

Franklin County Legal Journal
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Buchanan v. Quesenberry

MARTHA M. BUCHANAN, Plaintiff,
v. PAUL J. QUESENBERRY, Defendant
Court of Common Pleas of the 39th Judicial District of Pennsylvania,
Franklin County Branch
Domestic Relations Section
No. 2000-53

Child Support, Earning Capacity, Private School Tuition, Property and Separation Agreement

1. It is reasonable to ascribe an earning capacity of \$25,000.00 to Plaintiff in light of her prior earning capacity of \$20,000.00, which she does not challenge, and the passage of time, namely five years, since that amount was ascribed.
2. Defendant could not mitigate losses to his income where losses were caused by his employer/insurer's decision to curtail certain areas of his medical practice due to insurance costs and that curtailment has resulted in an involuntary loss of income.
3. Where a property and separation agreement provides that Defendant's obligation to pay private school tuition lasts "only so long as they [the children] are enrolled at the Cumberland Valley Christian School," Defendant's obligation under the Agreement ended when the children were removed from Cumberland Valley Christian School. However, the R.C.P. 1910.16-6(d) may obligate Defendant to pay private school tuition.

Appearances:

Maria P. Cagnetti, Esq., *Counsel for Plaintiff*

Michael J. Connor, Esq., *Counsel for Defendant*

OPINION

Walsh, J., July 25, 2005

A. Background and Procedural Posture

This is an appeal from a Domestic Relations Order for child support entered on January 21, 2005. The matter began by the filing of a Petition for Modification

of an Existing Support Order by Plaintiff on November 16, 2004. As a result, the Domestic Relations Office set the matter down for hearing on January 19, 2005. It appears that a Domestic Relations Office Conference was held on January 21, 2005. Following entry of the Order of January 21, 2005, both parties demanded a hearing and the matter was initially scheduled for March 30, 2005. On motion of Plaintiff, hearing in the matter was continued to June 14, 2005.

B. Statement of Issues; Exhibits

In support of her Demand for Hearing, Plaintiff cited the following issues:

1. Hearing Officer erred in calculation of child support.
2. Hearing Officer erred in increasing Plaintiff's earning capacity.
3. Hearing Officer erred in calculation of Defendant's income.
4. Hearing Officer erred in assigning credit to Defendant for paying private school tuition when Defendant placed Hearing Officer on notice that he would not pay the tuition.

In support of his Demand for a Hearing, Defendant cited the following reasons:

1. Hearing Officer erred in ordering Defendant to pay for private school tuition.
2. Hearing Officer erred in assigning an earning capacity to Plaintiff in an insufficient amount.

At the hearing, Plaintiff/Petitioner offered each of the following exhibits:

Plaintiff's Exhibit 1: Property and Separation Agreement dated July 30, 2000

Plaintiff's Exhibit 2: Copy of Court Order dated March 13, 2000

Plaintiff's Exhibit 3: Cumberland Valley Christian School Statement of Account as of December 8, 2004

Plaintiff's Exhibit 4: Final Student Grade Report for Megan Quesenberry dated June 7, 2005

Plaintiff's Exhibit 5: Final Student Grade Report for Emily Quesenberry dated June 7, 2005

Plaintiff's Exhibit 6: Social Security Statement prepared especially for Martha M. Buchanan dated November 22, 2004

Plaintiff's Exhibit 7: Bills for legal fees from September 27, 2004 through May 23, 2005

Plaintiff's Exhibit 8: Bill for legal fees from June 12 and June 13, 2005

Plaintiff's Exhibit 9: Synopsis of Account from Plaintiff's counsel's

office dated June 13, 2005

All of Plaintiff's exhibits were received without objection.

Defendant offered and the Court received the following exhibits:

Defendant's Exhibit 1: Payment detail listing for the date range January 1 through June 10, 2005

Defendant's Exhibit 2: W-2 and IRS 1040 for 2004

Defendant's Exhibit 3: W-2 and IRS 1040 for 2003

Defendant's Exhibit 5: Computer printout showing support calculations

Defendant's Exhibit 5 was received over Plaintiff's objection. Defendant's Exhibit 4, a January 10, 2005 letter to Franklin County Domestic Relations from David J. Carlson, D.O., Vice-President for Medical Affairs at Chambersburg Hospital, was not received on the basis of Plaintiff's hearsay objection.

