

No. A09-1957

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State of Minnesota  
**In Court of Appeals**

JAMES LAWRENCE,

*Relator,*

vs.

RATZLAFF MOTOR EXPRESS INC,

*Respondent,*

and

DEPARTMENT OF EMPLOYMENT AND ECONOMIC DEVELOPMENT,

*Respondent.*

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RESPONDENT-DEPARTMENT'S BRIEF AND APPENDIX

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The appendix to this brief is not available for online viewing as specified in the *Minnesota Rules of Public Access to the Records of the Judicial Branch*, Rule 8, Subd. 2(e)(2).

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## **Legal Issue**

Under the law, an individual who is discharged from his employment for violating the standards of behavior the employer has a right to expect of him, or for conduct demonstrating a lack of concern for the job, commits employment misconduct, and is ineligible for unemployment benefits. Ratzlaff Motor Express, Inc. (“Ratzlaff”) discharged James Lawrence, a truck driver, after he lost his driver’s license for failing to pay his child support. Did Lawrence commit acts constituting employment misconduct under Minnesota law?

The Unemployment Law Judge John Gunderson found Lawrence was terminated for employment misconduct, and was ineligible for unemployment benefits.

## **Introduction and Summary**

The question before this court is whether James Lawrence is entitled to unemployment benefits. The ULJ found that Lawrence committed employment misconduct when he failed to insure that his child support payments were being made, resulting in the loss of his driver’s license. A driver’s license is required for Lawrence to perform the duties of his job as a truck driver. Lawrence argues that he did not know the payments were not being made. The ULJ found that it was incumbent upon Lawrence to make sure that the payments were made. The ULJ’s factual findings are substantially supported by the record, and the record is clear that Lawrence was discharged for misconduct.

### **Statement of the Case**

Lawrence established a benefit account with the Minnesota Department of Employment and Economic Development (the “Department”). A Department adjudicator initially determined that Lawrence was ineligible for unemployment benefits.<sup>1</sup> Lawrence appealed that determination, and Unemployment Law Judge (“ULJ”) John Gunderson held a de novo hearing. The ULJ decided that Lawrence was discharged as a result of employment misconduct, and was therefore ineligible for benefits.<sup>2</sup> Lawrence filed a request for reconsideration with the ULJ, who affirmed.<sup>3</sup>

This matter comes before the Minnesota Court of Appeals on a writ of certiorari obtained by Lawrence under Minn. Stat. § 268.105, subd. 7(a) (2008) and Minn. R. Civ. App. P. 115.

### **Department’s Relationship to the Case**

The Department is charged with the responsibility of administering and supervising the unemployment insurance program.<sup>4</sup> As the Supreme Court stated in *Lolling v. Midwest Patrol*, unemployment benefits are paid from state funds, the Minnesota Unemployment Insurance Trust Fund, and not from employer funds,

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<sup>1</sup> E-2. Transcript references will be indicated “T.” Exhibits in the record will be “E-” with the number following.

<sup>2</sup> Appendix, A5-A8.

<sup>3</sup> Appendix, A1-A4.

<sup>4</sup> Minn. Stat. § 116J.401, subd. 1(18).

the employer not being the determiner of entitlement.<sup>5</sup> This was later codified.<sup>6</sup> The Department's interest therefore carries over to the Court of Appeals' interpretation and application of the Minnesota Unemployment Insurance Law. The Department is thus considered the primary responding party to any judicial action involving an Unemployment Law Judge's decision.<sup>7</sup>

The Department does not represent the co-respondent in this proceeding and this brief should not be considered advocacy for Ratzlaff.

### Statement of Facts

James Lawrence worked for Ratzlaff as an over-the-road truck driver from July 2008 to May 2009.<sup>8</sup> He was paid 32 percent of the revenue from the truck.<sup>9</sup> In October 2008, Ratzlaff received an order to withhold child support from Lawrence's paychecks in the amount of approximately \$1800 per month.<sup>10</sup> In February 2009, Lawrence went to court and got his monthly child support payment reduced to \$1063.20 per month.<sup>11</sup>

Lawrence frequently requested advances on his paycheck from his employer.<sup>12</sup> He began to request more in advances than he was earning.<sup>13</sup> From

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<sup>5</sup> 545 N.W.2d 372, 376 (Minn. 1996), citing *Jackson v. Honeywell*, 47 N.W.2d 449 (Minn. 1951).

<sup>6</sup> Minn. Stat. § 268.069, subd. 2.

<sup>7</sup> Minn. Stat. § 268.105, subd. 7(e).

<sup>8</sup> T. 7.

<sup>9</sup> T. 7.

<sup>10</sup> T. 8.

<sup>11</sup> T. 8, 10.

<sup>12</sup> T. 9.

<sup>13</sup> T. 9.

