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HIGHLIGHT:

BODY:

The Sixth District Court of Appeal, in *In re Marriage of Alter* (Feb. 26, 2009) 171 Cal. App. 4th 718, 2009 Cal. App. LEXIS 218, recently held that (1) a trial court always has the power to modify an existing child support order, upward or downward, regardless of the parties' contrary agreement; and that (2) a trial court has discretion to consider a party's recurring gifts of money as income when calculating child support under the statewide uniform child support guideline.

In the opinion by Justice Premo (with Rushing, P.J., Elia, J., concurring), the appellate court reasoned that (1) a child support agreement incorporated into a marital settlement is deemed court-imposed rather than contractual, and therefore is subsequently modifiable by a court and that (2) the definition of "annual gross income" in Fam. Code § 4058 is broad enough to encompass gifts that bear a reasonable relationship to the traditional concept of income as a recurrent monetary benefit.

Facts and Procedure. In 1989, a husband (Jack) and wife (Cindie) were married; in 2001, they separated. They had two minor children. Eventually, Jack and Cindie obtained a marital dissolution judgment that incorporated a marital settlement agreement (MSA). In July 2001, after finalizing the MSA, Cindie relocated with the children to Georgia.

Jack and Cindie's MSA gave Cindie sole legal and physical custody of the children. Regarding child support, it required Jack to pay \$4,000 a month plus significant add-ons for items such as tuition. It further provided that Jack's child support obligations "shall be absolutely nonmodifiable downward throughout the term that child support shall remain in effect."

Regarding spousal support, the MSA required Jack (1) to pay \$3,000 a month, (2) to give Cindie a portion of anything inherited from his parents' estates, and (3) to bequeath 25% of his own estate to Cindie. It further provided that spousal support would *not* terminate upon Cindie's remarriage, and that spousal support could be reduced to \$1,000 a month if

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(1) Cindie received her share of Jack's inheritance in periodic payments, (2) Cindie's employment income exceeded \$75,000 a year, or (3) upon Cindie's remarriage, her new spouse had an annual income or net worth in excess of specified amounts.

In December 2004, Jack sought modification of child and spousal support on the basis of changed circumstances. He asked that his monthly child support obligation be reduced to the statutory guideline amount, that his responsibility for add-ons be reduced, and that his monthly spousal support obligation be eliminated. Cindie opposed the modifications.

In June 2007, at trial, Jack testified that he received about \$7,000 a month in income from his inherited retail drapery business. At separation, he had anticipated receiving an additional \$12,500 a month in income from a commercial building that his mother owned, but his mother had sold the building. Thus, his current income was insufficient to meet his support obligations under the MSA.

Jack further testified that his mother covered many of his expenses, including his daughters' tuition, their clothing expenses, his attorney's fees, and his visitation travel expenses. His mother also paid him \$6,000 a month, and he used \$3,000 a month to pay the rent on his Sunnyvale home, which his mother owned. However, Jack insisted that his mother *loaned* him this money, and he produced promissory notes indicating that he owed \$400,000 to his mother's trust and \$25,000 to his brother.

Cindie responded that during the marriage Jack's mother had begun giving them \$4,000 a month, and that Cindie had always understood this money to be a gift, not a loan. Regarding her own income, Cindie testified that she earned \$61,000 a year as a law clerk for a superior court judge. She also explained that she had "paper income" reported on her tax returns as dividends from accounts owned jointly with her father, but that she did not have access to the accounts or actually receive the dividends.

A trial court found that there was a material change in circumstances, because Jack was not receiving his anticipated \$12,500 a month from the commercial building. It also found that Jack's income was \$7,500 a month from his business, plus \$7,000 a month in nontaxable income from his mother (a recurring \$6,000 a month, along with another \$1,000 a month in cash and benefits). In addition, the court accepted Cindie's salary amounts as stated on her wage and tax statements, and found that her dividend income was \$10,319 for 2005, \$480 a month for 2006, and \$100 a month for 2007.

