

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

<b>AMY M. SARR,</b>	:	
<b>Petitioner/Plaintiff</b>	:	
	:	
<b>v.</b>	:	<b>No. 93-20,458</b>
	:	<b>PACSES No. 616108008</b>
<b>JAMES P. SPOTTS,</b>	:	<b>DOMESTIC RELATIONS SECTION</b>
<b>Respondent/Defendant</b>	:	

**OPINION AND ORDER**

Before this Honorable Court, is the Petitioner/Plaintiff's April 17, 2006 Exceptions filed to the Family Court Hearing Officer's April 5, 2006 Support Order. The Petitioner/Plaintiff asserts that the Master erred in five respects. First, she contends that the Master failed to account for income she claims the Respondent/Defendant realized in addition to that of his former and current employment. Second, she contends that, pursuant to the nurturing parent doctrine, the Master should not have assessed her an earning capacity, or in the alternative, assessed her a lower earning capacity. Third, she contends that the Master should not have proceeded with the hearing without her counsel present because she was under the impression that the matter was to be a conference and not a hearing. Fourth, she contends that the Master should not have based the Respondent/Defendant's support obligation on his current employment but, because he voluntarily quit his prior, higher income employment, should have based his support obligation on that income. Finally, she contends that the Master should not have given the Respondent/Defendant credit for taxes paid because, as previously noted, she contends he realizes income in addition to his previous and current employment thereby altering his total tax implications.

## ***Background***

The parties are the parents of two minor children, a sixteen-year-old (16) daughter in the primary physical custody of the Petitioner/Plaintiff and a fourteen-year-old (14) daughter in the primary physical custody of the Respondent/Defendant. Currently, the Petitioner/Plaintiff is a stay-at-home mother for the benefit of her three minor children to her subsequent husband. The Respondent/Defendant is currently employed by Foamex on Reach Road.

The Petitioner/Plaintiff has not worked outside the home since she voluntarily left her job as a medical secretary in 1998 to have a child with her subsequent husband. At the time of her departure, she was earning between \$14,000.00 and \$15,000.00 gross per year (or \$966.07 net monthly income). Prior to February 2006, the Respondent/Defendant was employed by Glamorise where he earned \$2,341.60 net monthly income. The Respondent/Defendant voluntarily left his job at Glamorise because he believed the business would be closing, because the cost of insurance was more affordable with his current employer, and because his current position allowed him the time to better care for his daughter that is now under his primary care. In changing his job, the Respondent/Defendant suffered a \$500.00 per month wage decrease.

At the March 30, 2006 hearing on this matter, the Master took testimony from both parties regarding, *inter alia*, their employment history, ability to work, and current employment status. The Petitioner/Plaintiff was questioned regarding her decision to remain at home with her children to her subsequent husband and the Respondent/Defendant was questioned regarding his rationale for taking a lower paying job and whether he had any alternate/additional sources of income. At the conclusion of the hearing, the Master issued her Order assessing the Petitioner/Plaintiff a \$966.67 monthly earning capacity and, based on his tax forms and pay stubs, she assessed the Respondent/Defendant a \$2,341.60 net monthly income prior to February

14, 2006 and a \$1,791.96 net monthly income thereafter. These figures resulted in a \$237.62 monthly support obligation effective January 31, 2006 continuing through February 14, 2006, a \$201.66 monthly support obligation effective February 15, 2006 continuing through March 31, 2006, and a \$149.58 monthly support obligation effective April 1, 2006 and continuing thereafter for the Respondent/Defendant.

On April 17, 2006, the Petitioner/Plaintiff filed the instant exceptions to the Master's Order of April 5, 2006; a May 22, 2006 hearing was held on said exceptions. At the May 22, 2006 hearing, the Honorable Kenneth D. Brown DISMISSED the Petitioner/Plaintiff's third and fourth exceptions. Judge Brown explained that the Notice provided to the Petitioner/Plaintiff regarding the March 20, 2006 Master's hearing provided her adequate notice that her counsel could be present and the hearing transcript revealed that the Master sufficiently discussed this issue with the Petitioner/Plaintiff. Additionally, Judge Brown concurred with the Master's finding that, although the Respondent/Defendant did voluntarily leave his former employment for a lower paying position, he did not do so to avoid paying child support and, he sufficiently mitigated his losses. *See, Grimes v. Grimes*, 408 Pa. Super. 158, 163, 596 A.2d 240, 242 (1991) (when a party, following his/her change in employment status, seeks a reduction in his/her support obligation, the reviewer should apply a two prong test: 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).

