

**Lavish Lifestyle Allows Deviation**

**From Child Support Guideline**

**By Mitchell A. Jacobs and Robert Burch\***

*In re Marriage of De Guigne*, 2002 DJDAR 4677 (April 30, 2002)(First District) authorized for the first time a child support order *exceeding* codified child support guidelines based upon the existence of "special circumstances." The Court held that the parties' marital overspending constituted a special circumstance under Family Code Section 4057 justifying an upward deviation from the presumptively correct guideline child support formula set forth in Family Code Section 4055 and affirmed the trial court's order for child support, which was over three times the guideline amount.

In DeGuigne, Christian and Vaughn de Guigne were married in 1984 and separated in 1996. They had two children: Allison (born in 1985) and Eleanor (born in 1989). Christian owned a separate property 16,000 square foot mansion built by his grandfather in 1918, built on 47½ acres in one of the most exclusive neighborhoods in the San Francisco area. The residence contained hiking trails, streams, wildlife, gardens, a ballroom, pavilion, library, swimming pool, swimming pool and 11 bathrooms, along with valuable artwork, furnishings and

furniture. The parties lived in this mansion from shortly before marriage until separation, when Christian moved out.

Throughout the marriage, Christian and Vaughn maintained an opulent lifestyle for themselves and their children. The mansion was staffed with two housekeepers, three gardeners, a laundress, chef, childcare provider and part-time chauffeur. The family frequently took costly vacations and maintained multiple club memberships. The children attended private school and engaged in extracurricular activities, which included horseback riding, tennis, piano lessons, various other sports activities and overnight camps. The Court found that the annual household expenses were the sum of \$450,000.

However, neither party worked during the marriage. The sole income was \$240,000 per year that Christian received from securities holdings and his family trusts. Christian had sole control over the family finances during the marriage and consistently liquidated his own separate property assets to cover the substantial difference between the parties' expenses and his income. Between 1986 and 1997, Christian paid for the family expenses by withdrawing \$4,000,000 from his securities account; selling real property he owned prior to marriage; and selling an antique knife collection. At the time of trial, there was only \$260,000 remaining in Christian's securities'

account and his only significant asset was the Hillsborough mansion. According to expert testimony, the value of the Hillsborough mansion on 7½ acres would be \$7.5 to \$10 million and the remaining 40 acres would be worth \$15 million or more. There was no community property.

At trial, Christian contended that child support should be based solely on his securities and trust income of \$240,000 per year and requested an order of guideline child support of \$4,844 per month and spousal support in the sum of \$6,706. Vaughn sought combined child and spousal support in excess of \$32,000 per month, plus costs of housing and household help once she found a new house in which to live. The trial court ordered Christian to pay \$15,000 per month in child support and \$12,500 per month in spousal support. The trial court also ordered Christian to pay all of the children's private school expenses and to pay a lump sum of \$30,000 to cover rental deposits and furniture purchases for Vaughn's new residence. Christian appealed each of the trial court's orders.

The appellate Court first addressed the child support issue, affirming the trial court's order of \$15,000 per month. Noting the lack of any published decisions authorizing or forbidding reliance on special circumstances to support a child support order exceeding the guideline amount, the Court analyzed

Family Code Sections 4053 and 4057 in arriving at its decision and made three significant observations regarding these statutes. First, the Court noted that Family Code Section 4057 allows a deviation from the guideline child support amount in cases where the guideline amount would be unjust or inappropriate due to the special circumstances of the particular case and where the deviation would be consistent with the principles set forth in Family Code Section 4053. The Court then noted that Family Code Section 4053 makes clear that the court's paramount concern in adhering to or departing from the guideline amount must be the best interests of the children.

Finally, the Court noted that the language of Family Code Section 4057 does not "catalogue" all of the special circumstances that may apply under that statute, but rather uses the language "including, but not limited to." The Court concluded that because of this language the Legislature intended to give the Courts broad discretion to determine when such special circumstances apply under Family Code 4057.

The Court then looked at the first of the special circumstances alleged by Vaughn in DeGuigne: marital overspending. Christian relied on three cases in support of his argument that marital overspending was not a special circumstance justifying deviation from the child support

guidelines: In Re Marriage Of C. (1997) 57 CA4th 1100; In Re Marriage Of Simpson (1992) 4 Cal. 4<sup>th</sup> 225 and In Re Marriage Of Smith (1990) 225 CA3d 469. The Court distinguished each of these cases in finding that none of the cases precluded marital overspending from being a special circumstance.

The Court dismissed Christian's reliance on In Re Marriage Of C. (1997) 57 CA4th 1100 by pointing out that the Marriage Of C. Court was not presented with how the amount of child support would affect the children, but instead how the payment of support impacted the husband who was paying the support. The DeGuigne Court cited the fact that the Court's reasoning in In Re Marriage Of C. worked against Christian. Specifically, the Marriage Of C. Court had held that it was the statutory scheme to mitigate the financial impact of the divorce on the children, not the parents. This, according to the DeGuigne Court, worked against Christian's argument that a reduction in his children's lifestyle from marital overspending to a lower level of Guideline child support couldn't constitute special circumstances.