Applying its income findings to the statutory guideline formula, the court found that Jack's child support obligation should be reduced. Rejecting Cindie's claim that the MSA precluded any reduction in child support, the court stated that "the court always has jurisdiction to modify [child support]." The court also found that "[b]oth sides signed a Marital Settlement Agreement which set a floor for support," and reduced Jack's spousal support obligation to the floor amount of \$1,000 a month.

In October 2007, the trial court entered a final order that reduced child support to \$2,850 a month for 2005, \$2,839 a month for 2006, and \$3,045 a month for 2007. The order also reduced spousal support to \$1,000 a month, commencing in 2007.

On appeal, Cindie argued that the trial court erred by refusing to enforce the parties' MSA, which stated that child support was "absolutely nonmodifiable downward." In a cross-appeal, Jack argued that the trial court erred (1) by considering Jack's mother's monthly \$6,000 gift as income for purposes of calculating child support, (2) by ignoring Cindie's recurring dividends in determining her income, (3) by failing to modify his child support add-ons, and (4) by setting a "floor" of \$1,000 a month for spousal support.

Child Support Is Modifiable Despite Parties' Agreement. The appellate court reversed and remanded, with directions for the trial court to reconsider its spousal support order only. First, addressing Cindie's appeal, the appellate

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court explained that Fam. Code § 3651 constitutes the general rule for modifying or terminating support orders. This statute applies "whether or not the support order is based upon an agreement between the parties" [*see* Fam. Code § 3651(e)].

Under the express terms of the statute, the appellate court continued, "all support orders, even those based upon the agreement of the parties, are modifiable prospectively except *spousal support* orders that the parties have agreed may not be modified." [Emphasis added by appellate court.] Thus, child support orders are *not* exempted from the general rule, and may be modified even when based on an agreement of the parties.

The appellate court then rejected Cindie's argument that an agreement of the parties could set an absolute *floor* for child support that a trial court was bound to enforce. It stated that Cindie relied on an inapplicable line of cases, which commenced with *Puckett v. Puckett* (1943) 21 Cal. 2d 833, 136 P.2d 1, and involved integrated property settlement agreements.

Prior to 1967, the appellate court explained, a nonseverable "integrated" property settlement agreement, if approved by a court and incorporated in a judgment, was *not* subject to subsequent modification; and any support provisions included in the integrated agreement were not modifiable except as expressly provided by the agreement [*citing* Witkin, *Summary of California Law, Husband and Wife* § 356, 460-461 (10th ed. 2005)]. However, in 1967, the Legislature enacted Fam. Code § 3585, which eliminated the problems posed by the kind of property settlements considered in *Puckett* and its progeny.

The appellate court noted that Fam. Code § 3585 provides: "The provisions of an agreement between the parents for child support shall be deemed to be separate and severable from all other provisions of the agreement relating to property and support of the wife or husband. An order for child support based on the agreement shall be law-imposed and shall be made under the power of the court to order child support."

Thus, the court said, child support orders are always severable from an agreement dividing marital property, and are imposed by the power of the court, rather than by contract. Furthermore, "[w]hen a child support agreement is incorporated in a child support order, the obligation created is deemed court-imposed rather than contractual, and the order is subsequently modifiable despite the agreement's language to the contrary" [*quoting from* *Armstrong v. Armstrong* (1976) 15 Cal. 3d 942, 947, 126 Cal. Rptr. 805, 544 P.2d 941; *citing* *In re Marriage of Berezna* (2003) 110 Cal. App. 4th 1062, 1068-1069, 2 Cal. Rptr. 3d 351 (agreements purporting to restrict court's jurisdiction over child support are void as against public policy)].

