

Brenda L. Gamble, Plaintiff vs. Bentley K. Gamble, Defendant,
Franklin County Branch, Civil Action - No. F.R. 1994-615, Case
No. 5085-S01, S02

Gamble v. Gamble

Modification of child support - Effect of voluntary reduction in income

1. A Child support obligation will not automatically be reduced following a voluntary change in employment which results in a reduction of income since the support order is designed to accommodate the needs of the child as well as the obligated parent.

2. In order to have a child support obligation reduced, the petitioner must show: 1) that the reduction in income was made for a legitimate reason and not in an attempt to avoid the support obligation; and 2) that an effort was made by the petitioner to mitigate the loss of income.

Bradley L. Griffie, Esq., Attorney for Plaintiff

Thomas J. Finucane, Esq., Attorney for Defendant

Herman, J., May 7, 1996

OPINION AND ORDER OF COURT

Plaintiff Brenda L. Gamble filed a divorce complaint on July 1, 1994 which included a count requesting an award of alimony pendente lite. The parties appeared before the Domestic Relations Officer on June 19, 1995 who made a recommendation for an Order of alimony pendente lite. Defendant Bentley K. Gamble made a written demand for a hearing before the court of Common Pleas challenging the Order. A hearing was held before the Court on September 28, 1995 at which time both parties testified and offered evidence.

At issue in that hearing was whether Defendant was entitled to have part of his income considered as overtime and therefore the amount of income from that overtime would be reduced by one half pursuant to a recommendation in the Guidelines promulgated by the Franklin County Support Committee. The Court issued an Opinion and Order on that matter on October 26, 1995. The Court determined at that time that Defendant was not entitled to recalculation of his monthly net income due to overtime pay because he was a salaried employee and not a wage hour employee.

Bentley K. Gamble then requested a modification of his child support obligation for Brittney Jo Gamble, born September 24, 1988, again claiming that he was entitled to a reduction in his support obligation based on his theory that he is a wage hour employee. On January 2, 1996 the Domestic Relations Officer recommended that his support obligation be modified to enable Mr. Gamble to reduce his work schedule to 40 hours per week. A hearing was held on February 21, 1996 where both parties testified and presented evidence. The case is ready for decision.

FINDINGS OF FACT

Mr. Gamble is employed on a farm owned by his father. According to his prior testimony from the September 28, 1995 hearing, he works from 7:00 a.m. to 7:30 p.m. six days a week and has every other Sunday off. He takes one hour for meals each working day. Defendant claimed at that time, as he does now, that he was an hourly wage employee. In support of this contention he introduced into evidence "pay stubs" issued from June 23, 1995 through September 15, 1995, which broke his earnings down into regular and overtime hours.

However, the testimony from his employer about these pay stubs contradicted his claim that he was an hourly wage employee. The employer testified that June 23, 1995 was the first time pay stubs of this nature were ever issued to Defendant. The employer further testified that Mr. Gamble's pay did not change even if he missed a day of work. Further, the employer's own records did not indicate that Mr. Gamble was an hourly wage employee. In our opinion issued on October 26, 1995, we found that this evidence indicated a salaried position rather than income based on the number of hours worked.

DISCUSSION OF LAW

In order to succeed on a petition to modify an existing support order based upon reduced income, the petitioner must establish two things. First, the petitioner must establish "that the voluntary change in employment which results in a reduction of income was not made for the purpose of avoiding a child support obligation..." *Grimes v. Grimes*, 408 Pa. Super. 158, 163, 569 A.2d 240, 242 (1991). Second, the petitioner must establish "that

a reduction in support is warranted based on petitioner's efforts to mitigate any income loss." *Id.*

Defendant's argument suggests that he wishes to voluntarily change his employment from a salaried position to a wage hour position, which would amount to a voluntary reduction in his income. He then suggests that as a wage hour employee he cannot be compelled to work more than 40 hours per week, and is thus entitled to a reduction in his support obligation. We agree that the court cannot compel Mr. Gamble to work more than 40 hours per week. However, it does not necessarily follow that his support obligation must be reduced.

In order to reduce his support obligation, Mr. Gamble must first show that his income reduction was not made to avoid his support obligation. A parent's support obligation cannot be modified "simply on the basis of a reduction in salary..." *Id.* at 164, 596 A.2d at 243. The support obligation is designed to meet the needs of the child, not the desire of a parent to seek "a position with a salary that would meet personal needs alone". *Id.*, citing *Weiser v. Weiser*, 238 Pa. Super. 488, 362 A.2d 287 (1976).

Courts have traditionally viewed "with suspicion any sudden reduction of payments toward support based on...income reductions." *Grimes*, 408 Pa. Super. at 158, 596 A.2d at 242 (quoting *Roberts v. Bockin*, 315 Pa. Super. 52, 55, 461 A.2d 630, 632 (1988), citations omitted). In this case, Mr. Gamble's suggestion that he desired to change his employment from that of a salaried employee to a wage hour employee came only after this Court adjudicated his original petition for modification and found the evidence demonstrated that he was a salaried employee. Viewing this change with the skepticism appropriate under the Superior Court's holding in the above cited cases, we do not believe that Mr. Gamble has met his burden of proof in showing that his voluntary change from a salaried employee to a wage hour employee was for a legitimate reason, but rather was an attempt to avoid his support obligation.

Even if we were to find that Mr. Gamble made this voluntary change resulting in his reduction of income, our inquiry would not end there and result in a downward modification of his support

obligation. Mr. Gamble would also have to demonstrate that a reduction in support is warranted because he attempted to mitigate his income loss. The record before us is devoid of any evidence of Mr. Gamble's efforts to mitigate the loss in his income because of his voluntary change from a salaried to a wage hour employee. More specifically, he has not demonstrated "that he attempted to find a job with a comparable salary...or why finding a job with a comparable salary was not possible." *Grimes*, 408 Pa. Super. at 164, 596 A.2d at 243.

For the reasons stated herein, an appropriate Order of Court will be entered as part of this Opinion.

ORDER OF COURT

NOW this 7th day of May, 1996, the Court having held a hearing upon request of the defendant subsequent to the entry of an Order following an office conference, IT IS HEREBY ORDERED that in accordance with the attached Opinion the defendant's request for recalculation of his support obligation based on his voluntary reduction is DENIED.