

JOHN W. HAMMOND, Plaintiff, v. MANDI L. PECHO, Defendant  
Court of Common Pleas of the 39th Judicial District of Pennsylvania,  
Franklin County Branch — Domestic Relations Section  
No. 2005–153, PACSES Case No. 286107150

*Enforceability of Child Support Agreements; Statutory Child Support Guidelines;  
Deviations from Child Support Guidelines; Factors*

1. Although generally speaking child support agreements are enforceable, parents may not bargain away the rights of their children.
2. In family court actions, child support agreements are unenforceable when they fail to adequately provide for the best interest of the child.
3. The amount of child support a parent must pay is determined by the child support guidelines found in Pa.R.C.P. 1910.16-3.
4. These guidelines constitute a presumption that can be rebutted by a showing that the guideline amount is unjust or inappropriate.
5. In making a determination of whether to deviate from the guidelines, the Court must consider any unusual needs and fixed obligations, other support obligations of the parties, other income in the household, ages of the children, assets of the parties, medical expenses not covered by insurance, standard of living of the parties and their children, and other relevant and appropriate factors, including the best interests of the child or children.

Appearances:

Jennifer S. Newman, Esq., *Counsel for Plaintiff*

Mandi L. Pecho, *Pro Se Defendant*

OPINION

Walsh, J., October 17, 2007

Facts

John Hammond ("Father") and Mandi Pecho ("Mother") are the parents of Colton John Hammond. Colton was born July 30, 1994, and he lives with Father. The parties never married. On May 29, 2007, Father filed a complaint for child support for Colton against Mother. Domestic Relations heard the matter June 23, 2007, and the hearing resulted in the June 25, 2007, Order of Court, which required Mother to pay \$452.64 per month in support and \$45.26 per month toward arrears. Mother appealed that Order contending that the amount of support was excessive. Father cross-appealed arguing that Mother was not entitled to the multiple family deviation reduction because she was legally required to support only three children besides Colton and not four children as the Domestic Relations Officer had determined.

A hearing *de novo* on the appeal took place on September 25, 2007. Father was represented by counsel, and Mother appeared pro se. The parties constituted the only witnesses. The Court required post hearing submissions by both parties, and those submissions have been received and reviewed by the Court. Mother requests the Court to deviate from the support guidelines based upon her financial situation. Father requests the Court to affirm the June 25, 2007 Order. But, if the Court grants Mother a deviation, then Father seeks the alternative relief of a remand to Domestic Relations to have a new

guideline calculation based on Mother's updated and increased earnings. The matter is ripe for decision.

### Stipulations

Mother's husband Jason Pecho earns \$2,340 in gross monthly income.

### Findings of Fact

The Court makes the following findings of fact based on the uncontradicted evidence.

1. Father is permanently disabled and has a monthly gross income of \$1932.38.
2. Mother is projected to earn \$57,848.68 in gross income in 2007, but only \$33,583.68 constitutes her pay for regular hours worked. \$24,265.00 represents the amount of overtime and incentive pay she is projected to earn this year. For child support purposes, Mother's annualized income for 2007 is \$45,716.18.
3. Mother works as a nurse and has increased her income from 2006 to 2007 due to extra overtime and incentive pay that she has received. Mother worked the overtime in an unsuccessful attempt to save her home from foreclosure.
4. Mother is presently a full-time student in addition to being a full-time nurse.
5. Mother and Father are legally obligated to support their child, Colton.
6. Mother and David Caputo are legally obligated to support their two minor children, Darian Caputo and David Caputo.
7. Mother and Jason Pecho are legally obligated to support their minor child, Madison Pecho. Additionally, Mother has assumed a legal obligation to support her minor step-son, Jason Pecho, since she is married to his father, Jason Pecho, and has assumed the status of in loco parentis to her step-son Jason.
8. Mother has support obligations to five children in three different families, including her obligation to support Colton.
9. Domestic Relations granted Mother a multi-family deviation that required her to pay 92.51% of the guideline amount of \$489.29. Thus, under the June 25, 2007, Order, Mother must pay 452.64 per month in child support for Colton.
10. Jason Pecho has an existing \$186,000 federal income tax debt that he brought to the marriage with mother. Mother is not legally responsible for this debt.
11. Mother and her husband, Jason, had their home mortgage foreclosed this year.
12. Mother and her husband, Jason, must pay \$995 per month in rent for their housing.
13. During this year, Mother paid \$1,700 in attorney fees to obtain custody of two of her children, David and Darian Caputo.
14. Mother and Father agreed that Mother would pay Father only \$60 per week for Colton's child support and Father would not sue her for support.
15. \$60 per week is an inadequate amount of support for Colton's needs.
16. \$452 per month is an adequate amount of support for Colton's needs, and Mother can justly pay that amount for his support.

