

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

MS,		:	NO. 10 – 20,828
	Plaintiff	:	
		:	CIVIL ACTION - LAW
vs.		:	
		:	
TS,		:	
	Defendant	:	

OPINION IN SUPPORT OF ORDER OF JULY 9, 2014,
IN COMPLIANCE WITH RULE 1925(A) OF
THE RULES OF APPELLATE PROCEDURE

Plaintiff has appealed this court’s Order of July 9, 2014, which denied his exceptions to a Family Court Order directing him to pay child support to Defendant. Plaintiff raises four issues,¹ each of which will be addressed in turn.

First, Plaintiff alleges error in the inclusion in his income of “non-guaranteed, non-mandatory over-time”. Plaintiff does not contend he did not earn the over-time income, just that such is not guaranteed, which the court interprets to mean that he may not have it in the future. As the guidelines require the inclusion of all income actually earned, Pa.R.C.P. 1910.16-2 (a),² and since Plaintiff actually earned the over-time income, the court found no error in its inclusion for purposes of calculating child support.³

Second, Plaintiff alleges error in the finding that there had been a material change in circumstances: a material change in the parties’ incomes. The request for modification addressed an agreement entered in July 2010 that provided, inter alia, for Defendant to pay to Plaintiff \$600.00 per month. Therefore, the parties’ incomes in 2010 were compared with their incomes in 2011, the date of the petition for modification.⁴ In 2010, Plaintiff had a gross income of \$39,179 and Defendant had a gross income of \$43,063. In 2011, Plaintiff had a

1 Although Plaintiff lists five numbered issues, the court finds issue 3 (failing to include Defendant’s contractual obligation) and issue 5 (failing to offset Plaintiff’s obligation against Defendant’s contractual obligation) to be identical.

2 “Monthly gross income is ordinarily based upon at least a six-month average of **all of a party’s income.**” Pa.R.C.P. 1910.16-2(a) (emphasis added).

3 Plaintiff was advised he could file a petition to modify the support amount if he no longer had such over-time income in the future.

4 Plaintiff had filed a petition to re-open child support on December 29, 2011, but because an appeal was pending on the issue of whether the parties’ agreement of July 2010 could even be modified at all, that petition was never

gross income of \$42,310 and Defendant had a gross income of \$38,779. Thus, Plaintiff's income had increased 8% and Defendant's income had decreased 10%. Further, Plaintiff was now earning more than Defendant, whereas in 2010, Defendant had earned more than Plaintiff. Therefore, the court believed a material change in incomes had been demonstrated.

Third, Plaintiff alleges error in the finding that "the release or compromise of child support is invalid to the extent it prejudices a child's welfare." The court admits it is perplexed by this allegation, inasmuch as the Superior Court in this very case has stated exactly that.⁵ Therefore, the court will assume that Plaintiff is complaining not about the point of law itself, but about its application to the facts of this case, and will instead address the finding that, in this case, the effect of the agreed-upon payment was to prejudice the children's welfare.

The parties have 50/50 custody of their three children. The finding that the payment of \$600 per month from Defendant to Plaintiff would prejudice the children's welfare was based on the rule that "[i]n all cases in which the parties share custody equally and the support calculation results in the obligee receiving a larger share of the parties' combined income, then the court shall adjust the support obligation so that the combined income is allocated equally between the two households", and "[i]n no event shall an order be entered requiring the parent with the lower income to pay basic child support to the parent with the higher income." Pa.R.C.P. 1910.16-4(c)(2). The court believes this rule is based on the assumption that if the parties have equal time with the children, they have equal expenses for them,⁶ and if the parent with the lower income was required to pay the parent with the higher income, the paying parent would have less money to meet the children's needs than the rules assume that parent should have.

addressed until the Family Court Order at issue was entered April 15, 2014.

⁵ At page 11 of the Opinion issued in the appeal referenced *supra*, Judge Strassburger states: "Thus, any release or compromise of child support is invalid to the extent it prejudices a child's welfare."

⁶ This belief is bolstered by the fact that the rule applies to only basic child support. Payment of *additional expenses* is not subject to the rule. Pa.R.C.P. 1910.16-4(c)(2).

Finally, Plaintiff alleges error in failing to include Defendant’s contractual obligation to pay \$600 per month to Plaintiff, and in failing to credit/offset Plaintiff’s support obligation against Defendant’s contractual obligation.⁷ The court found neither of these alternatives to be appropriate in light of the above-stated finding, that any payment from Defendant to Plaintiff would prejudice the children’s welfare. Simply calling the payment an “offset” does not change its effect – it reduces the money available to Defendant to meet the children’s needs. The argument also seems to ignore the determination of both this court and the Superior Court that the “contractual obligation” is in reality “child support” and, as such, it is no longer a “contractual” obligation (as it is not enforceable) to the extent it prejudices the children’s welfare, which, as just stated, it was found to do in its entirety.

Dated: _____

Respectfully submitted,

Dudley N. Anderson, Judge

cc: Bradley Hillman, Esq.
Melody Protasio, Esq.
Gary Weber, Esq.
Hon. Dudley N. Anderson

⁷ The court assumes Plaintiff is arguing that the court should have offset Plaintiff’s child support obligation to Defendant by the \$600 per month payment, and thus still required a payment from Defendant to Plaintiff, albeit less than \$600 per month, or, in the alternative and at the very least, reduced Plaintiff’s support obligation to Defendant to zero.