

In re Marriage of Kerr (77 Cal.App.4th 87, 91 Cal.Rptr.2nd 374)

Richard and DeeDee Kerr were married in 1973 and separated in 1993. The husband was a VP of engineering at Qualcomm who received yearly stock options as part of his compensation package. The parties used the income from the exercise of stock options to enhance their standard of living and wealth.

Husband agreed to pay wife monthly spousal support and child support based on his salary and bonuses. Additional support was awarded based on 40% of the income from exercised stock options; 25% for spousal support and 15% for child support.

Husband agreed that the income from the exercise of stock option grants should be considered in calculating spousal support and child support. He objected to the court's award of support percentages because they were not based on the wife or children's needs.

Findings

1. The court found that the future grant of both incentive and nonqualified stock options was a part of Richard's overall compensation package from employment that must be considered in determining spousal support and child support.

The stock options existing at the time of separation were included in the parties' property division. Therefore, only future grants of stock options are considered.

2. In this particular case the wife was entitled to a percentage support award based on the husband's *exercised option income*. The court will determine the percentage that will result in a "just and equitable" support using the parties' *marital standard of living* as a point of reference. Due to the enormous increase in value of the Qualcomm stock, the court set a *maximum amount* for the award proportionate to the marital standard of living.

The specific factors in this case included the fact that the wife had been a homemaker for twenty years caring for the household and the children while the husband pursued a career. The wife had a twelfth grade education so she needed more assistance to maintain the marital standard of living. The wife was unable to maintain the marital standard of living under the current support award. During the marriage the parties had used income from the exercise of

Qualcomm stock options to enhance their standard of living and add to their wealth.

3. The minor children are entitled to a percentage support award based on the husband's *exercised option income*. The percentage award will be determined based on the *children's needs* in light of both parents' abilities and standards of living. The court will determine a *maximum dollar* amount based on the children's needs.

The appellate court wanted to maintain a lifestyle for the children that was consistent with their parent's position in society after the dissolution of the marriage.