

**NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37**

M.K.

Appellee

v.

E.K.

Appellant

IN THE SUPERIOR COURT OF  
PENNSYLVANIA

No. 957 MDA 2012

Appeal from the Order Entered April 24, 2012  
In the Court of Common Pleas of Berks County  
Domestic Relations at No(s): 03-187300  
PASCES NO. 767105625

BEFORE: BOWES, OLSON and WECHT, JJ.

MEMORANDUM BY OLSON, J.:

Filed: March 20, 2013

In this child support action, Appellant, E.K. ("Father"), appeals from the order entered April 24, 2012, by the Court of Common Pleas of Berks County, denying Father's exceptions to the Support Master's Findings and Recommendations. For the following reasons, we affirm.

The certified record reflects the relevant factual and procedural background of this matter as follows.

Father and Appellee, M.K. "(Mother)", are divorced and have three dependent children, two of whom are the subject of the support order at issue in this matter. On June 21, 2010, the trial court entered a support order requiring Father to pay \$1,200.00 a month for support of the two children.

Thereafter, on February 1, 2011, the trial court entered a new custody order, wherein the parties agreed to share equal physical custody of the children. On March 17, 2011, Father filed a petition to modify support based upon the new custody order. Considering that Mother and Father had nearly equal monthly incomes and had agreed to equal physical custody, Father's petition sought to terminate his support order or modify it to a support figure of \$0.00.

On December 6, 2011, a support master held a hearing on Father's modification petition. At the hearing, the parties stipulated to their respective net monthly incomes, which indeed were nearly identical. The parties also stipulated to the entry of the 50/50 shared custody order on February 1, 2011. However, the parties acknowledged that since March 16, 2011, the custody order had not been followed. Rather, the parties stipulated that, due to other issues irrelevant to this support proceeding, since March 16, 2011, the children resided exclusively with Mother.

On December 30, 2011, the support master denied Father's petition and recommended that Father pay \$1197.87 in support and an additional \$20.00 in arrears. The master set the effective date of the order as March 17, 2011, the day Father filed for modification of the support order.

Father filed timely exceptions to the master's report and recommendation. In the meantime, on or about January 12, 2012, the parties commenced equal shared physical custody of the children, consistent with the February 1, 2011 custody order. On April 24, 2012, the trial court

entered an order denying Father's exceptions, but modifying the support order to \$0.00, requiring Mother and Father to equally share costs of extracurricular activities, medical coverage, and unreimbursed medical expenses. The April 24, 2012 order set forth that the new support obligation was effective January 12, 2012. This appeal followed.

Father presents two issues for appeal:

Did the [t]rial [c]ourt (as well as the [s]upport [m]aster) err in not modifying the [s]upport [o]rder as of March 17, 2011, when a shared custody [o]rder was in [p]lace and [Mother] was unlawfully defying said [c]ustody [o]rder from March 17, 2011 until January 12, 2012, entitling [Father] [to] a refund of all support [m]onies submitted to [Mother] at that time period.

As a matter of equity, the support master as well as the [t]rial [c]ourt erred in not terminating the support [o]rder back to the filing date of March 17, 2011, when evidence stipulated to at the hearing of December 6, 2011, demonstrated [Mother] was withholding the children from [Father] in violation of a lawful shared custody order, and that by not terminating the support [o]rder dating back to March 17, 2011, and compelling [Mother] to return the money from that date unjustly enriched [Mother] and rewarded her for her bad behavior and acting in bad faith, to create conditions favorable to her position.

Appellant's Brief at 3.<sup>1</sup>

Father's issues on appeal are interrelated; we will, therefore, consider them together. The well-settled standard of review in a child support case provides:

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<sup>1</sup> The requirements of Pennsylvania Rule of Appellate Procedure 1925 have been satisfied in this matter.

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.

***Silver v. Pinskey***, 981 A.2d 284, 291 (Pa. Super. 2009) (*en banc*), quoting ***Mencer v. Ruch***, 928 A.2d 294, 297 (Pa. Super. 2007).

