2019 AB 1058 CONFERENCE
CASE LAW UPDATE CASE SUMMARIES

1. Cook v. Commissioner of Internal Revenue (5/7/2019) T.C. Memo. 2019-48

ISSUE/FACTS:
- M and F had one C, who lived with M for the entire year in 2012.
- F paid CS of $788 per month plus the C's uninsured med/den expenses. The CS order was silent as to which parent would take the exemption.
- M and F had an oral agreement that F would claim C as his dependent for tax year 2012.
- F claimed C as a dependent on his 2012 tax return, filed as HH, claimed child tax credit and earned income credit.
- F did not supply an IRS form 8332 or a substitute.
- The IRS determined that F had a $4169 deficiency for 2012.

ANALYSIS:
Dependency Exemption
- Taxpayer must have a qualifying child or qualifying relative [IRC 151(a), (c)]

What constitutes a qualifying child?
- Specified relationship to the taxpayer.
- The child must have the same principal place of abode as the taxpayer for more than ½ of the tax year.
- The child must not have attained the age of 19 during or before the taxable year.
- The child must not have provided more than ½ of her own support for the tax year.
- The child must not have filed a joint return for the tax year

HH filing status?
To qualify, the taxpayer must be unmarried at the close of the tax year and not be a surviving spouse; maintain a home that is the principal place of abode, for more than ½ of the tax year, for a qualifying child or any other dependent of the taxpayer.

CONCLUSION:
The child and her father did not have the same principal place of abode for more than ½ of the tax year, so she was not a qualifying child. Since Father did not have a qualifying child, he could not claim the child as a dependent, could not file as Head of Household, and was not entitled to the child tax credit or the earned income credit.

2. Marriage of Morton, 27 Cal.App.5th 1025 (2018)

ISSUE/FACTS:
- H received wages and S corporation income.
- The S corps also distributed funds to H in an amount sufficient to pay the quarterly estimated tax payments.
- H paid the estimated tax payments and also had income withheld from his wages.

- H received substantial tax refunds that were not included when calculating child support.
- The court also did not include H's 401(k) contributions when it calculated his income available for child support.
- W contends the tax refunds and the 401(k) contributions are income available for support.

ANALYSIS:

Tax Refunds:

FC 4059(a) allows for deductions from gross income for state and federal income taxes that are "actually payable" after considering the appropriate filing status, exclusions, deductions, and credits.

- Estimated tax payments and withholdings not the same as those taxes "actually payable".
- Tax refunds must be added back if they were deducted from gross income.

401(k) Contributions:

These contributions are voluntary and are property included in net disposable income for calculation of child support. Because of the voluntary nature of these contributions, these funds are available to a parent to be spent as he or she desires.

CONCLUSION:

Estimated tax payments and/or withholdings and 401(k) contributions cannot be deducted from income available for support.

3. Marriage of Ciprari, 32 Cal.App.5th 83 (2019)

ISSUE/FACTS:

- W filed her RFO on 12/5/13 to modify CS and SS. The court didn't rule on motion until 2016.
- Court used 2013 income tax returns to determine H's income for 2014 child support order.
- At the time the court made its ruling, there was a 2014 tax return available and in evidence. The trial court said the "trailing year figures are the most appropriate figures to use".
- W said court abused its discretion when it considered only the 2013 returns when the 2014 returns were in evidence and would have been a more reliable indicator of 2014 income.

CONCLUSION:

- Initial child support orders = OK to use past income figures to project likely future income
- Retrospective child support orders = court must consider the tax returns for the year at issue, not just prior returns.

4. Calvert et al., v Al Binali et al., 29 Cal.App.5th 954 (2018)

ISSUE/FACTS:

- In January 2011, P filed a defamation lawsuit against Doe defendants 1-25. P obtained an order permitting them to conduct discovery to determine the identity of the Does.

- P then filed an Amended complaint naming Binali as a D, and after many unsuccessful attempts to personally serve Binalu, P obtained court order authorizing service by publication in the Orange County Register. Publication and republication was made in the Laguna News-Post, which was a regional newspaper produced by the Orange County Register.
- Binali filed motion to vacate the Judgment, claiming it was void on its face, due to publication in a newspaper other than one specified in court's order. Court denied motion.

ANALYSIS:
It was clear from the judgment roll that the Summons was not published in the Orange County Register, as required by the trial court order. Without proper service on D, the Judgment is void for lack of personal jurisdiction. D is also not required to file the motion to vacate within the six month period set forth in CCP 473 because a facially void default judgment is subject to challenge at any time.

