CALIFORNIA Family Law Monthly

In re Marriage of Smith

We have a new case trilogy. Tinker to Evers to Chance is familiar to baseball aficionados. For estate planning, family law cross-over issues, it was *Holtemann*, *Starkman* and *Lund* [see 2009 Cal.Fam.Law Monthly 221 (July 2009)]. Now we have *Alter, Williamson* and *Smith*.

Alter is well-known as the case holding that when a person receives recurring gifts of money, the trial court has discretion to consider that money as income for calculation of support and fees. *Williamson* took a different approach, holding that even if the receipt of funds was characterized as a loan, an advance of a person's expected inheritance is treated as a gift, not income, and should not be considered as income for calculation of support and fees. [see 2014 Cal.Fam.Law Monthly 199 (August 2014)]. In *Smith*, the court treated father's payment of his daughter's fees as income to her for purposes of determining the relative circumstances of the parties for the calculation of a fee award.

A balance needs to be struck between an *Alter* recurring gift of income scenario, the *Williamson* "advance of inheritance" gift which is not treated as income, and the *Smith* situation where present and continuing payment of fees by wife's father was considered as income in determining the fee award. Thus is created space for creative counsel to construct the best possible framework for their client. Careful reading of this latest case trilogy is therefore an important mandate.

Smith is best known and cited for its holding that the trial court was within proper bounds to combine a fee award under both section 2030 (need and ability to pay/relative circumstances) and section 271 (sanctions), without making explicit differentiation between sums awarded pursuant to each statute.

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