IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PA

DEBORAH A. FOWLER, :
Plaintiff :
:
v. : No. 02-21,159
: PACES NO. 349104690
STEVEN FOWLER, :
Defendant :

OPINION and ORDER

This case involves exceptions both parties filed to the Master's report issued on January 23, 2005, which increased Father's child support obligation. The primary issue is whether Mother's earning capacity should be reduced.

On August 16, 2004, Mother resigned from her job as an Administrative Assistant at Chromaglass Incorporated, and started school at Penn College. Since that time, she has been attending school full-time for landscape design, a two-year course.

The pertinent rule for this type of situation is 1910.16-2(d)(1), which states,

> Where a party voluntarily assumes a lower paying job, there generally will be no effect on the support obligation. A party will ordinarily not be relieved of a support obligation by voluntarily quitting work or being fired for cause.

To modify a support obligation based upon reduced income,

> a petitioner must first establish that the voluntary change in employment which resulted in a reduction of income was not made for the purpose of avoiding a child support obligation and secondly, that a reduction in support is warranted based upon petitioner's efforts to mitigate any income loss. Effectively, Appellenat 'must present evidence as to why he or she voluntarily left the prior employment and also as to why the acceptance of a lower paying job was necessary.' . . .

Kersey v. Kersey, 791 A.2d 419 (Pa. Super. 2002).

In Kersey, the father quit his $70,000 per year job to attend medical school. While attending school, he worked thirty-two hours per week as a clinical research coordinator, earning $32,000 per year. The trial court refused to lower his child support, and the Superior Court affirmed, stating that although the father's ambition to

obtain a medical degree was laudable and commendable, it was nonetheless voluntary and subordinated the immediate financial needs of his children to his career aspirations. Regarding the acceptance of a lower paying job, the court rejected that as proof of mitigation because he failed to demonstrate why the acceptance of a lower paying job was necessary.

The court also notes the case of Cragle v. Cragle, 419 A.2d 1179 (Pa. Super. 1980), where the Superior Court reversed the trial court because no earning capacity had been attributed to a mother who had quit her job as a nurse's aid to attend nursing school. Although the case was decided before the guidelines, the court nonetheless finds the case instructive and relevant.

In the case before this court, Mother left a job paying $11.00 per hour—the highest wage she had earned. When asked why she decided to go to college as opposed to staying employed at Chromaglass, she responded,

> When I got my job at Chromaglass I had prior to that spent nine months looking for a job and got my job with Chromaglass only because I went through a temp agency. When I worked at Chromaglass I was told I wouldn't get a raise for a two-year period and my position was an hourly rate.

N.T., p. 43. She further stated, "[It] was a wonderful job if you had a second income, but to be able to support a child as a single parent it really didn't have a future." N.T., p. 44. When asked what her marketability would be upon completing the two-year course at Penn College, Mother answered,

> Very good because they don't train you just to be a landscape designer. You have a lot of room within the industry to find a very good position, most of which are salary positions.

N.T., p. 45. When asked what the starting salary she could expect is, Mother answered,

> I know starting—I can only tell you what I've heard starting at a local nursery in landscape design is $25,000 a year.

When asked whether she anticipated that the salary would rise as her experience increases, she answered, "Yes, right." And finally, when asked again about her decision to enroll in college, she answered,

> Well, unless you really want to be a secretary it's hard to get a job in Williamsport and it did take me nine months to find a job even though I had good references and that's an hourly rate. I can't get anything other than an hourly rate and I really—a degree is just what you need to get a job around here, anywhere actually any more and you're going to be locked into—you're going to max out very quickly, your earning potential without one.

N.T. 50.

To begin our analysis, the court does not find that Mother deliberately reduced her income for the purpose of increasing child support. Regarding mitigation, Mother is not working during the school year; during the summer, she will be working as an intern, and will earn approximately $2900, out of which she must pay Penn College $630.00 for the two credits she will receive.

Under the circumstances, the court must hold her to her income at Chromaglass. Although Mother's desire to get a degree in Landscape Design is understandable, the court does not believe her earning capacity should be decreased. Prior to resigning, Mother was working at a job where she earned $23,800 per year; her anticipated landscaping salary, after two years of college, is only $25,000. Her statement that she could not support a son on her Chromaglass salary rings untrue, especially in light of the child support she was receiving ($728.00 per month, plus childcare expenses). In short, the explanations Mother gave simply did not establish that a lower earning capacity due to her attendance at college is necessary. She presented only generalizations and guesses as to her marketability with the degree and the anticipated salary.

Mother's income at Chromaglass was $1906.67 per month. The court will not include her tax refund, as that was earned at a different position. Instead, we will

calculate her anticipated taxes (see GINX worksheet attached), and arrive at a net income of $1528.41 per month.

Father also complains he should not have to contribute to childcare expenses because the child should have gone to kindergarten. That exception will be denied, as the issue was decided by this court in a custody case. Father also complains about the tax exemption for the child. The court does not understand this objection, as the Master granted the exemption to Father.

Father next objects to two medical expenses for which Mother failed to provide bills. These exceptions will be granted, as the court could find no evidence of the bills.

Mother's exceptions relate to the Master's determination that Father has 40% of the overnights with the child. That exception will be granted, as the Master erred by calculating the school year overnights on a twelve-month basis, rather than a nine-month basis, and then adding in Father's summer overnights.

Mother next objects to the Master's deducting APL payments from Father's income during the period September 9, 2004 through December 31, 2004, and adding the payments to Mother's income. Inasmuch as his APL obligation ceased in March 2004, the court will grant these exceptions.

With Father's income at $4543.56 and Mother's income at $1528.41, child support is $801.43 per month, reduced by Mother's health insurance contribution of $30.78, for a total of $770.65 per moth. As this does not change the current support obligation more than 10%, this will be not be considered a material change of circumstances, and therefore the child support will remain the same.

O R D E R

AND NOW, this _____ day of April, 2005, for the reasons stated in the forgoing petition, Father's exceptions #2, 5, 6, and 7 are granted and the remaining exceptions are dismissed. Mother's exceptions #1, #2, and #3 are granted and the remaining exceptions are dismissed. It is further ordered that:

1. Child support shall remain at $728.50 per month, and childcare expenses shall remain at $215.33 per month.
2. Unreimbursed medical expenses shall continue to be paid as follows: 74% for Father, 26% for Mother.
3. Domestic Relations Section is ordered and directed to add to Father's arrearages $13.70 in unreimbursed medical expenses for the time period January 3, 2003 through August 31, 2003, $80.60 for the time period September 1, 2003 until December 31, 2003, and $138.89 for the payments from January 1, 2004 through December 31, 2004.
4. In all other respects, the Master's order of January 23, 2005 is affirmed.

BY THE COURT,

____

Richard A. Gray, J.

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