

Parker v. Harbert

Court congestion, delayed justice, disobedience of applicable rules, an increasing tsunami of *pro per* litigants, economic stresses, all form a dispiriting part of the current judicial landscape. Part of the reaction to this strained system is the judicial response to the imposition of sanctions. *Parker v. Harbert* shows how, after a decade of litigating child custody and visitation, after a 13 day trial, the Court of Appeal affirmed a trial court award of \$87,000 of sanctions against husband-father, in addition to \$92,000 in attorney's fees and costs as sanctions pursuant to *Family Code* Section 271.

The Court of Appeal opinion held that sanctioned conduct need not be determined to be frivolous under Section 271, that the imposition of sanctions did not violate father's constitutional rights, and re-emphasized the mandate of Section 271 to award attorney's fees and costs as a sanction based "on the extent to which the conduct of each party or attorney furthers or frustrates the policy of the law to promote settlement of litigation and ... reduce the cost of litigation by encouraging cooperation between parties and attorneys."

Parker v. Harbert should be viewed in the context of other current appellate cases imposing sanctions based on disfavored litigation conduct, including *Falcone v. Fyke* (2012) 203 Cal.App.4th 964 and *In re Marriage of Hofer* (2012) 208 Cal.App.4th 454. In addition to an increased (and welcome) willingness of the judiciary to impose sanctions, control of counsel and litigants by bench officers is an increasingly requested refrain from family law commentators [see Kirkland "It's Not Entirely Our Fault" 2012 California Family Law Monthly, page 385 (December 2012)].

It is true that the factual scenarios in *Parker v. Harbert*, *Falcone v. Fyke* and *In re Marriage of Hofer*, involve egregious litigation conduct. Less egregious conduct, including lack of civility, frustration of settlement, constant unjustified attempts at delay, and conscious failure to abide by court rules and time limitations, all contribute to congestion in the courts and compromise judicial administration. If these cases signal an increased willingness of the bench to enforce the rules by the imposition of sanctions, the administration of justice will be enhanced. Counsel and litigants who follow the rules will benefit; counsel and litigants who flout the rules will do so at their peril.

MARSHALL S. ZOLLA