

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

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|---------------------|---|--------------------------|
| CHRISTINA M. KULAN, | : | IN THE SUPERIOR COURT OF |
| | : | PENNSYLVANIA |
| Appellant | : | |
| | : | |
| v. | : | |
| | : | |
| MICHAEL S. KULAN, | : | |
| | : | |
| Appellee | : | No. 1144 EDA 2013 |

Appeal from the Order entered on March 18, 2013
in the Court of Common Pleas of Bucks County,
Civil Division, No. 2012-62032

BEFORE: FORD ELLIOTT, P.J.E., WECHT and MUSMANNO, JJ.

MEMORANDUM BY MUSMANNO, J.: **FILED APRIL 22, 2014**

Christina M. Kulan ("Mother") appeals from the Order requiring Michael S. Kulan ("Father") to pay \$844.00 per month for support of the parties' 17-year-old son, and an additional \$956.00 per month for spousal support. We affirm the Order as to child support.

Mother and Father married on November 21, 1993, and separated on October 10, 2012. Mother currently resides in the marital home. Father maintains the mortgage on the marital home, paying \$3,366.00 per month on the mortgage.

Mother filed a Complaint for Support on October 17, 2012. Mother filed a divorce Complaint on November 16, 2012.¹ When the parties could not reach an agreement as to support at the support conference, the trial

¹ As of the date Mother filed the instant appeal, no divorce decree had been entered.

court entered an Interim Order, directing Father to pay \$784.00 per month for child support and \$692.00 per month for spousal support. The trial court's Interim Order further required Father to provide medical insurance, with Mother being responsible for the initial \$250.00 of annual unreimbursed medical expenses. After the initial \$250.00 per year payment, the remaining annual unreimbursed medical expenses would be paid in proportion to each party's earning capacity, with Father paying 76% and Mother paying 24% of the unreimbursed medical expenses.²

On March 18, 2013, the trial court conducted a support hearing. As a result of that hearing, on April 15, 2013, the trial court entered a support Order requiring Father to pay \$844.00 per month for child support, and \$956.00 per month for spousal support. However, the trial court directed that annual unreimbursed medical expenses exceeding \$250.00 were to be allocated between the parties, with Father paying 81% and Mother paying 19%. Thereafter, Mother filed the instant timely appeal, followed by a court-ordered Pa.R.A.P. 1925(b) Concise Statement of Errors Complained of on Appeal.

Mother now presents the following claims for our review:

I. Whether the [trial] court abused its discretion when, as is clear from a review of the transcript of the hearing before the [trial] court, the [] court failed to consider the earning capacity of [Father], as required by Pennsylvania law[?]

² The Interim Order had failed to consider Father's mortgage payments on the marital home.

II. Whether the [trial] court abused its discretion when, as is clear from a review of the transcript of the hearing before the [trial] court, the [] court failed to consider the factors set forth in Pa.R.C.P. 1910.16-5, particularly the relative assets and liabilities of the parties and the standard of the living of the parties and their child, as required by Pennsylvania law[?]

Brief for Appellant at 4.

Mother first claims that the trial court abused its discretion by failing to consider Father's earning capacity in determining the appropriate amount of support. **Id.** at 8. Specifically, Mother challenges the trial court's finding that Father's earning capacity is commensurate with the net income available for support, as derived from the parties' 2011 joint income tax return. **Id.** According to Mother,

a review of the transcript of the hearing indicates quite clearly that the only thing that the [trial c]ourt considered in fashioning its award was the investment income earned by Father based on the parties' 2011 joint tax return, without any consideration or reference to Father's earning capacity....

Id. Mother points out that the trial court apparently adopted the testimony of Father's expert, who testified regarding Father's investment income, but offered no testimony regarding Father's earning capacity. **Id.** at 9.

Mother further argues that Father owns only one rental property, and there is no testimony that Father considers the management of that property to be his current occupation. **Id.** at 10. Mother asserts that the trial court improperly accepted Father's testimony that his "shaky hands"

prevent him from continuing in dentistry, where he had owned and operated his own practice. **Id.**

Initially, we observe that the trial court's Order awarded both spousal support and child support. This Court has jurisdiction to consider claims related to child support, but we cannot address issues related to spousal support until a divorce decree has been entered and the certified record shows that no economic claims remain to be decided. **Hrinkevich v. Hrinkevich**, 676 A.2d 237, 239 (Pa. Super. 1996).

