

# 2021 Case Law Update

25<sup>th</sup> Annual AB 1058 Child Support  
Training Conference

October 13, 2021

1926

# In re J.P.

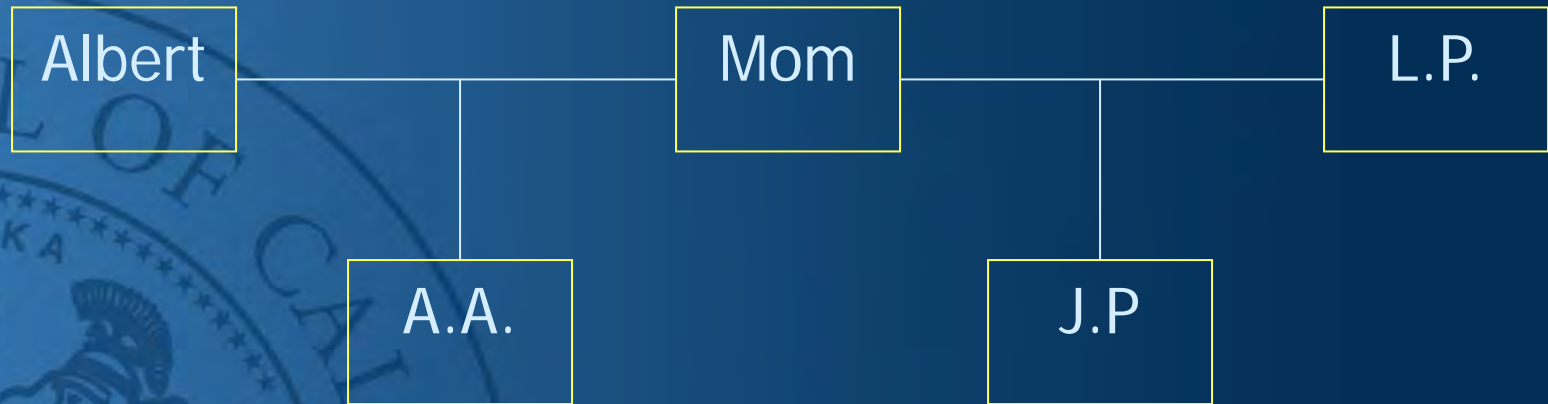
## (2020) 55 Cal.App.5th 229

- Juvenile case re parentage



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# The Story



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**In re J.P. (2020) 55 Cal.App.5th 229**