The Court distinguished In Re Marriage Of Simpson (1992) 4 Cal. 4<sup>th</sup> 225 and In Re Marriage Of Smith (1990) 225 CA3d 469 by finding that the DeGuigne case presented an entirely different

paradigm. Simpson and Smith both involved cases where the husband and wife lived a lifestyle based upon an income produced by a salary generated by the husband working extraordinary hours. At dissolution, the wives maintained that their support should reflect their marital standard of living. Both the Simpson and Smith Courts held that it was unreasonable to base support on the lifestyle during the marriage because the couples lived beyond their means by depending on an unreasonably burdensome work schedule to generate the salary needed to support the lifestyle.

The DeGuigne Court observed that the DeGuignes did not work at all during the marriage. Instead Christian sold assets and relied on income producing assets in order to finance the family lifestyle. Further, Christian still retained substantial real estate assets. The DeGuigne Court, therefore, found that the earning capacity line of cases of In Re Marriage Of Destein (2001) 91 CA4th 1385 and In Re Marriage Of Dacumos (1999) 76 CA4th 150 and not Simpson and Smith, were the more appropriate line of cases to follow and more consistent with the statutory principles of child support.

The Court pointed to the fact that Destein, in particular, was factually similar to DeGuigne. In Destein, the parties enjoyed a "lavish" lifestyle, spending \$14,500 per month on

their expenses. As in DeGuigne, in Destein, the husband was not employed during the marriage and paid for the parties' expenses from his substantial wealth and property, which included over six million dollars in stocks, bonds, retirement accounts and real estate. Husband claimed his income from these investment was \$65,555 per year. At trial, wife presented evidence that husband's income should be deemed to be \$328,066 based upon, among other things, sale of some of husband's real property and investment of the proceeds at a return of 6%.

The Destein Court upheld the trial court's child support award which was based, in part, on earning capacity from husband's real estate holdings, holding that Family Code Section 4058 authorizes the court to attribute income even if there is no evidence that he has taken steps to decrease his income. Citing In Re Marriage Of Dacumos, the Destein Court further found that the earning capacity doctrine embraces the ability to earn from capital as well as labor and that the only limitation on the court's ability to apply the doctrine to investment assets is the best interests of the child. The DeGuigne Court concluded that in DeGuigne, just as in Destein, the trial court reasonably considered husband's earning capacity from assets beyond his securities income. The Court made clear that the special circumstances existing in DeGuigne were not just the

parties' marital overspending, but also Christian's ability to support his children at a level consistent with their station in life.

The Court then turned its attention to Christian's three remaining arguments. First, Christian argued that the trial court abused its discretion in finding that the disparity of living arrangements between himself and the children that would have resulted if guideline support had been ordered constituted a special circumstance justifying deviation from the guideline. Christian argued that this disparity could not be a special circumstance because there is always a disparity in separate property at the end of a marriage and it is not uncommon for one party to live in rental property while the other lives in a house. The DeGuigne Court dismissed this argument by pointing out the large quantitative difference that would have existed between Vaughn and the children, who would have lived in rental property, and Christian, who would live in a 25-40 million dollar mansion in one of the most exclusive neighborhoods in the Bay area.

The DeGuigne Court emphasized that expert testimony was presented at trial that selling a portion of Christian's property could yield sufficient income to produce income to shield the parties' children from the full financial impact of

the parties' divorce, whereas allowing guideline support would result in a type of housing and lifestyle for the children that was vastly different than their father. Under these facts, the DeGuigne Court concluded that the trial court did not abuse its discretion

in considering the imbalances in housing as special circumstances.

The Court then considered Christian's argument that even if there are special circumstances, the special circumstances must be tied to some specific unmet need of the children. The DeGuigne Court agreed that a court could not arbitrarily impose an above guideline order, however it held that the only requirement when a Court departs from the guideline was Family Code Section 4056(a)'s requirement for specific articulation on the record or in writing of the guideline amount, the reasons for the deviation from the guideline and how the deviation is consistent with the best interests of the children.

Finally, the Court turned its attention to Christian's argument that the child support order improperly requires him to pay support out of his separate property. The Court quickly dismissed this argument by reminding Christian that after a dissolution all property has been awarded or confirmed to the respective spouses as their sole and separate property and all

income is each party's separate property. Hence, prospectively all support will be paid from separate property.

In conclusion, the DeGuigne Court's decision is significant because it affirms trial courts' discretion in deciding whether or not to exceed guideline child support and sets up a very expansive interpretation of what can constitute a special circumstance justifying deviation from the child support guideline. However, one wonders whether under the facts of the DeGuigne case whether it was necessary for the trial court to fashion an order that exceeded the guidelines.

A significant portion of the appellate court's decision was devoted to its discussion of In Re Marriage Of Destein (2001) 91 CA4th 1385 and In Re Marriage Of Dacumos (1999) 76 CA4th 150 regarding earning capacity. Christian did not work. There was evidence presented at trial that Christian could generate enough income from sale and reinvestment of 40 of the 47½ acres of Christian's residence to provide the child support needed to shield the children from the full financial impact of the divorce. The Court could have simply imputed Christian with the income he had the ability to earn from the sale and reinvestment of 40 acres of his residence and included this income with Christian's securities and trust income in determining guideline child support.

By imputing income to Christian, instead of fashioning an order that exceeded the guideline child support amount, the Court could have answered the question left unanswered by the Destein Court in footnote three of that decision, i.e. what circumstances justify attributing a reasonable rate of return being imputed to the equity in a party's residence. No clear answer to footnote three is given by the DeGuigne decision, although it does indirectly answer the question by stating that the child support, ordered could be paid by Christian working or the sale and reinvestment of a portion of the residence.

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