CONCLUSION:
CCP 415.50 requires strict compliance and substantial compliance (publication in a different newspaper) is not enough.

5. <u>David L. v. Superior Court</u>, 29 Cal.App.5th 359 (2018)

ISSUE/FACTS:
- F, a resident of Connecticut, and M are parents of a child, conceived in Nebraska.
- F has sporadic business contacts in CA.
- F and M have multiple dates in CA and conceive a prior child in CA who is miscarried.
- Do these facts give CA general jurisdiction to establish parentage and child support?

ANALYSIS:
Personal jurisdiction may be either general or specific. F's sporadic business contacts in CA were not continuous and systematic enough to support exercise of general jurisdiction. Specific jurisdiction requires that:
- defendant purposefully availed himself or herself of forum benefits or directed activities at forum residents,
- the matter must relate to or arise from defendant's forum related activities; and
- the exercise of jurisdiction comports with traditional notions of fair play and substantial justice.

F's only suit-related contacts tying him to California were his sporadic relations with CA resident M. His business trips are not connected, and his past contacts are jurisdictionally irrelevant.

CONCLUSION:
Sporadic relations in CA not enough to confer jurisdiction for parentage and support.

6. In re Marriage of George and Deamon, 35 Cal.App.5th 476 (2019)

ISSUE/FACTS:
- F files motion for sanctions for M increasing legal fees after refusing to sign judgment after hearing. F lives in Japan and submits declaration rather than personally appearing at hearing. M objects to sanctions, arguing that F must personally appear.
- Court issues sanctions over objection, and M appeals.

ANALYSIS:
The Court can properly impose sanctions against M based on F's written declarations submitted for the sanctions hearing. FC 217 allows for live testimony that is relevant to the hearing. The Court did not dispute M's right to present such testimony. The Court found that M had an obligation to secure F's testimony or arrange for it, and that because M took no steps to do so, she forfeited her right to present live testimony.

CONCLUSION:
To assert right to present live testimony under FC 217, party must follow proper process to arrange for testimony at hearing.

7. County of San Diego Dept. of Child Support Services v. C.A., 34 Cal.App.5th 614 (2019)

ISSUE/FACTS:
- Grandmother obtained sole custody order of child in MD and sought support order against M in CA.
- Trial court found that per FC 3951(a), which states that a parent is not obligated to reimburse relative for voluntary support of his/her child absent agreement, GM's request for support was precluded by fact that she voluntarily obtained custody and had no agreement for reimbursement. Sent back after appeal.

ANALYSIS:
Once custody order obtained, support ceased to be voluntary, so FC 3951(a) no longer applies.

CONCLUSION:
FC 3951(a) is not a bar to a relative with a valid custody order over a child from seeking support from the child's parents.

8. Look v. Penovatz, 34 Cal. App.5th 61 (2019)

ISSUE/FACTS:
- F timely paid court-ordered support up until child's emancipation on an older order.
- M's boyfriend had to supplement support for M's child, while child resided in their home.
- After child emancipated, boyfriend sought reimbursement from F per FC 3950.

ANALYSIS:
M never requested reimbursement nor requested a modification of support prior to emancipation. The Court viewed Mother's boyfriend's claim as an attempt to retroactively modify child support and disallowed the claim. The proper remedy would have been to seek a modification while the child was still a minor.

CONCLUSION:
FC 3950 relief cannot be used to retroactively modify child support after emancipation of child.

9. Greiner v. Keller, 2019 DJ 5289 (June 18, 2019)

ISSUE/FACTS:
- Whether childcare costs incurred by party while going to school qualify as "reasonably necessary education or training for employment skills" under FC 4062.
- M enrolled in a paralegal certification course. M testified that she could not find adequate employment to become self-supporting and was receiving state assistance at the time.
- Court denied request for ½ child care costs.

ANALYSIS:
The trial court should determine whether the schooling/education is necessary to become self-supporting without the need for public assistance. Remanded with instructions to determine whether, without the paralegal certification course, M could find adequate employment to support her family without the need of aid. Court distinguished the *Khera v. Sameer* case (206 Cal.App 4th 1467 (2012) in which the parent was enrolled in "elective education" to earn a PhD.

CONCLUSION:
In an appropriate case, a parent can seek her or his one-half reimbursement for childcare expenses incurred while attending school.

10. S.C. v. G.S., 2019 DJDAR 7519 (August 9, 2019)

ISSUE/FACTS:
- F incarcerated for 7 years, while an existing child support order was in effect. Time incarcerated led to over $70,000 in additional arrears. F never filed a motion to modify.
- Court allowed an adjustment of arrears due to incarceration based on equitable principles, despite support order being issued prior to initial FC 4007.5.

