CALIFORNIA COURT OF APPEAL

Cheriton v. Fraser

92 Cal. App. 4th 269 (Cal. Ct. App. 2001) · Decided September 14, 2001

SUMMARY

The California Court of Appeal reviews a marital dissolution judgment addressing child support, spousal support, and attorney fees. It holds that the trial court improperly excluded substantial stock-sale proceeds and wealth from its child-support analysis and inadequately assessed the children's needs. The court reverses and remands for further proceedings.

CASE DETAILS

COURT	California Court of Appeal
WRITING FOR THE COURT	Wunderlich, J.; Bamattre-Manoukian, Acting P. J.; Premo, J.
JURISDICTION	California
DECIDED	September 14, 2001
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Iris Fraser appealed from a marital dissolution judgment establishing child support and spousal support and denying her request for need-based attorney's fees.
STANDARD OF REVIEW	Abuse of discretion applied to the child-support, spousal-support, and attorney's-fee rulings. The court emphasized that child-support discretion is limited by statute and rule and that the trial court must exercise informed and considered discretion.
PRECEDENTIAL VALUE	Published California Court of Appeal opinion; precedential under California law.
PARTIES	Iris M. Fraser v. David R. Cheriton

TOPICS

child support · spousal support · family law procedure · appellate procedure · standard of review

PRACTICE AREAS

family law · child support · spousal support · attorneys' fees · appellate procedure

QUESTIONS PRESENTED

1. Whether the trial court erred by excluding Cheriton's 1997 Cisco stock-sale proceeds and other income from the child-support calculation.
2. Whether the trial court was required to consider Cheriton's substantial assets or impute a reasonable return on those assets in determining child support.
3. Whether the trial court properly determined the children's reasonable needs, including its reliance on historical expenses, a housing-cost cap, and an unformed trust.
4. Whether the trial court's future child-support modification procedure unlawfully circumvented statutory modification procedures and judicial factfinding.
5. Whether the trial court abused its discretion by refusing to make child support retroactive to the date of Fraser's modification motion.
6. Whether the trial court properly imputed earning capacity to Fraser for child-support purposes.
7. Whether the trial court adequately considered all applicable Family Code section 4320 factors, including Cheriton's ability to pay, in setting spousal support.
8. Whether the spousal-support step-down provision improperly reduced support based on Fraser's liquidation of separate-property assets.
9. Whether the contingent termination date for spousal support was an abuse of discretion.
10. Whether the trial court abused its discretion by refusing to reconsider retroactive temporary spousal support.
11. Whether the trial court improperly denied Fraser's need-based attorney's-fee request without considering the merits, her need, and Cheriton's ability to pay.

HOLDINGS

1. The entire amount Cheriton received from the 1997 sale of Cisco stock, subject to permissible deductions, constituted gross income for purposes of Family Code section 4058, subdivision (a)(1), and the trial court erred by excluding it from the child-support calculation.
2. In setting child support, the trial court must consider the parent's ability, circumstances and station in life, and standard of living; at a minimum, it may need to impute a reasonable return on substantial assets under section 4058, subdivision (b), to meet the children's reasonable needs.
3. The trial court erred in defining the children's needs by historical household expenses, by subtracting the custodial parent's expenses from total household expenses, by relying on an unformed trust, and by enforcing a stipulated housing-cost cap that adversely affected the children's support rights.
4. The trial court's procedure requiring the parties to exchange income information and calculate annual support changes without a judicial hearing or findings was invalid and exceeded the court's jurisdiction.
5. A court may impute earning capacity to a parent only if doing so is consistent with the children's best interests; the trial court erred by failing to make an express or implied finding on that issue.

6. The trial court abused its discretion by failing to consider and apply all relevant Family Code section 4320 factors, particularly Cheriton's ability to pay, including his assets and wealth.
7. The step-down provision was not supportable as written because it reduced spousal support based on gross proceeds from the sale of assets, potentially penalizing Fraser for liquidating separate property received in the property division.
8. The contingent termination order requiring Fraser to move to extend support by September 30, 2002, was not an abuse of discretion because it was not absolute and the record supported an inference that Fraser could become self-supporting.
9. The trial court was required to reconsider the retroactivity of temporary spousal support based on Fraser's need and Cheriton's ability to pay and to articulate the reasons for its decision.
10. The trial court abused its discretion by denying Fraser's need-based attorney's-fee request without considering the fee evidence and the merits, including Fraser's need and Cheriton's ability to pay.

