date of the filing of exceptions to the interim order..."
[emphasis added]

Pennsylvania case law has made clear that the court shall hear argument on the exceptions and not conduct a *de novo* hearing such that the matter is re-tried.[43] Father seemingly concedes this point as he also states in his Concise Statement that the court erred "by reviewing the transcript of the hearing before the hearing officer."[44] Notably, reviewing the Officer's transcript it ***exactly*** what is required on Support Exceptions. This court would not have been able to conduct a *de novo* review and ***at the same time*** base it's Order upon review of the transcript and findings of the hearing officer.

Furthermore, Father alleges that this court overrode the conclusions of the hearing officer, including findings of credibility, and thus substituted its judgement for that of the hearing officer.[45] Again, Father's error is misplaced. Contrary to Father's assertion, the undersigned did not

---

[43] *See* Eerhardt v. Akerly, 665 A.2d 1283, 1286 (Pa. Super. 1995) (holding that Pa. R.C.P. 1910.12(g) requires that the court hear argument on exceptions); *See Also* K.L.B. v. J.M.W., 2016 WL 5852915, No. 2061 MDA 2015, at Footnote 3 (Pa. Super. 2016) (finding that the appellant incorrectly characterized Rule 1910.12 as permitting a hearing *de novo*, when the rule only requires that the trial court hear argument if timely exceptions are filed.)

[44] *See* Father's August 9, 2021 Concise Statement of Matters Complained of on Appeal.

[45] *See* Father's August 9, 2021 Concise Statement of Matters Complained of on Appeal.

"override" the hearing officer's findings and instead, upheld the Officer's March 1, 2021 Order in its entirety, indicating the following:

> "40. Importantly, when reviewing an award of support, 'a master's report and recommendation, although only advisory, is to be given the fullest weight and consideration.'
>
> 41. Such reports are made with the benefit of having heard and seen witnesses, 'is entitled to great consideration,' and should not be lightly disregarded.
>
> 42. It is not this court's function to substitute its credibility determinations for that of the hearing officer.
>
> 43. The Officer thoroughly considered all the evidence presented to the record of the proceedings and issued a comprehensive report and the Court finds no error.
>
> *See* June 10, 2021 Memorandum and Order.

Accordingly, the undersigned did not abuse its discretion and the Order denying Father's Exceptions should be affirmed.

II. This Court's Findings Were Supported by the Record Transcript and Exhibits Submitted

In his second error complained of, Father claims that the trial court made certain factual errors in its "*de novo* review of the record," which he claims were the basis of the courts conclusions regarding the issue of personal expenses.

This court's procedure in hearing argument for a record review, as opposed to a *de novo* review, was thoroughly addressed in Sections I, *supra,* such that it should not be necessary to repeat again here for the reader.

However, for completeness, the undersigned notes that upon review of the hearing transcript Father clearly admitted to not maintaining separate personal and business accounts, and at numerous times, stated that his expenses through the business account were "personal" in nature:

HEARING OFFICER: What other personal expenses are paid through the business?

MR. AMATO: Other than the you know, after the bank account, joint account got shut down in September you know, I, is really the only time I, I've had to use the, the account for personal expenses

HEARING OFFICER: well, so what personal expenses?

MR. AMATO: oh, it was, there was from September to December of this past year, my expenses at the you know, like my groceries, there, there were four personal, or personal loans that I had to get, set back up for automatic payments because they were being paid for, through the, the joint account and once that got shut down, I then had to start getting everything transferred over and some of the lenders had, had changed because they had sold the debt off to other groups and it caused some problems in getting that set up. So...

See February 23, 2021 NOT at Pg. 26.

When determining support, income must reflect actual available financial resources and not the "oft-time fictional financial picture which develops from tax returns...'cash flow' ought to be considered and not federally taxed income."[46] Furthermore, when an obligor has substantial control over the finances of a business in which he is a controlling partner or sole shareholder and has the opportunity to manipulate the timing and amount of personal income derived from said business, the courts must look beyond the corporate veil to determine actual cash flow for support determination.[47] Here, not only did Father admit to running his personal expenses through his business, but also testified that he is currently the sole owner of his business—which provides Father the unchecked ability to manipulate the amount of personal income derived from the

[46] *See* Labar v. Labar, 731 A.2d 1252, 1257 (1999), *citing* Com. ex. re. Hagerty v. Eyster, 429 A.2d 665 (Pa. Super. 1981).

