

STATE OF MICHIGAN  
COURT OF APPEALS

---

TARRELL ALBERT HAGEN,  
  
Plaintiff-Appellee,

v

KIMBERLY JONES-HAGEN,  
  
Defendant-Appellant.

---

UNPUBLISHED  
April 3, 2008

No. 270930  
Wayne Circuit Court  
Family Division  
LC No. 04-403829-DO

Before: Whitbeck, C.J., and White and Zahra, JJ.

WHITE, J. (*concurring in part and dissenting in part*).

I agree with the majority that remand is necessary regarding spousal support to make the award modifiable. I also agree with the majority's affirmance of the trial court's award of spousal support.<sup>1</sup>

I disagree with the majority regarding attorney fees. I note that plaintiff filed for divorce in February 2004 and the proceedings below continued until June 2007. With the exception of two months early on in the proceedings, defendant proceeded below in propria persona and does so on appeal as well. The record supports that defendant could not afford to retain other counsel, yet her request for attorney fees to pay counsel during the several months during which she had representation below was denied. I would instruct the trial court on remand to award defendant whatever attorney fees she incurred, and an amount sufficient to gain representation on remand.

---

<sup>1</sup> I note, however, that the record does support that defendant suffers from chronic back pain and is on pain medication. Defendant, representing herself, early on in the proceedings stated to the court that she took pain medication daily, and had a bad back. The court asked defendant to explain to plaintiff's counsel off the record what her diagnosis was. The record reflects that defendant and plaintiff's counsel went out in the hallway, and plaintiff's counsel then stated on the record that defendant had shown her proof of an upcoming surgery. Defendant also stated to the court in a later proceeding, as did one of her witnesses, William Vaughn, that shortly before the Farmington Hills home was foreclosed on, she had been hospitalized for a number of days. Defendant's daughter testified that defendant had a bad back and she provided her with pain medication frequently.

I do not agree with the majority that the trial court properly denied defendant one half of the 2003 tax refund. Plaintiff made no showing in the trial court that he had even received the 2003 refund early enough so that he could apply it to pay marital bills through February 2004. The majority notes in a footnote that the record is silent as to when the 2003 tax refund was cashed, yet relies on plaintiff's testimony that he used the refund to pay marital bills, alone, to affirm the trial court, stating that defendant did not challenge this testimony during her cross-examination, when defendant did in fact challenge plaintiff whether he paid the bills. Defendant, representing herself, showed plaintiff various bills that evidence that he had not paid the marital bills through February 04. Defendant obviously did not know the method by which documents are offered and admitted into evidence.<sup>2</sup> A fair reading of the record does not adequately support that plaintiff applied the 2003 tax refund to pay marital bills through February 2004.

Finally, I note that the divorce judgment awards defendant one half of the 2004 and 2005 tax refunds, to which plaintiff admitted forging defendant's signature. The record supports that plaintiff refused to turn over those tax returns. Defendant should file a post-judgment motion in the trial court to compel plaintiff to produce the tax returns and to enforce the judgment as to those two refunds.

/s/ Helene N. White

---

<sup>2</sup> The record is replete with instances evidencing that defendant's representing herself permeated and damaged her case below. Nonetheless, the majority makes little allowance for defendant's having proceeded in propria persona. See e.g., *Burton v Jones*, 321 F3d 569, 573 (CA 6, 2003) (pleadings of petitioner appearing in propria persona are held to less stringent standards than those drafted by attorneys), and *Wimberly v Rogers*, 557 F2d 671 (CA 9, 1977) (Court of Appeals should make all allowances possible in favor of persons appealing in propria persona).