

In re Marriage of Schroeder (1/22/1987 – 192 Cal. App. 3d 1154)

Issue: Non-cash receipts of the supported spouse from cohabitor must be considered in determination of (reduced need of) spousal support.

18 year marriage, dissolved in 1982 – In 1986, Husband sought cessation of spousal support (no children) because ex-wife was cohabitating with adult male, or in the alternative, modification of spousal support.

Wife testified at trial that cohabitor was not contributing to household expense, but he made up for it by doing work around the house. Also, wife used cohab's Corvette, and she received gifts of a \$4,200 diamond ring and new furniture.

Trial Court found that wife's needs had not changed and denied modification.

Section 4801.5 states "there is a reputable presumption...of decreased need for support if the support party is cohabitating with a person of the opposite sex."

Appellate Court found that trial court erred in denying modification.

Appellate court concluded that a supported spouse may not evade section 4801.5 by accepting gifts from a cohabitant in lieu of actual reimbursement for shared living expenses. Non-cash receipts of the supported spouse must also be considered in the determination of reduced need. Any arrangement between cohabitants must be fair as to the supporting spouse. There cannot be an allocation of expenses in a manner that creates an appearance of continuing need in order to maintain the flow of income from the supporting spouse.