

# Courts Must Examine Statutory Factors Before Altering Support

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In *In re Marriage of Lynn*, 2002 DJDAR 9320 (Cal. App. 5th Dist. Aug. 13, 2002), the court held that where a property distribution equalization payment in a dissolution of marriage proceeding is discharged in bankruptcy proceedings, courts may consider this fact in ruling on a request to increase spousal support.

However, the *Lynn* court reversed the trial court's order increasing spousal support because it found that the trial court failed to consider all of the Family Code Section 4320 factors.

James and Patricia Lynn were married in 1971 and separated in 1992. They had two minor children. A judgment of dissolution was entered in 1992 that reserved the issues of support and property division. In October 1994, the court made orders on child support based upon James' income of \$2,594 per month and Patricia's income of \$771 per month. The court reserved jurisdiction on the issue of

ordered James to pay \$25,821 for spousal support at the rate of \$1,500 per month, pursuant to Section 3592. James appealed.

The appellate court analyzed Section 3592 and its predecessor statute, Civil Code Section 4218.

Section 3592 provides: "If an obligation under an agreement for settlement of property to a spouse or for a spouse is discharged in bankruptcy, the court may make all proper orders for the support of the spouse, as the court determines are just, having regard for the circumstances of the parties and the obligations under the agreement that are discharged."

The court considered the nature of marital settlement agreements and other statutes within the chapter of the Family Law Act containing Section 3592 and held that Section 3592 meant what it said by restricting its application solely to settlement agreements. The court held, therefore, that the trial court erred in basing its order modifying spousal support upon Section 3592 since James' equalization payment was based on a court order and not a property settlement.

ization payment in their divorce. The husband filed bankruptcy and discharged the debt, whereupon the wife filed to increase the amount and extend the duration of the spousal support. Her request was granted.

On appeal, the *Siragusa* court rejected the husband's argument that the spousal support increase and extension was, in effect, a replacement of the discharged debt in violation of federal bankruptcy law. The court held that the trial court's order modifying spousal support properly considered the fact that the wife would no longer receive the equalization payment upon which the original support order was based.

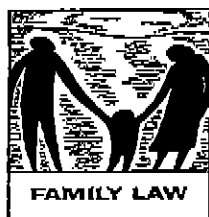
In *Clements*, a judgment of dissolution was entered that included an order for spousal support that took into account the division of the parties' assets and debts. Thereafter, the wife filed bankruptcy. The Family Court granted an order allowing the husband to offset from the spousal support payable to the wife any amounts that he paid for the wife's debts. The wife appealed.

The *Clements* court affirmed the trial court, stating that there are many factors a court can consider in establishing a spousal support order and that, in the case before it, the change in the relative economic status of the parties caused by the wife's bankruptcy discharge was sufficient for the court to authorize a reduction of support payments.

In conclusion, the *Lynn* court's ruling makes clear that trial courts have significant discretion in modifying spousal support based upon the discharge of an equalization payment in Bankruptcy Court. Where the equalization payment was not based upon a settlement agreement, the only limitation imposed upon trial courts by the *Lynn* court is that the trial court must use its discretion in considering all of the Section 4320 factors before it rules on the request to modify support.

Consideration of each of these factors, however, will not be significant in most cases, since many of these factors would typically support the applicant's request to increase support after discharge of an equalization payment. See Section 4320 (e) (7), (8).

Under Section 3592, a trial court would have even greater discretion in cases where the equalization payment was made pursuant to a settlement agreement. In such cases the court would not have to consider the Section 4320 factors, but rather could utilize the provisions of Section 3592, which allows the court to make "all proper orders for the support of a spouse which the court determines are just."



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In November 1994, the court made orders regarding distribution of the parties' property. They required James to make an equalization payment to Patricia of \$25,820.78. James failed to make the equalization payment to Patricia and in January 1999 filed a voluntary petition for bankruptcy under Chapter 13 of the Bankruptcy Act. James included among the debts that he sought discharged the equalization payment to Patricia, which was thereafter discharged in the bankruptcy.

On Oct. 23, 2000, Patricia filed a motion for modification of spousal support in which she requested that the court pay her spousal support in monthly installments of \$1,500 to replace the amount of the equalization payment discharged by the Bankruptcy Court. Patricia based her motion on Family Code Section 3592.

James opposed the motion on the basis that the original equalization payment was inequitable and that Section 3592 applies only to the discharge of obligations under settlement agreements.

In reply, Patricia conceded that Section 3592 applies only to settlement agreements but argued that she was nevertheless entitled to \$1,500 per month in support based upon the factors set forth in Section 4320. At the time of the motion, Patricia was earning \$1,400 per month with expenses of \$2,250 per month, and James was earning \$4,150 per month with claimed expenses of \$3,363 per month.

On March 14, 2001, the trial court

However, the court emphasized that the fact that Section 3592 did not apply did not mean that the court should ignore the discharge of the equalization payment in bankruptcy. Rather, the court found that the discharge of the equalization payment should be considered along with all of the other statutory factors for modification of spousal support set forth in Section 4320.

In considering these various factors, the court noted that trial courts possess broad discretion in weighing the importance of each factor. However, it stated that trial courts may not be arbitrary in exercising their discretion and must recognize and apply each factor, regardless of the weight given to the factor.

Following this logic, the *Lynn* court concluded that it was necessary to remand the matter to the trial court for a consideration of all of the Section 4320 factors. The trial court, in simply accepting Patricia's request for support of \$1,500 per month without any explanation as to how Patricia arrived at this amount, would be arbitrarily exercising its discretion under Section 4320.

In support of the proposition that the courts should consider the effect of the discharge of an equalization payment in ruling on an application to modify spousal support, the court cited two cases: *In Re Siragusa*, 27 F.3d 406 (9th Cir. 1994); and *In re Marriage of Clements*, 134 Cal.App.3d (1982).

In *Siragusa*, the husband was ordered to pay the wife \$1.25 million as an equal-

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