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COURT OF APPEALS OF WISCONSIN  
DISTRICT III

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Jonathan E. DeBauche and Nathaniel D. DeBauche  
Plaintiffs-Respondents,

-vs-

Case No.: 2010-AP-2081  
Circuit Court

David D. DeBauche  
Defendant-Appellant,  
and

Case No: 2010-CV-853

Wisconsin Department of Corrections  
Garnishee.

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**RESPONDENTS' BRIEF**

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Appeal from the Circuit Court of Brown County  
Honorable William M. Atkinson

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**STATEMENT ON ORAL ARGUMENT**

**AND PUBLICATION**

Oral argument is not necessary as the Respondent's brief will fully present and meet the issues on appeal and develop the theories and legal authorities on its side so that oral argument would be of such marginal value that it does not justify the additional expenditure of court time or costs to the litigants.

Publication is not requested.

**STATEMENT OF THE CASE**  
**AND STATEMENT OF FACTS**

On May 4, 2006, an Oconto County jury convicted Appellant David DeBauche (hereinafter, “David”) of feloniously and intentionally shooting and killing Amy DeBauche, his estranged wife, and her parents. (R10: p.9-10).<sup>1</sup> The murders occurred on August 7, 2005. (R10: p.9). The day after David was convicted of the homicides, the court handling the Amy DeBauche Brown County estate proceeding, Case No. 05-IN-145, ordered David to turn over all of his assets. (R8: p.27-29). The order specifically referenced David’s bank accounts, brokerage accounts, stocks and bonds. (R8: p.27-29). On July 13, 2006, the court handling the estate proceeding entered an order that David unlawfully murdered his wife Amy. (R8: p.2, para. 6). In Wisconsin, a murderer is not permitted to profit from his or her crime, thereby being precluded from receiving any of the decedent’s estate. Hackl v. Hackl (In re Estate of Hackl), 231 Wis. 2d. 43, 48, 604 N.W.2d 579 (Ct. App. 1999).

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<sup>1</sup> In Respondent’s brief, an “R” citation signifies the record, the number immediately following signifies the specific document within the record, and the page number (“p.”) and paragraph (“para.”) follow if applicable.

A wrongful death suit was filed in Brown County as Case No. 06-CV-1848 (hereinafter, the "Wrongful Death Suit") which resulted in two judgments being entered on March 13, 2007 in favor of the respondents, Jonathan DeBauche and Nathaniel DeBauche, Amy DeBauche's children (hereinafter, collectively the "Children"). (R10: p.11-12). The sum total of the Wrongful Death Suit judgments was \$418,506.00, and was split equally between the Children (hereinafter, collectively the "Judgments"). (R10: p.11-12).

On September 14, 2007, a garnishment action was filed using the Wrongful Death Suit case number (hereinafter, the "1848 Garnishment Action"). (R8: p.37-42). The 1848 Garnishment Action named Kelly Habermehl & Bushaw, S.C. (hereinafter, "Attorney Kelly") as a garnishee defendant. (R8: p.37-42). The 1848 Garnishment Action demanded that Attorney Kelly surrender to the court certain property owned by David, namely a Procter & Gamble check in the amount of \$13,570.95, payable to David D. DeBauche, c/o Attorney Kelly (hereinafter, the "P&G Check"), and a Procter & Gamble stock certificate Number CC1261186, CUSIP #742718 10 9, for 730 shares of common stock, in the name of David D.

DeBauche (hereinafter, the “P&G Stock”). (R8: p.40). On November 27, 2007, the court ordered the turnover of the P&G Check & P&G Stock as prayed for in the 1848 Garnishment Action and the assets were turned over to Hanaway Ross on behalf of the Children. (R8: p.68, para.12).<sup>2</sup>

Due to the procedural error of filing the 1848 Garnishment Action in the Wrongful Death Suit, as opposed to bringing the garnishment action as a separate proceeding, which error was discovered after November 27, 2007 when the assets were ordered turned over to Hanaway Ross, the order entered in the 1848 Garnishment Action was vacated and the garnishment aspect of the case was refiled on February 22, 2008 as Brown County Case No. 08-CV-478 (hereinafter, the "478 Garnishment Action"). (R8: p.66-70).<sup>3</sup> Due to the P&G Check and P&G Stock being in the possession of

