

1 as a part-time paralegal, earning \$15.00, per hour. He claims this was substantially less
2 than his previous job.

3 Father claims that he has taken advantage of working part-time to increase his
4 student enrollment from part-time to three-quarters time. He claims he expects to earn
5 his Bachelor's Degree in Computer Science and Engineering within a year.

6 Father contends that because his income has decreased more than 20%, a review
7 and modification of child support is appropriate. Father also contends that he is not
8 willfully underemployed, as his working part-time is not for the purpose of avoiding the
9 payment of support. Father attaches copies of recent paycheck stubs to his Motion.
10 However, Father did not file a Financial Disclosure Form with his Motion.

11 In her Opposition, Mother contends that Father is willfully underemployed as he
12 admittedly has not sought some other work either in the legal capacity or in web design.
13 Rather, she argues, he has opted to pursue his education. She claims he provides no
14 report of the money he received recently designing websites and she argues that many
15 people pursue education while managing to provide for their children. Mother argues
16 that she should not have to underwrite his education by paying more child support.

17 Mother argues that if Father wants to pursue an advanced degree he could do so
18 by taking online courses, night classes or weekend classes, and continue to work full
19 time. She claims he should have a support obligation commensurate with what he is able
20 to earn.

21 In his Reply, Father claims that his current income as a paralegal/debt collector is
22 commission-based, and that even if he were imputed income in that position at full-time
23 hours, he would still have a significant reduction in income. Father claims he has earned
24 \$800 in building websites, but that he will not find professional employment doing so if
25 he does not finish his degree.

26 Father claims he has been seeking alternative employment in the legal industry.
27 He claims that the perils of changing employment prevent him from leaving his current
28 job for another. He claims that because he is not going to school in order to avoid paying

1 support, this Court cannot find him willfully underemployed. Finally, Father argues that
2 his earning his degree is in the child's best interests.

3 At the hearing of July 25, 2013, Father argued that by obtaining a bachelor's degree
4 he will be able to better provide for the minor child in the future. Father argued that his
5 full-time enrollment status should not be construed as willful underemployment, but
6 rather as a best interest factor for the minor child. Father claimed that his eventual
7 graduation will result in higher-paying employment, thereby providing financial benefit
8 to the minor child.

9 Father claimed that he is not able to work full-time as his classes are only offered
10 during day-time hours. Father claimed that he currently works approximately 30 hours
11 per week at a rate of \$15.00 per hour.

12 On September 19, 2013 Father filed a Notice of Academic Advisor's Affidavit. Dr.
13 Michael Leverington, University Academic Advisor, states that Father is enrolled as a
14 full-time student. Dr. Leverington includes that the University does not have class times
15 available in the evening, online, or during winter and summer semesters for the program
16 Father is enrolled in.

17 NRS 125B.145(4) states:

18 An order for the support of a child may be reviewed at any time on the
19 basis of changed circumstances. For the purposes of this subsection, a
20 change of 20 percent or more in the gross monthly income of a person
21 who is subject to an order for the support of a child shall be deemed to
22 constitute changed circumstances requiring a review for modification of
23 the order for the support of a child.

24 Additionally, "a court cannot modify a child support order if the predicate facts
25 upon which the court issued the order are substantially unchanged. . . Also the
26 modification must be in the best interest of the child." *Rivero v. Rivero*, 125 Nev. 410, 431
27 216 P.3d 213, 228 (2009) (citations omitted).

28 NRS 125B.070(b) sets the obligation of support for one child at eighteen percent of
a parent's gross monthly income. Pursuant to NRS 125B.080(4), "[n]otwithstanding the
formulas set forth in NRS 125B.070, the minimum amount of support that may be

1 awarded by a court in any case is \$100 per month per child, unless the court makes a
2 written finding that the obligor is unable to pay the minimum amount."

