

NOTICE

Decision filed 02/21/12. The text of this decision may be changed or corrected prior to the filing of a Petition for Rehearing or the disposition of the same.

2012 IL App (5th) 110133-U
NO. 5-11-0133
IN THE
APPELLATE COURT OF ILLINOIS
FIFTH DISTRICT

NOTICE

This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

<i>In re</i> MARRIAGE OF)	Appeal from the
CAROLYN EICKMANN,)	Circuit Court of
)	Perry County.
Petitioner-Appellee,)	
and)	No. 06-D-86
JOSEPH C. EICKMANN,)	Honorable
)	James W. Campanella,
Respondent-Appellant.)	Judge, presiding.

JUSTICE CHAPMAN delivered the judgment of the court.
Justices Welch and Spomer concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court did not abuse its discretion in denying respondent's petition to decrease his child support obligation because his voluntary termination of employment was not in good faith. The order is affirmed.

¶ 2 **FACTS**

¶ 3 Respondent appeals from the trial court's order denying his motion to reduce his child support order based upon his voluntary termination of employment and move to Missouri.

¶ 4 Carolyn and Joseph were married in 1996 and divorced in 2009. During the marriage, two daughters were born. In the June 3, 2009, dissolution of marriage judgment, Joseph was ordered to pay child support in the amount of \$175 per week. Joseph remarried within 30 days of the date his marriage was dissolved in 2009. Previous to the remarriage, his new wife lived in Missouri. Joseph's father, who was in ill health, lived in Missouri near where Joseph's new wife lived. Joseph continued to live and work in Illinois after his marriage for

about one year, while his new wife continued to live in Missouri.

¶ 5 Procedural History. In January 2010, Carolyn filed a rule to show cause against Joseph for nonpayment of medical expenses for the children, as well as for nonpayment of certain assigned marital debts. On February 9, 2010, the court found Joseph in contempt for nonpayment.

¶ 6 On June 3, 2010, Carolyn filed a second rule to show cause for nonpayment of medical expenses for the children and assigned marital debts. On June 22, 2010, the court found that Joseph was in contempt for nonpayment of the debts and obligations.

¶ 7 On September 15, 2010, Carolyn filed another rule to show cause against Joseph—this time for nonpayment of child support and medical expenses. In November 2010, the court found Joseph to be in contempt of court.

¶ 8 On December 22, 2010, Joseph sought modification of his child support obligation claiming that there had been a change of circumstances. He alleged that Carolyn had a live-in boyfriend who was contributing to her household expenses. He claimed that he was now employed by Morningside Church in Blue Eye, Missouri, and that he worked only 32 hours each week at \$10 per hour. He claimed that both of these facts supported a substantial change of circumstances. Carolyn responded on January 5, 2011, with a pleading in which she admitted that his employment had changed. Carolyn challenged his petition on the basis that the change of circumstances was voluntary and that because the employment change was voluntary, that change should not be considered as grounds for reduction of his support obligation. The hearing on Joseph's modification petition was held on February 16, 2011. Both parties testified.

¶ 9 Carolyn's Testimony. Carolyn testified that she had a boyfriend but that he did not now, nor did he ever, live with her, and he did not contribute to the support of her family.

¶ 10 Joseph's Testimony. Joseph testified that after his Illinois home sold in June 2010, he

quit his job and moved to Missouri to live with his new wife.

¶ 11 Joseph's Illinois employment had been with a company called Siemens. He had been making \$18 per hour as an electrician. He testified that at the time he quit, he was not in jeopardy of losing his position with Siemens, although the company had cut back on overtime.

¶ 12 At the time that he quit Siemens, he did not have alternate employment lined up in Missouri. When asked why he quit and moved to Missouri, Joseph testified:

"Well, I moved thinking that I would get unemployment and at the same time my father's 84, he will be 85, and so I wanted to go down there and at least visit him every couple of weeks or something because he is kind of bed ridden and then he's not—and he is kind of up and down with that so I really needed to be there. That's where I originally wanted to move to[,] way back when I was married to Carolyn[,] but she didn't want to go. And so I moved there because I have family there and of course my [current] wife[,] and I tried to talk *** [my current wife] into staying here in Illinois ***."

¶ 13 Joseph testified that his father lives approximately 30 miles from where he lives with his current wife and that he sees him every other week. When he visits, he stays for six to eight hours and makes sure that he has plenty of firewood and that his water is working. His father lives in his own home and has been in a diminished physical capacity for years, although Joseph testified that he had gotten worse, due to depression.

¶ 14 Although Joseph voluntarily quit his job, he filed for unemployment in Illinois. His claim was rejected. He testified that he stopped paying child support when he ran out of money, but as of the date of the hearing, February 16, 2011, he was caught up on child support payments. His current wife agreed to pay the amounts pursuant to the contempt order in order to avoid having her husband sent to jail.

