duced by the defendant that either the Domestic Relations Division of this court or of the Adams County Court had indicated to her any specific or tacit approval for her to withhold the support payments as occurred in some of the cases above cited. However, this we do not find unusual, for in this Judicial District the Domestic Relations Division does not take it upon itself to modify court orders.

This Court had consistently adhered to the general rule that the misconduct of the custodial spouse concerning visitation matters in not justification for termination of support payments because the child is the primary beneficiary of the support. However, we do recognize an exception in those rare cases where the conduct of the custodial parent constitutes what can only be described as a flagrantly willful and intentional concealment of the children for the purpose of denying the non-custodial parent visitation rights. This exception we conclude is predicated upon the reasonable rationale that it is in the best interest of children for them to also spend time with the non-custodial parents and thus know they also have that parent's love, care, concern and support.

In the case at bar, we conclude that the conduct of Dennis W. Hippensteel does constitute flagrantly willful and intentional concealment of the parties' children for the purpose of denying their mother her right to visitation which justifies a stay rather than a termination of the support order of this Court dated December 20, 1978, effective February 4, 1980, and to remain in effect until the whereabouts of the plaintiff, Dennis W. Hippensteel, and the parties' children, Kimberly J. Hippensteel born August 21, 1964; Dennis W. Hippensteel born February 24, 1968; Jassen W. Hippensteel born March 22, 1970; and Corbett W. Hippensteel born October 27, 1971 are made known to Sharon L. Hippensteel, defendant, this Court, and the Court of Common Pleas of Adams County, Pennsylvania.

Other than the evidence has to the rental income of Dennis W. Hippensteel from the Mummasburg real estate no evidence was introduced to establish that the plaintiff's earnings have increased as alleged in the complaint. The Court, therefore, declines to rule on that issue.

Sua sponte we conclude that the income of the defendant has decreased from $90.53 net take-home pay on December 20, 1978 to approximately $61.20 (including $18.20 support payment being withheld) as of February 4, 1980. Taking into consideration the fact that the defendant is maintaining herself and two children on this minimal weekly income, we conclude that the defendant would also be entitled to have the support order of December 20, 1978 stayed effective February 4, 1980, and until her net take-home pay should increase to its prior level on the grounds that she is financially unable to pay support for her four children in the custody of the plaintiff.

ORDER OF COURT

NOW, this 18th day of March, 1980, the order of support dated December 20, 1978, requiring Sharon L. Hippensteel, defendant, to pay the sum of $12.50 to the support of the four children of the parties, plus $5.50 on account of the existing arrearage and a $.20 service charge is stayed; effective February 4, 1980.

The defendant shall remain responsible for the payment of all costs currently due, and at such time as the stay is lifted she shall also be responsible for the payment of any arrearage existing as of February 4, 1980.

The Domestic Relations Division of this Court shall forward a copy of this Opinion and Order to the Domestic Relations Division of the Court of Common Pleas of Adams County, Pennsylvania.

Exceptions are granted the plaintiff, Dennis W. Hippensteel.

KRISE v. STOCKSLAGER, C. P. Franklin County Branch, F. R. 1979 - 622S

Domestic Relations - Child Support - Remarriage of Spouse - Christmas and Birthday Presents

1. In computing the custodial parent's ability to pay, the Court can properly consider the new spouse's voluntary contributions to the family budget.

2. The extent to which a new spouse helps defray the family expenses is a proper inquiry for the Court in establishing a figure for child support.

3. Christmas and birthday presents are gifts, not something in the nature of child support, and therefore not a proper item which the Court will require a noncustodial parent to help pay.

George E. Wenger, Jr., Esq., Attorney for Plaintiff

Thomas J. Finucane, Esq., Attorney for Defendant

OPINION AND ORDER

EPPINGER, P.J., January 4, 1980:

What we have here are cross petitions for modification of a support order. The order was made after a stipulation had been filed and indicates that at the time of its making, Raymond Stockslager, defendant, (Raymond) was netting approximately $230 per month. No earnings for Cynthia L. Stockslager(now Krise), plaintiff, (Cynthia) were stated. The order required Raymond to pay $50 per week to Cynthia for the support of their sons Dusti and Toby, who were living with their mother. At the time the order was made, a third child, Douglas, was living with his father. The order is silent as to who is to support him. As a part of the stipulation, provision was made for visitation.

In Cynthia's petition for modification, she alleges her expenses have increased and that Raymond's earnings have increased. In Raymond's petition for modification, he alleges the earnings of both parties have increased, his expenses have increased and she has remarried. As to his visitation rights, Raymond claims they are impaired because Cynthia's husband has threatened to prevent the two children from participating in sports activities if Raymond is in any way involved in those activities.

Raymond's take home pay is $281 per week; Cynthia's is $171. Gerald Krise, Cynthia's husband, has a take home pay of $670 every two weeks. Besides the usual issues that are present in this kind of case, we are asked to determine whether, and if so, to what extent, Krise's income should be considered in computing the amount Raymond should pay for the support of the two children while they are in Cynthia's custody.

In *Commonwealth ex rel. Mainzer v. Audi*, Pa. Super , 403 A.2d 124 (1979), there was evidence of the income of the mother's second husband. Finding that both parents are obligated to contribute to the support of their children in accordance with their respective abilities to pay, it was held that though the mother's present husband had no duty to support the children of her first marriage, the court could properly consider as part of the mother's financial resources the new husband's voluntary contributions to the

family budget in computing the mother's ability to pay.