In addition, the appellate court pointed out that the statutory scheme and associated case law do *not* distinguish between a court's jurisdiction to increase or decrease an order for child support [*see* Fam. Code §§ 3651, 4053]. Also, if parties were allowed to prohibit any downward modification of child support, then when circumstances change, courts would be required to ignore legislatively-mandated principles, such as the principle that "[b]oth parents are mutually responsible for the support of their children," and require a parent to pay an amount that the parent could not afford, and that did not represent the parent's fair share of support.

Consequently, the appellate court concluded that a trial court "always has the power to modify a child support order, upward or downward, regardless of the parents' agreement to the contrary."

Recurring Gifts May Be Characterized as Income Under Child Support Guideline. Second, addressing Jack's cross-appeal, the appellate court rejected Jack's contention that gifts, such as his regular \$6,000 per month payments from his mother, are *not* income for purposes of calculating child support payments.

Fam. Code § 4055, the appellate court explained, sets out the mandatory statewide formula for calculating child support. The formula requires a determination of both parents' "annual gross income," which Fam. Code § 4058 defines as

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"income from whatever source derived." Fam. Code § 4058 contains an illustrative, nonexclusive list of types of *included* income (e.g., wages, salaries, dividends, interest, workers' compensation, business income). It also includes a specific list of *excluded* income (e.g., child support payments, need-based public assistance payments). Thus, in computing child support, "income" should be broadly defined, and exclusions from income should be narrowly construed [*citing* *Asfaw v. Woldberhan* (2007) 147 Cal. App. 4th 1407, 1425, 55 Cal. Rptr. 3d 323].

Gifts, the appellate court conceded, are *not* listed among the Fam. Code § 4058 examples of included income. However, gifts are also *not* listed among the statute's examples of excluded income, and if the Legislature had intended to exclude all gifts from gross income, it could have done so [*citing* *In re Marriage of Henry* (2005) 126 Cal. App. 4th 111, 119, 23 Cal. Rptr. 3d 707]. One case states, in dictum, that inter vivos and testamentary gifts are *not* income [*citing* *In re Marriage of Scheppers* (2001) 86 Cal. App. 4th 646, 649-650, 103 Cal. Rptr. 2d 529]. Another case establishes that a one-time gift or inheritance is *not* income, although any rents, interest, or dividends generated by the gift or inheritance *are* income [*citing* *County of Kern v. Castle* (1999) 75 Cal. App. 4th 1442, 1453, 89 Cal. Rptr. 2d 874]. Yet another case establishes that recurring gifts that are received as benefits from employer parents are "employee benefits" that *are* income [*citing* *In re Marriage of Schulze* (1997) 60 Cal. App. 4th 519, 530, 70 Cal. Rptr. 2d 488]. However, no existing case addresses the characterization of recurring monetary gifts like Jack's.

The traditional understanding of "income," the appellate court said, "is the gain or recurrent benefit that is derived from labor, business, or property or from any other investment of capital" [*quoting from Scheppers*]. Gifts, of course, are *not* derived from labor, business, or property. However, one legal dictionary defines *income* as "[t]he money or other form of payment that one receives, usu[ally] periodically, from employment, business, investments, royalties, *gifts* and the like" [*quoting from Black's Law Dictionary* 778 (8th ed. 2004) (emphasis added by appellate court)]. Therefore, the appellate court decided, common definitions of "income" do *not* preclude consideration of recurring gifts of money as income.

The appellate court then noted that the definition of "annual gross income" in Fam. Code § 4058 is taken from the Internal Revenue Code [*citing* *In re Marriage of Loh* (2001) 93 Cal. App. 4th 325, 332, 112 Cal. Rptr. 2d 893; *see* 26 U.S.C. § 61]. Because of this, some courts have proposed a formalistic, tax-model approach in determining what the Legislature intended to include as "annual gross income," although these courts addressed *noncash* benefits [*citing* *Loh*; *In re Marriage of Schlafly* (2007) 149 Cal. App. 4th 747, 758, 57 Cal. Rptr. 3d 274].

