

# Legislative Update

Hon. Charles Fuertsch, San Bernardino Superior Court

21<sup>st</sup> Annual AB 1058 Child Support  
Training Conference  
September 12-15, 2017

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## Bills Signed Into Law

- **AB 383:** Until January 1, 2023, authorizes courts to conduct informal discovery conferences between parties to a civil action upon request by a party or on the court's own motion to discuss discovery matters in dispute between the parties.

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## Bills Enrolled to the Governor

- **AB 712:** Would require a court transferring jurisdiction of a family law action to retain jurisdiction, if another court has not assumed jurisdiction, to make orders to prevent immediate danger or irreparable harm to a party or children involved in the matter, or to prevent the immediate loss or damage to property. JCC required to establish timeframes for a court to transfer and to assume jurisdiction by January 1, 2019.
- **AB 1396:** Would eliminate the requirement that any parental rights of a surrogate and her spouse be terminated when establishing the parental rights of the intended parents.

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### Bills on the floor

- **AB 160:** Would increase the time limit on aid for CalWORKs recipient parents and caretaker relatives from a cumulative total of 48 months to 60 months. Would increase amount of income disregarded when calculating CalWORKs eligibility and aid amounts.
- **AB 557:** Would make the CalWORKs homeless assistance benefits available to applicants who are past or present victims of domestic violence and are fleeing their abuser, notwithstanding any income and assets attributable to the alleged abuser. Would require a good cause exception for nonparticipation in school and for failure to provide immunization records if it is due to the DV.

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### Bills on the floor

- **AB 976:** Authorizes all courts by local rule to require electronic filing and service of documents in civil actions.
- **AB 1520:** Would establish the Lifting Children and Families Out of Poverty Taskforce to recommend comprehensive strategies to address childhood poverty and to reduce the childhood poverty rate.

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### Bills on the floor

- **SB 380:** Would clarify that income of a child's sibling, who is not included in the number of needy persons used to calculate the maximum aid payment, shall not be considered in determination of CalWORKs eligibility. Would prohibit child support payments for a child not included in the number of needy persons used to calculate the maximum aid payment from being considered available to any member of the assistance unit.
- **SB 469:** Would maintain the net disposable income threshold of \$1,500 per month (with annual cost-of-living increases) for the low-income adjustment to January 1, 2021. Without legislative action, this provision would expire as of January 1, 2018.

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## Case Law Update

Leah Boucek, San Diego Superior Court  
Hon. Sue Alexander, Alameda Superior Court  
Hon. Charles Fuertsch, San Bernardino Superior Court

21<sup>st</sup> Annual AB 1058 Child Support  
Training Conference  
September 12-15, 2017

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## Support



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## In re Marriage of Usher

6 Cal.App.5<sup>th</sup> 347 (2016)

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**Facts:**

- F successful director
- \$4.25 M annual earnings with substantial assets
- 1 Minor Child

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- F "High Earner" within meaning of FC § 4057(b)(3)

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**FC § 4057(b)(3)**

Parent with "extraordinarily high income" need not pay guideline support if guideline exceeds needs of children

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**Stipulated Agreement:**

- \$12.5 K Monthly CS
- \$5.0 K CS for housing
- 50% of extra-curricular
- Private school tuition

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**Additional Facts:**

- F monthly income decreased from \$350.0 K to \$70.1 K
- F filed RFO to reduce monthly CS payments based on change in income

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**Additional Facts (cont.):**

- M filed opposition requesting \$65.0 K monthly CS (incl. \$21.0 K expenses and \$3.3 K travel)
- 100 % of extra-curricular
- Private school tuition equal to F other children

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**General Rule:**

Court will not modify CS unless material change in circumstances

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**Trial Court Findings:**

- Material Change
- CS reduced to \$9.8 K month
- 85% of extra-curricular
- Private school tuition

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Trial Court imputed monthly income based on reduced salary plus estimated rates of return on assets

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**Court of Appeal Reversed**

