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Forty-three local attorneys formed the Franklin County Bar Association on May 23, 1899, according to Carol Van Horn, FCBA president. Today, 117 members follow the goals of its mission statement: "To serve and support the needs of our members professionally and socially, encouraging respect and collegiality (and to) encourage public respect for the rule of law and our system of justice.

Committed to service through a variety of programs including the monthly Law and You newspaper and Web column, a speakers' bureau and the Stepping Out program which helps high school seniors understand adult rights and responsibilities, the FCBA has expanded its reach into the community in honor of the centennial.

Throughout 1999, members are:

- Participating in Red Cross Bloodmobile visits
- Volunteering in the Salvation Army Soup Kitchen in Chambersburg
- Planting trees in Chambersburg, Greencastle, Mercersburg and Waynesboro
- Donating the Legal Almanac Series to the Franklin County Library System
- Providing additional assistance to Legal Services, Inc.

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MELVIN E. EBERSOLE, Plaintiff vs. JEAN E. EBERSOLE, Defendant, C.P. Franklin County Branch, Civil Action - Law, Action in Support, No. DRS 1998-01112, PACSES Case No. 677100330, Other State ID No. 160362900

Ebersole v. Ebersole

Child Support - Agreement Between Parents Not to Pay Child Support

1. Parents have a duty to provide care, control, and subsistence for their children, as well as a duty to love, protect and support the child.
2. One parent cannot contract away the right of his or her child to seek adequate support from the other parent.
3. Agreement between parents that mother need not pay support while father (as the non-custodial parent) temporarily took child to live with him in Italy for three years is void as against public policy; mother is responsible for the child's support and must litigate father's failure to return the child to her through custody proceeding in child's home state.

Barbara B. Townsend, Esquire, Attorney for Plaintiff
Jean E. Ebersole, in propria persona, for Defendant

OPINION AND ORDER

WALKER, P.J., April 21, 1999:

Factual and Procedural Background

This case involves an appeal from a support order entered against Defendant Jean Ebersole for her twelve year old son, Brody Ebersole. A support order was entered on December 8, 1998, ordering her to pay \$191.42 bi-weekly, plus \$5.00 in arrearages. Jean filed a timely appeal and a hearing was held on February 3, 1999.

At the hearing, Jean testified that she had entered into an agreement with Melvin Ebersole which relieved her from her child support obligation. She testified that she had been awarded custody of Brody in April of 1994. Melvin had been ordered to pay \$60 per week for Brody's support. In the summer of 1996, Melvin informed her that he and his wife were going to live in Italy for three years. He asked her if she would consider allowing

Brody to go with them to give him the benefit of the life and educational experience. Jean gave her permission and she entered into an agreement with Melvin which stated as follows:

Both Melvin and Jean, intending to be legally bound, do hereby agree as follows:

1. No claim for child support shall be made by Melvin against Jean when Brody is in Melvin's care and primarily resides with him. Jean agrees to continue medical coverage for Brody (Pennsylvania Blue Cross/Blue Shield) and reimburse Melvin any monies paid by this insurance for expenses incurred by Brody while in Melvin's care.

2. Beginning with the 1996 tax year, provided that Brody spends the majority of the year with Melvin, the tax dependency exemption for Brody shall be alternated - Jean will claim Brody in even-numbered years; Melvin will claim Brody in odd-numbered years. Melvin and Jean agree to provide each other with any necessary documents to permit the claim for dependency exemption.

(emphasis added).

The order of court of August 26, 1996, approved the parties' stipulation to suspend Melvin's child support obligation effective August 12, 1996, because Brody was residing with him. Jean furthermore testified that they had an oral agreement that she would send money whenever it was needed for Brody and that Brody would be returned to her after Melvin returned from Italy. However, when he returned in the spring of 1998, Melvin refused to return Brody to Jean. In addition, Melvin had filed for support in the fall of 1997 while he was still in Italy. After a conference held before a conference officer of the Domestic Relations Section, the support order being appealed in this case was entered.

Discussion

Parents have a positive duty to provide care, control, and subsistence for their children, as well as a duty to love, protect, and support the child. *Miesen v. Frank*, 361 Pa. Super. 204, 208,

522 A.2d 85 (1987). This duty to support applies to both parents; both parents bear an equal responsibility for supporting their children in accordance with the capacity and ability of each to do so. *Id.* It is well-settled that one parent cannot contract away the right of his or her child to seek adequate support from the other parent. *Id.* In *Miesen*, the parents had entered into a separation agreement in which the father was relieved from all child support obligations. When a court order was entered ordering him to pay child support, he sought indemnification from the mother pursuant to their agreement. The court held that the indemnification clause would defeat the purpose of child support payments which are made for the welfare of the child. The court concluded that the father's attempt to shirk his legally mandated duty could not be permitted. *Id.*, at 209.

Similarly, in the underlying case, this court cannot permit Jean to shirk her legally mandated duty to provide support for Brody. She did not have the power to contract away her duty to support Brody. The agreement between Melvin and Jean is void as being against public policy. This court realizes that Jean feels that she does not need to pay support because Melvin has not complied with their agreement to return Brody to her after his return from Italy, even though the agreement does not specifically provide for Brody's return. However, that is a custody issue which must be litigated in Florida, where Brody and his father are residing. If Jean succeeds in obtaining legal custody through the Florida courts, then Melvin will in turn be responsible to pay child support. Until then, Jean is legally responsible to provide support for him. Thus, defendant's appeal is denied and the support order of December 8, 1998, remains in effect.

ORDER OF COURT

April 21, 1999, after consideration of defendant's appeal to the support order of December 8, 1998, this court finds that defendant is obliged to pay support for her son, Brody Ebersole. Defendant's appeal to the support order is hereby denied. The support order of December 8, 1998, remains in effect.