



**Welcome to the 28<sup>th</sup> Annual  
AB 1058 Child Support  
Training Conference**

# Case Law and Legislative Updates

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# Case Law Update



# *In re Marriage of Cole*

**94 Cal.App.5th 450**

Filed August 11, 2023

Contra Costa County



# *In Re Marriage of Cole*

ISSUE: Imputed Income and Attorney Fees:

FACTS:

- November 2019 stipulation and order
  - Scott would pay Kikianne child support of \$7,537 per month for two minor children
  - Order also required that Scott pay bonus child support in accordance with a bonus wages report table (Scott had a reported gross income of \$2 million per year)
- For calendar year 2020 – Scott's child support obligations totaled \$90,444
- Scott paid January, February, and March, but stopped making payments in April



# *In Re Marriage of Cole*

## FACTS, cont.:

- May 2020 Scott filed a Request for Order to modify his 2020 child support
- Scott alleged
  - His law firm, Scott Cole and Associates (SCA), encountered severe economic challenges due to the COVID pandemic.
  - He stopped taking a salary to keep business afloat.
- Kikianne contended that Scott maintained assets, income and access to funds in excess of \$20 million



# *In Re Marriage of Cole*

## FACTS, cont.:

- Hearing occurred over 2 days in March and April 2021
- Evidence
  - In 2020, Scott voluntarily reduced his income to \$100,000, however
    - Law firm had \$1.4 million in reserves
    - Scott's total assets = \$6.4 million
    - Scott's net worth = \$4 million
  - Scott's salary history:
    - 2017 = \$11 million
    - 2018 = \$578,767
    - 2019 = 1.4 million



# *In Re Marriage of Cole*

## FACTS, cont.:

- The trial court found:
  - Scott's testimony was "largely unbelievable" concerning his personal finances and transactions.
  - The trial court's ruling:
    - Request for modification denied
    - Scott ordered to pay \$90,044 in total child support for 2020.
    - Scott ordered to pay Kikianne's attorney fees of \$123,909





# *In Re Marriage of Cole*

## **FACTS, cont.:**

### ■ **Scott appeals:**

- Trial Court's denial of his request to modify his support
- Order to pay Kikianne's attorney fees



## *In RE Marriage of Cole*

### **Appeals Court Discussion:**

California has a strong public policy favoring adequate child support



## *In Re Marriage of Cole*

### **COURT OF APPEAL (1st Dist., Div. 3)**

#### **Appeals Court Discussion:**

- **In implementing guideline support courts must adhere to certain basic principles**
  1. The first and principal obligation of a parent is to support parent's minor children
  2. Parent should pay support according to their ability
  3. Interest of the children are state's top priority
  4. Children should share in the standard of living of both parents
  5. Guideline seeks to encourage fair and efficient settlements and minimize litigation



# *In Re Marriage of Cole*

## **Appeals Court Discussion, cont.:**

- Generally, courts will not modify child support unless there has been a material change of circumstance
- The parent seeking to reduce a support order has the burden of proving changed circumstance and a lack of ability and opportunity to earn the income necessary to pay the court ordered support
- The overriding inquiry is whether a change has affected the parent's financial status



## *In Re Marriage of Cole*

### **Appeals Court Discussion, cont.:**

- Scott is the sole director of SCA and has unilateral ability to control his income
- SCA maintained \$1.4 million in reserves for 2020 a portion of which was held in reserves for long term investments
- Trial court has discretion to consider the earning capacity of a parent in lieu of the parent's income, consistent with the best interests of the children



## *In Re Marriage of Cole*

### **Appeals Court Discussion, cont.:**

- Trial Court had discretion to depart from the income-based child support amount set by the guideline formula
- Kikianne proved by substantial evidence:
  - Scott voluntarily and substantially slashed his salary
  - Scott and his current spouse withdrew \$977,000 from non-retirement Morgan Stanley accounts and paid at least \$387,245 of Scott's personal and business credit card expenses from a Morgan Stanley account during 2020