- F presented no evidence that reduced salary made him unable to pay current CS
- No proof C financial needs diminished

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Reduction in income, standing alone, not sufficient change in circumstances when payor has income from other sources

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**FC § 4058**

Defines annual gross income as "income from whatever source derived"

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Trial Court erred in not considering F assets in determining annual gross income  
Evidence did not support imposition of a 1% rate of return on F's investment portfolio

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TC's imputing an unreasonably low rate of return on F's investments resulted in a CS order that deprived C of funds to support the lifestyle F had agreed was appropriate and could provide

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Where CS payment is arrived at by stipulated agreement, TC must consider parties intent and reasonable expectations when making reductions

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Stipulated judgement stated current CS payment was necessary to meet C's needs

Parties agreement that current CS was necessary to meet C's needs was evidence that a CS reduction would cause C's needs to be unmet

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**Anna M. v Jeffery E.**

7 Cal.App.5th 974 (2017)

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**Facts:**

- F investment mgr - \$33 K monthly earnings
- M not working -\$33 K monthly expenses paid by friends
- 1 minor child

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- M argues support from friends not income
- F argues support should be considered income to M and reduce F CS to \$0

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**Trial Court Findings:**

- No evidence to impute income to M
- Noting legal preference that parents pay support for children F ordered to pay \$2.5 K month CS

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**Court of Appeal Finding:**

Trial Court did not abuse its discretion in failing to characterize gifts to M as income

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Statutory guidelines regulate determination of CS

Re: FC §§ 4050 - 4203

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**Principles in CS Determination**

- Interests of C top priority
- Parents principal obligation is to support C
- Both parents equally responsible

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- Parent should pay CS according to ability
- C should share in both parents standard of living
- CS should minimize disparities in living standards in two homes

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**FC § 4057.5**

Income of a parent's new spouse or non-marital partner shall not be considered when determining child support.

- 4057.5 does not apply – Davis F. family friend not partner
- Not argued at trial

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**FC § 4058(a)**

Definition of annual gross income does not mention but does not preclude a Court from considering gifts as income.

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**In re Marriage of Alter**

Regular, recurring gifts can be treated as "income" and used in calculating child support at the discretion of the trial court.

In re Marriage of Alter (2019) 171 Cal.App.4th 718

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In Alter grandparent gave monthly gifts of cash to a parent in the same amount, not tied to a specific expense, continuing for years

Court considered gifts to be regular enough to be considered income

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Trial Court distinguished from Alter:

- Davis F was legal stranger
- Payments were for specific expenses, including rent
- Not paid for years as in Alter

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Trial Court was not required to characterize gifts as income if gifts do not fairly represent income or are not available for CS

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**Y.R. v A.F.**

9 Cal.App.5th 974 (2017)

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**Facts:**

- F successful director/producer
- M hairstylist
- Never married
- 1 minor child

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- F admits he is "extraordinarily high wage earner" under FC § 4057(b)(3)
- F annual income in excess of \$2.0 M

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- Guideline Support Amount = \$25.3 K
- F argued CS should be \$7.0 K based on M current expenses
- Father requested deviation

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- Trial Court Order:**
- \$8.5 K monthly CS
  - 100% school tuition
  - 75% extra-curricular
  - Health Care + 90% uncovered medical expenses

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- TC found guideline support of \$25.3 K "would exceed child's reasonable needs
- CS ordered based on M standard of living
- TC stated M had burden to show deviation does not meet C needs

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M appealed contending:

- TC failed to state reasons for deviation
- Burden improperly placed on M to justify deviation
- TC ignored F disposable income and lifestyle

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**Court of Appeal Finding:**

TC failed to comply with statutory requirements for deviating from guideline CS

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**FC § 4056(c)**

Court shall state in writing/record:

- Amount of Guideline Support
- Reasons to support deviation from Guideline Support
- Reasons to support deviation in best interest of C

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The parent who invokes high income exception has burden of proof that application of formula is unjust or inappropriate

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Assumption that C's historical expenses define needs is erroneous in case of wealthy parent