Cash gifts, the appellate court noted, are *not* included as income under federal tax law. But, it reasoned, the purpose of the child support calculation "is to determine how much money a parent has available for the support of minor children ... [and] ignoring gifts that form a part of the parent's regular cash flow would give an unrealistic picture of the parent's ability to pay." Thus, even if a parent's recent tax returns set forth a presumptively correct amount of income, that presumption might be rebutted by evidence of recurring gifts of money that form a regular part of the parent's income picture [*citing* *In re Marriage of Calcaterra & Badakhsh* (2005) 132 Cal. App. 4th 28, 34, 33 Cal. Rptr. 3d 246 (parent's income stated on loan application was greater than income stated on tax returns)].

The appellate court acknowledged that some state courts have declined to consider gifts as income, because the donor has no obligation to continue giving [*citing, e.g., True v. True* (Me. 1992) 615 A.2d 252, 252-253]. However, other state courts have considered gifts as income when the gifts are recurring, cash gifts in predictable amounts [*citing, e.g., Ordini v. Ordini* (Fla. Dist. Ct. App. 1997) 701 So. 2d 663, 664]. In particular, the Illinois Supreme Court recently considered a case similar to the present case, and concluded that cash gifts may properly be included in a child support calculation [*citing* *In re Marriage of Rogers* (2004) 213 Ill. 2d 129, 820 N.E.2d 386, 289 Ill. Dec. 610 (father received gifts and loans from family that amounted to "steady source of dependable annual income")]. The *Rogers* court reasoned that if a parent who is obligated to pay support based on gift payments should stop receiving gift payments, then the parent may seek a support modification.

Applying the reasoning of *Rogers*, the appellate court concluded that gifts may be considered as income for purposes of

child support "so long as the gifts bear a reasonable relationship to the traditional meaning of income as a recurrent monetary benefit." The Fam. Code § 4058 definition of *annual gross income* as "income from whatever source derived" is broad enough to encompass gifts that bear a reasonable relationship to the traditional concept of income as a recurrent monetary benefit. Also, the court said, "it is irrelevant that there is no legal obligation on the part of the donor to continue making the gifts or that the flow of cash does not appear on the income tax return." However, the question of whether gifts should be considered income for purposes of child support calculations must be left to the discretion of the trial court.

Here, the appellate court pointed out, Jack received regular cash payments from his mother for many years. Thus, the payments' periodic and regular nature meant that the money was available to Jack for child support. Consequently, the trial court did *not* abuse its discretion in considering the gifts to be income.

Similarly, the appellate court concluded that the trial court properly characterized the money Jack received from his mother as a gift, rather than as a loan that would *not* be income for child support purposes [*citing* *In re Marriage of Rocha* (1998) 68 Cal. App. 4th 514, 517, 80 Cal. Rptr. 2d 376]. The record evidence amply supported the trial court's implicit conclusion that the money was *not* a loan, because Jack's mother had paid many of Jack's expenses for most of his life, and there was no evidence that Jack had ever repaid any of that money.

Also, the appellate court concluded that Jack was *not* prejudiced by the trial court's calculation of Cindie's income. Jack maintained that the trial court ignored Cindie's dividend income, but in fact the trial court's calculations imputed "paper" dividend income to Cindie for 2005 that Cindie never received. Furthermore, the trial court did *not* conclude that Jack's child support add-ons were nonmodifiable, but only declined to modify them in the absence of substantial evidence supporting modification.

Spousal Support Order Was Based on Erroneous Reading of MSA. Finally, the appellate court concluded that the trial court erroneously interpreted Cindie and Jack's MSA as setting a "floor" for spousal support. It reasoned that the MSA did *not* make spousal support absolutely nonmodifiable to less than \$1,000 a month, but instead specified that a \$1,000 floor would apply if Cindie received a stream of income from her portion of Jack's inheritance, or when her salary or that of a new spouse reached a certain level. The MSA did *not* set an absolute minimum level. Therefore, reversal and remand was required for the trial court to reconsider the spousal support component of its order.