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<sup>2</sup>See R8: p.66-70, whereby a court order references the 1848 Garnishment Action November 27, 2007 order for turnover of assets. *See also* R8: p.7-8, whereby Attorney Andrea L. Olmanson, Assistant Legal Counsel for the Wisconsin Department of Corrections, states in paragraph 36 that Attorney Kelly turned over the P&G Stock and P&G Check to Hanaway Ross Law Firm. While the actual November 27, 2007 Order for Case No. 06-CV-1848 is not specifically part of the appellate record, this brief references that the aforementioned order was entered and effective for a period of time (from 11-27-07 to 2-15-08) for the purpose of explaining how the P&G Check and P&G Stock came into the possession of the Hanaway Ross Law Firm.

<sup>3</sup>See R8: p.66-70, whereby paragraph 12 clarifies that a previous vacation of the 1848 Garnishment Action November 27 2007 order does not preclude the court entering another order. The full text of the aforementioned order is on page 9 of this appellate brief.

Hanaway Ross at the time of filing, the 478 Garnishment Action named Hanaway Ross as a garnishee defendant. (R8: p.66).<sup>4</sup> On January 13, 2009, the court entered an Order for the 478 Garnishment Action and ordered the turnover of said assets. (R8: p.66-70).<sup>5</sup>

On approximately March 25, 2010, Hanaway Ross learned that David had significant cash assets in his prison account(s) with the Wisconsin Department of Corrections (hereinafter, the "Significant Cash Assets"). (R2: p.1-3; R11: p.2). On or about March 25, 2010, the amounts remaining due and owing on said Judgments to each child, including accrued interest to such date, was \$206,202.85. (R2: p.2, para. 7). In order to take possession of the Significant Cash Assets in David's prison account for the purpose of paying down the Judgments, a new garnishment action was filed, namely, Brown County Case No. 10-CV-853, naming the Department of Corrections as the garnishee defendant (hereinafter, the "853 Garnishment Action"). (R1; R2).

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<sup>4</sup>See R8: p.66, which is the Order entered for the 478 Garnishment Action and names Hanaway Ross, S.C. as Garnishee Defendant in the caption.

<sup>5</sup> Indeed, due to the original procedural error of filing the garnishment action under the Wrongful Death Suit case number, this is the second time that the court would order the turn over of the same assets, the P&G Stock and P&G Check, to the Children in partial satisfaction of the Judgments.

A decision was rendered July 26, 2010 and entered July 27, 2010 in the 853 Garnishment Action whereby the Brown County Circuit Court (hereinafter, the “Trial Court”) granted garnishment of the Significant Cash Assets in David’s prison accounts as prayed for in the 853 Garnishment Action complaint (hereinafter, the “853 Garnishment Decision”). (R24: p.1-2). David's appeal in this appellate proceeding concerns and is limited to the 853 Garnishment Decision.<sup>6</sup>

## **ARGUMENT**

### **STANDARD OF REVIEW**

The “fairness analysis underpinning the application of issue preclusion is committed to the trial court’s discretion.” Ambrose v. Cont’l Ins. Co., 208 Wis. 2d 346, 355, 560 N.W.2d 309, 313 (Ct. App. 1997), *citing to* Michelle T. v. Crozier, 173 Wis. 2d 681, 698. 495 N.W.2d 327, 335 (1993). While issue preclusion is normally addressed to the discretion of the trial court, “[w]hen reviewing a court’s discretionary determination involving a question of law, [the appellate court reviews] the question of law de novo and reverse[s] if the exercise of discretion is based on an error

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<sup>6</sup>David’s appellate brief is hereinafter referred to as “David’s Brief.”

of law. Ambrose, 208 Wis. 2d at 356, *citing to* Berg v. Marine Trust Co., 141 Wis. 2d 878, 887, 416 N.W.2d 643, 647 (Ct. App. 1987).