[A] spousal support order entered during the pendency of a divorce action is not appealable until all claims connected with the divorce action are resolved. The rationale behind this rule is that, for purposes of judicial efficiency, in the event that an initial award of interim relief is granted in error, the court has the power to make adjustments in the final settlement via the equitable distribution of marital property. Thus, when all economic matters involved in a divorce are resolved, any support order can be reviewed and corrected when the court finalizes the equitable division of the property.

Capuano v. Capuano, 823 A.2d 995, 998-99 (Pa. Super. 2003) (citations omitted).

The trial court's Order is an allocated support order, as it made separate provisions for child support and spousal support. **See id.** (defining an allocated support order as one that makes "separate provisions for child support and separate provisions for spousal support"). As such, on appeal, we may review the portion of the trial court Order awarding child support. **See id.**

When reviewing an order of child support,

this Court may only reverse the trial court's determination where the order cannot be sustained on any valid ground. We will not interfere with the broad discretion afforded the trial court absent an abuse of [] discretion or insufficient evidence to sustain the support order. An abuse of discretion is not merely an error of judgment; if, in reaching a conclusion, the court overrides or misapplies the law, or the judgment exercised is shown by the record to be either manifestly unreasonable or the product of partiality, prejudice, bias or ill will, discretion has been abused. In addition, we note that the duty to support one's child is absolute, and the purpose of child support is to promote the child's best interests.

K.J.P. v. R.A.P., 68 A.3d 974, 978 (Pa. Super. 2013) (citations omitted).

We recognize that “[w]here a party voluntarily accepts a lower paying job, there generally will be no effect on the support obligation.” Pa.R.C.P. 1910.16-2(d)(1).

Where a party willfully fails to obtain appropriate employment, his or her income will be considered to be equal to his or her earning capacity. Pa.R.C.P. 1910.16-2(d)(4). A determination of earning capacity must consider the party's age, education, training, health, work experience, earnings history, and child care responsibilities.

Ney v. Ney, 917 A.2d 863, 866 (Pa. Super. 2007).

In its Opinion, the trial court summarized the evidence presented at the support hearing. Trial Court Opinion, 5/30/13, at 3-6. After setting forth the appropriate law, the trial court ultimately concluded that Mother's claim lacks merit. ***Id.*** at 8-13. Upon our review of the parties' briefs and the certified record, we agree with the trial court's reasoning, as set forth in its Opinion, and affirm on this basis. ***See id.*** In particular, we point out the following evidence presented by Father at the support hearing.

Father testified that, as a dentist in 2001, he earned more than \$59,000 a year. N.T., 3/13/13, at 65. When asked why he no longer works as a dentist, Father provided the following explanation:

Well, back at that point[,] I thought it was a good opportunity between my wife and I and we talked about selling my practice. I had a number of people ask me to sell it to them, and I decided to stop. Also, I started getting a little shaky and I couldn't do hands-on.

Id. Father further explained that

[T]hings were going pretty good at that point and the economy was pretty good, and my father had died a few years ago before that, so I thought it was a good opportunity to be able to take care of the properties that were left....

Id. at 68.

Father did not claim to have a disability. Rather, he stated that "when I do dexterity work, I get a little shaky, and I can't even sign my name."

Id. Father testified unequivocally that he could not work as a dentist because of the shakiness. **Id.** at 66. Mother offered no evidence to counter Father's testimony. This evidence further supports the trial court's conclusion.

Mother next claims that the trial court abused its discretion by failing to consider the factors set forth at Pa.R.C.P. 1910.16-5. Brief for Appellant at 10. In particular, Mother asserts that the trial court failed to consider the relative assets and liabilities of the parties, and their standard of living. **Id.** Mother argues that Father's income derived from his assets cannot serve to

satisfy the requirement of Rule 1910.16-5. **Id.** at 11. According to Mother, the trial court's

failure to consider the assets of Father in this case was particularly egregious given the considerable value of [Father's] assets and [Father's] testimony that the parties were required to, on occasion, utilize the principal of his assets in order to sustain their standard of living.

Id. at 11-12. Mother argues that as a result of trial court's failure to consider the parties' standard of living, the court's support order "was inadequate to permit Mother to make even the home equity, tax and insurance payments on the marital home in which she and the child were residing, let alone pay for any of her and her child's living expenses." **Id.**

Mother relies upon Pa.R.C.P. 1910.16-5 to support her claim that the trial court abused its discretion. Rule 1910.16-5 states that the trial court must consider the following factors in determining whether to *deviate* from the guideline child support obligation:

- (1) unusual needs and unusual fixed obligations;
- (2) other support obligations of the parties;
- (3) other income in the household;
- (4) ages of the children;
- (5) the relative assets and liabilities of the parties;
- (6) medical expenses not covered by insurance;
- (7) standard of living of the parties and their children;
- (8) in a spousal support or alimony *pendente lite* case, the

duration of the marriage from the date of marriage to the date of final separation; and

(9) other relevant and appropriate factors, including the best interests of the child or children.