C. Factual Findings

Based on the evidence, we make the following findings of fact:

1. Martha Buchanan ("Plaintiff") married Paul Quesenberry ("Defendant") in August of 1985. The parties divorced in July of 2000.
2. Two (2) children were born of their marriage: Megan, born December 17, 1990 and Emily, born May 8, 1992. As of the time of the hearing, Megan was 14-1/2 years old and Emily was just beyond her 13th birthday.
3. The children have resided primarily with Plaintiff since her separation from Defendant. Defendant has physical custody every other weekend and on Tuesday evenings from 4:00 p.m. until 8:00 p.m. The parties share legal custody.
4. The parties executed a Property and Separation Agreement in 2000 and that Agreement is dated July 3, 2000. See Plaintiff's Exhibit 1.
5. Among other terms, the Property and Separation Agreement contains the following provision:
 19. CHILD SUPPORT AND PRIVATE SCHOOL:
 - A. Husband and Wife agree not to seek modification of this existing Child Support Order until after July 1, 2001.
 - B. Husband will pay for the children's private school tuition only so long as they are enrolled at the Cumberland Valley Christian School.
6. As of the time of the execution of the Property and Separation Agreement, Defendant had been paying private school tuition directly to Cumberland Valley Christian School (CVCS) as evidenced by a Court Order dated March 13, 2000 in which Defendant was given \$6,800.00 credit with respect to child support because of those direct payments. See Plaintiff's Exhibit 2, page 3.

7. At the time of the parties' divorce in 2000, their children were attending CVCS and about to enter the third and fourth grades. The children had always gone to that school and only to that school from their first day of school.

8. After the parties concluded the Property and Separation Agreement, the children continued to attend CVCS for a period of time and Defendant continued to pay that private school tuition.

9. Thereafter, the parties agreed that Megan should begin attending public school when she entered the sixth grade and she attended public school for two (2) years, her sixth and seventh grade years.

10. For the school year following their agreement regarding enrolling Megan in public school, Defendant paid private school tuition to CVCS for Emily only.

11. After Megan's first year in public school, the parties agreed that Emily, too, should try public school and Emily left CVCS to attend public school at the beginning of her sixth grade year.

12. For one full year, Megan's seventh grade year and Emily's sixth grade year, both children attended public school and, of course, Defendant paid no private school tuition.

13. During the early summer of 2004, after some uncomfortable incidents in public school, Plaintiff broached with Defendant the idea of returning the children to CVCS at the beginning of the next school year, which was eighth grade for Megan and seventh grade for Emily.

14. Also during the summer of 2004, Plaintiff and Defendant had several discussions about the children's schooling. Defendant did not think that it was right for the children to return to CVCS and believed that they should remain in public school. Plaintiff disagreed.

15. During the summer, Plaintiff and Defendant remained at an impasse, reaching no agreement. At the end of the summer, Plaintiff re-enrolled both children in CVCS. She was permitted to do so without any prepayment of tuition.

16. As of December 8, 2004, CVCS's statement of account for the 2004-2005 school year reflected a balance due of \$7,696.00, representing the entire cost of tuition for Megan and Emily. See Petitioner's Exhibit 3. As of the date of the hearing, the bill remains unpaid.

17. Plaintiff testified that, at the time the parties agreed to remove Megan from private school and at the time the parties agreed to remove Emily from private school, Defendant agreed that if public school did not work out, the children could return to CVCS.

18. Plaintiff testified that she would never have taken the children out of CVCS if she thought they could not return. She further testified that the possibility of the children attending Faust Junior High was never within her contemplation when she removed the children from CVCS.

19. During the 2004-2005 school year, Megan completed eighth grade and Emily completed seventh grade at CVCS, where Plaintiff had re-enrolled them.

Both girls appeared to do well academically.

20. Emily's lowest final average for her eighth grade school year was 94% in mathematics and her highest final averages for that same year were 100% in home economics and 100% in science. See Plaintiff's Exhibit 4.

