

*Support - Child's Income - Mortgage Payments*

1. The support obligations of a parent are unaffected by the independent resources of the child.
2. The Franklin County support guidelines do not take into account a joint mortgage obligation.
3. A defendant may be required to pay a portion of both the principal and interest of a joint mortgage payment.

*George E. Wenger, Jr., Esquire*, Counsel for Plaintiff  
*Thomas M. Painter, Esquire*, Counsel for Defendant

WALKER, J., March 10, 1988:

Defendant, Preston Cook, has appealed from an order of this court approving the recommendation of the Domestic Relations' officer as to support payments to be made to plaintiff, Margaret Cook, and the parties' minor child, who resides with the plaintiff. The defendant's appeal is based on three factors. First, the hearing officer's findings of income were in error because he failed to consider only one-half of the defendant's part-time job with the Borough of Shippensburg. Second, the earnings of the minor child of \$50 net per week were not taken into consideration. Finally, requiring the defendant to contribute one-half to the mortgage payment and one-half to the fire and extended insurance coverage, and one-half of the taxes is not equitable.

On May 20, 1987, the Domestic Relations' hearing officer made the following findings and recommendations. The defendant's income included \$67.50 net pay per week from the Shippensburg Borough Department and earnings from the South Mountain Restoration Center of \$279.57 per week. A mileage deduction of \$18 was given, leaving defendant's net weekly income at approximately \$329. The plaintiff was found to have a net weekly income of \$251 (income plus one-half overtime)-\$6 mileage). The plaintiff was living in the marital home and her mortgage payment, taxes, and home owners insurance cost \$107.50 per week. The hearing officer recommended that the defendant pay to plaintiff \$217 plus 50¢ service charge, every

second Monday until further order of this court. In addition it was recommended that defendant pay \$20 bi-weekly on the arrearage and that the defendant maintain the minor child on his medical insurance. Of the \$217.50, \$53.50 was to be attributed to the mortgage, tax and insurance payments made by plaintiff. The recommendation was approved and adopted by order of this court dated May 22, 1987. Defendant appealed from this order and after a hearing the matter is now before this court.

Before addressing the issue it must be pointed out that at the time of this appeal hearing, almost six months have elapsed since the recommendation of the hearing officer. Within that time both parties have received raises. Therefore, the findings of the hearing officer as to incomes are no longer relevant. Since the Franklin/Fulton County Support Guidelines require that weekly net income be based on *at least* a six month average, and six months have passed, the court will recalculate the average weekly net income of both parties.

The defendant's first contention of error is correct, to which the plaintiff admits. (See Franklin/Fulton County Support Guidelines, No. 10). The hearing officer should not have included the entire \$67.50, but half of that or \$33.75. However, based on recent pay stubs submitted by defendant's counsel, the defendant's *current* average net weekly income from his second job is \$78.66. Therefore, the court will apply \$39.33 to defendant's new net weekly income for determining how much support is due to plaintiff.

The defendant's second contention is incorrect. The most recent Superior Court cases have stated that a child's income makes no difference to the support obligations of a parent. In *DeWalt v. DeWalt*, Pa. Super. , 529 A.2d 508 (1987), the Superior Court stated that the support obligations of a parent are unaffected by the independent resources of the child. "As long as a parent is able to support his minor child, the child should not be forced to use his own funds to support himself." *DeWalt*, 529 A.2d at 511 (citing to *Sutliff v. Sutliff*, 339 Pa. Super. 523, 538, 489 A.2d 764 (1985) ). In *Sutliff* the court stated that

"the burden of supporting minor children is to be borne by the parents, and that the courts will not allow a minor child to fend for himself when his parents are able to support him." *Sutliff*, 339 Pa. Super. at 539.

The court went on to quote *Commonwealth ex rel. Byrne v. Byrne*, 212 Pa. Super. 566, 568 A.2d 196 (1968) which held that “[i]t is well established that a father of sufficient means must support his child . . . and it is no defense that . . . the child itself has independent means.” *Byrne*, at 568, 197. In this case the defendant/father is capable of supporting his child. Therefore, her income will not be considered when calculating the amount of support due.

Finally, the defendant contends that by requiring him to pay an additional \$53.50 per week for the mortgage, tax, and insurance payments, he is, in essence, making double payments because the support payments already cover those obligations. In the alternative, defendant argues that if he must make such additional payments, he should only have to pay that amount which is attributable to increasing his equity in the house. (i.e., payments attributable to reducing the principal).

