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Corwell v. Corwell

ANGELIA J. CORWELL, Plaintiff,  
v. HARRY T. CORWELL III, Defendant  
Court of Common Pleas of the 39th Judicial District of Pennsylvania,  
Franklin County Branch

No. 1998-1365

*Calculation of monthly support obligation when parties have two children  
and custody of one child is split on a 50-50 basis*

- 1. The amount of a support order is determined according to the support guidelines set out in Pa.R.C.P. 1910.16-3.
- 2. The Support Guidelines set forth the amount of support which a parent should pay based on both parties' incomes and the number of persons being supported.
- 3. A party's net monthly income is calculated by taking his monthly gross income and deducting the following: (1) federal, state, and local income taxes; (2) F.I.C.A. payments and non-voluntary retirement payments; (3) union dues; and (4) alimony paid to the other party.
- 4. In Pennsylvania, both parents share an equal responsibility for supporting their children and must be required to discharge their obligations in accordance with their capacity and ability.
- 5. The support guidelines were promulgated to provide minor children the same proportion of parental income that they would have received if the parents lived together.
- 6. After a divorce, both parents retain responsibility for their children's needs regardless of their custody arrangements.
- 7. Although parents have a mutual duty to support their children, the child support guidelines contemplate child support payments be made by the noncustodial parent (obligor) to the custodial parent (obligee).
  - 8. Custodial parent is commonly understood to mean a parent who acts as the primary caregiver on a regular basis for a proportionally greater period of time.
- 9. Pa.R.C.P. 1910.16-4(c) sets out the process to be followed when the parties share physical custody: "[w]hen, however, the children spend 40% or more of their time during the year with obligor, a rebuttable presumption exists that the obligor is entitled to a reduction in the basic support obligation to reflect this additional time...the reduction shall be calculated pursuant to the formula set forth in Part II of subdivision (a) of this Rule."
- 10. Time spent with the children shall be determined by the number of overnights they spend during the year with obligor.
- 11. When the children spend equal time with both parents, the Part II formula cannot be applied unless the obligor is the parent with the higher income.

Appearances:

John M. Lisko, Esq., *Counsel for Plaintiff*

Thomas S. Diehl, Esq., *Counsel for Defendant*

## OPINION

Walsh, J., October 24, 2002

### Procedural Background

A Complaint for Support was filed by Angelia J. Corwell (Plaintiff) against Harry T. Corwell, III (Defendant) in Franklin County, Domestic Relations Section, on January 24, 2002. Although Plaintiff and Defendant have two children, Plaintiff sought child support only for Amber J. Corwell, because the parties share equally custody of Laken M. Corwell. An Order of Court was entered on February 20, 2002 directing Defendant pay \$290.09 a month to Plaintiff for child support for Amber J. Corwell. A modified Order of Court was entered on February 21, 2002 to include the amount owed by Defendant in arrearages; the amount owed by Defendant monthly was adjusted to \$311.76.

Defendant filed a Demand for a Hearing on February 22, 2002 claiming that since Plaintiff lives at home with her parents and has no bills to pay the amount Defendant is required to pay is too high. Defendant also claimed that Plaintiff could earn more money if she were to obtain a full-time job in place of the waitressing job she had. Defendant also expressed the belief that he and Plaintiff could have arrived at an agreement on their own regarding child support if they had only known of their option to do so. A hearing was scheduled for April 10, 2002.

A Petition for Modification of an Existing Support Order was filed by Defendant on June 18, 2002 requesting to have the parties' incomes reviewed. A hearing was held on August 12, 2002; Plaintiff's monthly income was set at \$1255.15 and Defendant's monthly income was set at \$1266.26. Plaintiff was also found to be providing medical insurance for Amber at a cost of \$129.43 bi-weekly. Based on the evidence, Defendant was ordered to pay \$405.00 per month to Plaintiff for child support for Amber. Both parties were ordered to share the cost of unreimbursed medical expenses equally.

Defendant again filed a Demand for a Hearing based on his belief that the amount of the most recent order was "unreasonable" and that the amount paid for insurance was "extremely high." A hearing was scheduled for September 18, 2002. At the hearing the parties offered to prepare, sign, and file a stipulation of facts; counsel were then ordered to submit a brief or memorandum containing authority for their respective positions and an exhibit setting forth in detail the calculations which would support their legal theory and a proposed order.