### Issues

A. Will the Court enforce the child support agreement between Mother and Father that limited Mother's obligation to \$60 per month?

B. Is Mother entitled to any deviations from the child support guidelines on the basis of 1) her husband's federal tax debt, 2) her financial difficulties that stemmed from a foreclosure on her home, or 3) the costs she incurred obtaining custody of the two Caputo children?

## Discussion

### **I. Enforcement of the Support Agreement**

At the hearing, both Mother and Father admitted to agreeing that Mother would pay Father \$60 per week for Colton's child support and Father would refrain from suing Mother for support. Mother did not sue on that contract to have it specifically enforced against Father, but, through this appeal, she took the case to family court. With the case in this posture, the Court must elevate the best interests of the child over the contractual rights of the parties. Knorr v. Knorr, 588 A.2d 503 (Pa. 1991). Concerning child support, the Pennsylvania Supreme Court held that parents "have no power . . . to bargain away the rights of their children." Id. at 505. Further, when parents conclude child support agreements that give "less than required or less than can be given to provide for the best interests of the children, it falls under the court's wide and necessary powers to provide for that best interest." Id. The rights of the parties must yield to the best interests of the child. Id.

Applying the law to this case, the Court finds that \$60 per week is less than required for Colton's best interests. Accordingly, Knorr controls this case, and the Court will not enforce the child support agreement between Mother and Father, because to do so would violate Colton's best interests, a consideration of primary importance to the Court. The Court also finds that Mother can contribute more than \$60 per week and that the present amount of \$452 per month constitutes a fair representation of what Colton's best interests require and of the amount that Mother can reasonably pay.

### **II. Deviations from Child Support Guidelines**

Mother challenged the amount of her support obligation and argued that her circumstances entitled her to a further deviation, beyond the 92.51% reduction she had received for the multiple family deviation she was awarded in the June 25, 2007, Order. The amount of child support a parent must pay is determined by the child support guidelines found in Pa.R.C.P. 1910.16-3. These guidelines set an initial amount of support that constitutes a rebuttable presumption. Pa.R.C.P. 1910.16-1(d). The presumption is rebutted "if the trier of fact makes a written finding . . . that an award in the amount determined from the guidelines would be unjust or inappropriate." Pa.R.C.P. 1910.16-1(d). To reach its conclusion, the Court must consider the following factors: 1) unusual needs and fixed obligations, 2) other support obligations of the parties, 3) other income in the household, 4) ages of the children, 5) assets of the parties, 6) medical expenses not covered by insurance, 7) standard of living of the parties and their children, 8) other relevant and appropriate factors, including the best interests of the child or children. Pa.R.C.P. 1910.16-5(b). Mother and Father presented evidence concerning only points one, two, three, seven, and eight. Accordingly, in reaching its decision, the Court will not discuss points 4, 5, and 6, and, since no evidence was presented on these factors, none can constitute a basis for deviation. The Court analyzes the remaining factors in turn.

First, the Court weighs the unusual needs and fixed obligations of Mother. Mother provided three examples. To begin, she presented evidence that she had to pay over \$900 per month in rent now that her home had been foreclosed upon. Next, she testified that her present husband, Jason Pecho, had an outstanding \$186,000 tax lien to the I.R.S. and that legal fees associated with this debt reduced the family's disposable income. Then, she stated that she had to pay \$1,700 in legal fees to obtain custody of two children, Darian and David Caputo. Thus, Mother argued that she was entitled to a deviation due to unusual needs and fixed obligations.

Mother has strained finances; however, this fact does not justify deviating from the guidelines for the following reasons. First, many families have to pay rent, and \$900 per month does not seem extraordinarily high. Second, her husband Jason's tax debt and associated legal fees undoubtedly drain family income, but the obligations are Jason Pecho's alone. He brought them to the marriage, and he will bear the cost of resolving them. Third, Mother's legal fees for custody do not seem to be so unusually high that they warrant a deviation from the guidelines. Of primary importance to the Court in making this determination is the best interests of Colton, and it seems unjust to the Court to reduce support necessary for Colton's subsistence due to some normal costs completely unrelated to him. Accordingly, the Court finds no unusual needs or fixed obligations that justify a guideline deviation.

