

## LEGAL NOTICES

SALE #18  
2000-3564

OCWEN FEDERAL BANK  
VS.

JUSTIN S. AND BETH A. SCHWARTZ  
ATTY: MARK J. UDREN, ESQ.

All the tract of improved real estate being situate in St. Thomas Township, Franklin County, Pa., having a street address of 839 Hade Road, St. Thomas, PA 17252, and being more fully described in Franklin County Deed Book Volume 1284, Page 76. Property ID #71-M-8.

SALE #19  
2000-2522

F & M BANK-WEST VIRGINIA, INC.  
VS.

NORMAN A. AND ELIZABETH M. GAMBLE  
ATTY: LEON P. HALLER, ESQ.

All that certain lot or parcel of real estate, together with all of its improvements and appurtenances thereunto belonging, situate in Fannett Township, Franklin County, Pa., having a street address of 24451 Path Valley Road, Concord, PA 17217, and being more fully described in Franklin County Deed Book Volume 779, Page 423. Tax Map B-3, Parcel 29.

SALE #20  
1999-20525

BENEFICIAL CONSUMER DISCOUNT COMPANY  
VS.

CLARENCE A. VAZQUEZ  
ATTY: TERRENCE J. MCCABE, ESQ.

All the real estate lying and being situate in Guilford Township, Franklin County, Pa., having a street address of 4051 Wayne Road, Chambersburg, Pa., and being more fully described in Franklin County Deed Book Volume 288D, Page 240.

SALE #21  
2000-3267

GMAC MORTGAGE CORPORATION  
VS.

STEVEN D. AND THERESA M. SPROW  
ATTY: MARTH E. VONROSENSTIEL, ESQ.

All the real estate lying in Greene Township, Franklin County, Pa., having a street address of 123 Anthony Highway, Fayetteville, PA 17222. Tax Parcel #09-C-27K-46A.

SALE #22  
2000-3548

WENDOVER FINANCIAL SERVICES  
VS.

OWEN C. HENRY  
ATTY: FRANK FEDERMAN, ESQ.

All the tract of real estate lying in Greene Township, Franklin County, Pa., having a street address of 2876 Henry Road, Chambersburg, PA 17201. Tax Map C-14, Parcel 100.

### TERMS

As soon as the property is knocked down to purchaser, 10 percent of the purchase price or 10 percent of all costs, whichever may be the higher, shall be delivered to the Sheriff. If the 10 percent payment is not made as requested, the Sheriff will direct the auctioneer to resell the property. The balance due shall be paid to the Sheriff by NOT LATER THAN Feb. 19, 2001, at 4 p.m. prevailing time. Otherwise all money previously paid will be forfeited and the property will be resold on Feb. 23, 2001, at 1 p.m. prevailing time, in the Franklin County Courthouse, Jury Assembly Room, Chambersburg, Franklin County, Pa., at which time the full purchase price or all costs, whichever may be the higher, shall be paid in full.

### SHERIFF'S REAL ESTATE SALES FOR 2001

Cutoff	Sale Date
02/02/01	04/20/01
03/30/01	06/08/01
06/01/01	08/10/01
08/03/01	10/12/01
10/05/01	12/14/01
11/30/01	02/08/02

Robert B. Wollyung, Sheriff  
Franklin County  
Chambersburg, Pa.

1/19, 1/26, 2/2/2001

THERESA A. SHAFER, Plaintiff, v. DUDLEY B. SHAFER, Defendant  
C.P. Franklin County Branch, Domestic Relations Section  
Docket No. 1998-01030

### *Private Agreement – Computation of a Lump-sum Workers' Compensation Award – Child Support*

1. The Court must determine whether the private agreement “adequately provides for the needs of the child.” When the amount of support significantly differs from guideline recommendations, there is a presumption of inadequacy. The Court may ignore the support terms of the agreement and order a modification of child support.
2. In an effort to ascertain the validity of a private support agreement, the Court should consider the terms of the agreement, the parents' intentions and the parents' performance under the agreement. An agreement to deposit money in a savings account, titled in parent and child's name to be used for his college education, is not an agreement to pay child support.
3. Lump-sum workers' compensation awards should be included in the computation of income for child support purposes as prescribed by 23 Pa.C.S.A. § 4302 and Pa.R.C.P. § 1910.16-2(a).
4. The appropriate method of calculating an award is within the Court's discretion. It is suggested that the award be annualized or averaged over a period of time to be determined by the Court.
5. While the Court ignored the support terms of the private agreement, the Court considered the remaining terms of the private agreement in an effort to formulate an equitable remedy.

