

CASE NO. A06-0459

State of Minnesota
In Court of Appeals

THOMAS H. RAUENHORST,

Respondent,

vs.

NANCY M.G. RAUENHORST,

Appellant.

RESPONDENT'S BRIEF AND APPENDIX

COLLINS, BUCKLEY, SAUNTRY
& HAUGH, P.L.L.P.
Walter G. Bauch, Esq.
Attorney Registration No. 208930
Elizabeth Clysdale, Esq.
Attorney Registration No. 0342567
W-1100 First National Bank Bldg.
332 Minnesota Street
Saint Paul, Minnesota 55101
(651) 227-0611

Attorneys for Respondent

McCULLOUGH, SMITH
WILLIAMS & CYR, P.A.
Gerald O. Williams, Jr., Esq.
Attorney Registration No. 232506
905 Parkway Drive
Saint Paul, Minnesota 55117
(651) 772-3446

Attorneys for Appellant

TABLE OF CONTENTS

Table of Authorities	ii
Statement of Issues	iii
Statement of the Case and Facts	1
Argument	3
I. Trial court's findings are supported by the record	3
II. The trial court did not abuse its discretion when it imputed income to appellant	9
III. The facts in the record support attributing income to appellant and denying appellant spousal maintenance	12
Conclusion	14
Certificate of Length	16

TABLE OF AUTHORITIES

Statutes

Minn. Stat. § 480.08, subd. 3 (2005)	9
Minn. Stat. § 518.522, subd. 1 (2005)	7, 12

Rules

Minn. R. Civ. P. 52.01.	5
------------------------------	---

Cases

<i>Carrick v. Carrick</i> , 560 N.W.2d 407 (Minn. Ct. App. 1997)	10, 11
<i>In re Guardianship of Dawson</i> , 502 N.W.2d 65 (Minn. Ct. App. 1993)	3
<i>Erickson v Erickson</i> , 434 N.W.2d 284 Minn. Ct. App. 1989).	3
<i>Gales v. Gales</i> , 553 N.W.2d 416 (Minn. 1996).	12
<i>Gessner v. Gessner</i> , 487 N.W.2d 921 (Minn. Ct. App. 1992).	3
<i>Hecker v. Hecker</i> , 568 N.W.2d 705 (Minn. 1997).	6, 14
<i>Maurer v. Maurer</i> , 607 N.W.2d 176 (Minn. Ct. App. 2000).	10
<i>Schallinger v. Schallinger</i> , 699 N.W.2d 15 (Minn. Ct. App. 2005)	6, 7, 14
<i>Toughill v. Toughill</i> , 609 N.W.2d 634 (Minn. Ct. App. 2000).	7
<i>Vangsness v. Vangsness</i> , 607 N.W.2d 468 (Minn. Ct. App. 2000)	8
<i>Walker v. Walker</i> , 553 N.W.2d 90 (Minn. Ct. App. 1996).	9
<i>Warwick v. Warwick</i> , 438 N.W.2d 673 (Minn. Ct. App. 1989).	9
<i>Wibbens v. Wibbens</i> , 379 N.W.2d 225, 227 (Minn. Ct. App. 1985).	5
<i>Zeller v. Larson</i> , 2005 WL 2143729 (Minn. Ct. App. September 6, 2005)	9, 14

STATEMENT OF THE ISSUES

- I. Whether the Court of Appeals should reverse the trial court's order denying spousal maintenance?

The Trial Court held that Appellant did not establish a basis for an award of spousal maintenance.

Minn. Stat. § 518.522, subd. 1 (2005)

Schallinger v. Schallinger, 699 N.W.2d 15 (Minn. Ct. App. 2005)

Toughill v. Toughill, 609 N.W.2d 634 (Minn. Ct. App. 2000)

Warwick v. Warwick, 438 N.W.2d 673, 678 (Minn. Ct. App. 1989)

STATEMENT OF THE CASE AND FACTS

This is a direct appeal from a Judgment and Decree denying spousal maintenance. The issue of spousal maintenance was put before the trial court in written form and there was no evidentiary hearing or trial. There were no post-decree motions brought before the trial court.

