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Maintenance income calculation: How gifts and imputation of income can affect awards

A recent Appellate Court case shed light on two issues that divorce attorneys often encounter when dealing with maintenance or spousal support: what constitutes income for purposes of calculating maintenance, and the imputation of income to a support recipient who is not employed.

The 2nd District case of *In re the Marriage of Ruvola*, 2017 IL App (2d) 160737, sheds some light on each of these issues in an interesting fact pattern where child support was not at issue because the parties had two grown children and the husband had a history of mental problems.

The parties had been married for more than 20 years, and the wife was employed by her family's company, earning $121,000 per year.

The husband had not been employed full-time in his field of study, chemistry, since 1998 and only worked sporadically for a number of years after that. Additionally, the husband attempted suicide in 2009 and did not reenter the workforce until 2012. His work history after his suicide attempt was spotty and unclear.

The court awarded the husband permanent maintenance after a trial and found the wife's income to be $125,000. Because the parties' combined income was less than $250,000, it applied the statutory guideline formula under 750 ILCS 5/504(b)(1)(a) to come up with a monthly maintenance amount of $3,125.

The court then deviated to $2,400 down from the guideline amount for three reasons: (1) The court imputed income in the amount of $25,000 to the husband per year; (2) The fact that the husband was able to meet his own expenses since the parties separated; and (3) The property award he received. The husband appealed the finding of his wife's income as well as the imputation of income to him.

Monetary gifts as income

With respect to the issue of wife's income, in addition to her base salary of $121,000, she admitted she also received a weekly check from the family company in the amount of $255, totaling $13,260 per year. Her father had given her regular monetary gifts prior to her employment at the company, and her siblings also received similar regular gifts.

Therefore, her annual income, was actually $134,460 even though that number was inconsistent with what was reported on the parties' tax returns.

The appellate court overruled the trial court's calculation of wife's income at $125,000 and held it should have included the monetary gifts she received from the company and her father for purposes of calculating maintenance.

Under the legislature's directive pursuant to 750 ILCS 5/504(b-3), gross income for calculating maintenance includes income from all sources within the scope of Section 505 of the Act — which is the child support statute.

MODERN FAMILY

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Under the Supreme Court case *In re the Marriage of Rogers*, 213 Ill.2d 129 (2004), annual gifts that a payor spouse receives constitute "income" for purposes of calculating child support.

Therefore, when calculating either child support or maintenance, it is clear that income from all sources includes monetary gifts that a support payor regularly receives. Parties who regularly receive monetary gifts from family members should be counseled that these gifts will likely be treated as income not only in child support cases, but also in maintenance situations, even if the gifts are not reported to the IRS on their tax returns.

Imputation of income for underemployment.

The court then addressed the issue of whether the husband had properly been imputed $25,000 in income, which resulted in a deviation down from the statutory maintenance award.

The husband graduated in 1981 with a degree in chemistry and worked in that field until 1998 when he was earning $125,000.

He left to start his own business, which did not come to fruition, and then struggled to find steady employment.

His later suicide attempt kept him out of work until 2012 when he earned under $20,000. In 2015, he moved and became a permanent resident of Florida, living with various friends and family members while his wife continued to earn her salary with her family company.

Despite the parties stipulating that the husband was not disabled and was not unemployable and the court entering an order requiring him to seek full-time employment, his job diary only reported contacts with friends and family, his canvas of a strip mall, and a description of him being hired by Sal's Pizzeria earning $8.25 per hour.

The court ultimately found that he displayed a lack of effort in obtaining employment, was voluntarily underemployed, and therefore imputed $25,000 of annual income to him.

The trial court criticized the fact that the husband did not pursue any opportunity within chemistry even though he had been out of the field since 1998. Furthermore, the husband provided no evidence to support his claim that he lacked marketability for chemistry positions because he was 56 years of age and far removed from the field.

The holding in this case is interesting because it raises the question whether parties need to seek employment in their field of training in order to not be considered underemployed.

In this case, the husband could have presumably obtained an expert opinion to opine on the likelihood of his securing current employment in the field of chemistry, which would have presumably been low given his mental health history.

Even though the court ultimately did not impute income to the husband consistent with what he had earned as a chemist, it left the door open that in some situations this could be a likely outcome.