

In re Marriage of Alter (2/26/09 - 171 Cal.App.4th 718)

This post-judgment case discusses, among other issues that recurring gifts of cash can be treated as “income” and used in calculating child support, and that continued long-standing payments by a (donor) grandparent for direct expenses of children should not be modified absent a showing of a change of circumstances.

Both parties appealed portions of the trial court’s reduction of spousal and child support and no-change of add-ons on a post-judgment modification.

For MSA, husband’s monthly income consisted of business income of \$7,000 and anticipated income from commercial building of \$12,500. He also received \$3,000 per month from his mother, and his mother paid directly for the children’s schooling, tutoring, and summer camp, which were treated as add-ons in the MSA.

Wife did not work, and had no income. Wife had sole physical and legal custody of both children and lived out of state in Georgia. Terms of MSA required husband to pay \$4,000 child support, plus significant add-ons, and \$3,000 per month spousal support. MSA stated that the child support obligations were absolutely non-modifiable downward and spousal support could be reduced to \$1,000, under certain circumstances.

Change of circumstances between time of Judgment and request for modification of support.

Changes for husband:

1. \$12,500 of expected building income never materialized.
2. Living in house owned by his mother. Receives \$6,000 stipend monthly from mother and gives \$3,000 back to her for rent.
3. Used his mother’s credit card to pay for clothes for children, she paid for husband’s expenses to visit children in Georgia, and for his attorneys in California and Georgia.
4. Husband claimed all payments from his mother were loans. However, promissory notes produced at trial all bore same signature date, had no stated interest and were not itemized.

5. While husband requested a reduction of both child support and the add-ons, he presented no evidence that the add-ons had in fact been reduced or could not be paid.

Changes for wife:

1. Wife reactivated her license to practice law and was earning \$61,000 per year at time of trial.
2. Personal savings depleted, but has joint tenancy accounts with her father. Wife reported dividends on her tax return of \$10,319, but claimed she had no access to the accounts. Dividends she actually received totaled \$50 per month.

The trial court treated the \$6,000 per month from husband's mother as income and determined no reduction had been made to the add-on child support payments by husband's mother. The dividends from the joint tenancy accounts of wife were included in her income. The appellate court confirmed.

A. What defines a gift as income for child support purposes?

- a. "Gifts can be considered so long as the gifts bear a reasonable relationship to the traditional meaning of income as a recurrent monetary benefit".
- b. The periodic and regular nature of the payments means that the money is available for the support of the children.
- c. "It is irrelevant that there is no legal obligation on the part of the donor to continue making the gifts, or that the flow of cash does not appear on the income tax return".
- d. The court rejects the argument that a gift cannot be income merely because there is no guarantee that the gifts will continue in the future. Few, if any, sources of income are certain to remain unchanged from year to year. People lose their jobs, interest rates fall, and business conditions change. Accordingly, the economic situation at the time the child support calculations are made is considered.
- e. No evidence of repayment to support claims the money was loaned, not gifted.
- f. "Annual gross income is income from whatever source derived" (see Fam. Code §4058(a)), and the list of income sources is expressly

Query – What about regular annual gifts received by a parent that are put into savings or invested rather than used towards living expenses? Would the court treat these gifts differently, i.e., not income for support, than if the money was used towards ongoing expenses? Would it make a difference if the parent’s other income was sufficient to meet all the needs of the children without the gifts?

Suggestion – It may be advantageous for the payor to include as income all direct and indirect gifts, i.e. tuition and other expenses paid by a donor for the children, and include the expense for tuition and the like as a child support add-on in the calculation.