

ORIGINAL

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exander M. Falconi
00 Sullivan Ln. #117,

5-722-3939

pearing in Proper Person

IN THE FAMILY DIVISION

OF THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

ALEXANDER M. FALCONI,

Petitioner,

vs.

ANN

Respondent

Case No.: FV08-03200

Dept: 11

MOTION FOR REVIEW AND MODIFICATION OF CHILD SUPPORT

COMES NOW, Petitioner, Mr. Alexander M. Falconi, appearing in proper person,
and hereby files a Motion to Modify Child Support. This motion is based upon the
following points and authorities and all pleadings filed herein.

Dated this June 11th, 2010

1800 Sullivan Ln. #117

Alexander M. Falconi

MEMORANDUM OF POINTS AND AUTHORITIES**I. Factual Background**

1. Father, Mr. Falconi, and Mother, Ms. [REDACTED] share a common child of age 3, [REDACTED] Falconi, henceforth [REDACTED]
2. The Court has awarded physical and legal custody to the parties jointly.

II. Argument in Support of Modification of Child Support

1. The Supreme Court in Rivero v. Rivero, 195 P. 3d 328 (2008), applied a formula referred to as "*The Modified Wright v Osburn*" to calculate how much child support one parent should pay to the other. This formula took into consideration the amount of time spent with the children.
2. The Supreme Court stated that the previous formula, "*assumes a parent contributes to the financial support of the child by merely spending time with the child and shifts the focus of custody disputes to child support rather than the best interest of the child.*" Consequently, the Supreme Court stated, in Rivero v. Rivero, 216 P. 3d 213 (2009) "*we withdraw the **Rivero** formula and reaffirm the statutory formulas and the formulas under **Barbagallo and Wright**. Because joint physical custody requires a near-equal timeshare, we conclude it is unnecessary to utilize a third formula for cases of joint physical custody with an unequal timeshare.*"
3. The Supreme Court went on to state that, "*In cases where the parties have joint physical custody, the Wright v. Osburn formula determines which parent should receive child support.*" Father takes this opportunity to clarify further that, as the Supreme Court stated, "*We take this opportunity to note that Wright overrules Barbagallo's application of the statutory child support formulas in joint physical custody cases.*"
4. Therefore, pursuant to Wright v. Osburn, 970 P. 2d 1071, where the Supreme Court clearly states "*when custody is shared equally, the determination of who receives child support payments and the amount of that*

1 payment can be determined as follows: Calculate the appropriate percentage
2 of gross income for each parent; subtract the difference between the two and
3 require the parent with the higher income to pay the parent with the lower
4 income that difference."

5 5. The Supreme Court made a reference to Ellis, 123 Nev. at 151, 161 P.3d
6 at 243, when it discussed that the purpose of requiring changed
7 circumstances was to prevent parties "[from filing] immediate, repetitive,
8 serial motions until the right circumstances or the right judge allows them
9 to achieve a different result, based on essentially the same facts." Father
10 holds that it is clear he is not filing a Motion to Modify Child Support in
11 the above stated manner. The Supreme Court having withdrawn its previous
12 ruling, greatly changes the financial responsibility calculation in Father's
13 case. To further support this, Father cites a statement from the Supreme
14 Court in Rivero v. Rivero, 216 P. 3d 213 where the court stated that
15 "However, a change of 20 percent or more in the obligor parent's gross
16 monthly income requires the court to review the support order." Father holds
17 that the implicit meaning behind this statement is that an income change of
18 20% or more modifies the amount of child support enough that it warrants
19 modification. While Father's income has not changed, the expected financial
20 responsibility of Ms. [REDACTED] is going to change, nearly three-fold.

21 6. Mr. Falconi agrees with the Supreme Court that it is in the best interests
22 of [REDACTED] to establish a financial equilibrium between households.

23 III. Computation of Child Support

- 24 1. Pursuant to ORDER AFTER HEARING (exhibit 1), paragraph 14, Ms. [REDACTED] is
25 required to pay Mr. [REDACTED] \$151.08.
- 26 2. Ms. [REDACTED] average monthly income is \$3402.53.
- 27 3. Mr. Falconi's average monthly income is \$1138.07.
- 28 4. Pursuant to Nevada Revised Statute 125B.070, Mr. Falconi's financial
responsibility is 18% of his monthly income, equaling \$204.85.
5. Pursuant to Nevada Revised Statute 125B.070, Ms. [REDACTED] financial
responsibility is 18% of her monthly income, equaling \$612.46.

1 6. Therefore, pursuant to Wright v. Osburn, 970 P. 2d 1071, and taking the
2 difference between paragraph 4 and 3, Ms. [REDACTED] is required to pay to Mr.
3 Falconi, \$407.61.

4 7. Father has attached current proof of income as Exhibit 2, showing his weekly
5 unemployment benefit amount.

6 **IV. Hearing**

7 1. Father does not request a hearing on this matter.

8 **V. Conclusion**

9 **THEREFORE**, Father requests that the Court, in the best interests of
10 [REDACTED] and to establish a financial equilibrium between the households, **MODIFY**
11 the existing child support order such that Respondent is required to pay to
12 Petitioner \$407.61 beginning July 1st, 2010.

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14 1800 Sullivan Ln. #117
15 Sparks, NV 89431
16 Alexander M. Falconi
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AFFIDAVIT OF ALEXANDER M. FALCONI

STATE OF NEVADA)

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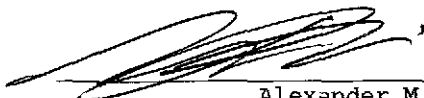
) SS.

)

COUNTY OF WASHOE)

I, Alexander M. Falconi, being first duly sworn under penalties of perjury, state that I have read this Motion and that the contents are true and correct of my own personal knowledge, except for those matters I have state that are not of my own personal knowledge, but that I only believe them to be true, and as for those matters, I do believe they are true.

Dated this ___th day of June, 2010.

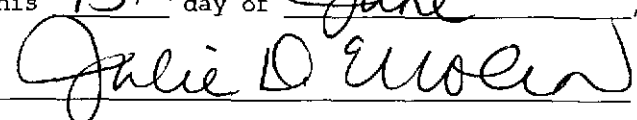
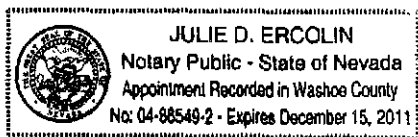

Alexander M. Falconi

Sparks, NV 89431

775-722-3959

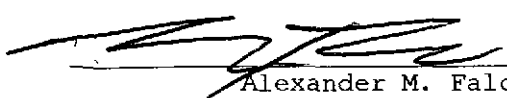
SUBSCRIBED and SWORN to before me

this 15th day of June, 2010.


NOTARY PUBLICAFFIRMATION PURSUANT TO NRS 239B.030

The undersigned hereby affirms that this document does not contain a Social Security Number.

Dated this 11th day of June, 2010.


Alexander M. Falconi
Pro Se