NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

V.G. Appellee v. K.G. Appellant	IN THE SUPERIOR COURT OF PENNSYLVANIA No. 82 MDA 2013

Appeal from the Order December 12, 2012
In the Court of Common Pleas of Centre County
Civil Division at No(s): 2010-406-S

BEFORE: GANTMAN, J., ALLEN, J., and MUNDY, J.

MEMORANDUM BY GANTMAN, J.: **FILED DECEMBER 27, 2013**

Appellant, K.G. ("Father"), appeals from the order entered in the Centre County Court of Common Pleas, which declined to implement the hearing officer's assessment of Father's child support obligation for his son, M.G. ("Child"), based on Father's present income, and assessed Father's support obligation based on his earning capacity. We affirm.

In its opinion, the trial court fully and correctly set forth the relevant facts and procedural history of this case. Therefore, we have no reason to restate them.[1]

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[1] Father timely filed a notice of appeal on January 10, 2013. On January 14, 2013, the court ordered Father to file a concise statement of errors complained of on appeal pursuant to Pa.R.A.P. 1925(b), and Father timely complied.

Father raises four issues for our review:

> DID THE TRIAL COURT ERR AND ABUSE ITS DISCRETION BY REFUSING TO REDUCE FATHER'S CHILD SUPPORT OBLIGATION AFTER HE LOST HIS JOB, WITHOUT EVIDENCE THAT HIS REDUCTION IN INCOME WAS VOLUNTARY?
>
> DID THE TRIAL COURT ERR AND ABUSE ITS DISCRETION BY IMPUTING AN EARNING CAPACITY TO FATHER WHICH WAS SUBSTANTIALLY HIGHER THAN HIS ACTUAL EARNINGS, WHEN THERE WAS NO EVIDENCE THAT HIS REDUCTION IN INCOME WAS VOLUNTARY?
>
> IF THE TRIAL COURT PROPERLY FOUND THAT FATHER'S REDUCTION IN INCOME WAS VOLUNTARY, DID IT NEVERTHELESS ERR AND ABUSE ITS DISCRETION BY IMPUTING AN EARNING CAPACITY TO FATHER OTHER THAN HIS CURRENT EARNINGS WHEN HE MITIGATED HIS INCOME LOSS BY A CONTINUING SEARCH FOR HIGHER EARNING EMPLOYMENT AND BY TAKING INTERIM LOWER PAYING EMPLOYMENT?
>
> IF THE TRIAL COURT PROPERLY FOUND THAT FATHER'S REDUCTION IN INCOME WAS VOLUNTARY, DID IT NEVERTHELESS ERR AND ABUSE ITS DISCRETION IN FINDING THAT HE WILLFULLY FAILED TO OBTAIN OR MAINTAIN APPROPRIATE EMPLOYMENT BECAUSE HE DID NOT APPLY FOR JOBS OUTSIDE HIS ESTABLISHED RESIDENTIAL AREA?

(Father's Brief at 9).

The relevant standard of review is:

> When evaluating a support order, 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 the 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.

Kimock v. Jones, 47 A.3d 850, 854 (Pa.Super. 2012) (quoting ***Brickus v. Dent***, 5 A.3d 1281, 1284 (Pa.Super. 2010)).

After a thorough review of the record, the briefs of the parties, the applicable law, and the comprehensive opinion of the Honorable Pamela A. Ruest, we conclude Father's issues merit no relief. The trial court opinion discusses and properly disposes of the questions presented. (***See*** Trial Court Opinion, filed March 1, 2013, at 2-3) (finding: Father's efforts to obtain appropriate employment were inadequate; having acquired only part-time employment with one company, Father's job search efforts seemed to fall off after he started working there; Father's most recent job search was confined to small geographic area; Father did not consider employment in other states, even though Father has relocated on multiple occasions to secure past employment; Father's responsibilities to his new family in New York do not negate Father's continuing responsibilities to Child; court did not believe that Father, given his level of education and work experience, and after purportedly searching for months, could find only one part-time position earning $14.00/hour; Father willfully failed to obtain or maintain appropriate employment; thus, Father's support payments should be based on his earning capacity rather than present income; additionally, under

factors utilized to determine earning capacity, Father's ample education, work experience and earning history are not in dispute; for approximately ten years prior to his most recent part-time position, Father earned between $95,000.00 and $110,000.00 per year; record does not reflect that Father has any health condition to prevent him from full time work or warrant reduction in his support obligation; Father's support obligation also does not warrant reduction based on child care responsibilities because Father spends only ten days per year with Child; court's determination that Father's earning capacity is $90,000.00 was reasonable).[2] Accordingly, we affirm on the basis of the trial court's opinion.

Order affirmed.

*JUDGE MUNDY CONCURS IN THE RESULT.