Pa.R.C.P 1910.16-5(b).

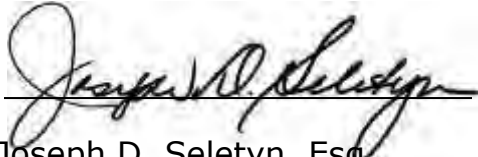
However, “[t]here shall be a rebuttable presumption, in any judicial or expedited process, that the amount of the award which would result from the application of such guideline is the correct amount of support to be awarded.” 23 Pa.C.S.A. § 4322(b). “The presumption is strong that the appropriate amount of support in each case is the amount as determined from the support guidelines.” **Ball v. Minnick**, 648 A.2d 1192, 1196 (Pa. 1994). Mother did not rebut this presumption.

In its Opinion, after setting forth the relevant law, the trial court addressed Mother’s claim and concluded that it lacks merit. Trial Court Opinion, 5/30/13, at 13-16. In particular, the trial court pointed out that the parties presented no evidence regarding their standard of living before, during or after the marriage. **Id.** at 16. We agree with the sound reasoning of the trial court, as stated in its Opinion, and affirm on this basis. **See id.** at 13-16.

Order as to child support affirmed.

J-A30042-13

Judgment Entered.

A handwritten signature in black ink, appearing to read "Joseph D. Seletyn", written over a horizontal line.

Joseph D. Seletyn, Esq.
Prothonotary

Date: 4/22/2014

IN THE COURT OF COMMON PLEAS OF BUCKS COUNTY, PENNSYLVANIA
FAMILY DIVISION

2013 MAY 30 P 2: 18

CHRISTINA KULAN : NO. 2012DRO1945-S
vs. :
MICHAEL KULAN : IN SUPPORT

RECEIVED
DOMESTIC RELATIONS
SECTION

OPINION

D. C. ...

Christina Kulan ("Mother") appeals from this Court's Order of March 18, 2013, ordering Michael Kulan ("Father") to pay \$844.00 per month for support of their minor child, Steven, age 17, and an additional \$956.00 for monthly spousal support.

On October 17, 2012, Mother filed a Complaint for Support with the Bucks County Domestic Relations Office. On October 23, 2012, Mother and Father were directed to appear at a Support Conference, scheduled for November 29, 2012.

Mother filed for divorce in the Family Division of the Bucks County Court of Common Pleas on November 16, 2012. The divorce proceeding is pending as of the date of this appeal.

On November 9, 2012, the Support Conference was rescheduled to January 22, 2013.

On January 22, 2013, the parties attended the Support Conference. At the Conference, it was established that the parties were married on November 21, 1993 and separated on October 10, 2012. Mother currently resides in the marital home, however, Father maintains the mortgage on this property. The total monthly mortgage payment is \$3,366.00.

SCANNED

ENTERED

Mother is a stay-at-home Mother who last worked outside the home in 1998. The parties stipulated to an earning capacity for Mother at \$9.00 per hour for forty (40) hours per week.

The parties' child, Steven Kulan, age 17, attends Lansdale Catholic High School at a cost of \$7,200.00 per year.

Father is a retired dentist. He retired in 2001 and sold his dental practice. Father's income was based upon an annual income of \$72,000.00, "which was derived from the taxable interest, tax-exempt interest and ordinary dividends listed on the parties' joint 2011 [Federal Income] tax return." See Domestic Relations Office's Support Recommendation.

The parties were unable to reach an agreement at the Support Conference.

Based upon the above findings, an Interim Order was entered on January 29, 2013, directing Father to pay \$1,476.00 per month for the support of one child and spouse. The Interim Order was allocated at \$784.00 for child support and \$692.00 for spousal support. See id.

The Interim Order also required Father to provide medical insurance for the family with Mother being responsible for the initial \$250.00 of annual unreimbursed medical expenses. After the initial payment of \$250.00 by Mother, all unreimbursed medical expenses would be paid proportionate to the parties earning capacity, with Father paying 76% and Mother paying 24%. See id.

