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Weller v. Torres

RONDA L. WELLER, Plaintiff, Appellee,
v. SANTOS A. TORRES SR., Defendant, Appellant
Court of Common Pleas of the 39th Judicial District of Pennsylvania,
Franklin County Branch
Civil Action — Law, No. 2002-697

Child Support; Imputed Income; Earning Capacity

1. It is well settled in Pennsylvania law that both parents share the responsibility for child support in accordance with their relative incomes and abilities to pay.
2. A parent's ability to pay is determined by his or her financial resources as well as earning capacity.
3. When calculating each parent's support obligation utilizing the Support Guidelines of the child support schedule set forth in Pa.R.C.P. 1910.16-3 and the formula set forth in Pa.R.C.P. 1910.16-4, the Court considers the individual circumstances of each parent's actual earned income as reported by the parent compared with their employment and income histories prior to the filing for support.
4. Where a party voluntarily assumes a lower paying job, there generally will be no effect on the support obligation.
5. A party will ordinarily not be relieved of a support obligation by voluntarily quitting work or by being fired for cause.
6. Ordinarily, a party who willfully fails to obtain appropriate employment will be considered to have an income equal to the party's earning capacity.
7. Age, education, training, health, work experience, earnings history and child care responsibilities are factors which shall be considered in determining earning capacity.
8. To modify a support obligation based upon reduced income, a petitioner must **first** establish that the voluntary change in employment which resulted in a reduction of income was not made for the purpose of avoiding a child support obligation and **secondly**, that a reduction in support is warranted based on petitioner's efforts to mitigate any income loss.
9. The parties must present evidence as to why he or she voluntarily left the prior employment and also as to why the acceptance of a lower paying job was necessary.
10. If either party willfully failed to obtain appropriate employment, then that party will have an imputed income equal to the party's earning capacity, taking into consideration his or her age, education, training, health, work experience, earnings history and child care responsibilities.
11. A parent's duty of support is like any other fixed obligation (i.e., mortgage, rent, car payment) which one must consider being able to meet upon a change in employment and salary.

Appearances:

Jeremiah D. Zook, Esq., *Counsel for Plaintiff/Appellee*

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

OPINION

Van Horn, J., April 2, 2003

Background

The parties in the above-captioned case attended a support conference before a hearing officer of the Domestic Relations Section of the Franklin County Court of Common Pleas on October 15, 2002, and the resulting Order found Defendant/Appellant's (hereinafter Father) monthly support share, based on his earning capacity, to be \$712.45 and Plaintiff/Appellee's (hereinafter Mother) monthly support share, based on actual earnings, to be \$354.67. Father timely filed an appeal and requested a hearing before the Court which was held on February 5, 2003. Issues addressed included the establishment of Mother's and Father's support obligations, considering the changed circumstances in their respective employments, and applying the relevant Pennsylvania Rules of Civil Procedure sections relating to support guidelines and calculation of net income in conformity with Pa. R.C.P. 1910.16-2. Attorneys for both parties submitted to the Court their Memoranda of Law, including case citations, in support of their respective positions. This matter is now ripe for disposition.

Relevant Facts

Mother obtained a Bachelor of Science degree in 1994 in Elementary Education, with a minor in Music. Contemporaneous with the degree, Mother obtained a Pennsylvania educational certificate. Mother chose not to pursue employment as a teacher but chose, instead, employment in other fields including restaurant management, social science research, and life insurance until beginning employment with RGIS Inventory Specialists in September of 2000 where she eventually advanced to the position of area manager, a position she held from 2001 to 2002, working at times as much as ninety (90) hours per week and earning approximately \$32,000.00 per year. Mother testified at hearing that she voluntarily left the job with RGIS in March, 2002, for "family reasons," and to find a job with "more regular hours." Her employment since March of 2002 included various part-time positions — substitute teacher, waitress, manager at Big Lots store — with most of it hourly wage employment. Mother also testified that she currently works fifty (50) to sixty (60) hours per week in her part-time jobs, but feels that she is "now spending adequate quality time with the children." Mother stated that she is pursuing a full-time teaching position in the area for which she is certified, with an estimated starting salary of \$28,000 per year.

Father testified at hearing that in September, 1998, he was suspended without pay by his former employer, the Commonwealth of Pennsylvania, after fourteen and one-half (14½) years with the Pennsylvania State Police. At the time of his suspension, Father was earning approximately \$60,000 per year. In January, 2000, Father was formally dismissed from his position. Since 2000, Father has not had full-time employment in his area of expertise and training but, rather, has maintained seven (7) rental properties that he owns in Philadelphia, Pennsylvania, which often necessitates his traveling to Philadelphia, a two and one-half (2½) hour trip one-way, an expense evidenced by his 2001 income tax return. Father testified that he is currently seeking employment and is taking the Civil Service exam, stating that he "feels that he is a good candidate." Father testified at hearing that a hernia condition of two (2) years "prevented his ability to lift" and "caused him discomfort." Additionally, Father informed the Court that he is currently paying child support, pursuant to a Cumberland County Order of Court, in the amount of \$216.00 per month for two (2) children, ages sixteen (16) years and fourteen (14) years, who reside in Buffalo, New York, with their mother.

