

### **In re Marriage of Simpson (12/17/92 - 4 Cal.4th 225)**

Income for support based on "reasonable work regimen" and not an extraordinary work schedule including significant overtime.

Husband (H) was a union stage hand working in theater and TV. He earned \$18/hour in theater work and \$13/hour for TV work. H worked considerable overtime, sometimes 7 days a week, 16 hours a day. The 3 years prior to separation he earned \$61,000 - \$71,000 per year including overtime. Wife (W) had custody of their 7 year-old daughter and was a student teacher. She became a substitute teacher shortly after trial.

At the OSC hearing, trial court made an order based on current income including overtime. A few days later, H stopped taking all overtime and only worked lower paying TV jobs. H's income dropped to \$2,200 per month. H only paid \$100 in support from OSC until trial. At trial, H testified the higher paying theater work was nights and weekends and was overly stressful to him. H testified he worked more than one job a day during marriage to enable his wife to obtain her teaching credential. With TV work, his hours were normal business hours and allowed him to spend time with his daughter. Trial court found H voluntarily reduced his ability to earn during the proceedings and fixed his income at \$60,000 per year, and ordered spousal and child support accordingly.

California Supreme Court reversed trial court because trial court did not apply correct standard of measurement of the earning capacity of H. H's earning capacity needs to be based on an objectively reasonable work regimen, which it defined as:

“A reasonable work regimen, as opposed to an extraordinary regimen, however, is not readily or precisely determined and is dependent upon all relevant circumstances, including the choice of job available within a particular occupation, working hours, and working conditions. Established employment norms, such as the standard 40-hour work week, are not controlling but are pertinent to this determination. In certain occupations a normal work week necessarily will require in excess of 40 hours or occasional overtime and thus perhaps an amount of time and effort which may be considered reasonable under the circumstances. A regimen requiring excessive hours or continuous, substantial overtime, however, generally should be considered extraordinary.”