21. Emily's lowest final average for her seventh grade school year was 92% in science and her highest final averages for the same year were 100% in home economics, 100% in geography and 100% in girls' physical education. See Plaintiff's Exhibit 5.

22. Plaintiff believes that the girls are doing exceptionally well at CVCS and that their extracurricular activities, such as athletics and choir, involve appropriately fewer students because of the smaller size of CVCS.

23. Defendant believes that the girls' grades are inflated. He believes that they are unchallenged at CVCS and that they have far better opportunities in athletics and other endeavors like choral music in the public school where there are substantially greater numbers of students involved in those activities.

24. Both girls did well during their attendance at public schools.

25. Plaintiff is not currently working outside the home; she is a stay-at-home mother. She and her current husband are the parents of a nine-month-old child.

26. Plaintiff testified credibly that at about the time Megan was born in 1990, Plaintiff and Defendant together agreed that Plaintiff would remain a stay-at-home mother so long as the children were at home.

27. Defendant offered no testimony nor did he otherwise dispute that the parties agreed that Plaintiff was to be a stay-at-home mother.

28. Plaintiff produced a social security statement dated November 22, 2004 showing that her last taxed social security earnings were made in calendar year 1990. See Plaintiff's Exhibit 6. Based on that exhibit, it appears that Plaintiff had no earnings for calendar years 1991 through 2002.

29. Plaintiff testified that she attended Messiah College to obtain a Bachelor's Degree in communications. At the end of her time at Messiah, she needed six (6) additional credits in order to receive a Bachelor's Degree. She further testified that she has attended Shippensburg University, Hagerstown Business College, and DuPage College in Illinois, at all of which she earned credits. She has also taken non-credit classes at Wilson College.

30. Plaintiff described a confusing scenario in which she was attempting to obtain dual degrees from Shippensburg University in communications and art, but she did not obtain the dual degrees for a number of reasons, apparently including Shippensburg not accepting credits from Messiah and Messiah not accepting credits from Shippensburg.

31. Plaintiff denied that she ever said she could qualify to teach Kindergarten through 12th Grade upon obtaining an additional degree or two. On cross-examination, however, she acknowledged that she had testified on

December 4, 2004 that she expected to obtain a double Bachelor of Arts Degree in communications and art with the ability to teach Kindergarten through 12th Grade. Plaintiff explained the discrepancy by saying that she probably had bad information from the school.

32. Defendant claims that he and his former attorney, Martha Walker, Esq., wrote paragraph 19(b) of the Property and Separation Agreement, Plaintiff's Exhibit 1. He testified that part of his motivation for including this provision was to provide continuity in his children's lives and to ensure Plaintiff did not move to North Carolina, taking the children with her.

33. Defendant testified, as did Plaintiff, that there was an agreement between them that Megan be permitted to attend Chambersburg Area Middle School.

34. When Plaintiff told him at the beginning of the 2004-2005 school year that she wanted to re-enroll the children at CVCS, Defendant disagreed.

35. Defendant believed that they were thriving at Chambersburg Area Middle School, which he described as a blue ribbon school, and he questioned why they should be placed back into a school with a second-rate education, choir, band and sports.

36. Defendant acknowledged that his disagreement over re-enrollment was based in part on finances. He testified to a cut in his salary, which he stated resulted from no longer doing obstetrical work or delivering babies due to rising malpractice premiums.

37. Defendant testified that he was not involved in the decision-making process regarding re-enrolling the children at CVCS. On cross-examination, however, he admitted that during the summer of 2004 he had had several discussions with Plaintiff about the children's schooling prior to their re-enrollment in CVCS.

38. Defendant is a family practice physician. For the period from January 1 through June 10, 2005, he reported a gross pay of \$4,617.83 per bi-weekly pay period.

39. During that period, Defendant's net pay per bi-weekly pay period ranged from \$1,951.01 for the pay period ending February 17, 2005 to \$3,471.54 for the pay period ending May 26, 2005, during which pay period Defendant received a bonus of \$2,415.00. See Defendant's Exhibit 1.

