

RESOLUTION 01-15-05

DIGEST

Spousal Support: Termination of Child Support as Change of Circumstances

Adds section 4326 to include termination of child support as a change of circumstances warranting court review of spousal support.

RESOLUTIONS COMMITTEE RECOMMENDATION

APPROVE IN PRINCIPLE

History:

No similar resolutions found

Reasons:

This resolution adds section 4326 to include termination of child support as a change of circumstances warranting court review of spousal support. This resolution should be approved in principle because it provides discretion to the court as to the needs of a supported party.

The obligation to pay child support terminates automatically upon, inter alia, a supported child reaching age 18 (or age 19 or completion of high school whichever occurs first). The amount of support is set by a complex formula, which assigns income first to child support with the balance to spousal support. Because the spousal support calculation occurs after assignment of child support, it is generally lower than would be the case if the parties had no children. *In Re Marriage of Lautsbaugh* (1999) 72 Cal. App. 4th, 85 Cal.Rptr.2d 688 held that termination of child support is not a change of circumstances which would permit review of spousal support, despite the factual reality that spousal support was set after calculation of child support. While there is some concern that review of spousal support on termination of child support may generate awards which are “disguised child support”, thereby subsidizing care of children over the age of majority, courts should be allowed to consider all facts which affect a party’s net spendable income for support purposes.

SECTION/COMMITTEE REPORTS

FAMILY LAW SECTION RECOMMENDATION

APPROVE IN PRINCIPLE

This resolution would deal with the results of the *Lautsbaugh* decision wherein the court held that the termination of child support is not grounds to modify a prior existing spousal support award. It is intended to give the court discretion to consider the termination, by majority or by change in the custodial arrangement to revisit the issue of spousal support. The proponent is the Sacramento County Bar Association.

The Committee recommends, by a vote of twelve Ayes, two Noes and one Abstention to approve this resolution.

This position is only that of the Family Law Section of the State Bar of California. This position has not been adopted by either the State Bar's Board of Governors or overall membership, and is not to be construed as representing the position of the State Bar of California. Membership in the Family Law Section is voluntary and funding for section activities, including all legislative activities, is obtained entirely from voluntary sources.

TEXT OF RESOLUTION

RESOLVED, that the Conference of Delegates of California Bar Associations recommends that legislation be sponsored to add Family Code Division 9, section 4326 to read as follows:

1 §4326
2 In any proceeding where a spousal support order exists or for which the court has retained
3 jurisdiction thereof, and there exists a companion child support order, the termination of child support
4 pursuant to Family Code Section 3901(a) shall constitute a change of circumstances that may justify
5 a request for modification of spousal support.

(Proposed new language underlined; language to be deleted stricken.)

PROPONENT: Sacramento County Bar Association

STATEMENT OF REASONS:

Existing Law: Current case law prohibits a court's consideration, as a change of circumstances warranting a request for modification of spousal support, the termination of a child support order by operation of law.

This Resolution: Would introduce a new section to the Family Code recognizing and dealing with the inherent inequity promoted by the *Lautsbaugh* decision, which ignored both economic reality and the process by which spousal support is set in most Family Law cases where there are minor children.

The Problem: The best argument for such a change has been proposed by Garrett Dailey. Spousal support is totally captive of the child support calculation. Spousal support is calculated from the money left over after child support is "paid" but before it is "received". Because of the increased amounts of child support mandated by Family Code section 4055, in most cases the paying spouse has insufficient remaining income to pay the supported spouse what would otherwise be an appropriate amount of spousal support based upon the parties' circumstances without regard to the children. (Fam. Code, §4320.) Thus, the spousal support award that is made is not a reflection of the supported spouse's need nor the paying spouse's ability to pay, both measured independently from the children. It is simply an equitable division of the income remaining after child support is calculated.

Furthermore, when the child support terminates, the supported spouse may still have the same mortgage payment, property taxes, insurance, car payment, etc. Many of the fixed expenses continue, whether the children are present or not.

A fairer way to deal with this problem would be for the trial court to make findings as to what a reasonable spousal support order would be were there no children of the marriage. That way, when child support terminates, the supported spouse would have a basis for returning to court for a fair support order based solely on his or her needs. Of course, if circumstances other than the child support terminating have changed, so too could the resulting spousal support order. But at least it would be based on reality, not fiction.

IMPACT STATEMENT

This resolution would not affect any other statute, law or rule.

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