

GUEST COLUMN

The importance of intent in determining voluntary impoverishment

What is voluntary impoverishment? According to Maryland case law, a person is voluntary impoverished when they have “made the free and conscious choice, not compelled by factors beyond his or her control, to render himself or herself without adequate resources.” *Goldberger v. Goldberger*, 96 Md. App. 313, 327, 624 A.2d 1328 (1993).

By Carol G. Cooper, Esq.

In *John O. v. Jane O.*, 90 Md. App. 406, 421, 601 A.2d 149 (1992), the Court of Appeals had included that the act “to reduce oneself to poverty” had to be done “with the intention of avoiding child support or spousal obligations.”

That additional requirement was then rejected as “too narrow” in *Wills v. Jones*, 340 Md. 480, 494, 667 A.2d 331 (1995). The Court of Appeals clarified that “a parent who has become impoverished by choice is ‘voluntarily impoverished’ regardless of the parent’s intent regarding his or her child support obligations.” *Id.*

Nevertheless, the factors considered by the court in determining whether voluntary impoverishment has occurred suggest that a party’s intentions regarding child support or spousal obligations are relevant. These factors are as follows:

- current physical condition,
- respective level of education,
- the timing of any change in employment or other financial circumstances relative to the divorce proceedings,
- the relationship between the parties prior to the initiation of the divorce proceedings,
- efforts to find and retain employment,

- efforts to secure retraining if that is needed,
- whether he or she has ever withheld support,
- past work history,
- where the parties live and the status of the job market there, and
- any other considerations presented by either party.

John O., 90 Md. App. at 422, 601 A.2d 149.

Although the intention to avoid one’s support obligations is not required for a finding of voluntary impoverishment, if that intention is found, it becomes very simple for a court to make a finding of voluntary impoverishment.

The more difficult cases arise where there are other reasons for the reduction of income. Most case law on voluntary impoverishment stems from cases where the appellate court found that the lower court erred in finding that a party was voluntarily impoverished.

For example, in *Malin v. Mininberg*, 153 Md. App. 358, 837 A.2d 178 (2003), the husband chose to leave his lucrative career in medicine and pursue a career in

business because he suffered from a substance abuse problem. The Court of Special Appeals focused on the intent and purpose behind husband’s decision.

“[A]lthough the intent, in order to constitute voluntary impoverishment, need not be to avoid paying one’s child support obligation, the intent and purpose in making a change in employment must nonetheless be actually to lower the level of income.” *Id.* at 402, 837 A.2d 178.

The Court of Special Appeals found

that husband’s decision was not made for the purpose of lowering his income, but was made for the purpose of preserving his health and well-being. Therefore, husband was not voluntarily impoverished.

Other examples involving a reduction in income that was not found to amount to voluntary impoverishment include the following:

Wills v. Jones, 340 Md. 480, 667 A.2d 331 (1995): A father’s incarceration resulted in a drop in income,

Moore v. Tseronis, 106 Md. App. 275, 664 A.2d 427 (1995): A father relocated from Baltimore City to Garrett County, his new wife’s original home, causing a significant drop in income,

Stull v. Stull, 144 Md. App. 237, 797 A.2d 809 (2002): Although a father had caused his discharge from work – which in turn caused a reduction in income, his intent was not to become impoverished,

Gordon v. Gordon, 174 Md. App. 583, 923 A.2d 149 (2007): The appellate court upheld the trial court’s finding that a wife’s reduction in her annual income from \$120,000 to \$25,000 was a “career move” and not “done for the purposes of this litigation,” and

Lorincz v. Lorincz, 183 Md. App. 312, 961 A.2d 611 (2008): A mother left graduate school, but received a monthly student stipend to attend law school without obtaining a job during the academic year.

In short, even if a person directly or indirectly causes their income to drop or purposely reduces their hours, they likely will not be considered voluntarily impoverished unless the primary purpose of their actions was to make less money than they are able.



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