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CIRCUIT COURT
ROANE COUNTY, W. VA.
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NEW VIRGINIA
BEVERLY GREATHOUSE
CIRCUIT CLERK

IN THE FAMILY COURT OF ROANE COUNTY, WEST VIRGINIA

In re the children of:

SHELIA ALLEN (now SHELIA ELIAS), petitioner,

and

MICHAEL ALLEN, respondent.

Civil Action No. 97-D-24
Special Judge Deloris J. Nibert

FINAL ORDER OF THE COURT

On this day appeared the petitioner, Shelia Allen (now Shelia Elias), in person and by counsel H. Beth Sears, Hancock & Sears, and also appeared the respondent, Michael Allen, in person appearing pro se. This matter is before the court for a final hearing on all outstanding issues. Presiding was Special Judge Deloris J. Nibert.

Whereupon, the court proceeded to hear the testimony of the parties and representations of counsel and Mr. Allen, who is pro se. Based upon the evidence, the court FINDS as follows:

A. The State tax department did provide Mr. Allen's tax documents to Ms. Sears pursuant to a subpoena, and later requested that the same be returned to them as being issued in error. Ms. Sears has returned the same to the tax department and does not object to the copy in the court file being destroyed or returned as well.

B. Rule 55 of the Rules of Practice and Procedure for family law, upon which Mr. Allen relied in his motion for sanctions, does not address confidential records. This rule was rescinded prior to

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the filing of his motion.

C. Mr. Allen's privacy was not invaded and he was not damaged by the introduction of his tax records into the court file, since it is a closed file and the documents were relevant to his case. Any fault therein lies with the state tax department rather than opposing counsel.

D. The court finds that the petition to modify support filed by Mrs. Elias was based upon her obtaining employment, and sought to modify the last order of child support in the file, which was an order from October 23, 2002. The appeal period for challenging this order had clearly expired when Mrs. Allen filed her modification petition in February of 2006.

E. The petition was served on Mr. Allen during March of 2006.

F. The case of Ray v. Ray upon which Mr. Allen relied, is distinguished from the case at bar.

G. The mother's current income is \$8.75 per hour and she works full time. The father, who is self-employed, does not have three (3) years of self employment income to average. Therefore, the court finds that it is appropriate to use his 2006 income and to give him credit for expenses pursuant to his financial disclosure. His current income is \$4,469.03 per month. Neither parent has any additional dependents for whom they owe a duty of support. There is no child care expense. The health care is provided by Mrs. Elias' husband's employment.

H. Since the court used the 2006 income figures for both parties, it will also use the 2006 figures for number of overnights

the children will spend with their father for purposes of determining which formula to apply. The children will spend 129 to 130 overnights with their father in 2006, so the extended shared parenting formula is appropriate.

I. There is a history of failure and/or refusal to provide complete tax returns between the parties annually.

Based upon the aforesaid findings, the court ORDERS as follows:

1. Any of the tax documents of Mr. Allen which were obtained by subpoena and lodged in the court file with a certificate of service on February 2, 2006, shall be removed from the file of the court and destroyed.

2. Mr. Allen's motion for sanctions against Ms. Sears are denied.

3. The income figures were applied to the child support formula and based on this calculation, the father shall pay child support to the mother in the sum of \$630.49 monthly beginning on the 1st day of April, 2006, and continuing monthly thereafter, until the youngest child graduates from high school, sooner dies or becomes emancipated, or until further Order of a Court of competent jurisdiction. However, the child support obligation shall not extend beyond the 20th birthday of the youngest child, unless the support termination date is modified by court order. A copy of the child support formula is attached hereto and incorporated herein as EXHIBIT 1.

In accordance with West Virginia Code, father's income shall be immediately withheld for the payment of child support, without regard to whether or not there is an arrearage. Upon entry of this order, father's source of income shall withhold so much of father's income as is necessary to comply with this order, up to the maximum amount permitted by federal or state law, and shall forward the support withheld to the Bureau of Child Support Enforcement, P.O. Box 247, Charleston, WV 25231. The parties are mandatorily enjoined to cooperate with the Bureau of Child Support Enforcement to facilitate the collection of child support due hereunder.

Any medical expenses not covered by insurance or other entitlement (including deductible, if any), shall be shared by the parents pursuant to line three of the child support formula, to-wit: the mother shall pay 25% of the non-covered expense and the father shall pay the remaining 75%. A copy of the court's standard RULES FOR CHILDREN'S MEDICAL EXPENSES is attached hereto and incorporated herein as EXHIBIT 2.

4. For as long as the parties have a legal duty to support these children, they shall exchange their complete income tax returns each year. The return must have attached to it all forms (including all W2 forms), tax documents, schedules, etc. They shall mail the same to the opposing party no later than April 20th each year. If either of them files an extension, then a copy of the extension shall be served on the other party upon filing. This does not excuse either party from filing the complete return as soon as the same is filed.

5. Pursuant to law, both parties shall report any change in gross income, either in source of employment or in the amount of gross income, to the bureau for child support enforcement and to the other party. The notice shall not be required in the change in income is less than a fifteen percent change in gross income.

The amount of monthly child support can be modified as provided by law based upon a change in the financial or other circumstances of the parties if those circumstances are among those considered in the child support formula. In order to make a modification a party must file a motion to modify the child support amount. Unless a motion to modify is filed, the child support amount will continue to be due and cannot later be changed retroactively even though there has been a change of circumstances since the entry of the order. Self help forms for modification can be found at the circuit clerk's office.

6. A) This is a FINAL ORDER; B) Any party aggrieved by the final order may take an appeal either to the circuit court or directly to the Supreme Court; C) a petition for appeal to the circuit court may be filed by either party within thirty (30) days after entry of the final order; and D) that in order to appeal directly to the supreme court both parties must file, within fourteen (14) days after entry of the final order, a joint notice of intent to appeal and waiver of right to appeal to circuit court.

7. Once this final order is entered, H. Beth Sears is relieved as counsel.

8. The Clerk of this Court shall provide a copy of this order

to: H. Beth Sears, Post Office Box 305, Ravenswood, WV 26164; Michael Allen, 122 Dodd Street, Spencer, WV 25276; and John D. Wilcox, BCSE, 2139 Cedar Lakes Drive, Ripley, WV 25271.

This court, being specially appointed and having concluded all duties in this matter, hereby strikes this action from the active docket of this court. The file will be transported forthwith back to the circuit clerk of Roane County, West Virginia. Any additional matters shall be filed with the Roane County family court.

It is, accordingly, ORDERED.

ENTERED this the 6th day of March, 2006.
nunc pro tunc.

Deloris J. Nibert

Judge Deloris J. Nibert

Prepared by:

H. Beth Sears
H. Beth Sears
WVSB #4714
Hancock & Sears

Entered in ^{or} G.O.B. No. 38 Page 489
this 9 day of Mar, 2007

b\303/a:allen.fin

TRIP COUNTY CLERK
Beverly Heathouse
CLERK OF COURT
ROANE COUNTY, WEST VIRGINIA
BY *Andrea Stockner*
USHER