

*WCTC v. Bekebekmad*, 9 ROP 53 (2002)  
**WESTERN CAROLINE TRADING CO.,**  
**Appellant,**

v.

**JOHNNY BEKEBEKMAD,**  
**Appellee.**

CIVIL APPEAL NO. 00-42  
Civil Action No. 362-97

Supreme Court, Appellate Division  
Republic of Palau

Argued: December 10, 2001  
Decided: January 25, 2002

[1] **Debtor-Creditor**

14 PNC § 2105 requires a finding of the fastest way to repay a debt and such finding must include the manner in which the trial court reached its conclusion.

[2] **Appeal and Error:** Remand

Remand is necessary when the record is insufficient for proper appellate review.

Counsel for Appellant: David Shadel

Counsel for Appellee: Pro Se

BEFORE: ARTHUR NGIRAKLSONG, Chief Justice; LARRY W. MILLER, Associate Justice;  
DANIEL N. CADRA, Associate Justice Pro Tem.

MILLER, Justice:

The Western Caroline Trading Company (“WCTC”) moved the Trial Division to enforce a stipulated money judgment against Johnny Bekebekmad (“Bekebekmad”) for a debt owed on a car lease. WCTC also requested that the Trial Division increase the monthly payment amount. The Trial Division denied WCTC’s motion without opinion. WCTC now asks this Court to issue an order directing payment and increasing the payment amount. For the reasons set forth below, the matter is remanded to the Trial Division for further proceedings.

**BACKGROUND**

In October 1999, the parties signed a stipulation for judgment in favor of WCTC in the

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amount of \$8,000 plus post judgment interest at the rate of 9%. An Order in Aid of Judgment was also entered that read in pertinent part:

Defendant shall pay the judgment herein according to the following schedule to plaintiff's below attorney: at least \$75.00 by the 20th day of every month beginning October 20, 1999. The foregoing payment will be reviewed by the court on the first anniversary hereof for possible adjustment . . . . If defendant fails to comply with this judgment and order, then plaintiff shall be entitled promptly to any and all other further orders and writs appropriate or necessary in order to enforce this judgment and order.

Stipulation for Judgment and Order, dated October 5, 1999.

In July 2000, WCTC moved for contempt and further relief, alleging that Bekebekmad was delinquent in his payments. 154 After a hearing, it was agreed that the matter would be continued until October 2000, while Bekebekmad made good the delinquency and resumed paying \$75 a month. However, in November 2000, WCTC requested that the monthly payment be increased from \$75 a month to \$450 a month. WCTC alleged, among other things, that Bekebekmad earned \$1,350 a month with few expenses and that the current payment schedule did not account for accruing interest and fees. The Trial Division also noted during the hearing that a payment of \$75 would barely cover the interest alone on the debt. After the evidentiary hearing, the Trial Division orally denied the motion and a written order followed that stated: "Hearing was held this date on Plaintiff's motion for an order amending the current order in aid of judgment. After due consideration of the evidence introduced at the hearing, the motion is denied."

## DISCUSSION

On appeal, WCTC argues that the Trial Division's denial of its motion to increase the payments violated 14 PNC § 2105, which reads:

At any time after a finding for the payment of money by one party to another, and before any judgment based thereon has been satisfied in full, either party may apply to the court for an order in aid of judgment. Thereupon the court, after notice to the opposite party, shall hold a hearing on the question of the debtor's ability to pay and determine the fastest manner in which the debtor can reasonably pay a judgment based on the finding. In making this determination the court shall allow the debtor to retain such property and such portion of his income as may be necessary to provide reasonable living requirements of the debtor and his dependents, including fulfillment of any obligations he may have to any clan, lineage, or other similar group, in return for which obligations he, or his dependents, receive any necessary part of the food, goods, shelter or services required for their living.

[1, 2] Here the statutory language requires the Trial Division to determine the fastest manner in

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which a debtor can reasonably pay a judgment. While there was a lengthy hearing with evidence produced by the parties as to Bekebekmad's income and expenses, the Trial Division did not articulate whether it determined that \$75 a month was the fastest manner of repayment and, if so, how it reached that conclusion. As it stands, the record is insufficient for proper appellate review of whether the Trial Division abused its discretion in denying WCTC's motion.

WCTC asks this Court, instead of remanding, to issue an order increasing the payment amount. We have no hesitation in declaring, as a matter of law, that the Trial Division has a statutory duty to determine a debtor's fastest method of payment. However, the factual findings concerning the debtor's income and expenses and the weighing of those findings, necessary to making the statutory determination, call for the exercise of discretion, and should be made in the first instance by the Trial Division.

### CONCLUSION

155 Accordingly, the matter is remanded to the Trial Division for further proceedings consistent with this opinion.<sup>1</sup>

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<sup>1</sup>At oral argument, Bekebekmad, *pro se*, stated that his financial condition had changed in the year since the hearing on WCTC's motion. We likewise leave to the sound discretion of the Trial Division whether to allow the taking of additional evidence.