

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PA

J.M.S.,	:	
Plaintiff	:	
	:	
v.	:	No. 99-20,559
	:	PACES NO. 257001658
W.W.S.,	:	
Defendant	:	

OPINION and ORDER

This opinion addresses the Exceptions filed by both parties to the Master's order of March 3, 2005, awarding child support.

Father's most important exception relates to his earning capacity, determined by the Master to be \$1020.11 per month. The Master arrived at this by assessing him full-time at \$6.75 per hour, the wage he earns at the part-time job working at Advanced Auto Parts.

Father began working at Advanced Auto Parts on September 20, 2004. Prior to that time, he last worked over five years ago, for a temp agency doing shipping and receiving. The last time he held a job that provided medical benefits was fifteen years ago. He is thirty-nine years old, has only a high school education, has no specialized training, and has no recent work experience other than this part-time job. For these reasons, he was correctly assessed a minimum wage earning capacity in previous orders.

Although Father now earns \$6.75 an hour at his part-time job, the court is not convinced he would be able to earn wage that full time, especially after being out of the workforce so long. In short, the court is not convinced Father's earning capacity has increased simply because he obtained a part-time job earning more than minimum wage.

This court has addressed similar situations in the following cases: Jennings v. Jennings, Lyc. Co. No. 04-20,906; Hull v. Hull, Lyc. Co. No. 04-20,530; and Smith v. Smith, Lyc. Co. No. 03-21,813. The three 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 those opinions, the higher wage was due to the part-time nature of the work, and it would be unrealistic to expect those individuals to obtain full-time work at that wage. We believe the same is the case with Father, especially because of his poor work history. He will therefore continue to be assessed at \$750 per month at the current time, although that might change as he re-establishes himself into the workforce.

Father also points out that Mother received a federal tax refund of \$6,065.00, which was not included in her income assessment. The court agrees the refund should have been included in Mother's income, and therefore will increase her income assessment to \$1836.22 per month.

Father's next exception relates to the treatment of the SSI benefits of \$221.05 per month, received by Mother on behalf of one of the children. Again, the court agrees with the defendant, because under Rule 1910.16-2(b)(1), these benefits are not to be counted as income in determining child support. Although a deviation may be appropriate in some circumstances, the court will not grant a deviation here.

Father's next exception relates to the Master's refusal to deviate due to Father's unusual medical expenses. While it is true Father must pay \$487.95 every two months for his prescription medication, the Master declined to deviate because the testimony clearly showed that Father's parents had been paying those expenses, as well as most of his living expenses, for the past few years, and that they would continue to do so. It is also noted that Father lives rent-free in a home owned by his parents. The court will not disturb the Master's decision in this regard.

Mother's exceptions will be denied except for her second exception, relating to the inclusion of SSI benefits in her income.

Since Father's income is within the CAM area of the guidelines, there is a rebuttable presumption that the child support amount (\$182 per month) is correct. However, as stated in Rule 1910.16-2 Explanatory Comment – 1998, if the circumstances warrant, the court may grant an upward deviation under Rule 1910.16-5 and/or order the party to contribute to the additional expenses. In fact, the Comment gives an example of an obligor who earns \$600 per month but is living with his or her parents. *See also* Mooney v. Doutt, 766 A.2d 1271 (Pa. Super. 2001).

In our case, the court will not raise Father's basic child support obligation over the presumptively correct amount. However, because of his minimal living expenses, we will order him to contribute to the additional costs of child care and health insurance.

ORDER

AND NOW, this _____ day of May, 2005, for the reasons stated in the foregoing opinion, Father's Exceptions #1, #2, #3, and #5 are granted and Mother's exception #2 is granted. The remaining exceptions are dismissed. It is further ordered that:

1. Effective October 7, 2004, child support shall be \$180.00 per month, plus a health insurance contribution of \$32.32 per month, and a child care contribution shall be \$42.73 per month. Unreimbursed medical expenses shall be 71% to Mother, 29% to Father.
2. In all other respects, the Master's order of March 3, 2005 is affirmed.

BY THE COURT,

Richard A. Gray, J.

cc: Dana Jacques, Esq., Law Clerk
Hon. Richard A. Gray
Joy McCoy, Esq.
J.S.
Domestic Relations (SF)
Family Court
Gary Weber, Esq.