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Court of Appeal reversed and remanded for Trial Court to provide omitted reasoning

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**Stover v Bruntz**  
Ordered Published 5/30/17

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**4/07 Stipulated Agreement:**

- \$1.0 K CS (incl. 50% child care)
- M to notify F if C no longer in child care
- CS may be retroactively modified if no child care

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**Other Facts:**

- F in arrears from 10/07 to 5/11
- M filed OSC re contempt 2/11 against F for failure to pay CS
- F filed for modification of CS 5/11
- In 10/11 M filed another OSC re contempt for failure to pay CS 2/11 to 7/11

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- F filed request for admission from M that C not enrolled in CC
- M failed to respond to request

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**Trial Court Decision:**

- F awarded \$441 child care credit from 1/07 to 5/11
- F to pay CS of \$490 6/11 to 12/12
- CS increased to \$699 1/13-11/13
- M to pay \$1,250 sanctions for discovery violations

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**Court of Appeal:**

- OAH reversed in part and affirmed in part
- TC directed to enter new order consistent with CA opinion

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**Appeal Issues:**

- Validity of retroactivity provision
- Estoppel
- Discovery admissions
- Modifications with outstanding arrearages

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**Retroactivity Provision:**

FC §§ 3653(a); 3651(c)(1) and 3603 prohibit modifying or terminating support before the date of filing notice of motion

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**Estoppel:**

- F argues M cannot challenge retroactivity provision since M failed to previously object
- CA allows attack on retroactivity
- Retroactivity violates statute and public policy

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**Discovery Admissions**

M's failure to respond deemed as admission that C was not enrolled in day care from 1/07 to 11/13 (Civ. Proc. Code § 2033.230)

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CA found TC award of discovery sanctions was not error  
Fact that M was pro per did not excuse her from compliance with statutory requirements

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**Modifications w/ Arrears**

- M contends F's modification request be dismissed due to unclean hands (owes arrears)
- Court may refuse modification but no requirement
- F made partial payments

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**Court of Appeal Findings:**

- TC erred in granting retro credits for child care from 1/7 to 5/11
- TC justified in modifying CS from 6/11 to 11/13
- TC did not err in deeming admitted requests for admissions

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- TC did not err in considering modification order despite arrears owed by F

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**Marriage of Minkin**

Ordered Published 5/19/17

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**Facts:**

- F healthcare executive
- F earned \$300 K + <20% bonus
- M various positions from surgical technician to stay-at-home mom

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**Stipulated Judgment:**

- F pay \$7.0 K monthly SS
- Plus 41% of annual bonus
- 10 year term of agreement
- At least 1 minor child
- No CS indicated

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**F Compensation:**

- Base Salary
- Annual Performance Bonus
- 457(h) Long-Term Incentive Plan
- 457(b) Deferred Compensation
- Change of Control Provision

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F Paid M:

- \$7.0 K Monthly SS
- 41% of Annual Bonus
- 41% of 457(h) Plan
- No payments on other compensation

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M Filed Motion:

- Reinstate SS beyond 10 yr term
- Determine unpaid arrearages on other compensation
- Attorney fees

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**Primary Issue at Trial:**

- F – Annual Bonus = discretionary payments by employer based on performance
- M – Annual Bonus = Any payments above base salary

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**Trial Court Rulings:**

- Annual bonus is a discretionary payment based on performance
- M awarded \$200 K underpayment (not \$700 K requested)

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- M awarded partial attorney fees
- Request for reinstatement of SS beyond 10 yrs denied

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**Ostler/Smith Awards:**

Additional award over and above guideline support amount expressed as a fraction or percentage of any discretionary bonus actually received

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**Marital Settlement Agreement**

- Parties MSA should be interpreted according to their expressed intent
- When F and M signed MSA they understood F's bonus to be discretionary based on performance

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- Bonus income provisions should be interpreted to mean payments similar to or serving the same purpose as the annual bonuses F received at time F and M signed MSA

