

In re Marriage of Heiner 136 Cal App 4th 1514 (2006)

FACTS: The parties were married in May of 1993 and separated in November of 1994. They had two children. Husband was a dentist who became disabled in an incident at Kmart in 1995. In 1997, the Court granted joint physical and legal custody to the parties and ordered Husband to pay \$327 per month in child support. In January of 1999, Husband was awarded \$3.8 million in unallocated personal injury damages in his suit against Kmart. Kmart appealed. In May of 2000, Husband filed a motion to modify visitation and child support. In October of 2000, the verdict against Kmart was upheld and Husband and Kmart entered into an agreement which characterized the entire sum paid as "damages on account of physical and personal injuries" and which made reference to IRC Section 104 (a) for tax reporting purposes. No portion of the settlement was reported as interest income by Husband on his tax return. Husband received \$2,364,500 after fees and costs, which he invested in real estate, stocks and bonds. On January 23, 2004, the Court issued its final statement of decision on Husband's modification motion. While the Court imputed income to Husband's real estate and investments, it did not characterize any portion of Husband's personal injury award as income. Wife appealed.

ISSUES:

1. Is an unallocated lump sum personal injury award income as defined by Family Code Section 4058?
2. Does the trial court have discretion to determine whether some portion of an unallocated personal injury award is allocable as income?

CONCLUSION:

1. No. Such payment does not meet the generally accepted definition of income that is "the gain or recurrent benefit that is derived from labor business or property or from any other investment of capital." For the most part, personal injury awards are not intended as gain at all, but as an attempt to make the injured party whole.
2. Yes. Based on the facts presented to it, a trial court has the discretion to allocate a portion of an unallocated lump sum personal injury award as income. In this case, however, the court determined that such allocation would be too speculative and arbitrary, given the facts, so it refused to make such allocation.