### Appearances:

*Theresa A. Shafer*, Plaintiff  
*E. Frank Martin, Esq.*, Counsel for Defendant  
*Jill A. McCracken, Esq.*, Assistant District Attorney

### OPINION AND ORDER

Van Horn, J., December 4, 2000

### Background

Defendant, Dudley B. Shafer (Father), brings this action to appeal two Court Orders (dated April 28, 2000, and August 31, 2000), that modified the child support obligation for his son, Michael B. Shafer (Child), born January 4, 1984.<sup>1</sup> Defendant claims that the Court failed to consider the agreement reached by the parties pertaining to child support and custody

<sup>1</sup> This is a consolidated appeal. Father is appealing a Court Order dated April 28, 2000, (Mother filed a petition to reinstate a previous Cambria County support Order and modify the Order according to current guidelines) and a Court Order dated August 31, 2000 (Father filed a petition to modify the April 28, 2000, Order regarding insurance coverage that also resulted in a modification of child support).

in May 1999 (July 30, 1999, Order). In the alternative, the Defendant contends that Plaintiff, Theresa A. Shafer's (Mother), workers' compensation award was not considered in determining her income for purposes of calculating her child support obligations.

The parties to this action were divorced on August 21, 1994, in the Court of Common Pleas in Cambria County. A support Order was issued in Cambria County on January 12, 1996, requiring Father to pay Mother \$250.00 per month for support of Child. The support Order was transferred to Franklin County on September 9, 1998, when Mother and Child moved to Franklin County.

In May 1999, the parties entered into an agreement establishing shared legal custody with residential custody in Father beginning July 18, 1999, and Mother having partial custody. The agreement also included a provision for child support as follows:

A. Beginning in May 1999, and continuing the first of each month until father retains custody in July, father shall put \$100 a month in a certain savings account that Michael has with Financial Trust in Greencastle, Pennsylvania.

B. Beginning in July 1999 when father has residential custody, mother shall put \$100 in said account until Michael is 18, returns to her custody or by further Order of Court.

C. If the residential custody should return to mother, then father shall place \$100 in said account until Michael is 18 or further Order of Custody.

D. Mother shall send a copy of each statement of the aforesaid account with Financial Trust within days of receipt.

E. The parties shall cause the account to require both parents and Michael's signature to make a withdrawal.

F. The money shall be used for Michael's college education when he is 18. If Michael does not attend college then the money will be turned over to him when he is 21.

(Paragraph 11, Respondent's Exhibit 1.)

The parties agreed that these provisions are the sole and exclusive duty of support by either party. The parties further agreed and acknowledged that they have given up certain rights by dropping their respective rights to support. The agreement also expressly addresses any future requests for support, "If either party should apply for support, the court should consider what has been paid and what has been given up during the period of residential custody." (Paragraph 12, Respondent's Exhibit 1.) The parties

complied with the terms of the agreement during Father's period of residential custody.

On or about May 13, 1999, Mother received a lump sum workers' compensation award in the amount of \$36,000 less attorneys fees of \$7200.00. Mother testified that the entire net award of \$28,000 was used to pay off large bills and to assist Mother's parents.

In December 1999, Child returned to Mother's residence. In February 2000, an Order was issued placing custody of Child in Mother but did not address nor replace any provisions of the July 1999 Order regarding support. Father contends that the child support provisions of the July 1999 Order are still in effect and he continued to abide by the provisions of this Order regarding child support obligations when Child returned to his Mother.

Mother petitioned the Court on March 6, 2000, to reinstate the Cambria County Order for support dated January 12, 1996, and requested modification of the Order to meet current guideline standards. A hearing was held on April 28, 2000, and support was modified to reflect current guidelines without consideration given to the parties' agreement regarding support or Mother's workers' compensation award. The April 28, 2000, Order is the subject of this appeal.<sup>2</sup>

On August 25, 2000, Father filed a petition to modify the support Order dated April 28, 2000, concerning the cost of Child's insurance coverage. An Order was entered on August 31, 2000, reducing Father's support obligation and Mother agreed that Child could be covered under Father's current insurance coverage. Father has filed an appeal of this Order claiming that the Court ignored the parties' agreement regarding support and did not consider the workers' compensation award in calculating Mother's income. The August 25, 2000, Order is also the subject of this appeal. A hearing addressing both of these appeals was held on October 18, 2000.