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**Court of Appeal:**

- Affirmed Trial Court decision / interpretation of annual bonus
- Affirmed denial of SS reinstatement (no change in circumstances)
- Affirmed partial payment of attorney fees

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**S.P. v. F.G. (2016) 4  
Cal.App.5th 921**

- S.P. and F.G. had child, E.P.
- Father never lived with mother and E.P. and never had custodial time
- Mother was an actress and father successful businessman with net worth in excess of \$400 million
- Parties stipulated to \$9,200 per month child support, later increased to \$10,000

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**S.P. (con't)**

- When E.P. was 10 years old, mother filed parentage case
- More than two years later mother filed request for child support
- Mother filed I&E with proposed needs of \$78,155 per month, \$69,420 for child
- T/C heard RFO w/o testimony and issued order for \$14,840 per month, deviating from the guideline amount of \$40,882

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**S.P. (con't)**

- In addition to C/S, father to pay all reasonable medical expenses, including insurance premiums, all of private school tuition, school expenses and reasonable extracurricular activities
- Per FC 4057, guideline figure may be rebutted by admissible evidence showing application of the formula would be unjust or inappropriate

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**S.P. (con't)**

- Amount of support may vary from guideline when parent paying support has extraordinarily high income and guideline would exceed needs of children FC4057(b)(3)
- T/C must articulate why deviation in child's best interest per *McGinley v. Herman (1996) 50 Cal.App.4th 936, 945*

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**S.P. (con't)**

- AFFIRMED
- T/C looked at historical, current, and future expenses for child as well as father's wealth
- The mostly arbitrary figures in mother's I&E, as well as her questionable credibility, torpedoed her request for guideline support
- T/C made requisite findings

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**Pratt v. Ferguson (2016)  
3 Cal.App.5th 102**

- Wife's Family Trust established in 1979, last amended in 1989
- Trustor's children and grandchildren named as beneficiaries of the Trust
- Distributions of principal at ages 50, 55, 60 and 65
- Trust contained "shutdown clause" to protect Trust from claims of creditors

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**Pratt v. Ferguson (con't)**

- H and W were married and had six children
- Judgment of dissolution entered 2009
- As of April 2014, W owed H a total of \$93,424.14 in unpaid child support and child care expenses
- C/S orders are judgments w/in meaning of Probate Code 15305
- 01/15 Pratt filed petition for Trust to pay

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**Pratt v. Ferguson (con't)**

- Trustee admitted truth of all allegations
- T/C denied H's petition based only on language of shutdown clause precluding distributions of principal if a creditor claim
- Two objectives of Probate Code 15305
  - ✓ To reduce ability of general creditor to reach beneficiary's interest in a trust
  - ✓ To give greater rights to support creditors

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**Pratt v. Ferguson (con't)**

- Intent of Legislature in enacting section PC 15305 was to ensure payment of C/S
- Even if trust instrument contains spendthrift clause applicable to claims for C/S, it is against public policy to give effect to that provision per *Ventura County Dept. of CS Services v. Brown (2004) 117 Cal.App.4th 144*
- REVERSED and REMANDED

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**Pratt v. Ferguson (con't)**

- T/C failed to exercise any discretion in declining to order payments from Trust
- T/C erred by applying shutdown clause to preclude use of Trust assets – whether principal or income - for C/S
- T/C to exercise its discretion to determine how much Trustee must distribute to pay C/S arrearages and current C/S obligations

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**Parentage**



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**Jason P. v. Danielle S. (2017) 9 Cal.App.5th 1000**

- 2002-2012 parties had on again off again romantic relationship
- 11/06 to 12/07 parties attempted to have a child then split up
- 2009 D becomes pregnant using J's sperm (with his consent)
- Child born 12/09 – J not present and not on birth certificate

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**Jason P. (con't)**

- J filed paternity case contending presumed parent under FC 7611(d)
- D's motion for nonsuit granted finding J sperm donor per FC 7613(b)
- REVERSED and REMANDED
- T/C to determine whether J qualifies as presumed parent per FC 7611(d)
- T/C concluded J met his burden to show he is the presumed father

