

In re Marriage of West (6/19/2007-152 Cal.App.4th 240, 60 Cal. Rptr.3d. 858)

The Wests divorced in 1997 after a 20 year marriage. At divorce they had 2 minor children. H had a successful insurance business that sold at the time of property division. H and W split the cash proceeds and a 6 year installment note.

The MSA required W to make a good faith effort to become self-supporting. In 1997 the trial court set family support at \$6,795 per month.

W graduated from college in 5/2002 and obtained a substitute teaching credential, but in 2003 changed her mind and went into real estate. In 2005 H sought modification of support due to W's change of career. H asserted she should be charged with \$4,000 per month of income.

After testimony from the parties and a vocation rehabilitation counselor (VCR), the trial court reduced support to \$4,000 retroactively to January 1 2005, reduced it further to \$2,500 starting January 2006 and reduced it again to \$0 in 2007. Justification for this was 1) W's favorable earnings outlook, 2) W failed to save her share of the money from sale of the C/P business, and 3) the length of the marriage.

W appealed and the appellate court reversed.

The appellate court supported its reversal based on comments concerning the three justifications stated by the trial court.

FAVORABLE EARNINGS OUTLOOK: The trial court's discretion extends to the step-down of support over time but must be based on reasonable inferences from the body of evidence available. Here the court reduced support retroactively to January 2005 when W had no income of her own at all. Thus, W surrendered a portion of her support without any other source of income. In the second year (2006), the VCR said W could earn approximately \$32,000, but the court reduced her support by \$48,000. In the third year the VCR said she could earn approximately \$34,000 but the court reduced her support by \$78,000. All this in light of the fact that her needs totaled \$102,000 per year and H had an abundant ability to pay.

FUNDS RECEIVED FROM SALE OF THE BUSINESS: The court of appeals could not understand how a loss of the cash flow from the installment note could justify a reduction in support. The fact that W did not save the payments (a division of CP) did not warrant a finding of reduced support. Interestingly, W did not move for additional support when the installment payments ceased. Cases supporting imputation of income (*McElwee, Terry*) do not apply here because W was not seeking an increase in support.

Interestingly, the appellate court stated that neither party should be imputed income if they failed to save their cash or installment payments from the sale.

Finally, the appellate court opined that without a *Gavron* warning, W could not be charged with income on the funds she received from the sale as it related to support.

DURATION OF MARRIAGE: The trial court erred in using the “half the length of the marriage” guideline because this was clearly a long term marriage under the statute.

Again, interestingly, the appellate court remanded with the statement that the trial court could modify support based on other unarticulated factors.