[47] *See* Morris v. Bell, 639 A.2d 846 (Pa. Super. 1993), *affirming*, 141 P.L.J. 169 (1992)

business.[48] Father further testified to many of his expenses being personal in nature, despite being deducted from his business accounts.[49]

Given that Father admitted to not maintaining separate bank accounts, confirmed being currently the sole owner of the company, and testified to many of his personal expenses being deducted from his business, it was appropriate for the Officer to provide add-backs to Father's income to determine the actual cash flow for support purposes. Accordingly, upon review of the testimony and exhibits, the undersigned confirmed that the Officer's findings, with respect to the add-backs, were supported by the record.

Thus, it was factual to state in the Order that Father did not maintain separate personal and business accounts such that his personal expenses, for support purposes, were being funneled through his business account, nor was it an error to state that Father is currently the sole owner of the company.

Therefore, the undersigned did not abuse its discretion and the Order denying Father's Exceptions should be affirmed.

III. Given Father's Testimony Regarding his Finances, the Corporate Depreciation Add Back the Hearing Officer was Appropriate

In his third error complained of, Father claims that the court erred by adding back the $29,330 depreciation on Father's 2019 tax return to calculate Father's income.

---

[48] *See* February 26, 2021 NOT at Pg. 16, 26. While it may have been a factual mistake to state that he has been the sole owner since 2012, it remains that Father is currently the sole owner of the company.

[49] *See Id.* at Pgs. 49-62.

While depreciation and depletion expenses are permitted under federal income tax law without proof of actual loss, the same "will not automatically be deducted from gross income" for child support purposes.[50] Rather, depreciation and depletion expenses should be deducted from gross income "only where they reflect actual reduction in the personal income of the party claiming the deductions, such as where, he or she actually spends funds to replace worn equipment or purchase new reserves."[51] In McAuliffe, the Superior Court addressed the appellant's claim that the trial court failed to consider the substantial increase of cash outlays for equipment in his business entitled him to a reduction in support.[52] Relying on Cunningham, the Court reasoned that the depreciation expenses should only be deducted from gross income when the appellant provides that they reflect an actual reduction in personal income.[53] While the appellant in the matter testified that all the purchases were necessary to replace worn equipment or preserve the capital of the business, the trial court found that appellant did not meet his burden of proving that the expenditures were necessary to maintain or preserve his business.[54] Specifically, the court was not compelled to accept as true all of the appellant's statements.[55] Thus the Superior court found no abuse of discretion and affirmed the trial court's determination.[56]

It has been a long accepted practice of adding back depreciation in child support cases as depreciation is a fictional expense that business owners are able to use on tax returns, over the

---

[50] *See* Cunningham v. Cunnigham, 548 A.2d 611, 612 (Pa. Super. 1988).

[51] *See* McAuliffe v. McAuliffe, 613 A.2d 20, 22 (Pa. Super. 1992), *citing* Cunningham v. Cunnigham, 548 A.2d 611, 6-12-613 (Pa. Super. 1988).

[52] *See Id.*

[53] *See Id.*

[54] *See Id.* at 23.

[55] *See Id.*

[56] *See Id.*

passage of time, to reduce taxable income. ***It is a tax shield; not an actual expense.*** Accordingly, the burden is on the business owner, in a child support case, to demonstrate why it shouldn't be added back to income.

