

Case May Help Spouses Who Conceal Income and Assets

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A spouse who can effectively conceal income and assets may have won a victory in *In re Marriage of Murray*, 101 Cal.App.4th 581 (2002). The trial court "temporarily suspended" spousal support and, several years later, reinstated it because the court found that the husband had the ability to pay support during those years.

The Court of Appeal first found that this order constituted an improper retroactive modification of support. The court, however, allowed the retroactive reinstatement of support to stand because the husband's appeal was too late. The court found that he should have appealed the suspension order when it was made.

For future cases, the court instructed that, instead of "temporary suspension" of support orders, the aggrieved party must file a motion to set aside the support order based on the other party's fraud. The court also ruled on the proper standard to review a trial court's finding that one

knew it was inaccurate and substantially padded. The court also found that the husband seemed to find money for things he wanted to buy, such as a purchase of a vehicle and trips to Hawaii.

In 1992, the court "suspended" the husband's obligation to pay support based on the husband's position that he was in ill health, that his business had failed and that he was deeply in debt. He claimed that his pension benefits were reduced to \$174 per month but that his Social Security payments increased to \$1,042 per month. He also claimed that a creditor attached the sale proceeds of the former family residence.

The court also "reserved the right" to retroactively reinstate support to the date that the order to show cause was filed. It appears from the record that the court contemplated a continued hearing a few months later. That continued hearing, however, never occurred because the husband filed a petition in bankruptcy, which stayed the divorce case. The Bankruptcy Court dismissed that petition because the husband had tried to defraud

The court also reasoned that "an order for temporary support is in the nature of a final judgment and so is directly appealable."

As a final judgment, it cannot be retroactively modified. The court then cited several cases that did not allow a retroactive modification of support.

The court then, interestingly, distinguished *In re Marriage of Caspar*, 232 Cal.App.3d 1308 (1991).

In that case, the parties stipulated that the husband's business would pay the wife monthly payments as a "distribution of community property, but were made subject to being re-classified" at the time of trial.

The court at trial ordered these payments to be reclassified as support. Over the husband's objection, the court found that the husband's stipulation gave it the authority to retroactively modify support.

The court in *Murray* then stated that the remedy for a spouse in the position of the wife was to file a motion pursuant to Family Code Section 2122 to set aside the support order based on the husband's fraud. That motion needs to be filed within the statutory time period of one year from the date that the complaining party knew or should have known about the fraud.

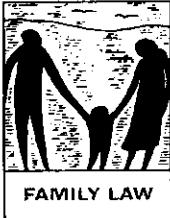
This opinion creates a dilemma for a spouse seeking support who suspects that the other spouse is not being truthful about his or her income and assets. Instead of merely having to show that the payor spouse had the ability to pay past support, the spouse seeking support now must meet a much higher burden, proving that the other spouse committed a fraud in connection with the prior order.

To the extent that the suspicions are raised in court pleadings or in any discoverable manner, they could trigger the one-year statute of limitations on setting aside the support order. If the evidence supporting the suspicion at the time the original order is made is weak, an argument could be made that it would be better not to voice the suspicions in order to prevent the statute-of-limitations clock from starting.

Additionally, a party in the wife's position should try to have the other party stipulate that the court can retroactively increase support as of the date the original order to show cause was filed. The basis for the increase can be, preferably, the court's subsequent finding that the party paying support had the ability to pay a greater amount of support than the amount ordered.

If the other party will not agree to this, he or she might stipulate that, if any of the facts on which the support are based are later found by the court not to be true, then the court may increase support retroactively.

Another lesson of this case is that the appealability of unfavorable temporary orders should be evaluated at the time that they are made. Failure to appeal when the temporary order is made may prohibit a future appeal.



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party committed fraud against the other.

The facts span several decades. The parties were married in 1972. At the time of the marriage, the husband worked for a company involved in the oil business. A year after marriage, the husband suffered a work-related accident, which he claimed left him totally disabled. For the next several years, his only income was from Social Security.

In 1981, he went back to work as a commissioned salesman. After several years, he became his employer's "working manager." In 1989 (the parties were in their late 50s), the husband and wife decided to retire in Texas. They purchased a house in Texas, and the wife moved there in mid-1989.

In 1991, the husband's debts forced him to close his business. In that same year, the husband filed a petition to dissolve his marriage with his estranged wife. The wife then obtained a temporary spousal support order of \$800 per month, based mostly on the court's finding that the husband was evasive and untruthful about disclosing his income and assets.

The husband claimed that his only income was \$831 per month from a pension from a prior employment and \$750 per month Social Security. However, the court found that there was insufficient evidence to substantiate the husband's claim of total disability. The trial court also found that the financial statements that the husband submitted of his business were out of date and that he was extremely evasive about answering questions about the status of his business.

The husband admitted that he signed a loan application stating that he had a net worth of close to \$1 million but that he

his creditors by concealing his assets.

In 2000, on the wife's request filed in 1999, a trial was held on the reserved issues of property division and spousal support. The court retroactively reinstated spousal support based on the finding that the husband actually had been able to pay support those years and that he, in essence, fraudulently allowed the creditor to attach the sale proceeds of the former family residence.

For a year before the trial, the husband worked doing refrigeration work earning \$3,400 per month. In mid-1999, the husband claimed that he injured his back and could no longer work.

The husband appealed both the support and property orders. With respect to the support order, the Court of Appeal found that, while the trial court did not have the authority to retroactively modify the support, the husband lost his right to appeal because he should have appealed the order allowing the retroactive modification when the court issued it in 1992.

The court relied on Family Code Section 3603, which states that an order awarding temporary spousal support "may be modified or terminated at any time except as to an amount that accrued before the date of the filing of the notice of motion or order to show cause to modify or terminate."

The court noted that the statute does not allow for a "suspension" of support or for modifying it beyond the date that the underlying request for modification was filed. Presumably, the court viewed the wife's claim at trial for reinstated support as the operative date of the modification request, not the original date that the order to show cause for support was filed.

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