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IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF PIMA

RICK C. DOWNING,)
) 2 CA-CV 2011-0088
Petitioner,)
)
and)
) D-2004 2403
LA VANCHA DOWNING,)
)
Respondent.)
_____) Tucson, Arizona

BEFORE: HONORABLE KAREN NYGAARD

MARCH 21, 2011
PETITIONER'S PETITION TO TERMINATE
SPOUSAL MAINTENANCE

APPEARANCES:

RICK C. DOWNING, In Proper Person.

PATRICK PHILLIPE LACROIX, Attorney at Law, on
behalf of the Respondent.

Mary E. Bernal
Certified Court Reporter
Certification #50414
Pima County, Arizona

PROCEEDINGS
3-21-2011

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THE COURT: We are here on D-2004-2403, in the
marriage of Downing.

5

The parties are present.

6

Announce your appearance for the record.

7

MR. LACROIX: Good morning, Judge --

8

MR. DOWNING: Your Honor, may I go first?

9

THE COURT: Well, he needs to announce his
appearance, it is a formality. Go ahead.

10

11

MR. LACROIX: Thank you, Judge, Patrick Lacroix
for the respondent wife, present in the courtroom.

12

13

THE COURT: Okay, thank you.

14

MR. DOWNING: I am Rick Downing and I have the
papers that you needed.

15

16

THE COURT: Okay, have you seen --

17

MR. LACROIX: I did, Judge.

18

THE COURT: If I could see those, please.

19

Thank you.

20

Do you dispute that these show he's got
disability under the appropriate statute?

21

22

MR. LACROIX: No, I do not, Judge. It shows
here, I believe on the third document, it shows he has
service-connected disability. Although, that is only
part of his disability in common.

23

24

25

1 I would like to be heard on that.

2 THE COURT: Yes, go ahead.

3 MR. LACROIX: He has asked that we do two
4 things today. He has asked that we reconsider and
5 terminate spousal maintenance based on this new statute,
6 25-530, and he also raised again the issue under
7 25-337(D) where he has asked to forgive the arrears.
8 You have already ruled on that so I am not going to
9 address that.

10 THE COURT: Okay.

11 MR. LACROIX: In terms of 25-530, as I
12 mentioned last time, I think it is bad law.

13 THE COURT: Hold on.

14 Is that the wind?

15 MR. LACROIX: It is the wind.

16 THE COURT: That is very disconcerting.

17 Okay. I am sorry, go ahead.

18 MR. LACROIX: Especially what happened to Judge
19 Browning. Was it Judge Browning's chambers where the
20 window blew in a few years ago?

21 THE COURT: I can't remember for sure, but I
22 think so, yes.

23 MR. LACROIX: That's what is making me
24 nervous.

25 Anyway, the statute impermissibly contradicts

1 the statutory scheme set forth by 25-319, and it is
2 going to lead to an inequitable result. It also, I
3 think, impermissibly limits your judicial authority or
4 discretion to determine what is equitable and gives
5 unequal protection, in violation of the Fourteenth
6 Amendment, to a specific class of parties without a
7 rational basis. Because it always -- if you apply this
8 statute broadly, what you end up with is an inequitable
9 result, and we know that because before the statute, we
10 looked at all the evidence in this case, which everybody
11 admits hasn't changed, and you came up with your result.
12 Now we have got this new statute, and because of
13 problems with it, Rick is arguing to terminate his
14 spousal maintenance, and I think that is inappropriate.

15 I asked you last time to refuse to follow this
16 law because it is invalid and because I think it is
17 unconstitutional, and I think it is in derogation to the
18 statutory scheme. You suggested a real hesitancy to do
19 that, although I think it is certainly possible.

20 As an alternative, and I don't know what your
21 feeling is on that, but I think you need to apply this
22 law in a way that would make it minimally consistent
23 with the statutory scheme for spousal maintenance and
24 minimally constitutional, and you already suggested that
25 that is what you do, because the Court, as a whole,

1 regards this law to apply to more than just military
2 disability, not to Mr. Downing's Social Security
3 benefits.

