NON-PRECEDENTIAL DECISION – SEE SUPERIOR COURT I.O.P. 65.37

ANN MARIE STEFANOV,	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
Appellant	:	
	:	
v.	:	No. 2101 MDA 2012
	:	
MICHAEL L. STEFANOV	:	

Appeal from the Order Entered November 16, 2012,
in the Court of Common Pleas of Lackawanna County
Domestic Relations Division at No. 2008 DR 341

BEFORE: FORD ELLIOTT, P.J.E., PANELLA AND PLATT,* JJ.

MEMORANDUM BY FORD ELLIOTT, P.J.E.: **FILED AUGUST 26, 2013**

Ann Marie Stefanov ("Mother") appeals, ***pro se,*** from a child support order entered in the Court of Common Pleas of Lackawanna County. After careful review, we affirm.

Mother and appellee, Michael L. Stefanov ("Father"), are the parents of one minor child born in July of 2000. Mother is a high school teacher and Father is a self-employed clinical psychologist. Mother filed a support complaint on June 19, 2009. On November 4, 2009, an order was entered directing Father to pay $226 per month support plus $51 per month towards arrears effective September 1, 2009. Mother appealed, and after several continuances, a ***de novo*** hearing was conducted on November 22, 2010 by Support Master Elizabeth R. Munley. On May 6, 2011, the support master issued findings of fact, conclusions of law, and a new support

* Retired Senior Judge assigned to the Superior Court.

recommendation. Because the parties shared physical custody of the minor child until July 15, 2010,[1] the master determined that Father's child support obligation through July 15, 2010 should take into account his shared physical custody of child. The support master determined Father's child support obligation from September 1, 2009 through July 15, 2010 to be $531.65 per month plus $100 per month towards arrears. The support master further determined Father's child support obligation after July 15, 2010 to be $785.46 per month plus $100 per month towards arrears. The support master also gave Father a credit for one-third the amount of private school tuition payments Father made in 2009 and 2010 totaling $4,940. The trial court issued a new support order modifying the November 4, 2009 order and gave the parties 20 days to file exceptions.

Mother raised seven exceptions. The trial court issued a memorandum decision and accompanying order, dated April 27, 2012, disposing of Mother's exceptions. The trial court granted all but one of Mother's exceptions and remanded the case to Support Master Alexandra Kokura. A hearing was held on August 6, 2012. On August 21, 2012, the support master issued findings of fact, a discussion, and a new support

[1] The record reveals from February of 2009 through August 14, 2009, Father had primary physical custody of the minor child. Between August 14, 2009 and September of 2010, the parties shared physical custody of the minor child. Since September of 2010, Mother has had primary physical custody of minor child, based upon a final custody order dated July 15, 2010, which went into effect in September of 2010.

recommendation that was subsequently adopted by the trial court. The support master calculated Father's support obligation to be $787.99 per month, plus arrears, effective July 15, 2010. The calculation of Father's net monthly income remained the same as that calculated by Support Master Munley, while Mother's net monthly income decreased by $58.99 per month, resulting in Father being assessed an additional $2.53 per month in child support.

Mother filed exceptions to this recommendation. On November 14, 2012, the trial court issued an order denying Mother's exceptions and accepting the support master's recommendation. This appeal followed.[2]

Mother presents the following numerous issues for our review:

> 1. Did the trial court abuse its discretion by deducting "car and truck expenses" from [Father's] gross income although said deduction did not reflect an actual reduction in [Father's] income?
>
> 2. Did the trial court abuse its discretion by using [Father's] 2009 federal income tax return to determine his gross income for 2010 although his tax liability greatly increased in 2010 and his 2009 federal income tax return was audited by the Internal Revenue Service?
>
> 3. Did the trial court abuse its discretion by deducting "meal and entertainment" expenses from [Father's] gross income although said deduction was not necessary for his business?
>
> 4. Did the trial court abuse its discretion by deducting "office expenses" and "telephone"

[2] The trial court did not order Mother to file a Rule 1925(b) statement.

expenses from [Father's] gross income although [Father] did not provide consistent testimony regarding said expenses?

