

In re Marriage of Reynolds (05/19/98 - 63 Cal.App.4 1373, 74 Cal. Rptr.2d 636)

Husband, a career physician formally retired at age 67 after several failed attempts to remain employed. The appellate court ruled, as a matter of law, that he could not be compelled to work past the normal retirement age of 65. Further, the trial court could not impute a return on his retirement assets beyond their actual return. Finally, husband could not be compelled to invade the principal of his retirement assets to pay a higher level of spousal support.

This was a 37 year marriage in which husband was employed as a successful physician. In the divorce, the parties divided substantial wealth including nearly \$900,000 in retirement assets. Husband agreed to pay spousal support of \$5,500 per month for three years, after which the order would be subject to modification. Husband worked until age 66 when he was terminated following surgery on his leg. Husband sought other employment without success and formally retired at age 67. Husband filed a motion to reduce support based on his reduced income and the court awarded a reduction to \$3,500 per month. Wife introduced evidence of Husband's attempt to obtain new employment without citing his lack of success. The reduced award was based on the trial court's finding that Husband's net income available for support was \$5,000. From the record, the appellate court was unable to determine how the trial court arrived at this conclusion.

Husband objected to the level of support which apparently included an assessment of his capacity to remain employed.

The appellate court stated as a matter of law that a payor of spousal support cannot be compelled to work after the normal retirement age in order to provide a higher level of support. The court also found that the trial court could not impute a higher return on husband's retirement assets than what he actually earned.

The appellate court broke new ground in this case because prior case law did not directly confront the issue of compelling a payor of spousal support to work beyond the normal retirement age of 65. The court also reiterated IRMO: Olsen that there is no requirement to invade retirement principal to provide a higher level of support.