An appellate court will not disturb a circuit court's discretionary decision unless an erroneous exercise of discretion is shown. *See, e.g.*, Hedtcke v. Sentry Ins. Co., 109 Wis. 2d 461, 471, 326 N.W.2d 727 (1982). An erroneous exercise of discretion results "if the record indicates that the circuit court failed to exercise its discretion, if the facts of record fail to support the circuit court's decision, or if this [appellate] court's review of the record indicates that the circuit court applied the wrong legal standard . . . ." *Id.* at 471-72. A discretionary decision will be upheld by the appellate court absent an abuse of discretion. Johnson v. Johnson, 78 Wis. 2d 137, 143-44, 254 N.W.2d 198 (1977).

A trial court's determination that assets were concealed constitutes a finding of fact. A trial court's findings of fact will be affirmed unless they are clearly erroneous. Wis. Stat. § 805.17(2) (2010).<sup>7</sup> Put another way, the trial court's findings will be affirmed unless they are against the great

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<sup>7</sup>Wisconsin statutes that are referenced in Respondents' Appellate Brief are to the 2010 year version unless otherwise indicated.

weight and clear preponderance of the evidence. Noll v. Dimiceli's, Inc., 115 Wis. 2d 641, 643, 340 N.W.2d 575 (Ct. App. 1983).

**I. ISSUE PRECLUSION IS NOT APPLICABLE TO SEPARATE GARNISHMENT ACTIONS**

David's appeal states that issue preclusion bars the validity and effect of the 853 Garnishment Decision.<sup>8</sup> "Issue preclusion 'has the dual purpose of protecting litigants from the burden of relitigating an identical issue, in certain circumstances, and of promoting judicial economy by preventing needless litigation.'" Amber J.F. v. Richard B., 205 Wis. 2d 510, 517, 557 N.W.2d 84 (Ct. App. 1996). Issue preclusion "refers to the effect of a judgment in foreclosing relitigation in a subsequent action of an issue of law or fact that has been actually litigated and decided in a prior action." Northern States Power Co. v. Bugher, 189 Wis. 2d 541, 550, 525 N.W.2d 723 (1995).

Chapter 812 of the Wisconsin statutes governs garnishment actions. "A plaintiff may commence a garnishment action at any time after . . . [a]n execution upon an in personam judgment is issuable." Wis. Stat. § 812.02(1)(b). Garnishment actions are separate actions that are distinct

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<sup>8</sup>See David's Brief at pg 3.

from the principal actions which form the basis for garnishment. *See* Wis. Stat. § 812.01(2a). “The plaintiff may, in like manner, subsequently proceed against other garnishees and, if the plaintiff has reason to believe they have subsequently become liable, against the same garnishee more than once.” Wis. Stat. § 812.02(3).

On approximately March 25, 2010, Hanaway Ross learned that David had Significant Cash Assets in his prison account(s) with the Wisconsin Department of Corrections. (R2; R11: p.2). At that time, the amounts remaining due and owing on said Judgment to each child, including accrued interest to such date, was \$206,202.85. (R2: p.2, para. 7). In order to collect on the Judgments, the 853 Garnishment Action was filed. (R1; R2). Although the same garnishee may be pursued more than once, this was the *first* garnishment action filed naming the Department of Corrections as a defendant garnishee.

David’s issue preclusion argument appears to allege that the past garnishment orders from the 1848 Garnishment Action and 478 Garnishment Action already litigated and decided issues addressed in the 853 Garnishment Decision. This argument is advanced despite the fact that

the 1848 and 478 Garnishment Actions named garnishee defendants and sought seizure of assets which are entirely different than the defendant and assets sought in the 853 Garnishment Action.

Although the court ordered the P&G Stock and P&G Check turned over in two separate matters, the court acknowledged and explained the situation as follows:

That the February 15, 2008 Decision and Order in 06-CV-1848 vacating the Order for Turnover of Assets dated November 27, 2007 in the same case does not preclude this garnishment action as that Decision and Order was not a decision on the merits of the garnishment action, rather said vacation was the result of procedural defects in the original garnishment action. (hereinafter, the “January 13, 2009 Order”). (R8: p.38, para. 12).<sup>9</sup>

There was no relitigation of substantive matters between the 1848 Garnishment Action and the 478 Garnishment Action. The 853 Garnishment Action does not involve the P&G Stock and P&G Check. The 853 Garnishment Action instead involved the Significant Cash Assets in David’s prison account(s). (R11: p.2). David appears to misunderstand that numerous garnishment actions can be filed based on one judgment.