5. Did the trial court abuse its discretion by deducting $22,730 from [Father's] gross income for federal income tax, Social Security tax and Medicare tax although [Father's] tax return indicated the amount owed for these taxes was $7,963?

6. Did the trial court err by failing to consider that [Father] voluntarily does not charge for professional services, thus receives no income from said services, but deducts the expenses associated with said services?

7. Did the trial court err by using [Mother's] federally taxed gross income instead of actual gross income to determine [Mother's] gross income?

8. Did the trial court abuse its discretion by allowing [Mother] to deduct only half of the amount paid in union dues to arrive at net income?

9. Did the trial court err in determining [Mother's] and [Father's] net incomes for support calculations, thus erring in calculating the support amount due [Mother] and the amount of arrears?

10. Did the trial court err in not filing an order within 60 days from the date of the filing of the Exceptions as mandated by Pa.R.C.P. 1910.12(h)?

Mother's brief at 4-5.

Our well-settled standard of review in a child support case provides:

> 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).

While Mother has presented numerous issues for our review, many issues are related. We shall address the related claims together for ease of disposition. Mother's issues one, three, and four consist of allegations that the master and trial court improperly calculated Father's income by allowing improper business expenses. The gist of Mother's claims is that the alleged miscalculations by the master and the trial court resulted in an improper determination of Father's child support obligation.

In addressing child support issues, this court has stated the following:

> Child and spousal support "shall be awarded pursuant to statewide guidelines." 23 Pa.C.S. § 4322(a). In determining the ability of an obligor to provide support, the guidelines "place primary emphasis on the net incomes and earning capacities of the parties[.]" 23 Pa.C.S. § 4322(a). ***See also Woskob v. Woskob***, 843 A.2d 1247, 1251 (Pa.Super.2004) (finding that "a person's support obligation is determined primarily by the parties'

> actual financial resources and their earning capacity").

Mackay v. Mackay, 984 A.2d 529, 537 (Pa.Super. 2009), ***appeal denied***, 606 Pa. 666, 995 A.2d 354 (2010).

With regard to determining the support obligation, this court has provided:

> At the outset, we note that a person's support obligation is determined primarily by the parties' actual financial resources and their earning capacity. ***Hoag v. Hoag***, 435 Pa.Super. 428, 646 A.2d 578 (1994). Although a person's actual earnings usually reflect his earning capacity, where there is a divergence, the obligation is determined more by earning capacity than actual earnings. ***See DeMasi v. DeMasi***, 408 Pa.Super. 414, 597 A.2d 101 (1991). Earning capacity is defined as the amount that a person realistically could earn under the circumstances, considering his age, health, mental and physical condition, training, and earnings history. ***Gephart v. Gephart***, 764 A.2d 613 (Pa.Super.2000).

Woskob, 843 A.2d at 1251.

Instantly, Father is a self-employed clinical psychologist. (Findings of Fact, 5/6/11 at #7.) Father's clients are Medicare or Medicaid clients, and he does not accept private pay clients. (***Id.*** at #8-9.) Additionally, Father conducts drug and alcohol and mental health groups. (***Id.*** at #10.) As such, the master and trial court were required to calculate Father's net income from his business. When determining income in a support matter, the Pennsylvania Rules of Civil Procedure provide the following:

> **Rule 1910.16-2. Support Guidelines. Calculation of Net Income**
>
> Generally, the amount of support to be awarded is based upon the parties' monthly net income.
>
> (a) **Monthly Gross Income.** Monthly gross income is ordinarily based upon at least a six-month average of all of a party's income. The term "income" is defined by the support law, 23 Pa.C.S.A. § 4302, and includes income from any source. The statute lists many types of income including, but not limited to:
>
> (1) wages, salaries, bonuses, fees and commissions;
>
> (2) net income from business or dealings in property;

Pa.R.C.P. 1910.16-2.

