

NON-PRECEDENTIAL DECISION – SEE SUPERIOR COURT I.O.P 65.37

IRVIN B. FLEEGLE, JR.,	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
Appellee	:	
	:	
v.	:	
	:	
DAWN M. HARKINS,	:	
	:	
Appellant	:	No. 1094 WDA 2013

Appeal from the Order entered February 13, 2013,
Court of Common Pleas, Bedford County,
Civil Division at No. 305-S for 2006

BEFORE: FORD ELLIOTT, P.J.E., DONOHUE and PLATT*, JJ.

MEMORANDUM BY DONOHUE, J.:

FILED FEBRUARY 20, 2014

Dawn M. Harkins ("Mother") appeals from the order of court entered on February 13, 2013, denying her appeal *de novo* in the trial court and providing that the child support order dated September 24, 2012 stay in effect. For the following reasons, we affirm.

Mother and Irvin B. Fleegle, Jr. ("Father") are the parents of two children. Mother is the obligor of a child support obligation for their children.

The trial court summarized the relevant factual history as follows:

On August 19, 2010 an order of support was entered which contained several tiers. The first tier directed [Mother] to pay \$345.00 per month for the support of her two children; the second tier suspended the order from April 2, 2010 through June 7, 2010. Finally, effective June 7, 2010 and continuing until further order of court, [Mother] was to pay \$36.58 for support of the two children. This figure was based on a minimum-wage earnings capacity for [Mother]. On August 13, 2012, the

*Retired Senior Judge assigned to the Superior Court.

Plaintiff, [Father], filed a petition for modification. In his petition the Plaintiff stated, 'she has been working for some time now. Need to go back and adjust child support for went [sic] she started working, 2 years.' The conference order dated September 24, 2012 was given an effective date of October 12, 2010.

[Unhappy with this result, Mother filed a request for a hearing *de novo* before the trial court.] At the hearing on November 15, 2012, [Mother], conceded that she failed to report several substantial increases in income. [Mother] did not dispute that her net monthly income as a Certified Nurse[] Assistant was \$1,400.00 a month from October of 2010 to through July of 2012. Currently her net monthly income is \$1,175.00 a month. In her testimony, [Mother] said she was unaware that she was required to report increases on her income. [Mother] currently resides in the state of Indiana.

There also was testimony at the November 15, 2012 hearing that one of the children for whom [Mother] pays support is a son who was born December 25, 1992, and who is currently twenty years of age. The son is an autistic special needs student who is presently still enrolled in a life skills program operated by the Everett School District. In May of 2012 he participated in a graduation ceremony with his classmates, however, he will not receive his diploma until he completes all of his required credits; this is estimated to be June of 2014.

Trial Court Opinion, 2/11/13, at 1-2.

Following the hearing, the trial court entered an order denying the requests for relief raised by Mother in her *de novo* appeal to the September 24, 2012 support order. Trial Court Order, 2/11/13. Mother subsequently

filed this appeal¹ and presents three issues for our review. In addressing these issues, we are mindful that

[w]hen 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.

Mencer v. Ruch, 928 A.2d 294, 297 (Pa. Super. 2007) (citation omitted).

In her first issue, Mother argues that the trial court erred by modifying her support obligation beyond the date upon which Father filed his petition for modification. Appellant's Brief at 6.

As a general rule, modifications of support orders are retroactive to the date upon which the petition for modification was filed. ***Ewing v. Ewing***, 843 A.2d 1282, 1289 (Pa. Super. 2004). The relevant statute provides that the retroactivity may be extended to a period prior to the date of filing under certain circumstances:

¹ Following a breakdown in the court system that resulted in the erroneous rejection of Mother's notice of appeal, the trial court restored Mother's appeal rights *nunc pro tunc*. Trial Court Order, 5/23/13.

