

In re Marriage of Schlafly (4/10/07 – 2007 DJDAR 4788)

The court can impute 3% return on a parent's portfolio as additional income available for child support. The Court can also consider a benefit for a parent living rent and mortgage-free, but cannot impute fair rental value as additional income available for child support.

The trial court modified child support by imputing a 3% rate of return on Husband's \$2.9M portfolio. Husband argued that since the portfolio was producing 1.6% the court had to use that figure. The appellate court relied on In re: Marriage of Dacumos (1999), In re: Marriage of Destein (2001) and In re: Marriage of Pearlstein (2006) in that not only can a reasonable rate of return be imputed to non-income-producing assets, but also underutilized income-producing assets. Since the trial court specifically used 3% based on certificates of deposit, the rate was determined with foundation and was reasonable.

The trial court originally calculated child support by adding \$1,062 per month to the guideline child support amount to take into consideration the fact that Husband lived rent and mortgage free. A later order instead imputed an additional \$3,000 per month income to Husband based on the fair rental value of the home he was living in. The appellate court agreed with the first approach but disagreed with the second approach.

The appellate court relied on the reasoning outlined in In re: Marriage of Loh (2001) and rejected the reasoning outlined in In re: Marriage of Stewart (1996). As such, since the free rent was not a result of an employment benefit, the fair rental value cannot be considered. However, an upward adjustment to child support can be made if there are "special circumstances". The court considered that living free of rent and mortgage expense constituted a "special circumstance". It is unclear how the trial court arrived at the \$1,062 per month amount, but it appears it was "well reasoned".