### ***Discussion***

“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 Petitioner/Plaintiff's first and fifth

exceptions directly challenge the following testimony the Master received from the Respondent/Defendant regarding his source(s) of income at the March 30, 2006 hearing on this matter:

MS. MCCOY: Do you have any other source of income besides your employment?

RESPONDENT/  
DEFENDANT: No.

(N.T. 03/30/06, p. 17). No additional testimony or evidence presented at the March 30, 2006 hearing contradicted the above cited testimony; therefore, because it is the province of the hearing judge to ascertain the credibility of the witnesses whom appear before him/her, this Court must defer to the Master's determination that the Respondent/Defendant's assertion that his sole source of income was derived from his employment. Accordingly, the Court DISMISSES the Petitioner/Plaintiff's first and fifth exceptions regarding the Respondent/Defendant's alleged additional income and the tax credit derived therefrom.

The Petitioner/Plaintiff's remaining exception contends that the Master should have, pursuant to the nurturing parent doctrine, assessed the Petitioner/Plaintiff a \$0.00 earning capacity or, in the alternative, assessed her a lower earning capacity. The nurturing parent doctrine directs that, "the parent who stays at home to care for the couple's children should be excused from support payments. The doctrine considers such factors as the age and maturity of the children, the parties' financial resources, and the custodial parent's desire to stay at home and nurture the child. In addition, the trial court may consider the parents' employment history and prior practice with regard to caring for their children." *Woskob v. Woskob*, 2004 PA Super 37; 843 A.2d 1247, 1256 (Pa. Super. Ct. 2004) citing *Frankenfield v. Feeser*, 449 Pa. Super. 47, 672 A.2d 1347 (Pa. Super. Ct. 1996). Acutely applicable to the instant matter, the Superior Court of

Pennsylvania applied the doctrine where the stay-at-home parent was caring for children of a subsequent marriage: “in determining whether the nurturing parent doctrine should apply, the issue was not for whose child the mother was caring, but whether under the facts of the case what her earning capacity should be.” *Kelly v. Kelly*, 430 Pa. Super. 31, 35, 633 A.2d 218, 220 (Pa. Super. Ct. 1993) (in applying the doctrine, the Court did not excuse the stay-at-home mother, who was caring for a child of a subsequent marriage and had previously been employed, from her support obligations) explaining *Atkinson v. Atkinson*, 420 Pa. Super. 146, 616 A.2d 22 (Pa. Super. Ct. 1992) (in applying the doctrine, the Court excused the stay-at-home mother, who was caring for children of a subsequent marriage and had not ever been previously employed, from her support obligations).

Similar to the mother in *Kelly*, the Petitioner/Plaintiff was employed prior to leaving that job to become a stay-at-home mother to care for the children of a subsequent marriage. In addition, similar to the *Kelly* Court, the Master, although not directly citing the doctrine, applied it; she considered the age of the children at issue, the support provided by the subsequent spouse, the Petitioner/Plaintiff’s employment history, and her prior practice regarding care of her children. After determining that two of the three children of her subsequent marriage are of school age, that the Petitioner/Plaintiff’s subsequent spouse supports the family, and that the Petitioner/Plaintiff was employed prior to giving birth to her and her subsequent spouse’s first child, the Master assessed the Petitioner/Plaintiff an earning capacity based on her income when she left her job in 1998. This Court agrees with the Master’s reasoning and application of the doctrine in this situation; accordingly, the Court DISMISSES the Petitioner/Plaintiff’s second exception.

**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 April 5, 2006 are DISMISSED and the Officer's Order is AFFIRMED.

By the Court,

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Kenneth D. Brown, P.J.

cc: Joy R. McCoy, Esq.  
Denise L. Dieter, Esq.  
Family Court  
Domestic Relations (SF)  
Hon. Kenneth D. Brown  
Laura R. Burd, Law Clerk  
Gary L. Weber, Esq.