

**IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA**

<b>DEBORAH A. (LINN) THOMAS,</b>	:
<b>Plaintiff</b>	: <b>No. 91-21,700</b>
	:
<b>vs.</b>	:
	:
<b>HEISTER H. LINN, JR.,</b>	: <b>Child Support/APL</b>
<b>Defendant</b>	: <b>Exceptions</b>

**OPINION AND ORDER**

This matter came before the Court on the defendant's exceptions to the Master's Order of April 29, 1999 regarding child support and alimony pendente lite (APL). The defendant challenges every aspect of the Master's determination except the incomes/earning capacities of the parties. Rather than address each of the defendant's sixteen (16) exceptions individually, the Court will simply make its own calculations of the defendant's obligations for child support and APL.

**CHILD SUPPORT**

The defendant's net monthly income as found by the Master is \$15,653 and the plaintiff's assessed earning capacity is \$1,500. Therefore, the parties' combined monthly income is \$17,153.

Given the parties' combined income, the Court must determine the presumptive minimum amount of support as if the parties' combined income did not exceed the guidelines and then conduct an analysis under Melzer v. Witsberger, 505 Pa. 462, 480 A.2d 991 (1984).

For the time period from July 1, 1998 through March 31, 1999, the presumptive

minimum child support is determined by subtracting Ms. Thomas' earning capacity of \$1,500 per month from \$10,000 to arrive at Dr. Linn's income of \$8,500 for presumptive minimum purposes. During this time period, Ms. Thomas is the custodial parent of two (2) minor children (Collin and Brennan) and Dr. Linn is the custodial parent for one (1) minor child (Courtney). The support guideline formula indicates that, at the parties' income level, 19.7% of the parties' income would be spent for the support of two (2) child and 11.5% would be spent for the support of one (1) child. Rule 1910.16-3. Therefore, the total presumptive minimum support for Collin and Brennan would be \$1970 of which Dr. Linn would be responsible for \$1674.50 and Ms. Thomas would be responsible for \$295.50, and the total presumptive minimum support for Courtney would be \$1,150, with Dr. Linn responsible for \$977.50 and Ms. Thomas responsible for \$172.50.

For the time period from April 1999, the presumptive minimum is "the obligor's percentage share of the highest amount of support which can be derived from the schedule or the chart for the appropriate number of children, using the parties' actual combined income to determine the obligor's percentage share of this amount." Rule 1910.16-2(2) (emphasis added). In other words, the court must take the amount of support from the schedule or chart assuming the parties' income is \$15,000, but determine Dr. Linn's share of this amount by dividing his actual income of \$15,653 by the parties' combined income of \$17,153. Again, during this time period Ms. Thomas has custody of Collin and Brennan and Dr. Linn has custody of Courtney. With an income level of \$15,000, the schedule indicates the amount of support for two children is \$2945. Dr. Linn's proportionate share

is 91%<sup>1</sup> and Ms. Thomas' share is 9%.<sup>2</sup> Ninety-one percent (91%) of \$2,945 is \$2,679.95 and nine percent (9%) of \$2945 is \$265.05. Similarly, the schedule indicates the amount of support for one child is \$2036. Ninety-one percent (91%) of \$2036 is \$1852.76 and nine percent (9%) of \$2036 is \$183.24.

When the parties' combined monthly net income exceeds the highest guideline amount, the Court must conduct a Melzer analysis. Pursuant to Melzer, the Court must first determine the reasonable needs of the children. The reasonable needs of the children does not constitute only the bare necessities. As the Pennsylvania Supreme Court stated in Melzer:

This is not to say that children are entitled only to the bare necessities; parents do have an obligation to share with their children the benefit of their financial achievement. See Conway, supra, 456 Pa. At 538, 318 A.2d at 325 ('station in life of the parties is relevant in determining parents' capacity to support their children). Thus, where the parents' incomes permit, it may be perfectly proper for a Court to recognize that certain expenditures for recreation, entertainment, and other nonessential items are reasonable and in the best interests of the children. See Spingola v. Spingola, 91 N.M. 737, 580 P.2d 958, 964 (1978)('where the income, surrounding financial circumstances and station in life of the father demonstrates an ability on his part to furnish additional advantages to his children about their actual needs, the trial court should provide such advantages within reason.').