¶ 15 After a lengthy job search, Joseph found work in November 2010, working for Morningside Church, doing audiovisual wiring necessary for the Jim Bakker daily broadcast show. Joseph now earns approximately \$17,000 gross per year. Joseph testified that he only works 32 hours each week for Morningside Church, but on cross-examination, he identified several pay stubs which reflected his payment for 40 regular hours, plus several hours of overtime. After payment of child support, Joseph claims that he has no residual money from his paychecks. He contributes nothing to the expenses of the marital home in Missouri.

¶ 16 Joseph testified that when he sold his Illinois home in June 2010, there was approximately \$35,000 after the mortgage was paid in full. He took the \$35,000 and paid off the loans on the vehicles owned by himself and his current wife. He testified that the remainder of the proceeds went to Carolyn in payment of various marital debts assigned to him in the dissolution judgment.

¶ 17 Joseph's child support ordered payment of \$175 per week was based on the statutory 28% for two children and was based upon annual income for Siemens of approximately \$32,500. His after-tax income at present is only \$15,730.

¶ 18 When employed by Siemens, he had medical insurance on himself and on the children. Joseph's employment with Morningside Church did not come with health or dental benefits—for himself or for his children.

¶ 19 The Court's Order. The court's order entered on March 2, 2011, denied Joseph's petition to modify child support. The court found that Joseph did not meet the burden of proving that his termination of employment was in good faith. The court concluded that Joseph's "termination of employment and corresponding change of residence was much more for his own convenience than for any good faith purpose." Because Joseph did not establish good faith for his termination of employment, the court did not determine whether this change was prompted by a desire to evade his financial responsibilities.

¶ 20

LAW AND ANALYSIS

¶ 21

Modification of Child Support Order

¶ 22 A trial court's ruling on a request for modification of a child support order will not be reversed unless the court's ruling amounts to an abuse of discretion. *In re Marriage of Rogers*, 213 Ill. 2d 129, 136, 820 N.E.2d 386, 389 (2004) (citing *In re Marriage of Bussey*, 108 Ill. 2d 286, 296, 483 N.E.2d 1229, 1233 (1985)); *In re Marriage of Davis*, 287 Ill. App. 3d 846, 852, 679 N.E.2d 110, 115 (1997).

¶ 23 Pursuant to section 510(a)(1) of the Illinois Marriage and Dissolution of Marriage Act (750 ILCS 5/510(a)(1) (West 2008)), a child support order can be modified upon a showing of a substantial change of circumstances.

¶ 24 Despite a showing of a substantial change in circumstances because of a reduction in income, the court can still impute income under some circumstances. There are three factors for the trial court to consider in reaching the conclusion that it is proper to impute income to a noncustodial parent seeking a decrease in child support due to a reduction in income. *In re Marriage of Gosney*, 394 Ill. App. 3d 1073, 916 N.E.2d 614 (2009). The *In re Marriage of Gosney* court stated:

"In order to impute income, a court must find that one of the following factors applies: (1) the payor is voluntarily unemployed [citation]; (2) the payor is attempting to evade a support obligation [citation]; or (3) the payor has unreasonably failed to take advantage of an employment opportunity [citation]. If none of these factors are in evidence, the court may not impute income to the noncustodial parent." *In re Marriage of Gosney*, 394 Ill. App. 3d at 1077, 916 N.E.2d at 618-19.

¶ 25 A parent seeking to modify child support on the basis of a decrease in income due to a voluntary change of employment bears the burden to prove that the change was made in good faith. *In re Marriage of Mitteer*, 241 Ill. App. 3d 217, 226, 608 N.E.2d 607, 613

(1993). The test of good faith is whether the change was prompted by a desire to evade financial responsibility or otherwise jeopardize the children's interests. *Coons v. Wilder*, 93 Ill. App. 3d 127, 132, 416 N.E.2d 785, 790 (1981). While proof that the parent is motivated to evade financial responsibility will defeat the "good faith" required to warrant a modification, the converse is not true. *In re Marriage of Imlay*, 251 Ill. App. 3d 138, 142-43, 621 N.E.2d 992, 995 (1993). The fact that there is no evidence that the parent was attempting to evade financial responsibility does not establish "good faith." *Id.*

¶ 26 Joseph lists cases in support of his contention that Illinois law does not preclude noncustodial parents from seeking a modification of support after voluntarily terminating employment if the rationale for the change was motivated by "furtherance of their own well-being." We have reviewed these cases and find them to be factually distinguishable and, therefore, of minimal support to his argument. The father in *Coons v. Wilder* quit his job in order to return to school to obtain his law degree. *Coons*, 93 Ill. App. 3d at 129, 416 N.E.2d at 788. The court stated that the custodial parent could not freeze the noncustodial parent in their present employment. *Id.* at 133, 416 N.E.2d at 791. The court noted that the father should be granted the opportunity to go to law school and the corresponding decrease in support while in law school because of the father's good faith in his "attempt to enhance his economic fortunes." *Id.* In *In re Marriage of Kowski*, 123 Ill. App. 3d 811, 816, 463 N.E.2d 840, 844-45 (1984), the noncustodial parent left his job for health and job security reasons. The parent's employer was bought by another company, and job security was no longer guaranteed as comments had been made to him intimating that he would be imminently replaced or fired. *Id.* at 813, 463 N.E.2d at 842. His job duties also increased under the new ownership. *Id.* at 812, 463 N.E.2d at 842. He had sought medical attention for a number of months prior to his decision to change employment based upon the negative impact on his health resulting from this change in company ownership. *Id.* at 813, 463 N.E.2d at 842. In

