In re Marriage of Padilla (38 Cal.App.4th 1212; 45 Cal.Rptr.2d 555)

The marriage ended in 1990 and the Husband, Ronald, was ordered to pay $550 in monthly child support. In 1993, after new child support guidelines were enacted the Wife, Lori, filed for an increase in child support.

Ronald, subsequently resigned from his current employment in order to afford himself an opportunity to "embark on a business venture" which would potentially provide him with greater income. He denied that he changed his employment to evade his support obligations. Before the hearing in which Lori asked for an increase in support, Ronald asked the Court to reduce his child support in the interim between start up and greater earnings. Nothing happened until the next hearing.

The Court, based on prior earnings history, increased support to $797, but because Ronald was starting a new business, the Court held the support at $550 and set a six-month review hearing.

Although the Court found no bad faith in Ronald's change in employment, it found that support should be $767 a month (based on prior earning capacity) plus a $1,500 contribution to Lori's attorney fees.

Appeal

Ronald argued that the Court can only impute income when there is a finding of bad faith. The court rejects that as follows:

The Philbin Rule: Does not require a bad faith finding before earning capacity may be imputed. A parent may have income imputed if he or she unreasonably fails to take advantage of an employment opportunity.

The Regenery Rule: There is a three-prong test before the capacity to earn standard may be applied. Earning capacity is composed of (1) the ability to work; (2) the willingness to work exemplified by good faith efforts; (3) opportunity to work which means an employer who is willing to hire. A parent's motivation for reducing available income is irrelevant when the ability and opportunity to adequately and reasonably provide for the child are present.

Ilas and Simpson: "A payor does not have the right to divest himself (or herself) of his (or her) earning ability at the expense of …minor children" (In re Marriage of Ilas (1993). The Court cites Simpson (1992), "the statutory guidelines governing…child support do not limit the circumstances under which the trial court may consider the earning capacity of the supporting spouse,,, with the exception that…reliance on earning capacity must be 'consistent with the best interests of the children'."

Conclusion

Once a person becomes a parent, the desire for self-realization, self-fulfillment, personal job satisfaction and other commendable goals must be considered in context of the responsibility to provide for the children's reasonable needs. If they decide to lead a simple life, change professions or start a business they may do so, but only when they satisfy their primary responsibility: providing for the adequate and reasonable needs of their children.