DIANA L. CARSON,	:	IN THE COURT OF COMMON PLEAS OF
	:	LYCOMING COUNTY, PENNSYLVANIA
Plaintiff/Petitioner	:	
	:	
vs.	:	NO. 95-21,611
	:	
KEVIN M. JUNE,	:	CIVIL ACTION – LAW
	:	
Defendant/Respondent	:	EXCEPTIONS

Date: July 5, 2000

OPINION AND ORDER

The matter presently before the Court concerns the Exceptions to the Master's Report, filed by Father/Respondent April 13, 2000. Respondent claims the Master erred in utilizing his previous income to calculate his support obligation, rather than his current income.

A petition for child support modification filed by the Mother, Petitioner Diana L. Carson, on December 17, 1999, requested an increase in child support for one child. The Mother/Petitioner requested modification of the prior support order, which was calculated for two children, one in the custody of each parent, because the child in Father's custody reached age 18 and was emancipated.

There is no dispute that in November of 1999, Respondent voluntarily left a job paying the same hourly rate as the position he currently holds. However, due to additional bonuses Respondent received at his previous employment, his actual earnings were greater than his current pay -- $1,916.64 per month rather than $1,404.58. There is also no dispute that the reason for Respondent's change of jobs was a good faith career change from being an automobile body shop

mechanic to being a builder of architectural models, a more suitable line of work given the Respondent's age and abilities.

In the Order of March 30, 2000, the Master indicated, correctly, that "when a party voluntarily assumes a lower paying job, there generally will be no effect on the support obligation. A party will ordinarily not be relieved of a support obligation by voluntarily quitting work or being fired for cause." Order, p. 2; Pa.R.C.P. §1910.16-5(c)(1). The master continued that because Respondent voluntarily left his previous job and accepted a position paying less, the higher income figure must be utilized to determine Respondent's child support obligation. ***Ibid***. Ordinarily, the Master's Order applying that principle would be upheld. However, under the agreed upon facts of this case the Order will be set aside.

In support of his Exceptions, Respondent relies upon the case of ***Klahold v. Kroh***, 649 A.2d 701 (Pa.Super. 1994). In ***Klahold***, the Superior Court considered a support case wherein the father was, through his own fault, discharged from a higher paying job and subsequently accepted a position paying substantially less. The change in position occurred prior to the entry of an initial support order. The trial court utilized the previous higher wage to determine Father's earning capacity, pursuant to Rule 1910.16-5(c), but the Superior Court reversed. The appellate Court determined that the language of the Rule required the existence of an existing support order, which was not present in the case before it. However, the Court also based its decision on the law of Pennsylvania that:

> A parent may **not intentionally** reduce his or her earnings and then use the reduction in earnings to obtain a reduction in the amount of support, which that parent must provide. . . . The rationale is that a parent has a duty to his or her children and therefore a parent should not be permitted to **evade** that responsibility by **deliberately reducing his or her income.**

Klahold at 704 (citation omitted) (emphasis in original). In the instant case, a pre-existing support order was in effect. However, there is no evidence that Respondent intentionally reduced his earning and then used the reduction to decrease his support obligation. Instead, Respondent continued to pay the prior obligation until Petitioner filed the modification request.

At argument on the Exceptions, Petitioner sought only the modification because the oldest child no longer was to be considered as living with Respondent. Petitioner did not question the validity of the reasons for Respondent's change of career, nor assert that Respondent's income was inappropriate given his abilities. There is no contention and no evidence that Respondent's change of job was done to evade his support responsibility. Further, while the change of employment did reduce Respondent's income significantly, he remains suitably employed and able to adequately provide support for his child.

Accordingly, on the record before us it does not appear Respondent voluntarily reduced his income to reduce his child support obligation. The Respondent's child support obligation shall be recalculated in light of his current income, found by the Master to be $1,404.58. Under the facts of this case, the current earnings of Respondent are found to be an accurate reflection of his earning capacity.

It should be noted, however, that this amount was determined on less than six months of work in Respondent's new job. Therefore, he should bring his pay stubs for the period from January 1, 2000 to June 30, 2000, to the Domestic Relations Office in order to verify that his gross income as reflected in the Master's opinion is accurate.

O R D E R

Respondent's Exceptions are hereby GRANTED. The Domestic Relations Office shall recalculate the Respondent's income consistent with the foregoing Opinion.

The Domestic Relations Office shall then apply the other factors affecting the child support obligation as found in the Master's Opinion and calculate an order for entry of the appropriate child support obligation. This obligation shall be reviewed during July 2000, based upon the Respondent's six-month earnings through June 30, 2000 as set forth in the foregoing Opinion.

BY THE COURT,

William S. Kieser, Judge