Commentary

Grace Ganz Blumberg

Careful application of the principles of statutory interpretation yields an odd result in *Alter*. Parties to a marital settlement agreement incorporated in a California decree of dissolution may successfully provide contract stability for a spousal support provision, but may not provide a floor for child support. It is well settled that parents may not contractually limit the amount of child support, in view of the concern of the state for the well-being of children. The issue presented by *Alter*, however, is whether the parents can effectively contract for a child support floor. *Alter* concludes that they may not. It is true, as *Alter* suggests, that a child support obligation exceeding the financial capacity of the support obligor may not serve the child's interests. But, in terms of the child's interests, the same may equally be said of a spousal support obligation that exceeds a support obligor's financial capacity.

The problem in *Alter* was that the income upon which the father's child support obligation was based never materialized. If this mutual mistake had been recognized within one year of entry of the stipulated judgment, Family Code Sections 2121 and 2122(f) would have provided relief for the support obligor. (The court's opinion does not tell us when the judgment was entered, but it appears that the obligor's motion to modify his support obligations may have been brought more than one year after entry of the stipulated judgment.)

The problem presented by *Alter* is not one of contractual stability of support obligations per se, but inflexibility should the support obligor's income decline. Contract stability may understandably be desired by support obligees but, particularly in these hard times, the quid pro quo for any contract stability provision should be a proviso allowing reduction of the obligation commensurate with a clearly demonstrable reduction in the obligor's income.

Commentary

Patrick DeCarolis, Jr.

The first question about this case is why did mom give Jack \$6,000 per month, then take \$3,000 per month in rental income? Was she being patriotic and trying to increase her tax liability? Simply giving Jack \$3,000 and free rent would have made more sense for his support liability and her tax liability.

This case provides ample authority in those cases where one party is living on gifts from relatives or special friends (the friends listed in the income and expense declaration under "The other people who live with me:"). These are also the people who pay a party's attorney's fees, and in the space in the income and expense declaration for the source of the fees, it invariably says "Loans." So from now on, when the income is "zero" and the monthly expenses are "\$18,548" you can cite the *Alter* case to get a support order and maybe a fee order too. However, collection might be a bit of a problem.

Notwithstanding the absence of gifts in the list of income under Family Code Section 4058 or the Internal Revenue Code, this case now provides clear authority that regular gifts are income available for child support. One time gifts will not qualify, but the monthly gifts as in this case are to be plugged into to the child support formula. The case says that parents are to take equal responsibility to support their children. The problem with using this maxim for authority here is a false assumption that the parent receiving the gifts is taking the responsibility. It is really the grandparent who has done so, perhaps against his or her will.

If parents are paying money to their children and asserting that they are loans, the loans should be documented and payments or other commercially reasonable methods of repayment should be provided. "He can pay it back when he can," translates to "It's a gift," under this case.

Clearly, if a parent wants to help an adult child without increasing the adult child's child support obligation, paying expenses directly without actually transferring funds is preferable. *In re Marriage of Loh* (2001) 93 Cal. App. 4th 325, 112 Cal. Rptr. 2d 893 held that providing housing may only be used to deviate from guideline support but not be used as income with which to pay support.

Counsel should be very wary of the great deal that was made on child support which is somehow linked, either in the settlement documents or during the negotiations, to a not so favorable property division. Throughout this case, it is clear that the child support stands alone, and, notwithstanding the stated intentions of the parties, is modifiable as a "court imposed rather than contractual [obligation]." A contractual floor for child support no longer exists in California.

Commentary

Hon. Roderic Duncan, Judge (Ret.)