January 2009 through May 2009, Lawrence's gross income was approximately \$7498.<sup>14</sup> After Lawrence's advances were paid back and taxes were withheld, there was not enough money left over from Lawrence's earnings to satisfy his child support obligations.<sup>15</sup>

On April 30, 2009, Ratzlaff received a call from child support enforcement informing him that Lawrence's driver's license had been suspended.<sup>16</sup> Ratzlaff verified this information online.<sup>17</sup> Ratzlaff discharged Lawrence for not having a valid driver's license, which was a requirement of his job.<sup>18</sup>

#### **Standard of Review**

When reviewing an unemployment-benefits decision, the Court of Appeals may affirm the decision, remand for further proceeding, reverse, or modify the decision if Lawrence's substantial rights were prejudiced because the decision of the ULJ violated the constitution, was based on an unlawful procedure, was affected by error of law, was unsupported by substantial evidence, or was arbitrary or capricious.<sup>19</sup>

The Court of Appeals held in *Skarhus v. Davannis* that the issue of whether an employee committed employment misconduct is a mixed question of fact and

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<sup>14</sup> T. 9.

<sup>15</sup> T. 9.

<sup>16</sup> T. 9.

<sup>17</sup> T. 9.

<sup>18</sup> T. 7.

<sup>19</sup> Minn. Stat. § 268.105, subd. 7(d)(3)-(6) (2008).

law.<sup>20</sup> Whether the employee committed a particular act is a fact question.<sup>21</sup> Whether the employee's acts constitute employment misconduct is a question of law.<sup>22</sup> The Court of Appeals also held in *Skarhus* that it views the ULJ's factual findings "in the light most favorable to the decision,"<sup>23</sup> and gives deference to the ULJ's credibility determinations.<sup>24</sup> The Court also stated that it will not disturb the ULJ's factual findings when the evidence substantially sustains them.<sup>25</sup> The Supreme Court in *Minn. Ctr. for Envtl. Advocacy v. Minn. Pollution Control Agency* defined substantial evidence as "such evidence as a reasonable mind might accept as adequate to support a conclusion."<sup>26</sup> In *Ywswf v. Teleplan Wireless Services, Inc.*, the Court of Appeals reiterated the standard that the Court reviews de novo the legal question of whether the employee's acts constitute employment misconduct.<sup>27</sup>

### **Argument for Ineligibility**

An applicant who is discharged from employment is ineligible for benefits if the conduct for which the applicant was discharged amounts to employment misconduct. The definition of employment misconduct is delineated in the statute,

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<sup>20</sup> 721 N.W.2d 340, 344 (Minn. App. 2006).

<sup>21</sup> *Id.* (citing *Scheunemann v. Radisson S. Hotel*, 562 N.W.2d 32, 34 (Minn. App. 1997)).

<sup>22</sup> *Id.*

<sup>23</sup> 721 N.W.2d 340, 344 (Minn. App. 2006) (citing *Lolling v. Midwest Patrol*, 545 N.W.2d 372, 377 (Minn. 1996)).

<sup>24</sup> *Id.* (citing *Jenson v. Dep't of Econ. Sec.*, 617 N.W.2d 627, 631 (Minn. App. 2000), *review denied* (Minn. Dec. 20, 2000)).

<sup>25</sup> *Id.* (citing Minn. Stat. §268.105, subd. 7(d)).

<sup>26</sup> 644 N.W.2d 457, 466 (Minn. 2002).

<sup>27</sup> 726 N.W.2d 525 (Minn. App. 2007).

and Lawrence's failure to insure that his child support obligations were met, resulting in the loss of his driver's license, did constitute misconduct under the statute. The 2008 statute, which was in effect at the time the Department determined Lawrence's eligibility for benefits, and thus controlling this case, provides:

**Subd. 4. Discharge.** An applicant who was discharged from employment by an employer is ineligible for all unemployment benefits according to subdivision 10 only if:

(1) the applicant was discharged because of employment misconduct as defined in subdivision 6...

The definition of "employment misconduct" reads:

**Subd. 6. Employment misconduct defined.**

(a) Employment misconduct means any intentional, negligent or indifferent conduct, on the job or off the job (1) that displays clearly a serious violation of the standards of behavior the employer has the right to reasonably expect of the employee, or (2) that displays clearly a substantial lack of concern for the employment.

\* \* \*

(e) The definition of employment misconduct provided by this subdivision is exclusive and no other definition applies.<sup>28</sup>

In *Vargas v. Northwest Area Foundation*, the Court of Appeals, citing a number of statutory provisions, held that an individual's eligibility for unemployment benefits is determined based upon the available evidence without regard to any burden of proof.<sup>29</sup>

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<sup>28</sup> Minn. Stat. §268.095 (2008).

<sup>29</sup> 673 N.W. 2d 200 (Minn. App. 2004).