Second, the Court analyzes the support obligations of the parents. Mother alone presented information on this factor, but Mother's only support obligations consist in her duty to support her children.

But, this does not constitute a basis for a deviation, since the guidelines themselves factor in the number of children supported and the incomes of the parties and Mother has presented no additional evidence that the guidelines may have overlooked. Furthermore, the Court notes that Mother has received a 92.51% multiple family deviation, and this demonstrates that the guidelines adequately address Mother's concerns regarding her other support obligations.

Third, only Father presented evidence relating to other income, arguing that, since Mother's present husband, Jason, earns over \$2,400 per month, the Court should give an upward deviation in Colton's support amount. The Court declines to do this because Jason has significant financial commitments that tie up his income for the foreseeable future. Chiefly, husband has a \$180,000 I.R.S. tax lien outstanding, and he currently is paying legal fees to deal with this. Additionally, this year, Mother and Jason lost their home, despite Mother's commendable efforts to save it; under the circumstances, penalizing her by allowing an upward deviation based on her husband's income would simply be unjust, and the Court will not do so.

Next, concerning the standard of living of the parties and the children, Mother presented evidence that she and her children, besides Colton, have experienced a lower standard of living as a result of the amount she must pay for Colton's support. She testified that her other children would be unable to participate in soccer and other similar youth activities. This is a lamentable situation, but it does not justify taking essential support away from Colton for what are basically fringe activities for the other children. Therefore, the Court declines to base a deviation on this.

Finally, the Court evaluates factor eight, which allows it to exercise its equitable powers and weigh all just factors including the best interests of the child. The Court notes that Mother has faced economic adversity this year. Moreover, the Court realizes that Mother is a full-time student and that she worked a lot of overtime this year in a futile attempt to save her home. However, the Court is also aware that Colton lives with his disabled father, whose disability caps his income at its present level. Colton is caught in the middle, and the Court has to determine what he has a right to expect from his mother for his support.

Difficulties face each party in this case, but raising children frequently requires painful sacrifices. The equities in this case dictate confirmation of the June 25, 2007, Order. This Order does not artificially tie Colton's support to Mother's temporarily inflated income levels. Additionally, the Order establishes a fair level of support necessary for Colton's welfare, while not gutting Mother's already strained budget. The Court declines to give Mother any further deviation and holds that she has failed to rebut the presumption that the guideline amount, as modified by the multiple family deviation, and reflected in the June 25, 2007, Order, accurately sets the child support due to Colton.

Finally, the Court notes that Domestic Relations properly granted Mother a 92.51% multiple family deviation under Pa.R.C.P. 1910.16-7. As a result of being obligated to support five children in three different families, Mother received a proportionate reduction from the recommended amount of \$489.21 per month to the effective amount \$452.64 per month. At the hearing, Father argued that Mother should not have received this deviation, since she did not have a legal obligation to support her step-son, Jason Pecho. Nonetheless, the Court finds that Mother does have such an obligation since she is presently married to Jason's father and she has assumed parental status and discharged parental duties. These facts give her in loco parentis status and obligate her to support her step-son, Jason, while her marriage to her husband, Jason, continues. Klein v. Sarubin, 471 A.2d 881, 883 (Pa. Super. Ct. 1983). Accordingly, Domestic Relations properly credited Mother with supporting four children in addition to Colton and not only three additional children as Father argued.

### Conclusion

Thus, the Court confirms the June 25, 2007, Order in all respects. Both Mother and Father have failed to carry their burden of rebutting the presumed guideline amount. Also, the Court concludes that the Order appropriately accounts for Colton's best interests and that it abides within the parties' present means. It fairly balances the equities between Colton, Mother, and Father. Although Mother and Father have expressed some anguish at complying with the Order, the support of children constitutes a crucial obligation and routinely requires significant sacrifices by both parents for the welfare of the children. The June 25, 2007, Order enforces Colton's well-being, and the Court affirms it. Consistently, the Court declines to specifically enforce the parties' child support agreement, since the agreement is contrary to the best interests of Colton.

October 17, 2007, a *de novo* hearing having been held on Defendant's appeal from the Order of this Court dated June 25, 2007, and upon consideration of the evidence, the arguments and memoranda of the parties and the law, and the Court having determined that the June 25, 2007, Order reflects both the best interests of Colton and Mother's and Father's capacity to support him, it is ordered that the June 25, 2007 Order is confirmed in its entirety.