

Helgestad v. Vargas

The first line of a work can often leave an indelible mark: “*It was the best of times, it was the worst of times...*” (A Tale of Two Cities); “*Call Me Ishmael*” (Moby Dick). Family law practitioners can now inscribe the first line of *Helgestad v. Vargas* with indelible ink: “**Family Law is not getting any easier.**”

In a case of first impression in California, the Court considered the following scenario: A couple lived together and have two children. They do not marry. They thereafter separate. The couple agree to a paternity action judgment which establishes the father’s paternity, his right to visitation, and fixes a monthly monetary child support payment to be made to the mother, who will have primary physical custody of the children. Later, the couple attempt a reconciliation; father moves into the residence of the children and the mother. After approximately nine months, the reconciliation fails, and father moves out. Question: Can father obtain credit for actual child support he afforded the children in the home during the nine months he lived with them and the mother? The trial court determined the answer was no, that the father was not eligible for such credits, but the court of appeal reversed and remanded, holding that the father was not categorically ineligible for equitable credit because allowing such credit would not constitute a retroactive modification (Fam. Code section 3651, subd. C.1) and was consistent with public policy in applying case law regardless of marital status and encouraging attempt at reconciliation. (Fam. Code section 3020, subdivision b, 3900). The Court determined that on remand, father would have the burden of proof to show that he actually provided support to the children while living in their mother’s home.

The opinion acknowledges that three distinct lines of California case law shed light on the problem of whether *Jackson credits* [allowing credit for a child support order in a marital dissolution proceeding where the parties reconcile and live together] may be available in paternity cases involving a reconciliation. After an exhaustive, extensive citation of authorities, the court determines that “Struggling through this thicket is largely a matter of elimination.” The result is an equitable allowance of the credit, with a remand to the trial court placing the burden of proof on the father seeking the credit.

A long opinion, a case of first impression, and worth reading even beyond the stunning first sentence!

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