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**Jason P. (con't)**

- T/C did not rely on J's biological connection to child but conduct
  - ✓ "frequented D's home and spent time w/child there"
  - ✓ "received child into his home in NY"
  - ✓ "worried about not seeing child"
  - ✓ "taking tentative steps to build relationship w/child"
  - ✓ "D made great efforts to encourage J to build a familial relationship"

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**Jason P. (con't)**

- T/C properly applied receiving into the home requirement
- 'Receipt of the child into the home must be sufficiently unambiguous as to constitute a clear declaration regarding the nature of the relationship....' per *Charisma R. v. Kristina S. (2009) 175 Cal.App.4th 361, 374*

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**Jason P. (con't)**

- T/C properly applied requirement parent hold child out as his or her own
- J's initial rejection of parental relationship does not preclude finding he is a presumed parent
- T/C's reliance on D's behavior not improper
- AFFIRMED as to parentage
- REVERSED as to custody

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**County of Orange v. Cole (2017) 4 Civ G053375**

- Applied holding in Jason P.
- M had relationship with F, who lied to M saying he was separated from his wife
- F donated sperm and C was conceived
- F held himself out as C's dad to M's family, but hid existence to own family
- F found to be presumed dad per FC 7611(d) following Jason P.

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**In re Isabella M. (2017) 10 Cal. App.5th 535**

- DEPUBLISHED 06/2017
- Isabella born 2014 to M Bridgett M.
- R.C., alleged father, incarcerated from time of birth until Isabella 20 mo. old
- Dept. of CFS detained Isabella due to M's illicit drug use
- R.C. served by mail w/ notice and petition in August 2014

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**Isabella M. (con't)**

- Order for R.C.'s appearance at hearing sent to warden
- R.C. did not appear, did not execute and return waiver
- J/C found proper notice, sustained petition and declared Isabella dependent
- J/C denied reunification services to R.C. as alleged father per W&I 361.5

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**Isabella M. (con't)**

- 366.26 hearing set for December 2014 re: grandmother's adoption
- Department again served R.C. w/ notice of hearing and order to appear
- R.C. signed waiver of appearance and did not appear or respond to Dept. notices
- Over course of proceedings, R.C. only personally appeared twice and failed to appear multiple times

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**Isabella M. (con't)**

- 03/23/16 hrg to terminate parental rights, R.C. appeared and counsel appointed
- J/C ordered paternity test which confirmed he is biological father
- R.C. filed W&I 388 petition alleging J/C violated his due process rights by adjudicating 300 petition in his absence
- R.C. failed to appear, J/C relieved his counsel and terminated parental rights

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**Isabella M. (con't)**

- AFFIRMED
- Alleged father has narrow range of rights, generally limited to notice to appear and challenge parentage status
- Penal Code 2625 governs notice of dependency proceedings to incarcerated parents
- Requires service of JV-505 which was not served upon R.C.

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**Isabella M. (con't)**

- Unless no notice given, errors in notice subject to harmless error analysis
- Court considers whether result more favorable to R.C. would have been reached
- R.C. did not make required showing, could not have demonstrated he "earned" presumed parent status
- DEPUBLISHED 06/2017

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**In re M.Z. (2016)  
5 Cal.App.5th 53**

- Mother and Miguel Z. married and had two children in 2009 and 2010 (Minors 1 and 2)
- Divorce filed 2014 but never finalized
- Mother and Anthony R. had three children, one in 2014 and twins in 2015 (Minors 3, 4 and 5)

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**M.Z. (con't)**

- One of the infant twins found dead in M's care in 11/2015 (Minor 5)
- Agency filed dependency petitions and parentage inquiries made
- J/C found Miguel Z. conclusively presumed father for Minors 1 and 2 per FC 7540
- J/C found Anthony R. presumed father for Minors 3 and 4 per FC 7611(d)

