IN THE COURT OF COMMON PLEAS OF FRANKLIN COUNTY PENNSYLVANIA
No. 1999-40054
PETITION FOR CHANGE OF NAME
IN RE: CHERYL LYNN HORST
NOTICE

NOTICE IS HEREBY GIVEN That on April 20, 1999 the Petition of **Cheryl Lynn Horst,** was filed in the above-named Court, praying for a decree to change her name to **Ceryl Lynn Kireta.**

The Court has fixed June 22, 1999, at 10:00 a.m. as the time and Courtroom Number Three (3), of the Franklin County Courthouse, 157 Lincoln Way East, Chambersburg, PA as the place for the hearing of said Petition, when and where all persons interested may appear and show cause, if any they have, why the prayer of the said Petition should not be granted.

GARY L. ROTHSCHILD, ESQUIRE
3207 North Front Street
Harrisburg, PA 17110
(717) 221-8330
Attorney for Petitioner

5/14/99

IN THE COURT OF COMMON PLEAS OF THE 39TH JUDICIAL DISTRICT PENNSYLVANIA, FRANKLIN COUNTY BRANCH
In re: Petition of the Board of School: Directors of Chambersburg Area School: District to make private sale of real estate: located in Greene: Township Franklin: County, Pennsylvania, known as the: "Bream School Lot": Miscellaneous Docket No. 40055

NOTICE OF PRIVATE SALE OF UNUSED AND UNNECESSARY REAL ESTATE

NOTICE is hereby given that the Board of School Directors of Chambersburg Area School District, of Franklin County, Pennsylvania, propose to sell to Conrad D. Peachey and Donna M. Peachey, his wife, of 5262 Heisey Rd, Shippensburg PA 17257, for the sum or purchase price of three thousand, six hundred fifty ($3,650.00) dollars, the following unused and unnecessary school premises: BEGINNING at an existing iron pin at a comer common to the within described real estate and lands now or formerly of Peachey; thence South 44 degrees 14 minutes 51 seconds West 260.67 feet to a set iron pin at lands now or formerly of Neuder; thence by the same North 44 degrees 57 minutes 16 seconds West 82.50 feet to a set iron pin; thence continuing along lands of Neuder North 46 degrees 47 minutes 58 seconds Ease 264 feet to a set iron pin at a comer common to the within described real estate and lands now or formerly of Wingert; thence by the same South 46 degrees 07 minutes 58 seconds East 5.63 feet to an existing iron pin; thence South 55 degrees 53 minutes 22 seconds West 4.62 feet to an existing iron pin; thence through a private road along lands now or formerly of Peachey; South 45 degrees 59 minutes 19 seconds East 66.04 feet to an existing iron pin, the place of beginning. CONTAINING 19,968.31 square feet or 0.4584 acres.

BEING the same real estate shown on a certain survey of land prepared for Chambersburg Area School District by William A. Brindl Associates, Inc., dated September 8, 1998.

Pursuant to the provisions of the Act of 1949, March 10, P.L. 30, Section 707, as amended, 24 P.S. , Section 7-707, a hearing pertaining to the proposed sale shall be held in the Courtroom designated by the Court Administrator of Franklin County, Pennsylvania, on Thursday, June 3, 1999, at 11:00 a.m., prevailing time.

George W. Fike, Jr.
Business Manager
Chambersburg Area School District
511 S. Sixth St.
Chambersburg, PA 17201

Jan G. Sulcove, Esquire
82 W. Queen Street
Chambersburg, PA 17201
Solicitor
5/14,5/21,5/28/99

JOSEPH E. TIMMONS, III, Plaintiff vs. DENISE A. ROBINSON, Defendant, C.P. Franklin County Branch, Civil Action - Law, Action in Support, No. DRS 1998-00986, PACSES Case No. 468100291

Timmons v. Robinson

Appeal from domestic relations finding which imputed an earning capacity to mother for purposes of calculating child support obligations; the nurturing parent doctrine applied.

1) Both parents are equally responsible for the support of their children.

2) As a general rule, a parent's financial obligation is measured by earning capacity rather than by actual earnings.