This is a meat and potatoes opinion that should be part of the learning of every law school family law student and noted by practicing family lawyers. Glancing at the fact situation and the identity of the dramatis personae prior to publication would have justly led most of us to expect a strong decision on some good issues. The opinion's author, Justice Eugene Premo of the Sixth District Court of Appeal, is a

highly respected expert in the field. The attorneys, Bernard F. Wolf for the appellant and Garrett C. Dailey for the respondent, are justly prominent in their field.

The primary issue--determining what is income for the purposes of computing spousal and child support--has been the subject of quite a few appellate decisions, but this decision should bring much of the uncertainty to rest. Another issue--the modifiability of a child support order that the parties had agreed will not be modified--is disposed of quickly by the court with a simple reference to Family Code Section 3651. The court chides the parties for giving this dispositive section "little attention," and correctly points out that it would not be in a child's best interest "to force the parent into a level of debt he or she has no ability to pay."

Husband's sources of income are complicated and contain items not likely to be totally duplicated in future cases. However, the court's close examination of Internal Revenue Service rules and sister state handling of the "gift vs. income" problem produces some principles that should remain as authority for the future in this state.

Commentary

Lawrence E. Leone

Read and then file this case under "judicial discretion," "largess oblige" and perhaps "dueling appeals." In a well-reasoned opinion, the Court offers guidance on, *inter alia*, how practitioners and trial courts should address the previously unsettled issue of recurring gifts as income/cash available for child support, and an affirmation that child support rights are always modifiable. This is a "tough case," namely "that of the scion of a wealthy family whose parents are not his or her employers and who still manages to live quite well even on a low annual gross income as defined by section 4058 because of bona fide nontaxable gifts from his or her parents." [In re Marriage of Schulze (1997) 60 Cal. App. 4th 519, 530, 70 Cal. Rptr. 2d 488 (dictum)].

Dad appealed a finding that funds from his mother that were periodically received over the years were includable in a child support calculation. In practice, many courts have found that where there appears to be a stream of resources flowing from a non-party (usually a family member) to a party with a child support obligation, that the stream may be considered in the setting of support. This analysis is fact-driven and competent evidence of the donor's intention is always probative. In this case the father offered testimony, but his mother, the donor, did not testify. Oops.

It appears that once a stream of resources is identified, the burden will shift to the recipient to prove why it should not be considered for child support purposes. The record supporting inclusion of the gifts before the trial judicial officer, Commissioner Joseph (a member of the Elkins Task Force), included a slew of promissory notes that were signed on the same day, and testimony that was hardly persuasive. Where the donor is aligned with the support obligor, courts often will draw appropriate inferences to reflect the reality of the obligor's circumstances.

Cases have affirmed the court's considering the largess of a family member in an employment context, and this case simply extends this trend to look beyond what a resource is called and whether it is "income" for tax purposes, and to consider the practical impact of the donee's receipt of the largess. Note that Commissioner Joseph made no finding as to whether the funds dad received were gifts or loans, but simply included them as tax-free income to dad in making the support calculations. The guts of this case affirm the trend for reviewing courts to confirm, where possible, the discretion of trial courts.

The most useful part of the opinion relates to dad's appeal challenging the trial court's decision to include

recurring gifts as income for child support. While Family Code Section 4058 does not mention gifts, either as items of income or as exclusions from income, the types of income listed, "are by way of illustration only." Clearly, when computing child support under the statutory guidelines, "income" should be broadly defined while the exclusions are specific and must be narrowly construed. While it is settled that the principal amount of a one-time, lump sum gift or inheritance is not income, the rents, interest, or dividends generated by the gift are income. Until now, current case law provided small guidance on this issue. *In re Marriage of Scheppers* (2001) 86 Cal. App. 4th 646, 649-650, 103 Cal. Rptr. 2d 529 stated, in dictum, that inter vivos and testamentary gifts are not income within the meaning of Family Code Section 4058. What the published cases have not addressed is how to characterize recurring, monetary gifts such as those dad received from his mother.

