Imputing Income Through the Prism of the Great Resignation

by
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Introduction

The concept of imputing income has always been controversial. While the underlying philosophy that support obligors and obligees should not be able to willfully and in bad faith suppress income is greeted with approval, how that philosophy has been implemented has been subject to numerous criticisms. Among those criticisms is how holding persons to an "earning capacity" may freeze them into career paths that are unrewarding or even miserable. The Great Resignation has put into sharper focus employee dissatisfaction. This article posits that when a court decides to impute income, the court should consider as factors overall job satisfaction and total remuneration, not just job history and availability of employment.

I. *Snowden v. Jaure*[1]

A recent case, decided during the COVID-19 pandemic and relying on job history, illustrates the narrow vision of courts when imputing income. In this appeal, the primary issue for the court was, "Did the district court abuse its discretion when it imputed Mother's net monthly income to calculate the presumptive child support amount?"[2]

The evidence concerning the mother's income was as follows: she had been employed in the oil and gas industry, but she had been laid off. Before she was laid off, she received a salary of $5,300 per month.[3]

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1 495 P.3d 882 (Wyo. 2021).

2 *Id.* at 883.

3 *Id.* at 883-84.

Of significance is why the mother was laid off:

> Mother said she was laid off because of the downturn in the oil and gas industry and the coronavirus pandemic. She also indicated that because of the coronavirus, she did not want her younger children in daycare, so she did not seek other temporary employment and stayed home to care for them.[4]

The mother also testified that she expected to return to her employment in either October or November of 2020, although she was not sure whether she would receive her previous salary when she returned.[5]

Based on the mother confidential financial affidavit and testimony, the court imputed to the mother net monthly income at $3,975.00. It based this calculation on the mother's testimony that she had earned $5,300.00 gross income per month when she was fully employed previously.

The mother appealed the district court's decision to impute an income of $3,975.00 for purposes of calculating her child support. She argued that she was not "voluntarily unemployed," and that therefore the district court's decision to impute income lacked evidentiary support. In particular, she argued that she was not willfully unemployed; rather, she was "unemployed as the direct result of the COVID-19 pandemic and the downturn in the oil industry," and that therefore the court should have set her income at $0.00.[6] The father argued that the mother was voluntarily unemployed because, as she testified, her employment in the oil and gas industry was stable, and she anticipated resuming that employment within a month of trial.

The supreme court upheld the imputation of income, based solely on the mother's testimony that she expected she would be able to return to work in a few months. The court held:

> Given our holding in *Lauderman*[7] and Mother's own testimony, we find the district court's decision to impute Mother's income at $3,975

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4 *Id.* at 884.

5 *Id.*

6 *Id.* at 886.

7 In *Lauderman v. State, Dep't of Fam. Servs. ex rel. Jen*, 232 P.3d 604 (Wyo. 2010), the court upheld the district court's finding that a mother was voluntarily unemployed when she was let go from her previous position and did not seek other employment, but instead chose to be a stay-at-home mother. *Id.* at 607. The court found that testimony supported the finding that there were similar jobs available that the mother was capable of performing, and that she

> reasonable under the circumstances. Mother testified that she was laid off in January 2020 with the downturn in the oil and gas industry, and then she voluntarily decided not to seek other employment due to the coronavirus pandemic. Mother further testified that she refrained from seeking other employment as she had done in the past because she did not want her younger children enrolled in daycare during the pandemic. While Mother may have understandably refrained from seeking work to care for her children during the pandemic, she also testified that she anticipated returning to work with her previous employer in approximately one or two months. . . .. Based on the record before us, we can find no abuse of discretion in the court's decision to impute [income].[8]

II. Critique of *Snowden v. Jaure*

There are two points of concern with the holding *Snowden v. Jaure*. First, the court relied on *Lauderman*[9] to hold that the desire to stay home with one's children and not pursue employment constitutes voluntary employment. This holding in *Snowden* does not consider that in the early stages of the pandemic, when the mother made her decision to stay home with the children, schools were closed, day-care centers were closed, and children had to stay home. The mother was not "choosing" to stay home with the children; she *had* to stay home with the children. Indeed, the child of the parties was ten years-old at the time of the hearing, and could not be vaccinated. The court made no mention of and did not consider that perhaps it was in the best interests of the child for the mother to stay home with the child.[10] Getting

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only refrained from obtaining other employment because she did not want to be away from her children. *Id.* The court found "it was well within the district court's discretion to find Mother voluntarily unemployed" and impute the mother's income. *Id.* (citing *In re* Paternity of IC, 971 P.2d 603, 607 (Wyo. 1999) (voluntarily leaving a job to return to school constitutes voluntary unemployment)).