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<sup>9</sup>The procedural history of the various garnishment actions stemming from the Wrongful Death Suit are complex at best. Therefore, Respondents reiterate and clarify that the 1848 Garnishment Action was refiled as the 478 Garnishment Action due to a procedural error.

Respondents are simply pursuing satisfaction of the Judgments against David's assets when and where determined.

As previously stated, garnishment actions are separate actions that are distinct from the principal actions which form the basis for garnishment. *See Wis. Stat. § 812.01(2a)*. After obtaining a judgment in the principal matter, the “plaintiff may . . . subsequently proceed against other garnishees and, if the plaintiff has reason to believe they have subsequently become liable, against the same garnishee more than once.” *Wis. Stat. § 812.02 (3)*. The 853 Garnishment Action is the first action that involves the Significant Cash Assets and the Wisconsin Department of Corrections (hereinafter, the “DOC”) as a garnishee defendant. Therefore, issue preclusion does not apply to the 853 Garnishment Decision and David's appeal must be denied.

## **II. DAVID RECEIVED PROPER NOTICES**

It is almost impossible to discern what David's notice argument is based on in his appellate submission without proper record citation. It appears that he contends he was not afforded the opportunity to challenge a motion due to lack of service of a court document.<sup>10</sup> David then explains

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<sup>10</sup>*See* David's Brief at pg. 5.

that he was not served with a copy of an injunction.<sup>11</sup> In support of this argument, or as a basis for the argument, David references an affidavit authored by Andrea Olmanson, Legal Counsel for DOC (the “DOC Affidavit”), which states:

On September 12, 2006, Judge Atkinson (in Case No. 2005IN000145) entered a temporary injunction. The Garnishee Defendant does not have a copy of the injunction, but assumes that it prohibited David DeBauche from disposing of individual or marital assets. (R8: p.2, para.3).<sup>12</sup>

Respondents agree that implicit in the right to a hearing is adequate notice of the hearing. Mullane v. Cent. Hanover Bank & Trust Co., 339 U.S. 306, 313, 70 S. Ct. 652 (1950). However, David appears to believe that the DOC Affidavit is an acknowledgment that at some point he was not served with a court document. David misreads the DOC Affidavit, and this argument, as formulated, is not a basis for appeal and David’s appeal should be denied. The DOC Affidavit simply states that the DOC, as the garnishee defendant, did not receive a copy of the September 12, 2006

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<sup>11</sup>See David’s Brief at pg. 6.

<sup>12</sup>See Andrea Olmanson’s Affidavit, R8 at pages 2-16, filed in the Brown County Garnishment Action for Case No. 10-CV-853. The Olmanson Affidavit was filed on behalf of the Garnishee Defendant, Wisconsin Department of Corrections. (R8: p.2, para.3).

injunction. Because the DOC was not a party to that proceeding, they would not have received this order.

David's appeal in this appellate proceeding concerns and is limited to the 853 Garnishment Decision. David was properly served with the 853 Garnishment Action Summons and Complaint, in fact he filed an Answer and a Motion to Dismiss. (R6; R7; R12). David was served with the Notice of Motion and Motion for Summary Judgment and the corresponding briefing schedule, in fact he responded by filing a motion requesting a continuance (R9; R14; R19). Therefore, it follows that David received notice of the relevant 853 Garnishment Action proceedings, and his appeal should be denied.

With that being said, David previously filed an appeal of a May 4, 2006 Brown County Case No. 05-IN-145 Order in the probate proceeding which required the relinquishment of certain assets. That appeal was based on David's belief that he was not served with proper notice of a May 4, 2006 hearing in the probate matter. In the event David is resurrecting this argument again, that issue was briefed and submitted to the court of appeals for consideration on February 8, 2011 as Appeal Number 09AP3077. That

decision will not affect this appeal since the present appeal is limited to the 853 Garnishment Decision, and has nothing to do with any perceived improprieties in the 2005 probate proceedings.