### Stipulated Facts

The following facts were stipulated to by both Plaintiff's counsel and Defendant's counsel:

1. Defendant's monthly net income is \$1,266.26.
2. Plaintiff's monthly net income is \$1,255.15.
3. The parties are the biological parents of Amber Jo Corwell, born October 4, 1988; and Laken Marie Corwell, born August 30, 1990.
4. The parties are currently subject to a Custody Order of Court dated May 29, 2002.
5. Plaintiff is entitled to an adjustment for health insurance premiums in the amount of \$140.83. This amount shall be added to Defendant's total monthly support obligation.

### Statement of the Issue

When the parties have two children and custody of one child is split on a fifty-fifty basis, how should Defendant's (Obligor's) monthly support obligation be calculated?

### Discussion

Determining the amount of a support order is done through reference to the support guidelines set out in

Pa.R.C.P. 1910.16-3, titled Support Guidelines, Basic Child Support Schedule. The Support Guidelines set forth the amount of support which a parent should pay on the basis of both parties' net monthly incomes and the number of persons being supported. Pa.R.C.P. 1910.16-1. A party's net monthly income is calculated by taking his monthly gross income and deducting the following: 1) federal, state, and local income taxes; 2) F.I.C.A. payments and non-voluntary retirement payments; 3) union dues; and 4) alimony paid to the other party. Pa.R.C.P. 1910.16-2(c)(1). In this case, Plaintiff's net monthly income is \$1255.15; Defendant's net monthly income is \$1266.26.

"In Pennsylvania both parents share an equal responsibility for supporting their children and must be required to discharge their obligations in accordance with their capacity and ability." *Blaisure v. Blaisure*, 395 Pa.Super. 473, 577 A.2d 640 (1990). The support guidelines "were promulgated to provide minor children the same proportion of parental income that they would have received if the parents lived together." *Dalton v. Dalton*, 409 Pa.Super. 258, 597 A.2d 1192 (1991). After a divorce, both parents retain this responsibility for their children's needs regardless of their custody arrangements. *Colonna v. Colonna*, 788 A.2d 430 (Pa.Super. 2001). Although parents have a mutual duty to support their children, the child support guidelines contemplate child support payments be made by the noncustodial parent (obligor) to the custodial parent (obligee). *Id.* at 438. Implicit in the application of the guidelines' methodology for determining an amount of child support is the recognition of which party is the "custodial" parent. *Id.*

While the support law does not define the term "custodial parent," it is commonly understood to mean a parent who acts as the primary caregiver on a regular basis for a proportionally greater period of time. *Id.* at 439. Here the parties share custody of Laken M. Corwell equally; she spends one week with Plaintiff and the next week with Defendant on a rotating basis. Plaintiff has primary physical custody of the parties' other child, Amber J. Corwell. Defendant is not contesting his duty to pay support for Amber, but wants the court to acknowledge that the parties equally share custody of Laken and therefore his support amount should be decreased accordingly.

Rule 1910.16-4(c) of the Pennsylvania Rules of Civil Procedure sets out the process to be followed when the parties share physical custody. It provides that: "[w]hen, however, the children spend 40% or more of their time during the year with obligor, a rebuttable presumption exists that the obligor is entitled to a reduction in the basic support obligation to reflect this additional time...the reduction shall be calculated pursuant to the formula set forth in Part II of subdivision (a) of this Rule. For purposes of this provision, the time spent with the children shall be determined by the number of overnights they spend during the year with obligor." In this case the child, Laken, spends 50% of the nights in a given year with Plaintiff and 50% with Defendant.

The Rule goes on to state in subparagraph (c)(2) that "[w]ithout regard to which parent initiated the support action, when the children (here child) spend equal time with both parents, the Part II formula cannot be applied **unless the obligor is the parent with the higher income.**" [Emphasis supplied.] Since Plaintiff is the obligee and her income is lower than Defendant/obligor's, Plaintiff is entitled to an order of child support with regard to Laken.

