

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

TRACY J. BUBIN,	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
Appellant	:	
	:	
v.	:	
	:	
RICHARD D. BUBIN,	:	
	:	
	:	No. 683 WDA 2012

Appeal from the Order entered April 13, 2012,
in the Court of Common Pleas of Allegheny County,
Family Division, at No(s): FD 11-002984-016.

BEFORE: PANELLA, ALLEN, and STRASSBURGER,* JJ.

MEMORANDUM BY STRASSBURGER, J.: Filed: January 15, 2013

Appellant, Tracy J. Bubin (Wife), appeals from the order dated April 13, 2012, which dismissed her exceptions to the recommendation of the hearing officer upon her complaint for spousal support against Appellee Richard D. Bubin (Husband). After careful review, we reverse.

Husband and Wife were married on December 26, 1992. They are the parents of two minor children. The parties separated; and, on June 13, 2011, Wife filed a complaint for both child and spousal support. On August 30, 2011, the trial court granted Wife's request to designate the case as complex and granted the parties leave to engage in discovery. On December 1, 2011, a hearing was held before Hearing Officer Sue Weber. At the hearing, the parties agreed that Wife is a W-2 employee with an income of \$3,448 per month less the amount she pays for health insurance

*Retired Senior Judge assigned to the Superior Court.

for the whole family. N.T., 12/1/2011, at 4-5. Husband testified (through his attorney) that he is self-employed as an ice sculptor and his 2010 adjusted gross income was \$31,016. *Id.* at 6. Husband also asserted that he received an additional \$1,300 in cash income during the year and he had been paying a \$676 mortgage payment on the family home since the time of the filing. *Id.* at 7.

Wife's attorney, Dennis Blackwell, Esquire, cross-examined Husband regarding his income and expenses. Husband's 2010 income tax return, which was admitted as evidence at trial, revealed gross income of \$139,923. *Id.* at 8. Husband acknowledged the additional \$1,300 in cash as well. *Id.* at 9. During his examination, Attorney Blackwell explored several of Husband's expenses claimed on his income tax return. After the hearing, Hearing Officer Weber concluded that Husband's income for support purposes was \$39,000 (or \$3,250 per month). This amount included the \$31,016 Husband claimed as his adjusted gross income on his income taxes. Then, Hearing Officer Weber added the amount of \$9,583, as income from Greenapple Barter Services (Greenapple),¹ which Husband testified was the only cash received from the barter service company to which he belonged in the year 2010. She also adjusted some other expenses based on Husband's testimony.

¹ Greenapple is a corporation which provides a system for its clients to barter products and services among themselves with Greenapple acting as a third-party record-keeper.

Both Husband and Wife filed timely exceptions to the hearing officer's recommendations. In her exceptions, Wife contended that the hearing officer miscalculated certain expenses as well as erred in her determination regarding the income from Greenapple. Husband raised one exception, namely that the hearing officer erred in failing to give him credit for his mortgage payments.

On April 13, 2012, the trial court dismissed Wife's exceptions, granted Husband's exception, and otherwise entered the recommendation of the hearing officer as a final order. Wife filed a timely notice of appeal. Both Wife and the trial court complied with Pa.R.A.P. 1925.

On appeal, Wife presents three issues for our review:

A. Did the trial court err in not properly determining that [Husband] realized an income of \$45,966.00 as a result of bartered services in the year 2010?

B. Did the trial court err in not adding back into [Husband's] income the inappropriate, unsubstantiated and multiple deductions taken by [Husband] as business expenses in the year 2010?

C. Did the trial court err in not properly calculating [Husband's] gross income for support determination purposes in conformity with the laws of this Commonwealth?

Wife's Brief at 2 (suggested answers omitted).

"We review ... support cases for abuse of discretion. In order to overturn the decision of the trial court, we must find that it committed not merely an error of judgment, but has overridden or misapplied the law, or has exercised judgment which is manifestly unreasonable, or the product of

partiality, prejudice, bias or ill will as demonstrated by the evidence of record." **S.M.C. v. W.P.C.**, 44 A.3d 1181, 1185 (Pa. Super. 2012) (internal citations and quotations omitted).

