

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

HEATHER L. WASHINGTON,	:	
Plaintiff	:	
	:	
v.	:	No. 03-20,626
	:	PACSES No. 635103726
SCOTT F. KARAL	:	DOMESTIC RELATIONS SECTION
Defendant	:	

OPINION AND ORDER

Before this Honorable Court, is the Plaintiff's June 5, 2006 Exceptions filed to the Family Court Hearing Officer's May 29, 2006 Order, and the Defendant's June 29, 2006 Exceptions filed to that same Order. The Plaintiff asserts that the Family Court Hearing Officer erred when she believed that the Defendant was a victim of religious discrimination when he was fired from his previous job at JC Penny's (at which he worked full-time and earned nearly double than what he currently is earning) for refusing to work on Saturdays and subsequently lowered his support obligation. The Plaintiff also asserts that the Officer erred when she failed to consider what she contends is the Defendant's actual financial situation – i.e. that his family provides for the majority of his financial needs. Alternatively, the Defendant's lone exception takes issue with the fifty dollars (\$50.00) per month arrears payment the Master assessed him in her May 29, 2006 Order. He claims that he cannot afford the current support obligation let alone the additional arrearage payment. For the following reasons, the Court agrees with the Master's assessments.

Background

At the May 25, 2006 hearing on the Plaintiff's request for a review of child support, the Defendant testified that, despite informing his employer that, because of his religious beliefs, he

could not work on Saturdays, the employer scheduled him to work on Saturdays and that after not showing up for these scheduled shifts, his employer fired him. The Master determined the Defendant's termination was the result of religious discrimination. Following his discharge, the Defendant applied for several jobs but was turned down due to, he claims, his conviction and jail sentence for violating a Protection from Abuse Order. Eventually, the Defendant was able to secure part-time employment with Dominic's (as a food preparer) where he earns the Connecticut minimum wage, seven dollars and forty cents (\$7.40) per hour – nearly one half less than he was making at his previous job. The Master, believing that the Defendant was a victim of religious discrimination, did not assess him an earning capacity based on his former employment but instead utilized his current minimum wage earnings and assessed him an earning capacity of two hundred seventy two dollars and forty-one cents (\$272.41) for a full-time workweek.

In addition to the Defendant's reduced monthly support obligation (which, the Master reduced even further to allow for a self-support reserve), the Master assessed him fifty dollars (\$50.00) per month to be applied towards his eight thousand dollars, three hundred eighty nine dollars and fourteen cents (\$8,389.14) arrearage.

Plaintiff's Exceptions

The Plaintiff's exceptions directly challenge the Master's assessment of the Defendant's testimony and 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 not disturb the Master's findings as derived from the Defendant's testimony. Nonetheless, the Court offers this brief explanation in further support of the Master's Order.

Pennsylvania Rules of Civil Procedure No. 1910.16-2(d)(4) states that, “either party to a support action who willfully fails to obtain appropriate employment will be considered to have an income equal to the party's earning capacity.” “A person's earning capacity is defined not as an amount which the person could theoretically earn, but as that amount which the person could realistically earn under the circumstances, considering his or her age, health, mental and physical condition and training.” *Strawn v. Strawn*, 444 Pa. Super. 390, 395, 664 A.2d 129, 132 (Pa. Super. Ct. 1995); *Myers v. Myers*, 405 Pa. Super. 290, 297, 592 A.2d 339, 342 (Pa. Super. Ct. 1991). Although it would have been entirely appropriate for the Master to assess the Defendant an earning capacity comparable to his earnings while at JC Penny’s, her decision to utilize the Defendant’s current wages was equally appropriate. It is clear that the Master considered all the relevant factors, including, but not limited to, his employment history, possible alternate sources of income available to the Defendant, and his ability to work full-time as opposed to his current desire to only work part time.

Defendant’s Exceptions

The Defendant’s sole exception challenges his obligation to make fifty dollar (\$50.00) monthly payments on his eight thousand three hundred eight-nine dollars and fourteen cents (\$8,389.14) arrearage. He claims that he does not even earn enough money to sustain himself and comply with his current support obligation let alone the added cost of the arrearage obligation.

“On and after the date it is due, each and every support obligation shall constitute a judgment against the obligor by operation of law, with the full force, effect and attributes of a judgment of court. . .” 23 Pa.C.S. § 4352. Although the Court has the discretion to alter an obligor’s arrearage obligation, the Master in the instant matter did not see fit to alter the

Defendant's obligation and the Court will not disturb her decision. Fifty dollars (\$50.00) per month is a small amount compared to the total debt the Defendant owes for the support of his children.

The Defendant's apparent unwillingness to comply with Orders of this court is appalling. At the August 7, 2006 hearing on the parties' exceptions, he readily admitted that he is currently paying less than 15% of his actual support obligation and making no payments on his arrears. Furthermore, at the August 7, 2006 hearing, the Defendant insinuated that his inability to secure full-time employment at a wage comparable to this previous job (from which he alleges to have been fired for religious reasons) was the Plaintiff's fault for enforcing the Protection from Abuse Order she had against him. Hopefully, the Defendant will keep his children's best interest in mind and attempt to better his financial situation, without placing blame on others, so that he can reduce his arrears and remain current on his existing support obligation.

ORDER

AND NOW, this _____ day of August 2006, for the reasons set forth above, it is ORDERED and DIRECTED that the Exceptions filed by the Plaintiff and the Defendant to the Family Court's Order of May 29, 2006 are DISMISSED thereby AFFIRMING the Family Court's May 29, 2006 Order.

By the Court,

Nancy L. Butts, Judge

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