# *In Re Marriage of Cole*

## **Holding:**

- Substantial evidence supports the trial court's imputation of income in excess of father's actual salary
- Special circumstances justified the trial court's departure from the income-based child support amount
- Trial court's alleged finding that father maintained sufficient income at the end of the previous year that carried over as available income and that investment accounts could be imputed as income did not erroneously impute the value of Scott's assets and credit card debt as income
- Trial court's decision is Affirmed



## *In Re Marriage of Cole*

### **Unpublished decision re Attorney fees:**

Family Code Section 271 permits a trial court to impose attorney fees and costs as a sanction where a party's conduct “frustrates the policy of the law to promote settlement of litigation and where possible to reduce the cost of litigation by encouraging cooperation between the parties and attorneys” only after notice and an opportunity to be heard is provided to the party against whom the sanction is proposed..





## *In Re Marriage of Cole*

### **Unpublished decision re Attorney Fees, cont.:**

- Scott was on notice that Kikianne was requesting attorney fees under Family Codes 271, 2030, 2032, and 3557
- Each party requested FC 271 attorney fees against the other and Scott argued in his brief that his conduct did not warrant FC 271 attorney fees but that Kikianne's conduct did
- Scott had ample notice and opportunity to be heard



# *In Re Marriage of Cole*

## Key Take Aways

- First and principal obligation of a parent is to support children
- Court has the discretion to depart from the income-based child support amount set by guideline
- Quit while you're ahead



# *In re Marriage of Hearn*

**94 Cal.App.5th 380**

August 10, 2023

Marin County



# *In Re Marriage of Hearn*

## Facts:

- On 1/07/2021, Jennie Hooker filed a post-judgment RFO asking for Rocky Hearn to pay need-based attorney fees incurred in response to his appeals from orders in their underlying divorce case.
- In support of her request, Hooker declared:
  - \$80k in AFC for appellate work from 2017 to 2020, another \$35k needed.
  - \$7k income insufficient to pay AFC and living expenses of \$8,600.
  - Rocky is attorney *in pro per*, “making his best efforts to wear [her] down.”
- In opposition, Hearn declared:
  - “Unexpectedly discharged” from job on 2/02/2021.
  - No income or assets to pay any portion of Jennie’s fees.
  - Unable to pay for his own counsel since 2017.
- Hooker reduced request, proposed payment plan and filed MP&A arguing for order based on earning capacity.



# *In Re Marriage of Hearn*

## **Trial Court Decision:**

- Noted case was “hotly contested,” repeatedly stated it had read all papers.
- Denied Hearn’s requests in last declaration to strike Hooker’s reply submissions or continue the hearing.
  - Hearn concerned with inferred allegation that he “enjoyed” fighting Hooker.
- Denied Hearn’s requests at oral argument for a continuance to conduct discovery and for an evidentiary hearing.
  - Hearn wanted to present “communications” that would disprove allegations.
  - Hearn wanted documents related to Hooker’s taxes, unemployment, retirement savings, etc.
- Made findings as to each party’s financial circumstances.
- Concluded both have ability to contribute to Hooker’s AFC.
- Granted reduced request with payment plan.



# *In Re Marriage of Hearn*

## **Denial of Evidentiary Hearing:**

- Family Code § 217 says TC generally must “receive any live, competent testimony that is relevant and within the scope of the hearing.”
- Rule 5.113 sets forth factors for the court to consider in finding good cause to refuse live testimony, including:
  - Whether material facts in controversy.
  - Whether testimony necessary to assess credibility.
  - Parties’ right to question anyone submitting reports or information to court.
  - Any other factor that is just and equitable.
- TC required to state only those factors on which finding is based.



# *In Re Marriage of Hearn*

- Hearn forfeited § 217 right by not asking to testify or cross-examine in TC.
  - Arguments to strike reply and for continuance were about wanting time to gather and produce documentation.
- Even if no forfeiture, TC made a sufficient finding of good cause:
  - At outset, TC said it was familiar with the issues and had reviewed all filings.
  - TC found matter “had been so exhaustively briefed” that evidentiary hearing would not provide information that could and should have been included.
- Regardless, Hearn failed to show he was prejudiced by the denial of his request for an evidentiary hearing.
  - Contends was harmed by not being able to cross-examine Hooker, but does not explain how cross-examination would have related to issues on which TC based AFC order.