This Interim Order did not take into account any deviation for the maintenance of the mortgage by Father upon on the marital residence, however, the Domestic Relations Office recommended that Father receive a credit of \$1,310.00 per month pursuant to Pa. R.C.P. 1910.16-6(e) if this Court determined that Father was entitled to such a deviation. See id.

The Domestic Relations Office recommended that the Interim Order become a Final Order.

On January 22, 2013, a support hearing was scheduled for March 18, 2013.

After hearing testimony on March 18, 2013, this Court modified the prior Interim Order and directed Father to pay \$1,800.00, allocated at \$844.00 per month for the support of their minor child, Steven, and \$956.00 for spousal support. Health care insurance coverage was to be provided by Father and unreimbursed medical expenses exceeding \$250.00 annually were to be allocated at 81% to Father and 19% to Mother.

The following evidence was presented at the March 18, 2013 Hearing:

Mother's counsel called Steven Ciampoli to testify concerning Father's income and earning capacity. Steven Ciampoli was qualified as an expert in "the fields of insurance, accounting, and investment advice," however, he testified that he was not familiar with Pennsylvania Rule of Civil Procedure 1910.16-2, which is entitled "Support Guidelines of Net Income." Furthermore, he testified that he has no experience with the term "net income available for support" (NIAS).

Steven Ciampoli reviewed Mother and Father's 2011 joint Federal tax return and prepared two (2) reports based upon his observations. See Mother's Exhibits 1 & 2. In the parties' 2011 joint Federal Tax Return, the "net income" of the parties' was \$59,060. Mother's Exhibit-4. In determining Father's net income available for support, Ciampoli testified that he "added back items to that number [\$59,060] that were not included" in net income. N.T. at 10. Specifically, Ciampoli added back \$7,109 of interest income, \$9,660 from the distribution of an annuity, \$5,964 for depreciation of property, and \$100,625 received as long-term and short-term capital gains.

Based upon his review of the 2011 joint tax return, Ciampoli determined Father's net income at \$181,788.00. N.T. at 11-23; see also Mother's Exhibits 1 & 2.

In reaching his determination, Ciampoli focused upon what he termed "cash inflow" – i.e. assets or items that are not necessarily taxable but are considered "income" because it was "money received" by Father. See N.T. at 11-15. He stated that this term is not interchangeable with "income." N.T. at 97. Further, in analyzing short and long-term capital gains or losses, Ciampoli only considered the proceeds from stocks purchased and sold in 2011. He did not factor in any amount of the proceeds that were reinvested. N.T. at 40-43; see also Mother's Exhibit 2 & 3. He testified that, when dealing with realized gains and losses, "the ultimate goal would be to determine the net inflow or outflow with documentation provided. I could only determine the inflow." Ciampoli admitted that he was not given access to any documentation regarding any reinvestment of proceeds from stocks or other assets. N.T. at 43-44.

On cross-examination, Ciampoli testified that the terms "cash inflow" and "cash outflow" are not "legal" or "tax" terms; rather, they are terms which he conceived for the purpose of analyzing Father's net income. Further, Ciampoli testified that, because the 2011 tax return was filed jointly, Mother agreed that the adjusted gross income available to Father and Mother was \$59,060 for 2011. Ciampoli also admitted that he could not determine what proportion of the income, if any, was allocated to Mother. N.T. at 28, 32-33.

Father testified that he is fifty-eight (58) years old. He was a dentist before retiring in 2001 and selling his dental practice. Father has not worked since 2001. As a result, his sole source of income is derived from stocks, dividends, and income from his ownership of various assets. Father testified that the title to the marital home is in both his and Mother's name. Father paid the mortgage on the marital property until the Interim Order was entered on January 29, 2013, when he began paying support to Mother. N.T. at 54-55, 57, 61.

Regarding Father's retirement, he testified that it was a decision agreed upon by both he and Mother. He also testified that before retiring he started getting a "little shaky" and could not do "hands-on" dental work. Father testified that he could not return to practicing as a dentist because of this physical issue. N.T. at 65-66.

Father testified that his average monthly income is "between six and seven thousand dollars," and it varies because the distribution of dividends occurs at different times. Father testified that if his expenses are greater than his monthly income he will "sell a little of the principle" of certain assets. N.T. at 71.

The parties' son, Steven, attends Lansdale Catholic High School in Lansdale, Pennsylvania. He is currently a senior. Father testified that the annual tuition is \$7,200, which Father paid for by selling "some principle" from his assets. Father further testified that he also intends to pay for Steven's college expenses from his assets. N.T. at 71-72.

