Case Law Summaries
2020 Annual AB 1058 Child Support Training Conference
Case Law Update – October 9, 2020

1. *In re Marriage of Brewster & Clevenger* (2020) 45 Cal. App. 5th 481

ISSUES/FACTS:

- W has criminal convictions of stalking and other acts against H. Invoking FC § 4325 presumption, H argues that he should not have to pay spousal support. At trial W introduces evidence alleging that she too was a victim of DV. **Is this evidence enough to overcome the FC § 4325 presumption against awarding spousal support to perpetrator of DV?**
- For nearly one year post-separation (3/15 to 9/16), H deposited $10k into joint account for W's use. **Are these monthly deposits in lieu of spousal support and therefore taxable to W?**

ANALYSIS:

- Two ways to rebut FC § 4325 presumption:
  - Court determines under preponderance standard that there is "**documented evidence**" ("writing" within the meaning of Evidence Code § 250) of the convicted spouse's history as a victim of DV by other spouse such as voicemail or text messages, social media posts, cellphone recordings, police reports and 911 calls, medical records, photos, employment records, and court records from criminal convictions for DV offenses.
    - Here, W did not produce any "documented evidence" to support contention, electing to present her case solely through her own testimony.
  - The trial court **<u>may</u>** [but is not required to] consider "... any other factors the court deems just and equitable, as conditions for rebutting" the FC § 4325 presumption.
    - Here, although not statutorily required, the court heard each parties' testimony regarding three DV allegations from W, ultimately finding H to be more credible.
- Temporary spousal support taxable to W and deductible by H.
  - Court found monthly deposits were in lieu of spousal support. H asked for "guideline" spousal support on FL-300 and reiterated request in his supporting declaration. Despite W's pending criminal charges, H didn't ask to set spousal support at zero at that time.

HOLDINGS:

- To overcome FC § 4325 presumption, court **must** consider "documented evidence" of DV alleged by convicted spouse and **may** consider other equitable factors.
- Court did not err in finding that $10k per month deposits for over a year into joint account for W's use were in lieu of temporary spousal support; they were taxable to W and deductible by H.

2. *In re Marriage of Deluca* (2019) 45 Cal. App.5th 184

ISSUES/FACTS:

- F and M were married 15 years and had two children during the marriage. F has custody.
- F asserts the court erred by including monthly loan principal payments he is required to make on his income-producing properties as income available for spousal support.

ANALYSIS:

- F argues court abused discretion by "imputing" monthly loan payments to him as "phantom income" and awarding M monthly spousal support of $7,500, despite finding the maximum monthly income available to him to support children after making loan payments was $7,281. Appeals Court devised general rule after carefully considering the split in authority.

HOLDING:

- Principal portion of business mortgage payment may be deductible if court determines that payments reasonably and legitimately reduce net income for child support purposes. Court retains discretion to decide if principal payments towards business debt is excessive, if assets were acquired to reduce child support payments, or if other circumstances indicate payments are not reasonable, unreimbursed, or legitimate.

3. *County of Los Angeles v. Christopher W. et al.* (2019) 41 Cal.App.5th 827

ISSUES/FACTS:

- 2 months after separation, M informs F that she is pregnant and he's the father. They were never married nor lived together. While pregnant M dates BF.
- F at the hospital at C's birth, but did not sign VDP. No one listed as C's dad. BF also at hospital and drives M and C home. For first 2 years of C's life, BF visits M about once/week for 1.5 hours.
- F interacted with C a total of 3 times. M eventually told F she didn't want him involved in C's life.
- M and BF get place together, but BF does not support C financially. There are a few pictures on BF's Facebook page of him and C prior to the move. Other than comments on Facebook, no evidence that BF told anyone he was C's father.
- LCSA files complaint against F to establish parentage and CS. F confirmed through genetic tests as C's bio dad. F then joins BF to be established as presumed father under FC § 7611(d).
- Court found BF's presumed father status under FC § 7611(d) outweighed F's bio dad status under FC § 7555 and entered a judgment declaring M and BF as C's parents.