Melzer at \_\_\_\_, 480 A.2d at 995. Both Ms. Thomas and Dr. Linn submitted income and expense statements. See Plaintiff's Exhibit #39 and Defendant's Exhibit #2. Ms. Thomas' expense statement covers the expenses for her and three children: Courtney, Collin and

---

<sup>1</sup>\$15,653 divided by \$17,153 = .9125517 x 100 = 91.25517%. Rounded to the nearest whole number equals 91%.

<sup>2</sup>\$1,500 divided by \$17,153 = .0874482 x 100 = 8.74%. Rounded to the nearest whole number equals 9%.

Brennan. Courtney, however, moved to Dr. Linn's residence on or about July 1, 1998, which prompted the parties' agreement for the Master to consider a modification of the child support order in conjunction with the Master's hearing on equitable distribution. After examining the expense statements, the Court determined that the amount of money to meet the reasonable needs for Collin and Brennan is \$4443.96. The Court divided the fixed expenses such as the mortgage, taxes and the like by three (the number of persons currently living in the residence) to determine the portion of those expenses attributable to each individual.<sup>3</sup> The Court then multiplied that figure by two to determine the fixed expenses of Collin and Brennan. With the exception of a few expenses that were solely the plaintiff's or the children's,<sup>4</sup> the Court divided the remaining expenses by four because the expenses included Courtney who no longer resides with Ms. Thomas and then multiplied that figure by two to arrive at the expenses attributable to Collin and Brennan.

Next, the Court must determine the abilities of the parents to support their children. Melzer, 480 A.2d at 996. This ability is determined by deducting the parties' reasonable living expenses from their respective incomes. A parent "may not voluntarily decrease his or her ability to provide child support by making unreasonable or unnecessarily large expenditures for his or her own benefit." Id.

Ms. Thomas' earning capacity is \$1500. Using the same methodology as the Court used in determining Collin and Brennan's needs, the Court finds that the

---

<sup>3</sup>The fixed expenses would remain the same even after Courtney moved out where the other expenses such as the clothing expense would or should decrease.

<sup>4</sup>For example, the Court attributed the school lunch expenses solely to the children and the lunch expense listed under employment solely to Ms. Thomas.

plaintiff's reasonable living expenses are approximately \$3000 per month. Dr. Linn's net monthly income is \$15,563. He claims monthly expenses in the amount of \$9,095.66. The Court notes, however, that these expenses include items which are not living expenses (like his alimony to Laura Lister, for example), items that he apparently no longer incurs, and expenses that are not reasonable. Without attributing any of the fixed expenses to Courtney, the Court finds Dr. Linn's reasonable living expenses are in the \$5500 to \$6000 range. When one-half of the fixed expenses are attributed to Courtney, Dr. Linn's reasonable living expenses are approximately \$4300.<sup>5</sup> Therefore, when Dr. Linn's reasonable living expenses are deducted he has between \$9,653 and \$11,353 per month in income available for support. Even assuming arguendo that all of Dr. Linn's claimed expenses except the alimony payment are reasonable living expenses, he has \$7,558 per month in discretionary income which can be considered for support purposes.

Under Melzer, the Court calculates each parent's support obligation in accordance with the following formula: parent's income available for support divided by the combined income available for support times the amount necessary to provide for the children's needs. Here, the only parent that has income available for support is Dr. Linn. Therefore, he would be responsible for 100% of the Collin and Brennan's reasonable

---

<sup>5</sup>The Court finds the total expense for Courtney are approximately \$3000. This total was derived by adding one-half of the fixed expenses from Dr. Linn's expense statement (approximately \$1700) and one-quarter of the non-fixed expenses from Ms. Thomas' expense statement (approximately 1300). The Court utilized 50% for the fixed expenses because two people are currently living in Dr. Linn's residence. Similarly, utilized 25% of the non-fixed expenses because four people were living in Ms. Thomas' residence at the time her expense statement was prepared.

needs above the total presumptive minimum support.

