Welcome to the 29th Annual AB 1058 Conference

AB 1058 Conference

Case Law and Legislative Updates

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Case Law Updates

Child Support Cases

In re Marriage of Cady and Gamick

105 Cal.App.5th 379

Filed September 25, 2024

Los Angeles County

In re Marriage of Cady and Gamick

Issue: Adult Child Support

Facts:

- Schuyler Gamick is the adult son of divorced parents Cady (mother) and Gamick (father)
- He has autism spectrum disorder and receives services from the Regional Center
- He receives SSI and SSP
- May 26, 2020 Mother files a post-dissolution judgment request for order for child support from father – under Family Code 3910

In re Marriage of Cady and Gamick

Facts, cont.:

- January 14, 2021Father files a response claiming Schuyler was not sufficiently incapacitated to qualify for child support, and
- Guideline support would exceed Schuyler's needs

In re Marriage of Cady and Gamick

Facts, cont.:

- Hearing is scheduled for August 30, 2022
- Schuyler receives:
  - Services from the Regional Center
  - SSI/SSP of $764 per month
  - CalFresh benefits of $279 per month
  - Medi-Cal benefits
- Mother's income is $5,449 per month
- Father's income is $165,000 to $276,000 per month
- Father does not reside in California and does not pay California state income taxes

In re Marriage of Cady and Gamick

Facts, cont.:

- Father argues:
  - Schuyler could get a job
  - Is entitled to an array of services and support which provided sufficient means
  - Schuyler would lose his SSI and disability benefits if he received support
  - Welfare and Institutions Code 12350 – neither parent was legally obligated to support Schuyler or contribute to his support

In re Marriage of Cady and Gamick

Facts, cont.:

- Trial court denies Mother's request for child support stating:

- Two statutes Family Code 3910 and Welfare and Institutions Code 12350 create ambiguity
- Broad and specific language of WIC 12350 precludes the court from ordering support under FC 3910
- May be best resolved through legislative enactment or guidance from the Court of Appeal
- Mother appeals

In re Marriage of Cady and Gamick

Court of Appeal, Second District, Division 1

Appeals Court Discussion:

- **Standard of review of statutory interpretation**
  - **Determine Legislature's intent**
  - **Statute's purpose, legislative history, public policy**

In re Marriage of Cady and Gamick

Appeals Court Discussion, cont.:

- Harmonize statutes
  - Reconcile seeming inconsistencies in them
  - Regarded as blending into each other and forming a single statute
  - Read together

In re Marriage of Cady and Gamick

Appeals Court Discussion, cont.:

- Family Code 3910
  - Parent’s duty to support an incapacitated adult child
  - The father and mother have an equal responsibility to maintain, to the extent of their ability, a child of whatever age who is incapacitated from earning a living and without sufficient means
  - Protect the public from the burden of supporting a person who has a parent able to support him or her

Appeals Court Discussion, cont.:

- **Welfare and Institutions Code 12350**
  - No relative shall be held legally liable to support or to contribute to the support of any applicant for or recipient of aid under this chapter.
  - No relative shall be held liable to defray in whole or in part the cost of any medical care …
  - No demand shall be made upon any relative to support or contribute to the support of any applicant or recipient of aid

Appeals Court Discussion, cont.:

- **AB 2397 Special needs trusts**
  - 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 a child support order from resulting in reduction of federal SSI benefits

In re Marriage of Cady and Gamick

Appeals Court Discussion, cont.:

- **The Order denying Mother's Request For Order for child support is reversed and remanded**

In re Marriage of Cady and Gamick

Key Take Aways:

1) The two statutes FC 3910 and WIC 12350 are not at odds. One places responsibility on parents to support an incapacitated adult child, the other prohibits the government from abusing its power by making demands and threats.

2) Ask and you shall receive – father was concerned that his support contributions would impact Schuyler's ability to receive public benefits and Regional Center services. The legislature passed AB2397 for that very purpose – allowing a court to order support payments into a special needs trust to protect the ability to receive benefits

In re Marriage of Saraye

106 Cal.App.5th 348

Filed October 30, 2024

Los Angeles County

In re Marriage of Saraye

Issues: (1) termination of wage assignment; and (2) laches as defense to claim for overpaid support.

Facts:

- Lois and David divorced in 1992 with one minor child.
- Judgment entered 7/22/1992 ordered David to pay:
  - $425/month in CS; and
  - $286/month in SS.
- Lois served a wage assignment order.

In re Marriage of Saraye

- On 4/01/1995, spousal support terminated.
  - On 6/14/1995, David filed to modify the wage assignment order as to SS.
- In June 2001, child support terminated.
  - Wage assignment remained in place.
  - David's wages continued to be garnished for CS until December 2008.
- On 11/18/2021, David filed an RFO asking the Court to:
  - Determine he had overpaid child support by at least $46,061.55.
  - Order Lois to reimburse him, with interest.
  - Order Lois to pay his attorney fees and costs "based upon [her] over-collecting on the child support."