Here, the facts are nearly identical to that of McAuliffe, as Father failed to meet his burden of proof. Father alleges that the $29,330 depreciation was added back to his income without testimony by Father on the issue. Upon review of the record, Father did not once mention that the deductions were necessary to replace worn equipment or preserve the capital of the business. In fact, Father testified that the last purchase of equipment at his business was in 2013 (and before that in 2008) and that he did not intend to get replacements "at this second."[57]

Father argues that the Court should rely on Labar for the proposition that the depreciation deduction should not have been included in his income for determining a support obligation. However, Labar is distinguishable in that the Labar court considered wife's argument that the funds used for capital expenditures should have been dispersed to shareholders as income.[58] The Superior Court found that the wife's argument failed because it assumed that the capital expenditures consisted of cash flows which the company could have elected to disburse to its shareholders.[59] The Superior Court noted that the wife could have argued that the funds expended were unnecessary disbursements made to shelter cash flows from the support obligation and the husband would then carry the burden of showing the expenditures were necessary for the continued operation of the business.[60]

---

57 *See Id.* at Pgs. 34-35.

58 Labar v. Labar, 731 A.2d 1252, 1251 (Pa. Super. 1994).

59 *See Id.*

60 *See Id.*

The possible argument that wife could have made in Labar is exactly what was intended by Mother in this matter. Not only did Father's counsel at the time question how the capital expenses were used, but Father admitted to many of the personal expenses being paid for through his business account (showing that some of the expenditures were not necessary for the continued operation of the business).[61]

However, even assuming that Father's testimony had provided proof that the expenditures were necessary to preserve the business, the Officer and the undersigned found Father's testimony to be incredulous. Specifically, Father testified many of his expenses from his business account to being personal, including, but not limited to: car insurance[62], mileage,[63] food purchases,[64] CVS prescriptions,[65] legal fees for a divorce and property attorney,[66] and carpet instillation for the marital home.[67] Thus, a simple cursory review of Father's financial expenditures compelled the Officer, and ultimately the undersigned, to not accept as true all of Father's statements related to his finances.

Father also asserts that the depreciation deduction would be depleted in 2019 and would not be available in 2020. However, Father did not submit a 2020 tax return to prove that the depreciation deduction would not be available, but simply offered his testimony that this was true. Again, the Officer and the undersigned did not find Father's statements credible.

---

61 *See* February 23, 2021 NOT at Pg. 53-63.

62 *See Id.* at 25-26

63 *See Id.* at 22, 40-41.

64 *See Id.* at 53-54.

65 *See Id.* at 57-58.

66 *See Id.* at 41.

67 *See Id.* at 63.

It is well settled that that a hearing officer's credibility determination must be accorded great weight.[68] Specifically, the hearing officer was in the best position to determine Father's veracity having heard and seen the witnesses. It is not this court's function to substitute its credibility determinations for that of the hearing officer.[69]

Accordingly, the undersigned did not abuse its discretion in relying on the Officer's recommendation, as supported by the record, and the Order denying Father's Exceptions should be affirmed.

IV. Father's Expense Reimbursement was Added Back to His Income as Many of his Expenses, Including Expenses for Interest and Mileage, were Personal in Nature

In his fourth error complained of, Father alleges that the court erred in adding the $36,650 of expense reimbursements to Father's income without deduction of the interest on loans paid and mileage for a total of $13,903.

First, it must be noted that Pa. R.C.P. 1910.16-2(c). *Monthly Net Income*. Specifically provides that, unless these rules provide otherwise, the trier-of-fact shall only deduct the following items from monthly gross income to arrive at monthly net income:

(i) Federal, state, and local income taxes;
(ii) Unemployment compensation taxes and Local Services Taxes (LST);
(iii)F.I.C.A. payments (Social Security, Medicare, and Self-Employment taxes) and non-voluntary retirement payments;
(iv)Mandatory union dues; and
(v) Alimony paid to the other party.

Noticeably absent from the Rule is any deduction for interest on loans.

---

68 *See* Moran v. Moran, 839 A.2d 1091, 1095 (Pa. Super. 2003)

69 *See* Gutteride v. J3 Energy Grp., Inc., 165 A.3d 908, 916 (Pa. Super Ct. 2017) ("In a non-jury trial, the fact finder is free to believe all, part or none of the evidence and a [reviewing court] will not disturb the trial court's credibility determinations.")

Secondly, "unreimbursed business expenses may be deducted in determining monthly gross income if the expenses constitute *bona fide* expenses."[70] Provided that it is proven that the unreimbursed business expenses were used to increase income, they may be deductible from gross income.[71] Thus, Father maintains the burden of proving that his unreimbursed expenses were used to increase his business income.

