

**NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37**

DANA ZOKAITES

Appellant

v.

LOUIS GLASSO, III

Appellee

IN THE SUPERIOR COURT OF  
PENNSYLVANIA

No. 558 WDA 2013

Appeal from the Order Entered March 4, 2013  
In the Court of Common Pleas of Allegheny County  
Family Court at No(s): FD 01-007994-006

BEFORE: SHOGAN, OLSON and WECHT, JJ.

MEMORANDUM BY OLSON, J.:

**FILED JULY 23, 2014**

Dana Zokaites ("Mother") appeals *pro se* from an order entered on March 4, 2013 in the Family Division of the Court of Common Pleas Allegheny County that dismissed her exceptions to a hearing officer's recommendation that set Louis Glasso, III's ("Father") child support obligation at zero. We affirm.

The trial court summarized the relevant facts as follows:

The parties are divorced parents of [two children, a female], born June 6, 1997, and [a male], born March 10, 2000. Pursuant to a December 20, 2006 custody order, the parties were awarded joint [physical] custody [of the children] with rotating weekends on a 5-2-2-5 schedule. Mother, a teacher, was awarded the discretion to take custody during Father's time if he was working and an additional week of summer vacation. Mother was granted sole legal custody with respect to educational decisions only. In all other respects, the parties were granted joint legal custody. Mother left her teaching position in June of 2007 to concentrate on [her] real estate career. The parties now share physical custody of the children

equally. On March 13, 2007, Father filed a petition for modification of child support. Mother, *pro se*, cross[-]petitioned for modification. The court appointed [a special master] to preside over all discovery disputes relating to the support proceeding.

After considerable procedural wrangling, a hearing was held before [the special master] on July 31, 2008. The [master] set Father's net monthly income at \$4,157[.00] for 2007 and \$4,194[.00] for 2008. Mother was assigned a net monthly earning capacity of \$3,536[.00] per month. Father was to pay child support of \$616[.00] per month from March 13, 2007 through December 31, 2007 and \$584[.00] going forward.

Mother filed a [p]etition to [m]odify [s]upport based on Father's change in employment and overall increase in income. Following [a hearing on Mother's petition], the [master] recommended that Father's support obligation be reduced to zero. Mother filed exceptions and the court remanded for a *de novo* hearing before a different [special master]. A remand hearing was held on September 26, 2012 at which both parties appeared *pro se*. The second [special master] recommended that Father's support obligation be set at zero. The [master] was not able to calculate an accurate income for Mother because she refused to provide pertinent documentation and her testimony was evasive, incomplete and lacking in credibility. The evidence established that Mother is able to provide for all the children's needs and that she lives a lavish lifestyle including monthly trips to her husband's home in Florida, traveling in his private jet and expensive vacations. The [special master] determined that [Father] was not able to contribute at a level comparable to that enjoyed in Mother's household and that it was not in the best interests of the children to require him to pay child support. Mother filed exceptions to the [r]ecommendation which were dismissed by order dated March 4, 2013 and this appeal followed.

Trial Court Opinion, 7/1/13, at 1-2.

In her brief, Mother raises the following claims for our review:

Whether the [trial c]ourt committed error in concluding the parties share custody of the children on a 50/50 basis based on the current custody schedule when the evidence adduced at the

hearing showed a *de facto* change in custody time over [the parties' son] in light of the substantial and additional time required by Mother [] in handling [her son's] health related issues resulting from him having epilepsy[?]

Whether the [trial c]ourt committed error in failing to make a determination of Mother's income in violation of Pa.R.C.P. 1910.16-2[?]

Whether the [trial c]ourt committed error in failing to take into account the evidence adduced at the [support] hearing by way of tax returns that Mother's income, solely derived from being a real estate agent with Coldwell Banker, was \$24,683[.00] for 2011 and \$22,527[.00] for 2010[?]

Whether the [trial c]ourt committed error in ignoring the evidence adduced at the hearing that Mother was not involved in her husband's company and that she did not have additional income[?]

Whether the [trial c]ourt committed error in relying on stale, irrelevant evidence of an offer Mother's husband made to her *eight* years ago for a job in Florida at \$64,000[.00] per year[?]

Whether the [trial c]ourt committed error in relying on stale, irrelevant evidence [consisting of] Mother's previous job as a teacher [that] she had *five* years ago where she earned \$43,000[.00] given] Mother's [new] position as a real estate agent and her inability to work full time because of her responsibilities for the health care of [her son?]

Whether the [trial c]ourt committed an error of law in imputing income to Mother in violation of Pa.R.C.P. 1910.16-2(d)(4) that requires a showing of willful failure to obtain or maintain appropriate employment when there was no such evidence adduced at the hearing[?] Indeed, the contrary was established in light of her responsibilities [for her son's] health care[?]

Whether the [trial c]ourt committed error in taking Mother's husband's income and lifestyle into account in its determination of Father's support obligations in violation of Pa.R.C.P. 1910.16-5[?]

Whether the [trial c]ourt committed error in failing to determine Mother's income under the support guidelines first before making any deviations for her husband's income under Pa.R.C.P. 1910.[15-5?]

Whether the [trial c]ourt failed to consider the evidence adduced at the hearing that Mother's husband incurred a loss of \$390,000[.00] and thus had no income[?]

Mother's Brief at 2-3.<sup>1</sup>

Mother's appeal challenges an order that denied her exceptions to a hearing officer's recommendation that Father's child support obligation be set at zero. We assess such claims under the following standard of review:

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) (citations omitted).