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**M.Z. (con't)**

- Anthony R. requested presumed father status as to Minors 1 and 2 per FC 7611(d)
- Anthony R. also requested to be found third parent per FC 7612(c)
- Minors 1 and 2 interviewed and do not consider Anthony R. their dad
- Motion under FC 7612(c) denied because no ongoing relationship between Anthony R. and Minors 1 and 2

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**M.Z. (con't)**

- J/C denied Anthony R.'s motion under FC 7612 concluding statute did not apply as no ongoing relationship with Minors 1 & 2
- Even if statute did apply, no finding of detriment
- "Absolutely not one bit of evidence that would support any detriment would eventuate should the relationship between these children and Anthony R. be disrupted"

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**M.Z. (con't)**

- Agency contended J/C erred in failing to make a finding as to FC 7611(d) before deciding if Anthony R. 3<sup>rd</sup> parent under FC 7612
- When presented with conflicting claims of parentage, court must determine which is entitled to greater weight per *In re P.A. (2011) 198 Cal.App.4<sup>th</sup> 974, 981*

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**M.Z. (con't)**

- Any error in this case harmless
- Anthony R. did not meet burden to establish presumed parent under FC 7611(d) or third parent under FC 7612(c)
- Factors for determining detriment not needed because substantial evidence to support J/C finding FC 7612(c) inapplicable due to lack of relationship
- AFFIRMED

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**In re Alexander P. v. Heidi S. (2016) 4 Cal.App.5<sup>th</sup> 475**

- Dependency petition filed for Alexander P. due to domestic violence by stepfather Donald
- At that time, paternity being litigated in family court by two other men
- Joel is biological father
- Michael is man living w/ Mother at time of Alexander's birth

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**Alexander P. (con't)**

- Family Court ruled that both Michael and Joel qualify as presumed parents and designated both per FC 7612(c)
- All three men sought to be declared parents in dependency proceeding
- J/C bound by F/C order and found Donald satisfied requirement for presumed parent and designated him as well per FC 7612(c)

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**Alexander P. (con't)**

- J/C erred in finding Michael and Joel to be presumed parents if judgment not entered prior to juvenile court petition
- W&I 316.2 grants exclusive jurisdiction over paternity issues to J/C upon filing of petition
- F/C order issued subsequent is VOID
- No error in designation of Donald as presumed parent

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**Alexander P. (con't)**

- F/C made parentage inquiries per FC 7611(d) and 7612(c)
- But, by the time it ruled, that court no longer had subject matter jurisdiction over paternity
- Doctrine of res judicata inapplicable to void judgments
- J/C orders as to Michael VACATED and matter REMANDED

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**Alexander P. (con't)**

- J/C directed to hear and render decision on Michael's request for presumed parent status
- AFFIRMED as to Joel's presumed parent status
- Joel was declared presumed parent in orders and judgment rendered by F/C when it had jurisdiction (08/14 and 03/15)
- Res judicata and collateral estoppel prevent the parties from relitigating

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**Alexander P. (con't)**

- AFFIRMED as to Donald's presumed parent status
- Issue of domestic violence did not disqualify Donald as matter of law from acquiring presumed parent status
- Minor has established, parental relationship with Donald and substantial evidence to support conclusion it would be detrimental not to designate him as presumed parent

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**In re L.L. (2017)  
4 Civ D071661**

- L.L. born in 2006 – Mother and boyfriend T.L. named as parents on birth certificate
- B.S. is biological father
- In 2007 B.S. filed F/C parentage action and awarded joint legal custody and visitation with L.L.
- B.S. sentenced to state prison in 2010

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**In re L.L. (con't)**

- 06/2016 mother arrested, L.L. removed, and dependency petition filed
- T.L. is now ex-boyfriend but still living in the home; L.L. asked for visits with him as he has been acting as her father since she was one year old
- J/C amended petition to designate T.L. as presumed father per FC 7611(d) and 7573
- J/C recognized B.S. as alleged father but denied request for genetic testing

