



DOMESTIC Cases Updated



Decided...

Overtime pay may be included in calculation of spousal support.

Elder v. Elder, 2009-Ohio-4868 (Dist. 5)

Mr. and Mrs. Elder divorced in 2008 after 24 years of marriage. Due to the disparity in income between the parties, and other factors, the trial court awarded Mrs. Elder spousal support for ten years.

The amount of support calculated was based on Mr. Elder's income as a truck driver, which included approximately \$22,000 in overtime pay. Mr. Elder's historical total pay was averaged to determine an appropriate value to use in calculating spousal support.

On appeal, Mr. Elder claimed the trial court abused its discretion by including overtime pay in the support calculation. Doing so, he argued, required him to "endure significant impingement on his lifestyle" to support Mrs. Elder.

In his argument, Mr. Elder cited *Carey v. Carey*, Clark Co. App. No. 2002-CA-109, 2004-Ohio-770, which allows reasonable amounts of overtime to be included in support calculations. However, the opinion states that it is "an abuse of discretion to fashion an order compelling an obligor to work an onerous amount of overtime". Mr. Elder argued that he should not be required to work overtime in order to support Mrs. Elder.

Mrs. Elder disagreed, and noted that in his deposition testimony, Mr. Elder stated he has no plans to alter his work schedule in the near-term. Also, Mr. Elder conceded that working overtime is a result of driving overnight routes to places like new Jersey and St. Louis.

The appellate court, after reviewing the evidence, determined that working overtime hours is an integral part of Mr. Elder's job and makes up a relatively large percentage of his income.

"It is an abuse of discretion to fashion an order compelling an obligor to work an onerous amount of overtime."

Because working long hours is a job requirement, the appellate court decided it was correct to include overtime pay in the calculation of spousal support. Because the trial court reserved jurisdiction over spousal support, the appellate court reminded Mr. Elder that, in the future, if his circumstances do change, he may ask the court to adjust the amount of spousal support.

*For more information on our
Family Law Advisory Services, contact:*

Rebekah Smith, CPA, CVA, CFFA
Director of Dispute Advisory & Forensic Services
614.947.5300