

IT IS ORDERED that the balance in the hands of the accountant be distributed as follows:

SCHEDULE OF DISTRIBUTION

Balance in the hands of the accountant	\$9,634.52
Additional charges against the estate:	
Beck, Patterson & Kaminski, legal fee \$	175.00
Glen E. Shadle, Clerk of Courts, Costs of Audit	376.05
Martin A. Landis, for care of decedent prior to his death	1,420.00
Total charges against the estate	1,971.05
Balance for Distribution	\$7,663.47

The balance for distribution shall be distributed as follows:

To Jane D. Williamson	\$ 1.00
To Pearl M. Wyble	1.00
To William H. Mogg	957.68
To Martin Landis	957.68
To Elmer Landis	957.68
To Trinity Lutheran Church	957.68
To Maude E. Harner	957.68
To John Calbraith	957.69
To William Shifflett	957.69
To Nevin Martin	957.69
	\$7,663.47

which exhausts the fund.

It further appearing to the court that the estate has overpaid the transfer inheritance taxes, it is directed that the accountant apply to the Commonwealth for a refund and that upon receipt thereof, he pay to each of the above-named legatees, except Jane D. Williamson and Pearl M. Wyble, a one-eighth share thereof, and a release signed by each such legatee for such share shall be a sufficient accounting by the executor for the faithful performance of the provisions of this part of the order. The payment of the additional charges against the estate and the above stated distribution of the balance shall not await the completion of the claim for a refund of taxes but shall be made forthwith.

COMMONWEALTH Ex. Rel. BAUGHMAN v. BAUGHMAN, C.P. Cr. D. Franklin County Branch, No. N.S. 31 of 1974

Non-support - Parental Responsibility of Support - Conway v. Dana - Modification of Order of Support of Minor Child - Earning Capacity.

1. An order of support of a minor child which predates the decision of the Supreme Court of Pennsylvania in *Conway v. Dana*, 456 Pa. 536, 318 A.2d 324 (1974), may be modified to take into account the altered obligation of support.

2. Generally, modification of a court order of support of a minor child may occur only upon a showing of changed circumstances, and the party seeking it must show by competent evidence changes justifying modification.

3. The Supreme Court of Pennsylvania in *Conway v. Dana* 456 Pa. 536, 318 A.2d 324 (1974), held that the support of a minor child is the equal responsibility of the child's mother and father, according to their earning capacities.

4. A mother who is employed and who then removes herself from the employment market, not because of the need to be with her children but because of her remarriage, retains the earning capacity she had before she terminated her employment.

5. To determine a mother's employability with respect to her obligation to support her minor child, the following factors should be considered: her work record and availability for employment, her skills, her health and stamina, and the presence or absence of children in the home.

Kenneth F. Lee, Esq., Attorney for Petitioner

Timothy S. Sponseller, Esq., Attorney for Respondent

OPINION AND ORDER

Eppinger, P.J., January 26, 1977:

On March 13, 1974, on the stipulation of William A. Robertson (father), without the assistance of counsel, and Beverly A. Robertson, now Beverly A. Baughman (mother) who had an attorney, the father agreed to pay the mother the sum of \$85.00 per week for the support of four minor children. He also agreed to maintain medical and hospitalization insurance as provided at his place of employment for the benefit of his family. The court made a notation that the father's income at the time of the making of the order was \$127.00 per week. Nothing is said about the mother's income.

LEGAL NOTICES, cont.

QUINCY TOWNSHIP		
FREEMAN, Junior & Anna	L-8-117 E. of Mt. Alto	55.42
KAUFFMAN, Mervil & Mary	L-5-141 lot 4	64.85
FREEMAN, Junior & Anna	1973 Flamingo	452.09
KAUFFMAN, Mervil & Mary	1974 Shultz	512.57
SMETZER, George Roy	1968 American	337.82
ST. THOMAS TOWNSHIP		
KIRCHNER, George	M-18-139 Twp. 467	58.23
KIRCHNER, George C. Jr. & Donna	M-18-134 Twp. 467	52.92
MARTIN, Thomas & May and/or Ann Foust	1973 Eagle	444.47
IZER, Danny	1970 Villager	268.58
KIRCHNER, George & Donna	1972 New Moon	232.78
SOUTHAMPTON TOWNSHIP		
MOOREMAN, Charles & McCarthy, Michael	N-20-60 lot 7 4.35 Acres	106.48
KRINER, John	1966 Van Dyke	369.20
WHISLER, Richard	1958 Gardner	188.60
WASHINGTON TOWNSHIP		
BYRON, David	Q-14 Q-23 Monterey Circle 2.18 Acres	1,163.23
HALCOTT, Robert	Q-8-154 lot 20 Pine Hill Dr.	193.01
SIMMERS, Milton E. Jr. & Gloria	Q-8-150 lot 16 White Mill Rd.	831.02
CRILLEY, Stanley L. & Janet	1973 Hillcrest	117.85

MEMORANDUM

TO: All Members of Franklin County Bar
 FROM: William A. Sheaffer, Court Administrator
 RE: Medical Certificates and Blood Tests — Adoptions
 DATE: August 31, 1978

At the instruction of both judges, I am informing you that from now on the requirement for serological reports in adoptions is dropped. However, the requirement for a general health statement will still be continued.

Also, because of problems concerning notice, voluntary termination of parental rights hearings will no longer be held back-to-back with the adoption hearing on the same case.

The parties were divorced March 25, 1976, and the mother remarried. She received the jointly owned home as a part of a property settlement and is now receiving rental income of about \$40 per month. After the divorce and before she remarried, she was earning \$70 per week in her employment.

