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COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By _____

Washington State Appellate Court, Division Three

In re the Marriage of)	
)	Reply Brief of Appellant
James Wallace, Appellant)	
)	Case no. 357490
v.)	
)	Title Page
Kim Collins, Respondent)	

Review from Kittitas County Superior Court No. 16-3-00124-2

by

Appellant

James Wallace
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ORIGINAL

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Washington State Appellate Court, Division Three

James Wallace,)	Reply Brief of Appellant
)	
Appellant)	Case no. 357490
v.)	
)	
Kim Collins)	
Respondent)	

Review from Kittitas County Superior Court No. 16-3-00124-2

I, James Wallace, hereby present my reply brief to the respondent's brief regarding the trial court decision pursuant to the above referenced divorce proceeding in the Kittitas County Superior Court, State of Washington, entered on November 20, 2017, per RAP 2.2(a)(1).

Respondent has responded to my assignments of error, including the issues pertaining to the assignment of error in the order presented in my brief. I will reply to her response in the same order. For the convenience of the court, I have included my assignments of error below from my original brief. Incidentally, respondent alleges 120 instances in my brief of improperly citing the record and twenty instances of failing to provide citations, but seldom identifies any of them, despite taking ninety-three days to file her response brief, instead of thirty.

ASSIGNMENTS OF ERROR

Assignment of Error No. 1

The court erred by ruling the SeaTac Cannabis License Application was valued at \$500,000.

Issues pertaining to assignment of error no. 1

1. Did the court err, ruling the SeaTac Cannabis License Application was valued at \$500,000?

Assignment of Error No. 2

The court erred by refusing to address the issue of spousal maintenance.

Issues pertaining to assignment of error 2

1. Did the court err by refusing to address the issue of spousal maintenance?

Assignment of Error No. 3

The court erred by ruling the quit claim deed, conveying the Cle Elum family home, was a valid conveyance from the husband to the wife, as the wife's separate property.

Issues pertaining to assignment of error 3

1. Did the court err by ruling the quit claim deed, conveying the Cle Elum family home, was a valid conveyance from the husband to the wife, as the wife's separate property.

Assignment of Error No. 4

The court erred by imputing the husband's income according to his rate of pay while living in Federal Way, instead of Cle Elum, and using the wife's former income prior to her present rate of pay.

Issues pertaining to assignment of error 4

1. Did the court err by imputing the husband's income according to his rate of pay while living in Federal Way, instead of Cle Elum, and using the wife's former income prior to her present rate of pay?

REPLY ARGUMENT

Reply to Response to:

Assignment of Error No. 1

The court erred by ruling the SeaTac Cannabis License Application was valued at \$500,000.

Issues pertaining to assignment of error no. 1

1. Did the court err, ruling the SeaTac Cannabis License Application was valued at \$500,000?

Respondent contends the court's \$500,000 valuation of the Seatac marijuana license was not error. Her argument is based on the expert testimony of one Tom Gordon, who claimed to have secured a bonafide offer for \$700,000 for the license application. Additionally, respondent

claims the court's refusal to consider the "evidence" presented on November 20, 2017, was not error, implicitly arguing the Seatac City Ordinance prohibiting a marijuana retail store was evidence the court properly rejected.

The respondent referenced the motion to vacate heard on November 20, 2017, which the court treated as a motion for reconsideration, but argued in response that I was trying to reopen the trial with new evidence, thereby suggesting Seatac Ordinance No. 13-1001 was evidence which the court should reject. At this juncture the court had not ruled on the division of property. Respondent misconstrues statutes and ordinances as evidence subject to civil rules of admissibility.

The trial court disregarded the SeaTac Ordinance No. 13-1001 for two reasons. First, ruling the City might change the ordinance. VRP at 413, lines 5 -16 Second, ruling it was new evidence. VRP at 415, lines 10-15. Based on the court's reasoning, ordinances can be "changed" and do not have to be given permanent force and effect, despite the law declaring the very opposite.- This is an obvious error of law, resulting in a majority of our marital property being awarded to the respondent.

