

NO. 94827-5

IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

ZELEKE KASSAHUN,

Petitioner,

v.

FANAYE ASHAGARI,

Respondent.

ANSWER TO PETITION FOR REVIEW

Elizabeth A. Helm, WSBA #23840
NORTHWEST JUSTICE PROJECT
401 Second Ave S., Suite #407
Seattle, Washington 98104
Tel. (206) 464-1519
bethh@nwjustice.org
Attorney for Respondent

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I. STATEMENT OF FACTS

This case arises from an appeal from an Order and Findings on Remand entered on March 16, 2016. CP 393-397. Trial took place over eight days in July 2013. The court issued an oral ruling on July 26, 2013. RP 946-982. Mr. Kassahun appealed the final orders entered on November 13, 2013, and the Court of Appeals, Division I, released its unpublished opinion on March 23, 2015. *Marriage of Ashagari & Kassahun*, 186 Wn. App. 1033 (2015) (Unpublished), review denied sub nom. *In re Marriage of Ashagari & Kassahun*, 184 Wn.2d 1012, 360 P.3d 818 (2015). That decision remanded the case back to the trial court for more detailed findings as to its decision on the income figure used to calculate child support and maintenance. Mr. Kassahun appealed the trial court's rulings on remand. The unpublished decision in the appeal of the Order and Findings on Remand was filed on May 19, 2017. *Marriage of Ashagari & Kassahun*, No. 75343-6-I, slip of. (Wash. Ct. App. June 19, 2017) (Unpublished). Mr. Kassahun's request for reconsideration of that ruling was denied. *Petition for Review*, App. 125. His request to have the decision published was denied. *Petition for Review*, App. 126.

Division I upheld the trial courts findings on remand, finding no abuse of discretion, and deferred to the trial court on issues of credibility.

The relevant facts are set forth in that opinion. *Ashagari*, 75343-6-I, slip op. at 2-5

II. AUTHORITY AND ARGUMENT

A Petition for Discretionary Review to the Supreme Court will be granted only upon one or more of the four bases enumerated in RAP 13.4. In this case the Petitioner argues that the decision of the Court of Appeals, Division I, is in conflict with prior court decisions. Petitioner, Zeleke Kassahun, has not met his burden to show that the decision below in this matter is in conflict with prior appellate decisions or a decision of this Court. He also asserts that the issues are of substantial public interest, but provides no persuasive argument to support that contention. The Division I opinion is not published, and the court denied Mr. Kassahun's request to have it published. It has no precedential value.

A. Reliance on Financial Declarations

Mr. Kassahun takes the position that *In re Marriage of Trichak*, 72 Wn. App. 21, 863 P.2d 585 (1993) forbids a court from looking to a party's financial declaration in a determination of income, under any circumstances. He misconstrues this case in his argument. *Ashagari*, 75343-6-I, slip op. at 16. He argues that the court was required to look to his tax returns and wage stubs to establish his income. However, in this case, the court determined that Mr. Kassahun's tax returns and wage stubs

were not reliable. *Ashagari*, 75343-6-I, at 7-8, 17. The court found his claims of impoverishment to be not credible. The appellate court did not disturb those credibility determinations. *Ashagari*, 75343-6-I, slip op. at 7, 14. The court had substantial evidence before it that he took far more from the business than he claimed; that he used his business credit cards for personal expenses; that he took substantial amounts of cash from the business; and that he failed to keep adequate records. In the absence of other reliable verification of income, the court took the parties sworn statements about their expenses in the form of their financial declarations, as a basis for calculating income. *Ashagari*, 75343-6-I, slip op. at 15-17. There is nothing in *Trichak* that prevents the court from looking to the expenses listed in the financial declarations, especially when the expense information in those declarations is supported and verified by other information available to the court, such as bank records, credit card statements, mortgage statements, other documents, and the testimony of the parties. *Ashagari*, 75343-6-I, slip op. at 20-21. This decision is consistent with *In re Marriage of Bucklin*, 70 Wn. App. 837, 855 P.2d 1197 (1993). The expenses listed in the financial declarations are verified by substantial evidence. Mr. Kassahun reargues his position on this issue, but does not show how the decision by the court in this case is in conflict

with prior appellate court decisions, or how this decision is of substantial public interest.