ANALYSIS:

- Burden of support should be borne by those directly responsible for the child's existence.
- "obligations of parenthood should not be forced upon an unwilling candidate who is not biologically related to the child"

- Facts in this case distinguished from others where non-bio parent is seeking to obtain parental rights and willing to take on associated responsibilities.
- Not having BF declared C’s dad would not leave C fatherless nor would it adversely affect C’s relationship with BF.

HOLDING:

- Unfair to require a man who is not father of a child to raise and support the child against his will, if he has not clearly held himself out as the child’s father. Voluntary act of kindness is not intended to result in punishing someone into a legal obligation.

4. ***Lak v. Lak* (2020) 50 Cal.App.5th 581**

ISSUES/FACTS:

- F and M stipulate that F pay $2,000/m in child support and $750/m in spousal support.
- F admitted to contempt for failure to pay child and spousal support in 2013 and 2014. Ordered to pay $49/m toward arrears in addition $1,601 per month for child support.
- F began collecting SSDI. LCSA garnished SSDI for arrears. F moved to modify support. Court modified support downward, reduced spousal support to zero, and ordered arrears audit.
- M began receiving derivative benefits on C's behalf but LCSA continued to withdraw $375 in arrears from father's SSDI. F moved to compel reimbursement and for sanctions against LCSA. Court denied sanctions and modified support order but ruled that LCSA had authority to take $375 from SSDI and that LCSA need not repay father for any overpayments.

ANALYSIS/HOLDINGS:

1. Contempt probation order did not modify underlying support order to limit amount of arrearages LCSA could collect from F.
   - Here, F could avoid spending time in jail by paying $49/m for arrears. Arrears payment as a probation condition does not have same effect as a final order modifying support.
2. F presented insufficient evidence that he met Supplemental Security Income (SSI) resource test, as necessary to limit garnishment of SSDI benefits.
   - Per FC § 5246(d)(3), LCSA withholding orders for arrears are limited to 5% of the SSDI monthly benefit if obligor meets the four-part test:
     1. “[O]bligor is disabled.”
     2. Obligor “meets the SSI resource test.” [RESOURCE TEST – i.e., lack of assets available to avoid eviction]
        - ➢ second element clearly includes all obligors who receive SSI benefits. This element also includes SSDI recipients who meet SSI resource test (having less than $2,000 in sellable assets) but were disqualified for other reasons.
     3. Obligor either “receiving” SSI/SSP “or SSDI, but for excess income as described in federal regulations, would be eligible to receive SSI/SSP.” [INCOME TEST]

    4. "the obligor has supplied the [LCSA] with proof of eligibility for and, if applicable, receipt of, SSI/SSP or [SSDI]."
  - F failed to show he met SSI resource test and would have qualified for SSI but for the SSI income test, and therefore, LCSA had authority to withhold up to a maximum of 50% of SSDI benefits for arrears until court ordered he only contribute $375/m.
3. M's receipt of derivative benefits in excess of F's monthly child support obligation completely satisfied child support obligation, with difference to be credited toward arrearage balance.
   - Court has the option of choosing one of two approaches with derivative benefits:
     1. consider derivative benefits in fixing the guideline support amount, or
     2. allow direct-benefit credit against guideline amount.
   - Here, the court chose 2nd option. M received $1,116/m in SSDI derivative benefits for her. F was correct that derivative benefits completely satisfied his $836 child support order. When one of kids emancipated, support decreased to $526, leaving larger sum to be credited against arrears. Any excess amount, before or after the reduction, applied to what F owed for unpaid arrears. (§ 4504, subd. (a); CCP § 695.221.)
4. Order that F pay at least $375/m toward reducing arrearage ***in addition*** to credit from derivative benefits appropriately balanced F's reduced income and his obligation to repay arrearages.
   - Court had authority to order F to pay a minimum amount of $375/m towards arrears ***in addition*** to the credit he would receive from derivative benefits.
5. Statute governing retroactive application of orders modifying support did not require department to repay any excess funds garnished.
   - F owed in excess of $160k in arrears. LCSA could withdraw $1,116/m under the 25/50 rule (FC § 5246) until March 2016; then it was limited to new order of $375/m. LCSA admitted it may have over-collected from F's SSDI funds to pay M for arrears.
   - FC § 3653(d) provides that when court enters orders that decrease or terminate support retroactively, it may order support recipient to repay the obligor for any overpayments.
   - However, "…no case authority or policy served by authorizing reimbursement of overpayments to arrears when an obligor owes in excess of [$160k] in past unpaid support."