The basis of Father's appeal does not challenge the modified support obligation entered by the trial court on April 24, 2012, but instead challenges the effective date of that obligation. The trial court set the effective date of the modified obligation as January 12, 2012. Father, however, believes that the effective date should have been set as March 17, 2011.

The certified record establishes that, while the April 24, 2012 modified support obligation entered by the trial court is based upon the parties' agreement to share equal physical custody, the trial court did not set the effective date of the modification based upon when the shared custody order was entered but, instead, when shared custody actually commenced. Given that from March 16, 2011 until January 12, 2012, Mother had sole physical custody of the children, the trial court set the effective date of the modified support obligation as January 12, 2012.

Father, however, argues that the effective date of the new support obligation should have disregarded Mother's sole custody of the children for the disputed period, and instead should have been based solely on the custody order entered February 1, 2011. While Father acknowledges that Mother had sole physical custody of both children from March 16, 2011 to January 12, 2012, he emphasizes that the custody arrangement during that time was in contravention of the existing custody order. According to Father, permitting Mother to receive child support payments for the period in which she was acting in disregard of the custody order allows Mother to benefit from her violation of that order. Father argues that by not making the new support obligations effective March 17, 2011, Mother is unjustly enriched, through child support payments, by her defiance of the custody order.

Furthermore, Father argues that to require him to pay child support, despite Mother's defiance of the February 1, 2011 custody order, is contrary to public policy. Father asserts that requiring Mother to return the funds he paid in child support between March 17, 2011 and January 12, 2012 will remediate Mother's defiance of the custody order.

Additionally, Father argues that two doctrines of equity, *in pari delicto* and laches, apply to this child support action and dictate the need to remedy Mother's defiance of the February 1, 2011 order by requiring her to refund the child support payments received while in contravention of that order. In so arguing, Father suggests that it is our Court's duty to ensure that parents

and guardians adhere to custody orders such as the one in this matter, and that conditioning receipt of child support payments on compliance with such custody orders is one way to achieve such compliance.

Father's arguments and suggestions, however, are contrary to a fundamental principle of child support actions – child support is intended for the benefit of the child, not the parent. As our Court has stated:

The principle goal in child support matters is to serve the best interests of the child through provision of reasonable expenses. The duty of child support, as every other duty encompassed in the role of parenthood, is the equal responsibility of both mother and father. As this duty is absolute, it must be discharged by the parents even if it causes them some hardship.

*Kimock v. Jones*, 47 A.3d 850, 855-856 (Pa. Super. 2012).

In this matter, the trial court evaluated the reality of the custody responsibilities assumed by Mother and Father and apportioned the child support funds accordingly. The modified order granted Mother support payments for the period in which she exercised sole custody of the children, and then adjusted the support obligation once the parties finally commenced equal shared custody. We find no error in the trial court's determination, as it based upon the best interests of the children. Indeed, regardless of the existing custody order, Mother exercised sole custody of the children from March 16, 2011 to January 12, 2012. Therefore, the **children** were entitled to benefit from Father's support payments during that period.

Moreover, contrary to Father's argument, under the principles of child support, the equity doctrines of *in pari delicto* and laches do not apply to this matter, as Mother is not "benefitting" from her improper actions. The support payments benefitted the children, not Mother.

Furthermore, Mother's contravention of the February 1, 2011 custody order is wholly irrelevant to this support proceeding. As our Supreme Court has explained, "[t]he purpose of a support order is the welfare of the children and not the punishment of the [parent]." ***Conway v. Dana***, 318 A.2d 324, 325 (Pa. 1974). Rather, as Father's brief acknowledges, the proper method to challenge a parent's violation of a custody order is through a contempt proceeding. Father's Brief at 13. Such contempt arguments, however, have no bearing on a support decision intended for the welfare of the children. We therefore decline Father's invitation to punish Mother and remedy her contravention of the February 1, 2011 support order by taking support payments away from the innocent children involved in this matter.

Order affirmed.