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**In re L.L. (con't)**

- J/C held special hearing on B.S.'s request to address paternity
- B.S. submitted 2007 F/C order, requested J/C elevate his status and renewed his request for genetic testing
- J/C ordered genetic test and set a trial re: presumed parent finding
- Test results positive and J/C amended petition to reflect B.S. is biological father

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**In re L.L. (con't)**

- 01/2017 contested hearing B.S. found to be presumed father per FC 7611(d)
- J/C also found it would not be detrimental for L.L. to have third parent and found B.S. third parent per FC 7612(c)
- Mother, T.L., and Agency appeal
- Mother and T.L. challenge both findings and Agency challenges 3<sup>rd</sup> parent finding only

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**In re L.L. (con't)**

- Citing present tense language of FC 7611(d), *In re Alexander P.* and other cases, Mother and T.L. argue qualification of presumed father in the past is insufficient to show current qualification
- Agency and B.S. cite *In re J.O. (2009) 178 Cal.App.4th 139* as support that once a parent meets the criteria of FC 7611(d) that parent qualifies as presumed parent despite subsequent absence

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**In re L.L. (con't)**

- Ct. of Appeal declines to make the showing of existing relationship an implied requirement for presumed parent status
- Substantial evidence to support J/C finding that B.S. presumed father under 7611(d)
  - ✓ 2007 filed F/C action for parental relationship and awarded joint legal and regular visitation
  - ✓ Told "everyone" he was L.L.'s father
  - ✓ Provided support and insurance coverage
  - ✓ Agreed to be listed as father on birth cert.

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**In re L.L. (con't)**

- J/C misinterpreted and misapplied FC 7612(c) in finding B.S. third parent
- J/C did not consider whether recognizing only two parents would be detrimental to L.L. but instead found it would NOT be detrimental if B.S. added as third parent
- B.S. could not be recognized as third parent - no existing relationship with L.L.
- In addition, no weighing process conducted as required by FC 7612(b)

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### In re L.L. (con't)

- AFFIRMED as to presumed parent finding under FC 7611(d)
- REVERSED as to third parent finding under FC 7612(c)
- REMANDED w/directions that J/C:
  - ✓ Enter new finding B.S. not third parent under 7612(c)
  - ✓ Conduct evidentiary hearing under 7612(b)
  - ✓ Make factual findings as to claims of T.L. and B.S., weighing competing claims as required

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### Procedure




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### IRMO Cohen (2016) 3 Cal.App. 5th 1014

- Stipulated above guideline order in 2011
- H's income down in 2012- 2013
- H files for mod in 1/14 – gets new job 5/14
- H's motion heard in 2015
- C/s reduced 1/14 to 4/14 only
- No change of circumstances effective 5/14
- Mod denied

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### **IRMO Cohen (cont.)**

- Ct averaged income beginning 5/14 (new job), not from 1/14
- Ct not required to use calendar year
- Use any fair and representative period

Affirmed

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### **IRMO Wilson (2016) 4 Cal.App.5th 1011**

- H ordered to pay \$200 mo c/s in 1984
- Minor lived with W from 9/84 to 6/85 and 9/85 to 1/86
- Rest of minority, minor lived with PGPs – emancipated in 1997
- In 7/85, arrears set for 11/81 thru 6/85 – H ordered to pay
- 1987 stip to reduce to \$100 mo, payable to PGPs
- 2000 stip – payments to PGPs credited to arrears (PGPs gave \$ to M)

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### **IRMO Wilson (cont)**

- W paid nothing to PGPs
- W sought enforcement of arrears thru DCSS in 2012
- H requested *Jackson* credits for time Minor lived with PGPs
- TC denied – Minor not living with H
- REVERSED AND REMANDED: When did W support minor?

