

In re Marriage of Schulze (60 Cal.App.4th 519, 70 Cal.Rptr.2d 488)

This case deals with two significant issues in spousal support cases. 1) Employee perquisites/benefits such as use of a company car and below-market rent on a residence are considered taxable benefits when computing guideline or permanent support, and 2) permanent spousal support has a very different purpose than temporary support and determination of the amount of support must be the result of a “ground-up” analysis using the factors of FL §4320.

This was a nine year marriage with 3 minor children at time of separation. H was employed in his parents’ business as VP of sales and earned a good living, averaging \$133k in the years prior to separation.

At the time of separation parents distributed 49% of the company stock to H’s other two siblings but none to him. His income dropped as a result of the conversion of some portion of compensation to dividends. In the year of separation H’s wages were \$80,000. Both the trial court and the appellate court saw this as a maneuver by H’s parents to lower income for purposes of support.

H had use of a company car and the trial court determined the fair rental value (FRV) of that benefit was \$500 per month. After separation, H’s parents bought a condominium in which H resided at a below market rent of \$800. FRV of the property was \$1,400 per month. The trial court found \$1,100 of additional income from these items and entered them into Dissomaster[@] as nontaxable income.

The trial court also used Dissomaster’s[@] planning option to order family support rather than deductible spousal support only. The result of all this was to cause over 83% H’s after-tax income to be payable as support.

The appellate court reversed as to spousal support and as to the tax status of H’s employee benefits.

Permanent spousal support must be determined by the trial judge in a “ground-up” analysis considering all the factors in FLC §4320(k). At no time is reference to the computer models such as Dissomaster[@] appropriate.

The court further ruled the car allowance, on its face, was an employment benefit and therefore should be included as taxable income for support. They also found the below-market rent to be a taxable benefit because H's parents were also his employers. This outcome might not be as clear if they had not been his employers: in that situation the below-market rent could be construed as a gift. Gifts are not generally includible as income under FLC 4058.

We note in this opinion there is scathing criticism of the computer programs that calculate guideline support.

We also note, further, that the trial court ordered the use of a Dissomaster[®] generated family support order. This seems odd in light of the fact that such orders must be carefully crafted to avoid potential treatment as non-deductible child support.