

FILED  
NOV 17, 2015  
Court of Appeals  
Division III  
State of Washington

No. 33301-9-III

COURT OF APPEALS, DIVISION III OF THE STATE OF  
WASHINGTON

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In Re the Marriage of:

DAWN MARIE WALKER n/k/a KIGHT, Respondent,

and

TOMMY RAE WALKER, Appellant.

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APPELLANT'S REPLY BRIEF

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## ARGUMENT

As Ms. Kight correctly points out, the trial court found that Mr. Walker sold the lottery annuity, that the money gained from the sale of the annuity had been “dissipated,” and that Mr. Walker was not, therefore, able to pay his prior child support obligation. (CP 208-210). The trial court did not, however, find that Mr. Walker was either unemployable or that he was not in fact employed, because he is both. Having made the findings that it did make, the trial court erred by denying Mr. Walker’s petition for a reduction in his child support obligation based on a change of income after the passage of two years. In effect, the trial court imputed income to Mr. Walker that it had already found he did not have. Alternatively, if this court accepts Ms. Kight’s argument that this was not truly an imputation of income, but a mere denial of the petition based on Mr. Walker’s bad faith, the trial court still erred by finding that the annuity income was in fact dissipated to the extent that Mr. Walker could not pay his prior ordered obligation, but not requiring that Ms. Kight show the court that Mr. Walker either still had the money, or had used it to buy assets other than money that could be considered in establishing support. Instead, even though it found that Mr. Walker had in fact proven that he could not pay the obligation and that it had been dissipated, the

court did not consider any evidence of what was or was not actually available to establish a figure for support, but simply imputed to Mr. Walker what it knew he did not have. This failure is similar to what compelled the court to remand the case to the trial court in *Matter of Marriage of Blickenstaff*, 71 Wash. App. 489, 497, 859 P.2d 646, 650 (1993)(citing *Tice v. Tice*, 295 P.2d 866 (1956)), a case also cited by Ms. Kight.

In *Blickenstaff*, *supra*, 71 Wn.App. at 492, 859 P.2d at 647, the obligor father had violated parole and been imprisoned. Despite this fact, the trial court found that he was voluntarily unemployed and entered an order that imputed his income based on what he had earned before he went to jail. *Blickenstaff*, 71 Wn.App. at 492, 859 P.2d at 648. The court of appeals reversed and held that the trial court erred by finding that a convicted prisoner could be voluntarily unemployed. *Id.*, 71 Wash. App. at 498, 859 P.2d at 651. The court based its decision, in part, on the notion that an unpayable obligation, like Mr. Walker's lottery based obligation in this matter, that is simply left to accrue over time and leave the obligor with a non-dischargeable and unpayable judgment against him does neither the obligor nor the child any good. *Id.*, 71 Wash. App. at 497, 859 P.2d at 650 (citing *Tice v. Tice*, 295 P.2d 866 (1956)). In commenting on the trial court's broad discretion to consider all sources of income, including the prisoner's pension

income for the purposes of establishing child support, the *Blickenstaff* court remanded for the court to consider the prisoner's actual ability to provide for the child through other sources of income rather than what had been imputed to him improperly. *Id.*, 71 Wash. App. at 500, 859 P.2d at 652; *See also Carstens v Carstens*, 10 Wn.App. 964, 968, 521 P.2d 241, 244 (1974)(where obligor had dissipated assets used to provide security for maintenance obligations due to his alcoholism, court remanded with instructions to provide adequate security from the assets remaining in respondent's estate to secure payments.)

In this case, the court's findings establish that significant money was lost and that the source of the money is gone. If the trial court wanted to find that Mr. Walker either still had the money somehow or that the "toys" he purchased had a specific value that was to be considered for the purpose of establishing a support amount, it had the right and obligation to do so. Rather than do this, however, the trial court fell back on the legal fiction that this significant income was still available to Mr. Walker to pay, even when it had already specifically found that it was not. This was error. Mr. Walker is employed and has income and can pay support, but the lottery largess is gone. He has established this and the trial court found that this is the case. His support obligation should have been modified consistent with his

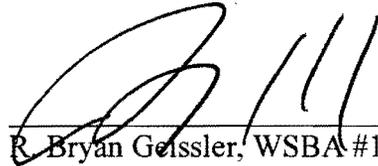
unfortunate reality. Alternatively, this matter should be remanded to determine whether the other assets exist which could establish a fair amount based on what is really there, rather than the fiction that is presently in place.

**IV. CONCLUSION**

Appellant respectfully requests that this Court find that the trial court abused its discretion. Based on this abuse of discretion, the orders below should be reversed and this case remanded for further proceedings.

Dated: November 16, 2015.

Respectfully Submitted,



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