First, Wife contends both the hearing officer, and then the trial court, erred in concluding that Husband had received only \$9,583 in gross income from Greenapple. Hearing Officer Weber questioned Husband regarding his income from Greenapple:

The Court: Can I ask a question[?] I got confused on the barter service information when you were trying to infer [*sic*] something else. When you wrote down these monies each month that you receive from I guess it's GAP is [Greenapple]?

[Husband]: Yes. That's my sales.

The Court: You are saying that you receive like a commission of 350.

[Husband]: It goes into an account. It's mine.

The Court: Okay.

[Husband]: And then I get to use it to buy other [Greenapple] Barter materials.

The Court: Okay.

[Husband]: And they get a commission.

The Court: And you are saying this is all they credit you for the year.

[Husband]: Yep.

The Court: Why would you infer [*sic*] that it would be more? I guess I'm not getting the connection.

[Husband]: I know.

[Attorney Blackwell]: Would you like me to testify, or would you like Mr. Mullen? I will stand as a witness and explain the whole [Greenapple] system to you.

[Husband's Attorney]: Which is hearsay.

[Attorney Blackwell]: It's not hearsay. I'm a member. I know how it works.

The Court: Well, then you will have to tell me.

[Attorney Blackwell]: Right. That's why I brought Mr. Mullen here.

The Court: So you can testify.

[Attorney Blackwell]: Right.

The Court: On what your experience is. Okay.

[Attorney Blackwell]: I know exactly what it is.

The Court: I just want to know what the formula is, that you are trying to infer [*sic*].

[Attorney Blackwell]: Here's what happens. If he wants to charge you \$3,000 for an ice sculpture, and you are a [Greenapple] member, you don't pay him \$3,000.

The Court: Right.

[Attorney Blackwell]: You give him 3,000 points.

The Court: Okay.

[Attorney Blackwell]: Which is what [Greenapple] is. Each point is one dollar. So, you get \$3,000. Now, on that \$3,000, because you pay it to him, he's charged six percent as their fee.

The Court: Okay. So, for keeping the points. Okay.

[Attorney Blackwell]: Correct. That's how [Greenapple] makes the money. No money is ever exchanged except

[Greenapple] is the only people that get the money. So that \$3,000 would then show up on a 1099 somewhere. And your six percent of \$3,000 would be \$180.

The Court: Right.

[Attorney Blackwell]: So, if you want to figure out -- if his fee was only \$180, you would take 180 divided by .06, and it would give you \$3,000. So all I did was take his fee and divided it by .06 and it came to the 45,999 number, which is income to him, that he does not report.^[2]

[Husband]: That's not what I got. The amount that I made was only that 9,000.

The Court: He is saying that the 1099 only said the 9,000.

[Husband]: Yeah.

[Attorney Blackwell]: I don't know what his 1099 says. It's not here.

[Husband]: They sent me the 1099 and then also how much their fee was.

The Court: I understand why you said what you said. Okay. We don't know what his 1099 says.

N.T., 12/1/2011, at 42-45 (footnote added).

Based on this testimony, the hearing officer offered the following summary:

[Wife's] position regarding cash from [Greenapple] is that [Husband] barter for services and based on the fees he claimed he received as a perk 45,000. This court finds the services he has bartered for is not actual income to him but benefits his ability to operate his business. [Husband] testified to the 9,583 was income he did receive and did not claim. The Court

² Husband testified that his fee is \$2,758. N.T., 12/1/2011, at 29. Using Attorney Blackwell's formula, which includes a transaction fee of 6%, Husband received 45,966.67 in Greenapple "dollars."

understood from the explanation how [Wife] came up with the 45,000 but it is not actual cash he receives. The \$9583 is the actual amount he did receive.

Hearing Summary, 12/1/2011, at 2.