4 So what I would suggest to the Court is that we
5 look at this statute and we look at its intended goal.
6 I think it is out there to recognize that people that
7 made a tremendous sacrifice for their country need to be
8 able to meet their basic financial needs before we
9 consider whether or not their income should be used for
10 paying support, financial obligations, support
11 obligations. This is the way we can do this in this
12 case.

13 You look at Mr. Downing's income, and you look
14 at his expenses, and you look to see if there is any
15 excess income after his expenses are met and whether or
16 not there is any excess income that arises from sources
17 other than military disability. If so, you can still
18 keep consistent with factors B-4 and B-5 of 25-319 by
19 using that excess income that he receives above his
20 needs to meet the support obligations.

21 Based on the evidence we have heard both at
22 trial and also a month ago, here is what we know. We
23 know he receives \$2,823 each month in VA disability,
24 which, as I said, we are not contesting falls under
25 Title 38.

1 We know that his financial affidavit shows,
2 together with debit payments, debt servicing, that he
3 has expenses each month of \$2,657. In other words, his
4 monthly expenses are about \$150 less than what he
5 receives from military disability. But we also know
6 that he receives \$1,223 each month as Social Security
7 benefits, above and beyond --

8 THE COURT: You will get your turn.

9 MR. LACROIX: Above and beyond his military
10 disability, and we know the statute doesn't apply to
11 that.

12 That means that there is more than enough
13 income available and excluded from the statute for him
14 to pay his support obligation, you found was equitable
15 under the circumstances, to La Vancha. You ordered \$500
16 a month, you ordered \$300 a month on the payments
17 towards the arrears of about \$28,000 that he owes her.

18 This is a way to take a bad law and read it
19 into a way that makes it minimally consistent with the
20 statutes that we have in the pre-existing minimum
21 constitutional.

22 THE COURT: Thank you.

23 Mr. Downing, did you want to say anything?

24 MR. DOWNING: My Social Security disability is
25 a disability, and this says very clearly --

1 THE COURT: This is -- when you say this, for
2 the record, what are you referring to?

3 MR. DOWNING: I am referring to 25-530, where
4 it says the Court shall not consider any, any, federal
5 disability benefits.

6 THE COURT: You got to read the whole sentence.

7 MR. DOWNING: Benefits awarded to the other
8 spouse for service connected pursuant to 38.

9 THE COURT: Yes.

10 MR. DOWNING: That's --

11 THE COURT: That is not Social Security.

12 MR. DOWNING: Also in Title 42, Section 407, it
13 says that this is -- Social Security is not divisible in
14 divorce court.

15 THE COURT: It is not divisible. That doesn't
16 mean it can't be considered as income for purposes of
17 spousal maintenance. Things that are divisible would be
18 like any retirement that you earned through your efforts
19 during marriage. Because it is a community-property
20 state, she would own her proportional share. That
21 doesn't apply to Social Security. I can't say you were
22 married for the whole time so she gets half your Social
23 Security, I can't do that. What I can do is consider
24 your Social Security as income for purposes of
25 determining an equitable division in terms of whether or

1 not she is entitled to spousal maintenance.

2 However, I think, as much as I like your
3 argument, and if I ran the Court of Appeals I might buy
4 it hook, line, and sinker, I am not the Court of Appeals
5 and I think I am bound by the terms of the statute. I
6 don't think I am in a position to find it
7 unconstitutional. I certainly want you to make your
8 record for appeal because I think that this is something
9 that has got to go up.

10 Here is what I am inclined to do. The
11 effective date of this was --

12 MR. DOWNING: July 29th.

13 THE COURT: What? July --

14 MR. DOWNING: July 29th.

15 THE COURT: July 29th of 2010?

16 MR. DOWNING: Yes.

17 THE COURT: Do you dispute that?

18 MR. DOWNING: Correct.

19 MR. LACROIX: I don't know if January 28th,
20 29th, or 30th -- July, excuse me.

21 THE COURT: Whatever was owing through the end
22 of July, is still owing because I am not going to apply
23 this statute retroactive, there is no indication that it
24 was to be applied retroactively. So whatever judgment
25 was owing through July of -- I think the law is clear

1 that any modification occurs as of the first day of the
2 following month.

