

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority. Citation is disfavored, but may be permitted in accordance with the provisions of Rule 30(e)(3) of the North Carolina Rules of Appellate Procedure.

NO. COA02-206

NORTH CAROLINA COURT OF APPEALS

Filed: 5 November 2002

STATE OF NORTH CAROLINA by
and through the Albemarle
Child Support Enforcement Agency,
ex. Rel., Melanie L. Dinger
(D'Autrechy),
Plaintiff,

v.

Pasquotank County
No. 92 CVD 289

EDWIN W. DINGER,
Defendant.

Appeal by defendant from order entered 13 December 2001 by Judge J. Carlton Cole in Pasquotank County District Court. Heard in the Court of Appeals 21 October 2002.

Attorney General Roy Cooper, by Assistant Attorney General Sonya M. Allen, for plaintiff-appellee.

The Twiford Law Firm, L.L.P., by Edward A. O'Neal, for defendant-appellant.

HUDSON, Judge.

On 25 July 2001 the District Court for Pasquotank County entered an order requiring defendant to pay the sum of \$517.00 per month as support for his minor child, Rachel Renee Dinger. On 17 August 2001 defendant filed a motion seeking reduction of the amount of support on the ground his income had decreased since the entry of the prior order. The court heard the matter and entered

an order on 13 December 2001 dismissing the motion. The court found that defendant voluntarily left his employment for a lower paying job. The court also concluded that even if defendant had voluntarily left his employment and decreased his income in good faith, defendant failed to present any evidence regarding any changed circumstances with respect to the financial needs of the child.

Defendant contends the court erred in finding that he voluntarily resigned his employment for a lower paying job. He argues the finding is not supported by competent evidence because the evidence tended to show that his resignation was not voluntary. We disagree.

When contention is made that a finding of fact is not supported by the evidence, the appellate court is required to determine whether there is any competent evidence to support the finding. *Nix v. Nix*, 80 N.C. App. 110, 112, 341 S.E.2d 116, 118 (1986). *Black's Law Dictionary* variously defines the term "voluntary" as:

Unconstrained by interference; unimpelled by another's influence; spontaneous; acting of oneself. *** Done by design or intention. Proceeding from the free and unrestrained will of the person. Produced in or by an act of choice. Resulting from free choice, without compulsion or solicitation.

Black's Law Dictionary 1575 (6th ed. 1990).

Defendant testified that he terminated his employment with Bouchard Transportation, with whom he had been employed as a tankerman on an oil barge, because an old foot injury was bothering him, he was away from home for 28 days at a time, and he was

concerned for his safety in that the barge transported gasoline, a highly explosive material. The foregoing shows defendant made a free and intelligent choice on his own, without influence, solicitation or coercion, to end his employment with Bouchard Transportation. This testimony supports the court's finding that defendant voluntarily terminated his employment.

Defendant also contends the court erred in concluding defendant was not entitled to modification of child support because he failed to present evidence regarding changed needs of the child. In order to obtain reduction of child support, a movant who has voluntarily reduced his or her income must present evidence showing that the financial needs of the child are reduced. *Mittendorff v. Mittendorff*, 133 N.C. App. 343, 344, 515 S.E.2d 464, 466 (1999). Therefore, because defendant voluntarily terminated his employment, he was required to show that the child's financial needs are reduced. Defendant did not present any evidence at all regarding the financial needs of the child. Accordingly, we affirm the court's conclusion.

Affirmed.

Chief Judge EAGLES and Judge MCCULLOUGH concur.

Report per Rule 30(e).