

The Practitioner Family Law

Color of Money

High Earners Now May Have to Disclose Income Information

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In the case of *In re Marriage of Hubner*, 94 Cal.App.4th 174 (2001), announced for the first time that child-support orders in cases that deviate from the guideline formula due a parent's extraordinarily high income no longer will be permitted to omit the findings mandated by Family Code Section 4056(a).

Section 4056(a) provides that when ordering child support that differs from the guideline amount, the court "shall state in writing or on the record the amount of support that would have been ordered under the guideline formula, the reason that the amount ordered differs from the guideline-formula amount and the reason that the amount is consistent with the best interests of the children.

Until *Hubner*, those fortunate enough to establish themselves as extraordinarily high earners enjoyed the benefit of a judicially created exception to the findings mandated by Section 4056(a).

After the enactment of the statewide guidelines in 1992, several cases held that despite the seemingly mandatory language of Section 4056(a), a determination of the guideline amount of child support may not be necessary in cases involving extraordinarily high earners. *Estevez v. Superior Court*, 22 Cal.App.4th 423 (1994); *McKinley v. Herman*, 50 Cal.App.4th 936 (1996); *Johnson v. Superior Court*, 66 Cal.App.4th 68 (1998).

With *Hubner*, the previously accepted judicially crafted exemption from financial disclosures enjoyed by high earners is no more. Disclosure of gross income will be necessary to permit the findings mandated by Section 4056(a). In fact, if the ruling announced in *Hubner* is consistently applied, the only avenue open to extraordinarily high earners to avoid financial disclosure, at least of income, will be a court-approved agreement between the parties as to the amount of child support.

In *Hubner*, when the wife moved to modify child support, the high-earning husband refused to turn over any documentation regarding his income. Instead, he chose to rely exclusively on an admission, signed only by his counsel, stating that "his annual earned income ... is at least \$1,750,000.00, pre tax, he lives a lifestyle commensurate with a person earning \$1,750,000.00 per year, pre tax ... [and] he has the ability to pay any reasonable and lawful child support ... ordered by the court."

The husband further contended that his admission established that he was an extraordinarily high earner and, therefore, that he should not have to comply with the wife's discovery requests.

The wife moved to compel discovery or, alternatively, for a court finding that the husband's net income available for support was at least \$5 million annually. Initially, the court refused to order the husband to submit to a deposition but directed him to complete the disclosure of financial information required by the local court rules. On rehearing, the court ordered the husband to submit to a limited deposition regarding "the general attributes of his lifestyle."

At the hearing on the wife's modification motion, counsel for the husband announced that, contrary to the court's orders, the husband had not produced any financial information and continued to decline to comply with the order to produce financial information.

Deciding that it might not "be productive" to enforce its previous order and overruling the wife's objection that the required guideline calculation could not be made in the absence of the financial information that the husband had been ordered to produce, the court decided to proceed without any financial information from the husband.

In so doing, the court stated that it intended to "assume the worst possible tax situation" for the husband and to accept the husband's professed income figure as an after-tax figure, rather than the pre-tax figure that the husband had asserted it to be.

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The court ordered the husband to pay child support of \$19,000 per month, based upon findings that the husband had an after-tax income of \$150,000 per month.

The decision did not include any reference to any past or projected expenses for the child but announced that support of \$19,000 per month would permit the child to share in the husband's standard of living and that anything over that amount would be excessive and not consistent with the child's reasonable needs. The court asserted that although the support was not based simply on the actual historical expenses of the child, it was not a college fund either.

Both parties appealed the amount of support awarded. The Court of Appeal reversed the modification of support and, at the same time, dismissed both parties' appeals as to the appropriate amount of support as not ripe for adjudication. *Hubner* held that the husband could not be permitted

Estevez even included a footnote stating that only in the event that the father challenged as unreasonable the amount of child support determined by the court would he "be required to disclose the financial information requisite to application of the guideline formula."

White and *Estevez* sought to balance the tension between the high earner's desire for privacy and protection from discovery and the court's need for sufficient information to properly assess the child's needs. The rule articulated was that strict application of the guideline formula was unnecessary, unduly burdensome and oppressive in cases of extraordinarily high earners because that information is irrelevant when an extraordinarily high earner has stipulated that he can and will pay any reasonable amount of child support.

Moreover, as *Estevez* pointed out, when a high earner resists detailed financial disclosure, the trial court was free to make the least favorable assumptions for the paying parent concerning his or her net disposable income.

