

IN THE COURT OF APPEALS OF TENNESSEE
WESTERN SECTION AT NASHVILLE

FILED

August 16, 1996

Davidson Circuit No. 94D-461

Cecil Crowson, Jr.
Appellate Court Clerk

NANCY ANDERSON

Appellant/Mother

v.

DAVID ANDERSON,

Appellee/Father

Appeal No. 01A01-9603-CV-00118

APPEAL FROM THE CIRCUIT COURT OF DAVIDSON COUNTY
AT NASHVILLE, TENNESSEE
THE HONORABLE MARIETTA M. SHIPLEY, JUDGE

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REVERSED AND REMANDED

WILLIAM H. INMAN, SENIOR JUDGE

CONCUR:

W. FRANK CRAWFORD, PRESIDING JUDGE

ALAN E. HIGHERS, JUDGE

OPINION

The issue in this case is whether the child-support obligation of the father, appellee herein, should have been reduced as he sought. We do not believe so and therefore reverse and remand.

A Marital Dissolution Agreement was approved in February 1995 by which the appellee agreed, in accordance with the Child Support Guidelines, to pay \$528.64 per month for the support of his children. He had been employed by a guitar manufacturing company for an annual salary of \$24,950.00. He was discharged January 3, 1995 for excessive absenteeism despite warnings of the consequences if he continued his defiance of the employer's rules.

In August 1995, being in substantial arrearage with his support obligation, the appellee filed a petition to modify the judgment entered in March 1995 by reducing his child support obligation.

He claimed a material change in circumstances had occurred in that he had lost his job and was financially unable to pay \$528.64 per month for the support of his two children. The proof developed that he is a young man in good health, is a highly skilled luthier and lives in an economically advantaged county, to wit, Davidson. He recited his efforts to find employment which he recounted as unsuccessful.

The trial judge found:

I consider that Mr. Anderson's earning capacity is to earn at least \$10 an hour. He was previously in the guitar business earning about \$12.50 an hour. He was earning \$500 a week gross. So there has got to be some type of job that supports him and his children at least \$10 an hour. If he gets back to a higher level of employment, he must immediately notify the court and child support will be upped to that amount.

Accordingly, the support obligation of the appellee was reduced to \$440.00 per month.

We are respectfully constrained to disagree with the trial judge.

First, the appellee was unemployed when he agreed to pay \$528.64 per month. He had been discharged for misconduct six weeks earlier. Therefore, he

failed to show a material change in circumstances that would justify a reduction in his child support obligation. Second, we think the appellee is, for practical purposes, wilfully underemployed and that his potential income as evidenced by his skills and previous work experience is that which he was earning before his discharge for misconduct. TENN. COMP. R. & REGS., Ch. 1240-2-4-.03(3)(d).

We think the judicial system should look with the gravest disfavor upon parents who through their fault or design become underemployed in an effort to evade their legal, natural obligation to support their children. *See Harwell v. Harwell*, 612 S.W.2d 182, 185 (Tenn. App. 1980).

Accordingly, the judgment is vacated, and the case is remanded to the trial court for enforcement of the original judgment. Costs are assessed to the appellee.

William H. Inman, Senior Judge

CONCUR:

W. Frank Crawford, Presiding Judge

Alan E. Highers, Judge