

Overcash v. Brown

NANCY D. OVERCASH, Plaintiff,
v. TERRY E. BROWN, JR., Defendant
Court of Common Pleas of the 39th Judicial District of Pennsylvania,
Franklin County Branch,
Domestic Relations Section
No. 2004-1059

Child Support, Earning Capacity, Inability to Work, Ability of Grandparent to Sue Only One Parent for Support of Child, Effective Date of Order

1. Where Defendant produces no written reports from his physician or documentation about his disability claim, but he testifies without objection as to his medical diagnosis, a court, as a finder of fact, may disregard that testimony because a lay witness may not testify to the existence or non-existence of a disease or disorder.
2. Where Plaintiff filed a Complaint for Support against Defendant on November 19, 2004, and at the initial Support Conference on January 24, 2005, the Hearing Officer found that Defendant was medically unable to work from June of 2004 to March of 2005, the Court will not disturb an effective date of March 1, 2005, though Defendant is able to work presently.
3. Our law and public policy require that both parents be held accountable for the support of their children. Therefore, when Plaintiff proceeds against only one parent, she must accept the reduction in the amount of the other parent's required contribution.

Appearances:

Aaron J. Neuharth, Esq., Counsel for Plaintiff

Terry E. Brown Jr., Defendant

OPINION

Walsh, J., November 9, 2005

A. Background and Procedural Posture

This is an appeal from a Domestic Relations Order for child support entered on March 22, 2005 with an effective date of March 1, 2005. That Order requires Defendant Terry E. Brown, the father of the child, to pay \$185 per month to Plaintiff Nancy D. Overcash, the maternal grandmother of the child, for the support of Honesty Faith Brown. Defendant filed an appeal from that Order on or about March 22, 2005, demanding a hearing. A hearing on the matter was held on August 10, 2005. At the close of the hearing, the Court requested Plaintiff's counsel to submit legal authority in support of Plaintiff's position; Plaintiff made a post-hearing submission to the Court. The matter is now ready for decision.

B. Statement of Issues

In support of his Demand for Hearing, Defendant wrote the following:

"I can not work at the previous time right now and I have a doctors [sic] note stating that. Plus we are in the middle of a custody battle and it would of [sic] been done but they postponed it."

At the beginning of the hearing, Plaintiff identified the following issues for the hearing:

1. The Hearing Officer erred in assigning the effective date of March 1, 2005. Plaintiff filed for support on November 19, 2004, thus the Order should have an effective date of November 19, 2004.
2. The Hearing Officer erred in taking a fifty percent reduction in the amount of support due to Plaintiff because Plaintiff chose not to sue the child's mother, who is Plaintiff's daughter.

At the beginning of the hearing, Defendant identified the following issues for the hearing:

1. The Hearing Officer erred in assigning an earning capacity to Defendant because Defendant is unable to work.

C. Factual Findings

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

1. Plaintiff Nancy D. Overcash is Honesty Faith Brown's maternal grandmother.
2. Defendant Terry E. Brown, Jr. is Honesty Faith Brown's father.
3. Tia Overcash is Honesty Faith Brown's mother and Plaintiff's daughter. She is not a party to this action.
4. Tia Overcash and Honesty Faith Brown reside with Plaintiff.
5. Defendant testified that he cannot work and that he has a doctor's note to support that contention. Defendant failed to present any documentation to the Court; he failed to state the name of his physicians. Further, on cross-examination, Defendant was unable to describe his ailments and his limitations.
6. Defendant has not looked for a job since 2004, though he claims that he would like to work and that he is working with his caseworker to locate employment.
7. Plaintiff testified that she did not seek support from Tia Overcash for the following reasons:
 - a. Tia Overcash receives \$600 per month from social security;
 - b. Tia Overcash is at home helping with Honesty Faith Brown;
 - c. Plaintiff was told that she would get only \$5 to \$25 per month in support from Tia Overcash based on Tia Overcash's income.
8. Plaintiff filed a Complaint for Support against Defendant on November 19, 2004.