Father's counsel called Mark Bradford to testify. Bradford was qualified to render his opinion with regard to the "issues of income available for support in the Commonwealth of Pennsylvania." Bradford testified that he does mostly "matrimonial work and matrimonial consulting," as well as income calculations for individuals going through a divorce. He testified that he is familiar with "Net Income Available for Support" (NIAS) as well as the statute upon which it is premised, Pennsylvania Rule of Civil Procedure 1910.16-2. N.T. at 79-80.

Like Ciampoli, Bradford analyzed Mother and Father's joint Federal income tax return from 2011. Mark Bradford identified five categories for Father's income: (1) interest income; (2) dividend income; (3) capital gains and losses; (4) rental income; and (5) pensions and annuities. N.T. at 83-91.

Where Bradford and Ciampoli differ is the characterization of "income" derived from short-term and long-term capital gains or losses. On the parties' 2011 joint tax return, located in Schedule D, the net short-term capital loss was \$4,935 and the long-

term capital loss was \$197,373. Setting aside any carryover losses from previous years, there was still a \$16,000 loss on capital assets in 2011. N.T. at 88-89; see also Mother's Exhibit-4.

Ciampoli found that \$100,625 was the net "cash inflow" derived from the sale of these short-term and long-term capital assets – i.e. this number represented the amount of money received by Father upon liquidation of certain stocks. Bradford disagreed with Ciampoli's analysis because it only dealt with "gross proceeds" from the sale of these assets without taking into consideration any expenses or the reinvestment of these proceeds. N.T. at 89-90. Further, Bradford testified that for purposes of support, it is a "net income calculation" not a "cash flow calculation." Thus, Ciampoli's analysis is inconsistent with Pennsylvania Rule of Civil Procedure 1910.16-2. N.T. at 89-90. .

Based upon his determination, as well as the "adding back" of other items to Father's income, such as interest income and depreciation, Bradford concluded that Father's annual disposable net income available for support was \$73,265.00, which was consistent with the annual income of \$72,000.00 found by the Domestic Relations Office in their Support Recommendation.

Father testified on surrebuttal that he reinvested all of the funds received from the sale of stocks in 2011, and did not utilize these funds for any other means. N.T. at 101, 107.

At the conclusion of this hearing, this Court determined that Mother's net income was \$1,390.39 per month. This conclusion was based upon her attributed full-time employment of forty (40) hours per week at minimum wage. Regarding Father's income, this Court determined that the one-time payout of \$16,574 from Father's life insurance policy was income, excluding the \$6,914 that was taxed, for purposes of support. Father's income was attributed at approximately \$6,000.00 per month. Taking into consideration Father's payment of tuition for their child's private school education, this Court issued the following Order:

[Father] shall pay \$844 per month in child support and \$956 in spousal support for a total of \$1,800. [Father] will continue to provide medical insurance for [Mother] and child. Any medical expenses which exceed \$250 for spouse and per child are to be apportioned as follows: 81 percent of the expense, [Father], and 19 percent, [Mother]. Any arrears occasioned by this Order shall be paid at an additional sum of ten percent.

N.T. at 117. The Order did not consider any mortgage payment and/or contribution.

Mother filed her Notice of Appeal from this Court's Order on April 15, 2013. On April 29, 2013, this Court ordered Mother to file a Concise Statement of the Errors Complained of on Appeal pursuant to Pa.R.A.P. 1925 (b)(1). Mother filed her Statement of Errors Complained of on Appeal on May 16, 2013.

In her Concise Statement of Matters Complained of on Appeal, Mother alleges the following, *verbatim*:

(1) The Court failed to consider, or assign to Defendant, an earning capacity, as required by 23 Pa.C.S.A. Section 4322, Pennsylvania Rule of Civil Procedure 1910.16-2, and applicable Pennsylvania case authority.

(2) The court failed to consider all of the factors required by Pennsylvania Rule of Civil Procedure 1910.16-5, in particular, the relative assets and liabilities of the parties and the standard of living of the parties and their child, as required by Pennsylvania Rule of Civil Procedure 1910.16-1 and applicable Pennsylvania case authority.

Concise Statement of Errors Complained of on Appeal, May 16, 2013.

It is well-established that the Superior Court's standard of review of an order awarding support is very narrow. Gephart v. Gephart, 764 A.2d 613 (Pa. Super. 2000). A support order can only be reversed if that order cannot be sustained on any valid ground. Albert v. Albert, 707 A.2d 234, 235-36 (Pa. Super. 1998).

