

Pepple v Pepple

MISTI J. PEPPLER, Plaintiff v. COREY C. PEPPLER, Defendant
Court of Common Pleas of the 39th Judicial District of Pennsylvania,
Franklin County Branch
Civil Action - DRS, No. 1998-00452

Child Support; In General; Support Appeal; De Novo Hearing

Child Support; In General; Purpose of Child Support

Child Support; Modification; Materiality of Change

1. Under Pennsylvania Rule of Civil Procedure 1910.10, where a demand for hearing before the Court of Common Pleas is filed, the resulting proceeding is *de novo* upon the issues raised.
2. *De Novo* review entails full consideration of the case anew, and the reviewing body is in effect substituted for the prior decision maker and redecides the case.
3. Income from Respondent's newly obtained employment is clearly a valid consideration in calculation of the amount of support due for the Children's benefit, and the Court will not require a subsequent petition for modification prior to requiring the Domestic Relations Section to perform a recalculation of the proper support amount.
4. Pursuant to Pa. R.C.P. 1910.16, in no event will an order be entered requiring the parent with lower income to pay basic child support to the parent with the higher income. See Pa. R.C.P. 1910.16-4(c)(2).
5. The principal goal in child support matters is to serve the best interests of the child.
6. A custodial parent may be required to pay child support to a non-custodial parent, where such payments are necessary to maintain the lifestyle to which the children are accustomed to while in that parent's home.
7. Modification of a Support Order may only be held upon a substantial change in circumstances, alterations being limited to situations which are either irreversible or indefinite.
8. Plaintiff's expenses were not appreciably altered by the temporary shift in custody, which was indeed transitory, and was never intended to be irreversible or indefinite.
9. The Court will not require payment from the Respondent in a situation which would create an adverse incentive to mutually agreed upon, practical parenting decisions made in children's best interest.
10. Where the children temporarily resided with the Defendant due to conditions in the Plaintiffs home which were making the children ill, the Court will not alter the amount of support due. Were the Court to order a payment from the Plaintiff, it would be sending the message that any shift in custodial arrangements, however temporary and regardless of the benefit which accrued to children thereby, could result in adverse financial consequences.

Appearances:

Jennifer Newman, Esq., *Counsel for the Plaintiff*
Michael Connor, Esq., *Counsel for the Defendant*
Franklin County Domestic Relations

OPINION

Van Horn, J., January 6, 2012

Statement of the Case

On August 26, 2011, Corey C. Pepple [hereinafter "Petitioner" or "Defendant"] filed a request for downward modification of child support paid to Misti J. Pepple [hereinafter "Respondent" or "Plaintiff"] under an order entered May 6, 2011. The

stated reason for the modification was the parties' recent agreement to share custody of their two (2) children, Logan Christopher Pepple, born May 12, 1996, and Preston Connor Pepple, born September 26, 1997 [hereinafter collectively "the Children"]. By Order dated October 7, 2011, following a support conference held on that date, the Court dismissed the Petition to modify, approving of the reasoning of the hearing officer that under the guidelines, the amount of the Order changed by less than five (5) percent. The same date, the parties agreed to credit the Petitioner two hundred two dollars and fourteen cents (\$202.14), in consideration for three (3) weeks the Children were solely in his care.

On October 27, 2011, the Defendant appealed the dismissal of his request for modification. The Court by Order dated October 31, 2011, set a *de novo* support hearing for December 19, 2011. Pre-Trial Statements were timely received from both parties, and the hearing proceeded as scheduled. Though the appeal raised four (4) issues at hearing the Defendant argued the merits of only the first two (2). First, the Petitioner alleged the Children had been in his sole custody for four (4) weeks and five (5) days, while he continued to pay support to the Respondent. Second, Defendant asserted that the Plaintiff had begun gainful employment, but that her earnings were not taken into account by the Support Order. The Respondent answered the first issue stating that a credit for the time the Children had been in Petitioner's sole custody had already been given, and agreeing to a further credit in the amount of sixty seven dollars and thirty eight cents (\$67.38). As to her newly obtained employment, Respondent maintained any request for modification based on her earnings was properly dealt with a new support conference, rather in an appeal hearing.

The Court having heard the evidence and the arguments of the parties, and having conducted an independent review of the applicable law, will now dispose of the issues raised on appeal by this Opinion and Order.

Discussion

1. Respondent's Newly Obtained Employment

At hearing, the Plaintiff testified she had recently gained what had begun as seasonal employment at Target, as a cashier. The orientation for the position occurred on October 24, 2011, her first day of work occurring on November 2, 2011. Following several weeks of work, Plaintiff was informed the position would become permanent. Though Plaintiff knew she had obtained a position with the retailer at the time of the support conference, she did not know the specific number of hours she would be given or the compensation to which she would be entitled.

