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Division II
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Court of Appeals No. 52160-1-II

COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION TWO

BRENDA A. WILSON

Appellant

v.

GARY W. WILSON

Respondent

APPELLANT'S BRIEF

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I. INTRODUCTION

The trial in this matter commenced on March 20, 2017, and meandered over the course of more than a year and seventeen (17) different days, culminating in the court's oral decision on April 8, 2018, and written findings and order dated June 12, 2018.

The parties, in both their individual capacities or through limited liability companies, owned six (6) parcels of real property located in Clark County, Washington (hereinafter collectively referred to as the "Properties"). From the date of separation (12/28/2012) to the date(s) of trial, the parties continued to collect rents, pay expenses, and manage the Properties, but not in an organized, cooperative and transparent manner. As a result, the trial court was left with the unenviable task of eliciting testimony and accountings for the subject period from the parties, and from their respective experts. The primary issue on appeal is the trial court's decisions and findings in relation thereto, including the imputation of unproven rents at rates unsupported by expert testimony, which were incorporated into the final judgment against the petitioner in the amount of \$142,287.

Over the course of the one-year-plus trial dates, the court elicited testimony from the petitioner pertaining to her monthly net income for purposes of calculating child support. This included extensive testimony about the petitioner's profession (realtor/broker) and the payroll and income aspects unique to that industry, and problematic for divining a figure for child support purposes. At the trial court's oral ruling on April 8, 2018, the court announced that the parties' incomes for child support would be based on 2017 income tax filings. The respondent's attorney interjected and quickly detoured the court to revising the petitioner's amount to \$12,000/month, which more than tripled the petitioner's income under the 2017 tax return analysis initially ordered by the court. The impact of that detour is significant to the petitioner due to the resulting pro rata percentages of the parties for payment of the children's extraordinary expenses, including but not limited to, private schooling.

II. ARGUMENT

A. The testimony and reports of Tiffany Couch/Acuity Forensics exceeded the scope of her appointment by imputing fictitious rental incomes at monthly amounts unsupported by expert testimony or admissible evidence at trial.

Tiffany Couch of Acuity Forensics (hereinafter “Couch”) was appointed by court order dated March 25, 2016, to undertake an accounting of the Properties, to wit:

“There shall be an accounting performed by Acuity Forensics to determine the rents received and expenses paid (or owing) between May 1, 2013, and February 29, 2016....”. (CP#112).

The order was extended and supplemented by court order dated October 21, 2016, to include a separate period of March 1, 2016, through February 28, 2017. (CP#205).

At no time was Couch tasked with anything beyond the specific language in the order to “determine rents received and expenses paid (or owing)” between the periods of May 1, 2013- February 29, 2016, and March 1, 2016 - February 28, 2017.

In her testimony at trial, Couch revealed that she did not have complete “source documents” and therefore imposed certain “assumptions” in her final report and calculations, to wit:

“The biggest assumptions here was that I did not have the source documents I needed to do — to completely follow the court order, which told me to — I don’t have it in front of me, but rents received and expenses paid was what basically, to summarize what the court order asked me to do. Unfortunately, I didn’t have the documents I needed to do that, so I had to infer, mostly on the income side, what the rents were on most of these properties.” (Volume V, page 343, lines 2-10).

Couch’s testimony at trial was replete with speculative “assumptions” about rents not received but imputed to the parties, and particularly against the petitioner. Couch revealed that she “*had to use an appraisal that Mr. Wilson had gotten on this property to estimate what the rents should’ve been on 1798 for both accounting periods.*” (Volume V, page 343, lines 20-25). There is no evidence in the record of this appraisal, its author, or substance, upon which Couch relied to speculate about rental values for the property; and even if there was a record, such speculation would still be beyond the scope of the task assigned to account

for actual rents and expenses.