In re Marriage of Saraye

- In response, Lois argued:
  - 14 years is an unreasonable amount of time to wait.
  - Reimbursement would create an "unimaginable financial burden."
  - Both parties had competent attorneys and were aware of the orders.
  - If David "had any issue," he should've contacted his attorney or sought a remedy from the Court.
    - He knew the proper procedure because he followed it for SS.
  - Give me another $5,000 as FC 271 sanctions.

In re Marriage of Saraye

- TC denied David's motion as time-barred.
  - Anything less than 3 to 5 years would've been granted, but 14 years is too long.
  - David knew what he needed to do, and didn't do it.
  - Lois has unclean hands because she wasn't "clueless" about the extra payment.
  - David's reasons for delay are insufficient to overcome the prejudice to Lois.
- TC denied Lois's request for sanctions and granted David's oral motion for same in the amount of $3,000.
- David appealed.

In re Marriage of Saraye

David's Appeal

- David's argument:
  - FC § 4007 requires CS overpayments to be reimbursed.
  - Nothing in the FC supports laches as a defense to reimbursement for CS overpayment.
- Lois's argument:
  - No error. Laches applies.

In re Marriage of Saraye

Court of Appeal, Second District, Division 8

Appeals Court Discussion:

- Standard of Review
  - Application of FC § 4007 (question of law) = de novo.
  - Application of laches = abuse of discretion.

In re Marriage of Saraye

Defense of Laches:

- Equitable defense to the enforcement of stale claims and an equitable limitation on a party's right to bring suit.
- Three elements:

  1. Delay in asserting a right or claim;
  2. A delay not reasonable or excusable; and
  3. Prejudice to the party against whom laches is asserted.

- As a general rule, a party seeking equitable relief must have clean hands.

In re Marriage of Saraye

- Here, TC expressly found Lois had unclean hands, so she can’t avail herself of a laches defense.
- “We need not and do not decide whether the defense of laches is generally available as a defense to overpayment of child support.”

In re Marriage of Saraye

FC 4007:

- The obligation of the person ordered to pay CS terminates on the happening of the contingency.
- The Court may, in the original order for support, order the obligee to notify the obligor or their attorney of record of the happening of the contingency.
  - If the obligee fails to do so and continues to accept payments, the obligee shall refund all payments received that accrued after the contingency (less any arrears).

In re Marriage of Saraye

- FC 4007 applies only where the original CS order required the obligee to notify the obligor of the happening of the contingency.
  - The judgment here placed no notice obligations on Lois, so the mandatory refund provision doesn't apply to her.
- Further, nothing in the record suggests David didn't know or needed notice from Lois that his daughter was no longer a minor and had graduated high school.

In re Marriage of Saraye

Obligor's Burden to Terminate Wage Assignment:

- Without an end date or statement of an ending contingency, a wage assignment isn't self-terminating.
- FC 5235(a) requires the employer to "continue to withhold and forward support as required by the assignment order *until served with notice terminating the assignment order*" (emphasis added).
- Pursuant to FC 5240(a)(2), it was David's responsibility, as obligor, to cause the termination of the wage assignment.

In re Marriage of Saraye

Timeframe for Seeking Reimbursement:

- CoA found no statute or case that:
    - Sets a deadline by which an obligor must seek reimbursement for overpaid CS; or
    - Specifies factors for the court to consider when deciding whether to order reimbursement of overpayment sought after substantial delay.

In re Marriage of Saraye

- TC referred to FC 3653(d), which sets out factors to consider when deciding whether to order reimbursement after a retroactive decrease or termination of a support order:
  - Amount to be repaid;
  - Duration of the support order prior to modification or termination;
  - Financial impact on the obligee; and
  - Any other relevant facts or circumstances.
- The timing of the reimbursement request easily constitutes a relevant fact when balancing the equities.

In re Marriage of Saraye

Holding:

- No abuse of discretion.
- TC affirmed.

In re Marriage of Saraye

Key Take-Aways

- Wage assignments aren’t self-terminating.
- Don’t sleep on your rights, especially when it comes to reimbursement for overpayment of support.
  - If you do, don’t assume the other party’s unclean hands will save you from your delay.
  - A statutory catch-all for “any relevant facts or circumstances” could allow the Court to treat unclean hands as an equitable factor to be weighed, rather than a factor that would automatically disqualify a laches-esque defense.

Mercado v. Superior Court of Orange County

106 Cal.App.5th 1153

Filed November 21, 2024, Modified November 25, 2024

Orange County

Mercado v. Superior Court of Orange County

Issue: Vocational Evaluation under FC4058 in parentage cases

Facts:

- In March 2022 Michael Wolf, father, filed a petition to establish parentage against Patricia Mercado, mother of two children.
- In April 2022 the Department of Child Support Services filed a Notice Regarding Payment of Support stating that DCSS was providing child and medical support and Wolf was the obligor.
- In May 2022 DCSS requested that child support issues be transferred to a child support commissioner.