# *In Re Marriage of Hearn*

## **Attorney Fee Award:**

- Family Code §§ 2030 and 2032 authorize TC in a divorce to award fees and costs between the parties based on their relative circumstances to ensure parity of legal representation in the action.
- When a fee request is made, TC shall make explicit findings about:
  - Whether an award is appropriate;
  - Whether there is a disparity in access to funds; and
  - Whether one party can pay for legal representation for both parties.
- If the findings demonstrate disparity in access and ability to pay, TC shall make an order awarding attorney fees and costs.
- Hearn argued TC abused its discretion in: (1) failing to make the findings required by § 2030; and (2) granting the award because there is no evidence of his ability to pay Hooker's fees.





# *In Re Marriage of Hearn*

- TC made explicit findings that an award was appropriate because:
  - Hearn's 2020 income was considerably higher than Hooker's;
  - Hooker's expenses exceeded her income; and
  - Their expenses were comparable; but Hearn had access to representation without paying attorney fees, and Hooker did not.
- TC did not require Hearn to pay all of Hooker's fees and costs.
- TC was not required to make explicit findings regarding the amount of fees Hooker had paid to date, how she paid or where the funds came from.
- Hearn argued that when you consider his "disposable income," compliance with the fee award is impossible even if his prospective income is the same as his 2020 monthly average.



# *In Re Marriage of Hearn*

- Assuming AFC must be paid from net disposable income, Hearn's argument fails because his calculation bears no resemblance to Family Code § 4059, which specifies how net disposable income is calculated:
  - Generally, the only deductions from gross income allowed are: federal and state taxes, FICA contributions, mandatory retirement contributions, health insurance premiums, child support and job-related expenses.
  - Hearn deducts self-reported expenses for rent, groceries and transportation.
- To the extent Hearn argues his unemployment precludes a finding that he has an ability to pay, he downplays the evidence of his earning capacity.

## **Holdings:**

- TC did not abuse its discretion in refusing to allow live testimony.
- TC did not abuse its discretion in awarding need-based AFC.



# Key Takeaways

- Ask for live testimony and/or cross-examination before and at the hearing.
- Unemployment doesn't necessarily preclude a finding of ability to pay attorney fees and costs.
- Even ineffective self-representation by an attorney can create a disparity for purposes of need-based attorney fee awards.
- Read the whole case before you cite to it!



# *In re Marriage Rangell*

**95 Cal.App.5th 1206**

September 28, 2023

Los Angeles County



# *In re Marriage Rangell*

## FACTS:

- September 1, 2017 - Deric filed a petition for dissolution of marriage
- March 2018 - Tracy filed a request for order for Deric to provide:
  - An accounting of all rental income received from their three investment properties since the date of separation and
  - Tracy with half of the proceeds.
- April 2019 - Parties entered into a settle agreement that provided that the Oklahoma property would be listed for sale and sold with a mutually acceptable agent



# *In re Marriage Rangell*

## FACTS, cont,:

- Deric made himself the broker for selling the property without Tracy's consent:
  - Took the property off market,
  - Continued to collect the rent,
  - Did not provide half to Tracy and
  - Did not provide any accounting to Tracy.
- Tracy requested control of the rental property and FC 271 attorney fees.
- Many hearings ensued and
  - Deric still did not comply
- January 12, 2021 - Ex parte hearing, sanctions of \$1,000 per day were imposed until Deric complied with the court order.



# *In re Marriage Rangell*

## FACTS, cont.:

- Deric sells the property but refuses to provide any information about the escrow and title company handling the sale.
- Deric now argues that funds should not be transferred to Tracy's attorney trust account because the corporation, Vespia, is the one who holds the funds, not him.
  - Deric was granted sole ownership of corporation, Vespia, as part of the dissolution.
  - He is the sole shareholder, the owner, and the only one in control of its funds.
- January 21, 2021- Court states that it will now start enforcing the \$1,000 per day sanctions.



