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NORMA G. GLUNT, Plaintiff, v. CASEY E. GLUNT, Defendant
C.P. Franklin County Branch, Domestic Relations Section
Docket No. 1997-1086

Voluntary change in employment — Deviation from support guidelines due to multiple family households — Nurturing Parent Doctrine — Calculation of net income when a parent qualifies under the Nurturing Parent Doctrine

1. In order to support a reduction in their child support obligations, parents must show that a voluntary change in employment was not undertaken for the purpose of avoiding their child support obligations.
2. The Court considers the difference in wage rates, length of time between periods of employment, and feasibility of changing jobs for the sole purpose of avoiding payment of child support to determine whether a parent's change in employment was undertaken to avoid his or her child support obligations.
3. Frequent changes in employment standing alone are not sufficient to hold a parent to an earning capacity calculation for purposes of determining net income.
4. When a parent is a member of a multiple family household, he or she is entitled to a proportionate reduction in child support obligations when the total child support obligation exceeds 50% of his or her net income. Pa. R.C.P. 1910.16-7(2).
5. In determining parents' total child support obligations, there should be a computation of income for each household that includes the income of both parents in each household.
6. The Nurturing Parent Doctrine allows a parent to be excused from contributing to a child's support when a parent stays at home to care for a minor child.
7. A parent who qualifies for an exception under the Nurturing Parent Doctrine, but who chooses to work part time, should not be held to his or her full-time earning capacity for purposes of calculating net income.

Appearances:

D. Lloyd Reichard, Esq., counsel for the plaintiff
Casey E. Glunt, defendant pro se

OPINION AND ORDER

Van Horn, J., January 5, 2001

Background

Casey E. Glunt (Father) and Norma G. Glunt (Mother) were married when their child, Casey L. Glunt (Child), was born on June 13, 1996. The parties separated in July 1997 and were divorced in 1998. Mother has primary physical custody of Child with Father exercising partial custody on an alternating weekend schedule. Father has remarried and has two children with his wife, Jennifer Glunt: Dylan Glunt, born August 6, 1998,

and Courtney Glunt, born June 15, 2000. Jennifer Glunt provides daycare services at their home and earns approximately \$100.00 per week.

Father was employed by J.L.G. in August 1998 and earned \$10.65 per hour when he terminated his employment in May 2000 to take a job closer to home. He went to work for Kurdziel (May 2000-August 2000) and his initial rate of pay was \$8.93 per hour with the potential of making an additional dollar an hour as a painter. Father left Kurdziel due to a dispute over paychecks and was unemployed for two months. He then found employment at Jerr-Dan in October 2000 earning \$8.97 per hour. He works forty to forty-two and a one half hours per week. Father testified that he intends to open a body shop and become self-employed after the first of the year.

Mother currently resides with Child; his step siblings, Sherry Fales, born May 18, 1998, and Angel Fales, born October 14, 1999; and her boyfriend, Harry Fales, who is self-employed as a carpet layer. Since August 2000, Mother has worked on a part-time basis at Food Lion and works approximately fifteen to twenty-three hours per week. She was previously employed full time at Tice & Co. P.C. at a rate of \$8.00 per hour from August 1996 until October 1999. Mother voluntarily terminated her employment after the birth of her third child due to the high cost of childcare (\$60.00 per week per child). Family members provide child care for the children while Mother works part time at Food Lion.

Father has filed an appeal of a Support Order dated November 14, 2000, that sets Father's income at \$1,370.33 net per month and Mother's income at \$821.16 net per month. Father's child support obligation is \$344.33 a month. Father claims that this amount of support is excessive because his income has decreased due to new employment and the hearing officer failed to consider his obligation to support the children in his present family. Father further alleges that Mother should be held to her full-time earning capacity since she voluntarily terminated her employment with Tice & Co. P.C.

Mother claims that Father should be held to the earning capacity calculated while Father was employed at J.L.G. or \$10.65 per hour. Mother also alleges that Father should not be given a deviation from the guideline amounts because he has two additional children to support in his present family.

A hearing was held in this matter on December 6, 2000, and it is now ripe for disposition.

Discussion

The Court is called upon to resolve the following issues: 1) whether Father is entitled to a reduction in the amount of his net income due to a change in employment; 2) whether Father is entitled to a deviation in the amount of child support due when there are multiple families to support; and 3) whether Mother should be held to her full-time earning capacity for purposes of calculating her child support obligations.

Change in Father's Employment

Father must show that his voluntary change in employment was not undertaken for the purpose of avoiding his child support responsibilities in order to substantiate a reduction in his child support obligation. *Grimes v. Grimes*, 408 Pa. Super. 158, 162, 596 A.2d 240, 242 (1991), see also *Beegle v. Beegle*, 438 Pa. Super. 285, 287, 652 A.2d 376, 377 (1994). When seeking a modification of a support order that reflects his actual earnings, Father must establish that he attempted to mitigate his loss of income when he changed employment. *Grimes* at 164, 243.

While the Court has concerns about Father's erratic work history, the Court does not find that Father's voluntary changes in employment were based on his effort to avoid his child support obligations.

Father was employed by J.L.G. for almost two years and his hourly wage increased over the two-year period to a rate of \$10.65 per hour. After leaving J.L.G. Father was employed by Kurdziel with an anticipated \$9.93 per hour rate of pay. He left Kurdziel over a wage dispute and was unemployed for two months. Father found employment with Jerr-Dan in October 2000 earning \$8.97 per hour with the potential of three hours of overtime per week. The minute difference in the change in his hourly wage does not indicate that he was seeking to avoid or obtain a reduction in his child support obligations. The fact that Father was only unemployed for a period of two months coupled with the minimal difference in his hourly rate suggests that he made an effort to mitigate his loss of income. In addition to the child who is the subject of this action, Father has a wife and two additional children to support and the Court suspects that he could not afford to assume a lower-paying job just to avoid this child support obligation.

