IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PA

E.F.,	:	
Plaintiff	:	
	:	
v.	:	No. 03-21,580
	:	PACES NO. 896105907
T.M.,	:	
Defendant	:	

OPINION and ORDER

This opinion addresses the Exceptions filed by both parties to the Master's order of April 7, 2005, awarding Husband child support.

Husband's exceptions relate to his income assessment. The Master based his income upon his pre-injury earning capacity. At the time of the hearing, Husband was out of work on short-term disability. He expected to return to work on April 4, 2005, to a position in the warehouse where, unlike his previous position, overtime was not available. This exception will be denied, as it is more properly the subject of a modification petition which should have been filed after Husband actually returned to work and presented a new paystub.

Wife's exceptions #1 and #3 relate to her earning capacity assessment. Wife worked at a bank for eleven years, during which time she worked her way up from teller to manager. Wife was terminated on January 4, 2005, for violating the bank's Code of Conduct and Ethics. Specifically, she used a subordinate to view a customer's bank account to determine if the customer had written any checks to Husband. The bank did not contest unemployment, and at the time of the hearing Wife was collecting a net amount of $1529.67 per month. The Master assessed Wife at her pre-termination salary.

In Ewing v. Ewing, 843 A.2d 1282 (Pa. Super. 2004), the Superior Court reversed a trial court's decision to base a father's income on the salary he earned before

he was fired for cause. The Superior Court found that the trial court erred because it failed to consider father's testimony regarding his efforts to mitigate his lost income, and remanded the matter back to the trial court with direction to do so. The Superior Court stated,

> [W]e cannot agree with the trial court that Father's termination, despite being for cause, precludes him from receiving a reduction in his child support obligation. . . . The trial court must determine whether Father has acted responsibly since he lost his job, even though his own irresponsible conduct prompted his termination.

Id. at 1288. The Superior Court did not discuss exactly what type of efforts must be made to establish mitigation, and certainly the determination must be made on a case-by-case basis.

In this case, Wife testified that since being terminated she has applied for jobs at seven banks and at Susquehanna Health System. She has also registered at Career Link. The Master found these efforts insufficient, primarily because given her serious ethics violation, it was futile to apply for jobs at other banks, and she had not made sufficient efforts to obtain non-banking positions. Although the court sympathizes with Wife, we cannot find that the Master erred in reaching this conclusion.

Nonetheless, at some point it may no longer be appropriate to assess Wife at her previous position. At the time of the hearing, not even three months had elapsed since her termination. Although it is not this court's intention to punish individuals who lose their job due to their own conduct, neither will we be quick to reduce their support obligation unless clear mitigation is established. Here, we are particularly reluctant to use Wife's unemployment compensation income at this time because, due to their shared physical custody arrangement, the result would be to order Father to pay Wife $367 per month in child support. That would be inequitable at this point, and would be penalizing Father for Mother's own irresponsible conduct.

However, the court is aware that Mother has recently obtained a job and will be filing a modification petition. If the job appears to be commensurate with her capacity, given the reality of her unfortunate circumstances, perhaps it will be appropriate to review her mitigation efforts and change her earning capacity at a later hearing.

Mother's second exception relates to the health insurance obligation. The question she presents is whether, when the parties' income is equalized under Rule 1910.16-4(c)(2), each party should be assessed with 50% of the obligation. Although Rule 1910.16-6(b)(1) states that health insurance premiums should be allocated between the parties in proportion to their net incomes, to do so after just performing equalization would make little sense. We believe that in promulgating Rule 1910.16-6(b), the Supreme Court simply did not contemplate the shared custody situation, and that the intent of Rule 1910.14(c)(2) suggests health insurance premiums be divided equally when the parties' incomes are equalized.

O R D E R

AND NOW, this _____ day of July, 2004, for the reasons stated in the foregoing opinion, Father's Exceptions are denied, Mother's Exceptions #1 and #3 are dismissed, and Mother's Exception #2 is granted. It is further ordered that Mother's health insurance contribution shall be $79.96 per month. In all other respects, the Master's order of April 7, 2005, as amended by the Master's order of April 18, 2005, is affirmed.

BY THE COURT,

_____

Richard A. Gray, J.

cc: Dana Jacques, Esq., Law Clerk
Hon. Richard A. Gray
Janice Yaw, Esq.
Michael Leonard, Esq.
Domestic Relations (RW)
Family Court
Gary Weber, Esq.