### Discussion

The well-settled principles of law regarding child support dictate that neither parent may bargain away a minor child's right to adequate support. *Kost v. Kost*, 757 A.2d 952 (Pa.Super.2000), citing, *Miesen v. Frank*, 361 Pa. Super. 204, 522 A.2d 85 (1987). It is within this Court's discretion, as well as part of this Court's responsibility, to determine whether a child is receiving adequate support. The Court cannot waive its duty simply because a parent has agreed to a certain amount of support by way of a written

<sup>2</sup> Father was granted an appeal Nunc Pro Tunc on August 14, 2000, from the April 28, 2000, Order revising his child support obligations.

agreement. *Id.* at 953. However, when an agreement adequately provides for a child's needs and is recently entered into under Court approval, unless a change in circumstances is shown, the Court should not ignore the terms of the agreement. *Id.*, see also, *Koller v. Koller*, 333 Pa. Super. 54, 481 A.2d 1218 (1984).

In this case the threshold question to be determined is whether the agreement "adequately provides for the needs of the child." *Id.* Under the July 1999 agreement, the nonresidential custodial parent is required to deposit \$100.00 per month in an account reserved for Child "until Child reaches age eighteen or further Order of Court." (Paragraph 11, Respondent's Exhibit 1.) The agreement does not address any other aspects of the parties' child support obligations. In an Order dated August 31, 2000, Domestic Relations determined, based on the guideline recommendations, that Father is responsible for providing child support in the amount of \$415.61 per month. The disparity between the amount of support in the agreement and the amount of support recommended under the guidelines gives the Court reason to question the adequacy of the amount of support defined under the agreement.

When the amount agreed upon significantly differs from the guideline range, the Court must presume that the agreement does not adequately provide for the fair and just support of the child. *Kost*, supra. Given this presumption of inadequacy, the Court is justified in ignoring the support terms of the agreement in its efforts to make a determination as to an adequate amount of support for this child.

Furthermore, upon closer examination of the agreement, the Court questions whether the agreement truly addresses the issue of child support. Under the provisions of the agreement, the nonresidential custodial parent is required to deposit \$100.00 per month into a savings account that requires both parents' and Child's signature to effectuate a withdrawal. The agreement explicitly states that the money in this account will be used for Child's college education. In the event that Child does not attend college, Child is entitled to the funds at age 21. (Paragraph 11, (E), (F), Respondent's Exhibit 1.) Based on these unambiguous terms, the Court finds that the parties did not intend to create child support obligations but rather intended to provide for the Child's future educational needs.

The Court could also infer based on the parties' intentions that the residential custodial parent was the sole source of the child's financial support while the child remained in his or her custody. The provisions of the agreement calling for \$100.00 per month deposit as the sole and exclusive duty of support by either party and the reciprocal nature of the

requirement based on residential custody support this contention.

The parties' actions also support the Court's assertions regarding child support obligations under the July 1999 agreement. During Father's period of residential custody, Father was the child's sole source of financial support. Father did not seek and Mother did not provide any additional financial support for the child between July 1999 and December 1999. Upon child's return to Mother's residential custody, Mother provided for child's financial support.<sup>3</sup> Clearly, the parties' intentions and their subsequent actions confirm the Court's findings that the residential custodial parent was the child's sole source of financial support while the child remained in his or her custody.

Finally, although the terms of the July 1999 agreement state that the support obligation "shall be the exclusive right and duty of support by both parties," it also anticipated a future application for support and provided the Court with directions to determine future modifications.<sup>4</sup> This anticipatory clause both supports and acknowledges the Court's authority to modify the parties' child support obligations.

For these reasons, the Court finds that a modification of the parties' child support obligations is warranted under the circumstances of this case. The only remaining issue to be resolved is the determination of the proper amount of child support and the calculation of any arrearage.