**III. THE TRIAL COURT’S DISCRETIONARY DECISION THAT THE PROPERTY WAS NON-EXEMPT SHOULD BE UPHELD.**

David’s last argument states that:

The Court Errored [sic] in This Case By Not Allowing the Defendant to Keep The Item [sic] Which Are Protected by 815.18.<sup>13</sup>

Chapter 815 of the Wisconsin statutes governs executions and section eighteen (18) of that chapter discusses property exempt from execution. Wis. Stat. § 815.18. Sub (3)(k) of that section exempts “depository accounts in the aggregate value of \$5,000, but only to the extent that the account is for the debtor’s personal use and is not used as a business account.”

After Hanaway Ross learned that David had Significant Cash Assets in his prison account(s) with the DOC, the 853 Garnishment Action was filed and the DOC was named as a Garnishee Defendant. (R11: p.2; R1: p.2). The DOC filed an Amended Garnishee Answer for Non-Earnings on

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<sup>13</sup>See David’s Brief at pg. 7.

April 22, 2010 (hereinafter, the “DOC’s Answer”). (R8). The DOC’s Answer admitted the allegations set forth in the 853 Garnishment Action and requested a ruling from the Trial Court that the exemptions under Wis. Stat. § 815.18(3)(k) did not apply to the subject assets due to David’s concealment of the assets. (R8). The DOC filed an affidavit in support of the DOC’s Answer that sets forth David’s concealment in detail. (R8).

Subsequently, the Children moved for summary judgment, which was granted. In granting summary judgment, the Trial Court considered the arguments set forth by the DOC and the Children and concluded that the Significant Cash Assets were not sheltered by the \$5000.00 exemption statute. (R24: p.2). The Trial Court’s decision should be affirmed for the reasons set forth herein.

**A. The Policy Behind Exempting Certain Property  
Is Not Advanced  
By Allowing David Such An Exemption**

Certain property of a debtor is exempt property or, in other words, free from a judgment creditor’s claim. *See* Wis. Stat. § 815.18. The purpose of exempting certain property is explained in subsection (1) of Section 815.18, which states:

This section shall be construed to secure its full benefit to debtors and to advance the humane purpose of preserving to debtors and their dependents the means of obtaining a livelihood, the enjoyment of property necessary to sustain life and the opportunity to avoid becoming public charges.

Under most circumstances, a judgment debtor should be able to retain a \$5,000.00 balance in his bank account in order to preserve his independence and avoid becoming a public charge. Wis. Stat. § 815.18(3)(k). The facts and circumstances of this case do not fall within “most circumstances.”

The exemption statute strikes a balance between a debtor’s livelihood and the creditor’s ability to collect money. (R8: p.13, para. 61, *citing to* Matter of Estate of Sandvig, 819 P.2d 184 (Mont. 1991)). The exemption statute allows a judgment debtor to secure for “his family the necessary shelter and personal property required for their welfare in times of difficult economic circumstances.” (R8: p.13, para.60, *citing to* State Bank of Antioch v. Nelson, 477 N.E.2d 77 (Ill. App. Ct. 1985)). In essence, the exemption statute takes into account that the judgment debtor still has to survive.

Here, we are talking about the potential for David to keep \$5,000.00 in his prison account so he can eat ice cream, purchase snacks from the

canteen, purchase catalogs, art supplies and order magazines. (R8: p.11, para. 49). The 853 Garnishment Action was prompted by the Significant Cash Assets deposited in David's DOC account. David is serving three life terms for three separate counts of first-degree intentional homicide. (R8: p.17-26). David is and will always be a public charge. An exemption will not help David support his biological sons as the Judgements find him indebted to them due to his murderous acts.

David is provided with "all of life's necessities by the Wisconsin Department of Corrections." (R8: p.13, para. 59). David will receive shelter, food and clothing for the rest of his life. (R8: p.13, para. 60). The "standard prison diet is nutritionally sound" and, for David, free of charge. (R8: p.11, para 49). The "prison library can be a rich resource for [David] in his idle hours," again, free of charge. (R8: p.13, para. 59). Therefore, providing the statutory exemption under these circumstances will not advance the statute's underlying purpose.