5. *IRMO Pasco* (2019) 42 Cal.App.5th 585

ISSUES/FACTS:

- In 20+ year marriage, stipulated disso judgment set support from H to W at $2,500/m plus percentage of bonuses. H files motion to terminate support based on change of circumstances: W's new job and increased monthly income.
- W objected arguing she no longer receives child support, had to take out loan on mortgage, and no substantial change in circumstances as her cash flow remained the same.
- At trial, W & W's attorney discussed W's circumstances but the Court did not consider any evidence. The Court ruled "no material changes in circumstances to warrant a hearing on modification/termination of spousal support." H appeals.

ANALYSIS:

- Fundamental principle – courts have broad discretion in deciding whether to modify a spousal support based upon changed circumstances but must base findings on substantial evidence.
- The Court based its decision on H's request solely on the argument of W's attorney and W's statements in response to the court's questions. The court did not consider any actual evidence.

HOLDING:

- Argument is not evidence; Court must base findings on substantial evidence, not only argument.

6. ***IRMO Grimes and Mou*** **(2020) 45 Cal.App.5th 406**

ISSUES/FACTS:

- Parties to disso had 2 kids and enjoyed a middle to upper-middle class lifestyle in Silicon Valley.
- H ordered to pay SS. W appeals, arguing court abused discretion in amount ordered.

ANALYSIS:

- W argued Court did not specify income to maintain her upper-middle class standard of living. Court has broad discretion in weighing factors in FC § 4320 with goal of accomplishing substantial justice for the parties. Although MSOL is an important factor, it is not the only factor. It can serve as a reference point but is not the absolute measure of reasonable need.

HOLDING:

- There was evidence sufficient to support the award of spousal support since the Court addressed and considered all the factors under FC § 4320; MSOL is not the only factor.

7. ***In re Marriage of Hein*** **(2020) 52 Cal.App.5th 519**

ISSUES/FACTS:

- F is a self-employed farm owner and manager and has been licensed as a commercial pilot for over 20 years. He has a Cessna airplane used for business which also provided a personal benefit to him including flying lessons for the daughter, vacations, and trips. He is the sole shareholder and president of two corporations. One is a C corporation, which pays income taxes, owns 4 ranches, and has no other employees besides H.
- After trial, M appeals, arguing Court abused its discretion by not including depreciation deductions claimed on the corporations' income tax returns (equipment, vehicles and Cessna plane) in the funds available for child support and inappropriately assigned M the burden of proving accuracy of F's individual and business taxes.

ANALYSIS:

- *Asfaw* case – Court held depreciation of rental property is not deductible from income available for child support under FC §s 4058 and 4059. The Court found that depreciating an asset does not involve a reduction of cash available, nor is depreciation "required" for the running of a business. Depreciation is merely a tax savings.
- *Rodriguez* case extended principles set forth in *Asfaw* to depreciation for motor vehicles.
- In this case, depreciating asset on company's books and claiming it on tax returns does not involve an outlay of cash with a corresponding reduction of cash available for child support.
- Re burden of proof issue, 1st factor considered under Evidence Code § 500's general rule is "knowledge of the parties concerning the particular fact." Here the knowledge factors weighs on F because he manages the businesses. 2nd factor is "availability of the evidence to the parties." Again F as the sole shareholder and president has control over the businesses' financial records. Also considerations of public policy/fairness support allocating burden of proof to F.

HOLDINGS:

- Depreciation deductions do not constitute "expenditures required for the operation of the business. "Expenditure" describes an actual outlay of cash. Claiming depreciation deduction on tax return does not require outlay of cash and thus does not reduce funds available for support.
- Burden of proving expenses claimed on tax returns for wholly-owned corporations should be allocated to parent who controls the corporations.

8. *County of Los Angeles Child Support Services v. Watson* (2019) 42 Cal.App.5th 638

ISSUES/FACTS:

- LCSA filed S&C on 11/15/17; personal service occurred on 2/19/18 (96 days after filing).
- Court entered default judgment but changed effective date of support from 12/1/17 to 3/1/18 because service was more than 90 days after case initiated per FC § 4009. LCSA appealed.