# *In Re Marriage of Rangell*

## **FACTS, cont.:**

### ■ **Deric appeals:**

- Trial Court's award of attorney fees and costs in Family Code Section 271 sanctions was an abuse of discretion
- Contends that the awarding of sanctions or \$1,000 per day *for, conceivably, an indefinite period*, was an abuse of discretion





# *In Marriage of Rangell*

**COURT OF APPEAL (2nd Dist., Div. 8)**

**Appellate Court discussion:**

Section 271 is a powerful weapon for the court

The court may base an award of attorney's fees and costs on the extent to which the conduct of each party or attorney furthers or frustrates the policy of the law to promote settlement of litigation and where possible to reduce the cost of litigation by encouraging cooperation between the parties and attorneys



# *In Re Marriage of Rangell*

## **Appeals Court Discussion, cont.:**

- The trial court's order of sanctions in the amount of \$1,000 per day was not for an indefinite period.
  - It was conditional for every day on which Deric failed to comply with the court's repeated orders.
- Trial court did not abuse its discretion in ordering sanctions and attorney fees.
  - Deric's continued disregard of trial court's orders warranted imposition of attorney fees and costs in the nature of sanctions



# *In Re Marriage of Rangell*

## Key Take Aways

- A trial court has discretion to award attorney fees in the nature of sanctions against a party who frustrates the policy to promote settlement and cooperation in family law litigation.
- The court will eventually run out of patience.



# *Jimenez v. Chavez*

**97 Cal.App.5th 50**

November 13, 2023

San Bernardino County



# *Jimenez v. Chavez*

## **FACTS:**

- October 2019 - Dianne Jimenez filed a complaint against Perry Chavez claiming a one-half interest in a residence that Jimenez and Chavez allegedly shared during a lengthy period of cohabitation.
- Feb. 8 – 2020 - Chavez was served with the summons and complaint
- August 20, 2020 - Default was entered against Chavez.
- March 9, 2021 - Default Judgment was entered granting Jimenez 50% fee simple legal and equitable ownership in the residence.



# Jimenez v. Chavez

## FACTS, cont.:

- September 9, 2021 - Chavez's attorney, Jason Allison, filed a motion to vacate the default and default judgment.
- October 13, 2021 – At the hearing on the motion Allison appeared by phone. Allison was initially on the line but when the matter was called, he was no longer on the line.
- Jimenez's attorney, Priscilla Solario, argued to the court that the motion to set aside was untimely filed because it was filed six months and one day, or 181 days, after the judgment was entered.



# *Jimenez v. Chavez*

FACTS, cont.:

- Chavez's motion is based on Section 473(b) which includes a mandatory relief or attorney fault provision which requires the court to vacate a default and any resulting default judgment if a motion for relief from the default judgment:
  1. Is filed not more than six months after entry of judgment
  2. Is in proper format
  3. Is accompanied by an attorney's affidavit of fault



## *Jimenez v. Chavez*

### FACTS, cont.:

- The mandatory relief provision has three purposes:
  1. To relieve the innocent client of the consequences of the attorney's fault
  2. To place the burden on counsel
  3. To discourage additional litigation in the form of malpractice actions by the defaulted client against the errant attorney





# *Jimenez v. Chavez*

FACTS, cont.:

- Chavez's attorney, Allison, submitted a declaration stating that:
  - In February 2020 when COVID-19 started becoming a major issue, he moved out of his office and set up a home office and had to let his assistant go. He lost track of the case.
  - In July 2020 Allison attempted to fax file an Answer in the case and did not receive notice that the fax did not go through.



# *Jimenez v. Chavez*

FACTS, cont.:

- Chavez appeals the denial of the motion to set aside



# *Jimenez v. Chavez*

## **COURT OF APPEAL (4th Dist., Div. 2)**

### **Appeals Court Discussion:**

- The court concludes that the six-month limitations periods of the mandatory and the discretionary relief provisions of section 473(b) mean the longer of six calendar months or 182 days.
- The motion to set aside was filed Sept. 9, 2021, which was 6 months after the default judgment was entered on March 9, 2021.



