

Family Law Focus

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A review of In re Marriage of Bardzik (2008 – Fourth District).

CASE SUMMARY

This case examines the requirements and considerations necessary when a parent makes a motion to modify child support payments and to impute income to the other parent.

A parent's motivation for reducing income is relevant to the decision of whether or not to impute income.

In *Bardzik*, a mother retired from her position as an Orange County Sherriff Deputy after 20 years of service. As a result, her income decreased from \$7,325 per month to her retirement benefits of \$2,577. Soon thereafter the parents' custody arrangement changed and the father took custody of one of their children. Subsequently the Father motioned the court for a modification in child support. He argued that because he now had custody mother should pay child support based on her pre retirement income because her only motivation for retiring was to spend more time with her children including two younger children from her current marriage. Mother argued that the ongoing stress of her job as a jailor was too much for her family and she retired to tend to the needs of her family.

Following an interesting history of the evolution of the rules for imputation of income in child custody issues, the court reaffirmed that today's rule is that in order for the moving party to meet his burden of proof, the moving party must satisfy two requirements. First it must be shown the other parent has the ability to work and second that the opportunity to work exists.

This is where the father in *Bardzik* fell short. The father simply argued that because mother voluntarily retired, she still has the ability to earn her pre-retirement income and support should be based upon that number. The court disagreed and explained that is not enough evidence to meet the burden of proving ability and opportunity.

To meet the burden the requesting party must present evidence that the non working party has the requisite skills or credentials to work, that work is available, and provide evidence of the pay in that industry in the community. (This list is not meant to be inclusive)

The court also addressed the fact that Mother voluntarily retired. The court stated earning capacity, ability and opportunity to earn income, does not in and of itself mean income will be imputed.

The burden of proof necessary to have income imputed to another parent falls on the requesting party.

Simply put, sometimes a parent's desire to reduce the stress of a job and or spend more time at home to care for the needs of the children is of equal importance to their ability to provide income to the family. Specifically, the concurring portion of the opinion makes it clear in these words: "[a] parent must weigh a reduced income against a need to spend more time with his or her families. Ultimately it is the job of the trial court to weigh all the needs



Robert J. Golde

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of the children, not only their economic needs, against the ability of the parents to fill those needs.”