Mercado v. Superior Court of Orange County

Facts, cont.:

- In October 2022 Wolf filed a request for an order for a vocational evaluation of Patricia Mercado.
- At the February 2023 hearing the court asked whether child support was at issue and was told it was in [DCSS] court with a child support commissioner
- The court granted Wolf’s request for the vocational evaluation of Patricia Mercado.

Mercado v. Superior Court of Orange County

Facts, cont.:

- In June 2023 Mercado filed an appeal from the court's February 2023 order requiring the vocational evaluation.
- This court dismissed her appeal as untimely.
- In August 2023, Wolf filed a motion to compel Mercado to submit to the vocational examination

Mercado v. Superior Court of Orange County

Facts, cont.:

Meanwhile in child support court:

- In March 2023, DCSS filed a motion for child support.
- Hearing was set for May 2023, continued to June 2023 and then again to July 2023.
- Matter is taken off calendar at the request of DCSS saying it is not enforcing in this case.

Mercado v. Superior Court of Orange County

Facts, cont.:

- In November 2023 Mercado files an opposition to Wolf's motion to compel.
- Mercado claimed the court's order was void because it lacked jurisdiction to order the vocational evaluation when there was no pending motion for spousal or child support.

Mercado v. Superior Court of Orange County

Facts, cont.:

- The court granted Wolf's motion to compel the vocational evaluation.
- The court held that child support is at issue in a parentage case regardless of whether the parties ask for it.
- Although FC 4331 (authorizing a vocational evaluation) appeared in a spousal support section of the Family Code *it did not believe it precluded the court from requesting a vocational evaluation for child support.*

Mercado v. Superior Court of Orange County

Court of Appeal, Fourth District, Division 3

Appeals Court Discussion:

- **Wolf relied on several statutes, which the Court reviews**

Mercado v. Superior Court of Orange County

Appeals Court Discussion, cont.:

- **Family Code 3558**
  In a proceeding involving child or family support, a court may require either parent to attend job training, job placement and vocational rehabilitation, and work programs, as designated by the court

- The parties cite to no legal authority, and we are aware of none, holding a vocational evaluation is authorized under section 3558

Mercado v. Superior Court of Orange County

Appeals Court Discussion, cont.:

- **Family Code 4331**

  In a proceeding for dissolution of marriage or for legal separation of the parties, the court may order a party to submit to an examination by a vocational training counselor.

  The focus of the examination shall be on an assessment of the party's ability to obtain employment that would allow the party to maintain their marital standard of living

  The order may be made only on motion, for good cause.....

- “there can be good cause for a vocational evaluation under section 4331 only if the examination is relevant to a determination of spousal support” *In re marriage of Stupp and Schilders*

Mercado v. Superior Court of Orange County

Appeals Court Discussion, cont.:

Family Code 4058

- The court may, in its discretion, consider the earning capacity of a parent in lieu of the parent's income, consistent with the best interests of the children…
- The plain language of section 4058 does not authorize vocational evaluations, but the legislative history indicates the Legislature intended to expand the use of vocational evaluations to proceedings involving child support.
- A trial court cannot consider earning capacity unless it is consistent with the best interests of the children

Appeals Court Discussion, cont.:

Evidence Code 730

- The court "on its own motion or on motion of any party may appoint one or more experts to investigate, to render a report as may be ordered by the court, and to testify as an expert at the trial…"
- Experts under section 730 are generally neutral experts appointed by the court, not retained experts like Wolf's chosen consultant.

Appeals Court Discussion, cont.:

- For the foregoing reasons, the court erred by granting Wolf's request that Mercado undergo a vocational evaluation because there was no statutory basis for the orders.
- The trial court is ordered to vacate its order requiring the vocational evaluation and the order to compel, and to enter a new order denying the request for a vocational evaluation.

Mercado v. Superior Court of Orange County

Key Take-Aways:

1.) Support must be at issue for a vocational evaluation to be ordered.

2.) A statute specific to spousal support in dissolution cases does not authorize a vocational evaluation in parentage cases.

3.) It’s important to use a statute that actually applies to the case type.

Pateras v. Armenta

330 Cal.Rptr.3d 371 (Ordered Not Published)

Filed February 27, 2025

Los Angeles County

Pateras v. Armenta

Issue: Whether payments from a tribe's general welfare program are income available for child support.

Facts:

- Thomas Armenta is a member of the Santa Ynez Band of Chumash Indians, and works at the tribal office.
  - $114,000/year salary.
  - $5,000/month Chumash tribe's general welfare program.
- TC ruled those tribal payments can be considered income.
  - No conflict with tribal authority because tribal nations let members participate "in the specific general family law structure."

Pateras v. Armenta

Court of Appeal, Second District, Division 6

Appeals Court Discussion:

- FC 4058(c) excludes "any public assistance program, eligibility for which is based on a determination of need."
  - Narrow exception specific to programs for the indigent that prevent people from going "hungry, cold and naked."
  - Doesn't apply to unemployment insurance, social security or worker's compensation.

