

In re Marriage of Terry (4/18/00 - 80 Cal.App.4th 921)

Supported spouse with an estate that could meet her needs if "reasonably managed," can be forced to change investment strategy.

Husband (H) was leading tax attorney in a major San Francisco law firm. Wife (W) had no employment outside of home. After 34 year marriage and children were adults, the parties divorced. W had separate property of \$2 million. W's needs determined to be \$10,000 - \$12,000 per month. H ordered to pay spousal support to make up difference between W's separate property income and her needs.

This matter was litigated three times, each time H asking for lower support as he became a salaried partner with subsequent reductions in salary twice and finally his employment ended. W's separate property estate increased in value between each proceeding. At the last hearing, W's separate property was an investment portfolio of \$3.75 million, retirement accounts approaching \$1 million, and real estate worth \$773,500. Trial court continued spousal support.

The trial court found W's separate property estate income rates of return, 5% at the first trial and 2.7% at the third trial, to be reasonable at the time, and did not order investment changes or impute income based on W's separate property estate.

Court of Appeal reversed and ordered spousal support set to zero. "The trial court's job is to ascertain whether the estate reasonably could generate sufficient income for proper support, not to second-guess how the spouse will manage that estate to ensure sufficient income. Thus a decision that an estate is adequate or sufficient is not a decision that any particular investment strategy must change, although that may happen."

Based on Court of Appeals discussion and action, W's previous rates of return may be floor indicators. An appropriate rate of return in most cases may be inflation plus a reasonable rate of return. For older litigants with a sizable portfolio, a reasonable approach may include a draw down of capital. In all cases, consideration should be given to whether an estate is being reasonably managed to generate income for support for a reasonable length of time.