

ALIMONY AND CHILD SUPPORT

Imputed Income

By K. Dean Kantaras

GENERALLY, ALIMONY IS based on the need of one spouse for it and the ability of the other to pay it. The standards of living, as established by the parties during the marriage, usually defines at least part of the need portion of the equation. Offsetting the need is the amount the receiving spouse earns or could earn. The “could earn” amount is called imputed income. That is, the trial judge may “impute” to the receiving spouse some amount of monthly income and calculate the paying spouse’s requirement to pay as though the receiving spouse was actually earning that amount.

The basis for the determination of the amount of imputed income is not a simple mathematical calculation. It also may, and often does, require the testimony of expert witnesses. Vocational evaluation experts are regularly used to conduct an examination of the spouse requesting alimony to determine if that spouse is capable of working and, if so, at what job or classification of employment and at what income. In most cases, the expert will be required to testify about specific jobs available to the requesting spouses in the community and at what salary.

A court is not required to impute income for alimony purposes. However, income must be imputed for child support purposes.

There are many reasons why a court will not impute income for alimony purposes. The requesting spouse, for example, may have some physical or mental disability, which prevents him or her from working. When such claims are asserted, additional experts become required. The paying spouse will want to have the receiving spouse medically evaluated to determine if a physical or mental problem actually exists. The Florida Rules of Procedure specifically provide for such evaluations. Who pays



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for the evaluation is another matter and the subject of a future article.

Another example of why a court may not impute income is because the parties have agreed one spouse, usually the mother, would stay home to care for children. That’s not uncommon, but the question becomes was the arrangement to continue until the children are out of high school and away from home or just until they are at some age while still in school? It is not unusual for the agreement to be so loose that it is considered undefined, in which case the chances are good that income will be imputed.

By statute in Florida, trial courts must impute income to an unemployed or underemployed spouse to determine the appropriate amount of child support. Since child support is determined based on a statutory schedule calculated using

the incomes of both parties, the imputed income issue must be resolved before child support can be determined. As with alimony, a trial judge may find reasons not to impute income even for child support purposes. The legal justification for not imputing income for child support is the same as for alimony.

The determination of whether a spouse is underemployed or unemployed is the same for both alimony and child support. For example, if the receiving spouse is a lawyer but is working in some other capacity, the court may find that spouse is underemployed. If that same spouse is unemployed, the court will look to the reasons for the unemployment and make a decision about whether or not the unemployment is reasonable.

The result of all this is that judges will try to determine if the parties are being both truthful and realistic. Judges have the experience sorting it out and making the appropriate rulings. Therefore, it’s always best to be honest when making a request from the court. ■■■

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