40. It appears that Defendant pays a bi-weekly health insurance premium of \$57.70 and a bi-weekly dental insurance premium of \$39.90. In addition, Defendant's other deductions per pay period, excluding taxes withheld, include a deduction of \$461.53 for the employee contribution to a 401(K) Plan and a deduction of either \$887.36 or \$904.95 for child support payments. See Defendant's Exhibit 1.

41. Defendant's W-2 income for tax year 2003 reflected income of \$176,191.18. See Defendant's Exhibit 3. Defendant's W-2 income for tax year 2004 was \$147,943.00. See Defendant's Exhibit 2. Defendant reports he has no other sources of income.

42. The uncontradicted evidence is that Defendant exercised no choice in the decision to stop delivering babies. It is clear that it was not Defendant's decision to eliminate that part of his professional practice. Defendant contends that his income has decreased because he is no longer delivering babies.

43. Defendant offered Defendant's Exhibit 5, which purports to be a calculation of a reasonable amount of child support. In that calculation, Defendant claims a gross monthly income of \$10,441.34 and claims that Plaintiff should be ascribed a gross monthly income of \$3,000.00 (based on Defendant's assertion that Plaintiff should be teaching school and that, if she were, she should be making \$36,000.00 a year in the Chambersburg School District). See Defendant's Exhibit 5.

44. Defendant's Exhibit 5 suggests a monthly total support obligation for Defendant of \$1,808.25 computing to a weekly total of \$417.29.

45. Defendant's argument is unpersuasive for a number of reasons. First, Defendant's evidence regarding Plaintiff's ability to earn \$3,000.00 per month as a school teacher in the Chambersburg Area School District is purely speculative both because of the source of Defendant's information and based upon Plaintiff's inability to teach (she does not have a teaching certificate). Second, Defendant's exhibit shows deductions for Defendant in the amount of \$2,557.44 and for Plaintiff in the amount \$435.90, but it provided no evidence whatsoever to support those figures. Further, Defendant was unable to explain those figures, rendering them speculative as well. Third, Defendant ascribes no childcare expenses to Plaintiff in his calculation though it is clear that if Plaintiff were employed as a teacher, she would have childcare expenses. Fourth, Defendant includes a healthcare adjustment in the amount of a \$14.83 credit and he was unable to provide any testimony or any exhibit explaining how that adjustment was calculated.

46. Defendant was unable to explain his deductions. He simply indicated that he would need access to a lot of his paperwork in order to explain them. On the stand, he could not explain how he arrived at the numbers reflecting deductions.

47. On reviewing report cards for Megan's two years at Chambersburg Area Middle School and for Emily's single year there, Defendant acknowledged that the girls had almost all A's.

48. Plaintiff's counsel asked Defendant repeatedly on cross-examination at what point CVCS became a second-rate school and Defendant did not answer that question.

49. Defendant acknowledged that there was no language in the Property and Separation Agreement that kept Plaintiff from moving away with the children. In addition, Defendant contended that if the children had continued at CVCS, rather than leaving briefly to attend public school for a couple years, he would still object to their attendance at CVCS at the present time. Defendant was unable to explain where in the Property and Separation Agreement there was any "changing needs" provision allowing for the children to be removed from CVCS.

50. In addition to no longer doing any obstetrical or pre-natal work or

deliveries, Defendant no longer performs in-patient care at Chambersburg hospital. He testified that his workweek now largely consists of a fairly regular schedule with Thursdays off, one day per week working 11 hours, seeing some patients at the office on Saturdays and having beeper time.

51. On cross-examination, Defendant acknowledged that if the cost of malpractice insurance for delivering babies was greater than the income derived from delivering babies, then, when he stopped delivering babies and stopped paying malpractice premiums, his income should have remained the same or increased.

52. Defendant maintains that after the children were removed from CVCS by agreement of the parties, Item 19(b) of the parties' Property and Separation Agreement was and is no longer enforceable against him. See Plaintiff's Exhibit 1.

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Discussion

Prior to the hearing, Defendant identified the following objections to the January 21, 2005 Order in his Demand for Hearing:

1. "The Conference Officer erred in ordering Defendant to pay for private school tuition." and
2. "The conference officer erred in assigning an earning capacity to Plaintiff in an insufficient amount."