ANALYSIS:

- Question is when can court change effective date on default judgment. Retroactive date per FC § 17400 (date of filing) compared to FC § 4009 (date of service if more than 90 days and defendant not evading service).
- LCSA used correct forms and prepared proposed judgment with support effective first day of the month after filing. FC § 17430 states only evidence needed is that required by FC § 17400; no prove-up hearing is allowed or required. Mandatory language means legislature intended proposed judgment to be final upon default as long as prepared as required by statute.
- The court followed FC § 4009 by changing effective date to date of service but made no express findings; this § requires defendant to not be served within 90 days of filing AND a finding that the parent was not intentionally evading service.
- There was no evidence, let alone substantial evidence, on which the court could find Watson did not evade service, intentionally or otherwise

HOLDING:

- If defendant does not respond to complaint, it does not matter how quickly LCSA serves the complaint or how efficiently the court processes the support order. The court must enter the proposed judgment without a hearing and without the presentation of any other evidence.

9. *Watkins v. Benjamin* (2019) 833 S.E.2d 22

ISSUES/FACTS:

- Parties divorced in North Carolina in 2014. F granted custody.
- In 10/15, M moves to Maryland.
- In 6/16, CS order made payable by M in North Carolina.
- In 10/16, parties stipulate to change custody to M.
- Early 2017, M requests CS payable to her in new Maryland case; F moves to dismiss.
- In 5/17, M also request CS payable to her in North Carolina case.
- Subsequently, Maryland dismisses M's action for lack of personal jurisdiction over F.
- In 12/17, North Carolina orders F to pay CS.
- M appeals, contending court lacked subject matter jurisdiction over CS in the 12/17 order.

ANALYSIS:

- **Threshold question: whether 12/17 order was an establishment of new CS order under UIFSA?**
- UIFSA contains provision that sets forth whether a state has jurisdiction over a support dispute when there exist multiple support proceedings pending in multiple states. UIFSA Article 2, § 204(a) concerns "when a tribunal of this state may exercise jurisdiction to establish a support order as opposed to the state's jurisdiction to modify an existing support order."
- M argues 12/17 order was establishment of a new order and not a modification because no CS obligation flowing from F to M had been established prior to 12/17.
- M filed MD action in early 2017; argues NC was not authorized to exercise jurisdiction to establish a new order. M argues F was not an "obligor" per UIFSA prior to MD action, so MD action was not to modify existing NC for M to pay F.
- A "support order" is an order for benefit of a child which provides for monetary support and arrears and specifically contemplates that such a support order can be subject to modification.
- Same kids were the subject of both orders, so 12/17 order was modification of prior NC order.

HOLDING:

- If the kids subject to the order remain the same, an order that changes obligee to obligor is a modification of the prior order, not an establishment of a new order for the purposes of UIFSA.

10. *Brett v. Martin* (2019) 9 Wash.App.2d 303

ISSUES/FACTS:

- H & W divorce in Indiana in 1983, but no CS or SS ordered as H had moved to Ontario.
- CS and SS orders made in Ontario, with SS payable until W's death or further order.
- H made one payment of $1300 and then no more.
- Parties agreed in 9/83 to one payment of $6,000; W remarried in 9/83.

- In 10/11, Washington CS agency received request from Canada to enforce ongoing SS obligation and CS and SS arrears; in 12/11, agency served notice and demand on H which he challenged.
- Internal review showed arrears of $287,900 for CS and SS (credit of $1300 but not $6000).
- In 3/16, agency served H notice of support debt and registration and he objected.
- H moves to remove arrears and ongoing obligation for SS; request denied.
- H appeals, arguing W's remarriage should have terminated SS in 9/83.