The parties had a short term marriage of seven years. (App.107-08 at ¶ 1). Once the marriage began, Appellant voluntarily left the job market in 2000 to renovate a house she received as an inheritance. (App.109-10 at ¶ 8). Appellant did not return to the job market until July, 2005, after the dissolution began. The parties have twins that were born on February 4, 2003. (App.110 at ¶ 9). Prior to the dissolution, the parties lived a lifestyle that was beyond their means. (App.112 at ¶ 16). Based upon a reasonable standard of living that the parties could afford during their marriage, the trial court found that Appellant was capable of supporting herself and earning an income of \$35,000 per year. (App.111 at ¶ 14; App.113 at ¶ 18).

The record reflects that Appellant was making \$35,000 per year prior to her voluntary departure from the work place in the year 2000. (App.108-09 at ¶ 5). Appellant received \$79,081 of the marital assets while Respondent received \$31,823 of the marital assets, a difference of \$47,258. (App.112 at ¶ 17). Respondent is paying 100% of the day care expenses until December 31, 2007, which is the equivalent of a tax-free gift to Appellant in the amount of \$586.00 per month. (App.111-12 at ¶ 15). Respondent agreed to name the

children as beneficiaries on all investments and life insurance policies, thus limiting his access to those accounts, while Appellant has free access to the accounts awarded to her. (App.108 at ¶ 4).

Appellant has a history of working various low-paying entry level jobs, despite having a four-year degree. (App.108-09 at ¶ 5). Since the parties' marriage, Appellant has received an inheritance, two personal injury settlements and a settlement from a former employer. (App.109 at ¶ 8). A vocational evaluation was performed on Appellant. (App. 111 at ¶ 12; App. 39-45). The evaluation concluded that Appellant could obtain work in an office setting earning \$11.00 to \$14.00 per hour or work as a painter earning \$14.00 to \$18.00 per hour as a beginning wage. (App. 111 at ¶ 12). The court found that Appellant does not need retraining to support herself because she is a college graduate and has no physical impairment. (App.113 at ¶ 18).

The trial court stated that it was only reasonable for Appellant to remain out of the work force only after the parties' children were born in February 2003. (App.110 at ¶ 10). The trial court made no such findings for the period of time Appellant was voluntarily not working between 2000, when Appellant left the workforce, and 2003, when the parties' children were born. The trial court found that Appellant was capable of securing appropriate employment and gave her nine months from the temporary order to become so employed. (App. 162 at ¶ 14). In addition, in its finding that the Appellant could not afford her mortgage payment of \$1,963 per month, the trial court stated that "this is yet another attempt

by Appellant to position herself in a way to receive an award of spousal maintenance." (App.111-12 at ¶ 15).

ARGUMENT

Trial courts are granted broad discretion in determining the level and duration of spousal maintenance. *Gessner v. Gessner*, 487 N.W.2d 921, 923 (Minn. Ct. App. 1992). Findings of fact made by the trial court will not be disturbed unless they are clearly erroneous. *Id.*

In this case, there was no motion for a new trial or for amended findings. The standard of review when there is no motion for a new trial is whether the evidence sustains the findings of fact and whether these findings of fact sustain the conclusions of law. *Erickson v. Erickson*, 434 N.W.2d 284, 286 (Minn. Ct. App. 1989).

I. TRIAL COURT'S FINDINGS ARE SUPPORTED BY THE RECORD.

A trial court's findings will only be reversed, if "upon review of the entire record, the appellate court is left with a definite and firm conviction that a mistake has been made." *In re Guardianship of Dawson*, 502 N.W.2d 65, 68 (Minn. Ct. App. 1993). In this case, after reviewing **the entire record**, the trial court did not err when it attributed or imputed income to Appellant.

Appellant argues that the trial court's finding that the Appellant was employed

consistently except for a three-month employment gap is erroneous and does not support the denial of an award of spousal maintenance. (App.108-09 at ¶ 6). However, Appellant does not dispute her employment chronology itself which demonstrates the Appellant's work history, including the types of employment and the length of time Appellant was employed in each position. Appellant's work history is as follows:

May 1989 to August 1989	Quality Computer Parts (Answered phones, managed mail and made copies) 40 hours/week	Receptionist
August 1989 to July 1990	Quality Computer Parts (Performed a range of duties in Accounts Payable, Accounts Receivable & Collections)	Accounting Clerk 40 hours/week
September 1990 top May 1992	Greeman's Property (Supervised crews of employees engaged in property renovation and construction; prepared bids for new property management contracts)	Service Manager 40 hours/week
May 1992 to November 1992	Alan King - Burnet Realty (Assisted in the processing of purchase agreements and solicitation of new clients)	Assistant 40 hours/week.
November 1992 to November 1993	Burnet Realty Sales (real estate sales)	Associate 30-40 hours/week.
February 1993 to August 1992	CTX Mortgage (Assisted in processing of mortgage loans and solicitation of new clients)	Assistant to Loan Officer 20 hours/week.
June 1996 to November 1996	Ted Cmiel-Allstate Insurance (Assisted in processing insurance policies, insurance claims, and solicitation of new clients)	Assistant to Agent 25-40 hours/week.

March 1997 to April 2000	Prudential Insurance (Coordinated various aspects of insurance remediation projects) 40 hours/week.	Remediation Specialist
July 2005 to Present	Absolute Improvements (Property renovation) 20 hours/week.	Assistant

(App.108-09 at ¶ 5).

If there were any errors made by the trial court in Finding Number 6, they are harmless technical errors. *See* Minn. R. Civ. P. 52.01 (stating findings of fact are not set aside unless clearly erroneous); *see also Wibbens v. Wibbens*, 379 N.W.2d 225, 227 (Minn. Ct. App. 1985) (refusing to remand for de minimis technical errors). Appellant's employment history speaks for itself. (App.108-09 at ¶ 5).

Appellant asserts that the trial court's finding that she did not use the period from April 2005 to August 2005 to look for a job is irrelevant, especially since Appellant started working in July 2005. (App.110-11 at ¶ 11). However, the trial court made it clear in its temporary order entered on March 29, 2005, that "effective April 1, 2005, until August 31, 2005, as and for temporary spousal maintenance, the [Respondent] shall pay to the [Appellant] \$1,700 per month." (App. 162 at ¶ 14). In an Order filed on June 28, 2005, the trial court denied Appellant's request to extend spousal maintenance beyond August 31, 2005. (App. 166 at ¶ 1).

That Appellant waited up until the last month temporary spousal maintenance was to be paid to find a job is relevant. The trial court expected and gave Appellant exactly nine months to find employment outside of the home. The trial court's findings demonstrate that

during this time, Appellant sought to have spousal maintenance extended without making a good faith job search. In addition, the trial court made a specific finding that during this time, Appellant was "delaying employment and health insurance coverage through her employer." (App.110-11 at ¶ 11).

In support of her argument for an award of spousal maintenance, Appellant claims that the facts in this case are similar to the facts found in *Hecker v. Hecker*, 568 N.W.2d 705 (Minn. 1997). However, the *Hecker* Court found that the maintenance obligee had disregarded the stipulation that required her to obtain vocational training and instead she choose to "rely upon the possibility that she would continue to receive spousal maintenance, despite the terms of the decree." *Id.* At 710. Rather than reward the obligee for her lack of reasonable efforts, the trial court attributed to the obligee the income that unrefuted expert testimony demonstrated could have been produced by her reasonable efforts. *Id.* at 710. In *Hecker*, the spousal maintenance award represented the difference between the obligee's demonstrated needs and the income attributed to the obligee. *Id.* Similarly, in this case the trial court found that Appellant had positioned herself to receive an award of spousal maintenance in more than one way. (App.111-12 at ¶ 15). Therefore, rather than reward Appellant, the trial court attributed income to the Appellant and found that the Appellant was able to meet her reasonable needs based on her ability to earn that income. (App.111 at ¶ 14; App.113 at ¶ 18). Therefore, no spousal maintenance was awarded to Appellant.

In *Schallinger v. Schallinger*, 699 N.W.2d 15 (Minn. Ct. App. 2005), a denial of

a spousal maintenance award was affirmed because the obligee had remained in the work force and was self-supporting. In determining the amount of spousal maintenance, the *Schallinger* Court considered "the financial resources of the party seeking maintenance . . . and the party's ability to meet those needs independently." *Id.* at 22 (citing Minn. Stat. § 518.552, Subd. 2(a), (g)) (emphasis added). In *Schallinger*, the trial court did not abuse its discretion when it found that the obligee had the ability to work full time because the obligee was in "good physical and emotional health, and has no health conditions that prevent her from seeking full time employment" and, therefore, the obligee was able to expand her employment from three days per week to full time. *Id.* In this case, the trial court found that Appellant has the ability to make approximately \$35,000 per year, which was Appellant's annual salary that she made in the year 2000 when she voluntarily left the workforce. (App.111 at ¶ 14). Therefore, the trial court did not abuse its discretion when it attributed this income to the Appellant.