Pateras v. Armenta

- Legislature’s goal was to protect the poor from being financially overburdened, but not to allow parents with large incomes to escape their CS obligations.
- Thomas didn’t show benefits are restricted for poor or low-income descendants and based on minimum subsistence level or why he was qualified to receive them.
  - TC could reasonably infer eligibility is based on being a descendant of the tribe, not any showing of need.

Holding: No error; TC affirmed.

Pateras v. Armenta

Key Take-Aways:

- The FC 4058(c) public assistance exception from income recalls the chorus from Cheap Trick's 1977 power pop hit:

♪ I want you to want me
I need you to need me ♫

Parentage Cases

C.C. v. L.B.

106 Cal.App.5th 1323

Filed November 26, 2024

San Louis Obispo County

C.C. v. L.B.

Issue: Status to Bring Parentage Action After Donor Agreement and Adoption

Facts:

- Respondents L.B. and R.B. are a married couple who sought to conceive a child via in vitro fertilization. C.C is the sperm donor
- R.B. and C.C. executed a written contract identifying appellant as "donor" and R.B. as "recipient"
- L.B. was not a party to this contract.

C.C. v. L.B.

Facts, cont.:

Pursuant to the donor agreement appellant agreed:

- to provide his semen for artificial insemination with the "clear understanding ...
- he would not demand, request, or compel any guardianship or custody with any child born from the artificial insemination procedure …
- that he fully understands that he would have no paternal rights whatsoever with said child,
- R.B. and L.B. will pursue second parent adoption for the child(ren) and C.C. will waive his parental rights before the courts at that time

C.C. v. L.B.

Facts, cont.:

- C.C. provided his sperm to a licensed physician
- A reproductive health center created an embryo using R.B.'s ovum and C.C.'s sperm
- The embryo was implanted by a physician

- Within a month of N.'s birth, L.B. petitioned for stepparent adoption
- C.C. signed state forms preserving R.B.'s parental rights and waiving his
- The adoption order was entered three months later

C.C. v. L.B.

Facts, cont.:

- For the first eleven years of N.'s life, C.C. exercised visitation
- At around age twelve, N. no longer wanted to visit him

- C.C. filed a petitioned to establish parental relationship and requested joint custody and visitation

C.C. v. L.B.

Facts, cont.:

- C.C. alleges he is:
  - a biological parent
  - a section 7611 presumed parent
  - a section 7612 third parent
- Trial court determined that the termination of parental rights and the adoption prevent C.C. from having standing to assert parentage.
- C.C. appeals.

C.C. v. L.B.

Court of Appeal, Second District, Division 6

Appeals Court Discussion:

- Adoption law provides that, “the existing parent or parents of an adopted child are, from the time of the adoption, relieved of all parental duties towards, and all responsibility for, the adopted child, and have no right over the child.”
- The main purpose of adoption statutes is the promotion of the welfare of children

Appeals Court Discussion, cont.:

- Appellant brings up S.B 274, arguing that nothing in any adoption statute holds that a stepparent adoption somehow neutralizes the statutory scheme enacted by S.B. 274
- Senate Bill 274, enacted three years after appellant gave up his parental rights and consented to N.'s adoption, partly amended the Family Code. It authorized a court to find a child has more than two parents "if the court finds that recognizing only two parents would be detrimental to the child."

Appeals Court Discussion, cont.:

- None of the cases appellant relies on concern a person whose parental rights were terminated. Our research has not revealed any cases where someone whose parental rights were terminated was later found to have standing to pursue custody under any theory, even an ongoing parent-child relationship. The closest is a dependency case holding that if the law is interpreted to allow a person whose parental rights have been terminated to later seek presumed parent status, the statutes governing adoption "***would be meaningless and the goals of stability and finality … would be substantially undermined***

C.C. v. L.B.

Appeals Court Discussion, cont.:

- Appellant contends equitable estoppel bars respondents from relying on his consent to the adoption as a basis to deny him the “benefits” of the donor agreement.
- To the extent he contends those “benefits” include his right to establish himself as a legal parent, we disagree. The donor agreement did not give appellant any right to legal parentage. In fact, it did the opposite

C.C. v. L.B.

Appeals Court Discussion, cont.:

- Even having played an important fatherly role for most of N.'s life, appellant remains a legal nonparent.
- Except for grandparents' right to petition for visitation under Family Code 3104, a nonparent has no standing to initiate an action for visitation under the Family Code.

C.C. v. L.B.

Key Take-Aways:

1.) The goal of adoption statutes is to promote stability and finality.

2.) The relinquishment of rights in the agreement as final and irrevocable means just that – it is final and irrevocable.

Mamer v. Weingarten

108 Cal.App.5th 169

Filed January 17, 2025

Riverside County

Mamer v. Weingarten

Issue: Reimbursement of IVF Costs under FC 7637.

Facts:

- Krystal Mamer and David Weingarten agreed to conceive a child via in vitro fertilization (IVF) using Weingarten's sperm and a third party's egg.
- They also agreed to raise the child together and to share the IVF costs, which were $55,635.
- One month after the child was born, Mamer filed a parentage action against Weingarten.