The respondent and the court mischaracterized the Seatac Ordinance No. 13-1001 as evidence, which the court had the power to reject. Classifying Ordinance No. 13-1001 as inadmissible is nothing less

than conscience shocking, considering all Washington state courts have ruled regarding the function of the courts. The law is abundantly clear on this point. In interpreting a statute, the fundamental objective is to ascertain and carry out the legislature's intent. *Dep't of Ecology v. Campbell & Gwinn, LLC*, 146 Wn.2d 1, 9, 43 P.3d 4 (2002).

Ordinances and statutes are not evidence which the court can refuse to consider. Mandatory judicial notice is required of statutes and ordinances of the state in all tribunals. RCW 5.24.010 The respondent and the court classified the ordinance as evidence, not law. Washington law requires ordinances to be given permanent and general effect in all courts, as a matter of law.

In re *Forks v. Fletcher*, the superior court's judgment was reversed and remanded. 33 Wn. App. 104, 652 P.2d 16** (1982). The court held that a municipal court was required to take judicial notice of ordinances of the municipality in which it sat, regardless of whether the ordinance was properly pleaded. Where the omitted ordinances materially affects the judgment of the court, reversal is required.

Under RCW 5.24.010, judicial notice is required of all statutes, civil laws, and constitutions of every state in the union. RCW 35.21.550 requires the court to give **permanent** and general effect of ordinances in all courts and administrative tribunals of the state. The trial court gave

Ordinance No. 13-1001 no effect. The court treated the ordinance as if it did not exist even in the face of it in court proceedings.

Under Ordinance 13-1001, dated January 8, 2013 (a copy of which was attached to my motion to vacate as Exhibit A), Clerks Papers 438 – 446, the City of SeaTac amended it's municipal code in response to I-502 (the new marijuana law) to prohibit any land use for purposes that are prohibited by local, state, or federal law, thereby rendering the marijuana license application no. 414506 in the City of SeaTac issued to me, James Wallace, commercially worthless, since marijuana manufacturing and retailing are prohibited in the city of Seatac and under federal law as a Schedule I drug under the Controlled Substance Act (CSA), 84 Stat. 1242, 21 U.S.C. 801 et seq.

Here, the instant court said it could **not** take judicial notice of the law, only of “things like today is Monday”. VRP at 413, lines 5 -16 The court ruled the ordinance could be changed, stating, “...the problem with ordinances is that they can always be changed. So, even assuming that the -- SeaTac has that -- takes that position today it doesn't mean they'll take that position tomorrow” so the court reasoned it could disregard Ordinance 13-1001, and thereby, violated RCW 35.21.550, requiring the court to give permanent and general effect of the ordinance in the court proceeding, and depriving me of due process of law, resulting in a worthless community

award of the license to me, which the court set at \$500,000. VRP at 413, lines 5 -16

The court limited judicial notice to adjudicated facts, and said it could not take judicial notice of laws and ordinances, ruling contrary to RCW 5.24.010 and RCW 35.21.550. This is an error of law. The result: the court placed a \$500,000 value on a cannabis license application that cannot be used under existing law, and awarded it to me as part of my property, constituting an abuse of discretion.

Washington courts have had much to say regarding interpreting and implementing the law. In re *Dep't of Ecology v. Campbell & Gwinn, LLC*, the court said “In interpreting a statute, our fundamental objective is to ascertain and carry out the legislature's intent. 146 Wn.2d 1,9, 43 P.3d 4 (2002)

Here, the trial court said Ordinance No. 13-1001 was evidence, thereby constituting an error of law for denovo review. Instead of ascertaining the meaning, the court dispensed with the clear meaning of the ordinance as having no **permanent** effect, contrary to law under RCW 35.21.550, saying “the ordinance could change tomorrow.” The trial court made no attempt to carry out the legislative intent in the court proceeding as required in all courts and tribunals of the state. The court's valuation of the license was based on what the law might be some day, not

what the law is today, therefore, it was not based on present law, but on a nullification in defiance of its permanent effect in our case. The court has no authority to nullify the permanent effect of the ordinance, but did precisely that, thereby depriving me of due process of law. Therefore, the disregard of the ordinance, deprived me of due process of law and undermined the intent of a constitutional form (tripartite) of government, guaranteed by the U.S. Constitution, which is a felony under RCW 9A.02.010. If the court is free to reject the ordinance, the effect is to nullify the legislative intent and the intent of the tripartite government of the state itself to the deprivation of my civil rights in this proceeding.

