

In Re Marriage of Stanton

We have seen many times how California courts cast a wide net to capture as much income as possible for child support. In *Stanton*, the net spread out to catch non-taxable military pay as a component of gross income. The court rejected an attempt to exclude it under the doctrine of federal preemption.

Soloman Stanton and Carol Stanton were married in 1993, and have a teenage son. They divorced in 2008. The parties signed a stipulated Marital Settlement Agreement (“MSA”), which included support. Soloman filed an Order to Show Cause to set aside the MSA, which the trial court granted. The court held a hearing to determine support and awarded Carol \$1,415 per month in temporary child support and \$1,600 in temporary spousal support. Soloman is a member of the United States Navy. In calculating temporary support, the court included his nontaxable military allowances in his gross income.

In 2009, Soloman filed an OSC for reduction of child support and for modification of spousal support. His base salary and basic allowance had both increased. Soloman’s argument was that the court erred by including his basic allowances for housing and subsistence in his gross income, and the court violated the federal preemption doctrine, since federal law exempts military allowances from the definition of income for federal tax purposes, and they are not subject to wage garnishment for support purposes. The trial court denied Soloman’s requested relief.

The issue before the Stanton Court of Appeal was whether the federal preemption doctrine prohibits inclusion of military allowances for housing and food in a party’s gross income for purposes of calculating child and spousal support, since such allowances are not taxable or subject to wage garnishment under federal law. Soloman had the burden to show the applicability of the federal preemption doctrine. The Court of Appeal held that he failed to meet that burden. He cited no direct enactment showing Congress intended to disallow a state court’s inclusion of military allowances in a party’s gross income for purposes of family support. The nontaxable status of military allowances does not suggest Congress had any preemptive intent with regard to child or spousal support. The Court of Appeal stated that tax laws and state support statutes have different purposes; the purpose of the Internal Revenue Code is to calculate taxable income, while the purpose of California’s support statutes is to make sure that parents have equal responsibility to support the child in the manner suitable to his or her circumstances. Parents’ actual – not taxable – income should be considered in determining child support. *In re Marriage of Alter* (2009) 171 Cal.App.4th 718 [2009 Cal. Family Law Monthly 97 (April 2009)]

The intersection of military issues with state family law issues, including the effect of active duty deployment [See, 2010 Cal. Family Law Monthly 234 (July 2010); 2009 Cal. Family

Law Monthly 87 (March 2009)] as well as Stanton-type issues, is becoming not only more frequent, but also more important.

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