Mamer v. Weingarten

- Weingarten filed an RFO seeking reimbursement for one-half the IVF costs pursuant to FC 7637, which authorizes payment of "reasonable expenses of the mother's pregnancy and confinement" in a parentage action.
    - Mamer opposed the request, arguing FC 7637 doesn't authorize a court to order a mother to reimburse a father for any pregnancy expenses.
- TC denied Weingarten's request, saying it had no authority under 7637 to order reimbursement of expenses incurred before the parentage action was filed.
- Weingarten appealed.

Mamer v. Weingarten

Weingarten's Appeal:

- TC's interpretation of FC 7637 impermissibly adds a restriction to the statute and produces absurd consequences.

Mamer v. Weingarten

Court of Appeal, Fourth District, Division 8

Appeals Court Discussion:

- Standard of review for statutory interpretation = de novo.

Principles of Statutory Interpretation:

- Primary task is to determine legislative intent.
  - Look at the statutory language.
  - Give the words their usual and ordinary meaning.
  - Consider the words in the context of the whole statute.

Mamer v. Weingarten

- FC 7637 says in a UPA case, [t]he judgment or order may direct the parent to pay the reasonable expenses of the mother's pregnancy and confinement."
  - When a child is conceived through IVF, the costs of the procedure qualify as "reasonable expenses of the mother's pregnancy" under the statute.
  - The parties "affirmatively intended the birth of the child, and took the steps necessary to effect in vitro fertilization. But for their acted-on intention, the child would not exist."
- The judgment determined Mamer is a parent, so FC 7637 authorized the court to direct her to pay IVF costs.

Mamer v. Weingarten

- A court may not, under the guise of construction, rewrite the law or give the words an effect different from the plain and direct import of the terms used.
  - FC 7637 doesn’t make an exception for costs incurred before a parentage action has been filed.
  - A court must assume the Legislature knew how to create an exception if it wished to do so.
- Excepting pre-lawsuit expenses would frustrate the purpose of the UPA and produce results the Legislature didn’t intend.
  - One of the overarching policy goals of the UPA is to ensure a child will be cared for, financially and otherwise, by two parents.
  - Equal responsibility to support a child includes pregnancy expenses.

Mamer v. Weingarten

- TC cited authorities that don't support its interpretation of FC 7637.
  - Cases predated the enactment of the UPA and didn't consider FC 7637.
  - Cases aren't authority for issues not considered.
- TC also cited FC 3951(a) as support for the rule that "the law disallows reimbursement for costs a parent voluntarily pays."
  - Exception where there is an agreement for compensation.
  - Mamer didn't deny Weingarten's allegation that they agreed to share the IVF costs equally, but she couldn't pay her share when they came due.
  - Although Weingarten voluntarily paid, Mamer's agreement to pay half doesn't preclude him from seeking reimbursement for her share.

Mamer v. Weingarten

- FC 7637 authorizes a court to direct a parent to pay expenses of pregnancy, including IVF costs, that were incurred before the parentage action was filed.
  - That doesn’t mean the statute *requires* a court to do so.
- Here, TC didn’t exercise its discretionary authority.
  - Proper remedy is to reverse the order and remand the matter to allow the court to exercise its discretion.

Mamer v. Weingarten

Holding:

- TC order reversed and remanded.
- CoA gave "guidance" that TC should consider the following in exercising its discretion:
  - The UPA policy that both parents contribute to the support of their child.
  - The parents' incomes or earning capacities.
  - Their agreement concerning IVF costs.
  - The reasonableness of those costs.

Mamer v. Weingarten

Key Take-Aways:

- Legal arguments can only be creative to a point.
  - Don’t add to statutes restrictions or requirements the Legislature didn’t.
  - Don’t cite cases as authority for issues they didn’t consider—leave that to ChatGPT.
- CA parentage statutes are gender neutral.
- The obligation of both parents to support a child begins with the expenses of pregnancy and birth.

Miles v. Gerstein

110 Cal.App.5th 88

Filed March 28, 2025

Sacramento County

Miles v. Gerstein

Issue: Enforceability of an oral surrogacy agreement.

Facts:

- Sarah Miles and Jeffrey Gerstein met and became friends in 2002 when Miles and her daughter moved next door to Gerstein.
- In 2010, Gerstein started exploring options to become a parent and decided on surrogacy.
- In 2012, Miles offered to be a surrogate for Gerstein.
- Gerstein wanted to use a separate ova donor, but Miles wasn't receptive because she didn't want hormone treatments.

Miles v. Gerstein

Miles	Gerstein

• Not child's mother.
  ○ Called "Sarah," not "Mom."
• Some contact with child anticipated, but no specifics.
	• Child's sole parent.
	  ○ Soon after birth, child to live with him permanently.
	  ○ All financial responsibility.
	  ○ All decisions about how child raised.
	• Responsible for all pregnancy related expenses.
	• Reimburse Miles for lost wages.
	• Pay for Miles's post-birth trip to Europe.