8 *Snowden*, 495 P.3d at 886.

9 *Id.*

10 *Cf.* FLA. STAT. ANN. § 61.30 (2021) (the court may refuse to impute income to a primary residential parent if the court finds it is necessary for the parent to stay home with the child); P.R. LAWS ANN. tit. 8, § 501 (2020) (income shall not be imputed in cases where the cost of child care makes it cost-effective not to work or when taking case of the chidren is in their best interest); VT. STAT. ANN. tit. 15, § 653 (income may not be imputed to a parent where the parent's underemployment is in the best interests of the child); VA. CODE ANN. § 20-108.2 (income may not be imputed to the custodial parent when the child is

reliable child care at home, such as a nanny, was nearly impossible at that time.[11] This inability to obtain child care, but being expected to work full-time put the custodial parent (and as in this case, they are usually women) in an impossible bind that the court did not recognize.[12]

Second, the court based its imputation of income on the mother's testimony that "she anticipated returning to work with her previous employer in approximately one or two months." The mother, however, did not know this to be true. There was no testimony from her previous employer about its future hiring; there was no testimony from a vocational expert about employ-

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not in school, child care services are not available, and the costs of child care are not included in the computation). *See, e.g., In re* Marriage of Ficke, 157 Cal. Rptr. 3d 870 (Cal. Ct. App. 2013) (deciding that the trial court could not impute income to the wife, as a custodial parent, when considering an award of child support absent any finding that imputation of income was in the best interests of the children); *In re* Marriage of Nelson, 570 N.W.2d 103 (Iowa 1997) (holding that the mother's decision to stay home was reasonable). *See generally* LAURA W. MORGAN, CHILD SUPPORT GUIDELINES: INTERPRETATION AND APPLICATION § 5:06(E) n.148 (Supp. 2021-1).

11 Alison Bowen, *Nannies Call the Shots as Parents Face Child Care Shortage*, CHI. TRIB. (Sept. 23, 2021), https://www.chicagotribune.com/coronavirus/ct-covid-nanny-shortage-tt-20210923-5eclf6ks2zertd6rpasysogpta-story.html; Katherine Harmon Courage, *Day Care, Grandparent, Pod or Nanny? How To Manage the Risks of Pandemic Child Care*, NPR (Aug. 21, 2022), https://www.npr.org/sections/health-shots/2020/08/21/902613282/daycare-grandparent-pod-or-nanny-how-to-manage-the-risks-of-pandemic-child-care. Jessica Grose, *Moms Are Back to Work, but Child Care Resources Are "Laughable,"* N. Y. TIMES (Oct. 30, 2021), https://www.nytimes.com/2021/10/06/parenting/working-moms-coronavirus-child-care-shortage.html.

As at least one author has pointed out, it doesn't take rocket science on how to get women back into the work force: adequate child care. Heather Long, *Opinion: It's Not Rocket Science How to Get Women Back to Work,* WASH. POST (Jan. 30, 2022), https://www.washingtonpost.com/opinions/2022/01/30/its-not-rocket-science-how-get-women-back-work/.

12 This bind continues with the demise of the Build Back Better legislation, which would have provided paid parental leave, more subsidies for child care, and universal pre-kindergarten. Ali Tadayon, *What the Likely Demise of Build Back Better Means for Its Education, Child Care Proposals*, ED SOURCE (Dec. 21, 2021 9:57 AM), https://edsource.org/updates/what-the-likely-demise-of-build-back-better-means-for-its-education-child-care-proposals.

ment in the oil and gas industry. The mother's testimony was opinion with no basis in fact.[13]

III. A Case Survey of Imputing Income During COVID-19

The problems manifest in *Snowden v. Jaure* are evident in other cases imputing income during COVID-19. Too many courts simply ignored the realities of the job market, and/or did not adequately consider that women, who are typically the primary custodial parent, had to stay home with the children.[14]

In *Tolliver v. Tolliver*,[15] the court did not consider the realities of finding a job in a restricted job market after testing positive for COVID-19. In that case, in July 2020, the husband reported positive COVID-19 test results to his employer. He was ordered to isolate from July 20, 2020, through August 3, 2020, and received sick-leave pay from Ice during this mandatory four-

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13 *See* Laura W. Morgan, *The Use of Vocational Experts in Support Cases*, 30 J. Am. Acad. Matrim. Law. 351, 367 (2018) (noting that major factors in imputing income are evidence of the prevailing job opportunities and earning levels in the community, and the availability of employers who will to hire this party); *see also* Roberta G. Stanley & Kenneth A. Gordon, *Working with a Vocational Expert*, 29 Fam. Advoc. 14 (Spring 2007).

