

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PA

F.S.,	:	
Plaintiff	:	
	:	
v.	:	No. 03-21,191
	:	
T.S.,	:	
Defendant	:	

OPINION and ORDER

The issue in this case is whether the court should uphold a child support agreement entered into by the parties in September 2003. The agreement was part of a Marital Property Settlement Agreement, filed on May 20, 2004. The agreement states that Husband shall pay \$1,054 per month in child support, and further provides in Paragraph D, "In accordance with the applicable law, the parties agree that in the event of a substantial change of circumstances, the amount of child support set forth herein, may be modified upward or downward." In Paragraph F(2), the agreement states,

Husband shall be entitled to claim the dependency exemptions of the children for income tax purposes for the 2003 tax year. Wife agrees to execute any document which may be required to release future claims to the dependency exemptions. The parties agree that the future dependency exemptions shall be allocated between the parties. If neither party requests allocation, the exemptions shall be taken according to the Internal Revenue Service.

The parties could not reach an agreement on the dependency exemptions for 2004, thus prompting Husband to file a petition requesting the court to make a determination as to the exemptions. The Master correctly awarded them to Husband, and went on to calculate the child support, factoring in the consequences of the award. The Master concluded that since the award of dependency exemptions raised the child support only \$33.30 per month, there was no substantial change of circumstances, and therefore the support should remain the same.

Wife argues the Master erred in not ordering the increase, because awarding the tax exemptions to Husband created a substantial change of circumstances for both parties. Without the exemptions, Father would owe \$1901 in federal tax. With the exemptions, he gets a refund of \$1680. Without the exemptions, Wife would get a refund of \$3403. With the refund, she would get a refund of \$3781.

Husband points to the case of Mertes v. Mertes, Lyc. Co. #04-20,613, in which this court refused to modify a child support agreement reached by the parties. In that case, Wife had filed a petition for support, asking to increase the amount Husband was paying under the agreement. We held that the agreement must be honored, so long as the amount of support adequately provides for the needs of the children. Kost v. Kost, 757 A.2d 952, 954 (Pa. Super. 2000). Since the guidelines amount was only 15% higher than the amount agreed upon by the parties, we held that the agreement figure adequately provided for the needs of the children.

The case currently before the court is very similar. Since the guideline amount would raise the child support less than 4%, we will assume the agreed-upon amount is fair and just, and will not disturb the agreement reached by the parties.¹

Wife claims the court must award her the extra support because Rule 1910.16-2 states that the tax consequences resulting from an award of child dependency “must” be considered in calculating each party’s income available for support. In this case, however, we are operating under the party’s agreement. Although the agreement envisions that the court will allocate the exemptions for tax years subsequent to 2003 if the parties cannot agree, it does not mention automatically adjusting the support upon allocation. Moreover, we note that the only petition before the court was Husband’s petition to allocate the exemptions.

¹ Since our decision is based upon an agreement for child support, we do not address the question raised at argument regarding whether, in an action for modification of a support order, a substantial change of circumstances in regard to the parties’ incomes that results in a less than 10% change in support, constitutes a substantial change in circumstances.

And finally, even if one of the parties had requested to modify the child support specified in the agreement, it is questionable whether awarding the exemptions constitutes “changed circumstances,” as at the time of the agreement, Husband was to receive both exemptions and the court was to allocate future exemptions if the parties could not agree on the issue.

ORDER

AND NOW, this _____ day of May, 2005, for the reasons stated in the foregoing opinion, the exceptions filed by the plaintiff to the Master's order of March 2, 2005, are dismissed.

BY THE COURT,

Richard A. Gray, J.

cc: Dana Jacques, Esq., Law Clerk
Hon. Richard A. Gray
Janice Yaw, Esq.
Joy McCoy, Esq.
Domestic Relations (SF)
Family Court