

Voluntary Under-Employment in Spousal Maintenance: When Not to Quit Your Job

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Thinking a new job for less money will automatically reduce your support obligation to your ex? Well, think again.

When you change jobs and accept less money, you could still be obligated to pay support based upon the higher paying job that you quit. Support may be based on earning capacity and not actual earnings. Here's an illustrative Mohave County case...

Arthur Pullen was moving on with his life. After 29 years of marriage, his wife Connie had filed for [divorce](#) in Arizona. With the trial still ahead, he decided that a move to Port Townsend, Washington, and a new job were just what he wanted. He quit his job as a commercial truck driver for FedEx in Kingman and moved to Washington. FedEx had no positions available in Port Townsend for Arthur, and he rejected any transfer to another location.

In the meantime, the Superior Court granted Connie's request for [spousal maintenance](#) under ARS § 25-319A. Awarded \$1,000 a month for 10 years, Connie satisfied one or more of the following support criteria:

1. She didn't have property sufficient to provide for her "reasonable needs";
2. She wasn't able to earn enough to be self-sufficient, or wasn't reasonably employable;
3. She contributed to Arthur's education;
4. The marriage was of long duration and, because of her age, employment opportunities were few, she was unlikely to become self-sufficient.

Back in Port Townsend, Arthur accepted a lesser paying job as a truck driver with Evergreen Building Products. In a down economy, Evergreen was the best deal. Arthur was willing to tighten his belt to live where he wanted, which was also near his girlfriend. Everything was going to be different and better...

The new job at Evergreen paid less, a lot less. Arthur went from \$65,000 a year with FedEx, to \$15 an hour at Evergreen (about \$29,000 a year based on a 40-hour work week)--less than half.

Because he was making substantially less, Arthur believed Connie should receive less, too. He didn't dispute an award of [spousal support](#), he disputed the amount of the award. The trial court based Arthur's support obligation on his previous FedEx income (earning capacity), not his current Evergreen income (actual income). He appealed.

Christmas Eve 2009 proved to be a little chilly for Arthur. That day the appellate court affirmed the lower court's order of spousal maintenance to Connie. Arthur's obligation was correctly based on his earning capacity, not on his actual income.

The court determined that Arthur had "voluntarily under-employed" himself by changing jobs. Arthur presented his reasons for "relocating to a new market area" and his "good faith attempt" to get a comparable job which, unfortunately, fell short. He failed to convince the appellate court that a reduction in pay was anything but a direct result of his decision to quit FedEx and move. Earning \$2,400 a month at Evergreen, Arthur as obligor will keep \$1,400 for himself and send \$1,000 to Connie.

When a support obligation is likely, as in this case, it could be a big mistake to choose where to live over how much to earn. Applying Pullen, a court weighs spousal maintenance against a voluntarily under-employed obligor. Under an intermediate balancing test, in addition to other evidence, five factors are analyzed:

"(1) The reasons asserted by the party whose conduct is at issue; (2) The impact upon the obligee of considering the actual earnings of the obligor; (3) When the obligee's conduct is at issue, the impact upon the obligor of considering the actual earnings of the obligee and thereby reducing the obligor's financial contribution to the support order at issue; (4) Whether the party complaining of a voluntary reduction in income acquiesced in the conduct of the other party; and (5) The timing of the action in question in relation to the entering of a decree or the execution of a written agreement between the parties."

Because Arthur had the ability and capacity to work, his obligation to Connie could not be diminished because "his own improprieties" resulted in his under-employment. "[Arthur] chose to decrease his income shortly before the divorce trial by moving to Washington for personal reasons when he could have stayed in Kingman earning a higher income [at FedEx] or transferred to other cities to maintain that income level."

If you have a duty to provide support, whether spousal maintenance or [child support](#), we recommend that you seek independent legal advice from a [family law attorney](#) before making critical employment decisions that could reduce your income.

Resources:

[Pullen v. Pullen, 222 P.3d 909 \(Ariz. App. 2009\)](#)

[Ariz. Rev. Stat. § 25-319. Maintenance; computation factors](#)

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