

Brechbiel v. Roberts

BRECHBIEL v. ROBERTS

Court of Common Pleas of the 39th Judicial District of Pennsylvania,
Franklin County Branch
Domestic Relations Section, Docket No. 1996-2630

Support Appeal - Voluntary Change in Employment - Earning Capacity

Pa. R.C.P. 1910.16-2 (d)(4); Income Calculations - Child Support -

Pa.R.C.P. 1910.16-2(a) - Inclusion of Fair Rental Value

1. When a parent voluntarily changes employment for legitimate reasons, a parent will not be assigned an income equivalent to his/her earning capacity.
2. Earning capacity is the amount that a person could realistically earn under the circumstances.
3. When there are multiple changes in employment, the Court will consider a parent's current employment and employment history in an effort to calculate a reasonable earning capacity for purposes of child support.
4. An economic benefit from a reduction in fair rental value of a parent's home shall be included in calculating a parent's income for purposes of child support.
5. An estimation of the value of an economic benefit is not necessary when a parent provides the necessary information from which the Court can render a definitive value.

Appearances:

Stephen D. Kulla, Esq., *Counsel for Plaintiff*

Jill A. McCracken, Esq., *Counsel for Defendant*

OPINION

Van Horn, J., March 28, 2001

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Background

Angela M. Roberts (Defendant) filed an appeal from the Domestic Relations Order dated January 10, 2001, ordering her to pay Donald E. Brechbiel (Plaintiff) monthly child support in the amount of one hundred eighty-five dollars and sixty-seven cents (\$185.67) for their three children, Donald Aaron Brechbiel, age 16, Ashley Dawn Brechbiel, age 13, and Jeremy David Brechbiel, age 13.^[1] Defendant alleges that the hearing officer incorrectly assigned her an earning capacity of \$9.50 per hour and erroneously included the rental income of three hundred seventy-five dollars (\$375.00) when calculating her income.

Defendant was employed as tractor trailer driver for Hoffman Transport from October 28, 1999, to

January 31, 2000, at an hourly rate of \$10.50. Defendant alleges that she was in training for a ten-week period and was accompanied by another driver. During one of her first solo runs, she encountered bad weather, and was almost involved in an accident. As a result of this incident, Defendant voluntarily quit her job at Hoffman because she was afraid to drive a tractor trailer. Defendant was unemployed until March 20, 2000, when she began working for Azerty as a forklift operator at a rate of \$8.00 per hour. She voluntarily terminated her employment in April 2000 because her work schedule and overtime requirements did not allow her to spend enough time with her son, Donald. Plaintiff concedes that she voluntarily terminated her employment with Azerty.

From May 2000 through August 2000, Defendant was sporadically employed by the U.S. Census Bureau earning \$9.25 per hour.

Defendant is currently employed at Dave's Tavern earning \$5.50 per hour and works approximately sixteen to twenty hours per week. Defendant claims that she is seeking other employment but is having difficulty finding first shift employment in a pay range of \$6.00 to \$8.50 per hour.

Defendant resides in one-half of a home that consists of two residential units. She contributes \$193.00 per month to the \$568.00 mortgage on the entire residence.^[2] The rental income of \$375.00 per month generated by the rental property is paid directly to Mr. Roberts. (Defendant's Exhibit 1, a cancelled check listing Ken Roberts as the payee and endorser.)

Discussion

The Court must determine two issues regarding this appeal: 1) Defendant's earning capacity; and 2) whether the income generated by the rental property should be included in Defendant's income for purposes of calculating her child support obligations.

Earning Capacity

In calculating net income for determining child support obligations, a party who willingly fails to obtain appropriate employment will be assigned an income equal to the party's earning capacity. Pa.R.C.P. 1910.16-2(d)(4). "Earning capacity is defined not as the amount that a person could theoretically earn but that amount which the person could realistically earn under the circumstances..." *Gephart v. Gephart*, 764 A.2d 613, 615 (Pa. Super. 2000), quoting *Myers v. Myers*, 405 Pa. Super. 290, 592 A.2d 339, 343 (1991).

The hearing officer assigned Defendant an earning capacity of \$9.50 per hour.^[3] Defendant contends that this amount is excessive in light of her current employment and employment history. Defendant admits that her child support obligations should be based on her earning capacity rather than her actual earnings.

In October 1999, Defendant was employed by Hoffman Transport at a rate of \$10.50 per hour. According to Defendant's testimony she was in training for a period of ten months to become a tractor trailer driver. During one of her initial solo runs, she encountered bad weather and almost had an accident. As a result of this experience, Defendant was afraid to continue driving tractor trailers. She voluntarily terminated her employment with Hoffman Transport on January 31, 2000.

Plaintiff argued that Defendant is a trained tractor trailer driver who voluntarily terminated her employment with Hoffman Transport. Since the termination was voluntary, Plaintiff contends that Defendant's reduction in income should not have any bearing on her child support obligations and Defendant should be held to her earning capacity as a truck driver. Pa.R.C.P. 1910.16-2 (d)(1).

