

In re Marriage of Loh (10/29/01 – 93 Cal.App. 4th 325)

Upward child support modification reversed – evidence based on Husband’s “lifestyle” with new partner was not sufficient to impute income to him.

Wife requested information from Husband including his current year tax returns. Husband never provided the information, but Wife did not bring a discovery motion. Wife, instead, provided photographs showing Husband in his new girlfriend’s house and other evidence of his increased standard of living. The trial court imputed \$9,000 per month based on this evidence.

The appellate court reversed for the following reasons:

1. The increased child support order cannot be a substitute for discovery sanctions.
2. This was not an imputation of income from earnings case. While Husband had gone into a new field, there was no evidence that this was done to reduce his income. On the contrary, it was in response to his company closing and his inability to transfer his securities license to another firm.
3. This was not an imputation of income to assets case. There was no evidence that Husband had acquired assets or that he had any interest in his girlfriend’s assets. On the contrary, it appears the house was in the girlfriend’s name alone.
4. Income tax returns are presumptively correct – and the most current years were not presented in this case.
5. The court rejected the Stewart v. Gomez approach to imputing income based on “anything that reduces living expenses”. This was especially true based on In re: Marriage of Wood held that a non-marital partner’s contribution to lifestyle cannot be considered given Family Code Section 4057.5 which precludes consideration of new mate’s income.
6. Photographic evidence would not be sufficient to establish income for income tax purposes and likewise, are not sufficient in family court.