**1. Lawrence committed misconduct by failing to pay his child support, which resulted in the loss of his driver's license.**

The Minnesota Supreme Court has held that conduct which results in the loss of a license necessary for the performance of normal job duties is misconduct within the meaning of the unemployment benefit scheme, so as to render the employee disqualified for the receipt of unemployment benefits.<sup>30</sup> As a truck driver, Lawrence needed a driver's license to do his job. It was Lawrence's responsibility to refrain from any conduct which may jeopardize the status of his driver's license. Lawrence neglected his child support obligations, which resulted in the suspension of his driver's license and thus, constituted employment misconduct. An employer has the right to reasonably expect its employees to comply with laws and court orders so that they may maintain the licensure needed to perform their jobs.

Relator's brief argues that Lawrence had no reason to believe that his child support payments were not being made and places the responsibility for the suspension of his license on the shoulders of his employer. Relator claims that there was no evidence before the ULJ as to whether he "was provided any information by Ratzlaff or his payroll service regarding his net income that would have apprized him of a possible problem."<sup>31</sup> This makes no sense at all. Lawrence was aware of the amount of his monthly child support obligation. For the hearing, Lawrence submitted two weekly pay stubs from Ratzlaff, which show

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<sup>30</sup> *Markel v. City of Circle Pines*, 479 N.W.2d 382 (Minn. 1992).

<sup>31</sup> Relator's brief, p. 3.

the amount of child support deducted from each check. The ULJ received these pay stubs into evidence. Lawrence's pay stub from the week of January 24 shows that \$49.85 was deducted from that week's check and that \$401.68 had been deducted for the month in total.<sup>32</sup> These pay stubs provided Lawrence with a weekly update on the status of his child support payment. It is unreasonable to expect the employer or payroll service to take further action to inform Lawrence that the total amount of child support deducted from his paychecks in a month is less than his obligation when Lawrence was already given a weekly record of the deduction.

Lawrence was obviously aware that he was not earning enough to make his child support payment, as he went to court to get the payment reduced in February 2009. He does not indicate that his employer or payroll service prompted him to do this. There is no reason why Lawrence would have been able to accurately and independently assess his financial situation in February but be completely oblivious just two months later. Rather than monitoring his pay stubs and measuring his average weekly pay against his child support obligation to insure that he was meeting the newly reduced payment, Lawrence chose to ignore the situation and now blames his employer and payroll company for not alerting him to the fact that he was not earning enough to cover his child support. To suggest that Lawrence's employer should take a more active interest in the welfare of Lawrence's children than Lawrence himself is ridiculous.

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<sup>32</sup> E-6.

Relator's brief also argues that because there was no evidence in the record that Lawrence had been notified of the suspension of his license, or that he could lose his driver's license for failing to make his child support payments, a conclusion of employment misconduct is unsupported. The ULJ found that Lawrence was discharged for losing a license he needed to do his job and that his conduct caused him to lose that license and those findings were supported by evidence in the record. Proper notification is irrelevant here. Lawrence should have known that there would be consequences to violating a court order. His license would not have been suspended had he complied with the order.

## **2. The ULJ adequately developed the record.**

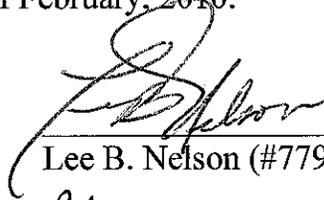
Relator's brief argues that the ULJ failed to develop all the relevant facts. Specifically, Relator believes that the ULJ should have inquired as to whether Ratzlaff was keeping Lawrence informed as to how much child support was being deducted from his paycheck. This line of questioning would have been unnecessary as well as irrelevant. The ULJ allowed Lawrence to submit into evidence two pay stubs from Ratzlaff showing his child support deductions. In addition, it is not Ratzlaff's responsibility to ensure that Lawrence meets his child support obligations. Lawrence was subject to a court order, he violated the order and received the consequence of a suspended driver's license, and he seeks the payment of unemployment benefits. The employer's conduct is not at issue here.

Relator also argues that the ULJ should have inquired as to whether Lawrence had received any notices from the child support collection office. Relator suggests that the ULJ should have performed a search of public records to develop this fact. ULJs conduct 25 evidentiary hearings per week, in addition to writing decisions and reviewing requests for reconsideration. It is unreasonable to expect the ULJ to go on a fishing expedition for documents that have little or no probative value as to whether the employee committed the act alleged to be misconduct. Here, the employer testified that Lawrence's driver's license was suspended because of failure to make child support payments and Lawrence confirmed that this was an accurate account of what happened. The ULJ asked Lawrence if he had anything he would like to add to his testimony and gave him the opportunity to make a closing statement. There is sufficient evidence in the record to sustain a finding of misconduct. It is not the ULJ's job to assist Lawrence in exploring possible excuses for not paying his child support.

### **Conclusion**

James Lawrence was discharged by Ratzlaff Motor Express, Inc. for reasons that amount to employment misconduct under Minnesota Unemployment Insurance Law. Lawrence is therefore ineligible for unemployment benefits. The Department requests that the Minnesota Court of Appeals affirm the decision of Unemployment Law Judge John Gunderson.

Dated this 18<sup>th</sup> day of February, 2010.



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