

County of Kern v. Castle (1999 - 75 Cal.App.4th 1442, 89 Cal.Rptr.2d 874)

Father inherited his mother's \$1 million estate, including a \$240,000 lump sum. He used the money to pay back taxes; he paid off the mortgage on his house, and put some money into his new inherited rental properties. Thereafter, he lived mortgage free, had potential rental income on three properties in excess of \$2,000 per month, he also owned his mother's mortgage free home in Long Beach and a country cabin in San Bernardino County. Father earned \$2,500 per month prior to voluntarily quitting his job.

The trial court made a finding that monies received as an inheritance, whether from a will or trust, are property and are excluded as income for purposes of calculating guideline child support. Also, the trial court determined the monthly net profit from the rental properties in the amount of \$2,950.00 per month shall be attributed to father as his monthly income in lieu of the court's prior finding of an imputation of his ability to earn \$2,500.00 per month.

The court noted that a parent's first and principal obligation is to support his or her minor children according to the parent's circumstances and station in life.... A parent's circumstances and station in life are dependent upon a variety of factors, including his or her earned and unearned income.

The trial court had discretion in deciding whether to consider the inheritance father received as income since it is not specifically listed in section 4058. This discretion is derived from subdivision (a) (3) of section 4058. Thus, the trial court here could have discretionarily considered as income the mortgage-free housing father was living in because he paid the mortgage off with part of the proceeds from his inheritance.

The appellate court stated that the language of the statute and the cases discussed lead to three conclusions: (1) one-time gifts or inheritances are not income; (2) interest, rents, dividends, etc., which are actually earned from gifts or inheritances, are income for purposes of child support; and (3) imputation of income based on the inheritance corpus or on interest the sum could have earned if invested, may be considered income in calculating support in the court's discretion.

The appellate court stated that the trial court did not consider any of the lump-sum inheritance of \$240,000 as an income resource, as it had

discretion to do. Further, after father spent the entire sum between hearing dates, the trial court did not impute interest income to father that the sum could have earned if invested. In addition, the court did not take into account father's reduction in living expenses as a result of his having paid off his mortgage with the inheritance sum. Finally, the trial court did not impute salary income of \$2,500, which father could have earned if he had not left his job.

The appellate court determined the trial court was unwilling to allow the child to share in her father's good fortune of having inherited a tremendous amount of money and real property assets. There was no basis given that this was in the child's best interests. The trial court failed to articulate any reasons why this would be so. The trial court fell far short of providing *reasons* why the level of support awarded is consistent with the child's interests as required by section 4056.

The appellate court concluded the father's inheritance is not income for purposes of calculating his annual gross income. However, his newly found wealth may be considered and its "corresponding reduction in living expenses." Under the circumstances here, it was an abuse of discretion for the trial court to not factor anything other than the rental income into its support determination.

The trial court's judgment was reversed and remanded with directions that the trial court consider each of the appropriate factors discussed above and determine whether any or all of them should be included as income for purposes of determining the appropriate child support order. If the trial court concludes any factors should not be included, it must state reasons why it would not be in the best interests of the child or in the overall interests of justice to include them.