

LESLIE A. BRANG, Plaintiff v. TIMOTHY M. SOLER,
Defendant, C.P. Franklin County Branch, Civil Action - Law,
DRS 199801150 PACSES Case No. 955100388, Support
Action

Brang V. Soler

Child Support - Nurturing Parent Doctrine - Estimation of Income

1. The purpose of child support is to further the welfare and best interests of the child for whom the support order is entered.
2. Both parents have an equal responsibility to support their children, but this does not mean they must pay the same amount of support.
3. The amount of support a parent pays is determined on his or her relative income and ability to provide support which is based upon earning capacity rather than actual earnings.
4. The nurturing parent doctrine holds that an earning capacity cannot always be imputed to a parent who chooses to stay at home with a minor child.
5. In order to determine whether the nurturing parent doctrine applies, the court must consider (1) the age and maturity of the child; (2) the availability and adequacy of others who might assist the custodian-parent; and (3) the adequacy of available financial resources if the custodian-parent does remain at home.
6. The nurturing parent doctrine has been extended to situations where the parent stays at home with a child who is not the subject of the support order.
7. The nurturing parent doctrine will not apply forever because as a child matures, a parent's argument that he or she must remain at home pales.
8. In determining a parent's support obligations, the court should consider the parent's income, the full nature and extent of the parent's property interests, and financial resources.

Carol A. Redding, Esquire, Counsel for Plaintiff
D. Lloyd Reichard, II, Esquire, Counsel for Defendant

OPINION AND ORDER

WALKER, P. J., December 2, 1999:

Factual and Procedural History

This case is a child support appeal which involves issues about the nurturing parent doctrine and estimation of income. Leslie A. Brang (hereinafter Mother) and Timothy M. Soler (hereinafter Father) are the parents of three children: Kerry, age 19; Joseph, age 16; and Nicole, age 13. Joseph resides with Father, and Nicole resides with Mother. The support of Kerry is not at issue because she is an adult. As a result of a mutual decision with Father, Mother stayed home with these children when they were younger.

Mother remarried over 3 years ago. She has a son, Christopher, with her current husband, David Brang. Christopher was born on December 7, 1995. Mother is currently unemployed because she stays at home with Christopher. She had worked at Sam's Club in Hagerstown, Maryland, until April 1998. At the time she stopped working, Mother was making \$7.10 per hour and working 18 to 20 hours per week. She stopped working because she felt that Christopher needed her to be at home. Also, Sam's Club was cutting back on her hours. She could not get child care for the weekends which was when Sam's Club wanted her to work. Mother's current husband is an engineer for the railroad. As a result, he has an unpredictable schedule and is away from home about 15 hours at a time. Mother did not think it was fair to make Nicole, age 13, care for Christopher when Mother was at work. No one else is available to care for Christopher while Mother and her husband are at work.

Father is self-employed as a telephone installer. He is not paid a salary, but he takes money out of his business account for his personal use. Father writes some business checks out to cash, pays a business expense, and keeps the remainder of the money for his personal use. Other times, Father writes business checks to pay his personal expenses. However, Father could not estimate how much money he had spent on his personal expenses. Michael Gibson, Father's accountant, estimated that

the net profit of Father's business from January 1999 through July 1999 to be \$39,487.57. In 1998, Father's adjusted gross income was \$11,340. Mr. Gibson testified that Father's income for 1999 would be approximately equal to his 1998 income.

Discussion

The purpose of child support is to further the welfare and best interests of the child for whom the support order is entered. *Commonwealth ex rel. Wasiolek v. Wasiolek*, 251 Pa. Super. 108, 112 (1977). Both parents have an equal responsibility to support their children. *Frankenfield v. Feeser*, 449 Pa. Super. 47, 51 (1996). However, this does not mean that each parent must pay the same amount of support as the other parent. *DeWalt v. DeWalt*, 365 Pa. Super. 280, 284 (1987). The amount of support that each parent pays is determined on the basis of his or her relative income and ability to provide support. *Depp v. Holland*, 431 Pa. Super. 209, 213 (1994). Specifically,

“the determination of a parent's ability to provide support is based upon the parent's earning capacity rather than upon his or her actual earnings”.

Frankenfield, 449 Pa. Super. at 51.

However, the nurturing parent doctrine holds that an “earning capacity cannot always be imputed to a parent who chooses to stay home with a minor child”. *Id.* (quoting *Hesidenz v. Carbin*, 354 Pa. Super. 610, 616, 512 A.2d 707, 710 (1986)). Therefore, the parent who elects to stay at home with a child is excused from contributing support. *Kelly v. Kelly*, 430 Pa. Super. 31, 34 (1993). In order to determine whether the nurturing parent doctrine applies, the court must consider (1) the age and maturity of the child; (2) the availability and adequacy of others who might assist the custodian-parent; and (3) the adequacy of available financial resources if the

custodian-parent does remain at home. *Wasiolek*, 251 Pa. Super. at 114.