“The function of the court in statutory interpretation is to discover the intent of the Legislature and give effect to that intent.” *Wilson v. Lund*, 74 Wn.2d 945, 947-48, 447 P.2d 718 (1968) “If a statute is unambiguous, the meaning of the statute must be derived from the actual language of the statute.” *In re Lehman*, 93 Wn.2d 25, 604 P.2d 948 (1980)

Here, the court made no attempt to discover the intent or to give effect to that intent, but to abandon the permanent intent of the language of the ordinance, and to replace it with a non-enforceable temporary intent, to my detriment in the amount of \$500,000, thereby erring as a matter of law.

The statutory analysis of the court is straight forward and well established in Washington state. There is no option of giving temporal

effect or no effect to the law when interpreting a statute or ordinance. Our courts have rehearsed the importance of statutory interpretation in many published decisions. “Our primary duty in interpreting any statute is to discern and implement the intent of the legislature.” *State v. J.P.*, 149 Wn.2d 444, 450, 69 P.3d 318 (2003)

Here, the trial court made no effort to discern or to implement the ordinance, but only to avoid applying the ordinance to the facts of our case, thereby constituting an error of law subject to denovo review.

In another case, the court said, “The starting point is the statute's plain language and ordinary meaning.” *Nat'l Elec. Contractors Ass'n v. Riveland*, 138 Wn.2d 9, 19, 978 P.2d 481 (1999) “A statute that is clear on its face is not subject to judicial construction.” *State v. J.M.*, 144 Wn.2d 472, 480, 28 P.3d 720 (2001)

The court's own reasoning was applied to nullify the force and permanent effect of the ordinance contrary to law, saying, “...the problem with ordinances is that they can always be changed. So, even assuming that the -- SeaTac has that -- takes that position today it doesn't mean they'll take that position tomorrow” VRP 413, lines 5-16. Here, the court interjected its own view of ordinances and dispensed with applying the ordinance to the value of the license application. In short, the ordinance says, retailing and manufacturing cannabis is against the law in Seatac.

The court's ruling, that can change, so it's not controlling. The problem is if cannabis is against the law in Seatac, the license has no market value until the law changes, and there is no guarantee it will change, considering the presence of the Seatac Airport. The role of the court was not to interject its own view of how the ordinance may change, but to apply the ordinance in valuing the license as if the law was permanent as required by law. RCW 35.21.550

In re State v. Armendariz, the court ruled "If the plain language of the statute is unambiguous, then this court's inquiry is at an end." 160 Wn.2d 106, 110, 156 P.3d 201 (2007) Therefore, there is no authority in the law for contemplating a different legislative intent, much less nullifying the permanent effect of the law. *In re State v. Delgado*, the court said, "just as we cannot add words or clauses to an unambiguous statute when the legislature has chosen not to include that language," 148 Wn.2d 723, 727, 63 P.3d 792 (2003), we may not delete language from an unambiguous statute: "Statutes must be interpreted and construed so that all the language used is given effect, with no portion rendered meaningless or superfluous." *Davis v. Dep't of Licensing*, 137 Wn.2d 957, 963, 977 P.2d 554 (1999) (quoting *Whatcom County v. City of Bellingham*, 128 Wn.2d 537, 546, 909 P.2d 1303 (1996)).

Since the court cannot alter the language of the ordinance, it erred by refusing to give the ordinance permanent effect, thereby deleting the permanent intent element of the ordinance in the court proceeding, to the detriment of my share of marital property in the amount of \$500,000, when the license has no present market value.

