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SUPERIOR COURT
KING COUNTY

No. 72264-6-I

COURT OF APPEALS, DIVISION I
OF THE STATE OF WASHINGTON

In re: Jodine Wall-Lewis (f/k/a Manago), Respondent

v.

Wendell C. Manago, Appellant

SUPERIOR COURT
King County No. 07-3-06393- KNT

BRIEF OF APPELLANT

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I. ASSIGNMENTS OF ERROR

1. Reversal is required because court set the order of child support by imputing income to Mr. Manago above his actual income in violation of RCW 26.19.071(6).

II. STATEMENT OF THE CASE

STATEMENT OF FACTS

The parties' marriage was dissolved in April 14, 2009. See Clerk's Paper No. 75 pp270-274. As a result of that dissolution, the parties shared custody of their minor children and no child support obligation was set by the court at the time of their initial dissolution. See Clerk's Paper No. 76 pp 275-282. On November 19, 2013, Jodine Wall-Lewis filed a notice of intended relocation of the child. See Clerk's Paper No. 85 pp 306-309. On June 26, 2014, this Court entered an order of Child Support. See Clerk's Paper No. 111 p.125-140. In that order, the Court imputed to Mr. Manago an income of \$3,735 (see Clerk's Papers p. 128); however, the documentary evidence shows that Mr. Manago's income was \$2,399.00 and he has never made \$44,820 a year. See Clerk's Paper No. 118 pp 154-

160. Therefore, the amount set forth in the Child Support Order is incorrect and should be vacated and a new order of child support should be entered by the trial court.

III. STATEMENT OF ISSUE

Whether the Court should vacate the child support order entered on June 26, 2014 and remand the case for further proceeding to issue a new child support order when the imputed income to Mr. Manago was greater than his actual income and there was no finding by the Court that Mr. Manago was voluntarily underemployed?

IV. ARGUMENT AND AUTHORITY

A. STANDARD OF REVIEW

The Court of Appeals reviews an order of child support for abuse of discretion. In re Marriage of Peterson, 80 Wash.App. 148, 152, 906 P.2d 1009 (1995).

ARGUMENT

A. The Court Improperly Imputed Income to Mr. Manago.

Under RCW 26.19.071(6), the trial court may impute income to a parent who is voluntarily

underemployed. The court first determines whether or not a parent is voluntarily underemployed based upon the parent's work history, education, health, age, and other relevant factors. In re Marriage of Peterson, 80 Wash.App. 148, 153, 906 P.2d 1009 (1995). "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.' " Peterson, 80 Wash.App. at 153, 906 P.2d 1009. The court may not impute income to a parent who is gainfully employed full-time unless the court finds that the parent is voluntarily underemployed and is purposefully underemployed to reduce the parent's child support obligation. RCW 26.19.071(6). In imputing income, the Washington Supreme Court has stated that a court should look at the level of employment "at which the parent is capable and qualified." In re Marriage of Sacco, 114 Wash.2d 1, 4, 784 P.2d 1266 (1990) (citing Washington State Child Support Schedule Commission, Report to the Legislature (Nov.1987), at 16-17); see also In re Marriage of

Shellenberger, 80 Wash.App. 71, 82, 906 P.2d 968 (1995).

There is no finding by the Commissioner that Mr. Manago was voluntarily underemployed whether purposely or otherwise to avoid child support. As stated above, Mr. Manago was not paying child support because he had shared custody of his minor child so he could not have been underemployed in order to avoid a child support obligation. See Clerk's Paper No. 76 pp 275-287. Without a finding that Mr. Manago was voluntarily underemployed, the Court Commissioner abused his discretion in imputing income to Mr. Manago above what he was actually making. Therefore this Court should vacate the child support order entered on June 26, 014 and remand this case back to the trial court for further proceedings regarding the issue of child support.

B. The Income Amount Used for Mr. Manago Was Incorrect.

Mr. Manago is currently self-employed and was and has been self-employed throughout the parties' marriage. He formally worked for the Austin Foundation

until December 2014 as a replacement for an employee that passed away. His average earnings for this year are \$2,399 per month. See Clerk's Paper No. 108 p.113. Mr. Manago made \$23,200 in 2013, \$14,613 in 2012 and \$7,234 in wages and other income in 2011 with a taxable IRA withdrawal in the amount of \$26,966.00 in 2011. See Clerk's Paper No. 118 pp 154-168.

This year, Mr. Manago has made an average of \$2,399 per month. See Clerk's Paper No. 118 p.154 and 112 p.141. The Court in their order dated June 26, 2014, imputed income to Mr. Manago of \$3,735, which is incorrect. Based on the records before them, his income should have been no more \$2,006 per month because this is what his average income amounted to including his IRA withdrawal. See Clerk's Paper No. 118 p. 154-168 and Clerk's Paper 112 p. 141. Mr. Manago is currently employed in a field that he has worked in for a number of years and he asks the Court to recalculate his child support obligation using his correct current gross income amount of \$2,399.00 per month or his actual average income amount of \$2,006.00 per month.

V. CONCLUSION

For the reasons stated, this Court should vacate the child support order entered on June 26, 2014 and remand this case to the trial court for further proceedings.

Respectfully Submitted this 18th day of November, 2014.

A handwritten signature in black ink, appearing to read "Harold H. Franklin, Jr.", written over a horizontal line.

Harold H. Franklin, Jr.
WSBA #20486
Attorney for the Appellant