For the time period of July 1, 1998 through March 31, 1999, the guidelines assume the reasonable need of two children are \$1,970 when the parents' combined income is \$10,000. Collin and Brennan's needs are \$4,443.96, an amount which exceeds the guideline amount by \$2,497.96. Dr. Linn has monthly income available to meet these needs after his reasonable living expenses are met and his portions of the total presumptive minimum child support for all the parties' minor children are taken into account. Therefore, after considering the presumptive minimum amounts and conducting a Melzer analysis, the Court finds Dr. Linn has a child support obligation of \$4,148.46 for Collin and Brennan during this time period.<sup>6</sup>

Commencing April 1, 1999, the guidelines assume the reasonable needs of two children at the parties' income level are \$2945. Collin and Brennan's needs are \$4,443.96, an amount which exceeds the total presumptive minimum of support by \$1498.96. Dr. Linn has monthly income available to meet these needs after his reasonable living expenses are met and his portions of the total presumptive minimum child support for all the parties' minor children are taken into account. Therefore, after considering the presumptive minimum amounts and conducting a Melzer analysis, the Court finds Dr. Linn has a child support obligation of \$4,178.91 for Collin and Brennan.<sup>7</sup>

---

<sup>6</sup>The Court arrived at the \$4,148.46 figure by adding Dr. Linn's presumptive minimum amount of support (\$1674.50) and the children's reasonable needs above the guideline amount (\$2,473.96).

<sup>7</sup>The Court arrived at the \$4178.91 figure by adding Dr. Linn's presumptive minimum support for Collin and Brennan (\$2679.95) and the children's reasonable needs above the guideline amount (\$1498.96).

For the time period of July 1, 1998 through March 31, 1999, the presumptive minimum owed by Ms. Thomas to Dr. Linn for Courtney is \$172.50. Ms. Thomas does not have any additional income available for support. Therefore, the Court will deduct from the child support obligation of \$4,148.46 owed by Dr. Linn for Collin and Brennan the \$172.50 owed by Ms. Thomas to arrive at a net child support obligation of Dr. Linn in the amount of \$3,975.96.

For the time period commencing on April 1, 1999, the presumptive minimum owed by Ms. Thomas to Dr. Linn for Courtney is \$183.24. Again, Ms. Thomas does not have any additional income available for support. Therefore, the Court will deduct from the child support obligation of \$4,178.91 owed by Dr. Linn for Collin and Brennan the \$183.24 owed by Ms. Thomas for Courtney to arrive at a net child support obligation of Dr. Linn in the amount of \$3,995.67.

Once each parent's total support obligation has been defined, the Court must determine what portion of that obligation may be offset by support provided directly to the children. There was not any testimony by either party as to significant direct contributions to the minor children. Therefore, none of the support obligations are offset by direct contributions.

The Court rejects Dr. Linn's contention that the Master erred in failing to consider the college expenses he pays for the parties' children who have reached majority. In Pennsylvania, a parent does not have a legal duty to support his or her children attending college. Therefore, while it is commendable that Dr. Linn is helping his older children with their college expenses, these expenses are not deductible as reasonable living expenses

when determining the amount available for the support of his minor children. The child support guidelines in Pennsylvania reflect a policy of putting the support of minor children first. This means the income available for support is determined before considering the support of any former spouses, the college expenses of children who have reached majority, or debts incurred from questionable investment decisions.

### **APL**

When the parties have dependent children, alimony pendente lite is determined by deducting the obligee's monthly net income/earning capacity and the obligor's child support obligation from the obligor's monthly net income and multiplying the difference by thirty percent (30%).

