

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

L.S.W.,	:	
Petitioner/Plaintiff	:	
	:	
v.	:	No. 03-21,299
	:	PACSES No. 974105718
M.A.W.,	:	DOMESTIC RELATIONS SECTION
Respondent/Defendant	:	

OPINION AND ORDER

Before this Honorable Court, is the Petitioner/Plaintiff's July 7, 2006 Exceptions and the Respondent/Defendant's July 10, 2006 Cross Exceptions filed to the Family Court Hearing Officer's June 28, 2006 Order. The Petitioner/Plaintiff asserts that the Master erred in lowering the Respondent/Defendant's earning capacity as he failed to present evidence to justify said lowering. The Respondent/Defendant contends that the Master should have assigned the Plaintiff an earning capacity for the summer months when she is not working and that the Master should have utilized the Defendant's tax returns to calculate his support obligation as opposed to assigning him an earning capacity.

I. Background

On May 17, 2006, the Respondent/Defendant filed a request for a review of the child support obligations established in the Master's August 9, 2004 Order and subsequent October 4, 2005 Administrative Order. The aforementioned Orders based the Respondent/Defendant's support obligation on an earning capacity, as determined by the Lycoming County Occupational Wages Schedule for electricians, of \$15.30 per hour; the Master utilized the Petitioner/Plaintiff's actual salary as a teacher and did not, in accordance with Lycoming County Policy assess the Petitioner/Plaintiff an earning capacity for the summer months when she does not work.

After a June 22, 2006 hearing on the Respondent/Defendant's exceptions, the Master reconsidered the earning capacity she assessed the Respondent/Defendant and, because he was no longer working as an electrician, assessed him a \$14.00 per hour earning capacity based on his last earnings prior to working as an electrician (specifically, he earned approximately \$14.00 per hour when he worked at Valley Farms and High Steel).

II. Discussion

Pa.R.C.P. No. 1910.19(c) provides that, "[p]ursuant to a petition for modification, the trier of fact may modify or terminate the existing support order in any appropriate manner based upon the evidence presented." Instantly, the Master's June 28, 2006 Order modified, *inter alia*, the earning capacity assigned to the Respondent/Defendant in the Master's August 12, 2004 Order; more specifically, the Master lowered the Respondent/Defendant's earning capacity from \$2,121.60 per month (under the 2004 Order) to \$1,941.33 per month (under the 2006 Order). Although the Respondent/Defendant's employment and commensurate wages did not change from what they were in 2004, the Master, after reviewing her 2004 Order, realized her assessment was in error and corrected this error in her 2006 Order. The Court finds the Master's decision to correct her own mistake was permissible under Pa.R.C.P. No 1910.19(c).

Pa.R.C.P. No. 1910.16-2(d)(3) provides that "[s]upport orders for seasonal employees . . . shall ordinarily be based upon a yearly average." The Petitioner/Plaintiff is a kindergarten teacher and is seasonally employed. Her yearly income, after September 2006, is over \$66,000.00. The Master amortized the Petitioner/Plaintiff's salary over the year when calculating the parties support obligations and, in accordance with Lycoming County Policy and the aforementioned rule, did not assess the Petitioner/Plaintiff an earning capacity for the

summer months when she is not employed; the Court does not find this policy to be an abuse of discretion or misapplication of the law.

Pa.R.C.P. No. 1910.16-2(d)(4) provides that “[o]rdinarily, 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.” Here, the Master clearly took into account the Respondent/Defendant’s previous and current employment, his employment skills, and other economic responsibilities when she assigned him a \$14.00 per hour earning capacity; although this amount is more than the Respondent/Defendant’s tax returns indicate he currently earns, it is clear that the amount his tax returns indicate he earns is significantly less than what he previously earned and less than the 2004 support order determined he earned. In light of the facts, the Court does not find that the Master’s decision to be unreasonable.

ORDER

AND NOW, this _____ day of September 2006, for the reasons set forth above, it is ORDERED and DIRECTED that the Respondent/Defendant's Exceptions and the Petitioner/Plaintiff's Counter Exceptions filed to the Family Court Hearing Officer's June 28, 2006 Order are DENIED; accordingly, the Court hereby AFFIRMS the Master's June 28, 2006 Order.

By the Court,

Nancy L. Butts, Judge

xc: Joy R. McCoy, Esq.
Janice Ramin Yaw, Esq.
Family Court
Domestic Relations (SF)
Hon. Nancy L. Butts
Judges
Gary L. Weber, Esq. (Lycoming Reporter)
Laura R. Burd, Esq. (Law Clerk)