3) The nurturing parent doctrine may be applied under certain circumstances to excuse a parent who stays home to care for a child from contributing support payments, in effect, imputing an earning capacity of $0.00 to that parent.

4) The court must consider the following factors in determining whether to apply the doctrine: 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, the parent's desire to stay home and nurture the child, the work history of the nurturing parent, the ability of the non-nurturing parent to support the child, and the fact that the child to be nurtured is not the child who is the subject of the support order.

5) Where the mother's parents and her husband work full-time, and paid daycare for their infant would be necessary if she returned to work even on a part-time basis, and her previous full-time work does not pay high wages or allow her scheduling flexibility, applying the doctrine was appropriate, particularly because the infant's fussiness would likely make it even more difficult to find adequate daycare.

6) Where the evidence showed the father could adequately support the parties' fifteen-year-old child who was the subject of the support order and who recently began living with the father, and the mother did not manipulate the child's residential situation in order to relieve herself of her duty to support that child, applying the doctrine was appropriate even though the infant to be nurtured is not the child who is the subject of the support order.

D.L. Reichard, II, Esquire, Attorney for Plaintiff
Janice M. Hawbaker, Esquire, Attorney for Defendant

OPINION AND ORDER

HERMAN, J., April 12, 1999:

INTRODUCTION

Before the court is the defendant's appeal from the domestic relations Order which imputed to her an earning capacity of $736.67. The issue is whether the nurturing parent doctrine should be applied to relieve the defendant of her obligation to provide support for the parties' child Justin Timmons under her current circumstances. We find the doctrine applies and direct the domestic relations section to recalculate the parties' respective support obligations consistent with this Opinion.

FACTUAL FINDINGS

The plaintiff and defendant are the parents of Justin Timmons who was born out of wedlock on December 8, 1983 and is currently fifteen years old. Justin lived with the defendant from his birth until the end of April 1998. The plaintiff paid child support for Justin during those years. Justin has lived with the plaintiff since August 10, 1998.

The defendant has two children to her present husband: Dakota, born March 11, 1995 (currently four years old), and Cole, born October 24, 1998 (currently five months old). The plaintiff is also married and has step children. His monthly income for purposes of calculating child support is $1,615.86.

The defendant worked full time at Beverage City for almost fifteen years. She ended full time work when Cole was born. Her monthly income before Cole's birth for purposes of calculating child support was $736.67, with an hourly wage of $8.00. When the defendant became pregnant with Cole, she and her husband discussed the possibility of her returning to work after the birth. This discussion took place even before Justin moved out to live with the plaintiff. The defendant and her husband believed the defendant's return to work would not be cost-effective in light of the high cost of paid day care. The defendant she testified day care would cost approximately $65.00 per week for Cole and $50.00 per week for Dakota for a total weekly cost of $115.00. The defendant agreed to work one day each week

during the fall of 1998 on a temporary basis because her old employer was having difficulty finding another employee to fill her position. Working one day per week would net her approximately $50.00 and would cost $23.00 per week for day care. The defendants husband and her two parents work full-time and are not available to care for Cole and Dakota during the work day. In addition to these monetary concerns, the defendant testified that Cole is a colicky infant who was having much trouble adjusting to both the bottle and the formula.

DISCUSSION

Both parents are equally responsible for the support of their children. *Kelly v. Kelly*, 633 A.2d 218 (Pa.Super. 1993); 23 Pa.C.S. section 4321(2). As a general rule, a parent's financial obligation is measured by earning capacity rather than by actual earnings. Id. An exception to this rule, the nurturing parent doctrine, was first enunciated in *Commonwealth ex rel. Wasiolek v. Wasiolek*, 380 A.2d 400 (Pa.Super. 1977). That doctrine provides that:

> earning capacity cannot always be imputed to a parent who chooses to stay home with a minor child. In appropriate cases, such a nurturing parent may be excused from contributing support payments. A trial court, so holding, 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 home and nurture the minor child.