Though no change in his circumstances was shown, except that the father's income is now \$140 per week on a 40-hour basis and with overtime about \$165 per week,¹ the father asked the court to reduce the amount of support relying on *Raitt v. Raitt*, 203 Pa. Super 226, 199 A.2d 513 (1964). In that case, without assistance of counsel, the husband agreed to pay the wife \$75.00 per week for the support of one child from weekly earnings of \$140.00. When he filed his petition to modify, the Superior Court agreed that at the time the order was made, it was unquestionably high and therefore affirmed the lower court's correction of the inequity without the husband showing a change of circumstance. Generally, a modification of a court order may occur only on the showing of changed circumstances and the party seeking it, must show by competent evidence the changes that would justify a modification. *Commonwealth ex. rel. Luongo v. Tillye*, 229 Pa. Super 453, 323 A.2d 172 (1974).

However, as stated in *Luongo*, "Orders of support are not final and may be increased or decreased where the financial conditions of the parties change." The court also said the purpose of a support order is to provide a reasonable sum for the support of children, considering the property and earning capacity of the parents and their station in life. We might have concluded that the father has not shown any factual changes in circumstances that would justify a modification and that the existing order is not "unquestionably high" as required in *Raitt* for a modification without changed circumstances. However, we cannot overlook, *Conway v. Dana*, 456 Pa. 536, 318 A.2d 324 decided March 26, 1974, just eleven days after this order was made. Before *Conway*, the primary duty of support of a minor child rested on the father. That law was changed, however, in the court's decision that "Support, as every other duty encompassed in the role of parenthood, is the equal responsibility of both mother and father. Both must be required to discharge this obligation in accordance with their capacity and ability." The court concluded:

¹Considering the economic situation, fairness would dictate that the father's income be considered as somewhere between these two figures and for the purposes of deciding the case, the court used a weekly income of \$150.00. The pay periods used to compute the salary ended August 7, 1976, through October 16, 1976.

While we were impressed from the record with the careful and considerate treatment the parties received from the hearing court, we realize that the court was then proceeding under the former decisions of this jurisdiction. There is serious question what, if any, effect the fact of the mother's income had upon the decision. Combining the decrease in the father's income along with the additional income resulting from the mother's recently acquired employment provides a sufficient change in circumstances to warrant a modification of the original order.

See also *Kaper v. Kaper*, 227 Pa. Super 377, 323 A.2d 222 (1974).

Knowing that a mother is equally responsible with the father, do we determine her obligation to support the children from her income or from her earning capacity? In *White vs. White*, 226 Pa. Super 499, 313 A.2d 776 (1973), our Superior Court said:

In the interest of fairness and with consistency in mind, we see no reason why, in this day and age, a court must limit its inquiry to the wife's earnings. Under the appropriate circumstances a wife's "earning capacity" may be a material factor in arriving at a reasonable support order. Id 504.

In footnote No. 5, Id. pg. 505, the court discusses the factors to be considered to determine the wife's employability. These include her work record, availability for work, relative skills, health, stamina, and presence or absence of children in the home for which she would have responsibility. See also *Commonwealth ex. rel. Kaplan v. Kaplan*, 236 Pa. Super 26, 344 A.2d 578 (1975).

That brings us to a consideration of footnote No. 4 on page 504 where the court expresses the view that there are strong moral reasons and public policy considerations why the law should not by implication force a wife to seek employment when there are minor children in the home, saying a mother has a moral, if not a legal right, to choose to remain in the home with these children to provide the constant presence of a parental figure. In this case, the children are eight, six, four, and two years old. As indicated, there was evidence that prior to her re-marriage, the mother was employed at \$70.00 per week. At that time apparently she had chosen to make other arrangements for the care of the children, other than looking after them herself during her working hours. Had she not remarried, we would have considered her weekly income to be \$80.00, \$70.00 from employment and \$10.00 from rent. Under these circumstances a fair amount for the father to

pay would have been \$66.00 weekly.

We are now faced with the question whether the mother should be required to contribute to the support of the children. After all, she is not employed at the present time. We hold that where a woman who is employed and who removes herself from the employment market, not because of the need to be with her children, but because she has remarried, retains the "earning capacity" she had before she gave up her job. It follows that in this case the mother's earning capacity will be considered in arriving at the amount the father must pay for child support. We have already indicated that we feel \$66.00 per week would be a fair amount.

We started with the proposition that the father had shown no changes in his circumstances except improvements in his earnings. He has shown, however, that the mother has an "earning capacity", that since the order in this case was made the courts have changed the law, the father is no longer primarily responsible for child support, that duty is now to be borne equally by both parents. Thus the changes required in *Luongo* that would justify a modification in this court order have occurred.

ORDER OF COURT

NOW, January 26, 1977, the prayer of the petition to modify the support order is granted and it is ordered that the respondent, William E. Robertson, shall pay to his former wife, Beverly Baughman, the sum of \$66.00 per week, beginning Monday, January 31, 1977, for the support of his four minor children, Keith Robertson, born January 14, 1968, Heather Robertson, born July 16, 1969, William Robertson, born October 7, 1971, and Jeffrey Robertson, born May 7, 1973. In all other respects, the order of March 13, 1974, shall remain in full force and effect.

The respondent, William E. Robertson, shall pay the costs of these proceedings.

BROWN'S SUCCESSOR TRUSTEE v. THIBAUT, et. Ux.,
C.P. Franklin County Branch, Ex. No. 6, February Term 1969

Single Bill - Principal-Surety Relation - Tenants by the Entireties - Right of Subrogation - Marshalling - Bankruptcy.

1. Where tenants by the entireties co-sign a note, it may be shown by way of defense to an action upon the note that one co-signer was solely a surety on the obligation.