



PROFESSOR LEX

BY HARVEY I. HAUER

Dear Professor Lex:

My client had been receiving a substantial amount of child support from her child's father, who had been earning substantial income in a cash business. He was recently incarcerated and is seeking a reduction in his child support obligation. It is not fair to his child that child support should be reduced due to his father's criminal activity. Do you agree?

Practitioner

In *Stallworth v Stallworth*, 275 Mich App 282, 738 NW2d 264 (2007), the Court of Appeals addressed the issue of imputing income to a party who can no longer earn an income similar to a previous level due to a criminal conviction.

In *Stallworth, supra*, the trial court made "a factual determination that defendant's actual income was higher than what defendant reported to the court." *Id.* at 285 The court reasoned longstanding Michigan caselaw permits a court to impute income to a parent on the basis of the likelihood of earning the imputed income. *Id.* at 198-199, 586 NW2d 883. Consistent with this caselaw, the MCSF grants a court the discretion to impute income to a parent, 2004 MCSF 2.10(B), which the manual defines as "treating a party as having income or resources that the individual does not actually have". 2004 MCSF 2.10(A). "This usually occurs in cases where there is a voluntarily (sic) reduction of income or a voluntary unexercised ability to earn". *Id.*

In this case, the trial court accepted testimony from plaintiff and plaintiff's witnesses that defendant earned or had access to monies other than his reported \$2,500 a month consulting fee. This was a factual determination that defendant's actual income was higher than what defendant reported to the court. The trial court also imputed income to defendant on the bases of his prior employment, FN1 education, and physical and mental abilities. The trial court recognized that defendant's criminal conviction adversely

affected defendant's income, but discounted this factor because the lowered income was the result of defendant's own actions.

In reversing the trial court on this issue, the Court of Appeals held:

the trial court improperly relied on defendant's reduced income capacity that resulted from his past criminal activities to impute income to him. The [trial] court opined that it "[was] not inclined to reward Defendant for his actions by lowering his financial obligations to support his family." Although it is true that defendant's criminal actions were voluntary, there is no evidence that defendant committed any crimes with the intent to reduce his income. Indeed, given the nature of the crimes, it could be inferred that defendant was attempting to increase his income. Defendant's criminal conviction bars him from earning a living in politics, at least now, because he was forced to resign from his most recent elected position. Defendant's resignation resulted in an involuntary reduction in his income. Although it is true that defendant obviously knew he was committing crimes and did so voluntarily, he has been punished for those crimes. To now cite his criminal conviction as a voluntary lowering of his income in an effort to thwart child and spousal support is both illogical and legally unprecedented. We cannot do so, and must conclude that it was improper for the trial court to have done so. Therefore, we hold that the trial court improperly used defendant's conviction as a reason for imputing income to him. [*Id.* at 287(emphasis in original).]

Answer respectfully submitted by Harvey I. Hauer, Hauer & Snover.

The above response is not meant to serve as a solution to a case. That would require complete disclosure of all facts in the case, including client consultation. Rather, the intent is to provide informal guidance based upon the facts that have been presented. The inquiring lawyer bears full legal responsibility for determining the validity and use of the advice provided herein.