In her Demand for Hearing, Plaintiff raised the following objections to the January 21, 2005 Order:

1. "Hearing officer erred in her calculation of child support."
2. "Hearing officer erred in increasing Plaintiff's earning capacity."
3. "Hearing officer erred in his calculation of Defendant's income." and
4. "Hearing officer erred in assigning credit to Defendant for paying private school tuition when Defendant placed hearing officer on notice that he would not pay the tuition."

Because of the overlap of some issues and the logical order necessary to determine all of the issues, we will address the issues as follows:

1. Plaintiff's earning capacity;
2. Defendant's income;
3. Parties' respective responsibilities to pay private school tuition, if any;
4. Amount of child support, if any; and
5. The credit assigned to Defendant for private school tuition that he did not pay and has not paid.

1. Plaintiff's Earning Capacity

Plaintiff is a stay-at-home mother. She has no actual income. During the hearing, Plaintiff did not challenge the earning capacity of \$20,000.00 ascribed to her in 2000 by the Domestic Relations Section. She did, however, challenge any increase above that amount. Defendant, on the other hand, presented evidence of Plaintiff's educational history, her educational goals, and her career plans to demonstrate that Plaintiff should be ascribed an earning capacity in line with those goals and plans. We find both arguments unpersuasive.

If Mother had been earning \$20,000.00 in 2000, it is likely that her earnings would have increased over the passage of five (5) years. Neither Mother's income nor her earning capacity is less in 2005 than it was determined to be in 2000. It is almost certain that cost of living increases and raises would have increased the amount of her earnings. We think an annual increase of \$5000.00 reflects this reality. Therefore, ascribing an earning capacity of \$25,000.00 to Plaintiff is reasonable in light of her prior earning capacity of \$20,000.00 and the passage of time, namely five years, since that amount was ascribed. Plaintiff's argument that her income should remain static is unconvincing and unrealistic.

Defendant's argument for an ascribed earning capacity of \$35,000.00 is likewise unconvincing and unrealistic.[1] The fact remains that Plaintiff does not have a college degree and/or a teaching certificate, whatever her goals and plans may have been. Without a degree and/or certificate, Plaintiff would be unable to obtain a position as a teacher and without such a position Plaintiff could not earn the \$35,000.00 Defendant attempted to fix, though speculatively, to a starting teaching position. Thus, we find Plaintiff's earning capacity to be \$25,000.00.

2. Defendant's income

Defendant testified that he is a physician, practicing in family medicine. Due to what he characterized as the increasing cost of medical malpractice insurance, his employer/insurer has curtailed certain areas of his practice. This curtailment has resulted in an involuntary loss of income.

Defendant produced an exhibit detailing his income from his employer, including deductions from his gross income and bonuses. See Def's Ex. 1. Based upon the information contained in this Exhibit, we extrapolate that Defendant's income for 2005 will be \$130,103.00.[2] Plaintiff argued that Defendant could easily mitigate his loss of income. We do not find that to be the case. Defendant participates in a group practice, which limits his ability to unilaterally alter the structure and form of his practice. Additionally, the nature of medical practice is changing rapidly with a growing emphasis on specialization. Further, the decision to leave an established and familiar medical practice in search of another position is complex and such a move would involve great uncertainty and disruption. Defendant testified that he, and perhaps his group, have examined opportunities in other areas, but he has located nothing comparable in the area. Moreover, relocating may put him at some geographic distance from his children. This, Defendant cannot easily mitigate his losses in income. Therefore, we find Defendant's income to be \$130,103.00.

3. Parties' respective responsibilities to pay private school tuition, if any

The parties agreed to the following provision regarding private school tuition: "Husband [Defendant] will pay for the children's private school tuition only so long as they are enrolled at the Cumberland Valley Christian School." Defendant argues that once the children were removed from CVCS his obligation to pay private school tuition under the Agreement ceased. We agree.