The Court finds that Father's child support obligation should be based on his current actual earnings from Jerr-Dan or \$8.97 per hour with applicable overtime.

Father should be on notice that this actual earnings assessment applies only to Father's current employment status at Jerr-Dan. In the event Father

chooses to become self-employed resulting in less income, he shall be held to this minimum level of earnings.

Father's Entitlement to a Multiple Family Deviation

When confronted with multiple family households, the Court shall consider other support obligations of the parties and other income in the household when deciding whether to deviate from the amount of support determined by the guidelines. Pa.R.C.P. 1910.16-5(b)(2)&(3). The Court may consider a proportional reduction in the amount of support when the total amount of support exceeds 50% of a parent's monthly income. Pa.R.C.P. 1910.16-7(2). The Pennsylvania Supreme Court found that a careful consideration of all of the relevant factors is necessary in deciding whether the circumstances warrant a deviation. *Elias v. Spencer*, 673 A.2d 982, 984, (Pa. Super. 1996), quoting *Ball v. Minnick*, 538 Pa. 441, 648 A.2d 1192 (1984).

Both parties to this action are members of a multiple family household. Father has two additional children, Dylan Glunt, born August 6, 1998, and Courtney Glunt, born June 15, 2000. Father has remarried and his wife Jennifer Glunt works as a child care provider in their home with an income of \$100.00 per week. Mother also has two additional children, Sherry Fales, born May 18, 1998, and Angel Fales, born October 14, 1999, and shares a home with their father.

Father is entitled to a proportional reduction in his child support obligation if his total support obligation exceeds 50% of his net income. The total amount of child support is the basic amount of child support calculated under Pa.R.C.P. 1910.16-4. See Pa.R.C.P. 1910.16-7(3). When a multiple family exists, a separate calculation of Father's child support obligations should be done for each household. These household calculations should include the income from each parent.

This case is remanded to the Domestic Relations Division of the Court for recalculation of Father's net monthly income based on the actual income earned at his current position with Jerr-Dan. The child support guideline calculation shall be performed to determine the amount of support for Child and the amount of support for the children of his intact family. If Father's total obligation exceeds 50% of his net monthly income, the Court directs that a proportionate reduction in Father's child support obligation be applied to adjust the basic guideline calculation.

Mother's Full-Time Earning Capacity

Father contends that Mother should be held to her full-time earning capacity when determining her child support obligations. Mother challenges

this contention citing the application of the nurturing parent doctrine because she is caring for two additional children from her current relationship. She alleges that her actual earnings from part-time employment and not the potential earnings from her past full-time employment should be considered in calculating her child support obligations. The Court agrees with Mother's assertions.

Generally a parent's ability to provide child support is based on the parent's earning capacity not the parent's actual earnings. *Frankenfield v. Feeser*, 672 A.2d 1347, 1349 (Pa. Super.1996), citing *Commonwealth ex rel. v. Wasiolek v. Wasiolek*, 251 Pa. Super. 108, 380 A.2d 400 (1977). The "nurturing parent doctrine" allows a nurturing parent to be excused from contributing support payments when a parent chooses to stay at home with a minor child. *Id.* In determining the applicability of the doctrine, the Court must consider the age and maturity of the child, the availability of others who might assist the parent, the adequacy of available financial resources if the parent remains at home, and, finally, the parent's desire to stay at home and nurture the minor child. *Frankenfield*, supra., quoting *Hesidenz v. Carbin*, 354 Pa. Super. 610, 616, 512 A.2d 707, 710 (1986).

In applying these factors to the case at bar, the Court finds that Mother has presented ample evidence to warrant the implementation of the "nurturing parent doctrine."

Mother resides with Child, age four, and her two additional children ages two years and sixteen months respectively. Mother was previously employed at Tice & Co. P.C. and terminated her employment after the birth of her third child in October 1999 due to child care expenses (\$60.00 per week per child). While these facts may not support a finding that Mother desired to stay at home, these facts suggest that Mother terminated her full-time employment out of necessity because her child care expenses would exceed 50% of her gross weekly income.

Mother has been employed part time at Food Lion earning \$5.75 per hour since August 2000. Mother testified that family members provide child care while she is working thereby eliminating all of her child care expenses. These facts show that Mother is attempting to financially provide for all of her children while still remaining at home.

Mother has established that she is entitled to an exception under the nurturing parent doctrine. Unlike an unemployed parent who seeks refuge under the doctrine, Mother is working part time to supplement her family's income and she should not be penalized for her efforts. Therefore, the Court finds that Mother's actual income should be considered for purposes of

calculating her child support obligations. If the Court were to hold otherwise a parent who qualifies for an exception under the nurturing parent doctrine would not have any incentive to contribute to the support of their child.

Conclusion

Father's child support obligations should be based on his current income from Jerr-Dan. Father shall be held to this minimum level of earnings despite any decrease in income that may occur as a result of his possible decision to become self-employed in 2001.

This case is remanded to the Domestic Relations Division of the Court to determine Father's net monthly income based on his current employment. If Father's total child support obligations exceed 50% of his net monthly income, a proportionate reduction in Father's child support obligations shall be applied.

Because Mother is entitled to an exception based on the nurturing parent doctrine, the Domestic Relations Division shall consider Mother's actual income for purposes of calculating her child support obligations.

The effective date of the Domestic Relations Order shall be October 10, 2000, to coincide with the date of filing.

ORDER OF COURT

And now this 5th day of January, 2001, after a hearing, it is hereby ordered that this case is remanded to the Domestic Relations Division of the Court to render an Order consistent with this Court's opinion.

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