

In re Marriage of Stewart v. Gomez (47 Cal.App.4th 1748)

Father contends the court erred in considering his earning capacity *and* his disability benefits, rather than his earning capacity *or* his disability benefits as income available for child support for his three children. Father also contends trial court improperly considered his rent-free housing on an Indian reservation, and his meal allowance during the period he attended a vocational training program as additional income for child support purposes.

Court of Appeal, for reasons stated below, said the trial court properly considered the foregoing items as gross income for child support.

The father had the ability to earn at least a minimum wage and such ability should be added to father's disability benefits because the two were not mutually exclusive in that father received these benefits whether he worked or not.

The father should be charged with reasonable value of the free rent he received because under the Agnos Child Support Standards Act, the reasonable value of non-monetary benefits received by a parent was chargeable as part of the parent's gross income.

The rent benefit results in a "reduction in living expenses" and, therefore, an increase in money available for child support.

The payment of father's meal expenses during his vocational training program were reimbursed and would have been incurred in the absence of the program. Thus, the Court of Appeal agreed with the trial court that the meal expense should be treated as income.