

IN THE COURT OF APPEALS OF TENNESSEE
EASTERN SECTION

FILED

August 16, 1996

Cecil Crowson, Jr.
Appellate Court Clerk

MARY FITZGERALD BROOME (GRAY)) HAMILTON COUNTY
) 03A01-9602-CV-00070
 Pl a i n t i f f - A p p e l l a n t)
)
)
 v.) HON. L. MARIE WILLIAMS,
) JUDGE
)
BRADLEY J. BROOME)
)
 Defendant - Appellee) AFFIRMED AND REMANDED

BARBARA L. BROERSMA OF CHATTANOOGA FOR APPELLANT

ANDREW BERKE OF CHATTANOOGA FOR APPELLEE

O P I N I O N

Goddard, P. J.

Mary Fitzgerald Broome (Gray) appeals a decree of the Circuit Court for Hamilton County which she contends did not sufficiently increase a previous child support award because the Court improperly failed to consider either capital gains income or an inheritance which Mr. Broome received from his mother.

Clearly, capital gains income should be considered as it is specifically mentioned in the Tennessee Child Support Guidelines.¹ However, a resolution of the issues raised does not require such a determination. We say this because the narrative statement of the evidence does not show that the sale of M. Broome's residence resulted in a capital gain or that the assets of his mother's estate exceeded the debts.

M. Broome's motion pursuant to T. C. A. 27-1-122 that he be awarded damages because this is a frivolous appeal is denied.

For the foregoing reasons the judgment of the Trial Court is affirmed and the cause remanded for such further proceedings, if any, as may be necessary and collection of costs below. Costs of appeal are adjudged against M. Broome.

¹ (3) Gross income.

(a) Gross income shall include all income from any source (before taxes and other deductions), whether earned or unearned, and includes but is not limited to, the following: wages, salaries, commissions, bonuses, overtime payments, dividends, severance pay, pensions, interest, trust income, annuities, capital gains, benefits received from the Social Security Administration, i. e., Title II Social Security benefits, workers compensation benefits whether temporary or permanent, judgments recovered for personal injuries, unemployment insurance benefits, gifts, prizes, lottery winnings, alimony or maintenance, and income from self-employment. Income from self-employment includes income from business operations and rental properties, etc., less reasonable expenses necessary to produce such income. Depreciation, home offices, excessive promotional, excessive travel, excessive car expenses, or excessive personal expenses, etc., should not be considered reasonable expenses. "In kind" remuneration must also be imputed as income, i. e., fringe benefits such as a company car, the value of on-base lodging and meals in lieu of BAQ and BAS for a military member, etc. (Emphasis supplied.)

Houston M Goddard, P. J.

CONCUR:

Herschel P. Franks, J.

Don T. Murray, J.