

In re Marriage of Mosley (8/14/08 - 165 Cal.App.4th 1375)

Although the case covers several issues the most insightful was the Court's discussion on how to handle a contingent year-end bonus for purposes of support. In addition, there is a discussion on what the Court should consider when imputing income.

As usual, the facts of this case are a bit odd. They were divorced in 2002 when H was a partner with a law firm in their real estate practice. In a 2002 judgment the Court found his income for purposes of support was \$447,150 and ordered him to pay monthly child spousal support at \$6,810 and \$4,100, respectively. There was also an order that he pay 21% of all income above \$447,150 per year.

In February 2005, due to the slow down in the real estate market the law firm opted to pare down its real estate practice and Paul found himself unemployed. He subsequently took a job with a home builder as in house counsel. His new base salary was \$205,000 with a *possibility* of a year end bonus. His net monthly take home on his base salary was \$10,000 - \$11,000 per month. His support payments were over \$10,000 per month, leaving him less than \$1,000 per month to live on. Based on this H stated there was a material change in circumstances and in January 2006 filed an OSC re modification of child and spousal support.

Luckily he did receive a 2005 bonus, payable \$257,000 in December 2005 and \$85,000 in March 2006 and he was able to pay off the debt he had incurred borrowing his living expenses during 2005.

However, upon review of Paul's I & E, showing his 2005 income at \$448,392 (including the December bonus) the trial court denied the change in circumstance since his 2005 income was in excess of his income as stipulated in the 2002 judgment.

The Court was sympathetic to Paul's dilemma of having less than a \$1,000 per month, after his support obligations, using his base salary. They reversed the trial court and deemed that Paul had met his burden of showing a material change in circumstances. The matter was remanded to the trial court with the instruction that it find its award on Paul's base salary, exclusive of a speculative bonus. They then addressed any possible bonus by instructing the trial court to fashion an additional award expressed as a fraction or percentage of any bonus. The Court also acknowledged that this additional award may be above the guideline amounts.