Tom Gordon's expert testimony is impeached by the plain meaning of Ordinance No. 13-1001, prohibiting land use within the Seatac City limits for any purpose in violation of federal law. Cannabis sales are against federal law. A willing buyer would not pay \$700,000 for a Seatac cannabis license application when it is against the law to use the land for such purpose under Ordinance No. 13-1001. Tom Gordon's testimony of a bonafide purchaser is impeached since he evidently failed to disclose all material facts that a willing, but not obligated buyer should know about Ordinance No. 13-1001. Tom Gordon even testified he knew of no such ordinance, evidencing he could not have informed the offeror of it if he had no knowledge of it as an "expert". VRP 191, lines 12-18

Tom Gordon did not testify that he had any cannabis license transactions in Seatac, because there are none. Given Mr. Gordon's testimony, it is apparent he fetched an offer by failing to disclose these material facts to his alleged offeror. Therefore, his testimony is contradicted by the ordinance and his testimony is impeached.

Kim's share of marital property increased proportionately in the amount of the erroneous cannabis license valuation, including all interest in our Cle Elum family home, all of the retirement, and one rental house. I was awarded one rental house with \$84,000 in equity, no retirement, and no share of our family home, which we acquired together and improved with my separate property proceeds from the sales proceeds of our Federal Way home, which I acquired prior to our marriage, all of which was specifically traced in my trial brief.

Therefore, due to the erroneous valuation of the cannabis license, the appellate court should reverse and remand to the trial court for further proceedings to redistribute the parties property consistent with the ruling of the appellate court.

Reply to Response to:

Assignment of Error No. 2

The court erred by refusing to address the issue of spousal maintenance.

Issues pertaining to assignment of error 2

1. Did the court err by refusing to address the issue of spousal maintenance? VRP page 35, line 22 to page 36, line 9

Initially, the court said it would not consider the issue of maintenance because it was waived in my response. However, the court

evidently changed its position (perhaps for due process reasons) and decided to rule on maintenance, since the court clearly addressed the issue. VRP 395-396.

The court ruled, I was voluntarily under-employed, ruling I could make \$60,000 a year, if I was not self-employed, reasoning it was my possible income, not my present income or the standard during our marriage. The imputation of my income was improper, since there was no finding that I was voluntarily underemployed to reduce my child support obligation as required by RCW 26.19.071(6), so logically it cannot be found for maintenance, since there is an intent element to be under-employed. The court ruled I was unsuccessful running my business, not that my lack of success was intentional. VRP 396 The court said I tried to have a profitable business, but some people simply cannot be their own bosses. The court ruled I was under-employed, but its reasoning does not support the finding, saying, I've tried and been unsuccessful. Moreover, I was self-employed our entire marriage. An element to determine maintenance is the standard of living during the marriage. So I contend the \$60,000 income ruling was contrary to law and the facts during our marriage. The court further reasoned that maintenance was not necessary because of the substantial assets that would be awarded to me, stating "...once all the assets are divided here, he's going to have very substantial

assets.” VRP 395, line 24 to 396 line 4. Essentially, the court reasoned that even though I'm a business failure and have a low income, I could make more if I was not self- employed, but that's not necessary because I would have substantial assets once our property was divided. Lets break this down.

My average annual income over the last three years is approximately \$27,000, but the court ruled it could be \$60,000 if I worked as an employee. My trial brief is indexed in the Clerk Papers. CP 291-306 Kim's income is \$240,000, since she signed a new contract, earning \$120/hr. See Exhibit No. 108. Clerks Papers 435 - 436

Generally, a lower income spouse is awarded a greater share of marital assets than a spouse with a substantially higher income. In our case, the opposite is true. The majority of our assets were awarded to Kim, including our Cle Elum home (equity of \$260,000 VRP 399). Despite the contradictory language cited in the deed being a bargain and sale conveyance, the court did not opine. The court disregarded all the defects in the deed which normally render deeds defective. The court agreed with Kim that conveying the property to Kim to avoid income tax was justifiable, contrary to federal law and public policy. VRP 397, line 14 to 398, line 2. Kim admitted the purpose in open court was income tax

evasion, but it did not disturb the court, despite rendering the conveyance void as a matter of law. VRP 178, lines 14-17

Kim was awarded all her retirement (valued at \$187,000 of which the court ruled \$100,000 was community, but not a dollar awarded to me), and one of our two Tacoma rental houses (with \$116,000 in equity).

