

SUPREME COURT OF NEW HAMPSHIRE

In the Matter of the State of New Hampshire and Cory R. Lounder

166 N.H. 353 (2014) · No. Cheshire No. 2013-359 · Decided June 13, 2014

SUMMARY

The Supreme Court of New Hampshire held that incarceration may constitute a substantial change in circumstances warranting modification of a child support order. It further held that incarceration-related loss of employment does not, without more, constitute voluntary unemployment or justify imputing pre-incarceration income. The court reversed and remanded for entry of a minimum support order under RSA chapter 458-C.

CASE DETAILS

COURT	Supreme Court of New Hampshire
WRITING FOR THE COURT	Lynn, J.; Dalianis, C.J.; Hicks, J.; Conboy, J.; Bassett, J.
JURISDICTION	New Hampshire
DECIDED	June 13, 2014
DOCKET	Cheshire No. 2013-359
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Cory R. Lounder appealed the Superior Court's denial of his petition to modify a child support order based on a substantial change in circumstances caused by his incarceration.
STANDARD OF REVIEW	Child-support rulings are reviewed for an unsustainable exercise of discretion or an error of law. Statutory interpretation is reviewed de novo. Whether a party is voluntarily unemployed is a fact question reviewed for support in the record.
PRECEDENTIAL VALUE	Published opinion; precedential
PARTIES	Cory R. Lounder v. State of New Hampshire

TOPICS

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PRACTICE AREAS

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QUESTIONS PRESENTED

1. Whether incarceration and the resulting loss of employment and income constituted a substantial change of circumstances warranting consideration of modification of the child support order.
2. Whether incarceration causing termination of employment constituted voluntary unemployment or underemployment permitting the court to impute the parent's pre-incarceration income.
3. Whether the trial court was required to apply the minimum-support-order provision when the obligor had no gross income and was not voluntarily unemployed or underemployed.

HOLDINGS

1. Incarceration may constitute a substantial change of circumstances sufficient to warrant modification of a child support order, and the trial court must consider the incarceration and its effect on the obligor's ability to pay.
2. Incarceration that causes termination of employment does not make a parent voluntarily unemployed for purposes of modifying a child support order, absent evidence that the parent voluntarily became unemployed or intended to avoid child support.
3. When an obligor's gross income is less than the self-support reserve and the court determines that the obligor is not voluntarily unemployed or underemployed, the court must order child support in the amount of the minimum support order.

KEY QUOTATIONS

“Similarly, then, incarceration that causes termination does not cause a parent to become “voluntarily” unemployed for purposes of modifying a child support order.” (at 355)

“If the obligor parent’s gross income is less than the self-support reserve and the court has determined that the obligor is not voluntarily unemployed or underemployed, the court shall order the child support obligation in the amount of a minimum support order.” (at 356)

FACTUAL BACKGROUND

In November 2009, the trial court ordered Louder to pay \$109 per week in child support while he was employed full-time at \$9.50 per hour. He was later convicted of arson and sentenced to prison, causing him to lose his employment and leaving him with no other income or ability to obtain employment while incarcerated. He petitioned to reduce his obligation to the \$50-per-month minimum support order, but the trial court denied the petition.

PROCEDURAL HISTORY

The Superior Court approved a uniform support order requiring Louder to pay \$109 per week in child support. After Louder was incarcerated, lost his employment, and had no other income, he petitioned for a reduction in support. The Superior Court denied the petition and reconsideration motion, relying on *Noddin v. Noddin*, and the New Hampshire Supreme Court reversed and remanded.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Remand for entry of an order consistent with the opinion, including application of the minimum support-order provision.

CASES CITED

- In the Matter of Muller & Muller, 164 N.H. 512, 520-22 (2013)
- State Employees' Assoc. of N.H. v. State of N.H., 161 N.H. 730, 738 (2011)
- In the Matter of Lynn & Lynn, 158 N.H. 615, 617 (2009)
- In the Matter of Adams & Houle, 156 N.H. 257, 259 (2007)
- Noddin v. Noddin, 123 N.H. 73, 76 (1983)
- In the Matter of Sarvela & Sarvela, 154 N.H. 426, 436 (2006)
- In the Matter of Rossino & Rossino, 153 N.H. 367, 370 (2006)

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