

In re Marriage of Wood (1995 - 37 Cal. App.4th, 1059)

This case involves new mate income. The court found that the trial court erred in lowering the child support obligation of the father based on the mother's following marriage to a wealthy man. The trial court had reasoned that they were only looking at mother's standard of living; however, the Court of Appeal said that this was tantamount to considering new husband's income.

While it may be appropriate to consider ways in which a parties' standard of living has been reduced (and therefore appropriate reason for lowering support—see *In re Marriage of Loh* (2001), *County of Kern v. Castle* (1999) and *Stewart v. Gomez* (1996)), Family Code Sec. 4057.5 (a)(1) [for the obligor parent] and (a)(2) [for the obligee parent] specifically forbids the consideration of new mate or non-marital income.

FC Sec. 4057 (b)(5) describes various “unjust or inappropriate/special circumstances” which may cause a trier of fact to reduce support. And, actually, before January 1, 1994, trial courts had the authority to consider new mate income in a child support action.

The Court of Appeal did state that an exception to the prohibition of looking to new mate income would be appropriate when there is an extreme or severe hardship to a child. The Court stated: If the child may suffer because one of his parents quits working deliberately, then this is an extraordinary case in which the court may look to the income of the new mate of the spouse who has quit working, but the court can only consider this in order to prevent a hardship to the supported child. Both sections 4057.5 and 4057 define what is an extraordinary case or an inappropriate or unjust case by reference to the needs of the children. The examples given in section 4057, for instance, delineate exceptions based on the needs of the children, not the needs or conduct of the parents.

In re: Marriage of Wood is a useful case to read because it summarizes well the instances in cases before 1995 where support can be increased from guideline based on various factors other than new mate income.

P.S. Bernie Wolf represented the mother in this matter, which was a decision in her favor!!