3 Any judgment that would be due to Ms. Downing
4 that accrued prior to the end of July, you still owe
5 that, okay.

6 As to spousal maintenance from August 1st
7 forward, I think we have to -- I think I am precluded
8 from considering his, you know, Title 38 -- I am sorry,
9 Chapter 11 -- yes, Title 38 disability, and -- remind
10 me, do you get Social Security?

11 THE RESPONDENT: Yes.

12 THE COURT: How much do you get?

13 THE RESPONDENT: Around 575

14 THE COURT: Okay. So I think we can talk
15 about -- let me finish and then I will let you speak.

16 I think we can talk about a modification that
17 would be effective August 1st, and that would -- you
18 know, any modification, because I can't, by operation of
19 law, I can't -- I mean I cannot change the statute.
20 Whether I agree with it or not is irrelevant.

21 MR. LACROIX: Could I be heard very quickly on
22 this?

23 THE COURT: Absolutely, because I want you to
24 make your record.

25 MR. LACROIX: Thank you.

1 In terms of the date of the modification,
2 Mr. Downing filed his petition to modify on December
3 8th, I believe, of 2010. To me that would mean the
4 soonest the modification would take place would be the
5 first day of the month following that petition to
6 modify, that would be January 1, 2011. In terms of
7 whether or not -- I understand --

8 THE COURT: Let me stop you for just a second.

9 MR. LACROIX: Sure.

10 THE COURT: Because I think this was brought to
11 the Court's attention by Mr. Clark at some earlier
12 point.

13 MR. LACROIX: With an untimely motion to
14 reconsider, and had he filed for a modification at that
15 time, I think then you would be right, it would go back
16 to that earlier period of time, I think it was October,
17 as opposed to December.

18 THE COURT: Just a second.

19 MR. LACROIX: Sure.

20 THE COURT: Did you want to add anything?

21 MR. LACROIX: Two other things.

22 You know, I again ask you to consider refusing
23 to apply this law, or at least for choosing to apply
24 this law so broadly. You think about this law, it leads
25 to absolutely absurd results. I mean, just like what we

1 have here today, where Mr. Downing, almost 4,000 --
2 \$5,000 a month in disability income, La Vancha has, I
3 think, about a thousand dollars in monthly income. You
4 looked at the facts in the 2-day trial and said, you
5 know, spousal maintenance is appropriate here under the
6 circumstances.

7 I imagine, if we change it a little bit, and
8 all the sudden La Vancha was earning \$6,000 a month, and
9 now Mr. Downing, under the statute the way you are
10 applying it, would be able to seek spousal maintenance
11 from her because you wouldn't be able to consider his
12 disability income, you would only have \$1,000, \$1,200 a
13 month. That surely can't be the intended result, and
14 this Court can apply that law. Among other things, it
15 will put La Vancha out on the street without enough
16 money to meet her basic needs, where Mr. Downing has
17 income sufficient to meet his own reasonable needs and
18 pay her expenses.

19 I just don't think -- I mean, it cannot be the
20 intended -- if you put all these statutes together, it
21 does not make sense.

22 THE COURT: I agree, I don't like the law. I
23 think it's -- I think it's probably unconstitutional, or
24 at least there is a conflict between 319 and 530, I
25 mean, clearly.

1 MR. LACROIX: Let me take this up to the Court
2 of Appeals, or let Mr. Downing take this up to the Court
3 of Appeals.

4 THE COURT: Well, here is the problem -- let me
5 address the modification date first. We are all imputed
6 with knowledge of what the law was. I frankly was not
7 actually aware that this law had been passed, until -- I
8 try to stay updated on things, but I am imputed with
9 that knowledge, and I think if I made a decision that
10 was based on an erroneous construction of the law, that
11 it is my job to fix that. So I think that the
12 modification date has to be April -- I mean April --
13 August, excuse me, the wind is really distracting me,
14 has to be August 1st, 2010. Whether I was actually
15 aware of the law or not, it was the law and I am imputed
16 with knowledge of it.

17 That's my ruling on that.

18 I will further find nothing in the statute that
19 indicates it was intended to be applied retroactively so
20 it would not affect any spousal support obligation which
21 accrued prior to that date.

