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

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| S.M., | : | |
| Plaintiff | : | |
| | : | |
| v. | : | No. 92-21,070 |
| | : | PACES NO. 260001832 |
| T.T., | : | |
| Defendant | : | |

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|---|---|---|
| K.T., | : | |
| Plaintiff | : | |
| | : | |
| v. | : | No. 04-21,068 |
| | : | PACES NO. 858106682 |
| T.T., | : | |
| Defendant | : | |

**OPINION and ORDER**

In this case Father has filed exceptions relating to the earning capacity the Master assigned to S.M., who was terminated from her employment the day before the Master's hearing, apparently for cause. The Master assessed her at her former income, but declined to include the $12,500 she received in bonuses.

Father argues that the bonus money should be included, and the court agrees with Father. Rule 1910.16-2(a)(1) states that bonuses should be included in a party's income. Therefore, if S.M.'s earning capacity is to be based upon her previous income, the bonuses should be included.

If S.M. wishes to decrease her earning capacity assessment due to her termination, the relevant rule is Rule 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 by being fired for cause.

In construing this rule, the Pennsylvania Supreme Court has required a party seeking modification after a voluntary reduction in income to show: (1) that the change was not made for the purpose of avoiding child support, and (2) that the reduction is warranted based upon the party's efforts to mitigate the lost income. Grimes v. Grimes, 596 A.2d 240 (Pa. 1991); Kersey v. Jefferson, 791 A.2d 419 (Pa. Super. 2002). This law also applies to cases where a parent is fired for cause. Ewing v. Ewing, 843 A.2d 1282 (Pa. Super. 2004).

It does not appear that evidence of either of these factors was presented at the Master's hearing. Indeed, because this was a very recent termination, it is virtually impossible that S.M. would have had any evidence of mitigation to present at that time.

The court has considered remanding the matter back to the Master for testimony on mitigation, as the court did in Ewing, supra. We decline to do so, however, because we believe the better approach is for S.M. to file for a modification if she believes she can establish the two factors discussed above. We reach this decision for two reasons. First, in Ewing evidence of mitigation had been presented at the hearing; however, the trial court failed to consider it. That is not the case here. And second, the change in employment occurred the day prior to the Master's hearing. Therefore, it is more properly the subject of a new petition to modify rather than an issue to be dealt with in the present proceeding.

**O R D E R**

AND NOW, this _____ day of January, 2005, for the reasons stated in the foregoing opinion, the defendant's Exceptions #1 and #3 are granted, and Exception #2 has been withdrawn. It is therefore ordered that T.T's support obligations shall remain the same, and the portions of the Master's order raising the support effective October 7, 2004 are hereby vacated. In all other respects, the Master's order of October 8, 2004 shall remain in full force and effect.

BY THE COURT,

_____________________________________

Richard A. Gray, J.

cc: Dana Jacques, Law Clerk
Hon. Richard A. Gray
Janice Yaw, Esq.
S.M.
K.T.
Domestic Relations (SF)
Family Court
Gary Weber, Esq.