3 Where parties share joint physical custody, child support is determined by
4 calculating the appropriate percentage of gross income for each parent, and then
5 subtracting the difference between the two and requiring the parent with the higher
6 income to pay the parent with the lower income that difference. *Wright v. Osburn*, 114
7 Nev. 1367, 1369, 970 P.2d 1071, 1072 (1998).

8 NRS 125B.080(8) states:

9 If a parent who has an obligation for support is willfully underemployed or
10 unemployed to avoid an obligation for support of a child must be based
11 upon the parent's true potential earning capacity.

12 "Where evidence of willful underemployment predominates, a presumption will
13 ■■■ that such underemployment is for the purpose of avoiding support. Once this
14 presumption arises, the burden of proving willful underemployment for reasons other
15 than avoidance of a support obligation will shift to the supporting parent." *Minnear v.*
16 *Minnear*, 107 Nev. 495, 498, 814 P.2d 85 (1991).

17 Father's Motion states that he has chosen to take advantage of the reduced number
18 of hours that he is working by enrolling in additional classes to obtain a bachelor's
19 degree. Father claims that he is actively seeking additional employment, but also
20 indicates that he does not want to work additional hours and claims that he cannot find
21 employment in his desired field without obtaining his degree.

22 Father has provided the Court with no evidence regarding his attempts to locate
23 further employment to supplement his current part-time employment. Father has
24 provided the Court with no evidence that he is unable to secure additional paid
25 employment in his current or desired field. The Court finds that Father has failed to
26 demonstrate a good faith effort to find additional employment.

27 Father's explanations admit willful underemployment. This assumption raises the
28 presumption that such underemployment is for the purpose of avoiding support. While
Father's decisions may be admirable, they are also voluntary. Parents have a legal

1 obligation to support their children. NRS 125B.020. The Court is unpersuaded by
2 Father's argument that his personal educational pursuit and request to modify child
3 support is in [REDACTED] best interest. The Court is unable to modify a child support
4 obligation on pure speculation and conjecture that [REDACTED] may eventually see a benefit
5 from Father's education.

6 Father's justifications for underemployment are insufficient to prove that the
7 willful underemployment is for reasons other than the avoidance of his support
8 obligation. Accordingly, it is the Court's obligation under law to base Father's child
9 support obligation on his true earning capacity.

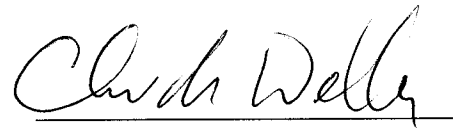
10 Father has provided documentation demonstrating a reduction in income of more
11 than 20 percent, however the documentation and testimony of Father also reveal that he
12 is employed at a part-time status working less than 40 hours per week. At the time of the
13 child support calculation in June 2011 Father was working full-time.

14 Based upon the evidence presented by Father, Father has not demonstrated that he
15 is incapable of working full time, the Court finds it appropriate to impute against Father's
16 income based upon his employment history indicating that he is capable of finding full-
17 time employment. Imputing his current pay rate of \$15.00 per hour, Father would earn
18 an approximate gross monthly income of \$2,600.00, not including bonuses or
19 commissions. With an imputed gross monthly income of \$2,600.00 per month, Father has
20 not demonstrated a changed circumstance of 20 percent reduction in income.

21 Therefore, Father's Motion to Modify Child Support is hereby DENIED.

22 **IT IS HEREBY ORDERED**

23 Dated: November 12, 2013.

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26 District Court Judge

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28 (FV08-03200 - Order Denying Motion to Modify Child Support)

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CERTIFICATE OF MAILING

Pursuant to NRCP 5(b), I certify that I am an employee of JUDGE CHUCK WELLER, and that I deposited for mailing at Reno, Nevada, a true copy of the attached document, addressed to:

Alexander Falconi
[REDACTED]

I further certify that that I electronically filed the foregoing with the Clerk of the Court system which will send a notice of electronic filing to the following:

Kathrine Berning, Esq.

Dated this 13th Day of November, 2013.

Sorace
ADMINISTRATIVE ASSISTANT