Miles v. Gerstein

Conception & Birth:

- In early 2013, Miles became pregnant with a child she and Gerstein conceived through at-home artificial insemination.
    - Before and during pregnancy, Miles referred to herself as a surrogate.
- In December 2013, Miles gave birth to baby girl E.
    - Asked to be named on the birth certificate so "mother" wouldn't be blank; Gerstein ultimately agreed it might matter to E. someday.
- After the birth, Gerstein and E. spent five or six days at Miles's home so she could breastfeed. E never slept there again.
- Gerstein relied on his mother and a nanny for childcare.

Miles v. Gerstein

- Gerstein paid $28,000 to Miles and others for pregnancy-related expenses, Miles's lost income and $5,000 for Miles's trip.

E.'s Early Childhood (2014 -2019):

- Gerstein had all financial responsibility and made all decisions.
- Gerstein and Miles sometimes had dinner, with or without E.
- Miles went to some of E.'s birthday parties, but only as a guest.
- Miles sometimes watched E. for a few hours if Gerstein's mother or nanny were unavailable.

Miles v. Gerstein

- Witnesses testified that Miles doesn't act like a mother or act differently than any other friend around E.
  - If E. needs someone to take on a parental task, Gerstein does it.
- E. calls Miles "Sarah," not "Mom," and has never referred to Miles's daughter as her sister.
- E.'s art and school projects about family never included Miles.
- E. understood Miles acted as a surrogate and tells people she doesn't have a mom.

Miles v. Gerstein

- Their relationship deteriorated in 2020, during the pandemic.
  - Gerstein restricted interactions with anyone not immediate family.
  - Miles started insisting she have the option to spend more time with E. in person and claiming Gerstein wasn't honoring their agreement.
- In May 2021, Miles filed a petition to determine her parental relationship with E. based on FC 7610 and the facts that she gave birth to and has a genetic relationship with E.
  - She also filed an RFO asking for joint legal and physical custody, parenting time and child support.
- In response, Gerstein asserted Miles had no parental rights and filed a petition to terminate any such rights.

Miles v. Gerstein

TC's 7/05/2023 final ruling and order:

- By clear and convincing evidence, Gerstein and Miles had a valid contract for a traditional surrogacy that governed their relationship.
    - The intended result was the birth of a child for whom Gerstein would have sole parental rights.
- Although Miles disputes the label "surrogate," that was their arrangement and their intent.
- Their conduct over the better part of 7-8 years supports the conclusion the agreement existed, despite never being reduced to writing.

Miles v. Gerstein

- Evidence doesn’t support a finding that Miles is a presumed parent of E. under FC 7611.
- Wouldn’t be in E.’s best interest for Miles to enter her life in the role of a parent.
- After judgment was entered on 7/10/2023, Miles filed a motion for new trial, which TC denied.
- Miles appealed.

Miles v. Gerstein

Miles's Argument on Appeal:

- The surrogacy agreement can't be enforced because:
  - Surrogacy contracts can't be oral, so the agreement wasn't an enforceable contract under Civil Code 1622.
  - The agreement didn't have a lawful object, so the agreement wasn't an enforceable contract under Civil Code 1550.
- Miles and amici curae also assert constitutional law issues and argue public policy favors her position.

Miles v. Gerstein

Court of Appeal, Third District

Appeals Court Discussion:

- Standard of review = de novo.

No Writing Requirement for a Traditional Surrogacy Contract:

- Miles argues the FC 7960 definition of surrogate specifies someone who bears a child through medically assisted reproduction and pursuant to a written agreement, therefore all surrogacy agreements must be in writing and must engage the services of medical professionals.

Miles v. Gerstein

  - The agreement with Gerstein wasn’t in writing so no surrogacy relationship was formed.
- The plain language of FC 7960 doesn’t say that.
  - It contains various definitions “[f]or purposes *of this part*,” which is Part 7 of Division 12 of the Family Code (emphasis added).
  - Part 7 only contains statutes that govern how nonlawyer surrogacy (and donor) facilitators manage client funds, and the required contents of *gestational* carrier agreements.
  - To interpret FC 7960 to require *all* surrogacy agreements to be in writing to be enforceable would treat the “for purposes of this part” language as surplusage.

Miles v. Gerstein

- Miles argues that FC 7613 requires a written agreement in certain assisted reproduction scenarios; therefore, if the Legislature had intended to allow oral surrogacy agreements, it would've adopted a statute to that effect.
  - Civil Code 1622 says "[a]ll contracts may be oral, except such as are *specifically required* by statute to be in writing" (emphasis added), not the other way around.

The Agreement Doesn't Lack a Lawful Object

- Miles argues that because she gave birth to E., her parentage is "established," not "presumed" under FC 7610 and can't be rebutted.

Miles v. Gerstein

- FC 7610 says parentage "may be established by proof of having given birth to the child," not *shall* be established if there's proof.