The Court seeks guidance from the Domestic Relations Order dated April 28, 2000, in its effort to define the amount of support due.<sup>5</sup> However, the Court does not agree with the computation of Mother's net monthly income as it does not include the 1999 lump sum workers' compensation award.

The circumstances of this case are analogous to those in *Babish v. Babish*, 361 Pa. Super. 118, 521 A.2d 955 (1987), see also, *Witherow v. Witherow*, 288 Pa. Super. 519, 432 A.2d 634 (1981), where the Court found that a lump sum workers' compensation award should have been considered when determining the proper amount of child support. The Court also concluded that it did not matter that the parent had depleted the substantial award, because parents have an obligation to share their financial

<sup>3</sup> Mother was child's sole means of financial support. However, Mother did seek a modification of Father's support obligation in February 2000.

<sup>4</sup> "If either party should apply for support, the court should consider what has been paid and what has been given up during each period of residential custody." (Paragraph 12, Respondent's Exhibit 1.)

<sup>5</sup> The April 28, 2000, Order determined that Father's monthly income was \$1,535.33 and Mother's monthly income was \$814.22. Based on these findings, Father was ordered to pay \$533.60 per month effective March 3, 2000. It should be noted that the Order dated August 31, 2000, modified Father's support obligations due to a change in the Child's insurance coverage and a change in Mother's income. Father's obligation was reduced to \$415.61 per month and an arrears was set at \$1431.92, effective July 14, 2000.

achievements with their children. *Id.*

A review of the current statutory definition of income also supports the inclusion of a lump sum workers' compensation award. The term income as it relates to support actions "includes compensation for services, including but not limited to, wages, salaries, bonuses, fees, compensation in kind, ... workers' compensation; ... other entitlements to money or lump sum awards, without regard to source ... insurance compensation or settlements; ..." 23 Pa.C.S.A. § 4302. This definition is reiterated in the section of the Rules of Civil Procedure titled Support Guidelines Calculation of Net Income. Pa.R.C.P. § 1910.16-2(a). It is clear from the pertinent case law, the relevant statutory definitions, and the applicable Rules of Civil Procedure that Mother's workers' compensation award should have been included in her net disposable income for purposes of calculating her child support obligations.

The Rules of Civil Procedure, specifically Pa.R.C.P. § 1910.16-2(a)(8), address entitlements to money and lump sum awards. The explanatory note following this subsection allows the Court to determine the "most appropriate method of imputing lump-sum awards as income for purposes of establishing or modifying the party's support obligations." *Id.* The note suggests that the award be annualized or averaged over a shorter or longer period of time depending on the circumstances of the case.<sup>6</sup>

In deciding the appropriate method of imputing Mother's award, the Court must also be mindful of the fundamental principle in determining support obligations which mandates that a support award "must be fair, non-confiscatory and attendant to the circumstances of the parties." *Fennel v. Fennel*, 753 A.2d 866 (Pa. Super. 2000), citing, *Calabrese v. Calabrese*, 682 A.2d 393, 396 (Pa. Super. 1996). The Court looks to the actual disposable income of the parties when determining their financial responsibilities in an effort to assure that the parties' income reflects actual available financial resources. *Labar v. Labar*, 557 Pa. 54, 731 A.2d 1252, 1255 (1999).

Mother testified that she received a lump sum workers' compensation award on or about May 13, 1999, in the amount of \$36,000 less attorney's fees of \$7200.00 for a net amount of \$28,800.<sup>7</sup> The Court must decide based on the circumstances of this case when and how this amount will be imputed into Mother's income.

<sup>6</sup> *Humphreys v. DeRoss*, 737 A.2d 775 (Pa. Super. 1999), appeal granted, 759 A.2d. 371 (2000), citing, Pa.R.C.P. 129(c) stating that

<sup>7</sup> Mother testified that the funds were used to pay off large bills and to help her parents. Based on the Superior Court holding in *Babish*, the fact that Mother has depleted these funds is irrelevant.

