

FILED

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COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By _____

COURT OF APPEALS, DIVISION III
OF THE STATE OF WASHINGTON

COA No. 357481

ROGER L. ALDRICH

Appellant

vs.

MARY BETH ALDRICH

Respondent

APPELLANT'S REPLY

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I. ARGUMENT

A. Mr. Aldrich's Income

Mr. Aldrich rests on the argument in his opening brief regarding the trial Court's error in calculating Mr. Aldrich's available income as well as his other arguments and repeats his previous statement of the case, and assignments of errors.

Ms. Aldrich's statement of the case is inaccurate in many assertions. Interestingly, Ms. Aldrich states, "Commissioner Anderson adopted Mr. Aldrich's representation of his income of \$1,666. (CP 609-610)." (Response at page 8). Thereafter, Ms. Aldrich states "Commissioner Anderson found Mr. Aldrich's overall net income was \$5,748.00, \$1,666 of that was income from CPPS. (CP 609-610)." (Response at page 9).

Of course, as argued in both hearings before Commissioner Anderson, the Commissioner could not count as Mr. Aldrich's income, Mr. Aldrich's Civil Service retirement, Air Force retirement and Social Security retirement income previously divided at the original trial. As previously argued in Mr. Aldrich's opening brief on this second appeal, "a court cannot require Mr. Aldrich to pay maintenance out of those assets which he has previously been

awarded by the court . . . Such a ruling amounts to the same property being awarded twice and constitutes clear error by the Commissioner.” (Opening brief page 13) *citing In re Marriage of Mathews*, 70 Wn. App. 116, 125,; 853 P. 2d 468, *review denied*, 122 Wn. 2d 1027 (1993) and *In re Marriage of Barnett*, 63 Wn. App. 385, 388; 818 P. 2d 1382 (1991). In fact, this was specifically argued to the Commissioner on remand when Mr. Aldrich’s counsel clearly stated: “using the assets awarded in the divorce is contrary to Bear (phonetic) and Mathews. We ask that you grant his petition and terminate the maintenance award.” (CP 598).

Mr. Aldrich also made this very clear prior to hearing in his 07/13/17 declaration upon remand when he stated, “as previously argued, property should not be used to pay spousal maintenance. In re Marriage of Mathews, 70 Wn. App. 116, 853 P. 2d462 (Div III, 1993); In re: Marriage of Barnett, 63 Wn. App.385, 818 P. 2d1382 (Div III, 1991) and should be reimbursed.” (CP 317).

This was the same position Mr. Aldrich advocated below before the first appeal when Mr. Aldrich’s counsel stated, “we’re also basing the petition on . . . Barnett and Mathews, . . . Barnett indicated a court cannot in determining spousal maintenance distribute the same property twice. And Mathews indicates that

requiring a payor to pay spousal maintenance out of assets awarded . . . a payor is clear error. Now to quote from that case the effect from the indefinite maintenance order is to require Mr. Mathews to pay maintenance out of his remaining retirement or disability income. This is not only an abuse of discretion, it is clear error, close quote.” (CP 249-250). See also, Mr. Aldrich’s 09/01/2015 initial financial declaration at page 5. (CP 70). In short, Mr. Aldrich has been making the same argument for close to three years.

It is thus surprising to read Ms. Aldrich’s statement “Mr. Aldrich’s own brief in support of his appeal does not address relevant law or the facts considered by the Court.” (Response at 13). The brief clearly does as does the record on appeal. Ms. Aldrich’s argument at page 13 is at best confusing and in bad faith.

B. Ms. Aldrich’s Income

Mr. Aldrich relies upon his arguments in his opening brief regarding Ms. Aldrich’s income and all other arguments and submissions.

