

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PA

D.M.,	:	
Plaintiff	:	
	:	
v.	:	No. 04-20,613
	:	PACES NO. 789106410
F.M.,	:	
Defendant	:	

OPINION AND ORDER

The issue presented in this case is whether the court should modify a child support agreement that has been made an order of court. The parties entered into a support agreement, contained in a stipulated custody order, whereby Father would pay \$1850 per month, which constituted combined spousal support and child support. The Master refused to consider the agreement, applied the Guidelines, and ordered child support in the amount of \$1,289.94 per month and spousal support of \$842.42 per month. After subtracting Mother’s share of the health insurance premium (\$18.73 per month), Father’s total ordered payment is \$2,113.64 per month.

Recently, this court has ruled that a child support agreement can be modified downward upon a showing of changed circumstances. Quigel v. Metzger, Lyc. No. 02-21,536. In that opinion we stated,

Our analysis begins with the long-recognized principle that individuals have a right to enter into such agreements and arrange their affairs as they see fit. This right flows logically from the right to privacy and the right to contract. Cercaria v. Cercaria, 405 Pa. Super. 176, 592 A.2d 64, 68 (1991). Contracting parties are normally bound by their agreement, without regard to whether the terms were read and fully understood and irrespective of whether the agreement embodied reasonable or good bargains. Mormello v. Mormello, 452 Pa. Super. 590, 682 A.2d 824, 826 (1996) (citing cases). Therefore, courts should ordinarily enforce such agreements and hold the parties to the terms of their bargain absent fraud, misrepresentation, or duress. Id. at 165. See also Simeone v.

Simeone, 525 Pa. 392, 581 A.2d 162 (1990) (antenuptial and postnuptial agreements must be evaluated under traditional contract law). Notwithstanding this principle, the Superior Court has recently ruled that a court does have the power to modify a child support agreement, if there is changed circumstances. Boullianne v. Russo, 2003 Pa. Super. 97, 819 A.2d 577 (Pa. Super. 2003).

In Boulliane, the court stated:

[A] family court's power to modify a support order downward is not precluded by the existence of an agreement upon which the support order is based. 'In [a] support action. . . the payee may not claim that the [agreement] prevents the family court from modifying the order downward if such reduction is necessary to prevent payor from having to comply with an order that he cannot pay due to changed circumstances.' Nicholson v. Combs, 550 Pa. 23, 44, 703 A.2d 407, 417. 'Because failure to comply with a support order can lead to incarceration, the court must be able to reduce the amount if the payor establishes an inability to pay.' Nicholson, 550 Pa. at 43, 703 A.2d at 416-417.

This conclusion is consistent with 23 Pa.C.S.A. §3104, which states, "A provision of an agreement regarding child support, visitation or custody shall be subject to modification by the court upon a showing of changed circumstances."

In the case before this court, the payee has filed a petition requesting to *increase* the support. Although it is well settled a party cannot bargain away his or her child's right to support, and that courts will always keep a watchful eye out for the financial interests of the children, the Superior Court has nonetheless held,

[W]hen the agreement adequately provides for the needs of the children and spouse and has been recently entered into under court approval, unless a change of circumstances can be shown, there is no justification for ignoring the agreement.

Kost v. Kost, 757 A.2d 952, 954 (Pa. Super. 2000), citing Koller v. Koller, 481 A.2d 1218 (Pa. Super. 1984).

In Kost, the court held the support could be increased, as the recommended guideline amount was 75% more than Father was currently paying under the agreement. The court stated,

Where the amount agreed upon differs from the guideline range so significantly, it must be presumed that the agreement entered by the

parties does not provide fair and just support for the child. In such a situation Father should bear the burden of establishing that the figure suggested by the guideline is not necessary for the child's support.

Id. at 954.

In the case before this court, the total amount of combined child and spousal support recommended by the Master was a mere 15% increase over what Father was paying under the agreement—even without considering Father's exceptions. Therefore, the court must conclude that the amount previously agreed upon by the parties provides fair and just support for the children, and as no change of circumstances has been shown, the court will hold both parties to their agreement. ¹

¹ In addition to protecting the right of individuals to contract, another reason for holding parties to child support agreements is that such agreements, like this one, are often part of stipulated orders involving custody agreements and/or property settlement agreements. Typically, child support is lower than it would be under the Guidelines, in return for certain concessions on custody or property. The court recognizes that in such instances, the children may benefit more from their parents reaching an agreement and thus ending the court battles, than from receiving extra financial support.

ORDER

AND NOW, this _____ day of October, 2004, for the reasons stated in the foregoing opinion, Father's Exception #8 is granted and it is ordered that Father's total support obligation, including child support and spousal support, shall be \$1850 per month and Mother shall pay no contribution to health care. In all other respects, the Master's order of July 6, 2004 is affirmed.

BY THE COURT,

Richard A. Gray, J.

cc: Dana Jacques, Esq., Law Clerk
Hon. Richard A. Gray
Rita Alexyn, Esq.
Joy McCoy, Esq.
Family Court
Domestic Relations (MPR)
Gary Weber, Esq.