“[W]hile not dispositive, the custodian-parent's perception that the welfare of the child is served by having a parent at home is to be accorded significant weight in the court's calculation of its support order”.

Wasiolek, 251 Pa. Super. at 114. Furthermore, the Superior Court suggested that the prior practice of staying at home with a child is a relevant consideration. *Frankenfield*, 449 Pa. Super. at 57.

The nurturing parent doctrine has been extended to situations where the parent stays at home with a child who is not the subject of the support order. *Bender v. Bender*, 297 Pa. Super. 461, 467 (1982); *Atkinson v. Atkinson*, 420 Pa. Super. 146, 148 (1992). In *Bender*, the court stated that the trial court, on remand,

“may wish to consider the fact that the child to be ‘nurtured’ is not the subject of the support order, although we do not feel that this fact necessarily removes this case from the application of the ‘nurturing parent doctrine’”.

Bender, 297 Pa. Super. at 467. Furthermore, in *Atkinson*, the court determined that the trial court correctly stated that the real issue was

“not whether the mother was caring for her children as opposed to *their* children, but whether under the facts of the case what the earning capacity would be”.

Atkinson, 420 Pa. Super. at 148 (emphasis in original). In *Frankenfield*, the court applied the nurturing parent doctrine and did not impute an earning capacity to a mother who chose to stay at home with her child from her second marriage. *Frankenfield*, 449 Pa. Super. at 57.

In this case, Mother argues that the nurturing parent doctrine should apply because she is staying home with her son,

Christopher, whose father is Mother's current husband, David Brang. Although Christopher is not the child who is the subject of the support order, the court finds that this fact is irrelevant if the factors for the nurturing parent doctrine are met. With regard to the age and maturity of the child, the first factor, Christopher will be four in December. As with her other children, Mother has chosen to stay home with Christopher while he is young. Although she worked for almost the first two and one-half years that Christopher was born, she stopped working in April 1998 because she felt that Christopher needed her at home.

Furthermore, with regard to the second factor, the availability and adequacy of assistance, her previous employer, Sam's Club, wanted her to work on the weekends which made it difficult for her to find child care for Christopher. Mother's current husband is an engineer for the railroad so his schedule is unpredictable. Mr. Brang is away from home about 15 hours at a time. Mother did not think it was fair to require Nicole to care for Christopher while she and her husband were at work. No one else is available to care for Christopher while his parents are at work.

With regard to the adequacy of financial resources, the third factor, Father offered no evidence on this factor. It appears that Father will be able to adequately support Nicole even if Mother stays home to care for Christopher. Therefore, the nurturing parent doctrine applies to Mother, and no earning capacity will be imputed to her at this time.

However, the nurturing parent doctrine will not apply forever. The court, in *Wasiolek*, noted that

"as a child matures, a parent's argument that he or she must remain at home pales and a court is free to discount that explanation for nonmonetary contribution to a child's support".

Wasiolek, 251 Pa. Super. at 113 n.3. When Christopher begins kindergarten, Mother will be able to work part-time. The court would then impute an earning capacity to her based on 20 hours per week. However, when Christopher begins first grade, Mother would have an earning capacity imputed to her based on 40 hours per week.

The second issue facing the court is estimating Father's income. In determining a parent's support obligation, the court should consider the parent's income, the full nature and extent of the parent's property interests, and financial resources. *Commonwealth ex rel. Hagerty v. Eyster*, 286 Pa. Super. 562, 568 (1981).

"[T]he federal government's decision not to tax particular items does not control the calculation of earning power as one of the elements in determining a support order".

Commonwealth ex rel. ReDavid v. ReDavid, 251 Pa. Super. 103, 106 (1977). Therefore, cash flow rather than federally taxed income should be considered. *Eyster*, 286 Pa. Super. at 569.

In the present case, Father is self-employed as a telephone installer. He takes money out of his business account to pay his personal expenses rather than collecting a salary. However, Father could not estimate the amount of money he took out of his business account to use for his personal use. The net profit for his business from January 1999 through July 1999 is estimated to be \$39,487.57. Father's adjusted gross income for 1998 was \$11,340, and Father's accountant estimated that Father's income for 1999 would be about the same.

The court, in its infinite wisdom, after hearing the testimony and judging the credibility of the witnesses firmly, believes that Father is paying some of his personal expenses with cash from his business account and writing business checks for his personal use. The court does not believe that Father's income

is \$15,854, as Father suggests, or that his income is \$38,111.48, as Mother suggests. As a result, the court is arbitrarily assigning Father an income of \$25,000 which the court believes is fair and equitable based on the evidence presented.

ORDER OF COURT

December 2, 1999, after consideration of the testimony at the hearing and the arguments made by counsel, the court finds that the nurturing parent doctrine applies to Leslie A. Brang and no earning capacity will be imputed to her at this time. The court also finds that Timothy M. Soler has an income of \$25,000.

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