In re Marriage of Murray (02/08/99 – 128 Ohio App. 3d 662, 716 N.E. 2d 288)

Unexercised [vested] stock options are to be considered when determining income for purposes of child support. The method and time period for determining the amount to impute is limited to the appreciation during the year in question [on the vested unexercised options].

Wife brought a motion to modify child support pursuant to the divorce decree, based on husband's unexercised executive employee stock options.

Income for child support pursuant to the divorce decree did not include unexercised stock options because they were considered part of the property division. Husband continued to receive employee stock options as part of his annual compensation package in years subsequent to the divorce. The growth of the options became a *substantial* portion of his employment package.

For purposes of the modification, husband reported income consisting of his base salary, average annual bonuses, dividends and interest, and taxable employee benefits, but not his stock options received in the years after the divorce. Even though the stock options had not been exercised, husband had sufficient resources to pay the child support obligation including the options.

The appellate court reasoned that an employee receiving stock options could shield a significant portion of income from the courts by simply not exercising them, and thus deprive his/her children of a standard of living they would otherwise enjoy. This would be in direct contradiction to the very purpose of the child support statute and the child's best interest.

Stock options received on a regular basis are not to be excluded as *nonrecurring income*.

The appropriate method for determining the income to impute from stock options in the year they vested is the difference between the strike price and fair market value on the exercise date. For subsequent years income, the increase in the fair market value between anniversary dates is the imputed income.

Query: What about annual decreases?