"[U]nreimbursed business expenses may be deducted in determining monthly gross income if the expenses constitute ***bona fide*** expenses." ***Berry v. Berry***, 898 A.2d 1100, 1107 (Pa.Super. 2006), ***appeal denied***, 591 Pa. 694, 918 A.2d 741 (2007), and ***appeal denied***, 591 Pa. 694, 918 A.2d 741 (2007).

In her first argument, Mother claims the trial court erred when it deducted car and truck expenses from Father's gross income because said deduction did not reflect an actual reduction in Father's income. Father testified that as a clinical psychologist, he sees many people who are in crisis. (Notes of testimony, 8/4/12 at 16.) Father has patients who are drug addicts, alcoholics, elderly, and some who do not have a driver's license

because they have been convicted of drunk driving. (***Id.***) This necessitates driving to their homes and having the sessions there. (***Id.***) Father testified Wayne County is the largest county in Pennsylvania and it takes two hours to drive from one side to the other. (***Id.***) At the November 22, 2010 hearing, Father testified he drove a total of 36,000 miles in 2009. (Notes of testimony, 11/22/10 at 45.) Instead of taking a deduction for gasoline or depreciation on his vehicle, Father's tax accountant takes a mileage deduction for Father; that is, the miles traveled for business purposes multiplied by a mileage rate. (Notes of testimony, 8/4/12 at 17.) In 2009, the amount totaled $19,800.

The support master explained her reasoning for allowing the reduction of $19,800 to Father's income as follows:

> [Mother] contests [Father]'s 2009 "car and truck expenses" in the amount of $19,800. [Mother] claims that the $19,800 should be added back in to calculate [Father]'s 2009 gross income.
>
> As previously stated, this Court finds the "car and truck expenses" distinguishable from the other itemized business deductions. When computing income available for support purposes when the payor owns his or her own business, the Pennsylvania Supreme Court has adopted the reasoning that such "income must reflect actual available financial resources and not the oft-time fictional financial picture" created by the application of federal tax laws. ***Cunningham v. Cunningham***, 548 A.2d 611, 612-613, ***alloc. denied***, 559 A.2d 37 (Pa. 1989). When determining a support obligor's disposable income, it is the cash flow that ought to be considered and not federally taxed income. ***Id.*** Therefore, those deductions which are allowed under

> the federal tax laws, which do not represent actual reductions in a support obligor's personal income, will not be allowed in the disposable income calculation. ***Id.*** ***See also Labar v. Labar***, 731 A.2d 1252, 1255 (Pa. 1996).
>
> [Father]'s "car and truck expenses" fits this definition. This deduction does not equal a cash equivalent available to [Father] for support purposes, and therefore shall not be included in his gross income. In other words, this business deduction does not represent an actual reduction in [Father]'s personal income.
>
> Here, [Father] testified that he travels to treat clients at their homes as part of his work. He testified that he only accounts for the mileage he expends in his travels, not gas expenses nor wear and tear to his vehicle. He testified that he does not bill his clients for the mileage. He testified that he keeps track of the miles without receipts because there are none for mileage. [Father] testified that he turns the mileage amount over to his accountant, which is then converted and taken as a business deduction on his tax returns. This Court finds [Father]'s testimony credible.
>
> Adding $19,800 to [Father]'s gross income creates a "fictional financial" picture. [Father]'s tax liability may be decreased because of this deduction, which may increase cash flow available to [Father] for support purposes, however this is not a dollar for dollar relationship.
>
> The Superior Court in ***Labar*** held that a reduction in tax liability is not a dollar for dollar relationship, but rather is a product of the tax rate applied to the income. ***Labar***, 644 A.2d at 781. The Superior Court further held that the savings created from a decrease in tax liability only marginally increases an availability of cash flow. ***Labar***, 644 A.2d at 781. The Supreme Court in ***Labar*** found this proposition to be sound, holding that when a depreciation expense is claimed, taxable income is

> decreased by the amount so claimed, resulting in a "marginal income tax savings," not an increase in income. ***Labar v. Labar***, 731 A.2d 1252, 1255 (Pa. 1996). Here, the "car and truck expenses" deduction does not represent cash flow that could have distributed to [Father].
>
> The case law is clear that when calculating [Father]'s income, the income must reflect actual available financial resources available to [Father]. ***See e.g. Spahr v. Spahr***, 869 A.2d 548 (Pa. 2005); ***Fitzgerald v. Kempf***, 805 A.2d 529 (Pa. 2002). Therefore, this Court finds that [Father]'s "car and truck expenses" are appropriate business deductions and shall not be included when calculating [Father]'s income for support purposes.

