

*Kevin Q. v. Lauren W.*

The Elkins Report, and its implementing statutory amendments, have an immediate impact on the recipe of ingredients concerning awards of attorney's fees. Since *Family Code* Sections 2030 and 2032 contain new standards of procedure and substance, any case which provides additional judicial gloss to Section 2032, commands our attention. *Kevin Q.* is such a case.

Lauren W. and Kevin Q. were involved in litigation to establish Kevin's paternity of Lauren's son under the Uniform Parentage Act ("UPA"). The trial court denied Lauren's motion for a court order requiring Kevin to pay her outstanding legal fees totaling \$227,746. Lauren had paid her attorney a total of \$28,280, which included payment of \$15,600 made by her father. Lauren claimed that she owed her father "tens of thousands of dollars." She maintained in her Income and Expense Declaration that she had no income and that her father had loaned her money to pay for her living expenses. The trial court applied *Family Code* Section 2032, Subsection (b), and considered the practicality of the expense of litigation with the parties' overall financial resources. Upon finding that neither party had a substantially greater ability to pay the other's fees, the court denied Lauren's motion.

The Court of Appeal affirmed. In doing so, the appellate court held that the trial court ruling was proper in relying on the standards and circumstances pertinent under Section 2032, instead of having to rely on *Family Code* Sections 7605 and 7640, which govern attorney's fees under the UPA. Even though Section 2032 applies only to marital dissolution proceedings, the Court of Appeal held that reliance on that provision was appropriate where there was no published case law on Section 7605, and that Lauren had directed the court's attention to Sections 2030 and 2032. Both Section 2032 and Section 7605 focus on the parties' needs and respective abilities to pay, but Section 2032 alone gives the court guidance on how to make a comparative analysis. Accordingly, the court was able to perform a more thorough evaluation of the parties' respective abilities to pay attorney's fees.

Further, the Court of Appeal held, in reliance on *In re Marriage of Alter* (2009) 171 Cal.App.4th 718 2009 [2009 Cal. Fam Law Monthly 97 (April 2009)], that payments made by Lauren's father constituted income to her and affected her ability to pay attorney's fees. In *Alter*, the Court of Appeal held that recurring gifts of money could be considered income for purposes of child support. The husband in *Alter*, seeking a reduction of an existing child support order, had received regular monthly payments from his mother for many years. Like the husband in *Alter*, Lauren received regular monetary infusions from her father over a lengthy period of time, which relieved her of the need to work outside the home. Such "monetary gifts" constituted income to Lauren. Thus, the trial court did not abuse its discretion by considering those gifts to be income for purposes of calculating Lauren's ability to pay her attorney's fees, echoing the holding in *Marriage of Alter* that the gifts were regular and periodic and bore a reasonable

relationship to the traditional meaning of income as a recurrent monetary benefit. Her request for fees and costs was denied.

Counsel need to be aware of a powerful weapon provided in *Family Code* Section 2032, Subsection (d), as amended effective January 1, 2011. When representing the supported spouse in a high asset case, it is recommended that counsel consider making a noticed motion in the beginning of the case, alleging that the case “involves complex or substantial issues of fact or law.” Under *Family Code* Section 2032, the supported spouse can ask the Court to “determine the appropriate equitable allocation of attorney’s fees, court costs, expert fees, and consultant fees between the parties.” In addition, the moving party can request that a referee be appointed to “oversee the allocation of fees and costs.” Such a motion may significantly level the economic playing field for the parties. If the motion is granted, the supported spouse will receive the necessary attorney, expert, and witness fees and costs to litigate the case on an economic parity with the spouse having the higher earnings.

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