

STATE OF MICHIGAN
COURT OF APPEALS

REBECCA ANN ROSE,

Plaintiff-Appellant,

v

WESLEY ALLEN ROSE, SR.,

Defendant-Appellee.

UNPUBLISHED

September 27, 2012

No. 303238

Ottawa Circuit Court

LC No. 06-055337-DO

Before: WILDER, P.J., and O'CONNELL and K.F. KELLY, JJ.

O'CONNELL, J. (*dissenting*).

I respectfully dissent from the majority's resolution of plaintiff's struggle to obtain the spousal support to which she is entitled. Instead, I would remand to the trial court for findings of fact and would retain jurisdiction to ensure that the matter is resolved efficiently. Given the amount of time that has passed since the original valuation of marital assets, findings of fact concerning the assets are necessary to determine the most effective enforcement mechanisms.

The trial court recognized this concern at the November 2010 hearing, when the court explained, "to the extent that a contempt action is sought for anything in excess of \$900 per month, *unless something has changed*, the court probably is not going to be inclined to hear that" (emphasis added). The court also provided plaintiff with opportunities to discover information about assets available for enforcement. Plaintiff's counsel subsequently informed the court that she believed defendant was purposefully avoiding discovery. As a result, in February 2012, although the trial court again declined to consider contempt, the court ordered defendant to participate in a debtor's examination and to respond fully to plaintiff's discovery requests.

The record before us does not indicate whether plaintiff ever sought or completed a debtor's examination of defendant. Until the debtor's examination is complete (or until plaintiff informs the trial court that defendant disobeyed the order to participate in an examination), I cannot conclude that the trial court abused its discretion in declining to consider contempt, or in declining to impose the remedies in MCL 552.27.

I would remand to the trial court for findings of fact pursuant to the debtor's examination. I would also retain jurisdiction until the trial court issued orders based upon the information received in the debtor's examination. In my view, a remand with retained jurisdiction would

result in a more efficient and effective resolution of this case than the approach adopted by the majority.

/s/ Peter D. O'Connell