

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

<b>C.A.S.,</b>	:	
<b>Petitioner/Plaintiff</b>	:	
	:	
<b>v.</b>	:	<b>No. 99-20,464</b>
	:	<b>PACSES No. 885100928</b>
<b>S.A.C.,</b>	:	<b>DOMESTIC RELATIONS SECTION</b>
<b>Respondent/Defendant</b>	:	

**ORDER AND OPINION**

Before this Honorable Court, is the Respondent/Defendant's May 26, 2006 Exceptions filed to the Family Court's May 16, 2006 Order. Specifically, the Respondent/Defendant contends that the Family Court Hearing Officer erred in assigning his earning capacity based on his former employment. For the following reasons, the Court **DISMISSES** the Respondent/Defendant's Exception thereby **AFFIRMING** the Family Court's February 14, 2006 Order.

***Background***

The Family Court Hearing Officer held a hearing on the Respondent/Defendant's April 7, 2006 Request for Review of Child Support on May 11, 2006. At the May 11, 2006 hearing, the Respondent/Defendant testified that, after being injured on the job, he left his job with Mid-Atlantic Express and, after collecting unemployment for six (6) months, he obtained his current employment at Kelly Services. The Respondent/Defendant was earning \$2,531.31 per month while employed at Mid-Atlantic Express; he collected \$1,864.20 per month from unemployment compensation; and he currently earns \$1,534 per month. After the Respondent/Defendant's ex-employer testified, via telephone, and offered testimony that, in large part, contradicted that of the Respondent/Defendant, the Master assessed the Respondent/Defendant an earning capacity

of \$2,665.81 (his \$2,531.31 monthly income from Mid-Atlantic Express plus his income tax return amortized over twelve months).

***Discussion***

Under *Pennsylvania Rule of Civil Procedure* No. 1910.16-2(d)(1), when a party voluntarily assumes a lower paying position, his support obligation will not ordinarily be affected; however, Pa.R.C.P. No. 1910.16-2(d)(1) does not bar all reductions in support obligations when the obligor voluntarily assumes a lower paying job. Instead, in interpreting this rule, the Superior Court of Pennsylvania has set forth a two prong test to be applied when determining whether a party seeking a reduction in his/her support obligation, following his/her change in employment status, should be granted the requested reduction: was the change in employment status done to avoid paying child support, and if not, is the reduction in support warranted based on the party's efforts to mitigate the lost income. *Grimes v. Grimes*, 408 Pa. Super. 158, 163, 596 A.2d 240, 242 (1991). If the party seeking a reduction in his/her support obligation fails to satisfy the second prong of the test, the Court will assess an earning capacity in accordance with the support guidelines. *Id.*

Absent evidence to the contrary, the Court will assume that the Respondent/Defendant's change in employment status was not an attempt to avoid paying child support. Therefore, the issue becomes whether or not the Respondent/Defendant attempted to mitigate his lost income, commensurate with his skills, training, and experience, resulting from his change in employment status.

Instantly, the Family Court Hearing Officer determined, based on the testimony presented at the May 11, 2006 hearing, that the Respondent/Defendant did not mitigate his lost income resulting from his change in employment status. Because "the credibility of witnesses and the

weight to be given to their testimony . . . can best be determined by the judge before whom they appear,” *Commonwealth ex rel. Harry v. Eastridge*, 374 Pa. 172, 177, 97 A.2d 350, 353 (Pa. 1953), the Court will defer to the Master’s findings and consequent income assessment.

**ORDER**

**AND NOW**, this \_\_\_\_\_ day of June 2006, for the reasons set forth above, it is ORDERED and DIRECTED that the Exceptions filed by the Respondent/Defendant to the Family Court’s order of May 16, 2006 are DISMISSED and the Officer’s Order is AFFIRMED.

By the Court,

\_\_\_\_\_  
Nancy L. Butts, Judge

cc: Bradley S. Hillman, Esq.  
S.A.C.  
Family Court  
Domestic Relations (JJ)  
Hon. Nancy L. Butts  
Judges  
Laura R. Burd, Law Clerk  
Gary L. Weber, Esq.