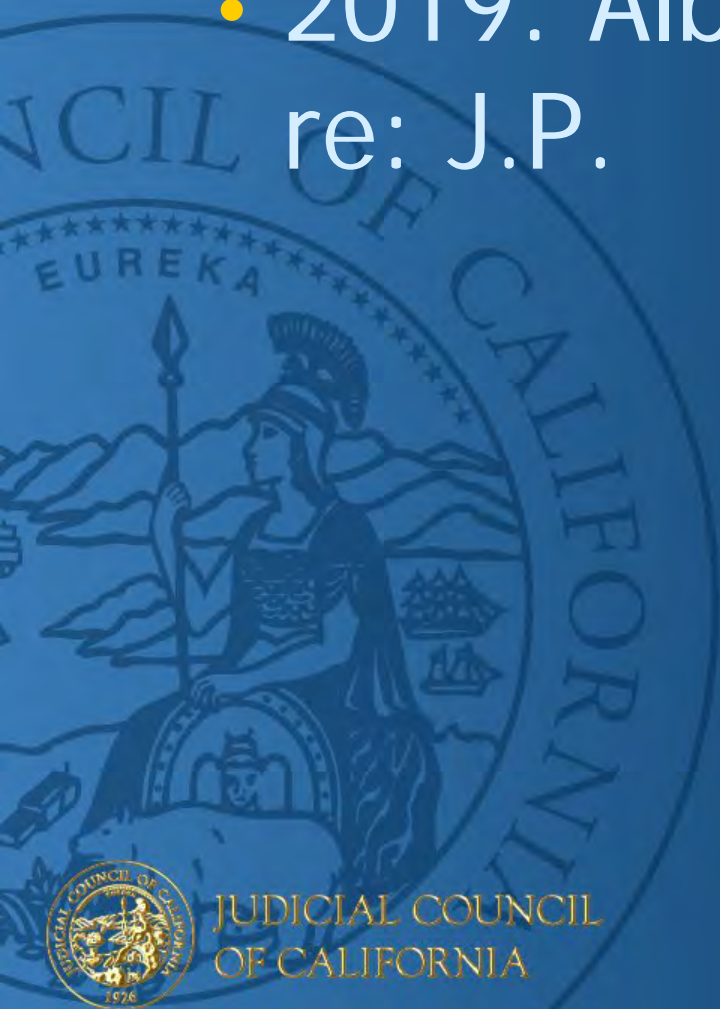
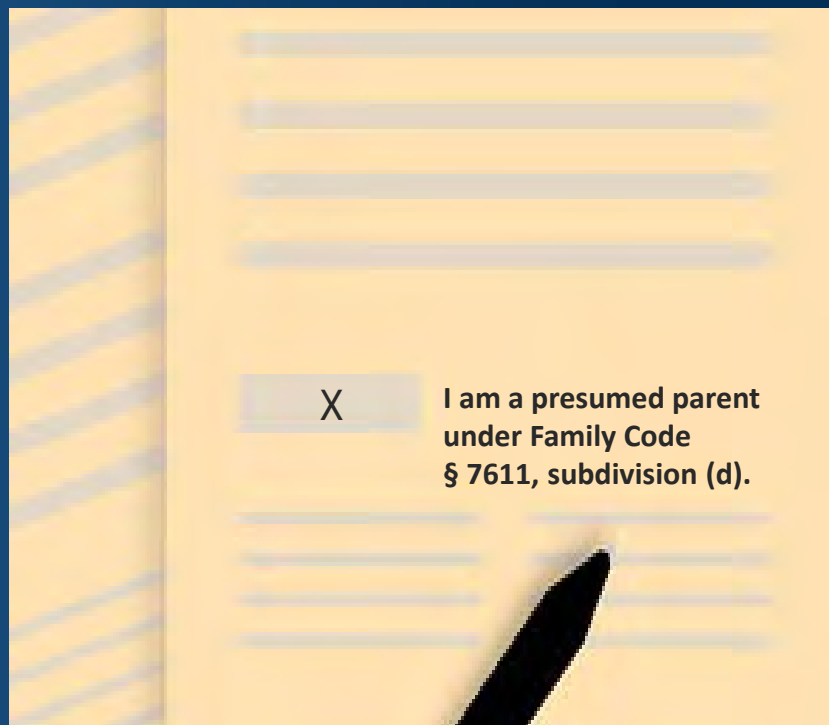
# The Story

- 2018: Albert asks to be found J.P.'s presumed father (PF)
- After contested hearing, court denies PF status
- But ordered that J.P. could visit Albert when A.A. visited Albert



# The Story

- 2019: Albert renews PF request re: J.P.



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**In re J.P. (2020) 55 Cal.App.5th 229**

# Trial Court Findings

- Evidence sufficient for Albert to claim PF status re: J.P. as third parent (Fam C 7612)
- W&I 385 permits sua sponte reconsideration of PF orders
- Albert found to be PF for J.P.



# Court of Appeal

- M appeals
  - Says FC 7636 + res judicata + collateral estoppel preclude reconsideration of PF status once ruled on



# How would you rule on appeal?

Click the link in the chat,  
scan the QR code below with your phone's camera,



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# Court of Appeal

- COA: Affirmed
- Family court and JV court serve different purposes
- But both use UPA for parentage



# Court of Appeal

- W&I 385 allows JV court to sua sponte reconsider prior orders
- FC 7642 gives courts (both JV and FL) continuing jurisdiction to modify or set aside judgments or orders made under the UPA



# Court of Appeal

- In ongoing JV proceeding, court has jurisdiction to reconsider prior rulings, including those on parentage



# Takeaways

- Courts have jurisdiction to revisit parentage determinations...to a point



# Takeaways

- Not the focus on the case, but facts included a brief review of third-parent analysis



# Takeaways

- Good reminder that JV court has exclusive jurisdiction re parentage while case pending
  - W&I 316.2(e): After a petition has been filed to declare a child a dependent of the court, and until the time that the petition is dismissed, dependency is terminated, or parental rights are terminated pursuant to Section 366.26 or proceedings are commenced under Part 4 (commencing with Section 7800) of Division 12 of the Family Code, the juvenile court which has jurisdiction of the dependency action shall have exclusive jurisdiction to hear an action filed under Section 7630 or 7631 of the Family Code.
  - *In re Jesusa V.* (2004) 32 Cal.4th 588, 620



# Takeaways

- Does this preclude establishment of parentage in DCSS-initiated actions under 17404?