KEY QUOTATIONS

> *"In short, the trial court's discretion is not so broad that it "may ignore or contravene the purposes of the law regarding . . . child support. [Citations.]""* (92 Cal. App. 4th at 283)

> *"Given the broad statutory definition of income, we conclude that the entire amount David received from the 1997 sale of his Cisco stock, subject to permissible deductions, constitutes gross income for purposes of section 4058, subdivision (a)(1)."* (92 Cal. App. 4th at 289)

> *"Just as a parent cannot shirk his parental obligations by reducing his earning capacity through unemployment or underemployment, he cannot shirk the obligation to support his child by underutilizing income-producing assets."* (92 Cal. App. 4th at 292)

> *"The statutes also contemplate that the trial court will modify child support orders based on the parties' then current circumstances."* (92 Cal. App. 4th at 298)

> *"Failure to consider and apply the statutory factors constitutes an abuse of discretion."* (92 Cal. App. 4th at 305)

> *"We therefore remand the matter of attorneys' fees and costs to the trial court for its reconsideration and determination on the merits."* (92 Cal. App. 4th at 318)

FACTUAL BACKGROUND

Iris Fraser and David Cheriton were married in 1980 and had four children. Cheriton was a Stanford professor, researcher, inventor, and consultant who received substantial Cisco stock options; by the time of trial his Cisco stock and options were valued at approximately $45 million, and he had realized about $9.75 million in gross proceeds from exercising options and selling Cisco stock in 1997. The trial court set child support at $2,292 per month, spousal support at $2,000 per month with step-down and termination provisions, and denied Fraser's request for additional attorney's fees.

PROCEDURAL HISTORY

The parties stipulated to a dissolution judgment in December 1997, resolving property division and reserving child-support, spousal-support, and certain attorney's-fee issues for later trial. After a May 1998 trial, the superior court issued an amended statement of decision and entered judgment in October 1998. Fraser appealed, and the Court of Appeal reversed the judgment insofar as it addressed support and attorney's fees, struck the future child-support modification procedure, and remanded for reconsideration under the court's instructions. A petition for rehearing was denied October 12, 2001, and the California Supreme Court denied review December 19, 2001.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The court struck the future child-support modification procedure and remanded child support for recalculation including Cheriton's 1997 Cisco stock-sale proceeds, previously omitted royalty, dividend, and interest income, and, if necessary, reasonable imputed returns on his assets. The trial court must reassess the children's needs based on the parents' ability to pay rather than historical expenses, disregard the stipulated housing cap and any unformed trust contribution, reconsider retroactivity, and determine whether imputing earning capacity to Fraser serves the children's best interests. The court must reconsider spousal support under all applicable section 4320 factors, including Cheriton's ability to pay, Fraser's reasonable needs, the balance of hardships, the step-down provision, and retroactivity of temporary support. It must also reconsider Fraser's attorney's-fee request on the merits, considering need, ability to pay, and the parties' stipulation. Fraser was awarded costs on appeal, and the trial court retained discretion to award appellate attorney's fees.

CASES CITED

- In re Marriage of Wood, 37 Cal. App. 4th 1059 (1995)
- In re Marriage of Chandler, 60 Cal. App. 4th 124 (1997)
- In re Marriage of Muldrow, 61 Cal. App. 3d 327 (1976)
- In re Marriage of Butler & Gill, 53 Cal. App. 4th 462 (1997)
- County of Stanislaus v. Gibbs, 59 Cal. App. 4th 1417 (1997)
- In re Marriage of Kerr, 77 Cal. App. 4th 87 (1999)
- In re Marriage of Hubner, 205 Cal. App. 3d 660 (1988)
- In re Marriage of Ostler & Smith, 223 Cal. App. 3d 33 (1990)
- McGinley v. Herman, 50 Cal. App. 4th 936 (1996)
- In re Marriage of Dacumos, 76 Cal. App. 4th 150 (1999)
- County of Kern v. Castle, 75 Cal. App. 4th 1442 (1999)
- In re Marriage of Hall, 81 Cal. App. 4th 313 (2000)
- In re Marriage of Popenhager, 99 Cal. App. 3d 514 (1979)
- Primm v. Primm, 46 Cal. 2d 690 (1956)
- In re Marriage of Simpson, 4 Cal. 4th 225 (1992)

- In re Marriage of LaBass & Munsee, 56 Cal. App. 4th 1331 (1997)
- In re Marriage of Richmond, 105 Cal. App. 3d 352 (1980)
- In re Marriage of Carter, 26 Cal. App. 4th 1024 (1994)
- In re Marriage of Jacobs, 126 Cal. App. 3d 832 (1981)
- In re Marriage of Sullivan, 37 Cal. 3d 762 (1984)
- In re Marriage of Braud, 45 Cal. App. 4th 797 (1996)
- In re Marriage of Olson, 27 Cal. 3d 414 (1980)
- In re Marriage of C., 57 Cal. App. 4th 1100 (1997)
- In re Marriage of Zywiciel, 83 Cal. App. 4th 1078 (2000)

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