Master's Recommendation and Order, 8/21/12 at 8-10.

The trial court adopted the above rationale in disposing of this claim, and we likewise do the same.

Next, we turn to Mother's argument that Father's meal and entertainment expenses were unreasonably high and unnecessary to Father's business. Mother contends Father should not have been allowed to deduct these expenses from his income. The record indicates Father deducted $3,300 in 2009 for meals and entertainment expenses. Unlike the "car and truck expenses," this $3,300 amount was an actual cash amount expended by Father. Father testified the amounts spent on meals and entertainment were "strictly for clinical purposes."[3] (Notes of testimony,

[3] As an example of a clinical purpose, Father testified he buys food for a bulimic patient and then stays with the patient for a specific amount of time after eating to ensure the patient did not throw up. (***Id.*** at 20.)

8/6/12 at 21.) Support Master Kokura noted that she found Father's testimony credible and further explained:

> No evidence was presented of blatant unreasonableness with regard to these specific business deductions, either at the initial support hearing or the remanded proceeding. Also, there was no evidence presented of vast changes in [Father's] business expenditures from year to year.[Footnote 2] More importantly, however, there is absolutely no evidence to support [Mother's] contention that [Father] is sheltering income to avoid or reduce his child support obligation.
>
> ---
>
> [Footnote 2] This Court reviewed [Father's] 2009 and 2008 tax returns.

Master's Recommendation and Order, 8/21/12 at 5.

In determining a child support obligation, the trier of fact is entitled to weigh the evidence presented and assess its credibility. ***McClain v. McClain***, 872 A.2d 856, 862 n.1 (Pa.Super. 2005). Here, the support master found Father's evidence and testimony credible. As a reviewing court, we may not disturb these credibility determinations. ***See Doherty v. Doherty***, 859 A.2d 811, 812 (Pa.Super. 2004), ***appeal denied***, 583 Pa. 682, 877 A.2d 462 (2005).

Next, Mother claims the support master erred when it allowed Father's office expenses to be deducted when calculating Father's monthly gross income. Father's office expense deduction totaled $4,650 in 2009 and included expenses for a printer, fax machine, paper, postage, toner, and other office supplies. Father's telephone expense deduction totaled $5,370

in 2009 which included the cost of Father's land line in his office, Father's private fax line, and his cell phone. The support master found Father's testimony regarding these expenses credible.

Mother complains Father failed to support the above deductions with itemized receipts. Support Master Kokura addressed this concern as follows:

> [Father] provided an explanation as to how deductions are contemplated on his tax returns. The tax returns are signed and filed by the accountant. [Mother] argues that this Court can not verify whether these deductions are accurate without any documentation or itemization. In light of ***Berry [v. Berry***, 898 A.2d 1100 (Pa.Super. 2006)], this Court finds [Father's] explanations acceptable. These expenses are ***bona fide*** business expenses and [Mother] failed to produce evidence that [Father] is sheltering income for support purposes.

Master's Recommendation and Order, 8/21/12 at 7.

In ***Berry***, this court held that in simply accepting Father's expert's conclusions as to deductions for gross income, without sufficient explanation or support, the trial court abused its discretion. ***Id.*** at 1107-1108. Instantly, unlike ***Berry***, the tax return is Father's documentation. The support master relied on the tax returns prepared by Father's certified public accountant noting that those returns were prepared with receipts turned over by Father. Additionally, the support master found Father's testimony credible. We reiterate that as a reviewing court, we may not disturb these credibility determinations. ***See Busse v. Busse***, 921 A.2d 1248, 1256 (Pa.Super. 2007), ***appeal denied***, 594 Pa. 693, 934 A.2d 1275 (2007).