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**IRMO Parker (certified for partial publication, 8/22/17)**

- 1990 Judgment
- 2 children, emancipated 2006
- Minors with dad (payor) since 1993
- Dad's motion for *Trainotti* credits and laches

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**IRMO Parker (cont)**

- In 2007 dad files OCS for determination of arrears and credits for when children resided with him
- Court determined request for *Trainotti* credits

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**IRMO Parker (cont)**

- Evidentiary hearing
- DCSS conceded credits
- Mom argued unclean hands
- Court found unclean hands and denied motion

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### **IRMO Parker (cont)**

- 2014 Dad files present RFO for accounting and *Trainotti* credits
- Dad also requests arrears to county deemed uncollectable due to laches
- DCSS argues res judicata and laches doesn't apply
- Court denies motion

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### **IRMO Parker (cont)**

- Collateral estoppel:
  - Identical issue
  - Actually litigated
  - Necessarily decided
  - Final & decided on merits
  - Same parties

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### **IRMO Parker (cont)**

- Dad's arguments:
  - *Trainotti* credits not in title of prior motion
  - No opportunity to cross examine
  - Current wife no allowed to testify
  - Insufficient notice of mom's argument (unclean hands)

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**IRMO Parker (cont)**

- Laches:
  - Only defense, not offense
- Elements:
  - Delay
  - Not reasonable or excusable
  - Prejudice

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**IRMO Shimkus (2016) 244  
Cal.App. 4<sup>th</sup> 1262**

- Spousal Support Termination Case
- H, firefighter, retires at age 61
- Normal retirement age for firefighters is 55
- H receiving CalPers and W already getting her share
- W argued H in contempt for non-payment, can't seek modification
- W relied on previously filed declarations

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**IRMO Shimkus (cont.)**

- Declarations never admitted at hearing
- H's motion to terminate s/s granted
- Declarations NOT automatically in evidence
- W never requested admission so no error
- However, no Family Code 4320 findings  
Affirmed and remanded for findings

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**Johnny W. v. Superior Court  
(2017) 9 Cal.App. 5th 559**

- Juvenile Dependency case
- Minor detained and placed with mother
- Father filed CCP170.6 challenge
- Denied as untimely

Reversed

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**Johnny W. (cont.)**

- CCP 170.6 timely
- Detention not substantive hearing
- Ct must have resolved a contested factual issue
- Not enough:
  - Contempt arraignment or appt of counsel
  - Issuing TRO
  - Granting Continuance

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**IRMO Djulus  
(2017) 10 Cal.App.5th 1042**

- Disso case
- Commissioner makes temporary orders F does not like
- 2<sup>nd</sup> time around, F refuses to sign written stip to Commissioner
- Commissioner hears case anyway / makes orders – finds implicit stip because heard case previously
- F appeals

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### **IRMO Djulus (cont.)**

- When no stipulation, orders are void
- Stipulation can be implied, but only when person knows bench officer is a commissioner, participates and fails to object
- Initially F did not know bench officer was a Commissioner
  - Not presented with written stip
  - Orders referred to Commissioner as Judge
- Here, F clearly objected once knew he was before a commissioner REVERSED

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### **IRMO Stupp & Schilders (2017) 11 Cal.App.5th 907**

- 5<sup>th</sup> Appeal – 1<sup>st</sup> Published
- H’s post jmt RFO for vocational evaluation (among other things)
- No voc eval without support motion pending
- Pre motion discovery limited to Family Code 3660-3668
  - I&E
  - Tax returns

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### **People v. Sanchez (2016) 63 Cal. 4th 665**

- Criminal case w/gang enhancement
- Gang expert testified
  - Police reports
  - Street Terrorism Enforcement & Prevention (STEP) notice
  - Field Identification (FI) cards
- “Case specific hearsay”
- Jury convicted w/gang enhancement

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## People v. Sanchez (cont.)

- Supreme Court (Corrigan) reversed re gang enhancement
- Applies to Civil Cases (People v. Acuna (2016) 9 Cal.App. 5<sup>th</sup> 1)
- Issues for Family Law
  - Bench trial v. jury trial
  - Stipulations before appointing experts
  - Recommending Counselors w/collateral contacts
  - Longer trials (more witnesses)

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