# *Jimenez v. Chavez*

## Appeals Court Discussion, cont.:

### Holding:

- However, 473(b) mandatory relief provision states that the filed motion must be "in proper form".
- "In proper form" means that it must be accompanied by a copy of the answer or other pleading proposed to be filed.
- Attorney Allison did not attach a proposed responsive pleading.



Therefore, the motion to set aside was properly denied.

# Key Take Aways

- Six months is defined as six calendar months or 182 days (one half a year). Six calendar months can range from 181 – 184 days. This approach reinforces the "strong public policy that seeks to dispose of litigation on the merits wherever possible, rather than on procedural grounds.
- It may be more cost effective to keep your legal assistant to help you properly file and track your cases.



# *In re Marriage of Tara & Robert D.*

**99 Cal.App.5th 871**

February 16, 2024

San Diego County



## In re Marriage of Tara & Robert D.

- Robert and Tara D. filed for divorce in 2016
- Robert filed for sole legal and physical custody of the children in November 2019
  - Feb. 2020 - Hearing was set, just prior to the COVID-19 shutdown and was continued to June 2020
  - After further continuances, the matter was set for trial in November 2021
  - November 10, 2021- One week before trial was set to begin, Robert's attorney filed to be relieved as counsel. The court heard the matter November 16, one day before trial, granting the request, but adding a handwritten note to the order "Trial of 11/17/21 will not be continued.



# *In re Marriage of Tara & Robert D.*

## FACTS, cont.:

- November 16, 2021 Robert filed a declaration in response to the motion that morning stating:
  - "I must affirm that the attorney-client relationship has broken down"
  - Requesting a continuance of the trial so he could obtain new counsel.
- The court stated that it had repeatedly said there would be no more continuances.
  - However, the court delayed the trial by one day so Robert could "get his ducks in a row".
- Trial proceeded on six nonconsecutive days from Nov 2021 to January 2022.
- The court ordered sole legal custody to Tara and joint physical custody.





# *In re Marriage of Tara & Robert D.*

FACTS, cont.:

- Robert appeals, asserting:
  - The trial court abused its discretion by refusing to grant a continuance after permitting his attorney to withdraw on the eve of trial
  - This error requires reversal and remand for a new trial



## *In Re Marriage of Tara & Robert D.*

### **COURT OF APPEAL (4th Dist, Div 1)**

#### **Appeals Court Discussion:**

- Losing counsel shortly before trial often constitutes good cause for a continuance.
- These are circumstances that on their face would seem to justify a continuance of some duration.
- Here the trial court explained that it would not grant a continuance primarily because it had previously told the parties the trial would not be continued.



## *In Re Marriage of Tara & Robert D.*

### **Appeals Court Discussion, cont.:**

- The appropriate exercise of judicial discretion requires the judge to reexamine tentative conclusions in light of changed circumstances.
- The decision to permit the withdrawal of counsel on the eve of trial is nothing if not a changed circumstance. The court could not merely rely on its prior statements.



## *In Re Marriage of Tara & Robert D.*

### **Appeals Court Discussion, cont.:**

The trial court's denial of Robert's request for a continuance is not supported by the record. We must conclude that the court abused its discretion.



# *In Re Marriage of Tara & Robert D.*

## **Appeals Court Discussion, cont.:**

No judgment shall be set aside, or new trial granted in any case for any error as to any matter of procedure, unless, after an examination of the entire cause, including the evidence, the court shall be of the opinion that the error complained of has resulted in a miscarriage of justice.

California Constitution Article VI section 13

This provision usually prohibits reversal where the challenged error did not affect the outcome of the proceeding and thus did not prejudice the appellant.



# *In Re Marriage of Tara & Robert D.*

## **Appellate Court discussion:**

- The trial took place on nonconsecutive days over several months.
  - We cannot assume that the court's refusal to grant a continuance deprived Robert of counsel for the entirety of the trial.
  - Robert does not explain why he failed to obtain counsel at any point during the extended trial.
- Final custody orders can be changed if a parent establishes a significant change in circumstances indicates that a different arrangement would be in the child's best interest.
  - Robert is not forever barred from seeking to alter the custody order.