Next, we turn to Mother's second issue where she claims the trial court erred by using Father's 2009 federal income tax return to determine his gross income for 2010 because Father's tax liability increased in 2010 and his 2009 federal income tax return was audited by the Internal Revenue Service. (Mother's brief at 22.) Mother made this objection in the initial exceptions that she filed to the support master's May 6, 2011 recommendation and to the trial court's order adopting this recommendation. Mother's specific exception stated: "The Support Master erred in computing [Father's] gross income because [Father] failed to provide appropriate documentation substantiating the amount listed on his tax return nor did [Father] provide any documentation of his 2010 income." (***See*** trial court opinion, 4/30/12 at 2.) The trial court denied this exception and observed, "Clearly, Master Munley was confident that father had provided an accurate statement of his 2010 earnings." (***Id.*** at 3.) The trial court granted Mother's remaining exceptions and remanded the matter to the support master for further clarification as to these exceptions.

At the August 6, 2012 remand hearing, the new support master, Alexandra Kokura, stated the following:

> THE MASTER: Let's just go through so the record is clear. Number One, mother's exception was denied by Judge Moyle wherein mother averred that the support master erred in computing [Father's] gross income because Defendant failed to provide appropriate documentation substantiating the amount listed on his tax return, nor did the

> Defendant provide any documentation of his 2010 tax return.
>
> Judge Moyle indicated that she found the prior master's, Master Munley, determination, that father's 2010 earnings were accurate based upon whatever was presented at that time. And Judge Moyle denied mother's exception.
>
> So, therefore, it's this Court's interpretation that after thoroughly reviewing the transcript of the 2010 hearing, wherein father deems that his 2010 income was tantamount to his 2009 income, that whatever this Court determines father's 2009 gross income to be it will also be the same for 2010.

Notes of testimony, 8/6/12 at 4-5.

There was a short discussion regarding Father's owing additional taxes to the Internal Revenue Service; however, that matter was not fully developed and was beyond the limited purpose of the remand hearing which was to address the exceptions that were granted. Based on the remand order as well as the notes of testimony from the August 6, 2012 remand hearing, the subject of Father's 2010 earnings was not up for discussion.

Next, Mother argues the trial court abused its discretion by deducting $22,730 from Father's gross income for federal income tax, social security tax, and Medicare tax although Father's tax return indicated the amount owed for these taxes was $7,963.

According to the record, Mother fails to take into account that in making the PASCES calculation, the trial court added back into Father's gross earnings the clinical incentives expense. Father owed $7,963 in taxes

in 2009 as shown on his federal income tax return. This amount included $7,926 in self-employment tax and represents 15.3% of Father's net earnings from self-employment. These net earnings were calculated by taking Father's gross profits of $150,715 and subtracting various deductions, including a deduction for $36,400 for Father's clinical incentives expense. Father's clinical incentives expense substantially lowered Father's federal tax liability. In calculating Father's net monthly income, however, the trial court added back Father's clinical incentives expense to Father's income.

When it determined Father's net monthly income to be $7,377.83, the trial court gave Father an earning capacity because the addition of Father's clinical incentives expense, which was an actual expense paid out by Father, rendered the trial court's calculation of Father's adjusted gross income fictitious. The trial court used the PASCES computer system to calculate the net income to be assessed to Father. Clearly, it would be unfair to simply add back to Father's gross income Father's clinical incentive expenses without deducting the associated taxes.

Next, Mother argues the trial court erred by failing to consider that Father did not charge Medicare for a few clients he saw who were on Medicare, but deducted the expenses associated with those services. Father indicates this issue is waived as Mother failed to raise it in her exceptions. We observe that Mother did not raise it in her exceptions to the master's recommendation; thus, we agree that the issue is waived. ***See Miller v.***

Bistransky, 679 A.2d 1300, 1302 (Pa.Super. 1996) (finding that pursuant to Pa.R.C.P. 1910.12-(e), (f), matters not raised in party's exceptions to master's recommendation are deemed waived).

