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PERSPECTIVE

A look back at family law in 2014

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Several important California family law cases were decided this year.

Property Rights

In probably the most important family law decision this year, *In re Marriage of Valli*, 58 Cal. 4th 1396 (2014), the state Supreme Court held that a life insurance policy purchased by husband from a third party with community property funds and titled (at husband's direction) in wife's sole name as both owner and beneficiary, is a community property asset and not wife's separate property.

Under *Valli*, purchases made by one or both spouses from a third party with community property funds during the marriage must satisfy the transmutation requirements in Family Code Section 852 to be characterized as separate property. Also, when a spouse claims that property acquired during the marriage is separate property, she must prove the separate property character by a preponderance of the evidence. The court also held that the form of title presumption of Evidence Code Section 662 does not apply in marital dissolution proceedings, when it conflicts with the Family Code transmutation statutes.

Valli creates potential complications for estate planners. All or a portion of life insurance proceeds may be unintentionally taxable to the decedent spouse's estate when the policy is funded with community property unless the policy is titled in the surviving spouse's name and accompanied by an "express declaration" by the non-owner/insured spouse confirming his present intention to relinquish his community interest in the policy at the time of acquisition and for any premium payments made with community property funds.

California's Courts of Appeal took up several interesting family law property rights cases this year.

In *In re Marriage of Greaux and Mermin*, 223 Cal. App. 4th 1242 (2014), a trial court awarded a business operated by both spouses during the marriage to the husband, with a five-year noncompete order imposed against the wife. The 1st District Court of Appeal upheld the noncompete order generally but reversed and remanded as to the specific order entered because of its impermissible and unsupported breadth.

In *Crosby v. HLC Properties Ltd.*, 223 Cal. App. 4th 597 (2014), the 2nd District Court of Appeal suggested that an individual's right of publicity is not community property. A trust established by Bing Crosby's first wife for the benefit of their children sued the entity created for the benefit of Crosby's second wife which held Crosby's right to publicity, seeking a community property share of the right of publicity created during Crosby's first marriage.

The court reversed the trial court's decision allowing the claim, based on res judicata established through an earlier settlement. However, in dicta, the court stated that because rights of publicity are treated as separate property under Civil Code Section 3344.1, they are not community property of the marriage, as an exception the community property presumption set forth in Family Code Section 760.

The 3rd District Court of Appeal addressed the division of various employment benefits in *In re Marriage of Moore*, 226 Cal. App. 4th 92 (2014). The trial court properly reserved jurisdiction to value a community property retiree medical reimbursement plan, and to characterize and value sick leave benefits at a later date, where the anticipated retirement was not too distant. The community value of the medical reimbursement plan was too speculative at the time of trial because husband had not yet retired, was continuing to earn a separate property interest in the plan, and the benefits paid would depend in part on the amounts of future claims for medical expenses he would incur.

Accrued sick leave benefits are separate property when taken and used by the employee spouse post-separation but before retirement, but community if instead paid out as a retirement benefit. However, accrued vacation pay was a community asset that should be valued and divided, since it could be cashed out upon retirement and could not be forfeited.

Support, Custody and Domestic Violence

There were also several appellate cases addressing issues of support, custody and domestic violence in 2014.

In *In re Marriage of Williamson*, 226 Cal. App. 4th 1303 (2014), the 2nd District addressed support issues in a case involving parties whose living expenses had been financed by the largess of one spouse's wealthy family. Gifts from the husband's parents during marriage were treated as advancements against the husband's future inheritance, were irregular, and were made upon request depending upon need. Following the parties' separation, the parents stopped making gifts altogether, with no indication they would resume.

The court held that the gifts were not loans, and should not be treated as income available for support. The trial court was not required to impute income as a result of husband's rent-free living in his parents' home pending distribution of proceeds from the sale of the family residence. The court also approved the trial court's setting of spousal support far below the marital standard of living, given the lack of ongoing gifts. In addition, the court held that the trial court properly limited discovery into the husband's family trust based on privacy interests of third-party trust co-beneficiaries.

In *In re Marriage of J.Q. and T.B.*, 223 Cal. App. 4th 687 (2014), the 4th District Court of Appeal held that a trial court has jurisdiction to award spousal support under the Domestic Violence Prevention Act before concluding domestic violence occurred, pending the resolution of an application for a domestic violence restraining order.

In *In re Marriage of Fajota*, 230 Cal. App. 4th 1487 (2014), the 4th District reversed a child custody ruling, where the trial court did not first apply the Family Code Section 3044 presumption that it is detrimental to the best interest of the child to award joint or sole physical custody to a parent found to have perpetrated any act of domestic violence against the other parent in the preceding five years. The Section 3044 presumption applies where there is a finding that a party engaged in acts of domestic violence, even where the court denied the requested restraining order based upon the acts of domestic violence. The presumption is triggered by the finding that a parent has perpetrated domestic violence, not the issuance of a restraining order.

In *Helgestad v. Vargas*, 2014 DJDAR 15436 (Nov. 18, 2014), the 4th District addressed an issue of first impression regarding child support. Where unmarried parents subject to paternity and child support orders cohabit during an unsuccessful attempt to reconcile their relationship, the child support payor may be entitled to credits for expenses she or he paid directly on the child's behalf during the period of reconciliation.

In another important child support case, the 2nd District approved a trial court's decision to decline to enforce a 15-year-old child support order where the recipient had "unclean hands." *In re Marriage of Boswell*, 225 Cal. App. 4th 1172 (2014). Two months after gaining custody of the children following the parties' divorce, the mother absconded with and hid the children from the father for 15 years of their minority, returning to "give" custody of the younger child at age 16 to father, who then raised the child to majority.

In *In re Marriage of Rosenfeld and Gross*, 225 Cal. App. 4th 478 (2014), the 2nd District also addressed an issue of adult child support. The court held that a mother could seek to modify a requirement that she equally share in an adult child's college expenses, an obligation set forth in the parties' marital settlement agreement and judgment, based on the mother's decreased income and father's increased income. The court held, as a matter of first impression, that where parties agree to provide adult child support, a court will have the authority to modify that support obligation based on changed circumstances, unless the parties specifically state in their stipulated agreement that the obligation is nonmodifiable.

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