

In re Marriage of Henry & Reissmuller (1/28/2005 - 126 Cal. App 4th 111, 23 Cal. Reprtr. 3d 707)

This case specifically addresses the use of the increase in the equity of a home as the basis for imputing earnings for purposes of child support under Family Code Sec. 4058. The court specifically found that the trial court erred in using the unrealized gain on such a residence as income for purposes of calculating child support. It also could be interpreted as limiting the broad definitions of earnings from other cases.

In this case, the mother of the children was the major wage-earner, and had generally been earning approximately \$8,000 per month as a nurse. However, she had a child from a new marriage, had become disabled, and therefore had not been able to earn that salary over a period of almost one year.

The trial court found that her income was still \$8,000 per month, and used the enormous appreciation of her ½ interest in her new home of \$120,000 over a nine-month period (which amounts to over \$13,000 per month) to justify this decision. The Court of Appeals noted that Husband could have used an argument of the wife's earning capacity, but he never presented any evidence regarding this and the court did not take this into account.

Husband relied on In re: Marriage of Destein (2001) 91 Cal. App. 4th to support his arguments that the appreciation of the value of the family home could be used, but this was rejected by the courts, mainly because the assets in Destein were true investment assets.

In this decision, the Court states that: "Although the language of section 4058 is expansive, it is not limitless." The court states that through its analysis of such cases as Destein, as well as In re: Maija v. Reed (2003) 31 Cal 4th 657 and others, that: "the child support obligation is based primarily on actual earnings and earning capacity."

It further goes on to state: "Section 4058's 'but is not limited to' language does not reach so far as to include the increase in equity of a parent's residence, forcing the parent to sell or refinance the home in order to make court-ordered support payments."