The amount of child support due to Plaintiff shall be calculated using the support guidelines as set out in Pa.R.C.P. 1910.16-4, making an adjustment to allow for the fact that this support obligation is for one child only. Exhibit 1 is attached to better explain how the following calculations were reached.

1. The parties have stipulated that Plaintiff's net monthly income is \$1255.15 and Defendant's net monthly income is \$1266.26 (Part I, line 3), giving them a combined total net monthly income of \$2521.41 (Part 1, line 5);
2. Under the Guidelines the parties' basic child support obligation for two children is \$842.00 (Part I, line 6);
3. The parties' respective net incomes expressed as a percentage are as follows: Plaintiff - 49.78% and Defendant - 50.22% (Part I, line 7);
4. Each party's monthly share of the basic child support obligation is: Plaintiff - \$419.15 and Defendant - \$422.85 (Part I, line 8);
5. Since the parties share physical custody of Laken, Defendant is entitled to a reduction in his support obligation under Part II of the support guidelines; according to the custody agreement between the parties custody of Laken is equally shared, resulting in each party spending 50% of the year with Laken (Part II, line 9(a));
6. On behalf of the Defendant, 30% is then subtracted from 50% resulting in 20% (Part II, line 9(b)); Defendant's adjusted percentage share of the basic monthly support obligation is 30.22% (50.22% -

20.00% = 30.22%) (Part II, line 9(c));

7. Defendant's adjusted share of the basic monthly support obligation is \$254.45 (30.22% of \$842.00) for two children (Part II, line 9(d)); that number is then divided by two to reach the amount of \$127.23 which Defendant must pay for the support of one child (Part II, line 9(e)); and

8. The parties have stipulated that Plaintiff is entitled to an adjustment of the child support obligation for her payment of health insurance premiums in the amount of \$140.83 (Part III, line 10(b)); adding that amount to Plaintiff's monthly entitlement from Defendant makes Defendant's total monthly support obligation \$268.06 (Part III, line 11). (Stipulation No. 5.)

Plaintiff requested a child support obligation in the amount of \$436.46, including the amount of \$140.83 for the health insurance premium. This amount was reached by incorrectly treating

Part II, line 9(d) as a reduction of the obligor's support obligation rather than the obligor's adjusted share of the basic monthly support obligation as is required under the rules.

Defendant requested that since the parties have "essentially equal incomes and therefore there is no obligor," his amount of child support obligation be calculated by taking the total amount owed each month by the parents when two children are involved (\$842.00), dividing that number in half to get the amount spent by each parent per month for the two children (\$429.00), then dividing that number in half to reach the amount Defendant should have to pay to support one child per month (\$214.50).

The parties cited no appellate authority nor did the Court find any for the manner in which Defendant requests to have his obligation determined. The PA Rules of Civil Procedure are clear on this issue; the Defendant/Obligor earns more than the Plaintiff/Obligee, therefore it is appropriate to apply Part II of the Rules in calculating Defendant's monthly child support obligation. The Court notes that the support obligation amount reached in applying the Rules is nominally higher than the amount suggested by Defendant.

#### Conclusion

After consideration of the stipulated facts, application of the Support Guidelines as set out in the PA Rules of Civil Procedure, and a deduction for Defendant based on the fact that custody of Laken is shared on a fifty-fifty basis, Defendant's total monthly support obligation for Amber is \$268.06, which includes \$140.83 for health insurance premiums.

#### ORDER OF COURT

October 24, 2002, this matter having come before the Court on the Defendant's Demand for Hearing and upon consideration of the record, the arguments of counsel and the law, it is hereby ordered that the Defendant's total monthly support obligation for Amber is \$268.06 which figure includes \$140.83 for health insurance premiums. The Domestic Relations Office is directed to prepare a new Order, consistent with the foregoing Opinion, making proper adjustments for payments to date and setting arrearages. The effective date of this Order is June 18, 2002.

Pa.R.C.P. 1910.16-4(a)Part II

The Defendant's calculations result in a monthly support obligation of \$214.50. Father, however, fails to consider the parties' Stipulation No. 5, which provides for adding \$140.83 for health insurance premiums to father's monthly support obligation. Making that addition for father, his monthly support obligation would be \$355.33. It appears that the Court's calculation is more favorable to father than his own calculations, corrected for the oversight.