14 The inequity of the situation is exacerbated by the law in a number of states that when the court imputes income to a custodial parent, it cannot also impute as a deduction the child care costs the parent would incur if that parent were actually working, because the child care costs are fictional. *E.g., In re* Marrage of Connerton and Nevin, 260 P.3d 62 (Colo. Ct. App. 2010) (holding that even though the mother had income imputed to her, the court could not impute child care costs; the court could only consider child care costs actually incurred); M.M.F. v. M.F., No. 462 WDA 2021, 2022 WL 374322, *4 (Pa. Super. Ct. Feb. 8, 2022) ("I am cognizant of the equitable dilemma regarding the imposition of a full-time earning capacity on Mother while depriving her of reimbursement for child care expenses that she would have incurred while working full-time during the COVID-19 pandemic. However, as discussed infra, the law only permits an obligation for child care when commensurate with current expenses, and Mother did not incur those expenses because she took an unpaid leave.").

This is not the universal rule, however. In many states, when income is imputed, child care costs are also imputed. Indeed, in at least two states, if child care costs would exceed the amount of income that would be imputed, then income should not be imputed. Morgan, *supra* note 10, at 7-42 to 7-43.

15 ___ So.3d ___, No. 2020-CA-01357-COA, 2022 WL 521439 (Miss. Ct. App. Feb. 22, 2022).

teen-day quarantine. The husband testified that he was still experiencing more than two COVID-19 symptoms after August 3, 2020, and therefore did not return to work when his mandatory quarantine expired on August 4, 2020. The husband then received a letter from his employer, informing him that his employment was terminated. The wife argued that the husband had been fired from his job through his own fault and voluntarily stopped working his other part-time jobs, which had brought him additional income. The chancery court concluded that the husband had not met his burden of proof to show no bad faith. The court found that the husband acted in bad faith and was fired through his own fault because his termination was a direct result of the husband's violation of the employer's family and medical leave policy. The appellate court affirmed.[16] Thus, the husband was deemed to be voluntarily unemployed, warranting imputation of income, because he did not return to work while experiencing COVID-19 symptoms.

In *In re Marriage of Frey and Kerres*,[17] the court also was unwilling to recognize the reality of the job market during COVID-19. In that case, the wife testified that her unemployment was due to COVID-19, and she was unable to find a job. She had been actively applying for jobs, and she had secured several interviews, but had not secured employment. The appellate court affirmed the imputation of income, reasoning that the wife's unemployment was *temporary*. "Because of the admittedly temporary nature of Cheyenne's unemployment, using her historical income to determine her child support obligation is ap-

16 *Id.* at *3.

17 No. 21-0448, 2022 WL 108952 (Iowa Ct. App. Jan. 12, 2022).

propriate."[18] As is now known, the contraction of the economy was anything but "temporary."[19]

At least one court took the attitude, "if you can't find a job, then work from home," and imputed income. In *Warrington v. Warrington*,[20] the wife was a commodities broker who had worked exclusively for a single firm for more than twenty years when the pandemic caused a dramatic drop-off in income. "The district court was not persuaded by Karen's argument that the COVID-19 pandemic had interfered with her ability to become self-supporting. The district court found Karen could have conducted business virtually, as many other professionals did during the pandemic."[21] The imputation of income was upheld.[22]

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18 *Id.* at *4. *See also* Patterson v. Patterson, No. A-21-056, 2021 WL 5571156, *4 (Neb. Ct. App. Nov. 30, 2021) ("The evidence reflects that the disparity between the $3,898 net income earned in the second quarter and the $123,112 net income earned in the third quarter was primarily attributable to the COVID-19 pandemic and the closure of the Valentine clinic during the second quarter. Despite the minimal net income earned during the second quarter, business at the Valentine clinic picked back up again in the third quarter. This quick turnaround indicates that the reduced level of income earned during the second quarter of 2020 is not likely to be repeated."); Kaur v. Dhillon, No. 0254-21-4, 2021 WL 5312389 (Va. Ct. App. Nov. 16, 2021) (the wife had worked full time at Gate Gourmet, a food service business to airlines; the court imputed income to the wife at the salary she had earned at Gate Gourmet, reasoning "it was reasonable for the circuit court to impute income to wife based on her recent past earnings and infer that wife could find another job at a comparable salary," despite the airline industry being one of the hardest hit sectors of the economy).

