

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

|           |   |                     |
|-----------|---|---------------------|
| C.W.,     | : |                     |
| Plaintiff | : |                     |
|           | : |                     |
| v.        | : | No. 97-20,770       |
|           | : | PACES NO. 001002022 |
| S.W.,     | : |                     |
| Defendant | : |                     |

**OPINION and ORDER**

Wife has filed exceptions to the Master's order issued on November 6, 2003, contesting the Master's determination that Wife should pay Husband spousal support in the amount of \$164.29 per month, plus a \$47.45 contribution to health insurance.

Wife's first two exceptions relate to the Master's failure to explore whether Husband has a need for the APL. This exception is denied, based upon the reasoning expressed in this court's opinion and order in Voneida v. Voneida, issued on March 10, 2004, Lycoming County docket #03-20,439.

Wife's exceptions numbers four, five, and eight contest the Master's failure to assess defendant with income from his business, Bojangle's Restaurant. The court finds no error in this regard, as the information provided by the defendant shows the business operated at a loss and has in fact been shut down. Moreover, the plaintiff had a full opportunity to cross-examine him on this issue, and did not do so.

Wife's exceptions numbers five and six relate to the Master's assessment of Wife's income. In an order dated September 28, 1998, Wife's income was found to be \$2,282 per month. At that time, Wife and the parties' son were working at/operating the Uptown Diner, and although Wife was not paid a salary, she took out money to pay her living expenses, which were found to be \$2,282 per month. In a subsequent order dated August 14, 2001, Wife was assessed the same income. The Master here

continued to assess her at \$2,282 per month, and added \$684.81 per month which she receives from her pension.

It appears the Master declined to entertain a modification of Wife's assessment because she did not allege her income had changed in her petition for spousal support. It is true that Wife alleged only that Husband's income had changed; however, once Wife established a change of circumstances based upon Husband's income, and therefore a re-examination of the award was warranted, Wife's income should certainly have been examined in order to arrive at a fair award.

The defendant argues that Wife waived her right to introduce evidence regarding her current income. The court does not agree. At the hearing, Wife initially stated she was challenging her previous income assessment. N.T., p. 6. After Husband had testified regarding his income, Wife was asked whether she wanted the Master to just determine what Husband's income is and determine the amount of spousal support, if any. Wife answered in the affirmative. N.T., p. 26. A short time later, Wife was asked whether she had any other information to offer the Master, with respect to Husband or herself. Wife replied that she did not. N.T., p. 30. However, after being called to testify by Husband's attorney and questioned about her pension income, Husband's attorney asked, "Since we were last in court when the court assessed you an earnings you now—do you actually draw a salary from the business?" Wife answered in the affirmative. N.T. p. 34. The Master later asked whether she was drawing a salary from the Uptown Diner, and Wife stated she was and that "I usually clear about ninety dollars, a hundred. . . . They call me and I go down and wash dishes or I help out down there when they get busy. I don't work like I used to because I can't. . . . I have a heart condition." N.T., p. 35.

Had Wife merely stated she had no information to provide regarding her income, and no testimony was introduced regarding her income, she would certainly have waived her right to do so. However, the defendant himself initiated a reassessment

of Wife's income. Unfortunately, the inquiry was not complete, and under current caselaw, it is the Master's obligation to make the inquiry complete, especially in the case of pro se litigants. When the record is undeveloped as to a fair determination of a party's income, it is the Master's duty to inquire into the relevant factors in order to make a fair award. Haselrig v. Haselrig, 840 A.2d 339 (Pa. Super. 2003); Gephart v. Gephart, 764 A.2d 613 (Pa. Super. 2000). Given the testimony introduced at the hearing, merely continuing an assessment made in 1998 and re-affirmed in 2001 is unfair to the plaintiff. Therefore, the court is compelled to order a remand.

We note that this is not an earning capacity case, in which event it might have been justified to continue the old assessment. Rather, Wife's previous assessment was based on the amount of money she took from the business at that time. Certainly, the business income may have changed, as well as the amount time Wife works there, and the amount of money she draws out of the business. Therefore, the court deems it necessary to remand the matter back for the limited purpose of inquiring into Wife's present income. After a thorough inquiry, the Master is free to set an earning assessment or earning capacity, as he deems appropriate.<sup>1</sup>

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<sup>1</sup> Wife is cautioned to bring to the hearing all relevant documentation of her income, including her income tax returns for the last three years, paystubs, cancelled checks, and proof of expenses paid by the business. Moreover, if she plans to allege that health problems prohibit her from working full time, she will need appropriate documentation from her current physician.

**ORDER**

AND NOW, this \_\_\_\_\_ day of May, 2004, for the reasons stated in the foregoing opinion, the defendant's exceptions # 1, 2, 3, 4, 8, and 10 are dismissed and exceptions # 5, 6, and 7 are granted. This matter is remanded back to the Master for the limited purpose of assessing Wife's income/earning capacity.

BY THE COURT,

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Richard A. Gray, J.

cc: Dana Jacques, Esq., Law Clerk  
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