Likewise, with respect to the payment of loans, Father also had the burden to prove that the loan money was specifically utilized for the business.[72] In Jayne, the husband argued that it was an error for the trial court to not credit him with the payment of his loan.[73] The husband's testimony revealed that he borrowed $6,000, placed it in his personal bank account, and the closest he came to identifying that the money was utilized for the business was that the money paid for "various bills."[74] The court found that the only evidence of record to support the use of the $6,000 was the husband's testimony. Since the Officer was in the best position to assess the husband's credibility as to how the loan was used, the Court did not disturb the Officer's determination.[75]

With respect to mileage, "personal perquisites, such as entertainment and personal automobile expenses paid by a party's business must be included in income for purposes of calculating child support."[76]

---

70 Berry v. Berry, 898 A.2d 1100, 1107 (Pa. Super. 2006).

71 *See Id.*

72 *See* Jayne v. Jayne, 663 A.2d 169, 176-176 (Pa. Super. 1995).

73 *See Id.*

74 *See Id.*

75 *See Id.*

76 *See* Heisey v. Heisey, 633 A.2d 211, 212 (Pa. Super. 1993), *citing* Coffey v. Coffey, 575 A.2d 587 (1990).

Here, upon questioning from both the Officer and Father's counsel, Father testified to the loans and the mileage. As for the loans, Father, on multiple occasions, testified that these were "personal" loans taken out for the business. When asked, Father did not ***specifically*** identify how the loans were being used for the business:

> HEARING OFFICER: what kind of personal loans?
>
> MR. AMATO: They were loans that had been used to fund operations at Delta. That, that's the interest that, they were unsecured personal loans taken out in 2016 or so of a five to seven year amortization. That money originally was used to fund you know, to , in a trading account, but when we had our child, I shut that down because I didn't have the time and capacity to you know, to do that in addition to run a company and in Delta, like in 2019 I was paying you know, overage charges in my account and obviously we really needed the money bad, so I put that into Delta and we've been paying the, the balance of whatever that was into Delta and the personal, and the add back for the cash interest is the cash interest that we're paying at the personal level or had been paying at the personal level that should have been at the company level…
>
> *See* February 23, 2021 NOT at Pgs. 27-28.

Similar to Jayne, Father only came close to identifying how the loans were being used when he testified that the money was being paid off to "keep the lights on."[77] Accordingly, the Officer appropriately added back the portion of loan interest expensed because the loans themselves were not identified as specifically being utilized for the business.

In addition, the mileage was also appropriately included in the add-back as Father testified to everything that the business does is completed on location:

> HEARING OFFICER: Is everything that the business does in this one location?
>
> MR. AMATO: Yes.
>
> HEARING OFFICER: So then what are the automobile and truck expense deductions on the tax return?

---

[77] *See Id.*

MR. AMATO: Those would be the expense for Kristen, and, and my car.

See February 23, 2021 NOT at Pg. 22.

When asked what the expenses he is actually being reimbursed for by his counsel, Father stated, *inter alia*, that the reimbursement was for "the mileage that doesn't' get reimbursed from the company." Thus, in accordance with Heisey, the Officer investigated Father's actual financial situation and determined that the mileage reimbursement should be added back to his net income. Given that Father admitted to the automobile expenses being deducted for his personal vehicle (presumably for personal uses given how Father has used his business account) and that all business is done on location, it was not an error for the Officer to add back the mileage reimbursement.

The undersigned reiterates, as mentioned in Section IV, *supra*, that a Hearing Officer's credibility determinations should be accorded great weight having heard the witnesses and testimony.

Accordingly, the undersigned did not abuse its discretion in relying on the Officer's recommendation, as supported by the record, and the Order denying Father's Exceptions should be affirmed.

V. Father's Fictitious Tax Consequences on the Added Back Income was Purely Theoretical and Not Supported by his Previous Payment of $161 in Federal Taxes

In his fifth error complained of, Father claims that it was an error for the Court to impute additional income to Father without imputing the taxes due on the same.