Accordingly, the hearing officer added \$9,583 to Husband's gross income for 2010. The trial court found that the hearing officer did not abuse her "discretion in choosing not to rely on the unsupported assertions of [Wife's] counsel and to accept the Hearing Officer's determination that [Husband's] testimony regarding his receipt of \$9,583 from [Greenapple] was credible." Trial Court Opinion, 6/12/2012, at 4. We disagree.

The trial court determined that the Hearing Officer did not err in concluding that the \$9,583 testified to by Husband was the only income from Greenapple as this was the actual cash he received. Such a conclusion is an incorrect statement of the law. In calculating income, the trial court is obligated to look at the entire benefit received. Here, Husband obtained a certain amount of Greenapple "dollars" during the course of the year as income when his business provided a service to another Greenapple member. Those dollars should be counted just as any other dollar in income Husband received. As such, we must remand this case to the trial court to calculate the effect of the Greenapple dollars on Husband's net income and his obligation for support.

We now consider Wife's second issue regarding the calculation of certain deductions in income taken through Husband's business as business

expenses. Specifically, Wife contends that the hearing officer and trial court erred in calculating advertising expenses, vehicle expenses, materials, and supplies. Wife's Brief at 11-15.

As to advertising expenses, Husband claimed \$19,278 in advertising expenses on his 2010 income tax return. At the hearing, Husband testified that he spent approximately \$24,000 per year on advertising and could specifically remember a total of \$8,400 in advertising expenses during that year. When asked what additional advertising expenses he had, Husband replied that "[t]here might be a few more that I'm not aware of. I would have to have my whole file on my advertising expenses." N.T., 12/1/2011, at 13. However, Husband did not have that file with him at the hearing.

Nonetheless, in her summary, the hearing officer reduced the advertising expenses from the \$19,278 he claimed to \$13,440, which is still more than the \$8,400 to which Husband testified. The trial court concluded that the hearing officer did not err because she must have found Husband's testimony credible that he had "advertising expenses in addition to those he could specifically remember." Trial Court Opinion, 6/12/2012, at 4.

Wife also contends the hearing officer erred in calculating car and truck expenses. Wife's Brief at 12-13. At the hearing, Husband testified to total car and truck expenses of \$5,228.50. N.T., 12/1/2011, at 17. Nonetheless, he deducted \$14,717 on his taxes. While Hearing Officer Weber did reduce Husband's car and truck expenses to \$13,082 because one

of the vehicles was used 50% of the time for personal use, Wife argues that this amount should be reduced further based upon Husband's testimony. The trial court concluded that Husband was "credible" and accepted the Hearing Officer's recommendation. Trial Court Opinion, 6/12/2012, at 6.

Finally, Wife contends that the Hearing Officer erred in calculating certain business expenses and allowing Husband to take multiple deductions for the same expenses. Wife's Brief at 14-15. Again, Husband relied on his accountant's calculations and was unable to explain how things were grouped together. **See** N.T., 12/1/2011, at 26 ("I didn't know she put it in with that. I didn't know where she grouped them together."). The trial court concluded that the Hearing Officer did not err in calculating the rest of Husband's expenses.

With the information before us, it is impossible for us to determine whether the trial court erred in accepting the Hearing Officer's recommendation. Furthermore, we point out that Husband has arguably violated the Pennsylvania Rules of Civil Procedure governing support actions. The Rules provide that Husband must bring to the conference a "true copy of [his] most recent Federal Income Tax Return, including W-2s[.]" Pa.R.C.P. 1910.27(b). Instantly, Husband acknowledged that 1099 forms existed and were attached to his income tax return, but he did not bring them to the hearing. **See** N.T., 12/1/2011, at 29, 31, 32-33. This further hampers our review of this matter. In light of the fact we are already remanding the case

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to the trial court for a recalculation as to the Greenapple "dollars," we remand to the to the trial court to re-calculate Husband's expenses as well.

Accordingly, we reverse the order of the trial court and remand the case for proceedings consistent with this memorandum.

Order reversed. Case remanded. Jurisdiction relinquished.