The court even ruled I did not trace my \$63,000 separate property transfer from the proceeds of my separate property in Federal Way because after the transfer, I could not prove the dollars Kim withdrew were the dollars I transferred. VRP 377, line 9 to 378, line 14. In the court's view, as soon as the deposit was made a transmutation occurred. If that was true, tracing would be impossible and futile. Our accounting system does not include serial nos. of dollar bills to know which ones are deposited and which ones are withdrawn. The law merely requires reasonable degree of particularity, which I documented in my trial brief. Clerk Papers 291 - 306. The only asset awarded to me was one Tacoma rental house with equity of about \$84,000, and the tools of my "unsuccessful business" valued at \$65,000 of which \$45,000 should be considered my separate property because I have been self-employed as a mechanic since 1993, thirteen years prior to marriage when I acquired the majority of my tools. So where are my substantial assets? By process of elimination, all that remains is the cannabis license application, valued at

\$500,000 by the court. However, due to the Seatac Ordinance 13-1001, it has no market value, so the reasoning that I would have “substantial assets” once the assets are divided was impossible when the court issued its decision.

“The court reviews a trial court's award of maintenance for an abuse of discretion. In re the *Marriage of Zahm*, 138 Wn.2d 213, 226-27, 978 P.2d 498 (1999). I contend it is an abuse of discretion to rule an unmarketable cannabis license is worth \$500,000, in Seatac where cannabis sales are against the law. An award of maintenance that is not based on a fair consideration of the statutory factors under RCW 26.09.090 constitutes an abuse of discretion. I also contend that denying maintenance based on the court's prediction of what I possibly might earn if I was not self-employed constitutes an abuse of discretion because I was self-employed our entire marriage. I contend it was an abuse of discretion to rule I was under-employed when I was full time self-employed our entire marriage, since it is against the facts of our case, and based on a hypothetical set of facts. In re the *Marriage of Crosetto*, 82 Wn. App. 545, 558, 918 P.2d 954 (1996). Ultimately, the court's main concern must be the parties' economic situations post-dissolution. In re the *Marriage of Williams*, 84 Wn. App. At 268 (1996).

The first element of maintenance is the consideration of the separate and community property awarded to each spouse. My economic situation is bleak, since my award of property was based on an erroneous valuation of the cannabis license. Kim's economic situation is just the opposite, having been awarded the vast majority of our marital property.

Therefore, since the court predicated the denial of maintenance on the “substantial value” of the cannabis license, its ruling was erroneous.

Therefore, I'm asking the court to remand and reverse on the maintenance issue in compliance with the statutory elements under RCW 26.09.090.

REPLY TO RESPONSE OF:

Assignment of Error No. 3

The court erred by ruling the quit claim deed, conveying the Cle Elum family home, was a valid conveyance from the husband to the wife, as the wife's separate property.

Issues pertaining to assignment of error 3

1. Did the court err by ruling the quit claim deed, conveying the Cle Elum family home, was a valid conveyance from the husband to the wife, as the wife's separate property.

I contended the quit-claim deed should be voided by the court because it was executed to avoid a possible income tax lien, and such

conveyances are against the law and public policy. Respondent admitted this in open court and in her response brief. VRP 178 lines 14-23 Respondent Brief, pp. 26 and 27.

The respondent contends the issue of tracing was not raised at trial. On the contrary, it was emphatically argued. I presented the \$63,000 tracing argument in my trial brief and at trial. Trial Brief, pp. 3-8; VRP 373 to 378. Accordingly, it is appealable.

Therefore, the respondent's contention that the issue of tracing cannot be raised on appeal because it was not raised in the pleadings or at trial is contrary to the record. I also raised several defects in the deed rendering it void.

The deed purports to be executed for two reasons, including "to correct vesting" and "to separate community property". We took title to the property as husband and wife because we were married, so that was not a mistake. See the Bargain and Sale Deed filed as Exhibit 104A. We could not separate community property in the Bargain and Sale Deed because we did not own the property, so there was no community property to divide or separate. If it was my wife's intention to separate our community property by having me quit claim my interest to her, it failed because she did not sign the deed, so her community interest was not changed, of which I have a community property interest. Since only I signed the quit claim deed on

August 6, 2014, only my community property interest could have been transmuted into her separate estate. Her community property interest remained in tact, so I continued to have an interest in my wife's community property. This assumes the deed is legally enforceable in all other respects.