Hesidenz v. Carbin, 512 A.2d 707, 710 (Pa.Super. 1986). Another factor to consider in determining whether to impute an earning capacity to the nurturing parent is whether that parent has a significant work history. *Atkinson v. Atkinson*, 616 A.2d 22 (Pa.Super. 1992); *Depp v. Holland*, 636 A.2d 204 (Pa.Super. 1994). The court must also consider the ability of the non-nurturing parent to support the child. *Frankenfield v. Feeser*, 672 A.2d 1347 (Pa.Super. 1996); *Bender v. Bender*, 444 A.2d 124 (Pa.Super. 1982).

The fact that the child to be nurtured is not the child who is the subject of the support order does not automatically make the doctrine inapplicable. *Frankenfield*, supra; *Bender*, supra. A parent's desire

to stay home with a child based on a perception that such would promote the child's welfare is not dispositive but is merely one factor to be weighed. *Bender*, supra.

The plaintiff contends the doctrine should not be applied and that a monthly earning capacity of $736.67 should be attributed to the defendant. The plaintiff points out that if the defendant works even one day per week and nets approximately $50.00, her child care costs could be reduced to $23.00 per week, leaving approximately $27.00 per week to contribute toward paying child support for Justin.

The plaintiff contends that "whether or not [the defendant] would have to pay child care expenses if she worked should be irrelevant to this proceeding." We disagree. One of the factors which the court must consider is "the availability of others who might assist the parent" in caring for the child. *Wasiolek*, supra; *Hesindez*, supra. If there is no one to assist the parent on an unpaid basis, then logically, that parent's only recourse is to pay someone for such assistance. The evidence shows the defendant's husband works full time and is not available during the day to care for either Cole or Dakota. Both of the defendant's parents also work full time during the week and are available to assist with child care only on the weekends. The fact that Cole is a colicky infant and refuses to take a bottle presents further difficulties in terms of finding adequate child care for him.

The plaintiff focuses on *Depp v. Holland* in which the court refused to apply the nurturing parent doctrine because the mother seeking the benefit of the doctrine had a significant work history. The *Depp* case is not as helpful to the plaintiff as he suggests, however, because the work histories of the respective mothers are not comparable. The mother in *Depp* had worked as a private accountant and at one time ran a day care facility out of her home. Accounting work pays at a higher rate than the defendant's hourly wage of $8.00 and carries with it some flexibility in terms of working hours. Running a day care facility from one's home frees the parent from the time and expense of commuting, and allows the parent to be at home with the child to be nurtured. The defendant's job at Beverage City does not have the advantages of either type of job previously held by the mother in *Depp*.

The plaintiff points out that the child to be nurtured is not the child who is the subject of the support Order. However, the courts have specifically held that such a circumstance should not necessarily render the doctrine inapplicable, but is simply one of the factors to be weighed. *Frankenfield*, supra; *Bender*, supra.

When the defendant was pregnant with Cole, she and her husband decided it would be in the best interests of the newborn and Dakota for her to stay at home rather than return to work. Their discussions took place even before the parties agreed that Justin could move to the plaintiff's home. There is no evidence the defendant deliberately manipulated the situation in order to relieve herself of her duty to support Justin. *Hesidenz*, supra; *Atkinson*, supra.

The court should fashion a support order which is fair, non - confiscator and takes into account the parties' circumstances. *Hesidenz*, supra. The evidence shows the plaintiff can adequately support Justin. In fact, the defendant testified that Justin spends many weekends at his grandparents' house. The plaintiff did not rebut this testimony. In light of all the parties' circumstances, in particular Cole's very young age and fussiness and the defendant's relatively modest wages, we find the nurturing parent doctrine should apply to impute an earning capacity of $0.00 to the defendant at the present time. The plaintiff may file a petition to modify the Order upon a later change in the parties' circumstances.

An appropriate Order of Court will be entered as part of this Opinion.

ORDER OF COURT

NOW, this 12th day of April, 1999, the court directs this matter to be returned to the Domestic Relations Section for recalculation of the parties' child support obligations consistent with the attached Opinion, specifically, that the plaintiff Joseph E. Timmons, III, and the defendant, Denise A. Robinson, have earning capacities of $1,615.86 and $0.00 respectively. The plaintiff may file a petition to modify the revised Order upon a change in the parties' circumstances.