Instead, providing an exemption under these circumstances is contrary to the statute's intent because exemptions are meant to not only preserve the debtor's livelihood, but also the livelihood of the debtor's

children. Wis. Stat. § 815.18(1). Here, the Children are the debtor's biological children *and* the judgment creditors. David is not assisting them financially in any fashion, and denying David's request for an exemption promotes the Children's livelihood and better supports the statute's intent.

### **B. David Concealed Assets to Defraud The Creditor Children**

In addition to an exemption being contrary to the purpose of the statute, David's right to the \$5,000.00 exemption disappeared when he attempted to conceal his stocks, bonds and other cash assets. (R8: p.2-16; R18).<sup>14</sup> Wis. Stat. § 815.18(10) provides, in pertinent part:

*Fraudulent Transfers. . . . If a court is required to satisfy the claim of a creditor and if that relief is demanded, the court may determine the manner of dividing fraudulently transferred property into exempt and nonexempt portions, or may order the sale of the whole property and an accounting of the exempt portion. Any or all of the exemptions granted by this section may be denied if, in the discretion of the court having jurisdiction, the debtor procured, concealed or transferred assets with the intention of defrauding creditors.*

Wis. Stat. § 815.18(10)(emphasis added).

On May 5, 2006, the Trial Court ordered David to turn over all assets, whether under his control or any other third party, to the Estate of

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<sup>14</sup>In affidavit and brief form, the DOC provides various examples of David concealing his assets along with supporting documentation. *See* R8: p.2-77.

Amy J. DeBauche. (R8: p.27-29). Assets were defined to include “all bank accounts, brokerage accounts, stocks and bonds.” Id.

Instead of turning over his stocks and bonds to the control of the estate, David continued to cash in stock, receive and keep dividends, and send money via check to his criminal appellate lawyer, Attorney Kelly. (R8: p.8, para. 38-42). Indeed, on approximately September 5, 2007, David sent Attorney Kelly an \$8,000.00 check, which was deposited on September 11, 2007. (R8: p.3, para.13; R8: p.34; R8: p.4, para. 16; R8: p.43-44). Learning that the P&G Stock and P&G Check were in Attorney Kelly’s possession, on September 14, 2007, the 1848 Garnishment Action was filed. (R8: p.37-41). The 1848 Garnishment Action was filed before Attorney Kelly could utilize the \$8,000.00. (R8: p.4, para.16; R8: p.6, para.31; *see also* S.C.R. 20:1.15(g)1 and SCR 20:1.15(j)(4)).

The 1848 Garnishment Action demanded that Attorney Kelly turn over the P&G Check, the P&G Stock and “other funds or property which the garnishee ha[d] under his, her and its control or possession . . . .” (R8: p.40). Attorney Kelly filed an answer and addressed the P&G Stock and P&G Check, but he failed to disclose that David had recently provided him

with an \$8,000.00 check. (R8: p.4, para. 21 and p.45-50). David did not correct this misrepresentation with the court. (R8: p.4, para. 22). Indeed, not only did David not correct this fraud on the court, he affirmatively misrepresented the nature and extent of his assets to the Wisconsin Supreme Court in May 2009 when he filed his indigency petition and failed to disclose his stock and cash holdings. (R8: p.8, para. 37-41; R8: p. 71-75).

While the 478 Garnishment Action was pending, on March 7, 2008, David received a \$12,665.42 check from the sale of Integrity Energy Group stock. (R8: p.5, para. 29; R8: p.54). Although by this date David was in the midst of another garnishment action, and the Judgements were far from being satisfied, instead of turning said money over to the creditor Children, David mailed Attorney Kelly an additional \$7,000.00 check. (R8: p.5, para. 30; R8: p.54).

David's sordid attempts to conceal his assets by transferring his funds to Attorney Kelly lost him his right to exempt any portions of his property. The Trial Court made the discretionary decision that David concealed his assets to defraud the Children and, pursuant to the court's powers set forth in Section 815.18(10), the Trial Court appropriately denied

granting David any exemptions, including the \$5,000.00 depository account exemption. (R25: p.3, para. 11).