Appellant cites to *Toughill v. Toughill*, 609 N.W.2d 634 (Minn. Ct. App. 2000), to support her position that she be allowed to maintain the same employment situation that she has since the parties got married. In *Toughill*, the Court made a finding that there was no evidence that the obligee intended to reduce her income for the purpose of obtaining maintenance, instead she continued working in the same job that she had before the dissolution. *Id.* at 641. However, the *Toughill* case is distinguishable from the present case because unlike the obligee in *Toughill*, Appellant voluntarily left the job she had prior to

and during the marriage, where she worked full time and made \$35,000 per year, in order to renovate a house she inherited. (App.109-10 at ¶ 8). Appellant did not find another job after she finished renovating the home. (App.110 at ¶ 10). The trial court found that there was no reason for Appellant's unemployment prior to the birth of the parties' children and that she was capable of self support. (App.110 at ¶ 10; App.113 at ¶ 18). In addition, in its finding that the Appellant could not afford her mortgage payment of \$1,963 per month, the trial court found "this is yet another attempt by Appellant to position herself in a way to receive an award of spousal maintenance." (App.111-12 at ¶ 15).

Even if the trial court were to delete the two findings to which Appellant takes issue, when all of the findings are taken as a whole, the trial court's denial award of spousal maintenance is supported by the findings and the evidence. *See Vangsness v. Vangsness*, 607 N.W.2d 468, 474 (Minn. Ct. App. 2000) (finding that the record might support findings other than those made by the trial court does not render the finding clearly erroneous, the appellate court views the evidence in the light most favorable to the trial court's findings and appellate courts do not reweight evidence presented to the trial court).

The parties had a short term marriage of seven years. (App.107-08 at ¶ 1). Once the marriage began, Appellant voluntarily left the job market in 2000 to renovate a house she received as an inheritance. (App.109-10 at ¶ 8). The trial court made a finding that when the parties' children were born in 2003, it was appropriate for Appellant to not be in the work force. (App.110 at ¶ 9). The trial court recognized that these parties could not

maintain the lifestyle they were living prior to the dissolution, which was high and beyond their means, and that Appellant would have to contribute to her own support. (App.112 at ¶ 16). Based upon a reasonable standard of living the parties could afford during their marriage, the trial court found that Appellant was capable of supporting herself and making \$35,000 per year. (App.111 at ¶ 14; App.113 at ¶ 18). Based upon all of these findings, the trial court's denial of an award of spousal maintenance should be affirmed because it is not clearly erroneous.

II. THE TRIAL COURT DID NOT ABUSE ITS DISCRETION WHEN IT IMPUTED INCOME TO APPELLANT.

Income may be imputed when there is a finding of bad faith underemployment. *Walker v. Walker*, 553 N.W.2d 90, 95 n.1 (Minn. Ct. App. 1996). However, a lack of a finding of bad faith is not fatal to the district court's ability to impute income. *Warwick v. Warwick*, 438 N.W.2d 673, 678 (Minn. Ct. App. 1989) (holding that, despite the lack of an explicit finding of bad faith, the district court did not err in imputing income rather than using actual income when determining spousal maintenance where the record contained an inference that the district court believed the obligor unjustifiably reduced his income by acting in bad faith). Determinations of whether a party's employment related decisions are in bad faith is a credibility determination and appellate courts defer to district courts for credibility determinations. *Zeller v. Larson*, 2005 WL 2143729 at *3 (Minn. Ct. App.

September 6, 2005).¹ In this case, bad faith underemployment can be inferred from the findings made by the trial court in its order denying spousal maintenance.

While the trial court does not use the phrase "bad faith" in its order, there is an express finding that "this is yet another attempt by Appellant to position herself in a way to receive an award of spousal maintenance." (App.111-12 at ¶ 15). In addition, the trial court stated that it was only reasonable for Appellant to remain out of the work force *after* the parties' children were born in 2003. (App.110 at ¶ 10). The trial court made no such findings for the period of time Appellant was not working between 2000, when Appellant left the workforce, and 2003, when the parties' children were born. Based upon these findings, it is evident the trial court believed that Appellant was underemployed in bad faith, even though there is not an express finding of bad faith. Therefore, a finding of bad faith can reasonably be inferred from the trial court's order and income was properly imputed to Appellant.