(e) Retroactive modification of arrears.--No court shall modify or remit any support obligation, on or after the date it is due, except with respect to any period during which there is pending a petition for modification. If a petition for modification was filed, modification may be applied to the period beginning on the date that notice of such petition was given, either directly or through the appropriate agent, to the obligee or, where the obligee was the petitioner, to the obligor. *However, modification may be applied to an earlier period if the petitioner was precluded from filing a petition for modification by reason of a significant physical or mental disability, misrepresentation of another party or other compelling reason and if the petitioner, when no longer precluded, promptly filed a petition. In the case of an emancipated child, arrears shall not accrue from and after the date of the emancipation of the child for whose support the payment is made.*

23 Pa.C.S.A. § 4352(e) (emphasis added).

The trial court found Mother's failure to disclose her changes in employment to Father to be sufficient misrepresentation to allow extraordinary retroactivity. Trial Court Opinion, 2/11/13, at 3. In arriving at this determination, the trial court found that Mother failed to comply with the terms of the August 19, 2010 support order, which required her to inform the Domestic Relations Section of the Bedford County Court of Common Pleas ("Domestic Relations") and Father of any change in circumstance relevant to her support obligation. ***Id.*** The trial court also concluded that Father promptly filed his petition after becoming aware of Mother's changes in employment, and so retroactivity to October 12, 2010 was appropriate. ***Id.***

The record supports the trial court's determinations. The support order of August 19, 2010 contains a provision, under the heading "Important Legal Notice" and written in a capital letters, requiring both parties to inform the other and Domestic Relations of, *inter alia*, "change of income or employment[.]" Trial Court Order, 8/19/10, at 3. At the hearing on Father's modification petition, Mother testified that her employment first changed in October 2010, and that it changed again when she moved to Indiana in 2012. N.T., 11/15/12, at 11-12, 14-16. These changes of employment involved modest increases in her hourly wage. ***Id.*** at 11, 14. She admitted that she did not inform Father or Domestic Relations of either of these changes in employment or income. ***Id.*** at 17. Further, it was uncontroverted that Domestic Relations first discovered Mother's change of employment, and this is what prompted Father to file his petition for modification. ***Id.*** at 7-8. In consideration of this evidence, we find no abuse of discretion in the trial court's determination that there was sufficient misrepresentation by Mother (in the form of her failure to inform Father or Domestic Relations of her changes in employment) to permit the modification to be retroactive beyond the date Father filed his petition for modification.

In her second issue, Mother argues that the trial court erred in determining that the parties' son ("Son"), who was a month shy of his 20th

birthday at the time of the hearing, was not emancipated such that Mother's obligation to support for him would terminate. Appellant's Brief at 10.

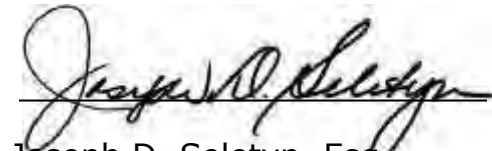
"The law provides unequivocally that a duty of support continues until a child reaches 18 or graduates from high school, whichever event occurs later." ***Robinson-Austin v. Robinson-Austin***, 921 A.2d 1246, 1247 (Pa. Super. 2007). In this case, the trial court concluded that Son had not yet graduated from high school and therefore that Mother's obligation to support him continued. Trial Court Opinion, 2/11/13, at 4. Again, the trial court's determination is supported by the evidence of record. Father testified that although Son's school allowed him to walk in a graduation ceremony with his classmates, Son has not received his high school diploma. N.T., 11/15/12, at 23. Father testified that Son will not graduate until he completes the "life skills" program run by the high school, in which Son is presently enrolled. ***Id.*** at 22-23.

Mother argues that it is not clear whether this life skills program is part of "a basic education," and therefore that Son should be deemed to have completed high school. Appellant's Brief at 11. We are not persuaded. Mother ignores the fact that Son's high school has not awarded him a diploma and according to the uncontradicted evidence offered at the hearing, it will not do so until Son completes a life skills program. N.T., 11/15/12, at 23. We find no error in the trial court's conclusion.

Finally, Mother seeks to challenge the calculation of the support modification. Appellant's Brief at 11. Mother did not raise this issue before the trial court in her request for a *de novo* hearing. **See** N.T., 11/15/12, at 5-6 ([Mother's counsel]: "I have two issues. One is ... to the retroactive modification ... in this case. Second issue is that ... [Son] should be considered emancipated for the purposes of child support."). It is axiomatic that "[i]ssues not raised in the lower court are waived and cannot be raised for the first time on appeal." Pa.R.A.P. 302(a). Accordingly, Mother has waived this issue for purposes of appeal.

Order affirmed.

Judgment Entered.

A handwritten signature in black ink, appearing to read "Joseph D. Seletyn", written over a horizontal line.

Joseph D. Seletyn, Esq.
Prothonotary

Date: 2/20/2014