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**In re J.P. (2020) 55 Cal.App.5th 229**

# M.M. v. D.V.

## (2021) 66 Cal.App.5th 733

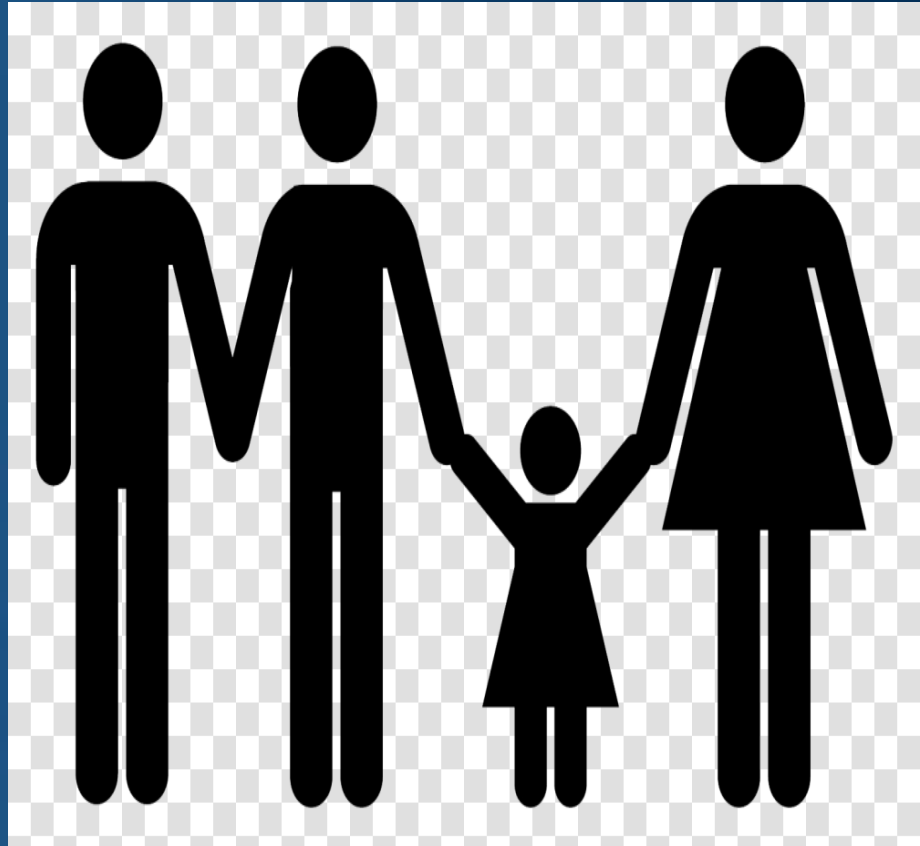
- Third parent case
- Biological father seeking to be
- *Kelsey S.* presumed parent
- Third parent



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# The Story



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**M.M. v. D.V. (2021) 66 Cal.App.5th 733**

# Trial Court Findings

- Not *Kelsey S.* father
  - Insufficient initial action
  - Insufficient action after being informed
- Not entitled to third parent status
  - Lack of existing relationship between M.M. and Child



# Court of Appeal

- MM appeals, claiming:
  - He is a presumed father under *Kelsey S.*
  - Despite his lack of relationship with the child, he should have been declared a third parent.



# You Decide

Would you  
affirm or  
reverse the  
judgment  
denying M.M.  
third parent  
status?



