

**NON-REMOVABLE MILLE LACS BAND OF OJIBWE INDIANS
COURT OF APPEALS**

District of Nay-Ah-Shing

IN THE COURT OF APPEALS

S.S.,

Petitioner- Appellee,

CASE 08APP04

vs.

ORDER

L.B.,

Respondent- Appellant

L.B. has appealed to this Court from the decision of Special Magistrate Plumer refusing to relieve him of his responsibility to pay child support for his two children from August 2007 through May of 2008, a period of time when the children primarily resided with him. For the reasons stated herein, this Court affirms the decision of Magistrate Plumer finding that the Appellant was still required to pay support from August of 2007 through March of 2008, but reverses that portion of the order requiring him to pay support after he filed for the temporary custody of his children.

The facts in this appeal are undisputed. The Court of Central Jurisdiction ordered the Appellant to pay child support to the Appellee for the two minor children of the Parties in June of 2007 in the amount of \$183.19. In August of 2007, the children started residing with the Appellant, apparently with the assent of the Appellee even though she continued to pay childcare for the children's care. Despite knowing that he was under a legal obligation to pay child support and that he had the children in his care, the Appellant apparently consciously decided not to

seek a modification of the Court order placing custody with the mother of the children and directing him to pay child support. In his brief and at oral argument he contended that he chose not to seek a modification because he and the other were getting along and he did not want to "rock the boat." It was not until March 13, 2008 that the Appellant filed a motion to modify his child support obligation and to gain custody of the children. That motion was granted but the duty to pay child support was not terminated until July of 2008. The Appellant contends that he should have been relieved of the obligation to pay child support from August of 2007 when he first gained the physical custody of the children.

This Court finds that the Appellant had a duty of support up until he filed his motion to modify in March of 2008 and that the Court did not err in refusing to relieve him of his duty to pay support. When a person is under a legal obligation to pay child support it is not uncommon for the custodial parent to seek further assistance from the non-custodial parent in the form of extended care for the child (such as during the summers) or assistance outside of the child support obligation. Providing such care does not relieve the parent of his obligation to continue paying the child support, however; until such time as the non-custodial parent moves the Court issuing the support obligation to modify the support obligation. One reason this requirement exists is to limit factual disputes regarding who cared for the children when. It was fairly apparent at oral argument that the Parties to this case continue to disagree regarding the reasons they agreed for the father to assume care of the children and whether the mother continued to provide support for the children while they were residing with their father.

Another potential problem with allowing a non-custodial parent to wait and seek a retroactive modification of support is that such violates the legal presumption that child support obligations should not be retroactively modified. Hock-Lien v. Hicks, 533 N.W.2d 885 (Minn. App. 1995). In Hock-Lien, the Court noted that the non-custodial parent had abandoned his claim for

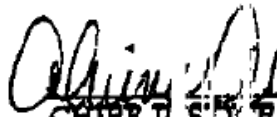
modification of support by not pursuing the motion to modify when the circumstances had changed.


However, this Court does find that the lower court had authority to modify the support from the date the Appellant requested a change in custody in March of 2008. At that time the custodial parent was on notice that there was a pending custody modification request that could affect the duty of the Appellant to pay child support. The Court, therefore, erred by requiring the Appellant to continue paying support from the time he filed his motion to modify custody.


WHEREFORE it is hereby

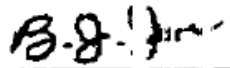
ORDERED. ADJUDGED AND DECREED that the court affirms the lower court's determination that the Appellant had a continuing duty of support for his two minor children from August of 2007 to March 2008, but not thereafter.


Dated this 24th day of November 2008.


CHIEF JUSTICE


ASSOCIATE JUSTICE


ASSOCIATE JUSTICE


SPECIAL ASSOCIATE

ATTEST:  _____