For the period of July 1, 1998 through March 31, 1999, Ms. Thomas' earning capacity is \$1,500 and Dr. Linn's child support obligation is \$3,975.96. Deducting these amounts from Dr. Linn's monthly net income of \$15,653 results in a difference of \$10,177.04.<sup>8</sup> Multiplying this amount by thirty percent (30%) results in an award of alimony pendente lite in the amount of \$3,053.11.<sup>9</sup>

For the period commencing April 1, 1999, Ms. Thomas' earning capacity remains \$1,500 and Dr. Linn's child support obligation is \$3,995.67. Deducting these amounts from Dr. Linn's monthly net income of \$15,653 results in a difference of \$10,157.33.<sup>10</sup> Multiplying this amount by thirty percent (30%) results in an award of alimony pendente lite

---

<sup>8</sup>\$15,653 - \$1,500 = \$14,153 - \$3,975.96 = \$10,177.04.

<sup>9</sup>\$10,177.04 x .30 = \$3,053.11.

<sup>10</sup>\$15,653 - \$1,500 = \$14,153 - \$3,995.67 = \$10,157.33.



in the amount of \$3,047.20.<sup>11</sup>

**ORDER**

AND NOW, this \_\_\_\_ day of April, 2000, based on the foregoing Opinion, it is ORDERED and DIRECTED as follows:

1. For the time period of July 1, 1998 through March 31, 1999, Heister H. Linn shall pay child support for Collin and Brennan in the amount of \$4,148.46 per month. For the same time period, Deborah Thomas shall pay child support for Courtney in the amount of \$172.50 per month. The net effect is that Heister H. Linn shall pay child support in the amount of \$3,975.96 per month to the Domestic Relations Office.

2. For the time period of April 1, 1999 forward, Heister H. Linn shall pay child support for Collin and Brennan in the amount of \$4,178.91 per month. For the same time period, Deborah Thomas shall pay child support for Courtney in the amount of \$183.24. The net effect is that Heister H. Linn shall pay child support in the amount of \$3,995.67 per month to the Domestic Relations Office.

3. For the time period of July 1, 1998 until March 31, 1999, Heister H. Linn shall pay alimony pendente lite to the Domestic Relations Office in the amount of \$3,053.11 per month.

---

<sup>11</sup>\$10,157.33 x .30 = \$3,047.20.

4. For the time period commencing on April 1, 1999, Heister H. Linn shall pay to the Domestic Relations Office alimony pendente lite in the amount of \$3,047.20.

5. In regard to unreimbursed medical expenses, the custodial parent shall be responsible for the first \$250.00 of unreimbursed medical expenses for each child during any calendar year. During 1999, the custodial parent shall be responsible for the first \$165.00 of unreimbursed medical expenses for each child from April 1, 1999 through December 31, 1999. Any other unreimbursed medical expenses shall be split by the parties shares proportionate to their incomes, i.e., Heister H. Linn shall be responsible for payment of 91 percent of all other unreimbursed medical expenses and Deborah Thomas shall be responsible for payment of 9 percent of all unreimbursed medical expenses.

6. Until further Order of Court, Heister H. Linn shall continue to maintain the children under his current health insurance program. He shall also maintain Ms. Thomas under his health insurance until she is no longer entitled to receive alimony pendente lite.<sup>12</sup>

7. Heister H. Linn shall continue to provide insurance for Brennan in the amount of approximately \$100.00 per month.

8. This Order is retroactive to July 1, 1998. The current support arrearages owed by Heister H. Linn total \$59,325.70. To reduce this arrearage, Heister

---

<sup>12</sup>In other words, if no appeals are filed to the equitable distribution order, alimony pendente lite and Dr. Linn's responsibility to provide medical insurance coverage for Ms. Thomas shall cease.

H. Linn shall pay to Domestic Relations an additional \$1000 per month until the arrearage is paid in full or until further Order of Court.<sup>13</sup>

By The Court,

---

Kenneth D. Brown

cc: Joy Reynolds McCoy, Esquire  
Steven Hurvitz, Esquire  
Family Court  
DRO  
Cost Clerk  
Gary Weber, Esquire (Lycoming Reporter)

---

<sup>13</sup>The Court recognizes Dr. Linn has filed a Petition to Modify his support obligations due to a decline in his health. After a hearing on this Petition, the Master may change the amount Dr. Linn is to pay toward the arrearage, as well as his support obligations. At this point, however, that issue is not before the Court and this Order is based on the record created at the Master's hearing on equitable distribution.