The applicable standard of review with respect to support awards is [an] abuse of discretion; the amount of support awarded is largely within the sound discretion of the trial court. “A finding that the court abused its discretion requires proof of more than a mere error in judgment, but rather evidence that the law was misapplied or overridden, or that the judgment was manifestly unreasonable or based on bias, ill will, prejudice or partiality.” Thus, this Court may reverse the trial court’s determination only if the court’s order cannot be sustained on any valid ground.

Chapman-Rolle v. Rolle, 893 A.2d 770, 773 (Pa. Super. 2006) (citing Spahr v. Spahr, 869 A.2d 548, 551 (Pa. Super. 2005) (citations omitted)).

The finder of fact is entitled to weigh the evidence presented and assess its credibility. The fact finder is free to believe all, part, or none of the evidence and the Superior Court will not disturb the credibility determinations of the court below. Miller v. Miller, 744 A.2d 778, 787 (Pa. Super. 1999); see also, Hoffman v. Hoffman, 762 A.2d 766 (Pa. Super. 2000) (assessment of the credibility of witnesses is within the province of the trial court). Further, with regard to conflicting expert testimony, the trial court must determine weight and credibility that it will afford each expert. Pennypack Woods Home Ownership Association v. Board of Revision of Taxes, 639 A.2d 1302, 1306 (Pa. Cmwlth. 1994). “[I]t is a proper exercise of the trial court’s discretion to accept one expert witness’s opinion over that of a conflicting opinion where the record adequately supports such a resolution.” Commonwealth v. Pruitt, 951 A.2d 307, 323 (Pa. 2008). The trial court’s credibility findings will not be disturbed absent an abuse of discretion or clear error of law. Appeal of Duquesne Club, 498 A.2d 459, 462 (Pa. Cmwlth. 1985).

We will first address Mother’s assertion that this Court “failed to consider, or assign to Defendant, an earning capacity, as required by 23 Pa.C.S.A. Section 4322, Pennsylvania Rule of Civil Procedure 1910.16-2, and applicable Pennsylvania case authority.”

The relevant portion of 23 Pa.C.S.A. § 4322, Support Guidelines, mandates that:

The guideline shall be based upon the reasonable needs of the child or spouse seeking support and the ability of the obligor to provide support. In determining the reasonable needs of the child or spouse seeking support and the ability of the obligor to provide support, the guideline shall place primary emphasis on the net incomes and earning capacities of the parties, with allowable deviations for unusual needs, extraordinary expenses and other factors, such as the parties' assets, as warrant special attention.

23 Pa.C.S.A. §4322 (a).

In calculating support obligations, the Superior Court of Pennsylvania has also noted that:

[A] person's support obligation is determined primarily by the parties' actual financial resources and their earning capacity. Hoag v. Hoag, 435 Pa. Super. 428, 646 A.2d 578 (1994). Although a person's actual earnings usually reflect his earning capacity, where there is a divergence, the obligation is determined more by earning capacity than actual earnings. See DeMasi v. DeMasi, 408 Pa. Super. 414, 597 A.2d 101 (1991). Earning capacity is defined as the amount that a person realistically could earn under the circumstances, considering his age, health, mental and physical condition, training, and earnings history. Gephart v. Gephart, 764 A.2d 613 (Pa. Super. 2000).

Woskob, 843 A.2d at 1251.

In the instant case, this Court issued its Order after hearing testimony regarding Father's Net Income Available for Support. Specifically, this Court reviewed the evidence presented at the hearing, including the 2011 joint tax return, the various sources of income, all of which are derived from investments, and the one-time life insurance policy payout of \$16,574 taken by Father in 2011. This Court also considered that Father pays for their child's high school tuition at Lansdale Catholic.

Based upon this evidence, this Court ordered Father to pay \$1,800 for child and spousal support. It is clear that this amount was based upon the parties' earnings in 2011.

It is also clear that this Court adopted the findings of Father's expert, Mark Bradford, and the Recommendation from the Domestic Relations Office, rather than the testimony of Steven Ciampoli in determining the income available for support and the earning capacity of Father.

Father is fifty-eight (58) years old. During the hearing, Father testified that the decision to retire as a dentist was a mutual decision and Mother was "all-in" with the retirement. Further, Father stated unequivocally that he could not return to work as a dentist today because his hands are very "shaky" and he would be unable to perform dexterity work. Father testified that he cannot even sign his name because of his "shakiness." Further, there is no dispute that Father maintains a number of rental properties and manages various stocks as investments and a source of income. He considers this to be his current occupation. His testimony was uncontroverted.