Next, Mother argues the support master's use of her 2009 federal income tax return as a basis for calculating her net monthly income, rather than her pay stubs for 2010, resulted in an underestimation of Mother's tax payments, which led to Mother's being assessed an additional $500.38 per year in income or $41.69 per month.

Father points out that while Mother may be correct, she fails to realize that the error actually inures to Mother's benefit. Mother received a raise of $3,000 in her base salary which increased her annual salary from $47,100 to $50,100. Additionally, Mother received an increase in her hourly overtime wage of 50 cents per hour, and also received a separate salary of $700 for serving as a junior class advisor. These additional amounts earned by Mother in 2010 which exceed $3,000 are six times as much as the $500.38 that Mother claims she was over assessed. Father maintains that any error was harmless when the support master used Mother's 2009 federal income tax return. We agree. In ***Sirio v. Sirio***, 951 A.2d 1188, 1194 (Pa.Super 2008), this court affirmed a portion of the trial court's support order where the trial court's failure to calculate a presumptive minimum amount of support constituted harmless error. ***See also Bulgarelli v. Bulgarelli***, 934

A.2d 107, 113 (Pa.Super. 2007). Instantly, any error in calculating Mother's gross income was harmless.

Next, Mother argues the trial court abused its discretion by allowing her to deduct only half of the amount paid in union dues when it arrived at her net income. According to Mother, the support master allowed a deduction of $31.40 per month for union dues for a yearly total of $376.80, but failed to acknowledge that $31.40 is deducted every two weeks or 26 paychecks per year for a total of $816.40. Mother contends this error amounted to $439.60.

As we discussed in the preceding issue, the amount in dispute is minor and would make no difference especially in light of the fact Mother was actually earning $3,000 more than she had earned in 2009. While an error appears to have been made, it is harmless.

In Mother's next issue, she rehashes earlier complaints about the computation of both hers and Father's net incomes for support calculations. As we have already determined, there was no abuse of discretion here based on the evidence presented along with the fact that six of Mother's seven exceptions were granted, a remand hearing was held, the support master conscientiously reviewed the evidence and heard testimony from the parties and entered an order of support. Furthermore, the support master felt that there was absolutely no evidence that Father was trying to avoid his support obligation to his child.

Finally, Mother argues the trial court erred when it did not file an order within 60 days from the date of the filing of her exceptions as mandated by Pa.R.C.P. 1910.12(h). The rule provides as follows:

> (h) If exceptions are filed, the interim order shall continue in effect. The court shall hear argument on the exceptions and enter an appropriate final order substantially in the form set forth in Rule 1910.27(e) within sixty days from the date of the filing of exceptions to the interim order. No motion for post-trial relief may be filed to the final order.

Pa.R.C.P. 1910.12(h).

Mother contends she filed her exceptions to the support master's August 21, 2012 order on August 28, 2012. The trial court filed its order on November 16, 2012, more than 60 days after the date Mother claims she filed her exceptions. We have reviewed the certified record, and it does not contain Mother's exceptions nor is there a certified docket listing that indicates the date Mother filed her exceptions.[4] As such, there is no need for this court to address this issue. "Our law is unequivocal that the responsibility rests upon the appellant to ensure that the record certified on appeal is complete in the sense that it contains all of the materials necessary for the reviewing court to perform its duty." ***Commonwealth v. Bongiorno***, 905 A.2d 998, 1000 (Pa.Super. 2006) (***en banc***), ***appeal***

[4] We are aware that an undated copy of Mother's exceptions filed in response to the August 21, 2012 order is contained in Mother's reproduced record.

denied, 591 Pa. 688, 917 A.2d 844 (2007). However, even if Mother is correct and the trial court violated this rule, the rules are silent as to the ramifications of such a violation. We hardly suspect that the remedy would be a reversal of the trial court's order. Furthermore, we do not see how Mother was harmed by the trial court's order being filed two and one-half months later as opposed to two months later.

Order affirmed.

Judgment Entered.

Deputy Prothonotary

Date: 8/26/2013