

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

E.F.,	:	
Plaintiff	:	
	:	
v.	:	No. 03-21,580; 03-21,398
	:	PACES NO. 896105907
T.M.,	:	
Defendant	:	

**OPINION and ORDER**

This opinion addresses the Exceptions filed by Mother to the Master’s order of October 3, 2005. Mother objects to the Master’s determination that her earning capacity should remain at the salary she earned at her previous position, from which she was terminated on January 4, 2005.

Mother began her employment at the bank eleven years ago, working her way up from teller to manager. She was terminated for using a subordinate to view a customer’s bank account to determine if the customer had written any checks to Father, in an effort to find income Father had not reported. The bank terminated Mother for violating its Code of Conduct and Ethics, but did not contest unemployment.

On January 5, 2005, Mother filed a petition to modify the child support order, along with a request for APL and health insurance. Mother was requesting her income assessment to be based upon the unemployment she was receiving. The Master denied the request, finding that Mother had not mitigated her loss of income, and assessed Mother at her former income of \$2594.70 net per month. This court affirmed in an opinion issued on July 20, 2005, noting that Mother filed her petition to modify a mere one day after she was terminated, and that the Master’s hearing occurred less than three months later. We stated, “Although it is not this court’s intention to punish individuals who lose their job due to their own conduct, neither will we be quick to reduce their support obligation unless clear mitigation is established.”

However, in that opinion we acknowledged Mother had recently obtained a job and filed a modification petition. We stated, “If the job appears to be commensurate with her capacity, given the reality of her unfortunate circumstances, perhaps it will be appropriate to review her mitigation efforts and change her earning capacity at another date.”

Mother’s next petition for modification was filed on July 13, 2005. At the hearing on August 16, 2005, the Master heard evidence from Betty Steinbacher, a local real estate broker. Ms. Steinbacher had become acquainted with Mother while marketing her home, which was facing foreclosure. Ms. Steinbacher had assisted Mother in attempting to obtain employment by personally contacting insurance companies, accounting firms, and a local bank. She had no success in obtaining a position for Mother. This is not surprising, given the circumstances of Mother termination. In fact, it is unrealistic to believe Mother will ever obtain such a position again, due to the sensitive nature of her wrongdoing, which will surely be discovered by potential employers.

Ms. Steinbacher felt sorry for Mother, and hired her as an assistant for \$1000 per month, with the stipulation that she obtain her real estate license. Mother obtained her license, and now requests to be assigned the earning capacity of a realtor.

The Master denied this request, doubting whether Mother will be able to earn \$15,000 to \$20,000 during her first year, as projected by Ms. Steinbacher. Moreover, the Master discounted Ms. Steinbacher’s efforts to help Mother find employment as mitigation efforts, since those actions were not made by Mother herself. The court disagrees. In our July 20, 2005 opinion, we noted that Mother had testified at length about her own extensive efforts to find employment at local banks, which were unsuccessful. In light of the situation, it was no doubt a very wise move for Ms. Steinbacher to approach employers personally, as she was obviously using her personal

clout in the community and perhaps even her personal contacts, to attempt to convince an employer to hire Mother despite her ethical transgressions at the bank.

In any event, it is abundantly clear Mother will not be able to obtain another banking job, nor is it likely she will be hired by an employer with privacy protection concerns. That rules out many, if not all, the local jobs Mother would be qualified for based upon her banking experience. Possessing no education beyond a high school diploma, it appears Mother was very fortunate in working herself up to her final position at the bank. With that position gone, she is highly unlikely to earn the same salary in the near future.

Under these circumstances, the court finds it reasonable for Mother to embark on a new career, and real estate seems to be a good choice. This court reached a similar conclusion in Neff v. Neff, Lyc. Co. #99-20,062. In that case we cited Novinger v. Smith, 880 A.2d 1255 (Pa. Super. 2005), where the Superior Court found that father's earning capacity should be based upon his education, qualifications, training, and what he could reasonably earn in today's market in similar positions in his field, rather than automatically continuing the earning capacity for a job he was fired from four years earlier. Although Mother has not spent as much time searching for employment as individuals in either of the cases cited above, her prospects are equally dismal.

The intent of a child support order is not to punish someone for losing a job, even when he or she has been terminated for cause. Continuing to assess a parent with an unrealistic earning capacity does not help the child for whom the support is intended, as the support obligation simply cannot be met. Moreover, it often results in extreme financial hardship for the parent owing the support, which is what happened in this case. That is why once a party sufficiently mitigates the loss of a job, the court must adjust the support accordingly. Ewing v. Ewing, 843 A.2d 1282 (Pa. Super. 2004). Mother has been assessed at her former salary for six months since losing her position. The court can no longer justify doing so based upon the record in this case.

Turning to the question of an appropriate income assessment for Mother, the court notes that the parties share physical custody of the child. Therefore, assigning her an earning capacity below Father's earning capacity of \$1922.31 net per month would result in a child support obligation from Father to Mother. In our previous opinion, the court expressed its reluctance to assess Father with a child support obligation to Mother, as it would make him suffer the consequences of Mother's wrongdoing. To Mother's credit, she has requested only that she be assigned an earning capacity equal to Father's, therefore resulting in no child support paid to either party. This seems like the equitable result under the circumstances. Moreover, since according to Ms. Steinbacher's testimony \$1922.31 per month is greater than the amount a starting realtor could be expected to earn, the court will grant this request.

Given this finding, Mother's Petition for Modification/Petition to Stay Support Order, filed on November 2, 2005, is rendered moot.

**ORDER**

AND NOW, this \_\_\_\_\_ day of January, 2006, for the reasons stated in the foregoing opinion, the Exceptions filed by the defendant to the Master's order of October 3, 2005 are granted and it is ordered that effective July 13, 2005, neither party is obligated to pay child support to the other party. It is further ordered that all medical insurance costs and unreimbursed medical expenses for the child shall be shared equally between the parties.

BY THE COURT,

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Richard A. Gray, J.

cc: Dana Jacques, Esq., Law Clerk  
Hon. Richard A. Gray  
Janice Yaw, Esq.  
Michael Leonard, Esq.  
Domestic Relations (MR)  
Family Court  
Gary Weber, Esq.