The provision clearly provides that Defendant's obligation lasts "only so long as they [the children] are enrolled at the Cumberland Valley Christian School." Therefore, Defendant's obligation under the Agreement ended when the children were removed from CVCS. Plaintiff's impressions of Defendant's obligations at the time the children were removed from CVCS and Defendant's alleged promises to pay tuition at CVCS if public school proved unsatisfactory are irrelevant in determining the meaning of this provision at the time it was enacted. We find the provision clear on its face. Defendant's obligation under the Agreement ended when the children were removed from CVCS.

However, the Agreement does not speak to Defendant's obligations to pay private school tuition as found in Pa.R.C.P. 1910.16-6(d).[3] Defendant testified that he and his counsel drafted the Agreement and it is axiomatic that contracts are strictly construed against the drafter. We find that the Agreement, in failing to address Defendant's legal obligation to provide private school tuition as provided in Pa.R.C.P. 1910.16-6(d), does not abrogate or eliminate that obligation.[4] Thus, though Defendant's obligation under the Agreement to pay the total amount of private school tuition ended with the children's removal from CVCS, Defendant remains obligated to pay private school tuition pursuant to the provisions of Pa. R.C.P. 1910.16-6(d).

In determining if expenditure for private school tuition are reasonable, the court should consider whether the children previously attended private school and the family's income and earning potential. Knapp v. Knapp, 758 A.2d 1205 (Pa.Super. 2000). Here, the uncontradicted evidence showed that the children attended CVCS since their first days of school. With the exception of the recent move to public school for a short period of time (two years for Megan and one year for Emily), the children have attended private school throughout their school lives. Further, we have found Defendant's annual income to be \$130,103.00, which appears to provide a sufficient basis from which to contribute to private school tuition. Although Plaintiff's earning capacity is \$25,000.00, it is reasonable that she contribute to the cost of private schooling for her children proportionately, as dictated by the rule. Further, we note that Plaintiff chose to return the children to private school at a time when Defendant disagreed with that decision and Plaintiff declined to contribute to the costs. Expenditures for private school tuition are reasonable.

Since we have determined that expenditures for private school tuition are reasonable, the expenses shall be allocated between parties in proportion to their net incomes. Defendant's monthly net income is \$8155.71 and the monthly net income ascribed to Plaintiff is \$1837.29.[5] Thus, Defendant shall pay 81.61% of the private school tuition for the children and Plaintiff shall pay the remaining 18.39%. The evidence shows that the combined costs of the children attending CVCS for one academic year is \$7696.00. Therefore, Defendant will be required to pay \$6,280.70 per year, or \$523.39 per month, for the private school educations

of the children and Plaintiff will pay \$1,415.30 annually, or \$117.94 per month.

4. Amount of child support, if any

Considering the balance of the evidence, the parties' respective net monthly incomes are determined to be as follows:

1. To obtain the parties' respective net annual incomes, we deduct only those items listed in Pa.R.C.P. 1910.16-2(c) from their gross annual incomes.

a. For Defendant, we deduct the sum of \$19,355.76 (federal income taxes), \$4,111.20 (state income taxes), \$1,301.04 (local income taxes), \$5,580.00 (F.I.C.A. taxes), and \$1,886.52 (Medicare taxes), or a total of \$32,234.52, from \$130,103.00 (gross annual income). It appears Defendant does not pay union dues, alimony, alimony pendente lite, or child support. Thus, Defendant's net annual income is determined to be \$97,868.48 (\$130,103.00 less \$32,234.52).

b. For Plaintiff, we deduct the sum of \$789.96 (state income taxes), \$249.96 (local income taxes), \$1550.04 (F.I.C.A. taxes), and \$362.52 (Medicare taxes), or a total of \$2,952.48 from \$25,000.00 (gross annual income). It appears Plaintiff does not pay union dues, alimony, alimony pendente lite, or child support. It also appears Plaintiff would not pay federal income tax. Thus, Plaintiff's net annual income is determined to be \$22,047.52 (\$25,000.00 less \$2,952.48).

2. To determine the parties' monthly net incomes we divide their respective annual net incomes by twelve.

a. Defendant's monthly net income is \$8,155.71 (\$97,868.48 divided by 12).

b. Plaintiff's monthly net income is \$1,837.29 (\$22,047.52 divided by 12).

