

IN THE COURT OF COMMON PLEAS OF
LYCOMING COUNTY, PA

LS		:	
	Plaintiff	:	NO: 09-21031
		:	
	vs.	:	
		:	
		:	
ES		:	CIVIL ACTION
	Defendant	:	

OPINION

On December 11, 2009 the Family Court Hearing Officer entered an Order assessing Mother with a full-time minimum wage earning capacity. By Order dated March 9, 2010, this Court denied Mother's Exceptions without prejudice. In its Order of March 9, 2010, this Court indicated that if a transcript was provided, the Court would review the application of the Nurturing Parent Doctrine in light of the record submitted. Mother subsequently produced transcripts to the Court from hearings held on November 9, 2009 and December 10, 2009, and on April 9, 2010 Mother filed a Motion for Reconsideration seeking reconsideration of this Court's March 9, 2010 Order.

The nurturing parent doctrine is an exception to the general rule that both parents have equal responsibility to financially support their children according to their ability. The factors to be considered for nurturing parent status are as follows: the age and maturity of the children, the availability of others to assist the parent, the parent's desire to stay at home and nurture the children, and the adequacy of available

financial resources if the parent does not work. See Frankenfield v. Feeser, 672 A.2d 1347 (Pa.Super. 1996). Under appropriate circumstances, a nurturing parent has the right to remain at home and care for the children.

Age and Maturity of the Children

In Commonwealth ex rel. Wasiolek v. Wasiolek, 380 A.2d 400 (Pa.Super. 1977), the Superior Court applied the nurturing parent doctrine to a situation in which the parties' three children were school age – 11, 9 and 7, and all attending school. Custodial mother testified that although she had worked as a secretary up until the time of her marriage, she didn't believe she could find work because she needed to be there when the children went to school, and when they came home. Id. at 402. In applying the nurturing parent doctrine, the Superior Court held:

We must be mindful that the purpose of a support order is the furtherance of the welfare and best interests of the child for whom it is entered....Obviously, a court cannot ignore the substantial nonmonetary contributions made by a nonworking spouse....It would surely be ironic if by its support order a court were to dictate that a parent desert a home where **very young children** were present when the very purpose of the order is to guarantee the welfare of those same children. Such an order would ignore the importance of the nurture and attention of the parent in whose custody the children have been entrusted and would elevate financial well-being over emotional well-being. Id. at 402-3. (Citations omitted)(Emphasis added).

In the present action, the parties have four children, all but one are younger than the ages of the children in Wasiolek. Charles is nine and Erika is six. Both are attending school. Luke, age four, attends pre-school in the mornings, three days per week. The parties' youngest child is merely nine months old. Accordingly, the first factor is clearly met.

Availability of Others to Assist the Custodial Parent

The only individuals identified by the parties to assist in care, were the children's maternal grandmother, wife's sister, and husband. Testimony from maternal grandmother on this issue was as follows:

A: Well, I do not babysit. I'm not available because my husband and I travel quite a bit, I have a mother who is in Mississippi and we try to visit her as often as possible. And most of the family are out of town.

Q: How about traveling to Florida. Do you have any plans to go to Florida this year?

A: Oh, yes. We always go February or March. We go to New Orleans twice a year, makes three times a year. We go to Long Island several times a year because that's where my husband's father is. So –

Q: Is – I'm sorry.

A: I mean my schedule is very irregular.

Q: As far as – so I guess you're saying you would not commit to a full-time babysitter?

A: Oh, no, I couldn't do that, no. I couldn't commit to being a babysitter.

(N.T. 12/10/09, p. 3-4).

Testimony regarding Wife's sister was as follows:

Q: Now I want you to tell me about any availability of people in this area that can take care of your children?

A: Ah, avail – my mom and her husband travel. They go to my grandmother's – her mother's they go to New Orleans and Mississippi a lot because that's where she's at. So she's really not readily available. And my sister, her husband just lost her [sic] job so they're both out looking for work right now so I couldn't really rely – that would be my only other option and she's actually looking for a job as we speak to go to work because her youngest is actually in school, so. But – we agreed when we had our children that was what we wanted not for anybody else to raise them, I would raise – I was going to raise them.

(N.T. 11/9/09, p. 27-28).

The only other individual identified to assist in the care of the children was the children's father. Although Father testified that he would watch the children in the evenings so that Mother could work, his testimony on this issue was uncertain.

Father's testimony regarding evening availability was as follows:

Q: How many evenings, sir, do you have appointments?

A: Ah, I would say one to two sometimes three days a week.

Q: Three days a week you have evening appointments. Is that every week?