The Court finds that the Mother's workers' compensation award should have been included in her income computations at the hearing held on April 28, 2000. The order resulting from this hearing had an effective date of February 3, 2000. Since this date coincides with the effective date of Mother's request for modification of the parties' child support obligations, it shall be the effective date for imputing Mother's workers' compensation award.<sup>8</sup>

The Court also finds that Mother's lump sum workers' compensation award shall be averaged over a period of twenty-four months. This time frame was chosen to reflect an end date on or about the child's eighteenth birthday or the anticipated time of child's graduation from high school. Averaging the award over a twenty-four-month period results in Mother's income being increased by \$1200.00 per month.

In compliance with the directions provided in the July 1999 agreement regarding child support modifications, the Court acknowledges the financial support provided by the parties during his or her periods of residential custody.<sup>9</sup> However, the Court is unable to fashion a monetary credit for each party because the parties failed to present evidence regarding the financial contributions of the parties during their periods of residential custody. In an effort to create an equitable solution, the effective date of the Domestic Relations Order will reflect a credit for Father's period of residential custody.

The Court will not dispute the parties' agreement regarding the current status of the child's insurance coverage.<sup>10</sup> In August 2000, Mother agreed to allow Father to cover Child under his insurance plan. The parties also agreed to share responsibility regarding any unreimbursed medical costs.

### Conclusion

The Court is not willing to uphold the July 1999 agreement as it pertains to the child support obligations of the parties because the agreement does not "adequately provide for the needs of the child." *Kost*, supra. Further, the Court questions whether the July 1999 agreement addresses the issue of child support. Ample evidence exists to suggest that the parties were not defining child support obligations but rather they intended to provide their child with an educational fund. The parties anticipated a future application

<sup>8</sup> This finding is consistent with *Babish*, at 122, 957 supra. because the hearing held on April 28, 2000, was the first determination of the parties' respective incomes following Mother's receipt of the award.

<sup>9</sup> "[T]he Court should consider what has been paid and what has been given up during each period of residential custody." (Paragraph 12, Respondent's Exhibit 1.)

<sup>10</sup> See Order dated August 31, 2000, effective July 14, 2000.

for child support in that the terms of the July 1999 agreement explicitly propose directions for the Court in determining a change in the support duties and obligations of the parties. Based on all of these reasons, the Court finds that the modification of the amount of child support is warranted under the circumstances of this case.

Finally, the Court has determined that Mother's workers' compensation award should have been included in her monthly income calculations for the purpose of computing her child support obligations. This amount should have been considered at the April 28, 2000, hearing, which was the first request for modification following Mother's receipt of the award. This case is remanded to the Domestic Relations Section of the Court to determine the parties' respective child support obligations and any arrearage consistent with this opinion. Specifically, Father's support shall be calculated after the sum of \$1200.00 per month gross is added to Mother's income for a total of twenty-four months.

The Domestic Relations Order shall be effective as of June 1, 2000, allowing for a credit to Father for providing support during his period of residential custody. The effective date is an estimation of Father's residential custody period. This date will also provide a start date that will ultimately coincide with an end date for calculating Mother's workers' compensation award and child's estimated graduation date from high school.

The portion of the Court Order dated August 31, 2000, that specifically relates to the child's insurance coverage is affirmed.

#### ORDER OF COURT

And now this 4th day of December, 2000, after review of the hearing and review of the briefs submitted by counsel, it is hereby ordered that this case is remanded to the Domestic Relations Section of the Court to render an Order consistent with this Court's opinion.

## *Franklin County Bar Association Lunch and Learn Program*

# Motions Practice and Courtroom Guidelines from a Judicial Perspective

*presented by*

The Honorable Douglas W. Herman

The Honorable Carol L. Van Horn

The Honorable Richard J. Walsh

*Court of Common Pleas, 39th Judicial District*

## Friday, February 2

Noon–1:30 p.m. • Jury Assembly Room, Franklin County Courthouse

Registration deadline is Wednesday, January 31

For more information, call the FCBA office at 267-2032

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#### Franklin County Legal Journal

The Franklin County Legal Journal is published weekly by the Franklin County Bar Association, 173 Lincoln Way East, Chambersburg, PA 17201. Subscriptions are \$30 per year.

Legal notices and all other materials must be received by noon on the Tuesday preceding the publication date. Send all materials to Carolyn Seibert-Drager, editor, at the above address or e-mail to <fcba@cvn.net>.

**POSTMASTER:** Send address changes to the Franklin County Legal Journal, 173 Lincoln Way East, Chambersburg, PA 17201.