In *Maurer v. Maurer*, 607 N.W.2d 176, 181 (Minn. Ct. App. 2000), the court held that "no authority exists for finding that an obligee continuing to work in the same employment without intent to reduce income in order to obtain maintenance is underemployed in bad faith." *Id* at 181 (citing *Carrick v. Carrick*, 560 N.W.2d 407, 410 (Minn. Ct. App. 1997)). Unlike *Maurer*, the trial court in this case made a specific finding

¹This unpublished opinion is attached hereto in accordance with Minn. Stat. § 480.08, subd. 3 (2005) (App. 168).

that Appellant intended to reduce her income to position herself to receive an award of spousal maintenance. In addition, unlike *Maurer*, Appellant did not continue to work the same job, or even the same type of job, that she did either prior to the marriage or during the marriage. Instead, Appellant voluntarily left a job where she earned \$35,000 in 2000. She made no attempt to find another job until July 2005. Appellant is now earning far less money than she has in the past and is not receiving any benefits. Based on Appellant's work history and her ability to be self supporting, a finding of bad faith underemployment can be reasonably inferred from the trial court's order.

In *Carrick*, the court did not find bad faith and found that there was no evidence of an attempt to reduce income where the obligee continued to work the same number of hours as before separation and was employed in the same type of position as during the marriage. *Carrick*, 560 N.W.2d at 410. This case is distinguishable from *Carrick* in two ways. First, in *Carrick* there was no professional analysis of employability or the job market as there is in this case. Appellant's vocational evaluation concluded that she could obtain work in an office setting earning \$11.00 to \$14.00 per hour or work as a painter earning \$14.00 to \$18.00 per hour as a beginning wage. (App. 111 at ¶ 12). Second, this is not an attempt to apply the spousal maintenance factors retroactively to a traditional homemaker. Unlike *Carrick*, Appellant voluntarily left the job she had prior to the marriage, where she worked full time and made \$35,000 per year, in order to renovate a house she inherited. (App.109-10 at ¶ 8). After the house had been renovated, Appellant never returned to the

job market. The only time that the court considered it reasonable for Appellant to remain out of the workforce was from February 4, 2003, when the children were born, to March 29, 2005, when the Temporary Order was issued. (App.110 at ¶ 10). At the commencement of the temporary spousal maintenance, Appellant had only been out of the workforce for 25 months. When Appellant did return to the job market, she took a job without health benefits and that paid less than the job she held in the year 2000.

When all of the Findings of Fact in the Order are considered as a whole, the findings of fact support an inference that Appellant is voluntarily underemployed in bad faith and, therefore, trial court properly imputed income to Appellant and properly denied an award of spousal maintenance.

III. THE FACTS IN THE RECORD SUPPORT ATTRIBUTING INCOME TO APPELLANT AND DENYING APPELLANT SPOUSAL MAINTENANCE.

In this case, the trial court made several findings that support its denial of an award of spousal maintenance. When making an award for spousal maintenance, the court must determine whether the party seeking maintenance:

- (a) lacks sufficient property, including marital property apportioned to the spouse, to provide for reasonable needs of the spouse considering the standard of living established during the marriage, especially, but not limited to, a period of training or education, or
- (b) is unable to provide adequate self-support, after considering the standard of living established during the marriage and all relevant circumstances, through appropriate employment, or is the custodian of a child whose condition or circumstances make it appropriate that the custodian not be required to seek employment outside the home.

Minn. Stat. § 518.522, subd. 1 (2005); *Gales v. Gales*, 553 N.W.2d 416, 418 (Minn. 1996).

Appellant has sufficient property and is capable of self support to maintain the standard of living that the Court has determined is reasonable for the marriage.

Appellant's arguments are a feeble attempt to draw the Court's attention away from the fact that prior to her voluntary departure from the workforce during the marriage, she had worked full time, earning \$35,000. Nothing has changed that prevents Appellant from doing so now. Appellant ignores all of the other findings in the record that support imputing income to her and the trial court's denial of an award of spousal maintenance.