Case Law Doesn't Prohibit the Agreement

- Miles cites to *In re Marriage of Moschetta*, 25 Cal.App.4th 1218 (1994), and its treatment of *Johnson v. Calvert*, 5 Cal.4th 84 (1993), to argue that without further legal action to terminate her parental rights, even a written traditional surrogacy isn't enforceable.
  - In *Moschetta*, a married couple's traditional surrogate agreed to sign all necessary TPR papers and cooperate with wife's adoption.
  - The couple divorced shortly after the child's birth; surrogate joined the case and all parties took the position the agreement was unenforceable.

Miles v. Gerstein

- The 4th District CoA affirmed the surrogate was the child's legal parent by applying the CA Supreme Court's *Johnson* framework:
    - Start with the UPA, which facially applies to any parentage determination—even rare maternity disputes.
    - To resolve competing UPA claims, look to the parties' intentions as manifested in the surrogacy agreement.
- The maternity dispute could be resolved under the UPA alone because the genetic and birth mother were the same person, so the tie-breaking role of intent never came into play.
- The decision noted *Johnson* concerned a gestational surrogacy agreement and didn't actually hold the contract was enforceable.

Miles v. Gerstein

- Four years later, the same court in *In re Marriage of Buzzanca*, 61 Cal.App.4th 1410 (1998), clarified "[t]here is a distinction between a court's enforcing a surrogacy agreement and making a legal determination based on the intent expressed in a surrogacy agreement.
  - It's not about "transferring" parenthood pursuant to those agreements; it's about the consequences of those agreements as acts that cause the birth of a child.
- Collectively, these cases don't compel a finding that traditional surrogacy contracts, in which the surrogate agrees they won't be the child's parent, are never enforceable.

Miles v. Gerstein

- Other cases where courts have refused to enforce agreements depriving a person of parentage under the UPA typically consider two types of agreements:
  - Those where the purported agreement didn’t match the practice of the parties once the child was born; and
  - Those where the effort to terminate parentage was made after parentage had already been legally established.
- Nothing in case law supports, under these facts, that the agreement unlawfully foreclosed Miles’s opportunity to assert parentage under the UPA, thus rendering the agreement unenforceable after it went unchallenged for 7 years.

Miles v. Gerstein

Public Policy & Constitutional Considerations

- Holding is supported by public policy:
  - “Honoring the plans and expectations of adults who will be responsible for a child’s welfare is likely to correlate significantly with positive outcomes for parents and children alike.” (*Johnson*)
  - Various authorities speak to the benefits of two-parent families, but there’s no current threat E. will become a public charge and CA law has increasingly recognized the ability of people to establish single-parent households.
  - TC here concluded it wouldn’t be in E.’s best interests to disrupt her single-parent household.

Miles v. Gerstein

- Miles argues TC’s order violates her fundamental right to parent.
  - From birth to age 7, Miles was never a parent to E.
  - Never planned to and didn’t: (1) financially support E.; (2) make decisions about E.’s education; or (3) provide any overnight care for E.
  - “The biological connection between [parent] and child is unique and worthy of constitutional protection if the [parent] grasps the opportunity to develop that biological connection into a full, and enduring relationship.”
- Amici curiae argue TC decision violates substantive and procedural due process, but Miles had ample opportunity to present evidence and arguments at trial.

Miles v. Gerstein

- Holding doesn’t “irrationally” require greater safeguards in gestational surrogacy agreements than traditional ones.
    - The requirements of FC 7962 apply where the parties wish to take advantage of the pre-birth filings and presumptively valid agreements the statute provides.

Holding:

- Judgment affirmed.

Miles v. Gerstein

Key Take-Aways:

- CA parentage law doesn’t yet fully address all of the different ways families are now created.
  - Single-parent surrogacy agreements are ripe for legislation.
- We’re still seeing the ripple effects of COVID.
  - Indirect consequences, including all the ways pandemic life changed people’s relationships, priorities and perspectives.

Spousal Support Cases

In re Marriage of Alan Freeman

110 Cal.App.5th 406

Filed April 4, 2025

Riverside County

In re Marriage of Alan Freeman

Issue: Use of Xspouse When Determining Permanent Spousal Support

Facts:

- Hub and Rod Alan Freeman registered as domestic partners in December 2004 and married in June 2008, separating in April 2020.
- Rod filed for dissolution in May 2020.
- Both Hub and Rod had been unemployed for about seven years.
- The parties lived off Hub's income from rental property, social security and annuities and dividends.
- Hub's available monthly income was $11,391, the monthly marital standard of living was $12,381.

In re Marriage of Alan Freeman

Facts, cont.:

- At trial the family court applied the relevant support factors under Family Code 4320
- The family court found:
  - Hub’s earning capacity was sufficient to maintain the marital standard of living
  - Rod would suffer harmful consequences if support was denied.
  - Rod’s job prospects were impaired by Hub’s request for Rod to take leave under FMLA to care for Hub and then remain unemployed for seven years to travel with Hub.

In re Marriage of Alan Freeman

Facts, cont.:

- After reviewing all FC 4320 factors, the family court ordered Hub to pay Rod $2,100 per month in permanent spousal support.