A: No.

Q: Well, how many weeks do you think you have evening appointments?

A: It varies. I mean sometimes there would be weeks where I might – and I'm using an average here, but there's been times that I had them four nights a week. It just depends on when the clients are available and I'm able to meet with them.

Q: So you have to run your schedule around the clients?

A: Sometimes – sometimes, yes.

(N.T. 12/10/09, p. 30-31).

When asked how he would be available to care for the children in light of his evening work schedule, Father testified, "...I can try to schedule it down to one day a week then." Id. at 31. No one else was identified by either of the parties for possible assistance and support.

The Parent's Desire to Stay at Home and Nurture the Children

The testimony unequivocally established that Mother had a desire to stay home and nurture the children, and in fact, had done so since the birth of the parties' first child. Testimony on this issue was as follows:

Q: And why didn't you work outside the home?

A: I was working at Nevill's and – while I was pregnant and when we had Charlie, I was going to go back part-time but when the time came we had both discussed – because it brought tears to my eyes because all I ever wanted to do was be a stay at home mom and he then agreed that he did not want me to go back to work. He wanted me to be home with the kids—with Charlie at the time.

Q: Okay. And after each pregnancy and after each child –

A: Never let –

Q: -- you never went back to work?

A: No. I never – no, I didn't have a job to go back to. I quit Nevill's and I never had a career. I was – had some jobs and then we got married and started having a family.

(N.T. 11/9/09, p. 27).

Mrs. Steinbacher additionally testified:

Q: And as far as any time and I think we went over this before, was there any time that [you] worked a full-time job after the birth of your first child?

A: No. No.

Q: And at this point, do you want to take your children and put them somewhere and get a full-time job?

A: No, I would not do that to them. I don't want to do that to them.

(N.T. 12/10/09, p. 7).

Mr. Steinbacher's similarly testified:

Q: So after your first child was born, she did not work outside the home, is that right?

A: Correct.

Q: No, did you, sir, ever tell her to get a job?

A: We never discussed it. We had children and she was going to stay home.

Q: And you pretty much agreed that she would stay home until your children went to school; is that right?

A: That was – yeah, it was understood.

(N.T. 11/9/09, p. 12-13).

Q: Did you want her to work?

A: No, I didn't. She didn't have to. I didn't want her to have to.

(N.T. 12/10/09, p. 32).

The Adequacy of Available Financial Resources if the Parent Does Not Work

Following a review of the financial resources of the parties, the Hearing Officer concluded that the nurturing parent doctrine should not be applied. This was primarily based upon the conclusion that Father's income was not adequate to support two households. This Court does not agree.

Under the support order of November 12, 2009, Father was ordered to pay \$1,209.47 for child support and \$442.72 in spousal support for a total of \$1,652.19. The parties agree that if the nurturing parent doctrine is applied, Mother would receive an additional \$428.00 per month from Father. Father argues that this does not leave him with a sufficient amount of money to provide a suitable living environment for himself. Father's analysis ignores the fact that additional contributions will be made by Father for the costs associated with daycare. As stated above, the parties have four (4) minor children. Mother submits that childcare would amount to \$860.00 per month. After the tax credit, childcare is \$645.00.¹ As Father's contribution is 71.53%, his percentage would amount to \$461.00 per month, or more

¹ Although Mother testified that estimated daycare costs would amount to between \$400.00 and \$450.00 per week, Plaintiff's Brief in Support of her Motion for Reconsideration cites daycare costs as set forth above. These amounts were not refuted by Defendant.

than the additional support which would be paid to Mother should the nurturing parent doctrine be applied. Although the Master concludes that “subsidies might apply if Wife’s finances were truly insufficient,” insufficient evidence was presented to support this conclusory assertion. Moreover, Pennsylvania support guidelines require that an obligor make all reasonable efforts to reduce expenses if he or she claims an inability to meet a support obligation. Pa.R.C.P. 1910.16-1(a)(3).

Following a review of the factors, and pursuant to the unique circumstances of this case, which included unequivocal testimony that it was both parties’ desire and intent for the children to be cared for by Mother at home, and testimony regarding Mother’s limited work history, this Court finds that it is appropriate to apply the nurturing parent doctrine.

ORDER

AND NOW, this 21st day of June, 2010, the Plaintiff’s Motion for Reconsideration is hereby GRANTED and this matter is remanded to family court for calculation of support without an assessment of earning capacity as to Wife.

BY THE COURT,

Richard A. Gray, J.

cc: Janice Ramin Yaw, Esquire
Christina Dinges, Esquire
Gary Weber, Esquire