In *Boni v. Boni*, 302 Pa. Super. 102, 448 A.2d 587 (1982) the court held that in requiring the defendant to pay the mortgage, in addition to the support payments, the effect was that the defendant was paying the mortgage twice. In *Commonwealth v. Miller*, 202 Pa. Super. 573, 198 A.2d 373 (1964) the court affirmed an order of the lower court requiring the defendant to make mortgage, tax and insurance payments in addition to the support payments. However, relying on either case to solve the immediate issue is misplaced. The Superior Court reached different conclusions for two reasons. First, the trial court, absent abuse, enjoys wide discretion as to the proper amount of support payments. *Boni*, 302 Pa. Super. at 198. Second, there is no indication that the trial courts in *Boni* and *Miller* used the same factors in determining support payments. That second factor is important here. Franklin County has adopted its *own* support guidelines. To properly determine whether the defendant is paying the mortgage, tax and insurance twice, one must look to the Franklin/Fulton County Support Guidelines.

Franklin County adopted support guidelines “to achieve a more equitable sharing of financial responsibility.” (p.1) The guidelines contain charts which show the amount of child and/or spousal support a spouse/parent should pay. “The primary focus of these charts is on a party’s net weekly income *and not on his or her expenses.*” (p.1) Furthermore, it is pointed out that these charts are just guidelines and that deviations from the charts may be

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## LEGAL NOTICES, cont.

beginning.

CONTAINING 13,918.60 square feet according to a survey of John Rex Benchoff, P.E., dated July 1978 and recorded in Franklin County Deed Book Volume 766, Page 19.

Having erected thereon a dwelling house known as 15303 (T-707) Dutrow Ave., Blue Ridge Summit, PA.

Title of Record is vested in Michael S. Kreitz and Kim Kreitz, his wife, by Deed from Ollen R. Kerby and Amphana Kerby, his wife, dated March 26, 1986 and recorded in Franklin County Deed Book 953, Page 362.

TAX PARCEL NO. Q-20P-4.

BEING sold as the property of Michael Kreitz and Kim Kreitz, Writ No. AD 1989-64.

### TERMS

As soon as the property is knocked down to purchaser, 10% of the purchase price plus 2% Transfer Tax, or 10% of all costs, whichever may be the higher, shall be delivered to the Sheriff. If the 10% payment is not made as requested, the Sheriff will direct the auctioneer to resell the property.

The balance due shall be paid to the Sheriff by NOT LATER THAN Monday, June 19, 1989 at 4:00 P.M., prevailing time. Otherwise all money previously paid will be forfeited and the property will be resold on June 23, 1989 at 1:00 P.M., prevailing time in the Franklin County Courthouse, 3rd Floor, Jury Assembly Room, Chambersburg, Franklin County, Pennsylvania, at which time the full purchase price or all costs, whichever may be higher, shall be paid in full.

Raymond Z. Hussack  
Sheriff

Franklin County, Chambersburg, PA  
5/19, 5/26, 6/2/89

### FICTITIOUS NAME NOTICE

NOTICE IS HEREBY GIVEN, pursuant to the provisions of the Fictitious Name Act, Act No. 1982-295, of the filing, with the Department of State of the Commonwealth of Pennsylvania, on May 4, 1989, an application for a certificate for the conducting of a business under the assumed or fictitious name of APPALACHIAN HILLS, with its principal place of business at 15010 Buchanan Trail East, P.O. Box 430, Blue Ridge Summit, PA 17214. The name and address or the person owning or interested in said business is Ashton Heights, Ltd., 15010 Buchanan Trail East, P.O. Box 430, Blue Ridge Summit, PA 17214.

Martin and Kornfield  
17 North Church Street  
Waynesboro, PA 17214

6/2/89

NOTICE IS HEREBY GIVEN pursuant to the Business Corporation Law that Certificate of Authority was issued from the Department of State of the Commonwealth of Pennsylvania on March 6, 1989, to MOUTAINTOP,

## LEGAL NOTICES, cont.

INC., A Maryland Corporation. The nature of business is to own and acquire real property and develop the same for industrial purposes.