3. To determine the basic child support owed, we combine the parties' monthly net incomes (\$8,155.71 and \$1,837.29) for a total monthly net income of \$9,993.00. Using this combined figure on the basic child support schedule contained in Pa.R.C.P. 1910.16-3, we determine that the basic monthly child support in a case with a combined monthly net income of \$9,993.00 (which we round up to \$10,000.00 for purposes of this chart) with two dependent children is \$2,312.00.

4. Next we determine the amount of each parent's guideline obligation by multiplying each party's net income expressed as a percentage of combined income to the monthly support obligation we determined in (3). See Pa.R.C.P. 1910.16-4(a) Part I.

a. Defendant's guideline obligation is \$1,886.82, which is 81.61% (\$8,155.71 divided by \$9,993.00) of \$2,312.00.

b. Plaintiff's guideline obligation is \$425.18, which is 18.39% (\$1,837.29 divided by \$9,993.00) of \$2,312.00.

5. Now we factor in any additional expenses under Pa.R.C.P. 1910.16-6.

See Pa.R.C.P. 1910.16-4(a) Part III. Here, Defendant owes the additional sum of \$523.39 per month for private school tuition. Thus, Defendant owes \$2,410.21 per month in child support.

5. The credit assigned to Defendant for private school tuition that he did not pay and has not paid

Any credit assigned to Defendant for private school tuition for the 2004-2005 school year was erroneous. Further, Defendant is obligated to pay his proportional share of tuition for the 2004-2005 school year, which is \$6,280.70. Since this sum remains due and owing to CVCS, Defendant shall pay this sum directly to CVCS promptly. Likewise, Mother shall pay the balance of the outstanding bill promptly.

E. Conclusion

1. Defendant will be ascribed an income of \$130,103.00.
2. Plaintiff will be ascribed an earning capacity (i.e., income) of \$25,000.00.
3. Defendant shall pay \$2,410.21 per month in child support, which includes \$523.39 per month for private school tuition.
4. Plaintiff shall pay CVCS directly for the children's tuition from this point forward.
5. Defendant promptly shall pay \$6,280.70, his share of last year's school tuition, to CVCS. Plaintiff shall pay the remaining balance.
6. Defendant shall provide medical insurance coverage.
7. Defendant shall pay 82% of any unreimbursed medical expenses that exceed \$250.00 annually per child and Plaintiff shall pay the remaining 18%.
8. The effective date of the order is November 16, 2004.

ORDER OF COURT

July 25, 2005, upon consideration of the record of these proceedings, the testimony and exhibits of the parties, the arguments and post-hearing submissions of the parties and the law, it is ordered that the matter be returned to the domestic relations office for the generation of a new PASCES order consistent with the foregoing opinion.

[1] In response to Defendant's assertion that she should be ascribed an earning capacity of \$35,000.00, which reflects a full time position, Plaintiff argues that she should then be given credit for day care costs associated with such a full time job. See Pl's Mem. in Supp. of Mother at 8-9. Plaintiff proffered no evidence regarding such costs. Therefore, we are unable to consider any childcare costs of Plaintiff in our determination.

[2] We recognize that prognostication is a matter of inexactitude and that extrapolation is at best an

educated estimate. Nevertheless, the basis for our estimation of Defendant's 2005 income is as follows: Defendant's gross income as of June 10, 2005 was \$57,829.00. See Defendant's Exhibit No. 1. That figure represents Defendant's income for 161 days of a 365-day year. Accordingly, $\$57,829 / 161 = x / 365$. The mathematics yields \$130,103.00 annually.

[3] Pa.R.C.P. 1910.16-6(d) provides:

Private School Tuition. Summer Camp. Other Needs. The support schedule does not take into consideration expenditures for private school tuition or other needs of a child which are not specifically addressed by the guidelines. If the court determines that one or more such needs are reasonable, the expense thereof shall be allocated between the parties in proportion to their net incomes. The obligor's share may be added to his or her basic support obligation.

[4] Because the Agreement does not attempt to abrogate or eliminate Defendant's obligation to pay private school tuition, we need not consider whether Defendant is legally able to do so.

[5] The calculations for monthly net incomes will be explained in section D(4) of this opinion.