

In re Marriage of Kirk (217 Cal App 3d 597, 266 Cal Rptr 76)

Case Point-Child support payers cannot reduce child support due by creating debt.

Facts

DOM 1970 - DOS 1982 – 4 Children

Husband owned Kirk Volvo. As 100% shareholder, by review hearing in 1988, \$572,000 with no repayments or repayment terms. Subsequently someone else owned the corporation and H entered into an employment contract with a monthly fee of \$5,000 plus an annual bonus of at least \$53,000, to be kept by the corporation to reduce H debt to the corporation. Court did not use the debt reduction in recalculating child support at \$1,200 per month.

Trial Court is reversed due to abuse of discretion in ignoring the debt as part of H's income in light of the record and findings.

1. The Agnos Act is applicable. The Act is broad enough to include debt forgiveness as income and there is no specified deduction for debt forgiveness. However, the Act is only mandatory for minimum child support awards.

Family Law Code sections 4700 and 4700.1 govern the setting and modification of child support. Code Section 7010 (d) mentions four factors and a fifth "all relevant facts deemed relevant by the court." There is broad discretion in the court to consider any factors which appear to it to be helpful in determining the amount of support. Except as to minimum support orders, it is the legislative intent to give broad discretion to the court within the guidelines of the county.

The child support ordered exceeded the minimum Agnos child support.

The appellate court found the trial was free to take or reject the cancellation of debt income as a factor in setting child support.

However, "A parent's first and principal obligation is to support his or her minor children...Section 4720(e). All payments of support shall be made by the person owing the support payment prior to the payment of any debts

owing to creditors...”4720(a)(1). “An indebted parent cannot escape liability for the paramount obligation to support the parent’s children because of indebtedness such parent has created. IRMO Muldrow. 61 Cal App 3d 327, 333.

The record shows income to H of \$9,450 per month and a shift to pay debt of \$4,450 per month. H voluntarily entered into the contract to shift the payment after the prior support award.

“Trial court error was failing to consider: the only rational inference...from the paperwork before the court was that this shift was a voluntary diversion of income to pay debt, resulting in deprivation of funds for child support. The law does not permit this.”

The appellate court indicated that without evidence to the contrary, the face of this record shows a reduction of child support for the purpose of repaying debt. A reduction of child support on that ground is, in our opinion, an abuse of discretion.