- The court attached an Xspouse report showing “the net spendable income available to both parties upon imputation of wages and salary to Rod and the spousal support order of $2,100 per month”.

In re Marriage of Alan Freeman

Facts, cont.:

- Hub appeals, contending:
  - The amount of spousal support awarded was disproportionate to the parties' marital standard of living.
  - The court improperly relied on Xspouse to calculate spousal support.
  - The court wrongly based its permanent spousal support order on the temporary spousal order.

In re Marriage of Alan Freeman

Court of Appeal, Fourth District, Division 3

Appeals Court Discussion:

- Hub claims:
  - The marital standard of living was $12,381 per month
  - Each party is entitled to one-half of the amount or $6,190 per month
  - Spousal Support of $2,100 would give Rod $9,300 per month
    - $5,400 family court found Rod capable of earning
    - $1,000 in dividends
    - $800 –community share of Hub's military pension
    - $2,100 in spousal support

In re Marriage of Alan Freeman

Appeals Court Discussion, cont.:

- Hub cites no authority for assertion that Rod is entitled to only half the marital standard of living.
- Nor does it appear that any such authority exists
- Family courts have broad discretion in fashioning spousal support orders to address the specific needs of the parties
- The court may order spousal support in an amount greater than, equal to, or less than what the supported spouse may require to maintain the marital standard of living

Appeals Court Discussion, cont.:

- While the court found Rod could make $5,400 per month, it is unclear how many years (assuming he finds a job).
- He was 60 at time of trial and had health issues.
- The court also found the Hub impaired Rod's employment by asking him to take FMLA and then to remain unemployed so they could travel together.
- $2,100 in spousal support was reasonable based on Rod's age, job prospects, and that Hub was partly responsible for Rod's unemployment.
- No Abuse of discretion by family court.

Appeals Court Discussion, cont.:

- Hub also contends trial court erred by
  - solely relying on Xspouse to calculate permanent spousal support
  - improperly basing the amount of permanent support on the temporary support order

Appeals Court Discussion, cont.:

- Hub's arguments are unsupported by the record
- The statement of decision clearly indicates the court's spousal support award was based on Family Code 4320 factors.
- The statement of decision discusses each Family Code 4320 factor in great detail before ordering Hub to pay $2,100 per month.

Appeals Court Discussion, cont.:

- Xspouse was not used to calculate spousal support.
- The Xspouse printout was attached to the statement of decision to show how the spousal support award calculated under 4320 would affect the parties' net spendable income.

Appeals Court Discussion, cont.:

- It is a basic presumption that the trial court is presumed to have known and applied the correct statutory and case law in the exercise of its official duties.
- Hub has not cited anything in the record to overcome this presumption.

In re Marriage of Alan Freeman

Key Take-Aways:

1.) Family courts have broad discretion in fashioning spousal support orders.

2.)Five pages of discussion of the FC 4320 factors is a pretty clear indication that the court did not rely on Xspouse to calculate spousal support.

3.) You play, you pay. Literally. When you ask a spouse to forgo working in order to travel with you for seven years, impairing their ability to find employment, you may be ordered to pay spousal support.

Legislative Updates

Overview

Background on 2025 Legislative Session

Child support related legislation

- AB 1297 – Automatic Temporary Restraining Orders
- AB 1521 – Notice to DCSS from estate

Other family law legislation

Other legislation impacting civil procedure

Background on 2025 Legislative Session

- First year of the two-year 2025-26 Session
- Legislative session ends on September 12th
- Governor has until October 12th to take action
- Bills in this presentation were still moving as of August 15, 2025

Child Support Related – AB 1297

- Effective January 1, 2027 would modify the existing Automatic Temporary Restraining Orders in a family law summons to prohibit parties from allowing an insurance plan to lapse for nonpayment of premiums or failure to renew.
- Signed by the Governor, with delayed implementation to allow for form changes.

(Judiciary) Omnibus - AB 1521

- AB 1521 is a committee omnibus bill with a number of provisions including:
- A requirement for estates administered on or after January 1, 2026 that notice be provided to DCSS if the attorney or representative knows or has reason to know that the decedent has child support obligations.

Family Law Bills of Note – AB 1134

- AB 1134 – Allows nullity to be granted for coerced marriage beyond statutory timeframe for good cause.

Family Law Bills of Note – AB 1363

- AB 1363 – Provides that information about transmission of restraining order is open to inspection and copying

Civil Procedure Changes – AB 515

- AB 515 – Statements of decision – establishes statutory requirements and timelines for statements of decision.

Civil Procedure Changes – SB 85

- SB 85 – Alternate service – allows a summons to be served electronically under CCP 413.30 when other means have failed and it is likely to result in notice

Final Take-Away:

From In re Marriage of McIntyre Shayan and Shayan
Canon of statutory construction “noscitur a sociis” which means “a word takes meaning from the company it keeps”

Words, like people, will be judged on the company they keep.

Thank You!