In her first claim, Mother asserts that the trial court erred in finding that the parties operated on a 50/50 shared custody schedule. Specifically, Mother argues that her son's epileptic condition, combined with her role as

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<sup>1</sup> Mother preserved these claims by including them within a court-ordered concise statement of errors complained of on appeal which she filed on April 24, 2013 pursuant to Pa.R.A.P. 1925(b).

her son's primary caregiver, caused a *de facto* change in the parties' custody arrangement. The trial court rejected Mother's contention, concluding that the testimony introduced at the parties' support hearing showed that Mother and Father operated under an equally shared custody arrangement and that Mother never contested that proof. Trial Court Opinion, 7/1/13, at 4. Our review of the record confirms that the record supports the trial court's assessment. **See e.g.** N.T., 9/26/12, at 10 (Father stating that, "2012 has been more of a 50/50 split so far"). Hence, Mother's first issue fails.

In issues two through seven, Mother alleges that the trial court, in fixing the parties' support obligations, committed various errors by failing to calculate Mother's income or, alternatively, in attributing income to her based upon prior employment and her affiliation with her current husband's real estate development business. Because these issues raise claims related to the determination of Mother's income, we shall address them in the same general discussion.

Mother asserts that the trial court failed to consider her actual income based upon her oral testimony and the tax returns she submitted into evidence, including tax forms showing her net income in 2010 as \$22,527.00 and net income in 2011 of \$24,683.00. **See** Mother's Brief at 11. Moreover, despite the availability of specific financial information bearing upon her income, Mother alleges that the trial court improperly considered her past employment and job opportunities. Mother claims that continued reliance on

her past work as a teacher in the Pittsburgh Public Schools at a salary of \$43,100.00 was unwarranted because she had not worked as a teacher since June 2008, the district closed the school at which she worked, and she required a flexible schedule to attend to her son's medical needs. Mother also claims that the trial court improperly relied on a job offer extended by her current husband to work at two Florida hotels that he owned at a salary of \$63,000.00 per year. Mother alleges that this offer was over eight years old and that the couple was not married at the time. Lastly, Mother argues that although she serves as the designated site agent for her husband's developments that are listed with Coldwell Banker, sales commissions are paid to the real estate agency, which then pays a share to Mother. Accordingly, Mother concludes that it is improper to impute any income to her based upon her affiliation with her husband's business.

We reject Mother's contentions. Rule 1910.16-2(d)(4) of the Pennsylvania Rules of Civil Procedure provides, in relevant part, that "[i]f 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). Although Mother contests the assignment of an earnings capacity equal to that which she achieved as a school teacher, Mother conceded at the support hearing that "she [didn't] mind being assessed the \$43,100.00 because she [needed] that flexibility for [her son's care], and

[she is] the first one to admit it.” N.T., 9/26/12, at 37. Beyond this, the trial court had trouble in assigning a specific income to Mother because she failed to provide requested documentation and offered evasive responses to relevant inquiries. Our own examination of the transcript from the parties’ support hearing confirms this assessment. For example, although Mother denied any affiliation with her current husband’s businesses, a review of his company website showed Mother as the contact person for sales and appointments. *Id.* at 14. Under these circumstances, we conclude that the trial court did not abuse its discretion and that the evidence is sufficient to sustain the support order. Consequently, Mother’s objections to the trial court’s calculations with respect to her income lack merit.

In issues eight, nine and ten, Mother alleges that the trial court erred in considering her current husband’s income when reviewing Father’s support obligation. Mother’s specific contention is that the trial court improperly found that her current husband’s income, derived substantially from construction activities and his real estate development business, contributed substantial additional income to Mother’s household. In support of this claim, Mother points out that the joint tax return she filed with her current husband for 2010 showed a net loss of \$390,680.00 (before exclusions and itemized deductions). Mother also claims that the trial court violated Rule 1910.16-5 in deviating from the support guideline based upon her husband’s income because it failed to first calculate Mother’s income.

Rule 1910.16-5 states as follows:

**Rule 1910.16-5. Support Guidelines. Deviation**

(a) Deviation. If the amount of support deviates from the amount of support determined by the guidelines, the trier of fact shall specify, in writing or on the record, the guideline amount of support, and the reasons for, and findings of fact justifying, the amount of the deviation.

*Note:* The deviation applies to the amount of the support obligation and not to the amount of income.

(b) Factors. 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.

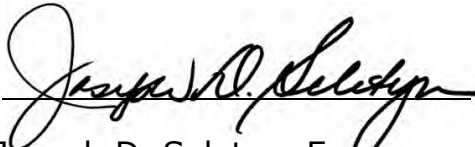
Mother has not offered any basis upon which this Court can identify an improper deviation from the support guideline pursuant to Rule 1910.16-5.



The trial found, and the certified record establishes, that Mother's current husband owns a successful construction and real estate development business, that Mother flies to Florida on a regular business, often utilizing her husband's private jet, and that Mother's standard of living is significantly higher than that of Father because of additional income introduced to Mother's household through her current husband. Two hearing officers and the trial court heard the evidence in this case arrived at the conclusion that a deviation from the support guidelines was appropriate. Mother raises no claim that compels us to alter that result. Accordingly, we affirm the order denying Mother's exceptions to the hearing officer's support recommendation.

Order affirmed.

Judgment Entered.

A handwritten signature in black ink, appearing to read "Joseph D. Seletyn". The signature is written in a cursive, flowing style with a horizontal line underneath.

Joseph D. Seletyn, Esq.  
Prothonotary

Date: 7/23/2014