CONCLUSION:
Court lacks equitable power to retroactively forgive child support that occurred during obligor's incarceration, if support order was issued prior to FC 4007.5

11. In re Marriage of Martin, 32 Cal.App.5th 1195 (2019)

ISSUE/FACTS:
- As part of parties' dissolution, they used a local form, modeled after a JC form FL-343, which included a checkbox to terminate spousal support upon death or remarriage of supported party.
- Does failure to check box infer a waiver of spousal support termination factors under FC 4337?

ANALYSIS:
Trial court relied on IRMO Thornton, 95 Cal.App.4th 251 (2002) for proposition that specific language required to waive spousal support. However, appellate court noted that Thornton was discredited in IRMO Cesnalis, 106 Cal.App.4th 1267 (2003), which said while silence was not enough, no particular words are necessary for waiver and extrinsic evidence may be admitted to remove ambiguity. Appellate court found that failure check box with FC 4337 termination factors was a sufficient writing to waive these factors.

CONCLUSION:
While silence is not sufficient to waive spousal support termination factors, there's no requirement for specific language. The failure to affirmatively check a box on a court form to include these factors can be inferred as a waiver of them.

12. County of San Diego Dept. of Child Support Services v. C.P., 34 Cal.App.5th 1 (2019)

ISSUE/FACTS:
- Child support order issued prior to 10/8/2015.
- Party seeks suspension of support for periods of incarceration under current FC 4007.5.

CONCLUSION:
Under current FC 4007.5, relief not available for orders issued prior to 10/8/2015.

13. C.A. v. C.P., 29 Cal.App.5th 27 (2019)

ISSUE/FACTS:
- M was married, but conceived child with another man.
- Child lived with M and her husband, but F remained involved in child's life.
- M and husband began excluding F from child's life.
- F requested determination that he is a third parent.
- M and husband argued that he was preclude from doing so due to marital presumption.

ANALYSIS:
The conclusive presumption does not preclude a finding of a 3rd parent if it is in the best interest of the child. There is a 3-step approach to analyzing these cases:

1) determine which individuals qualify as parents under any legal theory, and if only two qualify, stop the analysis;
2) if over two persons qualify, determine whether it is a "rare case" to find there are over two parents, and if it is a "rare case" (there should be over two parents) stop the analysis;
3) if it is not a "rare case" (there should only be two parents), then balance and weigh the conflicting parentage presumptions to determine which prevails and who the two parents are under section 7612.

The parent-child relationship must exist at the time of trial for the statutory presumption to apply. However, a gap in the relationship leading up to the trial does not necessarily preclude a finding of paternity.

CONCLUSION:
Conclusive presumption of parentage does not preclude finding of 3 parents. Forced separation does not preclude a finding of parentage by estoppel.

14. <u>County of Riverside v. Estabrook</u>, 30 Cal.App.5th 1144 (2019)

ISSUE/FACTS:
- LCSA filed complaint against F seeking support because mom was on aid.
- F asserted that M was married when child was born and her husband signed the birth certificate and VDOP. F asserted the marital presumption and sought to join husband.
- LCSA requested DNA testing; F argued that marital presumption must be rebutted first.

ANALYSIS:
FC 7551 provides that genetic testing is appropriate whenever parentage is a relevant fact in the case. Court may make the order on its own motion or when requested "by an interested party." Genetic testing is mandatory when 1) there is a civil proceeding; 2) wherein parentage is a relevant factor; 3) a timely motion is filed requesting the genetic testing by a party; and 4) the testing would be for the child, mother and alleged father. Trial court erred in not ordering testing. For the marital presumption, per FC 7540, to apply, there must be admissible evidence that the couple was married. In this case, there was no evidence, just assertions without any foundation. Further, even if the marital presumption was validly argued, it would not automatically render bio-dad a "legal stranger" to the minor child.

CONCLUSION:
Genetic testing in cases involving the marital presumption is appropriate if the request is timely and relevant to the case.

15. <u>Christensen v. Lightbourne</u>, S245395 (July 8, 2019)

ISSUE/FACTS:
- Should child support paid to 3rd parties be excluded from income when calculating the payor's eligibility for public benefits?

ANALYSIS:
Previous rules that allowed for the deduction of child support paid for children outside of the home are no longer applicable. There is a specific list of exemptions, and child support is not on that specific list.

CONCLUSION:
Child support paid to a 3rd party cannot be excluded from income for the purposes of determining eligibility for public benefits.