From the evidence in this case it is apparent that Cynthia's present husband is voluntarily applying his resources to the support of his wife and to this extent it frees up some of the money which she would otherwise have to spend for her own support. Thus she is able to apply more of her own money to the support of the children than she could if she was required to maintain her own place to live with all of the incident expenses. There is, therefore, a gross financial benefit to Cynthia from her remarriage. In this respect, the consideration we give to that factor is not that the second husband will be called upon to contribute to the support of the two children, but that Cynthia is better able to contribute. Specifically, Cynthia and the two boys are living in a house which Krise owned before the marriage. It has not been shown that their being there has in any way added to his housing costs. While there may be some increase in utilities, his taxes, insurance and probably repairs will remain the same.

In *Commonwealth ex rel. Travitzky v. Travitzky*, 230 Pa. Super 435, 326 A.2d 883 (1974), the court stated there is nothing in our law which requires a new spouse to help support the minor children of our first marriage, but the extent to which the new spouse is helping to defray the family expenses is a proper inquiry.

When the mother computed her expenses for the children, she assessed against them one half of the mortgage payments, a total of $25.63 each week. She also attributed $7.92 of property taxes weekly to the children and $1.16 of the house insurance. There are other items in the budget which are constant items, that is, they are present whether one or two or four people are living in the household. In the expense statement there is an item of Christmas and birthday presents of $7.08 weekly. It is our impression that a present is a gift, not something in the nature of child support. It is impossible for us to require the father to help pay for the gifts which the mother gives to the children. Likewise we would not require the mother to help pay for the father's gifts.

We also have a living expense statement from Raymond. It shows that his total expenses for a week exceed his income. But it too contains some items where in the normal course of things, savings might be effected. Entertainment, for instance, is one of the items that seems high under the circumstances.

Our conclusion is that considering all of the matters present in the case, that the mother has two of the children and that the father has one, the father should pay her the sum of $40.00 per week for the support of two children. This we conclude is the extent of his ability to pay.

On the subject of the visitation rights of the father, we see no reason at all why he should not continue to have the relationship he enjoyed with his sons before his former wife remarried. We do not plan to make an order to that effect at this time, relying on the parties to work it out. If he was a part of their wrestling and baseball programs before the remarriage, he should be a part of it now. He should not in any way be restricted in participating in their activities. A father's healthy relationship with his sons is to their advantage and should be encouraged.

ORDER OF COURT

January 4, 1980, the order dated March 12, 1976, is amended and commencing effective Monday, August 6, 1979, Raymond E. Stockslager shall pay to Cynthia L. Stockslager Krise via the Collection Office of this Court the sum of $40.00 plus $.50 service charge and a like sum of $40.50 each Monday thereafter for the support of his two minor sons, Dustin Charles Stockslager, born May 12, 1970 and Toby Alan Stockslager, born March 28, 1972. In all other respects the stipulated order of March 12, 1976 shall remain in full force and effect.

The defendant's bond in the amount of $3,000 to guarantee faithful compliance with this order shall continue and the defendant shall pay the costs of these proceedings.

APPEAL OF REVOCATION OF ZONING PERMIT No. NC1893, C. P. Franklin County Branch, Misc. Doc. Vol. X, Page 276

Zoning - Non-Confirming Use - Conditions - Jurisdiction

1. Township zoning boards do not have the authority to impose conditions upon the use of a property where the property owner is merely requesting to continue the use that had existed prior to the time the zoning ordinance was adopted.

2. Conditions imposed by a township zoning board, which is without authority to impose such conditions, are a nullity.

3. Decisions, made by a zoning board which it does not have the jurisdiction to make, can be questioned at any time.

J. Dennis Guyer, Esq., Attorney for Appellee

Stephen E. Patterson, Esq., Attorney for Appellee

William C. Cramer, Esq., Attorney for Appellants

OPINION AND ORDER

EPPINGER, P.J., January 28, 1980:

David and Frances George (owners) own a tract of real estate improved with a garage in Washington Township. It is located in an R-U (Residential Urban) district and this classification has been in effect since July 16, 1973. The owners acquired the property from Joseph and Joan Warner who used the property in their motor vehicle repair business, where they also sold parts and petroleum products. This business was known as the Keystone Garage and was a nonconforming use at the time the Washington Township Zoning ordinance was adopted.

After the owners (Georges) acquired the property, they applied to the Washington Township Zoning Officer for a permit to use the property as a business office and non-public repair shop and storage (parking) area for equipment associated with their construction business. The officer issued the permit pursuant to Sec. 404 of the township zoning ordinance.[1]

Adjoining property owners appealed the Zoning Officer's issuance of the permit to the Washington Township Zoning Board. After a hearing the board entered an Order and Decision on March 14, 1978, in which it was found, among other things, that the owners' use of the property did not constitute a use of a less restrictive classification. The board concluded that the permit was properly issued and that the owners could continue to use the property for their construction business, but imposed conditions. Condition (a)

[1]Section 404. Change of Use

[1]A nonconforming use may be changed to another nonconforming use of the same or more restricted classification by obtaining a Zoning Permit.

[2]When a conforming use has been changed to a more restricted classification, or to a conforming use, such use shall not hereafter be changed to a use of less restricted classification.