



STATE OF MINNESOTA

COURT OF APPEALS

CASE NO. A09-1957

James Lawrence

Relator,

v.

Ratzlaff Motor Express, Inc.,

Respondent-Employer,

and

**Minnesota Department of Employment
and Economic Development,**

Respondent.

RELATOR'S INFORMAL BRIEF

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STATE OF MINNESOTA
IN COURT OF APPEALS

CASE NO. A09-1957

James Lawrence,

Relator,

-vs-

INFORMAL BRIEF OF RELATOR

Ratzlaff Motor Express, Inc.

Respondent–Employer,

and

Minnesota Department of Employment
and Economic Development,

Respondent.

I. INTRODUCTION

The above entitled matter is before this Court for review pursuant to Relator's Petition for Writ of Certiorari under Minn. Stat. § 268.105, subd. 7. The following is submitted as Relator's Informal Brief as provided in Relator's Statement of the Case and under Rule 128.01, Subd. 1, Minnesota Rules of Civil Appellate Procedure.

II. Statement Of The Case And Facts

Relator was employed by Ratzlaff Motor Express, Inc. (hereafter Ratzlaff) as an over-the-road truck driver from approximately July, 2008 until late April, 2009. He was paid 32% of the revenue earned from each load. (Transcript, p. 7)(hereafter T.) He

stopped working in late April when Ratzlaff told him his drivers license had been suspended for failure to stay current on his child support. (T. 9). Relator subsequently went to court in June, reduced his child support substantially, and got this license reinstated. (T. 9-10; 15). However, Ratzlaff did not return him to work because the driver who replaced him “worked out better than James was working out” and also because no one else quit and Ratzlaff didn’t have a truck available. (T. 10-11)

Relator subsequently applied for unemployment benefits which was denied in a notice dated July 20, 2009. He requested a hearing which was held on August 14, 2009 before Unemployment Compensation Judge John Gunderson. Relator testified as did Ben Ratzlaff, his employer. Judge Gunderson issued a decision dated August 17, 2009 holding that Relator had been discharged due to employment misconduct and was not entitled to benefits. Relator requested reconsideration of this decision which was denied by Judge Gunderson on September 30, 2009. Relator filed a Petition for Writ of Certiorari on October 30, 2009 and the Writ was issued the same day.

III. ARGUMENT

A. Relator’s actions did not constitute misconduct.

The decision by the Unemployment Compensation Judge (UCJ) was that Relator committed misconduct by failing to keep current on his child support:

It was Lawrence’s responsibility to make sure his child support payments were made. Lawrence had an extremely high child support obligation based on his income. It was incumbent upon Lawrence to go into court and have those

payments modified to an acceptable level and to make sure the payments were made.

Findings of Fact and Decision, p. 3.

However, the facts show that Relator actually reduced his child support from about \$1800 per month to approximately \$1063 per month in February 2009, 2 months before he lost his job. (T. 10) This amount was presumably set by the court at that time based on what his earnings were in the time period before he filed his child support modification request. This modification subsequently proved to be beyond Relator's ability to pay because his earnings from his employment were too low to enable his employer to pay them. (T. 9)

Thus, even though Relator had in fact reduced his support to an amount that was in line with his income at the time of the reduction, it appears his actual income after the change was still insufficient to keep current. Ratzlaff testified that Relator only earned \$7,498 from January until early May but there was no evidence of what child support payments were made in that time period and whether Relator was provided any information by Ratzlaff or his payroll service regarding his net income that would have apprized him of a possible problem. Thus, there was no evidence, and there was no finding in the decision, that Relator was in fact aware that his work income was too low to cover his child support.

More importantly, there was no evidence and no finding that Relator actually knew or that he had been notified that his drivers license had been suspended due to non-payment of his child support. The decision states that it was Relator's responsibility to

make sure his child support payments were made but there was no evidence to show he had any reason to know or believe they weren't being made. Both Relator and Ratzlaff testified that they were not aware the payments were not being made until after Ratzlaff was contacted by the child support collection office in late April. (T. 9, 13)

Additionally, there was no evidence that Relator was sent notice of the proposed or actual suspension of his license under the notice and hearing provisions of Minn. Stat. 518A.65 or that he had been previously notified of the possibility he could lose his license if he failed to keep current with his support. In the absence of this evidence there is insufficient support in the record for the conclusion that Relator was negligent in failing to make his support payments and thereby losing his license.

The evidence in fact shows Relator had taken reasonable steps to reduce his child support obligation two months before he lost his job. And did so again in June ,shortly after he learned it was still too high, in an effort to get his license back and return to work. These efforts show that Relator took responsibility for modifying his child support when he was in fact aware that it was a problem that he needed to address. His actions did not display negligence or a lack of concern for his employment as stated in the decision.

B. The Unemployment Law Judge failed to develop the record.

The Findings of Fact and Decision in this case show that the Unemployment Law Judge (UCJ) failed to adequately develop all the relevant facts. Minnesota Rule 3310.2921 provides: "The judge must ensure that relevant facts are clearly and fully

developed.” In particular, as the argument above notes, there was no inquiry by the UCJ regarding what information, if any, was supplied to Relator by Ratzlaff or his payroll service regarding Relator’s income and what child support amounts, if any, were being withheld from his pay. There was no inquiry regarding whether Ratzlaff had previously advised Relator regarding his child support, that it was not being paid either fully or at all by his work income, and why he had not been so informed. These questions all go to the question of whether the negligence, if there was any in this case, rest with the employer and not Relator.

The UCJ also made no inquiry as to why no notices had apparently been issued by the child support collection office to Relator and, if they had, whether Relator would have acted to seek another reduction in his support. This information may not have been available from either party at the time of the hearing but could possibly have been obtained through a search of public records, or Relator could have been asked to obtain from the relevant child support collection agency any records that would show what notices, if any, he was sent.

The central issue in this case is whether Relator should have, but failed, to take action to address his child support arrearages and the suspension of his drivers license. But any determination on this issue requires information showing Relator knew, or should have known, that his child support was not being paid and that his drivers license had been suspended because of it. The evidence, primarily testimony, developed in this case

supplies some of the information necessary to this determination but much more could and should have been developed. Because there is insufficient evidence to support the determination of the UCJ on this issue the decision in this case should be reversed, as argued above, or it should be remanded for another hearing to more fully develop the record.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Paul Onkka". The signature is fluid and cursive, with the first name "Paul" being more prominent than the last name "Onkka".

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