

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PA

P.B.,	:	
Plaintiff	:	
	:	
vs.	:	No. 01-21,023
	:	PACES NO. 017103696
J.P.,	:	
Defendant	:	

OPINION and ORDER

This opinion addresses the exceptions filed by Husband to the Master’s order of April 27, 2004, regarding Husband’s spousal support to Wife. Husband filed a petition for modification on December 29, 2003, based upon Mother’s change of employment, which substantially increased her income. Husband requested that the order be made retroactive to the date when Mother’s employment changed, which was apparently in July 2002. The Master duly changed the spousal support assessment; however, the Master refused to make the order retroactive beyond the date the petition was filed.

The Master acknowledged the en banc decision of Harlan v. Harlan, Lyc. Co. Docket No. 00-20,971, which states that in cases involving arrearages 23 Pa.C.S.A. §4352(e) applies, which permits a court to make the order retroactive beyond the date the petition was filed.¹ However, the Master declined to apply §4352(e) because the arrearage at issue was created by Father. Apparently, the Master feels §4352(e) should only be applied to *increase* the arrears when the payor has failed to report a change in income, and not to *decrease* the arrears when the payee has failed to report a change in income. There is no support for such a decision in the Harlan opinion, nor in §4352(e).

Moreover, the problem with the Harlan result is not that retroactivity is permitted in all cases involving arrearages, but rather that it is *not* permitted in cases where no arrearages exist.² Whether the payor who seeks redress for the payee's refusal to report an income increase is in arrears or not, that payor should be entitled to a credit for the overpayments resulting from the non-reporting.

Furthermore, and regrettably, although the text of §4352(e) appears to permit the court to retroactively modify the general support obligation, the title of §4351(e), "Retroactive modification of arrears" and the relevant caselaw, indicate that only the arrearage may be modified. Maddas v. Dehaas, 816 A.2d 234, 239 (Pa. Super. 2003).

Father also requests that this court grant him a deviation for the overpayments made due to Mother's failure to report her increased income. The court declines to do this, as it appears a petition for contempt is the more appropriate remedy in such cases.

In conclusion, the court finds the Master erred in determining that §4352(e) is not implicated in this case. However, we cannot determine for sure whether Father's arrearages should be modified because §4352(e) states that modification may be made retroactive to the date the petition was filed "if the petitioner was precluded from filing a petition for modification by reason of a significant physical or mental disability, misrepresentation of another party or other compelling reason and if the petitioner, when no longer precluded, promptly filed a petition." Since the court has no transcript, the court cannot determine whether these conditions have been met. Therefore, we will order a transcript, review it, and issue a final order at that time.

¹ The en banc court reluctantly concluded, however, that in cases with no existing arrears, the effective date could not be made retroactive to the date the petition was filed.

² The remedy for wronged parties in cases where no arrearage exists is to file a petition for contempt.

ORDER

AND NOW, this _____ day of June, 2004, after argument, the court reporter is directed to transcribe the hearing held on March 2, 2004, in Family Court. The defendant is ordered to pay a deposit of \$75.00 to the Lycoming County Prothonotary within ten days of the date of this order. The transcript shall be prepared by the court reporter with thirty days after the deposit is made. Upon completion of the transcript, the court reporter is directed to forward the transcript to the undersigned. If the deposit is not made as directed, the exceptions will be dismissed.

BY THE COURT,

Richard A. Gray, J.

cc: Dana Jacques, Esq., Law Clerk
Hon. Richard A. Gray
Christina Dinges, Esq.
Rita Alexyn, Esq.
Domestic Relations (MR)
Ann Diggan, Court Reporter
Family Court
Gary Weber, Esq.