While not squarely on point, the Child Support Guidelines and case law supports the proposition that tax concerns should be considered when making a decision in support, as it may affect both how much of an award the obligor can pay, and how much of the award is actually

available to the recipients for support.[78] However, the court has held that the "actual" post tax net income of the payor under the award should be taken into consideration, as opposed to the theoretical tax consequences.[79]

Here, Father did not submit his 2020 tax return to indicate what his actual post tax net income would be. Instead, Father submitted a 2019 tax return which, upon review, showed that he paid a mere $161 on income for the previous year. In essence, Father would have this court impute tax consequences on income for which he has not paid taxes for in the past. As indicated by the undersigned's Memorandum and Order, "even though certain expenses are added back to income for support purposes, in reality, Father will not actually have to pay any more taxes on the imputed income than the burdensome amount of $161 he already paid."[80]

Accordingly, the undersigned did not abuse its discretion in relying on the Officer's recommendation, as supported by the record, and the Order denying Father's Exceptions should be affirmed.

VI. The Inclusion of Child Care Costs were Reasonable Given that Both Parties were Held to Full Time Earnings and the *De Minimis* Impact on the Overall Support Award

In his sixth error complained of, Father claims that this court erred by including the added child care costs over Father's objection, where the parties share legal custody, and where Paternal Grandmother was willing to continue to continue to care for the child at no cost.

Pa. R.C.P. 1910.16-6(a) *Child Care Expenses.* provides the following:

> "The trier-of-fact shall allocate reasonable child care expenses paid by the parties, if necessary to maintain employment or appropriate education in pursuit of income. The trier-of-fact may order that the obligor's share is

---

[78] *See* Holland v. Holland, 663 A.2d 768, 770 (Pa. Super 1995).

[79] *See* Reisnger v. Reisnger, 471 A.2d 544, 546 (Pa. Super. 1984).

[80] *See* June 10, 2021 Memorandum and Order, Section 35.

> added to his or her basic support obligation, paid directly to the service provider, or paid directly to the oblige…"

Furthermore, a party is under no obligation to utilize the other party's services for daycare during their custodial time.[81] In Mooney, the father took issue with the inclusion of daycare expenses, since he was willing and able to provide such services himself.[82] The father argued that he should not be "charged" with an obligation to contribute to mother's payments to a third party for the services if he can do so instead.[83] The Superior Court agreed with the trial court in that the mother was under no such obligation to agree to utilize the father as a daycare service.[84] The Superior Court reasoned that the father was actively seeking employment, and if he became employed, mother would then again have to find alternative caregiving services.[85] Thus, the Superior Court found no merit to the father's issue.[86]

Here, Father offered for his mother to provide daycare services in lieu of a third party. However, as established in Mooney, Mother was under no such obligation to agree to such services. In fact, the circumstances provided that both parties were being held to full time hours, and beginning January 1, 2021, the parties would have a near 50/50 custody schedule (later to transition into a true 50/50 schedule). Thus, it would be necessary for daycare services during both parties custodial time given their work and custody schedules.

---

[81] *See* Mooney v. Doutt, 766 A.2d 1271, 1275-1276 (Pa. Super. 2001).

[82] *See Id.* at 1273.

[83] *See Id.* at 1275.

[84] *See Id.*

[85] *See Id.*

[86] *See Id.*

Furthermore, when Mother testified that the child was enrolled in "Christopher's Footprints" for three days a week, paying $145 weekly, Father did not raise any objection.

Finally, with respect to paternal grandmother's ability to provide childcare, the record does not contain any evidence as to her availability and circumstances in which she could care for the child.

Thus, given the parties circumstances and the *de minimis* impact of child care cost for only $145 per week, it was appropriate for the Officer to allocate reasonable child care costs such that the parties could maintain their employment.

Accordingly, the undersigned did not abuse its discretion in relying on the Officer's recommendation, as supported by the record, and the Order denying Father's Exceptions should be affirmed.

VII. A Reverse Mortgage Deviation is Discretionary and is Not Warranted for the Parties Circumstances

In his final error complained of, Father claims that this court erred by failing to award Father a reverse mortgage deviation.

