CALIFORNIA Family Law Monthly

In re Marriage of E.U. v. J.E.

Over the years, there have been a number of instances where clients or counsel refer to the "Art of War," the ancient Chinese military treatise attributed to Sun Tzu. It is commonly known to be the definitive work on military strategy and tactics of its time. While armed conflict may seem far from the boundaries of California, reality tells us that the United States has been at war since 9/11. Military deployment means soldiers are called away from home to active duty; families are separated; children left behind.

The California Legislature dealt with the disruptive effect of active military deployment when it enacted *Family Code* Section 3047, which deals with interruption of custody and visitation orders by reason of a party's activation to military duty or temporary duty, mobilization in support of combat or other military operation or military deployment out of the state. The statute has been amended several times since its enactment in 2005.

In *Marriage of E.U. and J.E.*, the Court of Appeal reversed a trial court ruling which had incorrectly implemented the provisions of Section 3047. The appellate tribunal determined that a trial court may conduct a limited inquiry prior to reinstating custody pursuant to a prior order after a military deployment; however, absent a *prima facie* showing of detriment to the child, reinstatement of custody and visitation in accord with the prior order should be substantially automatic. The timing considerations between statutory reinstatement of the prior custody order versus a current 730 evaluation dealing with continuity and stability of the minor children are discussed in the opinion. This issue is directly addressed in the newly amended version of Section 3047, effective January 1, 2013, which provides that the trial court may not order a 730 evaluation upon the military member's return from deployment "unless the party opposing reversion of the order makes a *prima facie* showing that reversion is not in the best interests of the child." The Court of Appeal acknowledged the latest amendment to the statute but declined to apply it in this case, finding that, contrary to the Legislature's statement that the amendment was intended to "clarify" existing statutory provisions, the amendment contained substantive changes which should be applied only prospectively.

It is difficult enough to be uprooted from one's family on active military deployment. Reversion to pre-deployment status quickly upon return is the goal of Section 3047. The numerous amendments during the past several years illustrate the sensitive complexities of a soldier's return to a divided family. Automatic reversion and reinstatement on the one hand, and stability and continuity for the minor child on the other, are often in conflict. Those who serve their country on active military deployment deserve added clarity and certainty to ease their return, as do the minor children whose well-being remains primary.

Perhaps we would all be better served if, instead of turning to "The Art of War" in our handling of cases, we focused on Conflict Resolution and Peacemaking texts and resources.