

THE PRACTITIONER

BY MITCHELL A. JACOBS AND RACHEL S. SILVERMAN

Rich Dads

Discovery in Support Cases Involving a Wealthy Parent

In *Johnson v. Superior Court*, 98 Daily Journal D.A.R. 8931 (Aug. 19, 1998), Division 1 of the 2nd District Court of Appeal issued a writ of mandate and ordered the trial court to severely restrict discovery of a noncustodial parent's financial affairs in a child-support action in which the parent had an extraordinarily high income and had volunteered to pay reasonable support.

In making its decision, the court relied heavily on the rule generated by the court in *Estevez v. Superior Court*, Cal.App.4th 423 (1894), which held that once an extraordinarily high-earning parent rebuts the child-support guideline presumption and agrees to pay court-ordered child support, he does not need to provide detailed financial discovery.

In 1992, California enacted statewide, uniform child-support guidelines, which establish a presumption that the amount of child support a parent must pay is determined by an algebraic formula taking into account

such factors as income, mortgage interest, real property taxes and time-share percentages. Family Code Section 4050 et seq.

However, the presumption may be rebutted when the parent being ordered to pay child support has an "extraordinarily high income" and if the amount ordered to be paid pursuant to the guideline formula would exceed the needs of the child. Family Code Section 4057(b)(3). The court in *White v. Marciano*, 190 Cal.App.3d 1026 (1987), defined an extraordinarily high earner as having an income of \$1 million or more per year.

Marriage of Catalano, 204 Cal.App.3d 543 (1989), held that a child was entitled to be supported in a lifestyle comparable to that of the higher-earning parent, even if this meant that the lifestyle of the noncustodial parent would be enhanced. Child support is not supposed to be based on the needs of the child, but rather the incomes of the parents.

A parent is not obligated just to support the child's "mere necessities" if he or she can provide beyond that. *Bailey v. Superior Court*, 215 Cal. 548 (1932). Accordingly, it appears that while the courts recognize that the custodial parent's disposable income may be substantially increased in a case involving an extraordinarily high earner, the higher-earning parent still has an obligation to support the child based on his or her lifestyle.

The *White* court, however, recognized that the standard of living of the parent is determined by the income available, not by the manner in which it is expended. The court recognized that some people may earn an extraordinarily large amount of money, but live a very frugal lifestyle.

Mitchell A. Jacobs, a certified family law specialist in Los Angeles, limits his practice to marital dissolution and other family law matters. **Rachel S. Silverman**, an attorney with the Law Offices of Mitchell A. Jacobs, also practices exclusively in the area of family law.

Therefore, limiting discovery information relevant to lifestyle, but not income, will not permit the court to make a reasonable assessment as to the child's needs.

In all child-support cases the custodial parent will undoubtedly want as much information about the financial situation of the noncustodial parent as possible. However, such discovery in a case involving an extraordinarily high

In *Estevez* the court did not make a finding as to the guideline support. The court in *Johnson* did not take issue with this because in *Estevez* the custodial parent was not seeking to modify the child support but to change the manner of distribution. *McCinley v. Herman*, 50 Cal.App.4th 452 (1998). However, it does appear as though the *Johnson* court is giving a warning that the trial courts should make a finding as to guideline support even if they order a reduced amount due to a parent with an extraordinary high income.

While the court in *Johnson* did not change the central holding of *Estevez*, it did not agree that detailed financial information was necessarily irrelevant to the needs of a child who has an extraordinary high-earning parent. In *Johnson*, the mother stated that she believed Johnson earned close to \$12 million. Obviously \$1 million is much different than \$12 million and the court may determine the "needs" of the child to be

different in view of the noncustodial parent's lifestyle. In addition, the court needs sufficient information to assess the child's needs and to calculate guideline support for the record. The problem then becomes, how can the court assess the needs of the child without detailed discovery?

The *Estevez* court held that if the high-earning parent resists discovery, the court may, in determining what is reasonable child support, make the least-favorable assumptions on the liability side of the net-income equation. The *Johnson* court now makes these assumptions mandatory. If the assumptions can be made without financial information of the noncustodial parent, then no discovery should be permitted. If, however, the court cannot make such assumptions, the court may then allow limited discovery to only that information from which the least beneficial assumptions about Johnson's income may reasonably be made. The *Johnson* court further noted that limited discovery can easily be completed with the assistance of the trial court.

In light of *Johnson*, a non custodial parent with an "extraordinarily high income" should provide the court enough information about his or her income from which the court can make the assumptions necessary to determine reasonable support and to compute what the guideline support would have been. This would avoid any discovery.

Just saying that one earns over \$1 million is no longer enough. The court must be provided with enough information to make the necessary assumptions. The custodial parent, if he or she does not feel enough information has been supplied, may serve a limited discovery request. The discovery request should limit the demands to those documents necessary to establish a rough estimate of the noncustodial parent's net income. The discovery plan should also state with specificity why each request is necessary. Since guideline support will not be determinative of the court-ordered child support, the parties or their counsel should be able to cooperate and provide sufficient information for the court to make assumptions about the needs of the child.

The discovery request should be limited to documents necessary to establish a rough estimate of the noncustodial parent's net income.

earner will inevitably be complex, lengthy and burdensome. In *White*, the court dealt specifically with the issue of detailed discovery in a case with an extraordinarily high-earning parent. The court held that such detailed discovery was "irrelevant" to the amount of child support to be paid if the noncustodial parent has already stated that he can pay reasonable support.

In *Johnson*, the custodial mother filed a complaint to establish paternity and requested child support. The defendant was professional athlete Larry Johnson. Johnson admitted paternity and agreed to the mother's request that she have sole legal and physical custody. In addition, Johnson attempted to rebut the guideline child-support presumption by asserting that his income was over \$1 million per year and that he would agree to pay whatever child support the trial court deemed reasonable.

After the trial court entered a pendent lite child-support order of \$8,850 per month, plus \$2,500 per month of a nanny, the mother served Johnson with an extensive document production request. The mother stated that she believed Johnson's income was closer to \$112 million than \$1 million. Johnson sought a protective order citing *Estevez*.

The protective order was granted on part but was denied as it related to the living expenses of Johnson and his other two children, his nonbusiness travel expenses and his real property ownership and insurance coverage records. The trial court asserted that *Estevez* was in conflict with the rule that support is based on the standard of living of the parent and therefore, allowed discovery as to Johnson's standard of living but not his income. Johnson filed a petition for a writ of mandate challenging the order as it pertained to the portion of the request that was partially denied.

The appellate court held that "absent a showing of need for the detailed information requested, the protective order should have been granted" in its entirety. The *Johnson* court pointed out that Family Code Section 4056(a) mandates that if the trial court orders support that is different from the guidelines, it must specifically state what the guideline support would have been. Accordingly, the trial court must have enough financial information to at least make valid assumptions about the noncustodial parent's income.