The fact that the stream of resources was not taxable was "of no consequence." A benefit to a parent that enhances the parent's wealth and facilitates his or her ability to support his or her children is fair game under the right factual context. Similarly, the fact that dad did not have a right to receive the funds from his mother did not rebut what appeared to be a recurring monetary stream. "Few, if any, sources of income are certain to continue unchanged year in and year out. People can lose their jobs, interest rates can fall, business conditions can wipe out profits and dividends. Accordingly, the relevant focus ... is the parent's economic situation at the time the child support calculations are made by the court." [In re Marriage of Rogers (2004) 213 Ill. 2d 129, 138, 820 N.E.2d 386, 289 Ill. Dec. 610.]

Mom also appealed the decision, arguing that public policy supports recognition, by agreement, of a child support floor. The case re-confirms that child support orders are always modifiable, and we mean it. Here, mom, a lawyer, entered into an agreement that purported to limit the power of the court to adjust child support. While the language of the agreement was clear and confirmed an agreement that a child support floor was absolutely nonmodifiable, the agreement did not divest the court from adjusting child support. One wonders if mom gave up something for this obviously illusory promise of nonmodifiable child support.

Mom lost because Family Code Section 3651 provides that all support orders, even those based upon the agreement of the parties, are modifiable prospectively except for certain spousal support orders the parties have clearly agreed may not be modified. There is no current authority for the argument that agreements pertaining to child support orders are exempted from the general rule. Mom could find no legislative intent to support the idea of a nonmodifiable child support order. Here, mother cited a series of old cases eliminated in 1967 when the legislature enacted what became Family Code Section 3585. What she missed was that the California Supreme Court resolved her claim 30 years ago: "When a child support agreement is incorporated in a child support order, the obligation created is deemed court-imposed rather than contractual, and the order is subsequently modifiable despite the agreement's language to the contrary." [Armstrong v. Armstrong (1976) 15 Cal. 3d 942, 947, 126 Cal. Rptr. 805, 544 P.2d 941].

While recent case law affirmed that parties may settle their disputes over child support by agreement, and California has a "strong policy favoring settlement of litigation" over family law disputes, any agreement that restricts the court's jurisdiction over child support, is void as against public policy. "Children have the 'right to have the court hear and determine all matters [that] concern their welfare and they cannot be deprived of this right by any agreement of their parents.' " Parental child support agreements are not binding on the children or the court, and the court retains jurisdiction to set child support irrespective of the parents' agreement. [In re Marriage of Bereznak (2003) 110 Cal. App. 4th 1062, 2 Cal. Rptr. 3d 351].

As a side note, dad argued on appeal that the trial court should have attributed income to mom based

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upon the money his mother sent directly to mom for the children's expenses. While there is no current authority for this position, dad did not raise the argument in the trial court. This is the you-snooze-you-lose rule and should be considered by every lawyer paying E&O premiums. Remember that errors in calculating child support must be brought to the attention of the trial court while the error may still be corrected. [In re Marriage of Whealon (1997) 53 Cal. App. 4th 132, 61 Cal. Rptr. 2d 559].

References: CALIFORNIA FAMILY LAW PRACTICE AND PROCEDURE, 2nd ed., §§ 40.04, 42.02 (effect of child support agreement between parents), 41.07[2][a] (calculation of net disposable income under child support guideline formula), 41.08[6] (special circumstances rebutting presumption of correctness), 41.09 (additional support amounts), 42.02, 52.02 (jurisdiction to modify child or spousal support order), 51.60 (agreement that spousal support is nonmodifiable), 211.40[1][j], 214.10, 214.20, 214.90, 214.91 (marital settlement agreement provisions for modification of child and spousal support); CALIFORNIA FAMILY LAW LITIGATION GUIDE, Units 10 (modification), 32 (child support), 33 (spousal support).

LANGUAGE: ENGLISH