6/2/89

NOTICE IS HEREBY GIVEN pursuant to the Business Corporation Law that an Application for Certificate of Authority was filed with the Department of State of the Commonwealth of Pennsylvania on April 26, 1989 by Zullinger Orchards, Inc., a Maryland Corporation. The nature of the business is real estate development

6/2/89

NOTICE IS HEREBY GIVEN pursuant to the Business Corporation Law that a Certificate of Authority was issued from the Department of State of the Commonwealth of Pennsylvania on June 16, 1987, to WESTERN COMMERCIAL FUNDING, INC., a Nevada Corporation. The nature of the business is for the development of real estate for agricultural purposes. Corporation may purchase and sell real estate in furtherance of its purposes.

6/2/89

NOTICE IS HEREBY GIVEN, that a certificate of incorporation has been obtained from the Department of State of the Commonwealth of Pennsylvania at Harrisburg, Pennsylvania on March 6, 1989. The name of the corporation organized under the Commonwealth of Pennsylvania Business Corporation Law approved May 5, 1933, P.L. 364, as amended is Northeastern Ceramics, Inc. The purpose for which the corporation has been organized is for the manufacturing, distribution and sale of ceramics and like items.

6/2/89

NOTICE IS HEREBY GIVEN that a certificate of incorporation has been obtained from the Department of State of the Commonwealth of Pennsylvania at Harrisburg, Pennsylvania on March 7, 1989. The name of the Corporation organized under the Commonwealth of Pennsylvania Business Corporation law approved May 5, 1933, P.L. 364, as amended is ANTIETAM BUSINESS PARK, INC. The purpose for which the corporation has been organized is for the development of real estate for business purposes.

6/2/89

required from time to time. (p.2) In addition to the charts, the guidelines contain several comments concerning specific situations that might arise.

Comment 13 of the Franklin/Fulton County Support Guidelines provides, in pertinent part:

**Mortgage Payment:** The expense and obligation of the joint mortgage payment, real estate taxes and property insurance shall ordinarily be attributed to the occupant, and the amount of support shall be equitably adjusted to reflect these obligations. Ordinarily the adjustment will be up to one-half (½) of these obligations.

In other words, where there is a *joint* mortgage, the support payments as provided by the charts can be increased to reflect the obligation.

The defendant would contend that the payments dictated by the charts already take this obligation into effect. However, these charts of general application surely do not factor in joint mortgage payments, otherwise they would only apply to parties with joint mortgages. Furthermore, a joint mortgage payment would be an expense and as already pointed out by the court, the focus of the charts is on parties' net weekly income, *not* expenses.

The hearing officer determined that the defendant should pay one-half of the monthly mortgage, tax and insurance payments. Under the Franklin/Fulton County Support Guidelines, this court finds that determination to be equitable and it does not have the effect of requiring the defendant to pay the mortgage twice.

The defendant suggests that in *Commonwealth v. Miller*, 202 Pa. Super. 573, 198 A.2d 373 (1964) the court was noting that only the principal portions of the joint mortgage payments benefit the defendant and, therefore, the defendant should only be required to pay that portion of the monthly mortgage that is attributable to reducing the principal. This court is not persuaded by the dicta in *Miller* and feels that logic and equity demand that the defendant pay not only one-half the principal, but also one-half of the interest, tax, and insurance payments due on the house.

In *Smith v. Smith*, 285 Pa. Super. 146, 426 A.2d 1184 (1981) the court affirmed the trial courts' order directing the defendant to make mortgage, tax and insurance payments on the marital

property on the basis that these payments are generally fairly constant and because a portion of these payments benefit both husband and wife. The payments attributable to diminishing the outstanding principal of the mortgage clearly benefit the defendant, as he admits, because they increase his equity in the home. It is the other payments that the defendant contests. However, these payments also benefit the defendant. When parties take out a mortgage they generally agree to pay back the loan with interest. A monthly payment schedule is worked out in which the borrower pays back some of the principal *and interest* each month. If the borrower only paid that amount of the monthly payment attributable to reducing the principal, the borrower would probably be in default and the lender might be compelled to take action against the borrower. Therefore, the defendant does benefit by the payment of interest on the joint mortgage. If interest was not paid, his equity in the home might be in jeopardy. The defendant has an interest in protecting his equity. Paying taxes owed on the family home also protects one's equity. If the taxes are not paid the government may get a lien on the property to satisfy the obligation. Finally, paying insurance on the home also protects one's equity. If the house were destroyed by fire and the borrowers had no insurance, their equity would go up in smoke. It is clearly equitable to require the defendant to make one-half of the monthly mortgage, tax and insurance payments.