22 Now, as to the rest of it, like I said, I agree
23 that it doesn't make any sense, but the legislature, in
24 its infinite wisdom, thought it did, and until the Court
25 of Appeals tells me I am wrong, which I sincerely hope

1 they do, I think I have to follow the law, because I
2 can't make a blatant finding that it is
3 unconstitutional. I can make a finding that construing
4 it in conjunction with 25-319 is impossible, but, you
5 know, the plain language of 530 says I cannot consider,
6 you know -- and it says, in determining whether to award
7 spousal maintenance or the amount of any order of
8 spousal maintenance, the Court shall not consider any
9 federal disability benefits awarded under the
10 appropriate federal statute, and --

11 MR. LACROIX: I am not asking you to consider
12 it for that, though, I am asking you to consider it to
13 meet his expenses, but then the income he has above and
14 beyond his financial expenses, which are all on Exhibit
15 AG, and then applying that income towards his support
16 obligation, I think that is consistent with the statute,
17 but reading it in a way that is minimally constitutional
18 and minimally cohesive with 25-319.

19 At the very least I think we need to talk
20 about, if he only has \$1200 a month and she only has the
21 Social Security income that she just testified to, what
22 is the modified amount he sought, a modification going
23 forward, should it stay 500 or should it be reduced
24 based on the change in circumstances that is the
25 statute.

1 THE COURT: And they were married for a long
2 time, right?

3 MR. LACROIX: About 20 years.

4 THE COURT: Okay.

5 Sir?

6 THE RESPONDENT: 19.

7 MR. DOWNING: Just based on what is written
8 there on my spending right now, I live -- I have a
9 10-year-old car. I live in a really, really, really
10 crappy apartment and I don't want to live there forever.
11 I plan to live in a nicer place that is going to cost
12 more money. I have a wife that is sick, she is not
13 working, she works temporary. She has got a condo
14 payment that she has to make the payments on, my name is
15 on it. Those payments are going to be made, and there
16 just isn't enough money for La Vancha.

17 La Vancha is in this position because
18 throughout the marriage La Vancha refused to work. I
19 kept telling her, you have got to go to work because you
20 have to think about if this marriage doesn't last
21 forever, and she wouldn't do it. She went to work in
22 Lion County as a substitute teacher and she lasted 4
23 days and said I don't want to do this anymore. We lost
24 our house because of that. I couldn't make the
25 payments. We had an 8-percent loan, and that's why I

1 had to move.

2 THE COURT: Okay.

3 MR. DOWNING: I have been bending over
4 backwards to help her, her entire -- since I have known
5 her.

6 THE COURT: Let me tell you what I would like
7 to rule and then I will listen to arguments from either
8 side.

9 The difference in income, if I fail to consider
10 the federal disability benefits, difference in income is
11 \$200 a month, right? About?

12 MR. DOWNING: Right.

13 THE COURT: I propose modifying the spousal
14 maintenance to one-half of that, which is \$100 a month,
15 effective August 1st, 2010. Either side is free to
16 appeal. This needs to go to the Court of Appeals,
17 because this -- the state of the law is, I am in an
18 impossible position here because I cannot reconcile the
19 two statutes. But I understand your argument. So that
20 would reduce your obligation to pay spousal maintenance
21 to \$100 a month, effective August 1st.

22 MR. DOWNING: Okay.

23 THE COURT: I think that's as fair as I can be
24 under the circumstances, given the appalling
25 inconsistency with the law.

1 MR. DOWNING: Mrs. Downing is living with
2 another man that is totally supporting her.

3 MR. LACROIX: I would like to object to the
4 testimony, we are talking about argument.

5 I get a much different number if I look at her
6 575 net from Social Security and then I look at his
7 11 --

8 THE COURT: I thought you said she got about a
9 thousand and he got about 1200?

10 MR. LACROIX: I misstated.

11 MR. DOWNING: She also works.

12 MR. LACROIX: What we --

13 THE COURT: Well, I got, I mean, the difference
14 is \$200, so if he pays her a hundred, they are basically
15 on equal terms. I don't like it, frankly, I know nobody
16 likes it, it is an impossible situation for everybody,
17 but I don't know what else to do. That seems to be the
18 most fair thing to do under these circumstances, and I
19 pray for guidance from the Court of Appeals for future
20 cases.

