

IN THE COURT OF COMMON PLEAS
PHILADELPHIA COUNTY

FAMILY DIVISION

MICHELE LIPKIN : SUPERIOR COURT DOCKET
Plaintiff/Appellant : No. 119 EDA 2001

v. : COMMON PLEAS DOCKET
: DR No. 99-30418
: PASCES NO. 356101750

MITCHELL LIPKIN : In Support
Defendant/Appellee :

OPINION

Mozenter, Joyce S., J.

Dated: February 21, 2001

This is an appeal from a Final Order entered by the Court on November 17, 2000 with respect to child support. The procedural history of this case is as follows. Appellant, Michele Lipkin, filed a complaint seeking support for two (2) minor children, Ariella and Erica, born 8/6/84 and 3/30/89, respectively. On March 13, 2000 a Pre-Trial Conference was held and an interim order was issued ordering Appellee, Mitchell Lipkin, to pay \$160.00 weekly in support. A Master's Hearing was held on May 24, 2000 and a Proposed Order was issued recommending that Appellee pay \$168.36 weekly toward the support of two (2) children.

On June 16, 2000, Appellant filed a Petition to File Exceptions Nunc Pro Tunc. This petition was granted on July 10,

2000. A Support Exceptions hearing was scheduled on November 17, 2000. The Court issued an Order denying Appellant's exceptions and ordered that the Master's Proposed Order become a Final Order.

Appellant filed a Notice of Appeal and on December 21, 2000 the Court, pursuant to Pa. R. App. P. 1925(b), ordered Appellant to file a Concise Statement of Matters Complained of on Appeal. Appellant filed her Concise Statement of Matters Complained of on Appeal on January 3, 2001 which is outlined in five (5) paragraphs. These paragraphs are vague and repetitious. Accordingly, the Court addresses the issues contained within these paragraphs as opposed to addressing each paragraph individually.

Appellant claims that the record contains insufficient evidence to sustain the Master's finding that \$500.00 drawn in cash by Appellee was a loan from his parents.

The Master found as fact that Appellant testified that Appellee received a \$500.00 check and cash in the amount of \$500.00 while the parties resided together. See Master's Report 5/26/00 pg. 3. The Master also found that Appellee testified that the \$500.00 in cash was a loan from his parents and that this testimony was credible and believable. Id.

The record amply supports the findings of the Master. During the Master's hearing when asked by the Master if he had any outstanding debts, Appellee responded that he owes his parents

money which he plans to repay in the form of a building. See Notes of Testimony 5/24/00 pg. 44. Appellee testified that the building is located at 6388 Castor Avenue and is worth about a hundred thousand dollars. Id at 60. Appellee further testified that he was using the building as collateral to repay his parents. Id. Appellee stated that he was not able to return the money but had intentions of satisfying the debt. Id at 66.

Appellee testified that he is a hard-working man and it was embarrassing for him to borrow money from his parents. Id at 70. Appellee further testified that he plans to repay his parents whenever he can and stated "I will overestimate to be fair to them because they are getting older." Id. Appellee also declared that he feels obligated to return the money especially to protect his parents in their old age. Id at 103.

Based on the foregoing, the Court finds that this is a credibility issue that was within the Master's discretion. There was no abuse of discretion on the part of the Master in that the record contains sufficient evidence to sustain the Master's finding that the \$500.00 drawn in cash was a loan and not income for purposes of support.

Appellant claims that it was an abuse of discretion for the Master to decline to consider the opinion of a Judge of the Court of Common Pleas ordering that a Marital Separation Agreement procured by Appellee was null and void.

Appellant attempted to introduce into evidence a prior Order of Court declaring the parties' Marital Separation Agreement null

and void. Appellant made an offer of proof stating that the Order goes to the credibility of the parties. The Master excluded the Order from evidence stating that the Order was irrelevant for the purposes of the child support hearing. Id at 78.

The Court finds that the Master did not err as a matter of law. A previous Order of Court declaring a Marital Separation Agreement null and void is not relevant for support purposes. Furthermore, even if the Order states that it evaluated the credibility of the witnesses, this statement does not make a finding as to which witnesses testified and who was more credible. For the purposes of support hearings, it is the Master who evaluates the witnesses and determines their credibility. Accordingly, the Court finds that it was not an abuse of discretion for the Master to exclude from evidence the Order declaring the parties' Marital Separation Agreement null and void.

Appellant claims that it was an abuse of discretion for the Court not to remand the matter to the Master when Appellee advised the Court at the outset of the trial that he had provided erroneous information to the Master regarding his ownership in the family held business.

Appellee testified not only at deposition but also at the Master's hearing that he owns forty-nine percent of the family business. Id at 42. Based on this testimony, the Master found as fact that Appellee's parents own fifty-one percent and Appellee owns forty-nine percent of the business. See Master's Report 5/26/00 pg. 3.

During the Support Exceptions Hearing before the Court,

Appellee's counsel stated that Appellee thought he was a forty-nine percent shareholder at the time of the Master's hearing, but recently discovered that he is only a third shareholder in the business. See Notes of Testimony 11/17/00 pg. 6, 9. This is new information that was not presented at the Master's Hearing. The Court may not accept new evidence at the Support Exceptions hearing. The Court may only rule on the evidence that was presented to the Master at the time of the hearing. The Court finds that this newly discovered information was not before the Master and not part of the record below. Thus, it is not subject to the ruling of this Court.

Based on the foregoing, the Court finds that it was not an abuse of discretion for the Court not to remand the matter to the Master with regard to Appellee's ownership in the family held business.

Appellant claims that it was an abuse of discretion for the Court to dismiss Appellant's exceptions because there was insufficient evidence for the Master's determination and the Order is not bolstered by competent evidence.

The Court finds that the Support Order is based on competent and credible evidence presented at the time of the Master's hearing. As previously discussed, the record abundantly supports the findings of fact by the Master. The Court finds that there was sufficient evidence to support the Order and that there was no abuse of discretion.

For the reasons stated above, this Court respectfully requests that its Order of November 17, 2000, be affirmed.

BY THE COURT:

J.