



wrongdoing) to calculate his support obligations. For the following reasons, the Court hereby GRANTS Petitioner/Plaintiff S.L.L.'s Exceptions thereby VACATING the Family Court's December 23, 2005 Order as more specifically setout below, and REMANDS the matter to the Family Court to issue an Order in accordance with this Court's findings.

***Background***

Pursuant to the Respondent/Defendant's September 30, 2005 request for review of child support, the Master held hearings October 20, 2005 and November 17, 2005. At the October 20, 2005 hearing, the Respondent/Defendant testified that sometime in 2004, after refusing to relocate to New York, he was laid off from his job with Shop Vac (where he was earning \$16.80/hour). The Respondent/Defendant proceeded to testify that, following his loss of employment in 2004, he spent six months in jail for failure to pay child support after which, he applied for several jobs but because, as he testified, "domestics took his license," he was unable to secure employment. In January 2005, the Respondent/Defendant testified that Erie Materials offered the Respondent/Defendant a position starting at \$14.00/hour, conditioned on him securing a valid driver's license. Currently, Industrial Fabricators employ the Respondent/Defendant at a wage of \$7.50/hour.

After the aforementioned testimony, the Master directed the Respondent/Defendant to secure a letter from Erie Materials confirming the Respondent/Defendant's testimony regarding their job offer and, if he had not secured a job with Erie Materials, she directed him to bring in documentation of his efforts to secure alternate employment. She further directed the Respondent/Defendant to meet with someone in Domestic Relations to look into getting his driver's license returned. Then, after taking testimony from Petitioner/Plaintiffs S.L.E. and

S.E.H. regarding their income and financial obligations, the Master concluded the hearing with the intent to reconvene within a month.

The matter reconvened on November 17, 2005 with the Respondent/Defendant admitting that, despite the Master's direction at the October 2005 hearing, he failed to meet with Domestic Relations regarding the return of his license; the Respondent/Defendant also confessed that he failed to bring the Master any documentation regarding his supposed searches for alternate employment or documentation regarding the supposed job offer from Erie Materials. The Respondent/Defendant also admitted the loss of his license was ultimately due to a conviction for Driving Under the Influence and that although he is now able to seek the return of his driver's license, he has not done so because he claims to not have the time and funds to take the required drug and alcohol classes in order to have his driving privileges reinstated. After these initial admissions, the Respondent/Defendant claimed that he would be receiving a pay raise of \$2.00 more per hour by the end of the month, but that he based this information on the experience of other employees, not on any assurances from this employer.

Following testimony from Petitioner/Plaintiff S.L.L., her attorney cross-examined the Respondent/Defendant about his previous employment, loss of driving privileges, and his attempts to secure alternate employment. This line of questioning revealed several facts, most notably that, the Respondent/Defendant was actually fired by his previous employer (Shop Vac) for failing to follow company procedures, not for refusing to move out of state as he originally testified at the October 2005 hearing in this matter. Also notable is the fact that the Respondent/Defendant claims to not have time to search for alternative employment, although his current workday ends at 3:30 p.m.

At the conclusion of testimony, the Master reserved issuing a support order until the Respondent/Defendant learned whether or not he would in fact be receiving the \$2.00 per hour raise he testified to; however, in response to Petitioner/Plaintiff S.L.L.'s attorney's question, the Master stated that her ultimate decision would be based on the Respondent/Defendant's current hourly wage and not his the amount he was earning with his previous employer, Shop Vac; nor would she basing her decision on the supposed job offer from Erie Material. In the remainder of the dialogue from the November hearing, the Master essentially explained that, although she should have utilized the Respondent/Defendant's Shop Vac income to determine his support obligation, she was not going to because he would never catch-up on his arrears if a higher earning capacity was assessed.

Evidently, the Respondent/Defendant did not receive his anticipated pay raise because the Master's December 23, 2005 Order based the following support obligations on his \$7.50 hourly wage from Industrial Fabricators; adding his amortized income tax refund, the Master calculated Mr. J.A.E., Jr.'s net monthly income, for support purposes, at \$1,076.92:

