

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

STEPHEN J. MOORE,  
Plaintiff

v.

NENITA URBINA,  
Defendant

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No. 97-20,006  
PACES NO. 941001813

**OPINION and ORDER**

This case involves Exceptions to a child support order filed by Nenita Urbina, the mother of the couple's three children. Ms. Urbina, the non-custodial parent, was assessed an earning capacity of \$17,222 per year and ordered to pay child support of \$370.46 per month.

Ms. Urbina would like to be excused from her duty to support her first three children because she wants to stay home with her two children to her second husband. She has therefore asked to be declared a "nurturing parent." The Master rejected her request, and we see no abuse of discretion.

The Master acknowledged the test set forth in Frankenfield v. Feeser, 672 A.2d 1347 (Pa. Super. 1996), in which the factors to be considered for a nurturing parent are the age and maturity of the children, the availability of others to assist the parent, the adequacy of available financial resources if the parent does not work, and the parent's desire to stay home and nurture the children. Although Ms. Urbina's youngest child is still an infant, and although she is breast-feeding and wishes to continue, those factors are not dispositive. It is particularly relevant that Ms. Urbina lives with her parents, and her mother is not employed. We realize Ms. Urbina testified her mother was busy with other activities, but that in itself does not make her

“unavailable” for purposes of the Frankenfield test. Her mother may legitimately be considered as a possible resource when viewing all relevant circumstances surrounding Ms. Urbina’s situation, especially since Ms. Urbina is living with her parents. As to available financial resources, it may be true that Mr. Moore would be able to continue to bear the entire financial burden for the three children, as he has done in the past, but that does not mean he should have to do so. Mr. Moore has an additional three children in his home, who must also be taken into consideration. And finally, under Frankenfield the court may consider the past work history of the parent (Ms. Urbina worked until she had to quit because of problems with her pregnancy) and whether the child to be nurtured is a child subject to the child support order (the child is not).

Ms. Urbina relies heavily upon the case of Stredny v. Gray, 510 A.2d 359 (1986), which states a court cannot force a custodial parent to choose between the economic welfare of one child and the emotional welfare of another. That case, however, involved a custodial parent who showed that full-time employment would jeopardize the emotional welfare of a child born to a later marriage. The older child was emotionally disturbed, and there was reason to believe the second child was in danger of developing the same problems if the mother had to work full time. Moreover, even in that case the mother worked part time. There is no evidence either of Ms. Urbina’s two children to her present husband would be harmed if she got a job.

Ms. Urbina argues she should not have to choose between the interests of her first three children and her second two children, but she herself is asking us to elevate the interests of her second children. Courts must, however, consider the interests of all the children involved, and we agree with the Master that the three children at issue

deserve financial support from their mother.

Like many parents, Ms. Urbina would like to stay home with her children. Unfortunately, that is not always possible, and the more children one has, the more unlikely that possibility becomes. The decision to have a child is an important one, and should be made only after carefully considering all the consequences and repercussions. When a parent freely chooses to increase his or her financial responsibilities by bringing more children into the world, that parent should not expect a court to liberally lighten those responsibilities.

Ms. Urbina also is not happy about the amount she was assessed: the salary of a nurse's aide, at \$8.49 per hour. There is nothing wrong with this job category, as Ms. Urbina previously worked as a nurses' aide. Nor is there anything wrong with the methodology the Master used: The Pennsylvania Bureau of Labor and Industries Wage Assessment for the Williamsport area, with a 2% cost of living increase each year.

Lastly, Ms. Urbina argues Mr. Moore should be assessed a higher income capacity, based on his rental income. Mr. Moore rents a portion of his home to the Post Office for \$258.34 per month. His federal tax return, however, showed a net yearly income from the rental of only \$288.37. The Master added back in deductions Mr. Moore had claimed on his federal income tax for house insurance, mortgage interest, and taxes, and assessed him with a rental income of \$93.26 per month. However, there were other deductions that were highly suspect, such as \$1,150.19 for cleaning and maintenance. Mr. Moore also gets paid \$10 per hour for snow removal, which he did not include as income on his tax return. Mr. Moore was very vague when questioned on these issues, and based on his lack of support for deductions, the court will increase his rental income to \$155 per month.

**ORDER**

AND NOW, this \_\_\_\_\_ day of February, 2002, the Master's order of 4 December 2001 is hereby amended to provide that Nenita Urbina's child support obligation is \$368.45 per month, her share of the health insurance premium is \$6.65 per month, and her share of the child care expenses is \$57.87 per month.

BY THE COURT,

Clinton W. Smith, P.J.

cc: Dana Jacques, Esq.  
Hon. Clinton W. Smith  
Christopher Williams, Esq.  
David Irwin, Esq.  
Gerald Seevers, Esq.  
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Gary Weber, Esq.