NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

W. J. H., SR. Appellant v. T. M. Appellee	IN THE SUPERIOR COURT OF PENNSYLVANIA No. 295 EDA 2013

Appeal from the Order December 28, 2012
In the Court of Common Pleas of Carbon County
Civil Division at No(s): 257DR10

BEFORE: PANELLA, OLSON, and PLATT,* JJ.

MEMORANDUM BY OLSON, J.: **FILED NOVEMBER 08, 2013**

Appellant, W.J.H., Sr. ("Father"), appeals from the order entered on December 28, 2012, granting T.M.'s ("Mother") exceptions to the recommendation issued by a child support hearing officer and denying exceptions filed by Father. Upon careful consideration, we affirm.

The trial court summarized the facts and procedural history of this case as follows:

> On March 23, 2012, Mother [] filed a petition for modification of an existing support order for the support of one minor child, D.W.H. An interim order was issued on April 30, 2012, from which Mother requested a hearing *de novo*. The hearing, held before [h]earing [o]fficer, William G. Schwab, Esquire, took place on June 13, 2012. At this hearing, Father testified that he earned $82.50 per hour working for DeAngelo Brothers. Father stated he also had weekly health care deductions for family coverage in the amount of $397.43 per week. Mother testified that, although she has a degree in K-8 elementary education, she prefers to, and has for some time, worked as a TSS

*Retired Senior Judge assigned to the Superior Court.

> (therapeutic staff support) worker for Community Service Group, grossing an average of $2,433.00 per month.
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> As a result, the [h]earing [o]fficer authored a report and recommendation in which he found no basis to modify the support amount, but required Mother to submit biweekly job search application forms for ten places of employment, preferably teaching positions, and provide the same to Carbon County Domestic Relations.
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> As a result, both parties filed timely exceptions to the [h]earing [o]fficer's report and recommendation. Mother's exceptions, filed first on July 2, 2012, challenged the findings and conclusions that she had a greater earning capacity than the income she has earned as a 30-hour per week TSS worker. Additionally, Mother objected to the job search requirement of the report and recommendation.
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> One day later, on July 3, 2012, Father filed exceptions to the report and recommendation of the [h]earing [o]fficer. Father's exceptions, in essence, claimed that the [h]earing [o]fficer […] was required to recommend the interim order of April 30, 2012, as the "most current and controlling order" that should be put into effect and not the previous final order of October 12, 2010.
>
> Argument was scheduled and heard after which [the trial court] issued an order on December [28,] 2012, granting Mother's exceptions and denying Father's. Fundamentally, [the trial court's] order of December [28,] 2012, maintained the status quo as forth in the October 12, 2010 [o]rder of [c]ourt.
>
> On January 25, 2013, Father filed this instant appeal. [The trial court], on February 7, 2013, directed that Father file a concise statement of [errors] complained of on appeal pursuant to Rule 1925(b) of Pennsylvania Rules of [Appellate] Procedure. [The trial court subsequently filed an opinion pursuant to Pa.R.A.P. 1925(a) on March 22, 2013.]

Trial Court Opinion, 3/22/2013, at 1-3.

On appeal, Father presents the following issues for our review:

> A. Whether the [trial] court's memorandum opinion erred in reversing the [h]earing [o]fficer's credibility determination?
>
> B. Whether the [trial] court[,] rather than finding [Mother's] teaching degree insignificant, should [nonetheless have] remanded the matter with instructions for [Mother] to seek employment commensurate with her teaching degree?

Father's Brief at 3 (complete capitalization omitted).

Father's issues are interrelated and, therefore, we will examine them together. First, Father claims the trial court erred by usurping the hearing officer's credibility determinations regarding Mother's earning capacity. ***Id.*** at 7-8. He claims "the court erred in failing to impose a greater earning capacity upon [Mother] as compared to her actual earnings in an inferior employment position." ***Id.*** at 7. Father further challenges the trial court's determination that "based upon the numbers in the guidelines previously produced in the file[, the differential between] the net earning capacity [of] a TSS worker and a teacher would be 'de minimus.'" ***Id.*** at 8.

Our standard of review of child support orders is well settled:

> 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.

> We further note that an award of support, once in effect, may be modified *via* petition at any time, provided that the petitioning party demonstrates a material and substantial change in their circumstances warranting a modification. ***See*** 23 Pa.C.S.A. § 4352(a); ***see also*** Pa.R.C.P. 1910.19. The burden of demonstrating a "material and substantial change" rests with the moving party, and the determination of whether such change has occurred in the circumstances of the moving party rests within the trial court's discretion.

Summers v. Summers, 35 A.3d 786, 788-789 (Pa. Super. 2012) (internal case citations and brackets omitted).

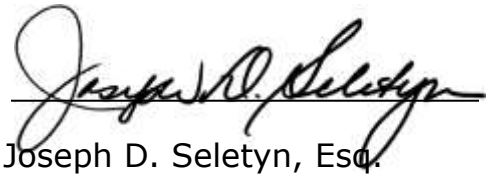
Moreover, we note that this Court has held that a hearing officer has authority to modify the non-moving party's child support obligations when ruling on the moving party's modification petition. ***See Brickus v. Dent***, 5 A.3d 1281 (Pa. Super. 2010), *citing* Pa.R.C.P. 1910.27. In ***Brickus*** this Court examined the trial court's notice of the modification hearing, which is substantially similar to the notice attached to Mother's petition in this case, which specifically stated "an order may be entered against either party without regard to which party filed the modification petition." Trial Court Order, 3/27/2012, at 2; ***see also Brickus*** at 1286. Hence, the ***Brickus*** Court determined that the hearing officer had authority to increase the father's child support obligation, despite the fact that the mother did not file a cross-petition seeking an increase. ***See Brickus***. Accordingly, *sub judice* it was not error for the hearing officer to modify Mother's child support obligations despite Father's failure to file his own modification petition or to file a cross-claim to Mother's petition.

Ultimately, in this case, the trial court determined "there was no evidence presented or testimony elicited from Mother or Father to establish that Mother has a greater earning capacity." Trial Court Opinion, 3/22/2012, at 8. "Since the end result was a denial of [Mother's] petition to modify, the natural consequence was to reinstate the previous order, which both the [h]earing [o]fficer and [the trial c]ourt did in this case." ***Id.*** at 12.

We agree. Despite not filing the petition to modify, Father still bore the burden of showing a material or substantial change in Mother's circumstances warranting a change to the original support order. As the testimony from the modification hearing on June 13, 2012 confirms, Mother "stayed with [her] company[, Community Services Group] for three years because they are flexible." N.T., 6/13/2012, at 6. During that entire time, she had not worked more than an average of 30 hours per week. ***Id.*** at 4-5. Hence, Mother was working the same number of hours in the same position since 2009, almost a full year before the original complaint for support was filed. Our review of the evidence offered at the modification hearing reveals that Mother's employment status, job qualifications, and income were unchanged since the filing of the original support petition in August 2010. For this reason, and because a support order was already in effect, the hearing officer's determination that Mother should submit written applications to ten places of employment was unwarranted. ***Summers***, 35 A.3d at 789. Accordingly, the trial court did not abuse its discretion in granting Mother's exceptions to the hearing officer's report.

Order affirmed.

Judgment Entered.



Joseph D. Seletyn, Esq.
Prothonotary

Date: 11/8/2013