

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PA

T.J.B.,	:	
Plaintiff	:	
	:	
v.	:	No. 00-20,325
	:	Paces No. 474102091
K.E.B., JR.,	:	
Defendant	:	

OPINION and ORDER

This opinion addresses the Exceptions filed by Mother to the Master’s order of June 19, 2007, awarding Father credit for overpaid child care expenses.

Mother’s first three exceptions relate to babysitting expenses being paid by Father under the prior custody order, entered on September 2002, in the amount of \$143.18 per month. It was clear from the record that the babysitting expenses incurred by Mother were reduced as the child grew older, beginning in June 2005. The Master calculated how much Father had overpaid for child care from June 2005 through June 2006, when the child was thirteen. The Master found that no child care was necessary beginning in July 2006, when the child was fourteen (even though Mother used some child care when she worked late), and accordingly calculated the amount Father had overpaid. The total credit awarded by the Master was \$2,990.34. The effect of this action was to retroactively modify Father’s support obligation.

Under Rule 1910.17(a), an order of support shall be effective from the date of the filing of the petition or complaint, but a retroactive modification may be done “if the petitioner was precluded from filing a petition for modification by reason of a significant physical or mental disability, misrepresentation of another party or other

compelling reason and if the petitioner, when no longer precluded, promptly filed a petition.”

Here, Father knew the child’s age, and there was no evidence that anything prevented him from filing a petition to modify. In fact, Father testified,

Back when we had the original order done and Randi Dincher was my lawyer then, we discussed this child care. And she told me she wasn’t sure of the exact age, but she thought it was 13 or 14 that I could petition to have it removed. And just being safe I waited until Brittany was 15. So I knew it wasn’t going to be well you know she’s only--. I didn’t want to look like I was trying to kick her out, you know.

N.T. p. 59. Furthermore, after reviewing the record it appears that Father never requested a credit for overpaid babysitting expenses. He merely wanted to stop paying child care expenses at the present time. For these reasons, Exceptions #1, #2, and #3 are granted.

The remaining exceptions relate to Father’s earning capacity. Father is in independent trucker. As is often the case with businesses, a yearly tax return is the best way of assessing income, as the profit or loss at any one point in time does not reflect the true picture. Mother argues that Father is now hauling for a different client, which is true. However, Father testified that he believes his profit was going to be “about the same” in 2007. N.T., p. 63. For these reasons, the court finds no error in the Master using Father’s 2006 tax return.

ORDER

AND NOW, this _____ day of October, 2007, for the reasons stated in the foregoing opinion, Exceptions #1, #2, and #3 are granted and the remaining Exceptions are dismissed. It is therefore ordered that K.B.J., Jr., is entitled to no credit for child care expenses, beyond the credit due from the date of his petition for modification, which was filed on May 1, 2007. In all other respects, the Master's order of June 19, 2007 is affirmed.

BY THE COURT,

Richard A. Gray, J.

cc: Christina Dinges, Esq.
Melody Hanisek
Family Court
Gary Weber, Esq.