<b>Summary of the Master's December 23, 2006 Support Order</b>							
<b>Petitioner/ Plaintiff</b>	<b>Net Monthly Income</b>	<b>Parties' total Monthly Support Obligation</b>		<b>Respondent/ Defendant's share of the parties monthly support obligation</b>		<b>Respondent/ Defendant's reduced<sup>1</sup> monthly support obligation</b>	
		<b>September 30, 2005 – January 26, 2006</b>	<b>After January 26, 2006</b>	<b>September 30, 2005 – January 26, 2006</b>	<b>After January 26, 2006</b>	<b>September 30, 2005 – January 26, 2006</b>	<b>After January 26, 2006</b>
S.L.E.	\$1,595.95	\$889.00	\$902.00	\$357.38	\$362.60	\$174.40	\$104.10
S.E.H.	\$750.00	\$427.00	\$455.00	\$251.33	\$267.81	\$122.65	\$76.89
S.L.L.	\$2,497.43	\$711.00	\$794.00	\$213.65	\$238.60	\$104.26	\$68.50
M.V. <sup>2</sup>	\$1,248.00	\$539.00	\$568.00	\$249.18	\$262.59	\$121.60	\$75.39
<b><i>Respondent/Defendant's Total Monthly Support Obligation</i></b>						<b><i>\$522.91</i></b>	<b><i>\$324.88</i></b>

The Master further ordered the Respondent/Defendant to pay \$25.00/monthly, on each order, towards his arrearages, which, at the time of the Order, totaled almost \$20,000.00.

### ***Discussion***

Under *Pennsylvania Rule of Civil Procedure* No. 1910.16-2(d)(1), when a party voluntarily assumes a lower paying position or is fired for cause, his support obligation will not ordinarily be affected. In interpreting this rule, the Superior Court of Pennsylvania has set forth a two prong test to be applied when determining whether a party who seeks 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,

<sup>1</sup> The Court must leave the Respondent/Defendant with monies to sustain himself; therefore, the Master reduced his support obligations by .4880% leaving him with \$550.00 per month for self-sustenance and \$522.92 to satisfy his support obligations.

<sup>2</sup> Ms. V. is the Respondent/Defendant's current fiancée with whom he has one child; she is not a party to this action.

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.*

There is no evidence that the Respondent/Defendant failed to follow company procedure in hopes that his employer would fire him thereby providing him an opportunity to avoid his child support obligations; therefore, the Court will focus on the second prong of the *Grimes* analysis – the Respondent/Defendant's efforts, or lack thereof, to mitigate his lost income following his change in employment status.

Instantly, the Respondent/Defendant testified that he attempted to secure employment after he was terminated from Shop Vac, however, despite the Master's request that he bring documentation of said attempts, he never provided her with any evidence, other than his testimony, that he attempted to secure alternate employment. Furthermore, the Respondent/Defendant testified that he would likely be able to secure employment at double his current wages his driving privileges reinstated, but after first lying as to why those privileges were revoked in the first instance (i.e. the Defendant claimed that he lost his driving privileges for failure to pay child support when in actuality, he lost said privileges after a DUI conviction), the Respondent/Defendant admitted that he had not completed the requisite class work to have those privileges reinstated. Although the Respondent/Defendant has several years experience in welding and maintenance/repair in a welding context that warranted a \$16.80/hour wage with Shop Vac, he was unable to secure employment at even one half (½) that rate after being terminated for cause from Shop Vac.

It is clear to this Court that the Respondent/Defendant did not adequately mitigate his lost income following termination. It is equally clear that the Master did not consider the Respondent/Defendant's attempts, or lack thereof, to mitigate his lost income when calculating his support obligation but instead focused on his blatant refusal to pay support in the past, stating that, if she were to assess him the appropriate higher earning capacity, he would never catch up on his obligations. Like the Master, this Court is disgusted with the Respondent/Defendant's obvious disregard for his support responsibilities and this Court's authority regarding those responsibilities, but unlike the Master, this Court will not allow the Respondent/Defendant's actions to effect the calculation of his accurate support obligations; therefore, irrespective of the Respondent/Defendant's ability and/or willingness to pay said obligations, the Court finds that the Respondent/Defendant's support obligation shall be based on a \$16.80/hour earning capacity. Accordingly, the Court VACATES the Master's December 23, 2006 Order with regard to her assessment of the Respondent/Defendant's support obligations specifically set out in paragraphs one (1) through three (3) of the ORDER and DIRECT section of her December 23, 2005 Order, and REMANDS the matter to the Family Court to issue an Order in accordance with this Court's assessment of the Respondent/Defendant's earning capacity and in accordance with the Pennsylvania Rules of Civil Procedure; all other respects of the Master's December 23, 2006 Order shall remain in effect.

**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 December 23, 2006 are GRANTED and paragraphs one (1) through three (3) of the Master's Order are VACATED. Additionally, this matter is REMANDED to the Family Court to issue an Order based on this Court's finding that the Respondent/Defendant's support obligation shall be based on a \$16.80/hour earning capacity.

By the Court,

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Nancy L. Butts, Judge

xc: Mark L. Taylor, Esq.  
S.L.E.  
S.E.H.  
J.A.E., Jr.  
Family Court  
Domestic Relations (JJ)  
Hon. Nancy L. Butts  
Judges  
Laura R. Burd, Law Clerk  
Gary L. Weber, Esq.