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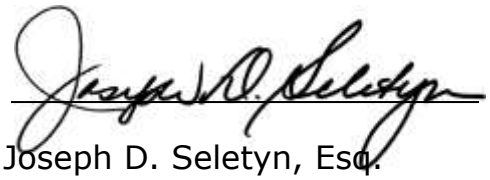
[2] Additionally, Father failed to explain at the support hearing the circumstances surrounding the job loss precipitating his petition for a support reduction even though Appellee, V.G., had alleged Father was terminated as a result of his own actions. ***See*** Pa.R.C.P. 1910.16-2(d)(1) (stating: "When either party voluntarily assumes a lower paying job, quits a job, leaves employment, changes job occupations or changes employment status to pursue an education, or is fired for cause, there generally will be no effect on the support obligation").

Judgment Entered.



Joseph D. Seletyn, Esq.
Prothonotary

Date: 12/27/2013

IN THE COURT OF COMMON PLEAS OF CENTRE COUNTY, PENNSYLVANIA
DOMESTIC RELATIONS SECTION

V.G.
Plaintiff

v.

K.G.
Defendant

No. 2010-0406-S

FILED FOR RECORD
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DEBRA C. IMMEL
PROTHONOTARY
CENTRE COUNTY

OPINION IN RESPONSE TO MATTERS COMPLAINED OF ON APPEAL

Presently before the Court is an appeal of this Court's Order of December 11, 2012 filed by Defendant K.G. . Defendant alleges the Court erred in setting his child support obligation for his son, M.G. , at $899.00 per month based on an earning capacity of $90,000.00 per year. The Court maintains its decision was proper.

Background

Defendant is 51 years old, having been born on May 30, 1961, and holds both a Juris Doctorate and a Masters of Library Science. For the majority of the last decade Defendant has worked as a law librarian at universities and law firms in various states earning between $95,000.00 and $110,000.00 per year. His most recent law librarian position was at Weil Gotshal & Manges LLP in New York, New York. He was terminated from that position in March of 2012 for reasons that are not clear from the record. Defendant maintains he has been searching for appropriate employment since that time and that he accepted the only job he could find, a part time position with the Hershey Company where he is paid approximately $14.00 an hour and earns approximately $560.00 every two weeks.

(54)

On April 18, 2012 Defendant filed a Petition for Modification of Existing Support seeking to reduce the amount of support he pays on behalf of M. G. The Domestic Relations Section entered a modified support order on June 5, 2012, basing Defendant's new support payment on an income of $50,000.00 per year. M. G.'s mother, Plaintiff V. G. requested a hearing before this Court to recalculate Defendant's support payments based on his earning capacity.

Discussion

"Generally, the amount of support to be awarded is based upon the parties' monthly net income." Pa.R.C.P. 1910.16-2. If, however, "the trier of fact determines that a party to a support action has willfully failed to obtain or maintain appropriate employment, the trier of fact may impute to that party an income equal to the party's earning capacity." Pa.R.C.P. 1910.16-2(d)(4). In determining earning capacity, the Court must consider the party's "[a]ge, education, training, health, work experience, earnings history and child care responsibilities." *Id.*

Here, after holding a de novo hearing on this matter on November 2, 2012, the Court determined that Defendant has willfully failed to obtain or maintain appropriate employment. Though Defendant testified he had applied to a variety of jobs after being terminated from his position at Weil Gotshal & Manges LLP, the Court is not persuaded that his efforts were adequate. First, despite having only acquired a part time position with the Hershey Company, his job search seemed to fall off after he started working there. Second, even though Defendant has relocated on multiple occasions to secure employment in the past, his most recent job search was confined to a small geographic area and Defendant did not consider

positions in other states. The Court appreciates that Defendant has responsibilities to the family he has started with his new wife in New York, including their new child, and his wife's great grandmother. That, however, does not negate the fact that Defendant still has responsibilities to his son M.G. The Court is also not satisfied that a man with Defendant's level of education and work experience, after purportedly searching for months, could only find one part time position with a company that pays him $14.00 an hour. Consequently, the Court concluded that Defendant's support payments should be based on his earning capacity rather than his present income.

Turning to the factors outlined in Pa.R.C.P. 1910.16-2(d)(4), the Court first notes that Defendant's ample education, work experience, and earning history are not in dispute. For approximately a decade before being terminated from his position at Weil Gotshal & Manges LLP, Defendant earned between $95,000.00 and $110,000.00 a year. The record does not reflect that Defendant has any health condition that would prevent him from working or warrant a reduction in his support obligation. Defendant's support obligation also cannot properly be reduced based on child care responsibilities as he only spends 10 days a year with M.G. The Court thus maintains that its determination that Defendant has an earning capacity of $90,000.00 per year was reasonable, and respectfully requests that its calculation and the resulting order of December 11, 2012 remain undisturbed.

BY THE COURT:

Pamela O. Ruest

Date: March 1, 2013

Pamela A. Ruest, Judge