Hubner relied heavily on the decision in *Johnson v. Superior Court*, 66 Cal.App.4th 68 (1998), decided shortly after the trial court's decision in *Hubner*. *Johnson* asserted that it did not take issue with the holding in *Estevez* that excepts high-earner cases from the mandatory requirements of Section 4056(a). But in cases where there is a dispute as to the actual income of the paying parent,

Johnson held that the information may not be irrelevant and, therefore, that the court must require sufficient discovery to permit reasonable assumptions as to gross income. *Johnson* also held that the permissive unfavorable assumptions about the high earner authorized in cases of minimal disclosure should be mandatory.

Noting that both *White* and *Estevez* had authorized prohibitions against detailed discovery that was viewed as unnecessary, *Johnson* held that discovery limited to sufficient information from which the least beneficial assumptions about the paying parent's income may reasonably be made does not require such detail and is appropriate as necessary to get the essential information.

However, *Johnson* continued the endorsement of the holding that despite the seemingly mandatory language of Section 4056(a)(1), a determination of the guideline amount may not be necessary in the case of an extraordinarily high earner, a view also endorsed in *McKinley v. Herman*, 50 Cal.App.4th 936 (1996).

Distinguishing its holding from *Estevez* and relying heavily on *Johnson*, *Hubner* returns to the footnote acknowledgment in *Estevez* that if the support amount were challenged as unreasonable, financial disclosure would be required to enable the court to apply the guideline formula. In addition, *Hubner* noted that, unlike *Johnson* and the *Hubners'* case, the discovery issue in *Estevez* did not involve a dispute about the income figure to be used for purposes of determining the child's needs and, thereafter, the support amount.

In conclusion, the *Hubner* court was not insensitive to the need to balance the tension between the extraordinarily high earner's desire for protection from discovery and a trial court's acquisition of sufficient information to properly assess the child's needs.

After *Hubner*, extraordinarily high earners will continue to be protected from the kind of detailed discovery to which less fortunate individuals must adhere.

But the bare-bones admission of an extraordinarily high income, even coupled with a willingness to pay any reasonable amount, no longer will except high earners from all discovery in the event of a dispute. *Hubner* stands firmly against the judicially carved exception from the dictates of Section 4056(a) for high earners and may well have sent it to the dustbin.

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to withhold his income information as long as the amount of support remained in dispute.

This is because the court must obtain a legitimate factual basis from which to determine the high earner's actual annual income. A court cannot simply rely on admissions by high earners when the admitted amount of income is disputed. Nor is the court permitted to make a determination using a value not supported by any evidence. Even if it makes assumptions detrimental to the high earner, the base-income figure must have evidentiary support.

At the time of trial in 1998, it was certainly reasonable to rely on the leading case at the time, *Estevez v. Superior Court*, 22 Cal.App.4th 423 (1994). In *Estevez*, the high-earner parent stipulated to an annual income of \$1.4 million and also stipulated that "he can and will pay any reasonable amount of child support."

In the face of such a stipulation, the trial court issued protective orders to prevent disclosure of further financial information sought by the mother. The court held that nothing in the newly enacted statewide guidelines precluded the application of the principle exempting high earners from discovery and court-ordered disclosure of financial information as articulated in *White v. Marciano*, 190 Cal.App.3d 1028 (1987).

White held that in light of the high-earner parent's stipulation that he had a gross income of approximately \$1 million and could pay any reasonable amount of support, a prohibition of further discovery was appropriate because "detailed evidence of the supporting parent's lifestyle and net worth is irrelevant to the issue of the amount of support and thus is protected from discovery and inadmissible in determining the support order."

The *Estevez* court also specifically held that the enactment of the statewide guidelines did not require a trial court to consider detailed lifestyle and net-worth evidence to reach a decision as to the needs of a child and the amount of support to be awarded. The court specifically rejected the mother's argument that the court was required to calculate the amount of support that would be required under the guidelines, then consider the needs of the children, and only thereafter determine whether the presumption of correctness of the guideline amount had been rebutted.

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Correction

In last month's Family Law Focus, "Secrets and Lies" (Jan. 8), the writers incorrectly identified the profiled case as *In re Marriage of Bryant*, 2001 DJDAR 8733 (Cal. App. Aug. 15, 2001).

The correct case citation is *In re Marriage of Brewer & Federici*, 2001 DJDAR 12452 (Cal. App. Nov. 28, 2001).