The question now is to determine what defendant's total monthly payments should be. As already mentioned, the figures used in the May 20, 1987 hearing are now out-dated. For the sake of expediency, the court has obtained the most recent income information of the parties and will make its own calculations in accordance with the Franklin/Fulton Support Guidelines.

The defendant's net average bi-weekly income between June, 1987 and December, 1987, was \$575.40 or \$287.70 per week. His net average bi-weekly income from his second job during the same period was \$157.33 or \$78.66 per week. Adding one-half of that, or \$39.33, to the defendant's weekly regular income, defendant's net weekly income becomes approximately \$327. A mileage deduction of \$18 a week is allowed, leaving the defendant's average net weekly income at \$309.

Calculation of the plaintiff's average net weekly income is more difficult. Between June and December of 1987, the plaintiff worked several hours of overtime. However, plaintiff has presented

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the court with a document from her employer stating that the circumstances surrounding her overtime work have passed. Support guideline number 10 states that if overtime is sporadic or periodic, it shall not be considered in determining a party's net income. The court feels that the overtime work by the plaintiff was periodic and it shall not be included in the calculation of the plaintiff's net income. The problem is that the plaintiff's net income statements reflect that overtime. Therefore, the court will calculate the plaintiff's net income in the following manner: The gross income for the regular 75 hours worked will be added together and then divided by the number of pay periods covered to obtain an average gross bi-weekly income. To reach the bi-weekly net income, the percentage by which the gross income is reduced will be determined for each pay period, and the average percentage will be used to reduce the average gross income to the average net income. That figure will then be divided in half to reach the plaintiff's average net weekly income.

The plaintiff's average bi-weekly gross income between June and December of 1987 was \$653.65. The average percentage by which her gross income was reduced each pay period was 29.95%. Therefore, the plaintiff's average net bi-weekly income was \$460.23. Dividing that in half and allowing a \$6 deduction for mileage, the plaintiff's average net weekly income is approximately \$224.

Using the plaintiff's average net weekly income of \$224 and the defendant's average net weekly income of \$309, the Franklin/Fulton County support charts indicate that the sum of \$57 per week is due plaintiff. That sum is allocable \$17 to plaintiff and \$40 to minor child.

In addition to the sum due plaintiff and minor child, the defendant shall pay \$53.50 per week as payment for one-half of the joint mortgage, tax, and insurance costs. Furthermore, defendant will continue to pay the \$20 bi-weekly on the arrearage.

This court shall order that the defendant, Preston Cook, pay to the plaintiff, the sum of \$221 plus 50¢ service charge each second Monday thereafter until further order of this court plus \$20 bi-weekly on the arrearage.

Finally, the defendant must continue to maintain the minor child on his medical insurance.

## ORDER OF COURT

March 10, 1988, the court having found that the plaintiff has a net weekly income of \$224 and the defendant has a net weekly income of \$309, it is ordered that the defendant pay the sum of \$57 per week to the plaintiff. This sum is allocated: \$17 for plaintiff and \$40 for the minor child.

In addition, defendant shall pay the sum of \$53.50 per week as one-half of the joint mortgage, tax, and insurance costs on the marital residence. Defendant shall continue to pay \$20 bi-weekly on the arrearages.

In summary, the defendant shall pay the plaintiff the sum of \$221 plus 50¢ service charge plus \$20 on arrearages each second Monday until further order of the court.

COMMONWEALTH vs. GRASSO, C.P. Franklin County Branch,  
Crim. Div., No. 72 of 1988

### *Criminal Law - Murder - Transfer - Juvenile Court Division*

1. Transfer from the criminal court to the juvenile court in a murder case is not a matter of right, but is within the sound discretion of the trial court.
2. A child has the burden of proving to the Court that he is amenable to treatment, supervision or rehabilitation as a juvenile.
3. The Court must consider an individual's personal makeup, previous history and the nature and circumstances of the alleged homicide.
4. Shooting another person in the back of the head is an inherently heinous act.

*John F. Nelson, District Attorney, Counsel for the Commonwealth  
David S. Keller, Esq., and John N. Keller, Esq., Counsel for Defendant*

WALKER, J., November 16, 1988:

On December 30, 1986, outside the New Franklin Firehouse, Keith L. Koons was killed by a gunshot wound to the back of his head.