



January 4, 2016

Cantor Forensic Accounting, PLLC
208 W. Chandler Heights Rd. #101
Chandler, AZ 85248
480-448-9904
david@dscfac.com
www.dscfac.com

The Stein Case – From An Accountant’s Perspective



On December 8, 2015 the Arizona Court of Appeals issued its opinion on the case of Jay and Jill Stein (No. 1 CA-CV 14-0748 FC).

In this case, the Court of Appeals vacated and remanded the case back down to the Superior Court based on the Superior Court’s finding related to a deviation from guideline child support award.

David Cantor, CPA/ABV has been working almost exclusively in Family Law Accounting since 1990 in both Arizona and California.

He has worked on over 1,000 Family Law cases and has experience in all aspects of Family Law Accounting including Business Valuations, Separate Property Tracings, Calculation of Income for Purposes of Determining Maintenance and Support as well as many other financial issues.

Mr. Cantor has testified in Court over 100 times as an expert witness.

While the primary emphasis of the opinion appears to relate to the legal details of the Superior Court’s findings, the major underpinnings of these details are the dollar amounts utilized in the Superior Court’s initial decision.

This case brings to light the importance of being prepared to present a solid case when dealing with disputed and complex financial issues. In my experience, when you are dealing with a deviation from guidelines for a child support issue, the risk/reward factor almost always justifies a detailed accounting presentation.

A.R.S. §25-320(D) lists all factors that must be considered and explained in order for a deviation from guideline child support. These are:

1. Financial resources and needs of the child
2. Financial resources and needs of the custodial parent
3. The standard of living the child would have enjoyed if the child lived in an intact home with both parents to the extent it is economically feasible considering the resources of each parent and

each parent's need to maintain a home and to provide support for the child when the child is with that parent.

4. The physical and emotional condition of the child, and the child's educational needs.
5. The physical and emotional condition of the child, and the child's educational needs.
6. The medical support plan for the child. The plan should include the child's medical support needs, the availability of medical insurance or services provided by the Arizona health care cost containment system and whether a cash medical support order is necessary.
7. Excessive or abnormal expenditures, destruction, concealment or fraudulent disposition of community, joint tenancy and other property held in common.
8. The duration of parenting time and related expenses.

As you can see, items 1, 2, 3 and 7 are all accounting related issues. With that being said, it would seem that a significant emphasis should be placed on presenting accounting testimony/reports as they relate to these items, since the Court of Appeals made the following statements in the opinion (emphasis added via bold type):

- “One of the purposes of Rule 82(A) is to give appellate courts the ability to examine the basis for a mathematical figure awarded as child support. See Elliott, 165 Ariz. at 135. “[W]e **must be able to determine which evidence formed the bases of the awards before we can affirm them.**” Id. As our supreme court has explained:

An appellate court must be able to discern more than a permissible interpretation of the trial court's analysis. **The reviewing court needs a sufficient factual basis that explains how the trial court actually arrived at its conclusion. Without this explanation,** an appellate court cannot effectively review the decision-making process of the trial court.

Miller v. Bd. of Supervisors, 175 Ariz. 296, 299 (1993) (quoting Urban Dev. Co. v. Dekreon, 526 P.2d 325,328 (Alaska 1974)). If a proper Rule 82(A) request is made, **but the family court's findings are insufficient, we do not infer additional findings necessary to sustain the award.** See Elliott, 165 Ariz. at 135.”

- “However, the findings do not explain how or why the court settled on the \$7500 per month figure. As this Court has stated:

When the issue of child support or spousal maintenance is resolved, the result is a mathematical figure that represents the amount of the award. As we explained in Reed v. Reed, 154 Ariz. 101, 740 P.2d 963 (App. 1987), such a figure does not inform an appellate court of the basis for the trial court's decision. Consequently, it does not enable an appellate court to conduct the type of review that Rule 52(a) requires.

Elliott, 165 Ariz. at 132; see also Reed, 154 Ariz. at 106 (trial court failed to comply with Arizona Rule of Civil Procedure 52(a) **because it did not "set forth even the most rudimentary arithmetic basis" for the monthly increase it ordered.**"

- **"Although we might infer reasons for an upward deviation in some amount, when a party has invoked Rule 82(A), appellate courts do not employ such inferences."**
- **"It must be clear from the family court's findings how the court arrived at its mathematical figure."**
- **"Because we cannot ascertain the basis for the family court's award of \$7500 per month, we remand for additional findings."**

I think what is clear from this opinion is that there is a need by the party seeking a deviation from guideline child support to provide sufficient evidence to The Court that supports their request for deviation. It is also equally important that the opposing spouse be in a position to either refute the findings of the other spouse or present their own evidence as to why a deviation is not necessary (as it relates to the accounting issues).

Based upon ARS §25-320(D), the Court will be looking for the following accounting related items to assist it in making a decision:

- ✓ **Personal balance sheets of the parents** to reflect their financial condition. Remember, this would not only include the basics such as cash, brokerage accounts, credit card balances and mortgages but would also include ownership interests in businesses as well as other assets that can potentially generate income.
- ✓ **Standard of living** – This may be the most important part of the case. The Court will be looking for evidence to support either a justification for or against a deviation. Be forewarned, this type of accounting is an extremely time consuming process (that doesn't necessarily mean exorbitant fees. It means that the process of data input, review by the spouse, changes to the schedules may take weeks or even months). A standard of living analysis is probably one of the most hands on projects involving the spouse, accountant and attorney working in a collaborative effort. It is extremely important that the spouse be involved to identify the details of the transactions in order to assist the accounting in preparing their allocation of expenses. This is not something that can be completed at the last minute.....
- ✓ **Income of the parties** – This is another important aspect of the case. If you are the one requesting the upwards deviation, you should be prepared to show that the payor spouse has sufficient income to pay the amount requested without suffering financial hardship. Conversely, you should also show that the recipient spouse does not have sufficient income. If you are representing the payor spouse,

you may need to be prepared to show that an upward deviation would present a financial hardship on your client. Either way, you should present accounting evidence that supports your position.

What appears to be the takeaway from this case is that if you want to present a deviation from guideline case you must present sufficient financial evidence to assist the Court in arriving at a conclusion. This is not a process that can be completed quickly. There must be a very concerted effort among the attorney, client and accountant from the beginning of the case to plan, prepare and assemble an accounting report that not only supports the position you will be taking but will also provide the Court with enough evidence to arrive at an opinion that supports its findings.

Please visit www.dsfcac.com and click on the “Downloads” tab for previous editions of CFA newsletters