This Court found Father's testimony to be credible. Although there was no formal medical declaration of Father's disability, his testimony was not refuted by Mother. Father's income is derived solely from the management of rental properties, dividends and interest from various investments, and the selling and reinvestment of stocks. Thus, this Court concluded that Father's earning capacity was commensurate with the net income available for support derived from the parties' 2011 joint tax return.

During the hearing, there was a wide discrepancy between Mother's determination of net income available for support and Father's determination of net income available for support. The parties both called experts to testify as to the analysis and framework that led to these respective determinations.

It is clear from the record that the sole source of income received by the parties in 2011 was based solely upon dividends, interest income, a life insurance policy payout, and the selling and reinvestment of various stocks. The only significant dispute as to the

net income available for support was found in Schedule D of the parties' 2011 joint tax return, which outlines short-term and long-term capital gains or losses.

Mother's expert, Steven Ciampoli, an expert in accounting, insurance, and investment advice, found that despite a loss of \$202,308 indicated on Schedule D of the parties' tax return, Father had a "cash inflow" of \$100.625, which he attributed as net income available for support. Ciampoli found the net income available for support to be \$181,788.

Mark Bradford, a qualified expert with regard to income available for support in the Commonwealth of Pennsylvania, disagreed with Steven Ciampoli. According to Bradford, Ciampoli focused solely upon the "gross proceeds" or "gross sales" of the stocks sold in 2011 without regard to expenses or reinvestment of these proceeds from the sales. Bradford attributed no income from Schedule D as Father claimed a loss of over \$202,000 in Schedule D of the parties' tax return. Based upon this finding, Bradford found a net income of \$73,265 available for support.

In this case, it was this Court's sole province to determine the credibility of the testimony of the expert witnesses and arrive at a proper determination of Father's net income available for support based upon the entire record. This Court adopted Mark Bradford's determination of net income available for support over Steven Ciampoli's determination for a variety of reasons.

First, Mark Bradford is more experienced in dealing specifically with Pennsylvania Rule of Civil Procedure 1910.16-2 and more familiar with the term "net income available for support," which is used in the context of determining spousal and child support. Bradford's work consisted of "matrimonial consulting" and income calculations for individuals going through a divorce. He had previously submitted reports and rendered his opinion regarding income available for support. On the contrary, Steven

Ciampoli readily admitted that he did not have any experience or knowledge of Pennsylvania Rule of Civil Procedure 1910.16-2 or the term “net income available for support.”

Second, Ciampoli lacked information vital to an accurate determination of net income available for support. Specifically, in his calculation of income derived from the selling of capital assets, he admitted that he had no knowledge or documentation of any proceeds from these sales which were reinvested into another source. He admitted that money reinvested into other sources would decrease the amount of income available for support. Father testified that all of the money or proceeds received upon selling stock were reinvested. Thus, Ciampoli’s determination of net income available for support was, at best, incomplete.

Third, Ciampoli’s analysis involved the terms “cash inflow” and “cash outflow,” which he admitted were created by him for purposes of his analysis. He admitted that “income” was not the same as “cash inflow” or “cash outflow.”

Most importantly, Ciampoli’s determination of \$181,788 available for support strains credulity when reviewing Schedule D of the parties’ 2011 joint tax return.

Schedule D outlines the sales price of stocks as well as the cost basis – the price Father and Mother paid for the stock – and calculates the loss or gain. It is simple arithmetic. In Schedule D, even in the absence of any carryover losses from previous years, there is a clear loss of \$61,506. It is difficult to construe this loss in any other way. It is particularly difficult to construe it as over \$100,000 of “gain” or income to Father.

Finally, Mark Bradford’s determination of income available for support was consistent with the Domestic Relations Office’s determination of income at \$72,000. It

included the gross income from the parties' 2011 joint tax return, as well as taxable interest, tax-exempt interest, and ordinary dividends.

Based upon the foregoing, this Court adopted both the Domestic Relations Office and Bradford's determination of net income available for support. This determination had ample support in the record.

The parties' income was derived solely through the sale and reinvestment of stocks, dividends, and other investments. It is clear that this case rests upon the issue of credibility and weight of the testimony of the two expert witnesses, Steven Ciampoli and Mark Bradford. This Court found Mark Bradford's opinion to be supported by the evidence presented and more credible than the testimony of Steven Ciampoli.

