

**IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PA**

J.Q.,	:	
Plaintiff	:	
	:	
v.	:	No. 02-21,536
	:	PACES NO. 020105803
J.M.,	:	
Defendant	:	

**OPINION AND ORDER**

The issue before the court in this case is whether the court has the right to modify a child support agreement contained in a separation agreement. The court finds that support can be modified, upon a showing of changed circumstances.

The facts are as follows: The parties signed a Separation Agreement which was filed as part of their divorce. It included a paragraph stating that Father would pay \$2000 per month child support until the child reached the age of eighteen, without the intervention of Domestic Relations. The parties subsequently orally agreed to reduce the amount to \$1,564.20 per month. When the money was not forthcoming, Mother eventually filed a complaint for child support, asking that the \$1,564.20 per month be incorporated into a court order, so that it could be enforced through Domestic Relations. The Master inquired into the parties' incomes, applied the Guidelines, and arrived at a child support obligation of \$739.66 per month. Mother claims the court erred in reducing the support obligation beyond what the parties had agreed to. Unfortunately, the Master did not address this legal issue.

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. In Boullianne v. Russo, 2003 Pa. Super. 97, 819 A.2d 577 (Pa. Super. 2003), 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.

The court does not have a transcript of the hearing in the case before this court, but based upon the fact that the legal issue was not addressed in the Master's report, along with the statements of counsel for Mother at the argument, the court concludes that the issue of changed circumstances was not addressed at the Master's hearing. Therefore, the case must be remanded back for a hearing on whether circumstances have changed such that Husband's child support obligation should be modified.

**ORDER**

AND NOW, this \_\_\_\_\_ day of February, 2004, for the reasons stated in the foregoing opinion, this case is remanded back to the Master to conduct a hearing regarding changed circumstances.

BY THE COURT,

---

Richard A. Gray, J.

cc: Dana Jacques, Esq., Law Clerk  
Hon. Richard A. Gray  
Michael Groulx, Esq.  
Jason Metzger  
8384 State Route 87  
Williamsport, PA 17701-9501  
Family Court  
Domestic Relations (MPR)  
Gary Weber, Esq.