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and use the code 2292 7474

# Court of Appeal

## 1. Establish Parentage

- Uniform Parentage Act (F.C 7600, *et seq.*)
- Voluntary Declaration of Parentage (F.C. 7570, *et seq.*)
- Conclusive Marital Presumption (F.C. 7540)
- *Adoption of Kelsey S.* (1992) 1 Cal.4<sup>th</sup> 816



# Court of Appeal

## 2. Determine Detriment

- 7612(c) Legislative intent:
  - narrow in scope
  - applicable in rare cases
  - protect child from being *separated from parent*
  - specifically required *existing* parent-child relationship



# Court of Appeal

- Examined interplay with *Kelsey S.*:
  - *Kelsey S.* is an exception
  - recognizes liberty interest for biological father precluded from establishing a relationship
  - *M.M.* court does not similarly broaden analysis under 7612(c)
  - Due process and equal protection “honored” by allowing participation



# Court of Appeal

## Holding

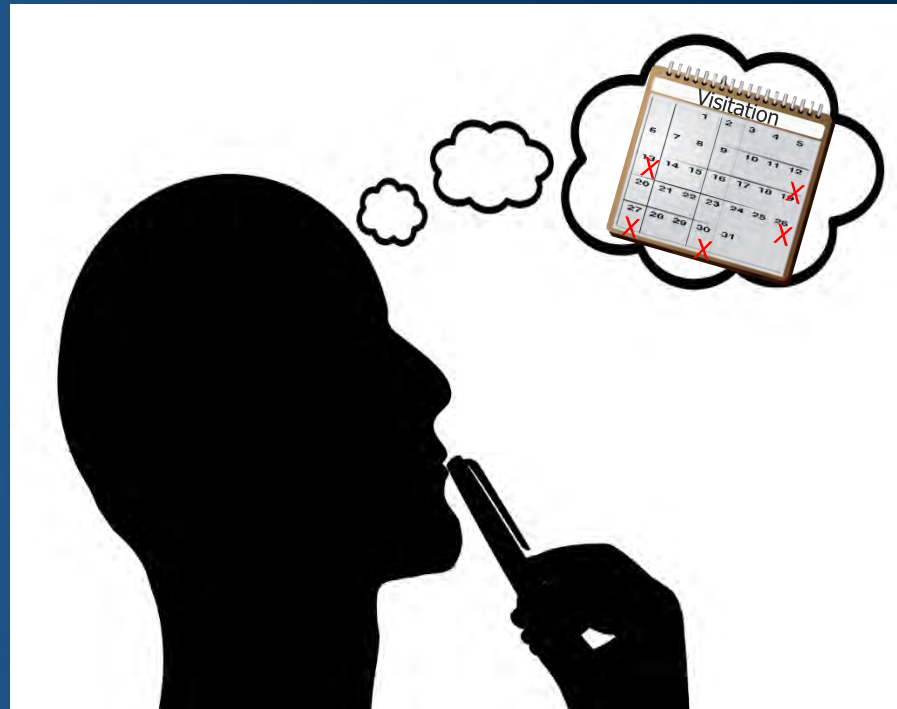
- Existing rather than potential relationship
- Would recognizing only two parents be detrimental to the child?
  - Not whether it would be detrimental to *add* a third parent
  - Would it be detrimental to have *only* two parents





# County of San Diego v. P.B. (2020) 55 Cal.App.5th 1058

- Use of timeshare in calculating support



# The Story

- M and F share joint legal
- C lived with M
- 2011: F's TS goes from 50% to supervised visits
- 10/2014 - 07/2015: TS 29%



# The Story

- 09/2014: M files RFO to mod CS
- Repeatedly continued
- 09/2016: Stipulation for CC/CV included statement that F had no TS for past year



# The Story

- 01/2017 CS hearing:
  - F alleged M interfering with reunification therapy, sought 50% TS
  - Court used 0% TS



# The Story

- 05/2017 CS hearing:
  - Court used 50% TS, finding special circumstances



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County of San Diego v. P.B. (2020) 55 Cal.App.5th 1058

# The Story

- 09/2017 CS hearing:
  - 29% TS 10/2014 to 07/2015
  - 2% TS 08/2015 to 12/2016
  - 2% TS 01/2017 forward



# The Story

- 12/2018 CC/CV hearing:
  - F had very little contact with C since August 2015 outside of a few joint therapy visits
  - C to live with M
  - Visitation with F as agreed between C and F



# Trial Court Findings

- 01/2019 CS hearing:
  - 29% TS 10/2014 to 07/2015
  - 29% TS 08/2015 to 12/2016
  - 29% TS 01/2017 to 10/2017
  - 0% TS 11/2017 forward