## *In Re Marriage of Tara & Robert D.*

### Appeals Court Discussion, cont.:

#### Holding:

- Robert had given us no basis to conclude that the denial of a continuance affected the outcome of the proceeding.
- The order is affirmed.



# Key Take Aways

- It is an abuse of discretion to deny a continuance solely because the court has repeatedly said there would be no more continuances. The court must consider a change in circumstance, such as counsel withdrawing immediately before trial
- However, an appellant has the burden to show that the court's denial prejudiced the outcome of the case.





# *Tran v. Nguyen*

**97 Cal.App.5th 523**

November 28, 2023

Orange County



# *Tran v. Nguyen*

## **Background:**

- While separated from his wife, Bruce Tran had a relationship with Que Phung Thi Nguyen, and they conceived a child.
  - Tran ended the relationship.
  - Nguyen had the baby.
  - Tran did not tell his wife, but voluntarily played a role in the child's life.
- Later, Nguyen threatened to disclose the relationship and the child to Tran's wife unless Tran paid her thousands of dollars.
  - Tran pleaded with Nguyen not to do so.
  - Feared the information would lead his wife to suicide.
- Nguyen persisted; Tran paid her \$500k and bought her a BMW.



# *Tran v. Nguyen*

- Years later, Tran learned Nguyen had a Facebook account in the child's name and used it to post photos of her "husband" Tran, herself and the child.
  - Tran asked Nguyen to remove his photos and make the account private.
- Nguyen agreed, but then demanded more money and a house.
  - Tran refused further payoff.
- Nguyen added 500+ photos to the child's account, made it public and emailed a link to Tran's wife.

## **Trial Court Proceedings:**

- Tran sued Nguyen for civil extortion and intentional infliction of emotional distress (IIED).



# *Tran v. Nguyen*

- Nguyen demurred, arguing:
  - CA has no cause of action for civil extortion under these circumstances.
  - IIED claim fails because the allegation of “outrageous conduct” is inadequate and violates Civil Code § 43.5, the “anti-heart-balm” statute.
- TC sustained Nguyen’s demurrer without leave to amend:
  - A claim for civil extortion must arise out of a threat to initiate a false civil or criminal prosecution.
  - Both the civil extortion and IIED claims implicate the anti-heart-balm statute because both are claims arising out of the “seduction of a person over the age of legal consent.”
- Tran appealed from the TC’s decision.



# *Tran v. Nguyen*

## **Criminal Extortion (Penal Code § 518 ):**

- Criminal extortion is “[t]he obtaining of property or other consideration from another, with his or her consent ... induced by a wrongful use or force or fear.”
- Fear may be induced by a threat to expose a disgrace or secret.

## **Civil Right to Rescind Consent (Civil Code § § 1566, 1569, 1570):**

- Consent to a transaction obtained through wrongful means is “not absolutely void, but may be rescinded by the parties.”
  - Includes duress, menace, fraud, undue influence or mistake.
  - Menace includes the threat of injury to a person’s character.
- No requirement of falsity.



# *Tran v. Nguyen*

## **Nguyen's Other Policy Arguments:**

- Public policy prohibits a man from denying his paternity of a child based on privacy concerns.
  - No allegation Tran ever denied he was the child's father.
- To allow Tran's claim would undermine the fundamental right of a custodial parent to seek child support.
  - This opinion in no way prohibits a custodial parent from seeking child support by any legal and legitimate means.
  - A custodial parent is not entitled to attempt to coerce the other parent to pay child support that has not been adjudicated or freely agreed to.



# *Tran v. Nguyen*

- It's against public policy to allow a father to recoup payments made to the mother of his child. *McBride v. Boughton* (2004) 123 Cal.App.3d 379.
  - Man found out he was not biological father of 2.5-year-old child; sought to recoup as unjust enrichment CS payments made to mother.
  - Based on man's status as a "putative father" to child and public policy that favors preservation and stability of such non-biological relationships.
  - CoA declined to recognize unjust enrichment claim to create a disincentive for an unmarried man to form a parental bond with a child if likely to be severed upon proof the child is another man's genetic offspring.
- Violates the public policy behind the anti-heart-balm statute.
  - Its immunity does not apply if alleged conduct breaches a duty of care independent of those old causes of action.