At the October 15, 2002, support conference at the Domestic Relations Office, Mother's current gross annual income calculated from submitted pay stubs was \$14,137.50, with child care costs of \$3,900.00 annually. Father was held to an earning capacity of \$22,864.12 gross annually. This included \$7,083.59 from a pension; \$10,093.53 from an annuity; \$4,127.00 from rental properties; and \$1,555.00 from his trucking business. From these amounts, the Domestic Relations officer calculated the parents' respective monthly child support obligations as follows:

Mother's Monthly Net Income \$1,039.91

Father's Monthly Net Income \$ 1,522.63

Combined Monthly Income \$2,562.54

Presumptive Amount of Child Support \$874.00

Net Income Expressed as a Percentage Share of Income:

Mother 40.58%

Father 59.42%

Each Parent's Monthly Share of the Basic Child Support Obligation:

Mother \$354.67

Father \$519.33

Child care exp. \$ 193.12

\$712.45

It is from this ordered \$712.45 monthly support amount that Father now appeals. In his Demand for Hearing dated October 15, 2002, Father stated as his objections to the October 15, 2002, Order that he has "not enough income for Order of Support; unable to pay."

In his Memorandum of Law, Father argues that his income should be imputed according to his 1040 Federal Income Tax Return for the year 2001, stating that "it is consistent with his expectations for his current income." Father further states in his Memorandum of Law that he "does not contest reducing Mother's earning capacity to her salary of \$28,000 due to her stated intent to spend more time with the children in lieu of all her prior overtime."

Discussion

The question presented in the above-captioned case is whether child support calculations for the parties should be based on their actual income earnings or on earning capacity based on past performance. It is well settled in Pennsylvania law that both parents share the responsibility for child support in accordance with their relative incomes and abilities to pay. *Mooney v. Doult*, 766 A.2d 1271, 1273 (Pa. Super. 2001). A parent's ability to pay is determined by his or her financial resources as well as earning capacity. *Akers v. Akers*, 373 Pa.Super. 1, 540 A.2d 269 (1988). When calculating each parent's support obligation utilizing the Support Guidelines of the child support schedule set forth in Pa.R.C.P. 1910.16-3 and the formula set forth in Pa.R.C.P. 1910.16-4, the Court considers the individual circumstances of each parent's actual earned income as reported by the parent compared with their employment and income histories prior to the filing for support. "Where a party voluntarily assumes a lower paying job, there generally will be no effect on the support obligation. A party will ordinarily not be relieved of a support obligation by voluntarily quitting work or by being fired for cause." Pa.R.C.P. 1910.16-2(d)(1). Additionally, "ordinarily, a party who wilfully fails to obtain appropriate employment will be considered to have an income equal to the party's earning capacity. Age, education, training, health, work experience, earnings history and child care responsibilities are factors which shall be considered in determining earning capacity." Pa.R.C.P. 1910.16-2(d)(4).

In the instant case, both Father and Mother had reductions in incomes, with Mother's reduction being voluntary and Father's reduction being involuntary. This Court will examine the circumstances surrounding each party's actions in reducing their incomes using the two-pronged test articulated in *Grimes v. Grimes*, 408 Pa. Super. 158, 596 A.2d 240, 242 (1991) which states that "to modify a support obligation based upon reduced income, a petitioner must **first** establish that the voluntary change in employment which resulted in a reduction of income was not made for the purpose of avoiding a child support obligation and **secondly**, that a reduction in support is warranted based on petitioner's efforts to mitigate any income loss." In essence, the parties "must present evidence as to why he or she voluntarily left the prior employment and also as to why the acceptance of a lower paying job was necessary." *Id.* [Emphasis added.] If either party willfully failed to obtain appropriate employment, then that party will have an imputed income equal to the party's earning capacity, taking into consideration his or her age, education, training, health, work experience, earnings history and child care responsibilities. Pa. R.C.P. 1910.16-2(d) (4).

Plaintiff:

Regarding the first prong of the Grimes test, it is clear from Mother's testimony that she did, indeed, voluntarily reduce her income as a result of voluntarily quitting her job at RGIS; however, she did not voluntarily reduce her income in an attempt to avoid her child support obligation. Therefore, Mother has satisfied the first prong of the Grimes test.