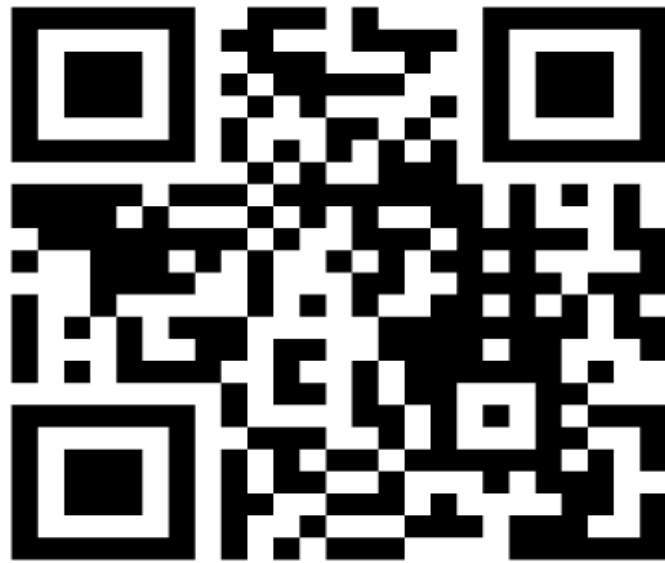
# Court of Appeal

- M appeals
  - (1) CS improperly calculated using a 29% timeshare when F had no visitation with Child
  - (2) Court failed to include as income gifts F received from parents



# How would you rule on appeal regarding the timeshare issue?

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# Court of Appeal

- COA: Reversed on timeshare
- Guideline presumed correct
  - Guideline requires use of actual timeshare (FC 4055(b)(1)(D))
  - Timeshare = period of time parent has primary physical responsibility for child



# Court of Appeal

- In limited circumstances, can use different timeshare
  - Adult disabled child
  - Boarding school
  - Daycare credit



# Court of Appeal

- Interference with custody or visitation does not affect obligation to pay support
- See Fam C 3556



# Court of Appeal

- COA: Affirmed on gift income
- Attorney fees paid by parents not income for support
- Not regular gifts (*cf* IRMO Alter)
- Funds used for specific purpose and for limited time



# Takeaways

- Takeaways:
  - Impute income, not timeshare
  - Deviation for special circumstances?
  - Not all funds are income for support purposes



# In re Marriage of Sawyer (2020) 57 Cal.App.5th 724

- UIFSA arrears



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# The Story

- 2001: Order issued in MN
  - F owes \$89,582.15 in arrears
- 2005: MN order registered and confirmed in CA
  - F did not challenge it at the time of registration



# The Story

- 2009: F unsuccessfully challenges arrears determination in MN
- Decision registered in CA for enforcement (F did not challenge)
- Stated arrears \$98,476.19



# The Story

- 2013: OSC for contempt in CA
- Court denies F's request to recalculate arrears to give him credit for payments made



# The Story

- 2018: Renewed judgm. from MN registered in CA for enforcement
- Arrears \$139,990.21
- F challenges registration



# The Story

- F's challenges:
  - Was unaware of 2001 MN hearing where arrears were determined
  - Children intermittently lived with him from 1993-2002



# Trial Court Findings

- Trial court stayed enforcement of \$28,890 based on children living with F for specific periods
- Found balance of \$60,692.15 enforceable



# Court of Appeal

- **DCSS & F Appeal**

DCSS:

- No authority to stay the arrears because the 2001 Minnesota order was registered and confirmed in California in 2005
- and
- F did not timely challenge the registration back in 2005

F:

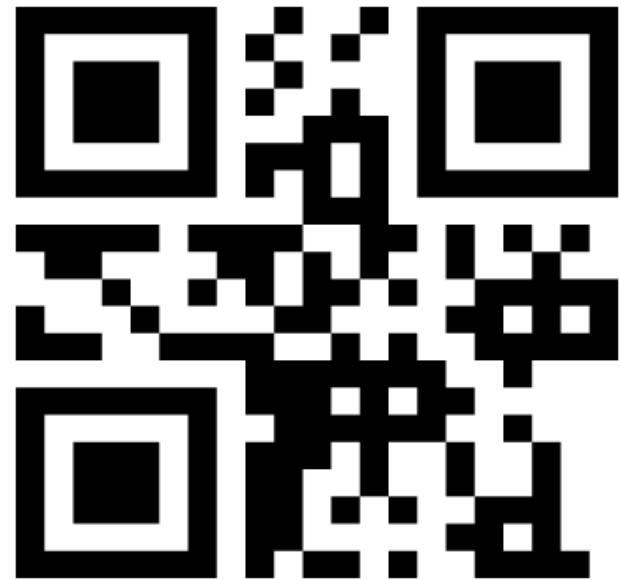
- Minnesota court lacked personal jurisdiction over him, so entire amount should have been stayed
- California trial court denied him the opportunity to present evidence supporting all equitable relief due