# Tran v. Nguyen

- Barred by doctrine of unclean hands; agreement was inequitable and contrary to CA's policy of child support because to keep Tran's parentage a secret from his wife "necessarily must have included an agreement not to pursue a child support action."
  - Could have privately and legally reached a child support agreement or even a stipulation in court without notifying Tran's wife.
  - Argument also fails because when a party's consent is obtained through menace, that party is not considered *in pari delicto*.

## Intentional Infliction of Emotional Distress:

- Claim for rescission based on menace "sounds in contract rather than tort" law. Thus, it does not support a claim for emotional distress damages.





# *Tran v. Nguyen*

## **Holdings:**

- Civil Code §§ 1566, 1567 and 1570 provide a statutory right to rescission on the grounds of menace—the civil equivalent of extortion—and thus the TC erred in sustaining Nguyen’s demurrer to Tran’s cause of action for “civil extortion” without leave to amend.
- TC did not err in sustaining Nguyen’s demurrer to Tran’s cause of action for intentional infliction of emotional distress without leave to amend.
- Judgment reversed.



# Key Takeaways

- Nguyen should've contacted her local child support agency!
  - Consider the financial resources one needs to be able to pay \$550k in hush money (includes median price of a BMW) without their spouse noticing.
  - What if payor offered to pay above guideline in exchange for silence?
- Custodial parent's bad conduct does not affect child's right to support.



# *Bailey v. Murray*

**102 Cal.App.5th 677**

May 9, 2024

San Bernardino County



# *Bailey v. Murray*

## **Background:**

- TC granted Charnae Bailey a DVTRO against her ex-partner, Jason Murray.
  - Petition alleged sexual assault in February 2023.

## **Evidentiary Hearing:**

- Bailey was self-represented, and Murray had counsel.
- Rather than have Bailey question herself, TC asked her questions.
  - TC said it would ask open-ended questions only; noted counsel could still raise objections and cross-examine.
- Bailey testified to a sexual assault in January 2021.
  - TC allowed testimony over Murray's objection, saying law required admission of evidence concerning all incidents of abuse in same category as abuse alleged in petition.
- Bailey testified Murray had attended their church twice since the TRO.



# *Bailey v. Murray*

- TC suggested Murray's counsel avoid asking him leading questions on direct examination.
- At close of first day of evidentiary hearing, TC notified Murray his criminal history report showed a Smith & Wesson 9-mm handgun registered in his name, which he had not disclosed or declared surrendered.
  - Gave him DV-800 and one day to file it.
  - Failure to do so = violation of TRO, report to law enforcement.
- Next day, TC said Murray's DV-800 appeared incomplete because he left blank fields for date and time of surrender; noted the gun was still registered in his name.
  - Murray declined to say more about the gun's whereabouts.
  - Not in possession. If compelled to report, "that's fine."



# *Bailey v. Murray*

## **Trial Court's Decision:**

- TC granted Bailey a 3-year DVRO after finding incidents of abuse, and noted the following:
  - Murray did not deny attending the church after the TRO was issued.
  - Murray declined to present evidence he did not possess the gun that was registered to him and declined to deny possession of the gun.
  - Violations of a TRO are acts of abuse in and of themselves and therefore grounds to grant a DVRO.

## **Murray's Appeal:**

- Murray appealed from the TC's decision, arguing it denied him procedural due process in several ways.



# *Bailey v. Murray*

## **Questioning Bailey:**

- TC did not compromise its neutrality as Murray argues.
  - Questions were not in some way advocacy for either side.
  - Restricted itself to eliciting material facts with general, open-ended questions, and to clarifying confusing and incomplete testimony.

## **“Admonishing” Murray’s Counsel:**

- Not a violation of due process, it is sound advice!
  - Didn’t strike counsel’s questions or the answers they elicited.
  - Gave guidance on how to elicit testimony that might be more useful to a factfinder.
  - Didn’t limit Murray’s ability to present evidence. If anything, assisting him in presenting his case.