Findings that support a denial of spousal maintenance include that the parties had a short-term marriage of seven years. (App.107-08 at ¶ 1). Appellant was making \$35,000 per year prior to her voluntary departure from the work place in the year 2000. (App.108-09 at ¶ 5). Appellant received \$79,081 of the marital assets while Respondent received \$31,823 of the marital assets, a difference of \$47,258. (App.112 at ¶ 17). Respondent is paying 100% of the day care expenses until December 31, 2007, which is the equivalent of a tax-free gift to Appellant in the amount of \$586.00 per month. (App.111-12 at ¶ 15). Respondent agreed to name the children beneficiaries on all investments and life insurance accounts, thus limiting his access to those accounts, while Appellant has free access to the accounts awarded to her. (App.108 at ¶ 4).

Since the parties' marriage, Appellant received a large inheritance and two personal injury settlements and a settlement from a former employer as income. (App.109 at ¶ 8).

Appellant does not need retraining to support herself, she is a college graduate, with no physical impairment. (App.113 at ¶ 18). Lastly, the Court found that "[Appellant] has supported herself her entire adult life except for the months after her children were born in February 2003." *Id.*

Appellant cites to only two findings of fact that she claims do not support the trial court's order denying her spousal maintenance. However, Appellant fails to address any of the trial court's other findings discussed above.

All of the case law cited by Appellant is factually distinguishable and does not support Appellant's position. In fact, some of the case law cited by Appellant supports Respondent's position that the trial court's order should be affirmed in its entirety. *See Schallinger, 699 N.W.2d at 22; Hecker, 568 N.W.2d at 710.*

Appellant raises mere technical errors or immaterial points in an attempt to undermine the trial court's order. Appellant fails to consider that the trial court's findings as a whole supports the trial court's order denying spousal maintenance. *See Zeller, 2005 WL 2143729 at *3* (App.169). The trial court's findings paint a picture of an Appellant who has acted in bad faith by positioning herself to receive an award of spousal maintenance and as an individual who is capable of self support but has chosen not to do so. Appellant has failed to meet her burden and demonstrate that the district court's findings are clearly erroneous.

Based upon the above mentioned findings, the trial court reasonably concluded that Appellant is capable of self-support and that she is capable of earning approximately

\$35,000 per year. Therefore, the trial court's denial of an award of spousal maintenance is proper and supported by the Findings of Fact.

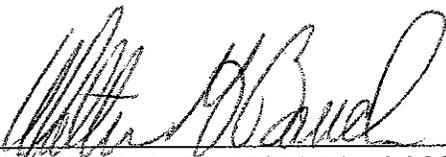
CONCLUSION

The trial court properly attributed income to Appellant. The trial court, based on its findings of fact and application of the law, did not abuse its broad discretion when it denied Appellant spousal maintenance. For the reasons and the authority set forth herein, the trial court's order should be affirmed in its entirety.

Respectfully submitted,

COLLINS, BUCKLEY, SAUNTRY &
HAUGH, P.L.L.P.

Dated: 28 April, 2006

BY: 
WALTER G. BAUCH, No. 208930
ELIZABETH CLYSDALE, No. 0342567

W-1100 First National Bank Bldg.
332 Minnesota Street
St. Paul, MN 55101-1379
Telephone: 651-227-0611

ATTORNEYS FOR RESPONDENT

CERTIFICATION OF BRIEF LENGTH

I hereby certify that this brief conforms to the requirements of Minn. R. Civ. App. P. 132.01, subds. 1 and 3, for a brief produced with a proportional font. The length of this brief is 3,933 words. This brief was prepared using Word Perfect 8.

COLLINS, BUCKLEY, SAUNTRY &
HAUGH, P.L.L.P.

Dated: 28 April, 2006

BY: 
WALTER G. BAUCH, No. 208930
ELIZABETH CLYSDALE, No. 0342567

W-1100 First National Bank Bldg.
332 Minnesota Street
St. Paul, MN 55101-1379
Telephone: 651-227-0611

ATTORNEYS FOR RESPONDENT

The appendix to this brief is not available for online viewing as specified in the *Minnesota Rules of Public Access to the Records of the Judicial Branch*, Rule 8, Subd. 2(e)(2) (with amendments effective July 1, 2007).