D. Discussion

Three issues are before the Court for determination:

1. Defendant's ability to work and, if he is able to work, his earning capacity;
2. The effective date of the Order for Support; and
3. The propriety of the fifty percent reduction in the amount of support awarded to Plaintiff because Plaintiff did not sue Tia Overcash, the child's mother, for support.

We will address each issue in turn.

1. Defendant's Ability to Work and Earning Capacity

Defendant testified that he cannot work. He claims to have documentation from at least one physician in support of that assertion and he claims to have filed for disability. According to Defendant, his disability claim was denied and it is presently on appeal. Defendant produced no written reports from his physician or documentation about his disability claim. He testified without objection as to his medical diagnosis. See Collins v. Cooper, 746 A.2d 615 (Pa. Super Ct. 2000) (a lay witness may not testify to the existence or non-existence of a disease or disorder). See also Commonwealth v. Neal, 713 A.2d 657 (Pa. Super. Ct. 1998) (a court, as a fact finder, may disregard inadmissible evidence).

As stated above, Defendant asserts that he is unable to work and thus we assume he seeks an earning capacity of \$0. On the other hand, Plaintiff argued that Defendant is able to work and Plaintiff presented some evidence to that effect. Plaintiff did not challenge the findings of the Hearing Officer regarding Defendant's earning capacity so we assume that Plaintiff supports those findings of the Hearing Officer. We find Defendant's testimony not to be credible and that the findings of the Hearing Officer ascribing to Defendant an earning capacity of \$11 an hour for forty hours per week, resulting in a weekly gross of \$440 is reasonable; and is based on income information from another child support case involving Defendant. Further, there was little other evidence on this issue.

2. Effective Date of the Support Order

Plaintiff filed a Complaint for Support against Defendant on November 19, 2004. At the initial Support Conference on January 24, 2005, Defendant presented a form from the Department of Public Welfare in support of his contention that he was unable to work at that time. The Hearing Officer accepted this as evidence and found that Defendant was medically unable to work from June of 2004 to March of 2005. Although we have found that Defendant is presently able to work, we will not disturb the finding of the Hearing Officer that Defendant was unable to work until March of 2005. Thus, the effective date of the support order against Defendant is March 1, 2005.

3. Reduction in Support

Based upon Defendant's earning capacity and other properly considered factors, the Hearing Officer determined the proper support amount for Honesty Faith Brown is \$370 per month. To determine Defendant's share of the support amount, the Hearing Officer reduced that amount by fifty percent, since the mother, who is one-half of the child's parenting unit, was not subject to this Order. We agree.

Plaintiff chose to sue only one parent for support of Honesty Faith Brown, her grandchild. Plaintiff's caring for the child is laudable and we appreciate her effort to hold the child's parents accountable and to make them responsible. However, we are bound by fairness and equity and thus we cannot find that one parent should be fully responsible for the financial support of a child simply because the person suing for support chose not to sue both parents. We believe it is appropriate to look to both parents for the support of a child. This is why the law determines the support amount based on the combined income of the parents and mandates the proportional determination of support amount between two parents. See Pa.R.C.P. 1910.16-3, Pa.R.C.P. 1910.16-4.

We do not condone Plaintiff's behavior in picking and choosing which parent to sue for support. Our law and public policy require that both parents be held accountable for the support of their children. However, since Plaintiff has proceeded against Defendant, the father, only, she must accept the reduction. We have no evidence of Tia Overcash's income or earning capacity. Thus, we cannot determine her proportionate share of support. Therefore, we find no error in the Hearing Officer's decision to halve the support amount.

E. Conclusion

1. Defendant will be ascribed an earning capacity of \$440 per week.
2. The effective date of the Order shall be March 1, 2005.
3. The amount of support (\$370) shall be reduced by fifty percent because Plaintiff did not seek support from the child's mother. For the same reason, Defendant shall be liable for only fifty percent of the child's unreimbursed medical expenses.

ORDER OF COURT

November 9, 2005, upon consideration of the record of these proceedings, the testimony of the parties,

the arguments and post-hearing submissions of the parties and the law, it is ordered that the Final Support Order dated March 22, 2005 shall remain unchanged.