The cashier position pays seven dollar and seventy five cents (\$7.75) per hour, with Respondent working a total of around twenty (20) hours per week. Because of the recent nature of the employment, Plaintiff has received only three (3) payments from her employer. The first, for the period from November 6 through November 19, 2011, contained a gross amount of three hundred thirty four dollars and three cents (\$334.03), for thirty eight point one (38.1) hours of work, five (5) of such hours representing a carry-over from the previous pay period. (See Plaintiff's Exhibit No. 4) The second stub, for the period from November 20 until December 3, contained gross earnings of three hundred thirty nine dollars and ninety eight cents (\$339.98), representing a total of forty two point eight three (42.83) hours of work. (See Plaintiff's Exhibit No. 6.) Plaintiff testified to receiving an extra dollar for each hour of work on Black Friday.

In Franklin County, support matters proceed according to Rule 1910.11. See Pa. R.C.P. 1910.10. Under the Rule, where a demand for hearing before the Court is filed, the resulting proceeding is *de novo* hearing upon the issues raised. See Pa. R.C.P. 1910.11(h)(i). Black's Law Dictionary, as precedential law, defines a hearing *de novo* as "a new hearing, or a hearing for the second time, contemplating an entire trial in the same manner in which the matter was originally heard and a review of the previous hearing." *In re Involuntary Commitment of Barbour*, 733 A.2d 1286, 1288 (Pa. Super. Ct. 1999) (citing *Commonwealth v. Virnelson*, 243 A.2d 464, 469 (Pa. Super. Ct. 1968)) ("*de novo* review entails full consideration of the case anew, and the reviewing body is in effect substituted for the prior decision maker and redecides the case").

There is no reason to require a subsequent petition requesting modification, when the income from Respondent's employment is clearly a valid consideration in calculation of the amount of support due for the Children's benefit. See Pa. R.C.P. 1910.16-2; 23 Pa. C.S.A. § 4302 (definition of "income"). The attached Order directs the Domestic Relations Section to recalculate the amount of support due from the Petitioner in light of the Respondent's employment income.

2. Temporary Full Custody in the Defendant/Petitioner

At the end of September, 2011, the Plaintiff discovered the presence of mold in her residence. According to her testimony, the growth adversely affected both Plaintiff's health and the Children's. After discussing the problem with the Defendant, the parties agreed the Children would remain in his physical custody until the problem was resolved. From September 28, 2011, until October 30, 2011, the Children remained in the care of their father. The parties having shared physical custody of the Children, the period contained fourteen (14) days during which the two would have been with their mother that they remained in the custody of their father. (See Plaintiff's Exhibit No. 5) Respondent admits to receiving

Social Security payments for the Children during the month of October, which was not shared with the Petitioner, and further that she did not give the Petitioner any monetary assistance for their care during that time. It is undisputed that the parties agreed to this arrangement, after mutual consultation, for the benefit of the Children.

A credit against the Defendant's arrears was agreed upon by the parties following the Support Conference, in the amount of two hundred and two dollars and fourteen cents (\$202.14), representing three (3) weeks of support. At hearing, Plaintiff agreed to a further credit in the amount of sixty seven dollars and thirty eight cents (\$67.38), for a total credit against Defendants arrears of two hundred sixty nine dollars and fifty two cents (\$269.52). As such, the Defendant has received credit for four (4) weeks of support payments. Defendant agrees with the credited amounts. However, he further requests payment from the Plaintiff in the amount of two hundred ninety seven dollars and twenty cents (\$297.20). Defendant argues that the proposed credit compensates only for the support he was obligated to pay to the Plaintiff, but does not contribute to his obligation during the month of October to actually support the Children. He argues that the Plaintiff received Social Security payments for the Children during that month, and that he should be entitled to some or even all of those funds. The Plaintiff counters with the well-established rule that a parent with a lower income cannot be required to pay support to a parent with a higher income.

For several reasons, the Court will deny the request for payment from Respondent to Petitioner. First, pursuant to Pa. R.C.P. 1910.16, "in no event will an order be entered requiring the parent with the lower income to pay basic child support to the parent with the higher income." See Pa. R.C.P. 1910.16-4(c)(2). The illustration reiterates that "a support order cannot be entered against the parent with the lesser income." *Id.* Petitioner does not cite, and the Rules of Civil Procedure do not provide, any exception to this bright-line rule.

Further, the law is now settled that a custodial parent may be required to pay child support to a non-custodial parent, where such payments are necessary to maintain the lifestyle to which the children are accustomed to while in that parent's home. See *Colonna v. Colonna*, 855 A.2d 648, 651 (Pa. 2004). The trial court under *Colonna* must consider whether the non-custodial parent has adequate assets to provide for the child appropriately in terms of housing and amenities. See *id.* at 652. Here, Respondent is entitled to support from the Petitioner in order to adequately provide for the Children in terms of housing and amenities. Requiring the payment requested by the Petitioner may place her ability to provide for the Children in jeopardy, which is not in their best interest and which the Court will not require.