**C. The Trial Court Had  
Discretionary Authority to Determine that  
David’s Property Was Non-Exempt**

Section 815.18(10), Wis. Stats., grants the trial court discretion to deny exemptions upon the finding that the debtor “procured, concealed or transferred assets with the intention of defrauding creditors.” An appellate court will not reverse a discretionary decision unless there is an abuse of discretion. Carl v. Spickler Enter, Ltd., 165 Wis. 2d 611, 622, 478 N.W.2d 48, 52 (Ct. App. 1991). An erroneous exercise of discretion results “if the record indicates that the circuit court failed to exercise its discretion, if the facts of record fail to support the circuit court’s decision, or if this [appellate] court’s review of the record indicates that the circuit court applied the wrong legal standard . . . .” *See, e.g., Hedtcke v. Sentry Ins. Co.*, 109 Wis. 2d 461, 471-72, 326 N.W.2d 727 (1982). In this case, the Trial Court correctly exercised its discretion and the facts in the record support the Trial Court’s decision.

In rendering its decision, the Trial Court relied on the briefs and affidavits filed on behalf of the DOC and the Children. (R24). The Trial Court had notice of the Judgements and various court orders for David to turn over his assets. (R25). The Children and DOC's documentary evidence in the record supported the aforementioned facts that David had fraudulently concealed and transferred his assets. (R8; R24; R25). The Trial Court then exercised its discretion and determined that the exemptions granted by Wis. Stat. § 815.18 would be denied. (R24; R25: p.3, para. 3).

David "failed to provide any legal or factual grounds" which refuted the DOC and/or the Children's position that he was concealing assets for the purpose of defrauding creditors. (R7; R25: p.2, para.9). Instead, and with a filing deadline looming, David spent his time filing motions. (R25: p.3, para. 10). David filed a Motion to Dismiss, Motion for Extension/Continuance Concerning Plaintiff's Motion for Summary Judgment, and a Motion for an Order Compelling Discovery, without in any way addressing his fraudulent concealment of assets. (R12; R19; R20).

With the factual evidence undisputed, the Trial Court's discretionary decision to deny exempt status must stand as it was not an erroneous exercise of discretion.

**D. David's Premarital and Gifted Property Argument  
Does Not Apply to Garnishment Actions**

David appears to argue that assets he may have received before his marriage were by gift or inheritance, and are therefore exempt from seizure in the 853 Garnishment Action.<sup>15</sup> Chapter 766 of the Wisconsin statutes deals with marital property. Chapter 767 of the Wisconsin statutes deals with Actions Affecting the Family. These chapters do not apply to this appeal as there is nothing in either chapter that states premarital or gifted property by itself is exempt from a garnishment action. Nor is there anything in Chapter 815, which governs, executions on judgment which would grant David some kind of generalized exemption for assets acquired by gift or devise. David's appeal, therefore, should be denied.

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<sup>15</sup>See David's Brief at pg. 8-10.

**CONCLUSION**

For all of the foregoing reasons, the Respondents respectfully request that the appellate court find that the Trial Court did not commit reversible error, and that the 853 Garnishment Decision should stand as entered.

Respectfully submitted this 10th day of March, 2011.

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The undersigned attorney Jeffrey J. Martinson, as guardian ad litem for David DeBauche's biological children, N.D. and J.D., in this garnishment proceeding, Brown County Case No. 10-CV-853, and as an interested party in this action, hereby joins in the Respondents' Brief.

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### **CERTIFICATION AS TO FORM/LENGTH**

I certify that this brief conforms to the rules contained in § 809.19(8)(b) and (c), Wis. Stats., for a brief produced with Times New Roman, a proportional serif font, with 13 point body text and 11 point footnotes. The length of this brief is 5465 words, as calculated by the automatic word count feature of Corel WordPerfect.

### **CERTIFICATION OF COMPLIANCE WITH SECTION 809.19(12), WIS. STAT.**

I certify that an electronic copy of this brief has been electronically transmitted on or before the date that the paper brief is filed, that such brief conforms with the requirements of Section 809.19(12), Wis. Stats., and that the electronically transmitted brief is identical in content and format to the printed form of the brief filed on or after such date.

A copy of this certification has been served with paper copies of this brief filed with the Appellate Court and served on all opposing parties.

Dated this 10th day of March, 2011.

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