Ms. Aldrich next erroneously states Mr. Aldrich never disputed Ms. Aldrich’s income. (Response at 13 -14) Yet, as clearly indicated in the record on review, in Mr. Aldrich’s supplemental financial

declaration of 07/13/17, he clearly states, "I dispute Respondent's income for the reasons stated in the declarations and as evident by the federal income tax returns." (CP 322). Again, Ms. Aldrich's misstatements must be deemed in bad faith. The blatant misstatements are consistent with the entire history of Ms. Aldrich's delay and intransigence in this case as partially summarized in Mr. Aldrich's declaration of 07/25/17. (CP 359-360).

C. Ms. Aldrich's Need

It is also erroneous for Ms. Aldrich's counsel to argue Mr. Aldrich's position "was based on his inability to pay maintenance and not Ms. Aldrich's need for maintenance." As Mr. Aldrich clearly shared at page 15-16 of the opening brief

. . . "After all, it is beyond dispute Ms. Aldrich has little to no debt. (CP 104-107; CP 108-113). It is equally beyond dispute Ms. Aldrich resides in a \$236,000 home which she owns free and clear. (CP 105; 107; 110). It is also beyond dispute Ms. Aldrich also spends \$800 in food and supplies each month solely on herself. (CP 110). Furthermore, it is beyond dispute Ms. Aldrich spends \$4,800 a year in clothes, (CP 111), \$2,400 a year on hair care, (CP 111), \$2,400 a year on recreational activities, (CP 111), and \$14,400 a year on gifts! (CP 111).

Indeed, Ms. Aldrich's bank statements showed a running balance of \$47,000 from August 2015 to December 2015, (CP 131-139), and \$60,000 to \$67,000 from September 2015 to January 2016. (CP 140-160). It is equally beyond dispute, Ms. Aldrich

had no need to cash at least three maintenance checks sent to her by Mr. Aldrich prior to the filing of the petition. (CP 191). It is also beyond dispute Ms. Aldrich's 2015 tax return indicates an adjusted gross income of \$201,039. (CP 202-203)." . . .

As the Commissioner found in her ruling, "since the Court of Appeals decision, no new evidence was presented by Ms. Aldrich." (CP 581; 615). A finding unopposed by either party is a verity. *In re: Marriage of Drlik*, 121 Wn. App. 269, 274, 87 P. 3d 1192 (2004), The above clearly shows Ms. Aldrich lacks any need for ongoing spousal maintenance.

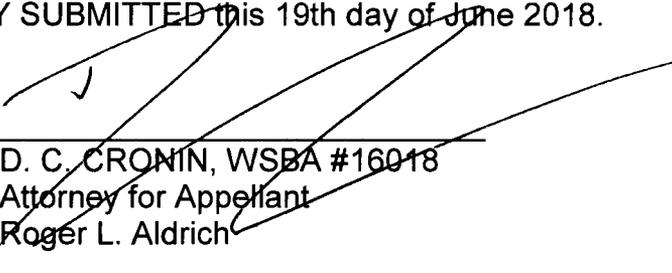
D. All Other Issues

Mr. Aldrich rests on his opening brief with respect to any other contentions argued by Ms. Aldrich.

II. CONCLUSION

After the passage of close to 3 years since the petition herein was filed, based on the foregoing facts and authorities, Mr. Aldrich respectfully urges this Court to reverse the trial court's orders and terminate Mr. Aldrich's obligation to pay spousal maintenance and insurance effective the date the petition was filed, and enter judgment plus interest for any over payments. Alternatively, in the event of a second remand, Mr. Aldrich requests this case be reassigned to another judicial officer for further proceedings.

RESPECTFULLY SUBMITTED this 19th day of June 2018.

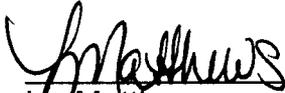


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Certificate of Service

I certify that on June 19th, 2018, I mailed a true and correct copy of Appellant's Reply by first class mail, postage prepaid to Heather Hoover at David J. Crouse & Associates, 422 W Riverside Ave., Suite 920, Spokane WA 99201.

Dated this 19th day of June, 2018 at Spokane, WA.



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