

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

MARY A. LICHTER,	:	
Petitioner/Plaintiff	:	
	:	
v.	:	No. 05-21,307
	:	PACSES No. 169107721
TIMOTHY M. LICHTER,	:	DOMESTIC RELATIONS SECTION
Respondent/Defendant	:	

ORDER AND OPINION

Before this Honorable Court, is the Respondent/Defendant's March 1, 2006 Exception filed to the Family Court's February 14, 2006 Order¹. Specifically, the Respondent/Defendant contends that the Family Court Hearing Officer erred in assigning his earning capacity based on his former employment because he is now self-employed and unable to earn the same amount. For the following reasons, the Court **DISMISSES** the Respondent/Defendant's Exception thereby **AFFIRMING** the Family Court's February 14, 2006 Order.

Background

At the January 31, 2006 hearing on the Petitioner/Plaintiff's December 21, 2005 Complaint for Child and Spousal Support, the Respondent/Defendant testified that, in April 2005, he voluntarily quit his job at Horsepower Harley Davidson after a disagreement with his employer over a rumor that he intended to leave Horsepower and open his own business. After leaving Horsepower, the Respondent/Defendant collected unemployment compensation until opening his own motorcycle repair business on July 1, 2006. The Respondent/Defendant testified that he is not currently earning an income from his business, and that he sustains himself with borrowed monies.

¹ Although the Family Court Hearing Officer issued her Order on February 14, 2006, the Court did not approve the Order until February 22, 2006.

After the Respondent/Defendant provided the Family Court Hearing Officer with a pay stub dated April 29, 2005, that indicated he earned a net income, to that date, of \$12,596.09, the Officer, based on that figure, assessed the Respondent/Defendant a monthly earning capacity of \$3,032.40. Taking into account the Petitioner/Plaintiff's income, and other relevant considerations, the Officer ordered the Respondent/Defendant to pay the Petitioner/Plaintiff \$580.81 and \$313.80 monthly for child support and spousal support respectively, from December 21, 2005 through January 26, 2006, and \$612.24 and \$304.37 monthly for child support and spousal support respectively thereafter.

Discussion

The Respondent/Defendant's Exception to the Family Court Hearing Officer's aforementioned Order claims that, as a self-employed business owner, he cannot earn the Officer's assessed earning capacity. In likely anticipation of this exception, the Officer's Order explains that, 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. The Officer went on to explain that, the Respondent/Defendant's testimony revealed that he voluntarily quit his job, or was fired for cause, and he failed to seek alternate employment (i.e. mitigate his losses) for several months until ultimately electing to open his own business with the knowledge that it would be some time before he realized any significant revenue from said business.

Pa.R.C.P. No. 1910.16-2(d)(1) does not bar all reductions in support obligations when the obligor is fired for cause, voluntarily assumes a lower paying job, or quits his/her current employment. 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 resulting from his change in employment status; the Family Court Hearing Officer found that he did not². The Court defers to the Officer and will not disturb her findings.

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² "Once unemployed, [the Respondent/Defendant] had the option of attempting to find work elsewhere. Instead, he voluntarily chose to forego this option and to open his own business, knowing that it would be unlikely that he would have significant revenue in the business until after the initial start up." Family Court Hearing Officer's February 14, 2006 Order, p. 3.

ORDER

AND NOW, this _____ day of May 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 February 14, 2006 are DISMISSED and the Officer's Order is AFFIRMED.

By the Court,

Nancy L. Butts, Judge

cc: Jill A. Spayer, Esq.
Petitioner/Plaintiff
Family Court
Domestic Relations (MR)
Hon. Nancy L. Butts
Judges
Laura R. Burd, Law Clerk
Gary L. Weber, Esq.