21 MR. LACROIX: Two other things --

22 THE COURT: I know that this isn't the only
23 case in this courthouse --

24 MR. LACROIX: No, no --

25 THE COURT: -- that is going to go up.

1 MR. LACROIX: No, this is a new statute and a
2 really problematic one, I understand that.

3 There are still the payments, he said he has
4 been trying his best to support her, but he's still --
5 he really hasn't paid any support -- much support, to
6 his \$28,000 in arrears.

7 THE COURT: You are entitled to judgment.

8 MR. LACROIX: You ordered payments already,
9 \$300 a month on those arrears. I would like to ask that
10 those arrears increase since he has more available
11 income to pay off the arrears.

12 THE COURT: Here is the problem. I can't do a
13 wage assignment on his Social Security benefits. You
14 can only get that after he has converted --

15 MR. LACROIX: I understand.

16 THE COURT: So I think all I can do is give you
17 a judgment and you have to execute the judgment under
18 the civil rules.

19 MR. LACROIX: Your July 29th ruling, 2010,
20 orders him to pay, in order to purge of the contempt you
21 found him to be in for failing to pay for the 5 years,
22 orders him to pay \$300 a month towards his arrears. All
23 I am asking now is that it increase so that at least
24 La Vancha can get this debt paid off by him and still
25 meet her financial needs.

1 THE COURT: Well, I don't think I can find
2 him -- has he been paying 300?

3 MR. LACROIX: Has he been paying the 300? Not
4 since December 2010.

5 THE COURT: Prior to that he was?

6 MR. LACROIX: From the date of your ruling
7 through July through December 2010, he did pay on those
8 arrears, from December 1, 2010, to present.

9 THE COURT: I will leave the purge order in
10 effect as it is.

11 MR. DOWNING: Pardon me?

12 THE COURT: You do still -- you know what,
13 spousal maintenance you owe prior to the law change --

14 MR. DOWNING: Right.

15 THE COURT: You still owe that, okay, you have
16 got to pay it off. And last summer I ordered that you
17 do that at the rate of \$300 a month --

18 MR. DOWNING: Right.

19 THE COURT: To purge yourself of contempt.

20 MR. DOWNING: Right.

21 THE COURT: I am going to order that that
22 remain in effect.

23 MR. DOWNING: Okay. So it is 400.

24 THE COURT: Yes, a hundred plus three. Okay.

25 MR. LACROIX: One other thing set for today was

1 the continuation of the contempt hearing from last
2 February, but you said you would rule on it after the
3 hearing today. The defendant, among other things, said
4 he could provide proof that he -- that he set La Vancha
5 the beneficiary of \$20,000 life insurance.

6 THE COURT: That life insurance issue.

7 MR. LACROIX: And the other issue --

8 MR. DOWNING: There is going to be a time when
9 I am done with her, excuse me for being blunt, but it's
10 been 7 years, when do I get my life back?

11 THE COURT: Okay. I think that -- wasn't that
12 part of the decree?

13 MR. LACROIX: It was.

14 THE COURT: See, a deal is a deal. If you
15 agree to that in the decree, or if the Court --

16 MR. DOWNING: Okay, that's fine, I understand.

17 THE COURT: Then the decree -- it is too late
18 to appeal that now.

19 MR. DOWNING: I am not going to. I also am not
20 going to die so it is moot, because I told my family,
21 put me on life support if she is still alive, so --

22 THE COURT: But you still have to provide proof
23 that she --

24 MR. DOWNING: I did, I sent it to the -- I sent
25 it to the -- let me see if I have it here, and this is

1 the letter that -- I just got the statement this
2 Saturday.

3 THE COURT: Just go ahead and show it to me.

4 MR. LACROIX: It says here --

5 THE COURT: If I could look at it.

6 MR. DOWNING: Have at it, Perry Mason.

7 THE COURT: Okay, so they sent you the new form
8 and you are going to send that in. It says the form you
9 provided is outdated, the correct form is enclosed.
10 You are going to send in the correct form,
11 right?