19 The unemployment rate did not reach pre-pandemic levels until February 2022. *See* Christopher Rugaber, *Strong Job Growth Points to Covid's Fading Grip on Economy*, ABC NEWS (Mar. 4, 2022), https://abcnews.go.com/US/wireStory/us-added-678000-jobs-february-sign-economic-health-83250561. *See also* Ben Casselman, *Pandemic's Economic Impact Is Easing, but Aftershocks May Linger*, N.Y. TIMES (Feb. 19, 2022), https://www.nytimes.com/2022/02/19/business/covid-economy.html.

20 No. A21-0180, 2022 WL 17123 (Minn. Ct. App. Jan. 3, 2022).

21 *Id.* at *7.

22 *See also* L. C. v. J. C., No. CN19-04499, 2020 WL 8226017 (Del. Fam. Ct. Nov. 4, 2020) (the court imputed income to the father, who was employed in telecommunications and IT, reasoning that during the pandemic, those in the IT sector should have seen their earning potential increase because everyone was working from home and needed their computers).

The court in *Giunta v. Fahey*[23] gave lip-service to a recognition that COVID-19 impacted the husband's earning capacity. In that case, the husband testified that in the months before the COVID-19 pandemic, he might have been able to find a job "within a few weeks" given his strong resume and many contacts.[24] He testified that he believed the pandemic had caused firms in his field to cease hiring for the time being and had cast uncertainty over his prospects. Nonetheless, the trial court imputed a salary of $120,000. The appellate court upheld the imputation of income, reasoning that it was less than the $200,000 in compensation he had been earning, and so it was a fair compromise.[25] The saving grace of the opinion was the recognition that "if husband's unemployment or underemployment persists despite his best efforts, he can move to modify the alimony due to an alleged change in circumstances."[26]

On the other hand, some courts did face the reality of the job market during the worst of the lockdown. In *K.D.H. v. Cabinet for Health and Family Services*,[27] the matter of the mother's earning capacity was an issue when the state sought to terminate her parental rights. The court noted:

> Similarly, it goes without saying that the pandemic had far-reaching impacts on the ability to obtain and/or keep employment. We find it unrealistic to fault Mother for her limited employment history when people throughout this Commonwealth were losing the ability to maintain employment due to the effects of COVID-19 on the state's economy. Thus, Mother's limited employment history during this time does not constitute clear and convincing evidence of her failure to comply with her case plan or provide support for the termination of her parental rights. And again, Mother testified that attempting to comply with the drug screen protocol affected her ability to maintain employment.[28]

Likewise, consider *In re Marriage of Peckumn,*[29] although not an imputed income case. When the wife petitioned for di-

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23 No. A-0973-20, 2021 WL 5764251 (N.J. Super. Ct. App. Div. Dec. 6, 2021).

24 *Id.* at *2.

25 *Id.* at *4.

26 *Id.* at *6.

27 630 S.W.3d 729 (Ky. Ct. App. 2021).

28 *Id.* at 738.

29 No. 21-0823, 2022 WL 610444 (Iowa Ct. App. Mar. 2, 2022).

vorce in April 2020, she was working as an executive assistant at the Greene County Medical Center in Jefferson. In that position, she worked forty to fifty hours per week and earned $42,000 per year. But in July 2020, she lost that job, "told by her boss that she 'wasn't reliable during the pandemic.'"[30] She testified that she had to take leave from work when their daycare closed three or four times because of COVID-19 or when the children had to quarantine. The wife testified that she asked the husband for help with child care, but he declined. Despite her diligent efforts, the wife had not found a comparable position in Jefferson by the time of the divorce trial in April 2021. The court found it significant that the wife lost her job because of her absences caring for their children during the pandemic and the husband's refusal to lend a hand, and these factors were an appropriate consideration to the economic value of the wife's contribution to the marriage through both her income and provision of health insurance, as well as her homemaking and childcare services.[31]

As in *Peckumn*, the court recognized the realities of the job market during COVID-19 in In *Matter of Routhier*.[32] The wife had been working approximately twenty-five to thirty hours per week as a pharmacy technician, earning about $2,700 to $2,900 per month. The wife testified that, due to financial constraints caused by the COVID-19 pandemic, her employer had no full-time positions available, and that she would likely earn less money if she found employment elsewhere.[33] The trial determined that the wife was not voluntarily underemployed "at this time due to the impact" of the COVID-19 pandemic.[34]

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30 *Id.* at *1.

31 *Id.* at *3.

32 Nos. 2021-0032, 2021-0036, 2022 WL 457428 (N.H. Feb. 15, 2022).

33 *Id.* at *2.