While Defendant possesses the necessary skills to drive a tractor trailer, she has also demonstrated that she is unable to seek employment in this field for legitimate reasons. Her fear of driving and her need to find employment that would not require prolonged absences due to her now having primary physical custody of the parties' sixteen-year-old son are justifiable reasons for terminating her employment with Hoffman Transport. Therefore, the Court will not hold the Defendant to her earning capacity as a tractor trailer driver.

In March 2000, Defendant was employed by Azerty as a forklift operator at a rate of \$8.00 per hour. Conflicting theories were presented regarding Defendant's reasons for terminating her employment with Azerty. Plaintiff alleges that Defendant terminated her employment with Azerty to return to work for Hoffman Transport.

While Defendant admits that she considered returning to Hoffman Transport, she also stated that she was still afraid to drive a tractor trailer. Defendant maintained that her hours of employment and overtime requirements did not allow her to spend time with her children.

The Court finds that while the hours of employment and overtime requirements of Azerty may inconvenience Defendant, these time requirements are not unreasonable. Many single family households consist of a parent who works second shift or mandatory overtime with little or no detrimental effect on their relationship with their children. In the case at bar, Defendant has primary custody of her sixteen-year-old son and a child of this age should be capable of adjusting to his mother's work schedule.

For these reasons, the Court finds that Defendant should be held to an earning capacity commensurate with her position at Azerty. Since Defendant would have been employed for a period of one year had she remained at Azerty, she would have received at least an annual increase in her hourly rate of pay. Therefore, Defendant is assigned an earning capacity of \$8.50 per hour (starting rate of \$8.00 per hour plus a 50¢ per hour increase).

The Court does not find that Defendant voluntarily terminated employment and secured lower paying jobs in an effort to avoid her child support obligations. Defendant testified that she is currently seeking employment with a pay range of \$6.00 to \$8.50 per hour but is having difficulty securing a day shift position within that pay range. She attempted training as a truck driver that did not result in permanent employment. Defendant was also employed by the Census Bureau from May 2000 to August 2000 and she traveled outside the area to maintain her employment. Of further significance to the Court are Defendant's minimal periods of unemployment. These actions are not indicative of a parent who is seeking to avoid child support obligations.

Rental Property Income

Income for purposes of support law is defined under 42 Pa. C.S. §4302 and includes income from any source. Pa.R.C.P. 1910.16-2(a). The Rules of Civil Procedure specifically state that rental income should be included in monthly income calculations. Pa.R.C.P. 1910.16-2(a)(3). While the statutory and procedural laws mandate inclusion of rental income, the factual scenario of this case demands further consideration.

Defendant resides in a home consisting of two separate units. The second unit is a rental property. Defendant presented copies of a cancelled rent check showing her current husband, Mr. Roberts, as the payee and endorser. Defendant alleges that the rental income should not be included in her monthly gross income because she is not the direct recipient of those funds.

Plaintiff appropriately contends that although Defendant does not directly receive a monetary benefit, she does receive an economic benefit from the rental property. The mortgage payment on the entire property is \$568.00 per month. Defendant pays Mr. Roberts \$193.00 per month to live in one half of their marital property while the income from the rental property (\$375.00) pays the remainder of their monthly mortgage obligations. As such, Defendant receives an economic benefit from a reduction in the fair rental value of her unit. This case is analogous to *Com.Ex.Rel. Homsher v. Homsher*, 289 Pa. Super. 112, 114, 432 A.2d 1076, 1077 (1981), in which the Superior Court found that the trial court correctly supplemented plaintiff's income to include a rent-free house, partially paid for utilities and other amenities associated with plaintiff's job. The trial court estimated the value of these free benefits to determine plaintiff's approximate total gross income.

The Court need not estimate the value of Defendant's economic benefit because Defendant has provided the necessary information from which the Court can definitively calculate her economic benefit. The fair rental value of Defendant's unit is \$375.00 per month (the monthly amount paid for the rental unit). Since Defendant only expends \$193.00 per month for rent, she receives an economic benefit in the amount of \$182.00 per month.

Defendant's income should be supplemented to include the \$182.00 economic benefit she receives from the rental property.

ORDER OF COURT

And now this 28th day of March, 2001, after hearing and review of the brief submitted by counsel, it is hereby ordered that this case is remanded to the Domestic Relations Division of the Court to render a determination of the parties' child support obligations that is consistent with this opinion.

^[1] This matter comes before the Court on cross appeals. On December 11, 2000 Plaintiff filed a petition to modify the support order dated March 20, 1992, (transferred to Franklin County on August 24, 1993) regarding the issues of income, medical insurance and reimbursement. Defendant filed a petition to modify support on December 8, 2000 due to a change in the primary physical custody of the parties' son,

Donald Aaron Brechbiel. Defendant filed a complaint in support on December 8, 2000, (DRS 2000-01246). Plaintiff's complaint was dismissed by Order dated, January 10, 2001.

[2] Defendant and Ken Roberts, (Mr. Roberts), Defendant's current husband are separated. As part of an agreement between these parties, Defendant continues to live in one half of the marital property and makes a contribution to the mortgage.

[3] There was no evidence presented at the hearing nor does the record indicate the rationale behind this determination. The record indicates that Defendant has held numerous jobs over the last year ranging in pay from \$5.50 to \$10.50 per hour and the hearing officer concluded that Defendant had voluntarily quit the higher paying jobs.