B. Savings as Evidence of Income

The parties in this case saved a substantial amount of money over the years of their marriage. Mr. Kassahun provided no evidence that his income or ability to save changed from during the marriage to after separation. *Ashagari*, Slip. Op. at 18-19. The court had substantial evidence before it that indicated that the businesses were doing even better than they were during the marriage. Exs. 47-51, 54-55, 60-66, 123, 200. It was not unreasonable for the court to find that the ability to save money would be similar after the divorce. Given the problems with the Mr. Kassahun's credibility regarding his current income, the court did not abuse its discretion when it looked to the parties' ability to save during the marriage in its estimate of Mr. Kassahun's earning capacity. Mr. Kassahun does not show how the appellate court's decision to uphold this finding is inconsistent with other appellate decisions.

C. Court's Decision Not to Impute Income to Ms. Ashagari

Mr. Kassahun does not provide authority for his assertion that a court is required to impute income to a party who is not employed when that party is receiving maintenance and that maintenance is included in the child support calculation. Ms. Ashagari contributes 47 percent of the total

child support obligation. *Petition for Review*, App. 10-28. Mr. Kassahun asserts no authority that would require a court to impose an additional obligation upon Ms. Ashagari above the 47 percent she already contributes. He does not provide an argument to overcome the fact that he did not raise this issue in his first appeal and that it was not before the court on remand. *Ashagari*, 75343-6-I, slip op. at 25. He does not articulate why the appellate court decision in this matter is in conflict with any other decisions of the appellate courts or this court.

D. Decision to Change Method of Tax Calculation and to Use Children's Actual Ages

Mr. Kassahun raised his objection to the court's decision to change the method it used to calculate taxes in the child support worksheets, and to use the children's actual ages in the child support worksheets, in the context of his argument that the court was biased. He cites no authority and offers no evidence to support his contention that it was error for the court to make these changes in its orders on remand. *Ashagari*, 75343-6-I, slip op. at 24-25. Mr. Kassahun has not shown the Division I decision finding that he had not shown bias and that he provided no authority or evidence to support his arguments is an issue that is suitable for review by this court.

E. Award of Attorney's Fees

Mr. Kassahun fails to provide authority why a litigant receiving services from a legal services organization is less entitled to an award of fees under RCW 26.09.140 than any other litigant. Regardless of the source of funds to pay fees, a litigant is entitled to reasonable attorney's fees under RCW 26.09.140 based on an analysis of need versus ability to pay. This Court in *Tofte* made clear that the fact that a litigant was represented by a public legal services corporation and the fact that she paid no actual attorney's fees in a case was immaterial to the determination of reasonable legal fees. *Tofte v. Department of Social & Health Serv.*, 85 Wn.2d 161, 531 P.2d 808 (1975). The Division I decision to award fees in this case is consistent with prior case law and with RCW 26.09.140.

III. CONCLUSION

The Court of Appeals decision in this case to affirm the trial court's decision with respect to the entry of the Order and Findings on Remand and an updated and corrected Order of Child Support was correct. Mr. Kassahun has not made a compelling argument that this court should accept review of that decision. Ms. Ashagari requests that review be denied.

DATED this 8th day of September, 2017.



Elizabeth A. Helm, WSBA #23840
NORTHWEST JUSTICE PROJECT
401 2nd Avenue S., Suite 407
Seattle, WA 98104
(206) 494-1519 x0907
bethh@nwjustice.org
Attorney for Respondent

CERTIFICATE OF SERVICE

I certify that on September 5, 2017, I caused to be delivered the Answer to Petition for Discretionary Review by Electronic Filing to Supreme@courts.wa.gov, and a copy to C. Nelson Berry III, Berry and Beckett, 1708 Bellevue Ave., Seattle, WA 98122 by ABC Legal Messenger.

DATED this 5 day of September, 2017.



Tracie Wells
Legal Assistant
NORTHWEST JUSTICE PROJECT
401 2nd Ave. S., Suite 407
Seattle, WA 98104
(206) 464-1519

NORTHWEST JUSTICE PROJECT KING COUNTY

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