34 *Id.* at *4. *Accord* Nelson v. Richardson-Nelson, 964 N.W.2d 463 (Neb. Ct. App. 2021) (recognizing the impact of COVID-19 on the wife's employment as a hairdresser).

IV. When Imputing Income, Courts Should Consider Job Satisfaction and Total Job Remuneration

When determining whether to impute income to a party, courts first look at whether the party is voluntarily unemployed or underemployed. The above cases demonstrate that the courts have varying approaches to deciding whether not working during COVID-19 is voluntary.

Once the court determines that the unemployment or underemployment is voluntary, the court then determines earning capacity. Earning capacity is the amount of income the party would earn by making all reasonable efforts to maximize income.[35] In determining earning capacity, the courts have generally focused on five factors: work and earnings history; education; occupational qualifications; the party's mental and physical condition; the job opportunities in the appropriate geographic area, along with the prevailing wages in that geographic area.[36] The above cases demonstrate that the courts are not paying sufficient attention to the actual job market and prevailing wage. A court should not impute income based on earning capacity based solely on past earnings when there is no reasonable way the party could actually earn that amount.

Courts are also ignoring two other factors that should be considered: job satisfaction and total remuneration, which includes benefits such as health care and retirement contributions.[37] The courts have focused too much on "maximizing income," and forgotten that the concept of earning capacity is not supposed to make all people into wage slaves. As stated in *Sandlin v. Sandlin,*[38]

> [T]he Guidelines do not require or encourage parents to make career decisions based strictly upon the size of potential paychecks, nor do the Guidelines require that parents work to their full economic poten-

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35 MORGAN, *supra* note 10, at § 5.04 (2022-1 Supp).

36 *Id.*

37 An example that has received much press is the case of teachers, who are leaving the profession for greater flexibility and higher pay. *See* Brenda Cassellius, *Opinion: My Fellow Educators Are Quitting in Droves. Here's Why*, WASH. POST (Feb. 9, 2022), https://www.washingtonpost.com/opinions/2022/02/09/pandemic-teacher-burnout-hurts-kids/.

38 972 N.E.2d 371 (Ind. Ct. App. 2012).

> tial. It is not our function . . . to approve or disapprove of the lifestyle of [parents] or their career choices and the means by which they choose to discharge their obligations in general.[39]

The original Advisory Panel on Child Support Guidelines, commissioned by the U.S. Department of Health and Human Services in 1987, also recommended that any state child support guideline should not create extraneous negative effects on the major life decisions of either parent. In particular, a guideline should avoid creating economic disincentives for remarriage or the type of employment a parent seeks.[40] Yet current law con-

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[39] *Id.* at at 375 (internal citation omitted). *See also* Apter v. Ross, 782 N.E.2d 744, 765 (Ind. Ct. App. 2003) (ruling that child support should not be used "as a tool to promote a society where all work to their full economic potential, or make their career decisions based strictly upon the size of potential paychecks"); Johnson v. Johnson, 452 So. 2d 322 (La. Ct. App. 1984) (deciding that the wife who was pursuing a career as artist through self-employment in her studio at home was not obliged to take a job teaching art, though that job would afford greater income, where self-employment offered greater satisfaction); Moore v. Tseronis, 664 A.2d 427, 431 (Md. Ct. App. 1995) (stating that while a parent must take into consideration his or her child support obligations when making job decisions, such considerations should not be "immobilizing"); Smith v. Smith, 969 S.W.2d 856, 859 (Mo. Ct. App. 1998) (observing that courts should not interfere in the marital relationship to mandate which employment a spouse should pursue); Stewart v. Stewart, 866 S.W.2d 154, 159 (Mo. Ct. App. 1993) (in a concurring/dissenting opinion, one justice raised the "specter of the 13th amendment" in forcing one's spouse into accepting whatever job is available); Fogel v. Fogel, 168 N.W.2d 275, 278 (Neb. 1969) (stating that no person should be "frozen" into an occupation because of a support obligation); *In re* P.J.H., 25 S.W.3d 402, 406 (Tex. Ct. App. 2000) (observing that when imputing income, a court must keep in mind a parent's right to pursue his or her own happiness); Sellers v. Sellers, 549 N.W.2d 481, 484 (Wis. Ct. App. 1996) (saying that a spouse has, to some extent, the same right to choose a career path that might realize less annual income than other career paths that might be available as the spouse had prior to divorce). *Cf.* Garfinkel v. Garfinkel, 945 S.W.2d 744, 748 (Tenn. Ct. App. 1996) (rejecting the father's argument that he had fundamental right to choose profession that "made him happy," so the court could impute income to him when he discontinued work utilizing his masters in physics and instead became a landlord).

