

Slacker Spouse

Support Cut Off When Woman Fails to Become Self-Supporting

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In a case that will likely become a leading decision on the issue of spousal support, the court in *In re Marriage of Schaffer*, 69 CalApp.4th 801 (1999), reduced support to zero where the wife failed to make reasonable efforts to find employment during the 15 years after the trial. This reduction occurred after more than a half-dozen previous extensions of support.

The parties were married in 1952 and separated in 1976. The judgment terminating marital status was entered in 1980. The trial court initially awarded the wife spousal support of \$850 a month for the first year and \$650 a month for the second year. Jurisdiction over support was retained because of the length of the marriage.

At the time of trial, the wife was 48 years old. She held a master's degree in marriage, family and child counseling and planned to obtain a Ph.D. in two additional years. However, the trial court was "clearly troubled by her choice of occupations." The court "doubted that she had the emotional stability and self-control to do the social and counseling work for which she was training, and suggested she was headed in the wrong direction."

Through the course of six post-judgment hearings for support, the wife was able to extend her two years of support to 15. These postjudgment proceedings (each heard by a different judicial officer) were as follows:

■ July 1984: The wife sought an increase to \$1,200 a month, claiming she suffered from severe chronic depression and anxiety that made her totally unemployable. The court, in an order upheld on appeal, extended support for two years at \$400 a month. The court admonished the wife to become self-sufficient.

■ August 1984: Two days after the Court of Appeal upheld the prior order, the wife brought another modification request. The trial court awarded her \$750 a month support for one year and \$500 a month for the next. The court again warned the wife to become self-sufficient. The court told the wife: "You are not going to help yourself get work by sitting around watching daytime television. ... If you come back before this Court and you haven't demonstrated that you have made a real effort, I'm going to cut you off." The court also ordered her to keep a record of her efforts to find a job.

■ January 1985: This third request to extend support included five job rejection letters and a claim that despite her "conscientious effort to find employment," she was unable to do so. The parties stipulated to a one-year extension of \$750-a-month support. The wife also agreed to submit to a vocational examination.

■ January 1987: Even though the support pursuant to the stipulated January 1986 order was to expire in January 1987, the wife sought support because she could not meet her expenses based on her "current support." The court extended support for three years at \$750

a month, with a "review" at the end of that period.

■ March 1990: This request was based on the wife's inability to find and retain employment to cover her living expenses. At this time, she actually managed to have a job. Following a suicide attempt (and while taking antidepressant medication), she had a job at a nonprofit foundation counseling manic-depressives and schizophrenics. She also was a group therapy facilitator once a week and a receptionist on weekday mornings. The parties stipulated to resolve this order to show cause by stipulation, which extended support for 15 months. It fur-

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could a court determine whether or not reasonable efforts were made to find employment. It may take several years to determine this.

The court noted that Family Code Section 4320(k) provides that a reasonable period of time for a person to become self-supporting is one half of the length of the marriage. The court concluded that based on these facts, the wife was not reasonable in exclusively pursuing a job in the counseling field. Moreover, Section 4320(k) allowed a court on this issue to examine the facts of a case occurring prior to the most recent orders.

In the dissent, Justice Sheila Prell Sonenshine argued that the majority incorrectly allowed the husband to challenge the prior court orders. At least one prior court order found that the wife had made her best, good-faith attempt to find employment. A look at the "entire picture" allowed the husband, in effect, to challenge those orders and obtain an order that the wife was not reasonable. In other words, under the guise of "looking at the big

picture," the court was simply disagreeing with the prior orders. The dissent also argued that based on the record, the wife was reasonable, given her disabilities in her attempts to find employment.

Perhaps the most important lesson of this case is that in post-judgment proceedings, the entire picture of the case needs to be (and can be) presented to the court. A prior adverse ruling can be challenged by arguing the "big picture," which may have been not apparent when the prior order was made. The court is not limited to the facts that occurred since the prior order.

Another important lesson of this case is that it may be unreasonable for a person to exclusively pursue one line of work even if his or her educational training is in that area. At the time of the divorce, the wife held a master's in marriage, family and child counseling. Yet the court held it was unreasonable for her to pursue that field. She could have obtained a job as a hospital or doctor's office insurance clerk or a legal file clerk. (Apparently, even a suicide attempt and the need for antidepressant medication should not stop someone from being able to work and support herself, according to the court.)

Another interesting, but perhaps overlooked, point is the determination of the "length of the marriage" for purposes of permanent spousal support. The issue is whether or not the "length of the marriage" includes the period of time from separation to the date a judgment terminating the marital status is entered. The court, in a footnote that is arguably dicta, stated that measuring the marriage to the date of separation is "substantively more accurate." In the future, attorneys representing a spouse paying support should rely on this opinion to exclude the time period from the date of separation to the date the marital status is terminated from the "length of the marriage."

This case will surely be argued by any party seeking a reduction or termination of support. It is thus important for an attorney representing a party in the wife's position to prepare for these arguments. One strategy the wife could have used was to pursue jobs in other fields of work. The fact that she did not pursue these other jobs obviously influenced the court heavily. In any case, this opinion will be the subject of future interpretation and debate.

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■ March 1991: The wife, in pro per, brought the now-familiar request for an extension of support. In fact, the court noted that it appeared that she photocopied her prior request and changed the dates with Liquid Paper. The court found that she had "made a good faith effort to find employment considering her disabilities" and extended support for approximately two years at \$650 a month.

■ January 1993, November 1994, January 1995: The parties stipulated to three extensions of the \$650-a-month support. During this time, the wife quit her job with the nonprofit foundation because she was "burned out and stressed out." She also found, and lost, another job because she "repeatedly pursued an inappropriate complaint against another employee."

■ February 1996: This was the request for an extension of support that finally hit a brick wall. The court, reviewing the entire picture of this case, reduced support to zero. The court reasoned that the wife had "ongoing poor judgment in pursuing a career." Also, for many years, she did not diligently pursue employment, and she quit her job because of stress.

The Court of Appeal first commented on the "potential for injustice" when different judges hear post-judgment hearings, noting that assignment to a single judge would remedy or reduce this problem.

The court then examined the rule that limits a court to only looking at whether there has been a material change of circumstances from the most recent order. The court stated that pursuant to this rule, at each request for support, the court could only examine whether or not the wife made a reasonable attempt to find employment since the prior order. During the time period between any two orders, the wife appeared to have made reasonable attempts to find employment. Analyzing the case under this standard, "it was an abuse of discretion not to give her yet another extension of support."

However, the rule requiring a change of circumstances was designed to prevent repeated requests for modification. Yet in this case, the rule backfired. The rule allowed the wife to successfully bring the repeated modification requests that the rule was designed to prevent. Only by examining the entire picture of this case

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