In response to Couch's testimony and report, the petitioner offered the expert testimony of Heidi Bowen of Financial Forensics (hereinafter "Bowen"). Bowen reviewed Couch's report and the documents for the subject time periods, and identified two (2) primary areas of discrepancy in their reports and results:

1. For the 1800 Columbia property, Couch used speculative rents based on rental values and appraisals provided by the respondent, and Bowen used actual rents. The disparity in approaches resulted in a \$52,000 difference in the overall analysis. (Volume VI, page 584).

2. For the Ridgefield property--where respondent solely resided from October 1, 2013, forward--Couch imposed equal obligations to the parties for ongoing mortgage payments through February 2017, while Bowen segregated the obligation as of October 1, 2013, when petitioner no longer resided at the Ridgefield property. (Volume VI, page 599).

Bowen's conclusion and summary result, using her methodology of actual rents and assigning the respondent's mortgage payment to him during the period of his sole occupancy, was that the respondent owed the petitioner \$29,653.55. (Volume VI, page 602).

Apart from Couch's testimony and report for the time periods described above, the court also accepted an "accounting" completed by the respondent for the period of time after February 28, 2017 (when the court-ordered time frame for accounting terminated). (Volume VI, page 544).

By her own testimony at trial, Couch admits that she exceeded the scope of her appointment, and ventured into areas unauthorized by the court order in reaching the final judgment amount in her report of \$142,287. Bowen properly completed the task assigned in the court order, using actual rents, and concluded that the judgment should be against the respondent instead of the petitioner, in the amount of \$29,653.55. The court's adoption of Couch's report and testimony, and the judgment flowing therefrom, was error.

B. The Petitioner's net monthly income for child support was improperly set at \$12,000/month.

RCW 26.19.017(2) sets forth the "Verification of Income" requirements for determination of income for child support, to wit:

(2) Verification of income. Tax returns for the preceding two years and current paystubs shall be provided to verify income and deductions. Other sufficient verification shall be required for income and deductions which do not appear on tax returns or paystubs.

The court elicited testimony and documentation from the petitioner in March 2017 regarding her income for child support purposes, at that time (Volume III). At the April 18, 2018, oral ruling, the court indicated that child support calculations would be based on 2017 tax returns and to “run the figures from that”. (Volume IX, page 829, lines 1-4). Petitioner’s 2017 tax return reflected adjusted gross income of \$58,000. Within seconds of the decision to utilize 2017 tax returns to determine income, respondent’s attorney convinced the court to deviate significantly back to the March 2017 testimony, and impose a monthly net income of \$12,000/month for the petitioner. (Volume IX, page 892, lines 5-20).

It is unclear from this oral exchange, and not set forth in the findings, why the court diverged from the initial decision to follow RCW 26.19.017 and the current 2017 tax information, and instead revert to testimony from the petitioner in March 2017, over a year earlier. It was error to summarily order \$12,000/month without further findings or reasoning, and without consideration of the petitioner’s current tax and income information, which had been provided to the court and showed \$58,000 in adjusted gross income for 2017.

IV. CONCLUSION

The trial court's adoption of the Couch report and judgment against petitioner for \$142,287 is error. Couch exceeded the scope of her authority, expertise and assignment by using imputed fictitious rents for the Properties, based on unsubstantiated fair market rental values provided by the respondent. The resulting judgment from Couch's report (\$142,287) adopted by the court is not aligned with the actual rents and expenses for the Properties, as evidenced by the report and testimony of Bowen, who concluded that using actual rents results in judgment against the respondent (not the petitioner) in the amount of \$29,653.55.

The trial court's oral decision on April 8, 2018, to change the petitioner's income based on current data in her 2017 tax documentation, to instead using \$12,000/month from testimony elicited in March 2016 is error. RCW 26.19.071 requires consideration of the petitioner's current tax returns and income information—which was provided—in determining her income for child support purposes.

Pursuant to RAP 18.1(a), Petitioner should be entitled to recover her attorney's fees and costs incurred herein.

DATED this 11th day of January, 2019.

Broer & Passanante, P.S.



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