If it was our intent to correct the acquisition deed with the deed signed on August 6, 2014, and to hold her interest as her community property, then the deed at the time of acquisition would have read “my wife, holding the husband's interest as to an undivided one half interest as her separate estate” and “my wife, holding her undivided one half interest as her community property.” Why would either of us intend for my half of the property to be her separate estate and her half to be community property? It seems strange to me that either of us would have intended to hold title in such a bazaar manner.

If the deed was intended to separate community property between us, both of us must be grantors and grantees, otherwise, there is no separation or division of community property into separate estates. The deed must be signed by both spouses as community property holders to transmute the community property interest of both spouses. It is only signed by me, so the deed does not divide or separate our community

property into separate estates, so it fails to do what it expressly states is its purpose.

In addition to the above, the deed includes contradictory language in the consideration clause, stating “for and in consideration of zero (\$0.00) dollars” and then “in hand paid” both cannot be true, so the consideration clause contradicts itself and nullifies itself by its own terms, rendering the deed void for contradictory consideration.

Notwithstanding the defects in the quit-claim deed above, the court finding that it was a valid conveyance does not preclude a division of our Cle Elum property in our divorce, considering the deed was executed to avoid taxation, not in contemplation of divorce. Moreover, the court has a statutory duty to consider the nature and the extent of separate and community property in dividing our marital property according to what is just and equitable considering all our circumstances at the time of divorce.
RCW 26.09.080

The court ruled the Cle Elum property was awarded to Kim because it was conveyed to her as her separate property to protect it from an IRS lien. VRP 437, lines 8-19. This is an error of law. Both spouses are liable for community income taxes incurred during the marriage, and are recoverable from either spouse's property, as joint and several liability,

even after the marriage. In the landmark case of *United States v. Mitchell*, 403 U.S. 190 (1971), the United States Supreme Court held “A wife is personally liable for federal income tax on half of the community income realized during the existence of the community, despite the fact that the wife, pursuant to a state statute granting a wife the privilege of being able to exonerate herself from the debts contracted during the marriage by renouncing the community of gains, has renounced her community property rights after such income tax liability had already attached.”

Taxation follows ownership of income. Consequently, conveying property from one spouse to the other does not avoid a tax lien for past years during the marriage and is pointless, because community income is owned by each spouse equally. Kim knew of the potential tax liability and intentionally devised the quit claim deed to avoid it, but she is still liable under federal law, joint and severally, despite the quit claim deed to avoid any alleged tax liability during our marriage against all her property, even after divorce. Incidentally, no tax lien was ever filed during our marriage. The court's basis for awarding the family home to Kim to avoid income tax has no merit as a matter of law. VRP 437, lines 8-19 It's decision is based on a fiction that conveying property from one spouse to the other spouse protects it from community tax liability. It is an error of law to be reviewed de novo.

Therefore, for the above reasons, I'm asking the appellate court to order the quit claim deed, dated August 6, 2014 and recorded under auditor no. 201408200035 in the Kittitas County Recorder's Office, be declared null and void by the court.

REPLY TO RESPONSE TO:

Assignment of Error No. 4

The court erred by imputing the husband's income according to his rate of pay while living in Federal Way, instead of Cle Elum, and using the wife's former income prior to her present rate of pay.

Issues pertaining to assignment of error 4

1. Did the court err by imputing the husband's income according to his rate of pay while living in Federal Way, instead of Cle Elum, and using the wife's former income prior to her present rate of pay?

I contended the court erred by imputing my income for child support while I lived in Federal Way and had my business in Seatac, instead of Cle Elum.

The court ruled I was voluntarily under-employed. The respondent requests the appellate court to affirm the trial court ruling.

