

In re Marriage of Chakko (2004) (115 Cal.App.4th 104)

This case is generally cited for reasons other than the proper method of determination of income for support, child support, in this case. Specifically, the trial Court ordered an issue sanction because of Jacob's refusal to comply with discovery requests.

The couple was married in 1976. The eldest daughter was born in 1980 and the younger daughter was born in 1985. The parties separated in 1990 and father filed a motion to modify custody in October 2000. The Ventura County District Attorney intervened and requested that guideline child support be ordered and made payable through the District Attorney's office. At one of several hearings on the child support issue, the District Attorney introduced into evidence a loan application that Jacob used to refinance his home mortgage. In it, Jacob stated that his monthly income was \$40,000 and that the value of the house was \$2,500,000. In response to its introduction, Jacob testified that the loan broker prepared the application and that he didn't think that his signature on that form was genuine. The court ordered the exchange of I&Es, tax returns and "all other relevant documents". Interrogatories were sent to Jacob. He refused to comply with all. Finally, the DA's motion to compel was granted. Still, Jacob refused. What to do?

DA then filed a motion for issue sanctions declaring Jacob's monthly earnings to be \$40,000 as stated on his loan application. The trial court granted that motion and made child support arrearage orders for the youngest daughter for two of the three years in question.

Jacob files for reconsideration stating, in part, that his prior counsel was responsible for his non-compliance with discovery requests. Now he understands because his new counsel "explained the matter to me." The loan officer who handled the refi testified that the loan was a "stated income" loan, where the average of 12 months deposits was used to verify income. Jacob is an "employee" of a closely-held corporation that he and his current wife own. The business bank statements were used rather than Jacob's personal bank statements. She further stated that Jacob signed the loan application along with the other loan documents.

Jacob loses on appeal. The appellate court stated "[t]hose who interfere with the truth-seeking function of the trial court strike at the very heart of the justice system" Issue sanction order affirmed. As to the weight of the

evidence, the Court, citing In re Marriage of Martin (229 Cal.App.3d 1196, 1200) found that the loan application, standing alone, constitutes substantial evidence that Jacob's income was \$40,000 per month. And further, to no ones surprise, "[a] spouse who is the owner of a successful business and who has control of his or her income can structure income and the payment of expenses to depress income. This is not fair if it inures to the detriment of children."

This case was cited in In re: Marriage of Calcaterra and Badakhsk (2005) (132 Cal.App.4th28) wherein the Court stated "[w]e conclude that the presumption of correctness of recent tax returns may be rebutted by a statement of income on a loan application where, as here, the parent owns his own business."

This case reminds us that all is not lost when we are having difficulty getting requested documents in discovery. Documents supplied by third parties (e.g. loan applications) may constitute "substantial evidence".