

STATE OF MICHIGAN
COURT OF APPEALS

SUZANNE MARIE CHIPPS,

Plaintiff/Counter-Defendant-
Appellee,

v

GREGORY BRADFORD CHIPPS,

Defendant/Counter-Plaintiff-
Appellant.

UNPUBLISHED
February 23, 2010

No. 291755
Livingston Circuit Court
LC No. 08-040599-DM

Before: Donofrio, P.J., and Meter and Murray, JJ.

MURRAY, J. (*concurring*).

I concur in the majority opinion affirming the trial court's final judgment in this divorce action. I write separately merely to point out the perplexing situation resulting from application of Michigan imputation of income law in a case such as this.

The central question presented in both the spousal support and child support issues is whether the trial court abused its discretion in imputing to defendant income of \$113,000 a year, when during the last part of the marriage and after the divorce he made \$36,000 a year. Our Court has struggled with the standard to apply in determining this issue, in particular whether a finding of bad faith is necessary before a court can impute income for purposes of spousal support or child support. As explained by our Court in *Rohloff v Rohloff*, 161 Mich App 766, 769-776; 411 NW2d 484 (1987), earlier decisions from our Court had concluded that some evidence of bad faith or intent to avoid spousal support or child support obligations was *required* before imputation could occur. See, e.g., *Dunn v Dunn*, 105 Mich App 793, 798-799; 307 NW2d 424 (1981); *Rutledge v Rutledge*, 96 Mich App 621, 625; 293 NW2d 651 (1980); *Moncada v Moncada*, 81 Mich App 26, 27-31; 264 NW2d 104 (1978). However, after examining these and other decisions, the *Rohloff* Court concluded that although "a parties' motivation in voluntarily reducing his or her income is an appropriate factor for the trial court to consider in determining a parties' ability to pay, to the extent that *Moncada* and its progeny mandated the use of a 'bad faith test' as being dispositive, we must disagree with those cases." *Rohloff*, 161 Mich App at 775. Since *Rohloff*, most courts have stated that a trial court has discretion to impute income

whenever a parent voluntarily reduces or eliminates income or has the unexercised ability to earn, without mentioning the need for evidence of motive. *Stallworth v Stallworth*, 275 Mich App 282, 286-287; 738 NW2d 264 (2007); *Moore v Moore*, 242 Mich App 652, 655; 619 NW2d 723 (2000).¹ See, also, Michigan Child Support Formula Manual, § 2.01(G).

In our case, the parties married on June 9, 2001, and defendant was earning approximately \$121,000 working a full-time position and a contract position. At the time of the marriage, defendant was a member of the Church of God, and after the marriage plaintiff became a member as well. Toward the end of this turbulent marriage, in approximately February 2008, defendant quit both of his jobs and took a position with the Church of God PKG, earning \$36,000 per year. In this position, defendant traveled around the world proselytizing the church's views. Indeed, it was a result of defendant's choice to become employed by the Church of God PKG, as well as some of the effects emanating from the views held by members of that church, that led plaintiff to refile for divorce in March 2008. By the time the judgment of divorce was entered in April 2009, defendant had been working at the Church of God PKG for more than a year.

In light of these undisputed facts, there is no suggestion – nor is there any finding – that defendant had any improper motive when he left his higher paying positions to be employed by the Church of God PKG. In a case such as this, where a parent voluntarily reduces his or her income during the marriage, the critical factor in deciding imputation of income should be the parent's motivation. Courts must exercise caution before interfering with an employment choice made during a marriage that is based solely on how one wants to earn a living. As defendant points out in his brief, many persons – be it professionals, blue collar workers, etc. – make decisions during the course of their employment career that financially impact the family. Sometimes people decide to quit a position to make more money because either the family needs additional resources or the financial returns from employment are more significant to that individual. Other people, however, make the opposite decision. For example, many successful attorneys decide that public service is a more satisfactory position and therefore take the bench, where pay and benefits are most often much lower than what can be reaped in the private sector. See *Citizens Protecting Michigan's Constitution v Secretary of State*, unpublished order of the Court of Appeals, entered August 13, 2008 (Docket No. 286734) (Whitbeck, J. concurring). If that decision were made during the course of a marriage, one would hope that the family would adjust and continue forward on the revised family income. If a divorce eventually came down the road, it would be ludicrous to argue that income should be imputed to that individual merely because he could be making more money in a different position in the same profession.

It appears that is what has occurred here. There is no dispute regarding defendant's faith in the tenants of the Church of God PKG, and indeed his wife used to attend the Church of God. The evidence also squarely shows that defendant devoted much of his life to the teaching and

¹ However, some post-*Rohloff* cases have still indicated that an “ability to pay alimony includes the unexercised ability to earn *if income is voluntarily reduced to avoid paying alimony.*” *Knowles v Knowles*, 185 Mich App 497, 498; 462 NW2d 777 (1990), citing *Healy v Healy*, 175 Mich App 187; 437 NW2d 355 (1989) (emphasis added).

beliefs of the Church of God and Church of God PKG, and that his employment with that church was a natural and inevitable event given his devotion to that church. Although I do not doubt that the main breadwinner of any family has an obligation to earn sufficient funds to support his or her family, to say that defendant's action in this case was contrary to that proposition is not consistent with the evidence. However, because the more recent law as outlined above supports the trial court's decision, I join the majority opinion on this and all other issues.

/s/ Christopher M. Murray