

In re Marriage of Dacumos (11/8/99 - 76 Cal.App.4th 150, 90 Cal.Rptr.2d 159)

Appeal

Eduardo Dacumos appealed a judgment that awarded child support and attorney fees to his ex-wife. Appellant's primary contention is that the trial court abused its discretion by 1) imputing him with rental income to determine his cash flow, and 2) excluding Hilda's second job from her income.

The question before the Court is whether "earning capacity" is limited to income from work or whether the Court may also consider the parent's ability to receive income from assets.

Analysis/Conclusion

In the context of child support, income is broadly defined to include "income from whatever source derived." (Fam. Code, §4058, subd. (a).) Accordingly, "earning capacity" should also be given a broad interpretation. "Earning" need not be limited to payment for work; it may also be defined as: "something earned as compensation for labor or the use of capital." "Earn" means "to bring in by way of return." (Webster's New Internet. Dict. (3d ed. 1971) p. 714, col. 2.)

The Court determined that a broader definition of "earning capacity" which includes income that could be derived from income-producing assets as well as from work is in accordance with the legislative intent. It reasoned that when calculating child support, the state's top priority is the interests of the children and supporting a child according to the parent's circumstances and station in life is a parent's first and principal obligation. (Fam. Code, §4053) The Court stated that just as a parent cannot shirk his parental obligations by reducing his earning capacity through unemployment or underemployment, he cannot shirk the obligation to support his child by under-utilizing income-producing assets.

The trial court did not err in imputing rental income based on the fair market rental value of the properties and Eduardo's equity therein in calculating his income.

Facts/Background

Hilda and Eduardo were married in 1989 and had a son in 1990. The parties separated March 4, 1991. In 1998, Hilda requested the \$400 a month child support that Eduardo had been paying be continued and that the court determine there was an arrearage. Hilda's income and expense declaration showed she had two jobs in 1997; she worked one full-time time job and also had a part-time job. Eduardo's

income and expense declaration reflected that his expenses exceeded his income and that he had two rental properties that lost money.

The court ordered Eduardo to pay \$832 a month in child support. The court based its order on Hilda's wages consistent only with her full-time job. It found she had a second job because Eduardo was unwilling to support his child. The court imputed wages to Eduardo and imputed rental income to him. The court determined the imputed rental income by considering both the fair market rental value of his properties and his net equity in the properties.