12 MR. DOWNING: Right.

13 THE COURT: Okay. And then, once you meet
14 whatever requirements they set forth, you can reduce the
15 amount of life insurance to 20,000, is that what the
16 decree says?

17 MR. LACROIX: That's right, 20,000 as long as
18 spousal maintenance is still approved.

19 MR. DOWNING: If I ever win the lottery and
20 give her \$25,000, would that end that then, I would be
21 in compliance with everybody, right?

22 THE COURT: If you paid the --

23 MR. DOWNING: The lottery --

24 THE COURT: It is not quite that simple.

25 MR. DOWNING: The lottery, of the past and the

1 interest, right?

2 THE COURT: Probably, I mean.

3 MR. DOWNING: Okay.

4 THE COURT: I think she would probably accept
5 that.

6 MR. LACROIX: I certainly suggest you talking
7 to me if you win the lottery and are in the situation
8 that --

9 MR. DOWNING: I certainly assure you if I win
10 the lottery, I am going to spend every damn dime of it
11 before I talk to you.

12 THE COURT: Mr. Downing, I am really trying
13 hard to be fair, but I really do --

14 MR. DOWNING: I know --

15 THE COURT: I do expect people --

16 MR. DOWNING: I understand.

17 THE COURT: I do expect people in my courtroom
18 to be courteous to each other.

19 MR. DOWNING: I'm sorry. Yes.

20 THE COURT: Okay.

21 MR. DOWNING: Yes.

22 THE COURT: This is a court of law, not a back
23 alley.

24 MR. DOWNING: That's right.

25 THE COURT: Okay.

1 All right. You need to do what this says to
2 do, okay, send in the new form, provide Mr. Lacroix with
3 a copy of it. Just send him a copy, you can mail it in,
4 okay. And when you get a response from him, send him
5 another copy. If he feels like he needs a review
6 hearing, you can do it by telephonically requesting a
7 review hearing anytime, let's say, within the next 90
8 days, okay.

9 I will let you keep this.

10 MR. DOWNING: You sure you don't want these?

11 THE COURT: If they are extras, I will keep
12 them, sure.

13 MR. DOWNING: Yes, then you can --

14 THE COURT: I will keep them with my bench
15 notes.

16 MR. LACROIX: He was supposed to bring this
17 information in today. He was supposed to pay on the
18 arrears. Frankly, he should have paid on the actual
19 maintenance itself. We have had to come back into court
20 numerous times, requested our attorney's fees because of
21 that. That was, I think the last -- that was the last
22 issue.

23 MR. DOWNING: I already paid attorney's fees,
24 2500 bucks.

25 THE COURT: Just a second.

1 In terms of the -- I have to consider all the
2 factors here. He actually, in terms of my ruling,
3 although I am not happy with it, he has prevailed on the
4 modification argument. So I think it would not be
5 appropriate to award attorney's fees at this time. But
6 if there is future noncompliance with my orders, then I
7 will award attorney's fees as a sanction for that. So
8 please don't ignore my orders, okay?

9 MR. DOWNING: I won't.

10 MR. LACROIX: 25-3019 says two criteria, one is
11 the financial disparity between the parties, the other
12 is the reasonableness. You are saying you found it
13 reasonable in terms of his request to modify, but
14 certainly his contempt wasn't reasonable, certainly the
15 refusal, even to this day, to submit the insurance
16 information has to be reasonable, and poor La Vancha has
17 to come through with this, now the fourth hearing we
18 have had on this one issue, she has to pay me to be
19 here.

20 THE COURT: And you are worth every penny.

21 MR. LACROIX: Thank you.

22 Given the financial disparity alone, I think
23 25-324 merits an award of attorney's fees. I would like
24 to ask you to reconsider.

25 THE COURT: I will think about it, okay, but

1 because he prevailed -- I mean, I understand both sides
2 here. He did prevail on the legal issues and I am
3 disinclined to award attorney's fees at this point. I
4 have awarded them in the past, any past award stands.

