IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PA

NANCY E. MIKSCH, Plaintiff	: :	
v.	:	No. 99-21,091
DAVID E. JONES, Defendant	: :	

OPINION and ORDER

This opinion and order resolve the exceptions both parties have filed to the Master's Report of February 26, 2002, regarding child support. The issues which the court deems worthy of explanation are discussed in the body of this opinion.

A. Nurturing Parent

Ms. Miksch has requested nurturing parent status. In the child support and APL order of February 5, 2001, the Master assessed her a full time earning capacity of $2,600 per month. In the order of February 26, 2002, the Master refused to consider her a nurturing parent but discounted her earning capacity on the basis that she is saving child care expenses by not working. This is clearly an error. Either a person is or is not a nurturing parent.

The factors to consider for a nurturing parent are set forth in Frankenfield v. Feeser, 672 A.2d 1347 (Pa. Super. 1996): the age and maturity of the child, the availability of others to assist the parent, the adequacy of available financial resources if the parent does not work, and the parent's desire to stay home and nurture the child.

Work history may also be considered. Id. Ms. Miksch compares her situation to the mother in Illes v. Illes, Lyco Co. No. 98-20,477, where the court granted nurturing parent status. The Master cites Moore v. Urbina, Lyc. Co. No. 97-20,006, where the court did not. The case before this court is closer to Illes, although as always, each case is highly fact sensitive and dependent upon the individual circumstances.

The parties have two children: Collin, born on September 30, 1997 and Ian, born on August 4, 1993. Collin attends school full time. Ian will enter first grade in the fall of 2003.

Ms. Miksch has a Bachelor of Science degree in Nursing. She was working full time as a nurse when the parties were married. After the birth of their first child, she worked part time. After the birth of their second child, she did not go back to work. The testimony shows the parties agreed Ms. Miksch would stay at home until Collin entered first grade, at which time she would return to work full time.

Ms. Miksch has no family in the area to help out with childcare. Moreover, Dr. Jones has moved to the Lancaster area, which severely limits the extent to which he can assist her.

And finally, the parties have adequate resources to permit Ms. Miksch to stay home with the children until they are both in school full time. Although this means Dr. Jones will, at least temporarily, bear the burden of supporting the children, his income is large enough that he will not suffer tremendous hardship. This is not to say the nurturing parent doctrine will apply to every circumstance where the noncustodial parent has a large income. Nor does it meant that every time two parents in an intact family decide one of them will stay home with the children, that parent will receive

nurturing parent status upon separation. In most cases, two households cannot be sufficiently supported on one parent's income without unfair hardship to the working parent. Here, however, we have a well-to-do couple who jointly decided to provide their children with a full-time mother until they reached school age. Their children should not be deprived of that benefit, which their parents previously committed themselves to, simply because the family is no longer intact. If anything, the children's need for nurturing is greater, especially now that their father has moved out of the area.

Ms. Miksch's nurturing parent status shall be effective as of February 5, 2001, the date the parties agreed the Master could modify the stipulated child support and spousal support order. Unfortunately, due to the temporary nature of the February 5, 2001 order, this means a large arrearage has accumulated, which shall be paid at the rate of $500 per month.

B. Dr. Jones's Reduction in Income

Dr. Jones quit his job at Anesthesia Associates of Williamsport, where he earned $232,188.84 in 2001,[1] and started a new position on January 2, 2002 with Anesthesia Associates of Lancaster, where he is making $200,000.[2] This results in a net monthly salary of $12,478.56. However, Dr. Jones is on the partnership track, and expects to become a partner in three years, at which time he is expected to earn $350,000 per year.[3] That is more than $100,000 over what he was making as a partner in

[1] Dr. Jones' income varies, according to his "on-call pay" and the amount of his annual bonus, which depends upon the cash the business has accumulated at the end of each year.

[2] His actual salary is $120,000; the difference of $80,000 is a loan which will be repaid through bonuses in subsequent years.

[3] According to a letter from the business manager of Anesthesia Associates of Lancaster (Defendant's exhibit #52), $350,000 is a "very conservative assumption."

Williamsport. Ms. Miksch wants Dr. Jones to be held to his former salary for support purposes, rather than his actual salary.

The Support Guidelines specify that when a person voluntarily assumes a lower paying job, there "generally will be no effect on the support obligation." Rule 1910.16-2(d). As is evident by the language of this rule, it is not without exception. The court must inquire into the circumstances of each individual case in order to determine whether or not a parent's income should be reduced for support purposes. Grimes v. Grimes, 596 A.2d 240 (1991). It is Dr. Jones' burden to establish that a modification is warranted. Id. The moving party must show the voluntary change in employment was not made for the purpose of avoiding a child support obligation and that a reduction in support is warranted based on his efforts to mitigate any income loss. Id. The cases of Weiser v. Weiser, 362 A.2d 287 (1976) and Roberts v. Bockin, 461 A.2d 630 (1973) demonstrate that exceptions are made to the voluntary reduction rule, especially when the change of jobs is a well thought out and genuine attempt to better one's financial circumstances.

While Dr. Jones frankly admitted he did not like the Williamsport area and intended from the get-go to leave after a few years, the evidence nonetheless shows that his change in employment is a good career move. He is practically guaranteed a partnership with a corresponding leap in salary in three years. At that time, he is expected to earn $100,000 more than he made as a partner in Williamsport. Furthermore, Dr. Jones testified that as a partner in Williamsport, he could not expect much of a salary increase in the years to come.

The evidence establishes that ultimately, Dr. Jones' change in employment will translate into more support for his children, rather than less. In the interim, the $200,000 he will be making is quite sufficient to provide his children with adequate support.[4] Under these circumstances, it would be bad policy to penalize Dr. Jones for changing employment. While a parent should not be rewarded for putting his children's financial security in jeopardy by quitting a secure job for a risky one, neither should a parent be discouraged from making a wise career change which will in all likelihood result in increased earnings, from which his children will ultimately benefit.

[4] The court would be highly reluctant, however, to reduce Dr. Jones' earning capacity below $200,000 in the future without extreme, unforeseen circumstances.

O R D E R

AND NOW, this _____ day of June, 2002, the Exceptions filed to the Master's child support order of February 26, 2002 are disposed of as follows:

Ms. Miksch's Exceptions :

Exceptions #1, #2, #3: Granted.

Exception #4: Moot.

Exception #5: Granted.

Exception #6. Denied, as it is obvious the most benefit will be gained by awarding the deduction to Dr. Jones.

Exception #7: Granted.

Dr. Jones' Exceptions

Exceptions #1, #2, #3: Granted.

Exception #4: Granted.

The Master's Order of 26 February 2002 is amended as follows:

1. Effective 5 February 2001, child support shall be $2939.00 per month and APL shall be $3604.00 per month.
2. Effective 2 January 2002, child support shall be $2656.00 per month, and APL shall be $2947.00 per month
3. Arrearages shall be paid in the amount of $500 per month.

4. David E. Jones shall be responsible for 100% of all unreimbursed medical expenses over the first $250.00 per calendar year. In all other respects, the Master's order of 26 February 2002 is affirmed.

5. Any refund resulting from the execution of form 8332 shall be reported to the Domestic Relations Office so the support may be adjusted accordingly.

BY THE COURT,

_____
Clinton W. Smith, P.J.

cc: Janice Yaw, Esq.
Joy McCoy, Esq.
Domestic Relations (RMW)
Gerald Seevers, Esq.