We will now address Mother's second contention: that this Court "failed to consider all of the factors required by Pennsylvania Rule of Civil Procedure 1910.16-5, in particular, the relative assets and liabilities of the parties and the standard of living of the parties and their child, as required by Pennsylvania Rule of Civil Procedure 1910.16-1 and applicable Pennsylvania case authority."

Rule 1910.16-1 explicitly states that the amount of support, whether it be child support, spousal support or alimony pendente lite, shall be determined in accordance with the support guidelines which consist of not only the grids set forth in Rule 1910.16-2 and the formula set forth in Rule 1910.16-3, but also Rule 1910.16-5 which discusses in detail the operation of the guidelines. The rules make clear that the amount of support as determined from the support guidelines is presumed to be the appropriate amount of support and that any deviation must be based on Rule 1910.16-4.

Ball v. Minnick, 648 A.2d 1192, 1195-96 (Pa. 1994).

“The law is well-settled that in support cases there is a rebuttable presumption that the amount of an award for support which results from the application of the guidelines is correct.” Landis v. Landis, 691 A.2d 939, 941 (Pa. Super. 1997). The trier of fact may deviate from support guidelines only when special needs and/or circumstances are present so as to render an award in the amount of guideline figures unjust or inappropriate. Id.

Here, Mother contends that this Court should have deviated from the amount of child support determined by the Support guidelines because of “the relative assets and liabilities of the parties and the standard of living of the parties and their child.”

Because only the child support aspect of this Court’s Order of March 18, 2013 is appealable, we will only address Mother’s argument with regard to the award of child support. See Order of Superior Court, dated May 14, 2013.

This Court found that Mother had a net monthly income of \$1,390.39, based in part, upon a stipulation to that figure by the parties. This Court found Father to have a net monthly income of \$6,000, which was consistent with the facts produced at the March 18, 2013 hearing.

Based upon these findings, this Court directed Father to pay \$844 per month for the support of the parties’ one minor child, Steven. The award of child support was computed using the formula set forth in Pennsylvania Rule of Civil Procedure 1910.16-3. It did not deviate from the amount of support determined by the guidelines in Rule 1910.16-3. See Pa.R.C.P. 1910.16-3.

Pennsylvania rule of Civil Procedure 1910.16-5 states in pertinent part:

In deciding whether to deviate from the amount of support determined by the guidelines, the trier of fact shall consider:

- (1) unusual needs and unusual fixed obligations;
- (2) other support obligations of the parties;
- (3) other income in the household;
- (4) ages of the children;
- (5) the relative assets and liabilities of the parties;
- (6) medical expenses not covered by insurance;
- (7) standard of living of the parties and their children;
- (8) in a spousal support or alimony pendente lite case, the duration of the marriage from the date of marriage to the date of final separation; and
- (9) other relevant and appropriate factors, including the best interests of the child or children.

Pa. R.C.P. 1910.16-5(b).

During the March 18, 2013 Hearing, the parties' 2011 joint tax return was admitted into evidence. It outlined the assets and liabilities of the parties, including the income, if any, from all properties owned by the parties, as well as the sources of income, or lack thereof, derived from the various stocks and other assets owned by the parties.

It was uncontroverted that Father derived all of his monthly income from "payouts" of various stocks and the reinvestment of these proceeds into other ventures. It was also uncontroverted that Father could not return to his previous profession as a dentist due to a medical condition causing his loss of manual dexterity necessary for his practice.

Based upon these findings, this Court found Father to have a monthly income of \$6,000, which as addressed above, was fully supported by the record. It is clear that this

determination included consideration of all of Father's assets, including those owned jointly with Mother.

Further, concerning the parties' standard of living during the marriage, there was absolutely no evidence introduced by either party regarding their standard of living before, during, or after the marriage.

"Once monthly net income or earning capacity is determined, the trial court calculates the amount of child support to be awarded, based upon the support guidelines set forth in Pennsylvania Rule of Civil Procedure 1910.16." Klahold v. Kroh, 649 A.2d 701, 703 (Pa. Super. 1994).

There was nothing in the record that would support a deviation of any kind. Moreover, this Court cannot deviate from the support guidelines found in Rule 1910.16-3 based upon mere conjecture and speculation.

Therefore, we find that Mother's arguments are without merit.

For all of the foregoing reasons we recommend that Mother's appeal be dismissed.

DATE: _____

5/30/13

BY THE COURT:



ALAN M. RUBENSTEIN, J.