[40] Robert Williams, Development of Guidelines for Child Support Orders: Advisory Panel Recommendations and Final Report at I-4 (U.S. Dep't of Health and Human Services, Office of Child Support Enforcement, 1987) ("A guideline should not create extraneous negative effects on the major life decisions of either parent").

cerning imputation of income does exactly this.[41] The reckoning was coming, and the Great Resignation[42] is that moment.

The Great Resignation[43] has pointed out that workers are seeking a greater work/life balance and greater job satisfac-

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41 See *In re Marriage of Padilla*, 45 Cal. Rptr. 2d 555, 560 (Cal. Ct. App. 1995), in which the court stated that parents couldhave their personal fulfillment only after they have paid their child support based on what they could earn by maximizing their income, regardless of good faith:

> Once persons become parents, their desires for self-realization, self-fulfillment, personal job satisfaction, and other commendable goals must be considered in context of their responsibilities to provide for their children's reasonable needs. If they decide they wish to lead a simpler life, change professions or start a business, they may do so, but only when they satisfy their primary responsibility: providing for the adequate and reasonable needs of their children.

The desire by courts to impute maximum "earning capacity" to a support obligor without the consideration of career fulfillment can lead to ridiculous results, with a court imputing income on the basis of what a support obligor could earn had he or she pursued a career he or she never contemplated or wanted. For example, in *Robinson v. Tyson*, 461 S.E.2d 397 (S.C. Ct. App. 1995), the original support order was entered when the husband was in law school. After the husband graduated from law school, he joined his father's practice, and earned $700 per month. The court imputed income to him of $30,000 per year, reasoning that with his education and skill, he could earn this much in another firm. *See also* Lopez v. Ajose, No. 4863/01 (N.Y. Sup. Ct. (Manhattan) Apr. 5, 2005) (the court imputed income to the husband on the basis of being a bar admitted attorney, although he had never registered with the state bar and had quit his law firm job shortly after passing the bar exam because he realized working at a law firm was not for him).

42 Anthony Klotz, an organizational psychologist and professor at Texas A&M University, coined the phrase "the Great Resignation" during an interview with Bloomberg in May 2021 to describe the wave of people quitting their jobs due to the ongoing Covid pandemic. Arianne Cohen, *How to Quit Your Job in the Post-Pandemic Resignation Boom,* BLOOMBERG (May 10, 2021, 5:00 AM CDT), https://www.bloomberg.com/news/articles/2021-05-10/quit-your-job-how-to-resign-after-covid-pandemic.

43 *See* Derek Thompson, *Three Myths of the Great Resignation*, ATLANTIC (Dec. 8, 2021),https://www.theatlantic.com/ideas/archive/2021/12/great-resignation-myths-quitting-jobs/620927/ (summarizing Bureau of Labor Statistics data, noting that the increase in quits is mostly about low-wage workers switching to better jobs in industries that are raising wages to grab new employees as fast as possible).

For a more recent summary of the Bureau of Labor Statistics data on the Great Resignation, see Lauren Liebhaber, *What Data Can Teach Us About the 'Great Resignation,'* GWINNETT DAILY POST (Feb. 7, 2022), https://

tion.[44] According to researchers at MIT, "Toxic culture is the biggest factor pushing employees out the door during the Great Resignation" – it is "10 times more important than compensation.[45] While the principles of imputed income demand that a party take a job, any job, that is commensurate with the party's education and work history to maximize income,[46] the Great Resignation rebels against this: workers are not willing to take a job, any job, at any pay, simply to have a job. The job must offer benefits, such as health insurance, paid parental leave, and, hopefully, child care, and it must offer a work/life balance. In the food service industry, to lure back workers, "[r]estaurant owners are offering shorter workweeks, life insurance, mental health services, college tuition and more paths to career advancement. They are giving out free Spotify subscriptions, adding nursing stations for lactating employees, and promising signing bonuses and

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www.gwinnettdailypost.com/multimedia/slideshows/what-data-can-teach-us-about-the-great-resignation/collection_12f63608-d02e-56bf-8d6b-d59e6c979baa.html#1.

44 Thompson, *supra* note 43 (noting that a sense of fulfillment from employment and the desire to escape a toxic work culture were the greatest factors in the Great Resignation; better benefits were also a driving factor).

See also Hillary Hoffower, *Meet a 40-year-old Millennial Who Joined the Great Resignation Because Her Employer Wouldn't Let Her Work Remotely: I Chose to Be Happy*" BUS. INSIDER (Jan. 29, 2022), https://www.businessinsider.com/40-year-old-millennial-librarian-joins-great-resignation-labor-shortage-2022-1.