light of the loss of job security, and negative impact on his health, the court found that the parent's change of employment which resulted in a reduced salary was not done in bad faith. *Id.* at 816, 463 N.E.2d at 844-45; see also *Elizer v. Elizer*, 36 Ill. App. 3d 552, 555-56, 344 N.E.2d 493, 495-96 (1976) (educational support should have been reduced in light of father's economic loss to his business and attempts to secure employment to rectify the loss of income).

¶ 27 In arguing that his employment termination was made in good faith, Joseph claims that because he had not acted in order to avoid his child support obligations, we must conclude that the trial court erred. He seizes upon language in the above-referenced cases as supporting his argument. Essentially, Joseph argues that because he had no intention of avoiding his child support, based upon his testimony at the hearing to that effect, we must conclude that his employment termination was in good faith. Joseph also argues that because the trial court factually stated that Joseph left his job in order to care for his father and to move in with his new wife, the trial court's order finding that he lacked good faith is not soundly based. A finding of bad faith in a case where income has decreased is not limited to purposeful evasion of child support obligations. As stated earlier in this order, a parent who quits his job can be found to have done so in bad faith if the change "otherwise jeopardize[s] [the children's] interests." *Coons*, 93 Ill. App. 3d at 132, 416 N.E.2d at 790. The individual facts of each case must be carefully examined in order to reach a conclusion about the noncustodial party's good- or bad-faith intentions in seeking a reduction in support.

¶ 28 In this case, Joseph voluntarily terminated employment without the promise of future similar employment and compensation. His petition merely sought a reduction in child support without explanation. At the hearing, Joseph testified that his primary motivation to move was to be closer to his elderly father who lived in Missouri and needed his assistance. His second stated reason involved his marriage to his current wife whom he married one year

before he terminated his employment. Joseph's brief on appeal lists the same two reasons, but switches the order of importance.

¶ 29 While Joseph stated that he left his job and moved to Missouri in order to care for his father, the evidence supporting this claim was less than compelling. Joseph acknowledged that his father had been in pretty much the same physical and mental state for years. He testified that his father's depression had gotten worse, but provided no proof of this. He also failed to provide any evidence, other than his testimony, that his father, who lived on his own, needed any assistance. Furthermore, despite his claim that he moved in order to be able to help his father, he testified to only going to his father's home once every other week. Given the distance between his original home in Illinois and his father's home, if he only intended to visit twice each month, Joseph's motivation perhaps was more about reducing his travel time than about helping his father.

¶ 30 When Joseph remarried in June 2009, he was aware of the distance between his home and his new wife's home. In fact, the couple maintained separate residences for one year before Joseph decided to sell his home and quit his job in order to move to be with her. Most married couples live together, and achieving this end was very likely a motivating factor in Joseph's decision to quit his job.

¶ 31 Despite potentially valid reasons for Joseph's job termination, the validity of his reasons does not equate to a "good faith" basis. We find that the trial court did not abuse its discretion. While there are circumstances where employment can be terminated in "good faith," we agree with the trial court's assessment that Joseph's reasons do not satisfy that burden. The interests of Joseph's children are paramount. Clearly, Joseph wanted to be with his new wife in Missouri, which is not an illogical motivation. Whether or not he was motivated to move to be closer to his father is not critical. Even though we understand why Joseph quit his job, we agree with the trial court's conclusion that Joseph's reasons do not

constitute good faith. Joseph bears the burden to support his children as originally determined by the court. Changing jobs for no reason other than his own convenience, and seeking a decrease in the amount of support, serves to jeopardize the interests of his children. Accordingly, we affirm the trial court's order finding that Joseph lacked good faith and affirm the court's order denying his request to decrease his child support obligation.

¶ 32 Constitutional Right to Marry

¶ 33 We agree with Joseph that he has a constitutional right to marry. Nothing in the court's order has infringed upon that right. He did, in fact, get married. The decision to marry someone who lived in another state was Joseph's decision. Similarly, it was his new wife's decision not to move to Illinois. Regardless of his decision to marry or not marry, Joseph maintained an obligation to support his children. We conclude that this argument is without merit.

¶ 34 CONCLUSION

¶ 35 For the foregoing reasons, the judgment of the circuit court of Perry County is hereby affirmed.

¶ 36 Affirmed.