Pa. R.C.P. 1910.16-6(e) *Mortgage Payment*. Provides the following:

> "(2) If the obligor is occupying the marital residence and the mortgage payment exceeds 25% of the obligor's monthly net income (less any amount of spousal support, alimony pendente lite, and child support the obligor is paying), the trier-of-fact ***may*** downwardly adjust the obligor's support amount." [emphasis added]

A trial court does not abuse its discretion in denying a request for a reverse mortgage deviation when the property is non-marital, such that respondent would only be entitled to an increase in value for purpose of equitable distribution.[87] In E.D.H, the father argued that the trial

[87] *See* E.D.H. v. L.D.H., 2021 WL 4059937, No. 1711 EDA 2020, at *7 (Pa. Super. 2021)

court erred by denying him a reverse mortgage deviation.[88] The father specifically argued that, although the house was pre-marital property, the mother benefited from the equity in the marital residence and that the balance on the mortgage is higher than the balance owed on the date of the marriage.[89] The trial court reasoned that a downward deviation was not an abuse of discretion as, per the rule, the deviation was completely in the discretion of the trier-of fact.[90] Furthermore, given that the property was pre-marital, the mother would have no economic claim to the property except for any percentage of the increase in value.[91] Thus, the mother would not see a financial benefit from the property to which she would be contributing maintenance towards.[92] The Superior Court affirmed the trial court's decision and supported the trial court's reasoning.[93]

Here, the facts are nearly identical to E.D.H. During the hearing before the Officer, Mother admitted to not contributing to payments to the mortgage.[94] At argument, it was clarified that the former martial residence that Father is residing in, is titled in Father's name and is accordingly pre-marital property.[95] As such, the undersigned noted that while the Officer did not state her reason for the denial, it was clear that it was not an error to deny the mortgage adjustment since the property is pre-marital.[96]

---

88 *See Id.* at *6.

89 *See Id.*

90 *See Id.* at *7.

91 *See Id.*

92 *See Id.*

93 *See Id.*

94 *See* February 23, 2021 NOT at Pg. 9.

95 *See* June 10, 2021 Memorandum and Order.

96 *See Id.*

The undersigned put forth in the June 10, 2021 Memorandum and Order the very same reasoning as described in E.D.H.:

> 10. To require Mother to contribute to the expense of the mortgages after the parties' separation would be inappropriate because Father is not preserving a martial asset but rather is maintaining an asset that solely belongs to him.
>
> 11. In short, it would be unreasonable for Mother to contribute, via a mortgage adjustment in Father's favor, to upkeep and expenses of Father's pre-marital property (which she has a limited financial benefit of) for his benefit alone.
>
> *See* June 10, 2021 Memorandum and Order.

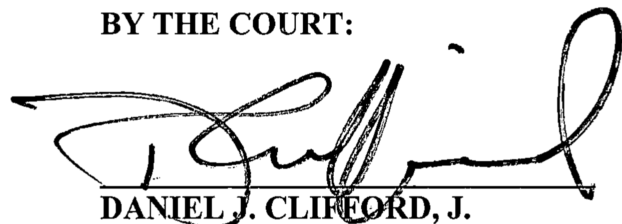
Furthermore, in Footnote 2 of the aforementioned undersigned's Order, it was made clear that Father has argued elsewhere that the duration of the marriage was a short three (3) years. As a result, such a short term marriage will ultimately provide a very minimal increase in value of the property for which Mother could make a claim for at Equitable Distribution.

Accordingly, the undersigned did not abuse its discretion in relying on the Officer's recommendation, as supported by the record, and the Order denying Father's Exceptions should be affirmed.

CONCLUSION

For the reasons set forth above, this Court respectfully requests the Court Order of June 10, 2021 be affirmed.

BY THE COURT:



DANIEL J. CLIFFORD, J.

Copies sent via Prothonotary to:
Jason Amato, Pro Se
Justin Highlands, Esq.
William C. Denardo, Esq.

Copies sent via Chambers to:
Court Administration – Family (*Interoffice*)

Judicial Assistant