Respondent contends the court relied on testimony at trial of what I could earn in my occupation, alleging the absence of financial documentation to do so. Respondent's Brief at p. 30. This is false. I filed two financial

declarations. Clerks Papers 18-23, 90-96. I'm self-employed, so I do not have pay stubs. My tax returns are on the court exhibit list Clerks Papers 435-436. The testimony at court was what mechanics earn in western Washington, as confirmed by the court. VRP 362-363. Kim and I decided to move to Cle Elum to raise our family. My business is in Cle Elum. The testimony of what mechanics earn in Western Washington is not on point with the facts of our case. It was not the standard of living during our marriage.

Respondent contends if the court finds I'm voluntarily under-employed, it is mandatory that my income be imputed. I contend in reply that is not the law.

In re *Peterson*, the court reasoned as follows: The father had a law degree and worked full time as counsel for a bail bond company. 80 Wn. App. 148, 906 P.2d 1009 (1995) Because he earned less than the national average income, the trial court found that the father was voluntarily underemployed within the meaning of Wash. Rev. Code § 26.09.071(6) and imputed income to him in computing the amount of his child support payments. On appeal, the court held that the trial court erred in imputing income to the father. The court explained that under § 26.09.071(6), income was not imputed to a parent who was gainfully employed on a full-time basis unless the parent was purposely underemployed to reduce a child

support obligation. The court reasoned that because the father worked full time for a salary in his customary occupation, he was gainfully employed. Because there was no finding that he was purposely underemployed in order to reduce his child support obligation, the court held that income could not be imputed to him.

The child support statute directs the trial court to make two inquiries when considering whether to impute income. First, the trial court evaluates the parent's work history, education, health, age, and any other relevant factor to determine whether that parent is voluntarily unemployed or underemployed. RCW 26.19.071(6) If a parent is underemployed but also "gainfully employed on a full-time basis," the court must make a further determination as to whether the parent is "purposely underemployed to reduce the parent's child support obligation." If not underemployed for that reason, the parent may not have income imputed to him.

Put another way, a prerequisite to a finding of voluntary underemployment is a finding that the person is intentionally underemployed to reduce his child support obligation. RCW 26.19.071(6) No such allegation was raised at trial, in pleadings, or on appeal. The court merely opined that it believed I could earn \$60,000 a year if I moved to the westside, but was uncertain if the legislature contemplated such moves as an obligation in enacting child support. VRP 362-363

In other words, the court believed \$60,000 a year was possible if I moved to the westside, but could not rule definitively that I was obligated to do so as a matter of law. As such, the entire argument of the respondent is defective, since the finding of being voluntarily under-employed to reduce child support was never found by the court. The court ruled I lacked ability in being a successful business person, not that I was voluntarily under-employed to reduce my child support.

Therefore, the ruling that I am voluntarily under-employed was error as a matter of law, and subject to de novo review.

For these reasons, I'm asking the court to reverse the trial court decision regarding child support and to enter an order consistent with my average rate of pay in the amount of \$2,700/month gross.

CONCLUSION

Based on the aforementioned, the appellant requests the court to reverse the decision of the trial court entered on November 20, 2017, and remand before a different Judge to enter orders consistent with the ruling of the Appellate Court.

October 4, 2018.



Respectfully submitted,
Signature – James Wallace

Affidavit of Service to Parties is filed together with this Brief.

FILED

OCT 09 2018

COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By _____

Washington State Court of Appeals, Division Three

James Wallace

Appellant,

Appellate Case No. 357490

and

Kim Collins

Respondent.

Declaration of Service of
Appellant's Reply Brief

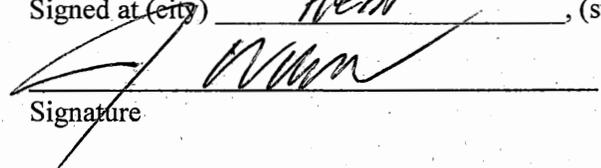
Kittitas County Superior Trial Court
No. 16-3-00124-2

I, James Wallace, declare that I sent my Appellate Reply Brief on October 4, 2018, via first class U.S. Mail to the following persons at their respective addresses.

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I declare under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

Signed at (city) Kent, (state) WA on (date) 10-04-2018.


Signature

James Wallace
Print or Type Name

ORIGINAL