# You Decide

Click the link in the chat, scan the QR code below with your phone's camera,

Would you hold that the trial court properly stayed the arrears?



or go to [www.menti.com](https://www.menti.com) and use the code 6272 9742



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# Court of Appeal

- COA on DCSS appeal: Affirmed in part, reversed in part
- Amount of arrears came from 2001 order that F did not challenge when registered in 2005 and 2009



# Court of Appeal

- 2018 registration was for renewal of 2001 order
- As 2001 order was already confirmed by 2005 and 2009 registrations, arrears were set and F could not challenge them in 2018



# Court of Appeal

- COA on Father's appeal: Affirmed
  - Claim of lack of jurisdiction in MN unpersuasive as he had lawyer representing him in 2001
  - Court's failure to consider equitable remedies irrelevant as court lacked ability to modify order



# Court of Appeal

- Reversed order denying enforcement of \$28,890
- Affirmed order enforcing the balance



# Takeaways

- Limited opportunity to challenge UIFSA registrations
- Once they're confirmed, the orders cannot be modified, even on equitable grounds



# IRMO Maher & Strawn (2021) 63 Cal.App.5th 356

- F.C. 4320 Spousal Support Case
- Can a court consider the supporting spouse's payment of adult child's college expenses in determining ability to pay spousal support?



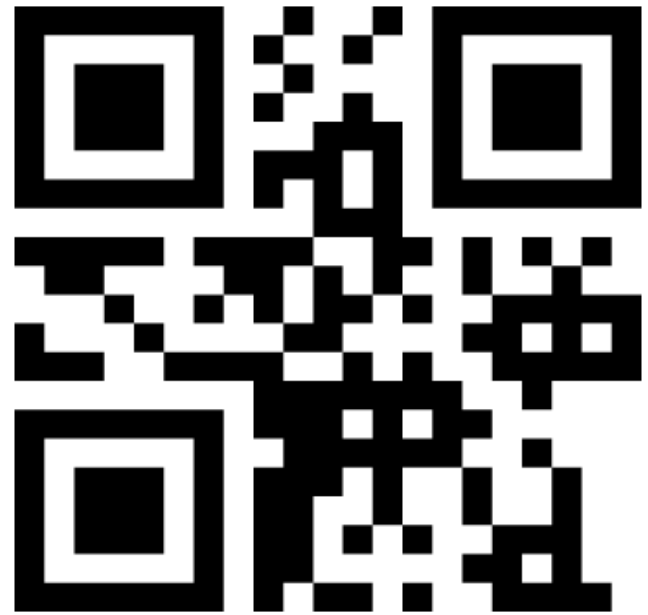
# You Decide

Can a court consider supporting spouse's payment of adult child's college expenses in determining ability to pay spousal support?



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and use the code 5053 9275

# IRMO Maher & Strawn (2021) 63 Cal.App.5th 356

- Answer: Yes
- Court may appropriately consider supporting spouses payment of adult child's college expenses





# Marital Standard of Living

- Sending adult child to college = marital home, eating out, vacations, cars
- Ten-factors to consider for evaluating reasonableness



# Split of Authority

- *Marriage of Paul* (1985) 173 Cal.App.3d 913
  - Court has discretion to consider adult child's college expenses
- *Marriage of Serna* (2000) 85 Cal.App.4<sup>th</sup> 482
  - Law prohibits compelling supported spouse to pay adult child support



# Unpublished Portions

- Characterization of MSL as “appalling” not abuse of discretion
- Husband’s ability & opportunity to work supported by substantial evidence



# California Rules of Court, Rule 8.1115

- Precedential value given to published Court of Appeal decisions
- If addresses split of authority - retains limited precedential status during review



