

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

CJD,	: NO. 96-21,167
Petitioner	:
	:
vs.	: DOMESTIC RELATIONS SECTION
	: Exceptions
DWD,	:
Respondent	:

OPINION AND ORDER

Before the Court are Respondent's exceptions to the Family Court Order dated December 24, 2001, in which Respondent's request for modification of his support obligation was denied. Argument on the exceptions was heard February 27, 2002.

Respondent was previously employed as an Operations Manager with Federal Express and was earning approximately \$60,000.00 per year when he lost his job in October 2000. He filed a request for modification but by Order dated March 8, 2001, that request for modification was denied based on the hearing officer's finding that Respondent was fired by his employer for "job performance", the hearing officer citing Rule 1910.16-2 (d) and Laws v Laws, 758 A.2d 1226 (Pa. Super. 2000). Rule 1910.16-2 (d) provides that a party will not ordinarily be relieved of a support obligation by voluntarily quitting work or being fired for cause. Laws v Laws, *supra*, cites this Rule with approval in finding that Mrs. Laws was willfully failing to obtain appropriate employment by working part-time when she was able to work full-time, and assessing her a full-time earning capacity. Respondent filed a second Petition for Modification on October 26, 2001, seeking a reevaluation of his earning capacity. In the Order dated December 24, 2001, the hearing officer focused on whether Respondent's receipt of unemployment compensation "automatically exempts them (sic) from Rule 1910.16-2 (d)" While the Court agrees with the hearing officer's conclusion that receipt of

unemployment compensation does not in and of itself, without a finding by an administrative body, make a difference, the Court believes the hearing officer's focus was misplaced.

Respondent presented significant evidence that he has made a substantial effort to find employment similar to his employment with Federal Express, but has been unable to do so. Respondent testified that he had worked at Federal Express for ten (10) years, had worked his way up to Operations Manager earning approximately \$60,000.00 per year and that his attempts to find a managerial position have thus far been unsuccessful. He indicated that he has answered many many ads and has made inquiries of many companies. In the meantime, he has accepted employment with Leer as a laborer earning \$10.00 per hour and works as much overtime as he can obtain. Respondent is thus presenting evidence to support a finding that there has been a change in circumstances in spite of his being "fired for cause". The issue thus presented is whether assessment of an earning capacity based upon such a finding can be modified at some point in the future, and if so, at what point.

While the Court declines to draw a bright line with respect to a time period, it does appear equitable that in certain circumstances an earning capacity should be subject to modification. In the instant case, Respondent appears to represent a classic example of the "Peter Principle". That is, apparently he rose to the level of his incompetency, as he was fired for "job performance". Despite significant efforts, he has been unable to obtain similar employment. The Court would thus be hard pressed to say that he does have the capacity assessed to him, when the market apparently is saying he does not. The Court thus finds that in the instant case, and based upon the unique facts presented by this case, modification of Respondent's earning capacity is appropriate.

Respondent presented a pay stub from Leer for pay date November 30, 2001, pay period ending November 24, 2001. The year-to-date figures thereon cover a period of twenty-four (24) weeks. That pay stub shows a year-to-date gross income of \$9,659.78. The year-to-date gross income may be extrapolated to an annual gross income of \$20,930.00. Federal income tax is calculated at \$2,021.00, social security and medicare tax at \$1,601.00, and state and local tax at \$795.00. Respondent thus has an annual net income of \$16,513.00, for a monthly net income of \$1,376.00.

Petitioner testified that her circumstances have remained the same since the Order of March 8, 2000, when the current child support payment was established. She will therefore continue to be assessed the earning capacity assessed to her by that Order, \$1,942.00 per month. Considering Petitioner's earning capacity of \$1,942.00 per month and Respondent's income of \$1,376.00 per month, Respondent's child support obligation is calculated at \$287.39 per month.

ORDER

AND NOW, this 4th day of March, 2002, for the foregoing reasons, the Family Court Order dated December 24, 2001 is hereby vacated and effective October 26, 2001, Respondent's child support obligation shall be modified to \$287.39 per month plus an additional \$86.00 per month toward the health insurance coverage provided by Petitioner's father. Respondent shall pay an additional \$25.00 per month toward any arrearage which remains after adjustment based upon the instant Order. Respondent's responsibility toward excess unreimbursed medical expenses is hereby modified, effective October 26, 2001, to 41.47% of such and Petitioner's obligation is modified to 58.53% of such. As modified herein, the Order of May 30, 2001 shall continue in effect.

By the Court,

Dudley N. Anderson, Judge

cc: Family Court
Domestic Relations
CD
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Hon. Dudley N. Anderson