

In re Marriage of Williams (2007 DJDAR 7027)

This case deals with the imputation of income on investment assets and specifically whether the trial court may impute income from a return on the equity of the supporting spouse's personal residence. This case is important in that it distinguishes *de Guigne*, where the imputation of income (for purposes of child support) on land associated with H's ancestral residence was affirmed by the court.

H and W were both wealthy with 2 minor children. In a mediated settlement the parties resolved most if not all their property and support issues. H was charged with child support of \$3,411 per month based on stipulated levels of compensation and investment income to H and W. Subsequent to the settlement, W sold the former family residence for a handsome gain and purchased a smaller residence and reserved over \$1.5 million dollars to remodel the residence to better meet the needs of the minor children and pay the capital gains taxes on the sale. Prior to the divorce, the children lived in opulent circumstances in the Silicon Valley area and at H's "palatial" estate in Pebble Beach on the Monterey Peninsula.

H filed a motion to reduce child support based on the additional wealth obtained by W from the sale of the former family residence. W opposed the motion and asked for additional child support in light of the fact that the stipulated settlement failed to consider a reasonable return on H's substantial investment assets.

The trial court denied H's motion and increased monthly child support to \$7,177 by imposing a 3% return on H's invested assets, including over \$5 million dollars of equity in his Pebble Beach residence.

H appealed the ruling on the grounds that W failed to prove the needs of the children required the imputation of income pursuant to FLC §4057 (b). He objected specifically to the imputation of a return on the equity in his Pebble Beach estate.

At some length the court outlined the State Legislature's principle concern that parents have a duty to support their children and that trial courts have wide discretion to set a support level that is in the children's best interests.

Put another way, where the best interests of the children requires a level of support that exceeds the more traditional sources of income (wages, salaries, income from investments); the court may impute a rate of return on “under-utilized” assets to effect the appropriate level of support.

However, with respect to imputation, the court, citing *Henry*, said the trial court’s wide discretion under FLC §4058 was not limitless and precedent case law did not extend such discretion to include a supporting parent’s equity in their personal residence. The court distinguished *de Guigne* (which rebutted guideline support under §4057 (b)) from the present case in support of its opinion.

The court remanded the case for reconsideration, ordering the trial court not to impute income on the equity in H’s personal residence.