As to the second prong of the Grimes test, Mother must prove that she mitigated her income loss, and acceptance of a lower paying job was necessary under the circumstances. *Grimes v. Grimes*, 408 Pa.Super. 158, 596 A.2d 240, 242 (1991). Mother testified that she first accepted a lower paying job at RGIS, where she had previously worked as much as ninety (90) hours per week, in order to spend more time with her two-year-old son and five-year-old daughter. Mother testified that this reduction in income from \$32,000.00 to \$28,000.00 was necessary in order to find a job with more regular hours that would better suit her needs in parenting her two young children. When that new job resulted in continued late hours, she terminated her employment and accepted various part-time jobs. Although her actual earnings were less, she testified as to her intentions to earn additional income through these part-time jobs to provide an equivalent lifestyle. Although Mother is currently working approximately fifty (50) to sixty (60) hours in her part-time jobs, she is actively pursuing employment as a full-time classroom teacher, a position for which she was trained and which Mother expects would enable her to earn approximately \$28,000.00 per year, with health and retirement benefits. The classroom teacher position, which is her ultimate goal, would also enable her to be on approximately the same daily and vacation schedule as her children as they reach school age. This Court finds that it is appropriate, under all the circumstances of this case, to reduce Mother's income capacity from the \$32,000.00 actual annual amount in 2001 to \$28,000.00. It is not appropriate to reduce her income to her current actual earnings given her work history and her continued practice of working 50 to 60 hours per week.

Defendant:

Regarding the first prong of the Grimes test, Father did not voluntarily change his employment, thus voluntarily reducing his income, for the purpose of avoiding a child support obligation. Father testified at hearing that he was suspended without pay in September of 1998 and was formally dismissed in January 2000 from his employment with the Pennsylvania State Patrol where he was earning \$60,000.00 per year. Thus, Father satisfies the first prong of the Grimes test.

To satisfy the second prong of the Grimes test, Father has the burden of proving that his efforts to mitigate his income loss warrant a reduction in his ordered child support obligation. At hearing, Father testified that since losing his \$60,000.00 per year job with the State Police, he has relied principally on passive income from an annuity (\$10,098.53) and a pension (\$7,083.59), as well as income from seven (7) rental properties that he owns (\$4,137.00) in Philadelphia, Pennsylvania. Through these sources of income, plus \$1,355.00 in "small business earnings," Father earned \$22,674.12 in gross annual income for the year 2001. Father testified that because of a "hernia condition" of two (2) years, he was unable to lift and experienced discomfort. Father informed the Court of no physical condition that would presently prevent his working at full time employment. Father offered no testimony of pursuing employment that would utilize his training as a State Police Officer but did testify that he is taking the Civil Service exam, and he stated that he "feels that he is a good candidate." However, Father neither offered testimony as to the particular employment for which he was applying nor the amount of money which he expects to earn as a result of the new employment. Without a showing of what the new employment salary would be comparable to, this Court is left wondering if it would mitigate Father's income loss and, therefore, finds this testimony of little assistance. Father presented no testimony as to why his reduced income is necessary. Therefore, Father fails to satisfy the second prong of Grimes because he has failed to show any attempt to find a job with a salary comparable to the \$60,000.00 he earned with the Pennsylvania State Police or that finding other employment with a comparable salary was simply not possible.

The Grimes court addressed the importance of considering the children's need when a parent contemplates a change in employment stating:

We liken [a parent=s] duty of support to any other fixed obligation, i.e., mortgage, rent, car payment, which one must consider being able to meet upon a change in employment and salary. We believe this consideration should be as important to a parent of a [separated] family as it would be to a parent of an intact family when a change of employment is contemplated.

Grimes at 243.

For the above reasons, this Court finds that Father's child support obligation must be calculated using his earning capacity. Considering Father's training, health, work experience, earnings history, and other ordered child support obligations, this Court finds that Father's imputed annual income for calculating child support in the instant case is \$40,000.00. This number is based on his actual income from pension (\$7,083.59), annuity (\$10,093.53) and rental properties (\$4,127.00) totalling \$21,304.12 and imputed annual income of \$18,695.88 requiring 30 hours of work per week at \$12.00/hour OR 40 hours of work per week at \$9.00/hour. Given his support obligation to his children, Father cannot wait for a \$60,000.00 per year job to come his way at the expense of obtaining employment in the range of \$9.00 to \$12.00 per hour.

Appropriate Orders consistent with this Opinion are attached. No information was provided at the hearing relative to child care expenses, filing status of either party or medical insurance. Therefore the information gathered at the support hearing on these matters is adopted.

ORDER OF COURT

And now this 2nd day of April, 2003, upon presentation and consideration of the within Petition, Memoranda of Law, and testimony at hearing on February 5, 2003, it is hereby ordered as follows:

A. Defendant/Appellant's support obligation is to be calculated based on an established earning capacity of \$40,000.00 per year.

B. Plaintiff/Appellee's support obligation is to be calculated based on an established earning capacity of \$28,000.00 per year.