

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PA

M.C.,	:	
Plaintiff	:	
	:	
v.	:	No. 03-21,618
	:	PACES NO. 87010591
M.C.,	:	
Defendant	:	

OPINION and ORDER

This opinion addresses Father's exceptions to the Master's report issued on November 12, 2003, ordering Father to pay child support. Father's exceptions are based upon the Master's calculation of the arrears. Father argues that the amount of arrears is wrong because it was calculated without taking into consideration an oral modification the parties had made to their child support agreement.

The relevant background is as follows. The parties entered into a Separation and Property Agreement on January 31, 2000, in which Father was to pay child support of \$138.57 per week. The parties executed an Addendum on March 2, 2000, changing the child support amount to \$173.21 per week. In April 2003, the parties orally agreed to reduce the child support payment back to \$138.57 per week, as part of a custody contempt settlement.

The Master calculated the arrears at \$35.21 per week. The Master apparently believed Mother was entitled to have the arrearage calculated from March 2, 2000

through the present time,¹ for the Master asked Mother whether she would be insisting on that as the arrearage period, or whether she was willing to limit the arrearage period to March 2, 2000 through April 5, 2003, when the oral modification was made.

Transcript, p. 26. Mother agreed to limit the arrearage period to April 5, 2003, which results in an arrearage of \$5700. The Master then inquired whether Mother would be willing to reduce the arrearage to \$4000, and Mother eventually agreed to do so.

Father, however, never agreed to the arrearage amount. In fact, Father testified that the parties orally agreed to modify the amount of child support to \$138.57 on November 11th of some year, probably 2000, although it is not clear from the transcript. Father's assertion was dismissed by the Master, apparently because the modification was not in writing. Transcript, p. 23. Had the Master made an assessment of credibility and determined that Husband was not credible on this issue, there would be no need of a remand. As it is, the court can only guess from the transcript that the Master was under the erroneous impression that an oral modification of a contract is not valid.² Therefore, the court must remand the matter back to the Master for a hearing and specific findings on whether the parties orally modified their child support agreement on the November 11th date, and/or in April 2003, and if so, exactly what the modification(s) consisted of. There is too much money at stake for the court to determine the matter without clarification on these issues.

¹ Although it is not clear from the record, the Master apparently found that Father never paid the \$173.21 per week.

² Pennsylvania contract law is well settled that a written agreement [other than for the sale of goods over \$500] may be modified by a subsequent oral agreement, provided the modification agreement is based upon valid consideration and is proved by evidence which is clear, precise, and convincing. Pellegrine v. Luther, 169 A.2d 298, 299 (Pa. 1961); Somerset Community Hospital et al. v. Mitchell & Associates, Inc., et al., 685 A.2d 141, 146 (Pa. Super. 1996).

The Master is also requested to consider whether the contract law doctrine of waiver is implicated, either through express agreement,³ estoppel,⁴ or implied waiver.⁵ See Den-Tal-Ez, Inc. v. Siemens Capital Corp., 566 A.2d 1214, 1223 (Pa. Super. 1989). The purpose of the waiver doctrine is to prevent unfairness when one party, acting on another party's statements or actions, reasonably believes that he or she will not be required to fulfill a contractual provision and acts accordingly, only to be brought to court at a later date for not complying with the provision. Specifically, the Master should consider whether Mother, by routinely accepting the child support payments of \$138.57 for a long period of time, waived her contractual right to receive \$173.21 per month.

³ I.e., Mother told Father she would accept less.

⁴ I.e., Mother, by her conduct, knowingly induced Father to believe that she would not demand strict compliance with the child support contract.

⁵ I.e., Mother's unexpressed intention to reduce the child support amount can be clearly inferred from the circumstances, or Mother's conduct misled Father into a reasonable belief that the child support provision had been waived.

ORDER

AND NOW, this _____ day of February, 2004, after argument, the matter is remanded back to the Master for a hearing and findings of fact on the following issues:

- (1) Whether the parties entered into a valid contract, with mutual consideration, to modify their child support agreement on the November 11th date, and/or in April 2003,
- (2) If such a contract was made, what the exact terms of the contract were, (3) For what months Father paid child support of \$138.57 per week rather than \$173.21 per week,
- and (4) Whether the doctrine of waiver should be applied.

BY THE COURT,

Richard A. Gray, J.

cc: Dana Jacques, Esq., Law Clerk
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