5 Yes, sir?

6 MR. DOWNING: So if I were to pay her the money
7 that I owe her back and I got it all paid off, then I
8 could stop, right?

9 THE COURT: Well, you still owe her \$100 a
10 month in spousal maintenance.

11 What you might want to do, even though you said
12 you didn't want to, you might want to talk to
13 Mr. Lacroix because you may be able to come to some sort
14 of resolution. I am sensing, in my psychic -- because I
15 have a crystal ball back here, I am sensing what you
16 want most of all is to have the relationship severed,
17 and I think what she wants is to know that she has some
18 financial security. So maybe if the two of you talk,
19 you can come to a meeting of the minds where you can
20 both resolve this, which would be in everybody's best
21 interest.

22 MR. DOWNING: Yes --

23 THE COURT: Let me tell you one more thing.
24 Don't be stubborn, because, you know, that just gets
25 you, like the old saying, when you find yourself in a

1 hole, stop digging.

2 MR. DOWNING: Yes.

3 THE COURT: Well, there you go.

4 MR. DOWNING: And the amount is the total
5 amount that I have to pay?

6 THE COURT: It is a calculated sum. I don't
7 know off the top of my head.

8 MR. DOWNING: Is it \$25,000 or is it \$20,000?

9 MR. LACROIX: It is 28,500, plus attorney's
10 fees of \$2,500.

11 MR. DOWNING: I already paid that.

12 THE COURT: To him?

13 MR. DOWNING: Yes.

14 MR. LACROIX: No, you didn't.

15 MR. DOWNING: Yes, I did.

16 MR. LACROIX: Well, we can clarify that later.

17 THE COURT: I am sure there will be records.

18 MR. DOWNING: And I can prove it.

19 THE COURT: Okay, if you can prove it, you can
20 show that to him, okay, I mean there is going to be
21 documentation on those issues. That's not an issue of
22 argument, that is just an issue of fact.

23 MR. DOWNING: Okay.

24 THE COURT: So if you guys want to, you know,
25 chat about this, I think that would be in everybody's

1 best interest. You don't need to do it now, but I would
2 urge everybody to be reasonable, because this -- you
3 really don't want to be coming back here every 6 months
4 for the rest of your life.

5 MR. DOWNING: I don't want to come back here
6 ever. I think you are a wonderful person, but, please.
7 Now, can the money that I gave her for August,
8 September, October, and November be counted towards
9 these, the \$400?

10 THE COURT: Yes, yes, you get credit for
11 everything that you have paid.

12 MR. DOWNING: Actually --

13 THE COURT: Everything you paid, and the
14 effective date of the modification is August 1st, as of
15 August 1st, you owe \$100 a month, plus 300 in arrears.
16 And so anything that you have paid since August 1st you
17 get credit for, absolutely.

18 MR. DOWNING: Okay. So --

19 THE COURT: Okay.

20 MR. DOWNING: So I can subtract that, I can,
21 like this month I wouldn't have to because I have to use
22 this money up first and then --

23 THE COURT: Remember, though, Judgments accrue
24 interest at 10 percent, and Mr. Clark made a very
25 compelling argument that 10 percent is unreasonable

1 because the legislature passed that statute when the
2 interest rate was 17 -- but they haven't changed it so I
3 am bound by it, that's the law, just like your statute
4 is the law.

5 MR. DOWNING: \$110.

6 THE COURT: Well, it is 10 percent per annum,
7 per year, so if you owe her a thousand dollars, each
8 year it would be an extra hundred, okay.

9 All right, we are adjourned, thank you. I
10 really hope you work something out.

11 (PROCEEDINGS CONCLUDED.)

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REPORTER'S CERTIFICATE

STATE OF ARIZONA)
 : SS
COUNTY OF PIMA)

I, Mary E. Bernal, do hereby certify that as an Official
Machine Shorthand Certified Reporter for the Superior
Court of Pima County, Arizona, the hearing of the
foregoing entitled case that the proceeding held that I
have transcribed from FTR into typewriting, and that the
foregoing typewritten matter contains a full, true and
correct transcript of FTR so transcribed by me as
aforesaid.

Mary E. Bernal
Certified Court Reporter
Certification #50414