IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

LRF,	: NO. 11 – 20,575
Plaintiff,	:
vs.	: CIVIL ACTION - LAW
	:
DWF,	LRF vs. DWF:
Defendant	:

OPINION IN SUPPORT OF ORDER OF JULY 26, 2016,
IN COMPLIANCE WITH RULE 1925(A) OF
THE RULES OF APPELLATE PROCEDURE

This child support saga began when Plaintiff filed a divorce complaint on April 29, 2011, followed by a praecipe for a hearing on her request for alimony pendente lite, on May 5, 2011. A hearing was held July 21, 2011, but because Defendant (who at that time owned and operated his own business, Automatic Sprinkler Supply, Inc.) did not provide sufficient documentation (the most recent tax return available was that for 2008), an interim order was entered based on Defendant's paystub (he paid himself a wage) and the matter was re-scheduled. Plaintiff then filed a complaint for spousal support and, after leaving the marital residence, a complaint for child support. Further hearing was held October 17, 2011, but Defendant still did not provide the documentation "necessary to validate his alleged income from his business." A third hearing was held December 7, 2011, at which Defendant attempted to present a picture of his business as being "so financially strapped that he is unable to take even his paycheck from it." This attempt was rejected by the hearing officer based on Defendant's testimony respecting continued business expenses being incurred, certain "loan repayments" being made by the business to Defendant, and Defendant's prior practice of using the loan repayments to lower his W-2 income for purposes of college financial aid applications. The hearing officer found Defendant's testimony lacking in credibility and instead used Defendant's 2010 W-2 to set his support obligation, in an Order dated December 14, 2011.

On February 22, 2012, Defendant petitioned for modification, indicating that his business had significantly decreased. After a hearing on May 1, 2012, however, the hearing officer found that Defendant had presented nothing significantly different than what he had

presented in December 2011, again found him lacking in credibility, and continued the support based on his 2010 W-2. Exceptions to the hearing officer's order were denied.

On April 18, 2013, Defendant again petitioned for modification, again alleging that his income had decreased. He presented a 2012 personal income tax return which showed he had a gross income of $46,453.00,[1] but presented no financial information for the business, no bank account statements and no credit card statements, even though these documents had been requested. The hearing officer found that the tax return was not credible, based on other information from which she concluded that Defendant had falsified his 2011 tax return, and the lack of supporting documentation. By Order dated July 3, 2013, the support was continued based on the 2010 W-2.

Defendant's May 20, 2014 petition for modification again alleged that his income had decreased. At the hearing on that petition, held July 14, 2014, following Defendant's testimony that his business was failing, that he had no money, that he had moved into the business property (from the foreclosed-upon marital residence), that he had lost all of his employees and that most of his customers now used the services of a former employee, considering that Defendant had produced no financial documents, general ledgers or business tax returns and had testified that he was not looking for work, the hearing officer found that he was intentionally limiting his income because of the divorce litigation. By Order dated August 1, 2014, the support was continued based on the 2010 W-2. Exceptions to that Order were later withdrawn, as the parties agreed to continue the Order in effect.

Defendant's December 17, 2014, petition for modification took a different tactic. Rather than asserting reduced business income, Defendant alleged that he had a new job, earning $15.25 per hour, less than the earning capacity previously set. In an Order dated March 18, 2015, Defendant was found to be working for his pastor through a business owned by his pastor, which business was in direct competition with Defendant's previous business, and was begun three weeks after the pastor had begun working for Defendant, prior to the change in roles. The hearing officer again found that Defendant had intentionally reduced his income and had made no effort to mitigate that reduction, but agreed to review the support

1 The 2010 W-2 showed a gross income of $80,787.22.

because it had been more than three years since the earning capacity had been set and in this Commonwealth, "a child support litigant is entitled to a review of his or her case every three years whether or not the litigant is alleging a material and substantial change in circumstances." The hearing officer then set an earning capacity based on a finding that Defendant had the following job skills: installation, repair and inspection of sprinkler systems, managing a business, hiring and firing employees, creating and executing business plans, scheduling work, providing estimates, engaging in contract negotiations, issuing invoices, keeping track of receivables, maintaining an inventory and paying bills. A capacity of $25 per hour was assessed. Since there was no explanation as to the source of this figure, however, in response to exceptions, although upholding the hearing officer's assessment of an earning capacity based on Defendant's job skills, the court remanded the matter for further hearing, the purpose of which was to hear evidence of what those skills are worth in today's job market.

The most recent hearing in this matter was then held on December 7, 2015, at which Plaintiff presented the testimony of a vocational evaluation expert, who opined that someone with Defendant's set of job skills could expect to earn $25.59 per hour. Defendant presented the testimony of a building inspector/ senior plans examiner who earns $48,000 per year, and his own testimony, that he would not be able to work as a building inspector as he does not have the required certifications. The hearing officer found the testimony of the vocational evaluation expert more relevant, and assessed an earning capacity based on that expert's opinion. That decision was upheld on exceptions and Defendant has now appealed.

The gravamen of Defendant's complaints on appeal is that the earning capacity assessed to him is not consistent with his education, training, experience, health, earning history and availability of jobs. To the contrary, however, the vocational evaluation expert provided evidence of what a person earns if he works in the same field as has Defendant for over twenty years, and the capacity assessed is consistent with Defendant's earning history (he actually has earned significantly more in the past). As for availability of jobs, the evidence was more than sufficient to support a finding that the sprinkler business is still out there, but is simply being performed by the pastor's company rather than Defendant's company. The court believes Defendant intentionally transferred his customers to others, a former employee and his pastor, arranged to work for the pastor at $15.25 per hour, and then came into court seeking a

reduction of his support obligation. The assessment at $25.59 per hour is actually significantly less than what the court believes Defendant would still be earning if he had not orchestrated the ruse.

Dated:_____ Respectfully submitted,

Dudley N. Anderson, Judge

cc: DRO
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Hon. Dudley N. Anderson