David Gelles, *Executives Are Quitting to Spend Time with Family . . . Really*, N. Y. TIMES (Feb. 16, 2022), https://www.nytimes.com/2022/02/16/business/executives-quitting.html.

45 Donald Sull, Charles Sull, & Ben Zweig, *Toxic Culture Is Driving the Great Resignation*, MIT SLOAN MGMNT. REV. (Jan. 11, 2022), https://sloanreview.mit.edu/article/toxic-culture-is-driving-the-great-resignation/.

As the economist Paul Krugman pointed out, the countries of Europe did not experience the Great Resignation to the extent the United States did. Why? "Perhaps one reason Europeans aren't engaging in an American-style Great Resignation is that they don't hate their jobs quite as much." Paul Krugman, *What Europe Can Teach Us About Jobs*, N.Y. TIMES (Nov. 29, 2021), https://www.nytimes.com/2021/11/29/opinion/united-states-europe-jobs.html.

46 *See, e.g., In re* Marriage of Gregg, 2021 IL App (2d) 210199-U, 2021 WL 4173168 (Ill. Ct. App. Sept. 14, 2021) (holding that the trial court did not err by imputing income when the wife testified she did not wish to return to work as a lab chemist, because the experience was "horrible").

free food to anyone off the street who fills out an application."[47] Simply put, as the estimable Robert Reich pointed out, the "Great Resignation" is a reaction to brutal U.S. capitalism that fails to serve workers.[48] Imputing income without considering work/life balance or total remuneration is another manifestation of the law failing to serve workers involved in support disputes.

The workers who quit during the Great Resignation were not, in the words of one author, "en masse rejecting consumerism, moving off the grid, and living off the land."[49] Rather, "most Americans quitting their jobs merely seem to be aiming to get better jobs,"[50] and "better jobs" are those that offer higher pay and more amenities, and greater flexibility.[51] Thus, just as em-

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47 Laura Reiley, *Restaurant Workers Are Quitting in Droves. This Is How They Are Being Lured Back,* WASH. POST (Jan. 28, 2022), https://www.washingtonpost.com/business/2022/01/28/great-resignation-restaurant-perks/.

48 Lindsey Jacobson, *The "Great Resignation" Is a Reaction to "Brutal" U.S. Capitalism: Robert Reich*, CNBC (Feb. 4, 2022), https://www.nbcdfw.com/news/business/money-report/the-great-resignation-is-a-reaction-to-brutal-u-s-capitalism-robert-reich/2879728/.

See also Abha Bhattarai, *4.3 Million People Quit Their Jobs in January*, WASH. POST (Mar. 9, 2022), https://www.washingtonpost.com/business/2022/03/09/job-quits-january-openings/ (finding that flexibility and remote work were important to workers); Vanessa Wong, *The Great Resignation Was Fueled by Workers Who Were Fed Up with Being Broke*, BUZZFEED NEWS (Mar. 9, 2022), https://www.buzzfeednews.com/article/venessawong/great-resignation-low-wages> (reporting that the top reasons workers quit were low wages, feeling disrespected at work, childcare needs, and wanting more flexible hours).

49 Greg Rosalsky, *The Great Resignation? More Like The Great Renegotiation*, NPR (Jan. 25, 2022 6:30 AM ET), https://www.npr.org/sections/money/2022/01/25/1075115539/the-great-resignation-more-like-the-great-renegotiation.

50 *Id.*

51 *Id.*

"Better jobs" are also those that don't subject workers to abuse by customers on a daily basis, such as the airline industry. Derek Thompson, *The Great Resignation Is Accelerating*, ATLANTIC (Oct. 15, 2021), https://www.theatlantic.com/ideas/archive/2021/10/great-resignation-accelerating/620382/ ("Leisure and hospitality workers might be saying "to hell with this" on account of Americans deciding to behave like a pack of escaped zoo animals. Call it the Great Rudeness."). *See also* Melissa Keyes,"*Why We Stay at Our Firms, and What To Do When We Shouldn't*, ABOVE THE LAW (Feb. 17, 2022), https://abovethelaw.com/2022/02/why-we-stay-at-our-firms-and-what-to-do-when-we-shouldnt/ (noting that the legal market saw a record high 23.2% associate turnover rate in 2021; "it was not just compensation driving the high rate of turnover but that it was driven by more concern with flexibility and personal

ployers need to adjust to the new reality and offer better pay and amenities,[52] the courts and legislatures need to adjust the law concerning imputed income and consider job satisfaction and work/life balance, along with total remuneration, including perks, when considering whether to impute income.

