

In re Marriage of Cheriton (2001 - Cal. App. 4th 269, 282-283)

It is important to understand that Cheriton is a lengthy case which covers a great many issues. As relates strictly to income available for support, it did not really cover any new ground. Nonetheless, Cheriton reinforces certain guidance provided both by the Family Law Code and prior cases.

- 1) The Court of Appeal ruled that the proceeds from H's post separation sale of stock acquired through options did constitute income available for child support. While the Court observed "That difficulty lies in determining *when* stock options become income available for child support" it went on to state that "At the very latest, though, income is realized when the underlying stock is sold for a gain."

As part of its remand, the Court of Appeal gave the trial court the discretion to "determine the proper allocation of those stock sale proceeds over time as appropriate." For purposes of determining income available for child support, they held that the proceeds could be reduced by "permissible deductions" which included taxes but excluded legal fees.

- 2) While acknowledging "that the 'key financial factor in the guideline formula is net disposable income", the Court of Appeal stated "Never the less, relevant authority at least suggests that wealth is an appropriate consideration in setting child support." And "It is fair to assume that in most cases assets contribute to the ability to provide support."

Part of its remand stated "At the very least, the trial court should consider imputing reasonable income on David's assets, pursuant to section 4058, subdivision (b), to the extent necessary to meet the children's reasonable needs."

- 3) The Court of Appeal overturned the imputation of earning capacity to W for purposes of determining child support, but not for spousal support. The difference related to the welfare of the children. "But no authority permits the court to impute earning capacity to a parent unless doing so is in the best interest of the children." "Unlike a child support order, however, a spousal support award does not require the court to consider the children's best interests."