ANALYSIS:

- Under UIFSA, WA has authority to administratively enforce a foreign support order. Upon registration, it is enforceable in the same manner and subject to same procedures as an order issued in WA.
- Any argument re: amount or duration of support would need to be in Canada as WA lacks jurisdiction to modify.
- If nonregistering party does not contest registration and enforcement by establishing a defense under WA law, order is confirmed by operation of law. To bar enforcement, there must be a legal basis preventing the state from enforcement.H admitted he lacked any statutory defenses or fraud.
- WA presumes any foreign order manifestly incompatible with public policy when enforcement of the order would result in violation of any right guaranteed by state or federal constitution.
- WA laws presume termination of SS upon remarriage of supported party absent stip otherwise; Canadian laws do not. H argues failure to terminate SS upon remarriage violates WA public policy, but H fails to identify any right under WA or US constitution violated by Ontario order.
- Court finds, in a SS order, effect of remarriage is simply a durational requirement, which does not violate public policy.

HOLDING:

- UIFSA assumes differing laws and resolves it by requiring deference to the law of the issuing forum. Duration of orders is determined by law of issuing forum. Effective of remarriage on SS order is a durational requirement which does not violate public policy; issuing state law governs.

11. *Matter of Cameron Gift Trust* (2019) 931 N.W. 2d 244

ISSUES/FACTS:

- **Issue: whether trust's spendthrift provision prohibited direct payments of child support obligation, previously ordered by another state's court as part of divorce decree?**
- Parties divorce in CA. H gets sole custody and W ordered to pay CS, SS and atty fees.
- W is beneficiary of family trust and primary beneficiary of gift trust with spendthrift provisions which prohibit the trustee from making direct payments to W's creditors.
- Family court joins the trust to facilitate regular payment of CS.
- W and bank (Wells Fargo) ordered to pay the support and fees from the trust
- Probate action to change trustees which is granted; new trustee (BNY) bound by support order.
- CA Probate Code provides that court can overcome a trustee's discretion to enforce a CS order.
- This is a narrow exception that depends on existence of valid order and bad faith on part of trustee to satisfy.
- Judgment and modification of order, and trust continues to make support payments.
- W moves trust to South Dakota; BNY replaced by Citicorp and eventually by Empire Trust.

- Empire reviews spendthrift provision and will not continue support payments as of 1/17.
- In 5/17, W petitions circuit court to resume court supervision over trust and following hearing, opinion issued that trust is prohibited from making support payments.
- Court also concluded means of enforcing CA support was determined by South Dakota law and not CA law and therefore CA family court order not entitled to full faith and credit.

ANALYSIS:

- Relevant inquiry is whether CA direct payment order is entitled to full faith and credit.
- Full Faith and Credit Clause of the US Constitution – serves purpose of limiting opportunity to relitigate issues resolved previously through judicial process. State may not disregard judgment of sister state because it disagrees with underlying reasoning. "Providing full faith and credit to a foreign state's judgment does not mean that States must adopt the practice of other States regarding time, manner and mechanisms for enforcing judgments. Enforcement measures do not travel with the sister state judgment as preclusive effects do; such measures remain subject to the evenhanded control of forum law."
- CA statute at issue here is a method of enforcing a support obligation; because the means of enforcing judgments do not implicate full faith and credit considerations, the circuit court is not required to submit to CA order compelling direct payments from the Trust.

HOLDINGS:

- Even if the order had been registered for enforcement, the registered support order is only enforceable in the same manner and subject to same procedures as an order issued by a tribunal of this state.
- Both the UIFSA and FFCCSOA leave enforcement mechanisms to the legal standards of the forum state, even if it is without jurisdiction to modify the order.
- A forum state may use its own enforcement mechanisms if it does not alter the amount, scope or duration of the issuing state's order.

12. *In re Marriage of Siva* (2020) 53 Cal.App.5th 1170

ISSUES/FACTS:

- F ordered to pay $1,700/m in CS. In 4/18, child starts living with F. M files request for IWO.
- In 2/19, F files request for *Jackson* credits (*Jackson* (1975) 51 Cal.App.3d 363) and reimbursements for overpayments, as he was both caring for child and paying support via IWO.
- *Jackson* credits granted and M ordered to reimburse $18,133 for support he paid while child was in his care. M appeals.

ANALYSIS/HOLDINGS:

- Ordering Jackson credits is not an impermissible retroactive modification of child support order.
- Ordering credits here is appropriate because F paid child support twice (once in actual payment and again by having C live with him).
- Courts have discretion to order Jackson credits in proceedings like this one, not just in collection proceedings; court is not required to order credits, but has discretion to do so.