When courts undertake an imputed income analysis, in many states one inquiry is whether the loss of income or failure to earn full earning capacity is the result of good faith or bad faith, i.e., what is the reason for the lesser earnings, and is that reason a desire to avoid the support obligation.[53] In undertaking this analysis, courts are required to discern motives and determine credibility. Whether a party quits a job because it is an unfulfilling job or one that offers no work/life balance fits squarely into this inquiry.[54] Indeed, the courts often decline to impute income to a non-custodial parent who wishes to live near his or her children, and thus forego higher pay in another geographic area.[55] The courts have deemed the preservation of the parent-

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control over their working arrangements") ; Rani Molla, *The Jobs Americans Want*, VOX (Feb. 9, 2022), https://www.vox.com/recode/2022/2/9/22923843/jobs-careers-quitting-google-search-great-resignation (analyzing Google search data and concluding that job searches are now for jobs that offer flexible hours and the ability to be their own bosses, both highly sought-after qualities for people who have had time during the pandemic to reconsider how they want to work).

52 Alison Green, *Companies Are Desperate for Workers. Why Aren't They Doing the One Thing That Will Attract Them?*, SLATE (Jan. 24, 2022), https://slate.com/human-interest/2022/01/job-market-vacancies-hiring-desperate-no-workers-why.html.

53 MORGAN, *supra* note 10, at 5-90 - 5-91.

54 *See, e.g., In re* Marriage of Gilbert, 2009 WL 2170251 (Iowa Ct. App. July 22, 2009) (finding that the trial court erred in imputing income to the father on basis that the father's inability to apy child support was self-inflicted because the father had ability to renew his contract of employment under which he served as a truck driver in Iraq; since the father's employment in Iraq was potentially dangerous and he had already spent two years away from his family, he should not have to take a dangerous job away from his family to maximize earnings).

55 *See* Olson v. Mohammedu, 81 A.3d 215 (Conn. 2013) (holding that where a father voluntarily relocated from Florida to Connecticut to be closer to his child, the father's motivation did not preclude him from establishing a change in circumstances without imputation of income); Abouhalkah v. Sharps, 795 N.E.2d 488 (Ind. Ct. App. 2003) (determining that a father who voluntarily left his employment as a chemist, when his employer relocated out of state, in order to remain close to his children's home was not voluntarily underem-

child relationship a societal good that excuses the lack of higher earnings. Job satisfaction and better job remuneration is an equal societal good. The courts should be willing to allow a party to say, when the circumstances warrant, "Take this job and shove it."[56]

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ployed); *In re* Marriage of Graham, 87 S.W.3d 893 (Mo. Ct. App. 2002) (finding that a mother who worked as a part-time hairdresser to give herself flexibility to meet the children's schedules should not have additional income imputed); Smith v. McCarthy, 143 A.D.3d 726, 38 N.Y.S.3d 588 (N.Y. App. Div. 2016) (deciding not to impute income when a father, who resided in Pennsylvania, had been laid off from his job in aviation electronics through no fault of his own, had accepted a job in his field in Delaware but had left it shortly afterward because it was several hours away from his home and his former wife had refused to relocate with their four children to that state); Spreeuw v. Barker, 682 S.E.2d 843 (S.C. Ct. App. 2009) (holding that the trial court was not required to impute income to mother for purposes of determining child support, despite father's claim that she left her job to take a low-paying job in another town; motivation for mother's resignation and move was to be closer to children when father's wife moved out of father's residence, employment was not available in mother's field in the new community, and mother continued to search for appropriate employment).

[56] JOHNNY PAYCHECK, *Take This Job and Shove It* (Epic Records 1977) (written by David Allan Coe). At least one commentator has written that the ability of an employee to say this phrase is does not exist: "[E]mployees often have inferior bargaining power when compared to their employers, rendering so-called mutuality of the at-will doctrine illusory at best." Edwin Robert Cottone, Comment, *Employee Protection from Unjust Discharge: A Proposal for Judicial Reversal of the Terminable-at-will Doctrine*, 42 SANTA CLARA L. REV. 1259, 1260 (2002). *See also* Martha R. Mahoney, *Exit: Power and the Idea of Leaving in Love, Work and the Confirmation Hearings*, 65 S. CAL. L. REV. 1283, 1289 (1992) (arguing that few workers actually have the luxury (or make the choice) "to take this job and shove it").

Interestingly, a Westlaw search revealed twelve cases where an employee actually told his supervisor to "take this job and shove it."