

ORDER OF COURT

June 13, 1991, the court denies the appellant's request for rear yard setback variance.

COFFMAN V. COFFMAN, C.P. Franklin County Branch, No.
F.R. 1979-933S

Support - Reduction in Income - Substantial Change in Circumstances

1. A support order may be modified only upon a showing of substantial change in circumstances.
2. A voluntary change of occupation made in good faith may constitute a material change in circumstances sufficient to warrant a modification of child support.
3. Where father left a job in California and took a job closer to his children at less pay, his support payments may be reduced.

Deborah K. Hoff, Esq., Attorney for Plaitiffs
Timothy W. Misner, Esq., Attorney for Defendant

OPINION AND ORDER

WALKER, J., July 2, 1991:

FINDINGS OF FACT

On May 2, 1989, Lloyd A. Coffman, Jr., petitioner, was ordered by the court to pay \$115.50 twice a month to Debra K. Coffman, respondent, for the support of his children, Adrienne Lynn, born January 7, 1978, and Ashley Marie, born June 6, 1983. At the time of this order, Lloyd had an associate degree in electronics and was employed with Autocall Incorporated in California where he made \$380.00 per week.

In April of 1990, Lloyd voluntarily quit his job in California in order to return to Hagerstown, Maryland to be located near his children and his parents. Lloyd is currently employed as a press operator with the Station House in Hagerstown, Maryland where he makes \$200 per week in take home pay.

On February 8, 1991, Lloyd filed a petition for the modification of the May 1989 support order, requesting the reduction of the support payments to a reasonable weekly amount.

The issue presented to the court is whether the events leading to the petitioner's reduction in income establishes a substantial change in circumstances, and thus warrants a reduction in his support payments.

DISCUSSION

A support order is not final and may be increased or decreased if the financial conditions of the parties change. *Commonwealth ex rel. Burns*, 251 Pa.Super. 393, 400, 380 A.2d 837 (1977); *Commonwealth v. Vogelsong*, 311 Pa.Super. 507, 511, 457 A.2d 1297 (1983). However, a support order may be modified only upon the demonstration of a substantial change in circumstances. *Jaskiewicz v. Jaskiewicz*, 325 Pa.Super. 507, 509, 473 A.2d 183 (1984). In a request for modification of child support orders, the party seeking the modification bears the burden of proving a change of circumstances that will justify the modification. *Id.* Only material and substantial changes in circumstances will warrant a modification of a support order. *Id.*

A voluntary change of occupation made in good faith may constitute a material change in circumstances sufficient to warrant a modification in the child support order. The test used by this court to determine a good faith change is whether the change in occupation was made to evade financial responsibility for supporting the child. If the party seeking the modification deliberately designed to avoid responsibility for his or her dependents, the modification will be denied on the basis of bad faith. Appellate courts have held that a parent may not obtain a reduction in the amount of support which a parent must provide for his or her children if that parent intentionally reduced his or her earnings. *Robert v. Bockin*, 315 Pa.Super. 52, 55, 461 A.2d 630 (1983); *Weiser v. Weiser*, 238 Pa.Super. 488, 492, 362 A.2d 287 (1976).

In the current situation, the court finds that Lloyd's change in employment was made in good faith. Lloyd voluntarily resigned from his position in California, paying \$380, in order to move to

Hagerstown, Maryland to be closer to his children and parents. Upon moving to Hagerstown, he was unable to secure a position in the field of electronics. The record does indicate that Lloyd did use reasonable efforts when searching for employment. However, no job openings existed in the Hagerstown area in his field. Therefore, he had to take a job paying \$200 a week as a press operator. Granted, Lloyd is not working up to his earning capacity, but he did make reasonable efforts to find employment commensurate with his abilities. Natural economic factors dictate that Lloyd will continue searching for employment in the field of electronics since this area of employment offers a greater salary. The amount of child support is simply a percentage of the party's earnings. If Lloyd earns a greater income, he, as well as the children, would benefit.

Furthermore, there is no indication in the evidence before the court that Lloyd left his job in California so as to effect his children's right to support. Therefore, Lloyd should be granted a reduction in his child support obligation. If the court was to hold otherwise it would effectuate an involuntary servitude on Lloyd. Lloyd's freedom to move closer to his children would be limited by his financial obligations owed to his children. This court refuses to support this policy. Instead, the court feels the children would benefit more by their fathers presence.

Considering all the evidence, the court holds that Lloyd Coffman is entitled to a modification in his support order. However, if in the future, Lloyd obtains employment in the field of electronics and earns a greater income, the support order may be modified once again.

ORDER OF COURT

July 2, 1991, the petition to modify the support order is granted, and the Franklin County Domestic Relations' Office is directed to schedule a support conference. The hearing officer shall determine the support order on the basis of the defendant's present earnings.

MARYLAND NATIONAL BANK V. GIBBLE, C.P. Franklin
County Branch, No. DSB 1988-734

Motion to Strike - Petition to Open Judgment

1. A motion to strike a judgment is filed when the judgment is entered for items not included in the contract.
2. A petition to open a judgment is filed when an alleged defect in a confessed judgment is based on a matter outside the record.
3. Where a defendant waits thirteen months to petition to open judgment, he has not acted promptly and may not have his judgment opened.
4. Ongoing negotiations after the entry of judgment is not an excuse for delay of petition to open.

Anthony Stefanon, Esq., Attorney for Plaintiff
Eric L. Brossman, Esq., Attorney for Defendant

OPINION AND ORDER

Keller, P.J., June 25, 1991:

The inception of this litigation was the filing of a complaint for confession of judgment by Maryland National Bank, plaintiff, against Darrel R. Gible, defendant, on November 23, 1988. Judgment was entered in the amount of \$445,600 which included the principal amount of \$380,000, accrued and unpaid interest to November 22, 1988 of \$8,600, and attorney fees of \$57,000. The required notice of entry of judgment was sent by plaintiff to defendant on November 23, 1988.

Subsequent to the entry of judgment the parties and their representatives entered into negotiations concerning an underlying obligation of Nibble with Gibbles, Inc. The defendant was president of the corporation and had guaranteed its obligation with the plaintiff. The judgment here under considerations was entered on defendant's note of August 11, 1988 captioned "Unconditional Guaranty of Payment". Inter alia payments were made on account of the underlying corporate obligations after entry of the judgment. The defendant took no action with regard to the judgment.