

*In re Marriage of Usher*

Here is a Shakespeare quote most appropriate for Mr. Usher after the Court of Appeal ruled against him and refused to reduce his child support obligation because of his wealth:

“Who would not wish to be from wealth exempt,  
Since riches point to misery and contempt?”

Flavius, *Timon of Athens*, IV.II.31

Mr. Usher, a successful director and producer, suffered a significant decline in monthly earnings and owned substantial assets, including cash, investment funds and real and personal property. He sought to reduce his child support obligation due to his claimed change of circumstances. The trial judge accepted his position, reduced his child support from \$17,550 to \$9,843 per month, only then to have the Court of Appeal reverse: no change of circumstance because of his overall wealth. Sorry, Mr. Usher, better brush up on your Shakespeare. The holding stated that in light of Respondent’s overall wealth, the reduction in his employment income did not materially impair his ability to pay the agreed upon child support.

The discussion about imputation of income, the proper rate of return, and whether it is proper for a court to second-guess the composition of an investment portfolio, is instructive, without being a definitive guide. The two forensics presented different opinions as to reasonable rates of return, and differing returns on a different mix of capital investments. A significant gap in the evidence presented by Respondent’s expert was a lack of evidence as to what Respondent’s investments had actually produced, rather than various projections and alternatives. Mr. Usher presented no evidence that his reduction in salary rendered him unable to pay the existing child support amount. The trial court’s reliance upon a 1% imputed return on his investment portfolio was reversed as being unreasonably low and not supported by substantial evidence.

The Court of Appeal’s discussion of under-utilization of income-producing assets yielding a lower than commercially reasonable rate of return [i.e., second-guessing an obligor’s investment strategy], invoked discussion of *Dacumos* (1999), *Destein* (2001), *Berger* (2001), and *Sorge* (2012). One can readily discern from the language and tone of Justice Manella’s opinion that the court was not buying Mr. Usher’s pitch for a reduction of support. The battle of experts as to investment mix and projected rates of imputed income presents a fresh guide for what type of evidence needs to be established in these high-earner, high wealth, support cases.

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