While the Court did not find, nor did the Petitioner provide, case law addressing an analogous situation, the matter of *R.C. v. J.S.* is illustrative. See *R.C. v. J.S.*, 957 A.2d 759 (Pa. Super. Ct. 2008). In that case, the child was temporarily removed from the home of his mother and placed in in-patient treatment in a mental health facility. See *id.* at 763. The Court addressed the issue of whether the best interest of a child is served by suspension of a child support order during periods of transitory treatment outside the home. See *id.* First, the Court concluded that the mother continued to provide for the child, in visiting the facility, and maintaining her household in the same condition as when he was present therein, providing a benefit to the child and a financial burden to his mother. See *id.*

Further, the *R.C.* Court stated that modification of an Order could only be had "upon a substantial change in circumstances," alterations being limited to situations which are "either irreversible or indefinite." *Id.* The Court cited "typical examples" of changed circumstances as including "significant alterations in a parent's income, a change in household expenses, or modification of custodial arrangements of the children." *Id.* The Court concluded:

Thus, it is difficult to characterize an impermanent change in living arrangements as a substantial "change in circumstances" permitting modification proceedings in the first instance. Blurring the line between temporary and permanent changes in circumstances clearly impacts a responsible custodial parent's ability to provide for the child's best interests. If a child is removed from a parent's physical custody indefinitely, the parent does not need to maintain a household suitable for visits, and he can change his living arrangements and thereby reduce expenses. However, when a child is receiving provisional inpatient treatment, the custodial parent's child-related expenses, as a practical matter, are not altered significantly. The custodial parent still must maintain an appropriate residence in anticipation of the child's eventual return.

Id. at 763-64.

Though the instant case involves a transitory alteration in custody between parents, rather than between a parent and a residential facility, the Court believes the analysis regarding changed circumstances is applicable. The Plaintiff's expenses were not appreciably altered by the temporary shift in custody, which was indeed transitory, and was never intended to be irreversible or indefinite. As noted in *R.C.*, the amount of a support order is a matter left to the discretion of the trial

court. See *Hartley v. Hartley*, 528 A.2d 233, 235 (Pa. Super. Ct. 1987). So, too, it is within the Court's discretion "to determine under all the circumstances what is just and equitable to the child and to the [obligor]." *Id.* Further, it is well established that the principal goal in child support matters is to serve the best interests of the child. See *Yerkes v. Yerkes*, 824 A.2d 1169, 1171 (Pa. 2003). That interest is not served by reducing the Plaintiff's ability to maintain her household as the Children are accustomed to.

Finally, public policy considerations move the Court to deny the request for a temporary alteration to the Support Order, or requiring payment of the Social Security benefits from the Plaintiff to the Defendant in the instant situation. The Children were becoming ill as a result of toxic mold in their mother's home. Plaintiff, concerned for their welfare, spoke to the Defendant, who concurred in her concerns, and the two mutually agreed to temporarily alter the custodial arrangement for the Children's benefit. Petitioner then took custody of the Children until the problem in the Respondent's home could be remediated, sparing the Children from any further illness. The parties acted as responsible parents should, placing the welfare and needs of their children first.

The Court will not financially penalize the Plaintiff for her action in consulting with the Defendant, and foregoing her period of custody for the Children's benefit by temporarily altering the support order. To require payment from the Respondent would be to create an adverse incentive to such mutually agreed upon, practical parenting decisions. Were the Court to order a payment to from the Plaintiff, it would be sending the message that any shift in custodial arrangements, however temporary and regardless of the benefit which accrued to children thereby, could result in adverse financial consequences. Parents would perhaps be less apt to undertake such mutually agreed upon alterations in custody even in situations where temporary changes would benefit their children, because of the possible financial consequence of such action. The purpose of support payments, and the goal of the Court in support matters, is to serve the best interest of children. To grant the relief requested by the Petitioner would contravene that primary goal. The attached Order denies the request.

Order of the Court

And now, this 6th day of January, 2012, upon consideration of the Petition for Modification of Child Support filed by the Defendant/Petitioner; the Court having held hearing and received the written submissions and oral arguments of the parties, and having conducted an independent review of the applicable law;

It is hereby ordered:

1. The matter is remanded to the Domestic Relations Section for re-calculation of the support obligation of the Defendant considering the Plaintiff's employment income, and the shared custodial arrangement between the parties.
2. The Defendant shall be entitled to a total credit against his child support arrears in the amount of two hundred sixty nine dollars and fifty two cents (\$269.52).
3. The Defendant's request for support payment from the Plaintiff in the amount of two hundred ninety seven dollars and twenty cents (\$297.20) is denied.