

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PA

R.A.S.,	:	
Plaintiff	:	
	:	
v.	:	No. 03-21,813
	:	
R.L.S.,	:	
Defendant	:	

OPINION and ORDER

This opinion addresses the Exceptions filed by Husband to the Master's order of December 2004, awarding alimony pendente lite to Wife. His Exceptions relate to the full-time earning capacity the Master assigned to Wife.

Wife is employed as a school bus driver, earning \$38 per day gross during the school year. Wife's W-2 for 2003 shows that she earned \$6198.51 gross, and \$5111.74 net. She collects unemployment during the summer, which amounted to \$843.00 in 2003. The Master found that Wife was a minimum-wage type individual, and since her actual earnings were less than full-time minimum wage, the Master assessed her with a full-time minimum wage earning capacity.

Husband argues this is unfair because Wife is paid \$9.50 per hour, which is significantly higher than minimum wage. This court has been presented with a similar argument in the cases of Jennings v. Jennings, Lyc. Co. No. 04-20,906 and Hull v. Hull, Lyc. Co. No. 04-20,530.

Both women in these cases were classic minimum wage earners, but were earning more than minimum wage working at part-time jobs. As we pointed out in both those opinions, the higher wage was due to the part-time nature of the work, and it would be unrealistic to expect either woman to obtain full-time work at that wage. The Wife in Jennings was working 27 ½ hours per week at a school cafeteria during the school year. We assessed her at her actual earnings during the school year, because her

total earnings each month were more than full-time minimum wage. However, we noted there was no reason she could not work during the summer, and assessed her at a full-time minimum wage job during the summer. The wife in Hull worked 22 to 25 hours per week at Sears. As she was earning more than she could earn working full-time at minimum wage, the court affirmed the Master's decision to use her actual earnings.

In this case, Wife is also a classic minimum wage worker. She is fifty-one years old, has a high school education, and no additional training. She has been employed driving a school bus for seven years. Prior to that, she worked as a daycare aide for \$5.00 per hour. The court will not assess her full-time at \$9.50 per hour, as it is totally unrealistic to expect her to find such employment. Husband also argues Wife should be assessed at an additional twenty hours per week earning minimum wage during the school year, since her bus driving job only takes up four hours each day. We decline to do this, as it is unrealistic to expect Wife to find a part-time job that would allow her to be available for the daily bus runs in the morning and afternoon, as well as for additional runs when the school hours are altered due to the weather or the normal school calendar.

Husband also argues that Wife did not attempt to obtain additional bus driving jobs available from her employer, and the Master's report states that as well, although it gives no details. The court would be open to an additional assessment due to the availability of additional work; however, we have not been provided with a transcript and from the oral argument, we do not believe there was sufficient evidence presented at the hearing to make a specific income assessment of this type.

As Wife does not work during the summer, the court could certainly use her actual earnings during the school year and assess her with full-time minimum wage work during the summer, as we did in Jennings. However, that would still amount to

less than a full-time minimum wage salary year-round. Therefore, we will affirm the Maser's assessment of a full-time, year-round minimum wage earning capacity.

ORDER

AND NOW, this _____ day of March, 2005, for the reasons stated in the foregoing opinion, Father's Exceptions are dismissed.

BY THE COURT,

Richard A. Gray, J.

cc: Dana Jacques, Esq., Law Clerk
Hon. Richard A. Gray
Marc Drier, Esq.
William Miele, Esq.
Family Court
Gary Weber, Esq.