# If vacated for reconsideration

- If already published in the bound volumes – deemed “not citable”
- If not already published in the bound volumes – deemed depublished



# Contact Information

**Christine Donovan**

Contra Costa County Superior Court

[cdono@contracosta.courts.ca.gov](mailto:cdono@contracosta.courts.ca.gov)

**Nannette Stomberg**

Shasta County Superior Court

[nstomberg@shasta.courts.ca.gov](mailto:nstomberg@shasta.courts.ca.gov)

**Fariba Soroosh**

Self Help Center/Family Law Facilitator's Office

Santa Clara County Superior Court

[Fsooroosh@scscourt.org](mailto:Fsooroosh@scscourt.org)



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# Family Code § 4007.5

- Reenacted eff. Jan 2021



- Language identical to prior version



- Relief granted by "operation of law"



# Legal Question

Can an obligor who qualified for relief under the prior version\*, petition the court for relief now (i.e., after the sunset date)?

*\*Oct 2015-Dec 2019*



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# Consider this Hypo

● Feb 2016: order entered

● May-Oct 2017: NCP incarcerated

● Jan 2022: LCSA fails to give NCP  
credit for months of incarceration



# Unsettled Issue

- DCSS comment to ITC: relief should be added to JC Forms



- *County of San Diego v. C.P.* (2019)

- Court to decide if relief is available



# Options for Forms

List relief

Not list relief



Middle  
ground

- Give info about potential relief available
- Allow relief to be requested, without specifically listing dates of prior version



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# JC Forms (eff. Jan 2022)

- FL-192 & FL-676-INFO:

If your child support order was entered or modified between October 8, 2015, and December 31, 2019, and you were confined against your will for more than 90 days in a row during the same time frame, you may also qualify for relief...



# JC Forms (eff. Jan 2022)

- FL-490 & FL-676:

Relief for *current* version of FC 4007.5

b.  I could not pay child support because

(1) After **December 31, 2020**, my child support order was entered or modified, and I was confined against my will for more than 90 days in a row in jail, prison, juvenile detention, a mental health facility, or other institution (*attach proof*).

(a) Start date:

(b) End date:

(2) I was not confined for

(a) domestic violence against the other parent or our child; or

(b) failing to pay a child support order.

(3) I had no money available to pay child support while I was confined.



# JC Forms (eff. Jan 2022)

- FL-490 & FL-676:

The child support order entered on *(date)*: \_\_\_\_\_  
was stopped (suspended) because

the order says it would stop

by operation of law

*(specify the reasons why and attach applicable proof):*



# JC Forms (eff. Jan 2022)

- FL-490 & FL-676:

The child support order entered on *(date)*: \_\_\_\_\_

was stopped (suspended) because

the order says it would stop

by operation of law

*(specify the reasons why and attach applicable proof):*



The background of the slide features a large, faint, circular seal of the Judicial Council of California. The seal contains a central figure holding a scale and a sword, surrounded by various symbols of justice and the state. The text "JUDICIAL COUNCIL OF CALIFORNIA" is written around the perimeter, and "1926" is at the bottom.

# Legislation of Interest

25<sup>th</sup> Annual AB 1058 Child Support  
Training Conference

October 13, 2021



# AB 135 (1 of 2)

## AB 135 (Assembly Budget Committee)

- TBL fleshes out the budget
- By topic (Human Services Omnibus)
- Sections 1-5 (out of 93)



# AB 135 (2 of 2)

## AB 135 (Assembly Budget Committee) con't.

- Child support collections
- E-signatures and forms
- Amends and Replaces FAM §17400 (Support obligations)



# Other Bills of Interest

- AB 429 (Dahle)
- AB 177 (Budget TBL)
- SB 241 (Umberg)



# Please Complete Surveys/ Evaluations

Surveys and evaluations will be sent out shortly after the conference.

Your input helps us, the organizers and presenters, understand how to change/improve for next year.



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# Add Contact Information

*For additional information related to the legislative program of the Judicial Council visit*

*<https://www.courts.ca.gov/policyadmin-oqa.htm>*

*or contact me directly as follows:*

Andi Liebenbaum (916) 323-3121

[andi.liebenbaum@jud.ca.gov](mailto:andi.liebenbaum@jud.ca.gov) *Thank you!*



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