

FILED
Court of Appeals
Division II
State of Washington
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No.: 52037-1-II

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION TWO

In re the Marriage of:

KATIE WICKSTROM,

Appellant,

and

VANCE WICKSTROM,

Respondent.

REPLY BRIEF OF APPELLANT

Charles P. Shane, WSBA # 33250
Attorney for Appellant

The Law Office of Charlie Shane, PLLC
755 Winslow Way E. Suite 207
Bainbridge Island, WA 98110
Phone (206) 201-3655
Charlie@CharlieShane.com

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VI. ARGUMENT

Ms. Wickstrom and the Court Cannot Respond to Non-Existent Evidence

Mr. Wickstrom points out that the trial court stated, “there was no testimony or evidence to counter the financial figures provided by Respondent, this Court accepts respondent’s figures as established fact.”¹ CP 107-113. Mr. Wickstrom made several assertions about his income and situation in his declarations. He claims they are true. His statements may or may not be accurate. The burden is on Mr. Wickstrom to prove with substantial evidence to the court that his statements are, indeed, accurate. See *In re Marriage of Littlefield*, 133 Wn2d 39, 45, 940 P.2d 1362, 1366 (1997) and *State ex rel. Stout v. Stout*, 89 Wn. App 118, 124, 948 P.2d 851, 854 (1997). Without financial documentation such as bank account statements, tax statements, profit and loss statements, etc. it is impossible for either the court or Ms. Wickstrom to know the accuracy of his statements. In this case, all that was presented to the court regarding Mr. Wickstrom’s finances were Mr. Wickstrom’s assertions and nothing

¹ This is not true as Ms. Carrico did indeed present a responsive declaration rebutting some factual points about her in Mr. Wickstrom’s Declaration. CP 258-60.

else. There was no financial documentation presented in support of his declarations.

The trial court then shifted the burden to Ms. Wickstrom to rebut Mr. Wickstrom's declarations regarding his finances which were not supported by any evidence. See CP 107-113. Ms. Wickstrom and the court could not know if they were true or not because Mr. Wickstrom presented nothing in support of their validity, other than his word. So, how was Ms. Wickstrom supposed to respond? Both Ms. Wickstrom and the court could not agree with or deny that his expenses had substantially increased or his statements about his business and financial situation were true or false because there was nothing presented by Mr. Wickstrom to support them either way. If she did respond, it would have only been a guess. Then the court essentially stated that because she did not respond (because she could not respond) that it was going find everything Mr. Wickstrom stated to be deemed true, regardless of the complete lack of any evidence in support of his statements. *Id.* Yet, there was no way for the trial court to know Mr. Wickstrom's declarations were accurate without any evidence in their support. Under the trial court's reasoning, a person seeking a support modification need only present declarations and nothing else, and that person would prevail

every time because it would be impossible to rebut, or even agree with the declarations, because it would impossible for anybody to know the veracity of those declarations without financial documentation. In a support modification, a person cannot respond to non-existent evidence and a court cannot find a party's statements about their financial situation to be true without financial documentation and that is what happened in this case.

The Changing of a Statute Does not Per Se Overrule Case

Law

Mr. Wickstrom contends that because RCW 26.09.170 had changed at some point after *In re Marriage of Scanlon*, 109 Wn. App. 167 (Wash. App. Div. 1 2001) and *In re Marriage of Arvey*, 77 Wn.App. 817, 820 (Wash. App. Div. 1 1995) was decided, the requirement of an unanticipated change of circumstance for a support modification somehow no longer applies. Respondent's Brief pp. 14-16. While this is an interesting theory, it is not supported by any authority. Mr. Wickstrom contends that because the statute now states that it can be changed "at any time" based on a substantial change in circumstance that it somehow overrules the need for the circumstances to be unanticipated. RCW 26.09.170(5)(a). This

additional phrase in no way eliminates the requirement that the change in circumstances be unanticipated. In fact, it is completely consistent with both *Arvey* and *Scanlan*, in that with an *unanticipated* change of circumstances in a support modification could be brought at any time.

Attorney Fees Should be Awarded to the Ms. Wickstrom
Based on Disparity of Income

Mr. Wickstrom contends that Ms. Wickstrom's request for attorney fees should be denied because "no evidence of Petitioner's resources is before the court." Brief of Respondent p. 19. Even ignoring the clear disparity of incomes as set forth in the support worksheet, RAP 18.1(c) not only allows, but requires, a party to provide an affidavit of financial need in order for the court to consider the financial resources of a party who is requesting attorney fees based on financial resources. Just because Ms. Wickstrom did not submit a financial declaration to the trial court below does not preclude her from submitting one now to the Court in consideration of her request for attorney fees based on her

financial resources.² Furthermore, Mr. Wickstrom did not dispute/answer her affidavit within seven days after service, so they should be deemed by this court to be accurate. *Id.*

VII. CONCLUSION

The trial court incorrectly determined Mr. Wickstrom's declarations regarding his financial situation to be "an established fact" even though there was no evidence, let alone substantial evidence, in support of his assertions. CP 107-113. How could the trial court know his expenses had substantially increased as he was contending? How could the trial court know how his business was affected, if at all, by his move or that any statement regarding his finances were accurate? It could not. There was absolutely no evidence in support of his statements regarding finances. Furthermore, how could Ms. Wickstrom rebut or agree with his financial statements when Mr. Wickstrom gave the court and Ms. Wickstrom no evidence to support his statements.

² In his brief, Mr. Wickstrom seems to confuse the purpose of Ms. Wickstrom submitting the affidavit of need, even though it clearly references RAP 18.1 and identifies it as a declaration of "financial need." Brief of Respondent, pp. 4-6, n. 2.

Finally, Mr. Wickstrom does not cite to any authority to support his contention that just because a law changes after a related case rules on that law, or an issue related to that law, that the case is deemed overruled. Nothing in the language of RCW 26.09.170 or any case that Ms. Wickstrom is aware of overrules the requirement that a change in circumstances be unanticipated for a support modification.

Dated this 11th day of August, 2018

The Law Office of Charlie Shane, PLLC

A handwritten signature in black ink, appearing to read "Charles Shane", written in a cursive style.

Charles P. Shane, WSBA # 33250
Attorney for Appellant, Katie Carrico FKA
Wickstrom

THE LAW OFFICE OF CHARLIE SHANE, PLLC

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Address:

755 WINSLOW WAY E STE 207
BAINBRIDGE ISLAND, WA, 98110-2483
Phone: 206-201-3655

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