# *Bailey v. Murray*

## **Abuse Not Alleged in Petition:**

- *In re Marriage of Davila & Mejia* (2018) 29 Cal.App.5th 220:
  - DVPA does not require that the petition describe all individual actions taken by the alleged abuser, as long as the alleged abuser is put on notice of the general allegations.
- Bailey alleged sexual assault in her petition, so Murray had notice.
  - If he wasn't prepared to respond to Bailey's specific allegations about January 2021, he could've asked for a continuance.
    - He didn't. Instead, he testified sexual activity was consensual.





# Bailey v. Murray

## Allegations of Post-Petition Abuse:

- *In re Marriage of F.M. & M.M.* (2021) 65 Cal.App.5th 106:
  - The purpose of a DVRO is not to punish abuse, it is to prevent future abuse.
  - Evidence of abuse that occurred after the petition was filed is relevant, especially after issuance of a TRO.
  - Family Code § 6203(a)(4) specifically says engaging in behavior that has been enjoined pursuant to section 6320 constitutes abuse.
  - TC was required to consider the evidence that Murray had violated the TRO by continuing to attend church with Bailey and possess a firearm.



# *Bailey v. Murray*

## **Possession of Firearm:**

- Murray misrepresents what happened at trial. (“Simply counterfactual.”)
- TC was solicitous of Murray’s rights.
- Murray made the choice to invoke his 5th Amendment right against self-incrimination and not answer questions about the gun other than to say he was no longer in possession of it.
  - TC gave him several opportunities, and he refused to respond fully.
- Murray claimed after TC ruled that he had never possessed the firearm and questioned the veracity of the report.
  - Does not challenge sufficiency of evidence for TC’s finding.

## **Holdings:**

- No violation of procedural due process.
- DVRO affirmed.



# Key Takeaways

- Don't assume you're more clever than the judge.
- Know your mandatory Judicial Council forms! (Or at least read them?)
- You can't have your 5th Amendment cake and eat it, too.
- Address all possible grounds for an appeal.



# Legislative Updates



# Legislation passed in previous sessions



# SB 1055

## Child Support Enforcement: License Suspensions

- Prohibits Child Support Services Department from submitting litigants to the Department of Motor Vehicles for suspension of a driver's license if the litigant's income is at or below 70% of the median income for the county in which they reside
- Commencing January 1, 2025



# AB 1148 Child support

## Amends FC 4007.5

- Extends the suspension of a child support order during incarceration of more than 90 days from resuming on
  - the first day of first full month after release of the person owing support to
  - the 1st day of the 10th month following release.
  - for those who are released on or after Jan. 1, 2024
- Allows local child support agency or person receiving support to seek order reinstating sooner if paying party obtains employment.



# 2024 Legislative Session

- Legislative Sessions ends on August 31<sup>st</sup>
- Governor has until September 30th to sign or veto legislation
- Summaries of bills and links to the text are included in your materials (note that summaries are as of July 30th)
- After making significant changes to child support law in 2023, 2024 was a quiet year





# AB 2397 Special needs trusts (Ch. 25)

- Amends Family Code section 3910 to provide express authority for a court to award support for an incapacitated child of any age into a special needs trust
- Purpose of the bill is to prevent child support order from resulting in reduction of federal SSI benefits



# AB 161 – Budget Trailer Bill

- Human Services Trailer Bill with many provisions relating to the Budget Act
- Two child support related provisions to conform the law:
  - Repeals the requirement that DCSS report on CCSAS
  - Repeals the performance incentive provisions for LCSAs which had been suspended since 2002
- These changes became effective when the Governor signed the bill on July 2, 2024



# Other Family Law Legislation

- **AB 3072** – Ex parte child custody orders



- **AB 3281** – Broadens authority to transfer jurisdiction over family law matter not involving LCSA



- **SB 1427** – New Joint Petition for Dissolution



# Legislation discussed last year:

**AB 1324** – would have required the Local Child Support Agency to cease enforcement of foster care arrears and seek modification to eliminate ongoing enforcement for all foster care child support referrals made before January 2023. This bill is no longer being pursued.

**SB 618** – would have prohibited Local Child Support Agency from collecting interest owed for assigned arrears. This bill is no longer being pursued.



**Thank you!**

