

In re Marriage of Tharp (2010) ___ Cal. App.4th ___
(No. F057696)

Family law litigants desire and deserve a level playing field. Reality tells us the playing field is often not level, due to an imbalance in wealth, education, age, risk tolerance; the list could go on and on. The judicial officer is supposed to be the leveling instrumentality, assuring the parties of impartial neutrality and economic parity. What happens where this leveling influence does not occur? What are the consequences for the parties [and our system of justice] when the playing field is placed at an unacceptable angle, where the slanted slope is so tilted that the trial judge falls off the track? Thank goodness for an appellate court reversal of an egregious abuse of trial court discretion. As the court pointedly observed: "...this litigation is out of control." Here, now, is *Marriage of Tharp*. A lesson for bench and bar alike.

Rich, controlling husband, running most expenses through the wealthy family corporation. Three minor children. Wife a homemaker, seeking financial information... and custody of the children. Husband falsely represented that a signed Premarital Agreement existed. He repeatedly disobeyed orders re discovery and support. He changed counsel. Therapist appointed by court had undisclosed ties to husband's family. The trial court ignored the findings of the discovery referee in denying wife's request for attorney's fees. Get the picture? Heard enough? The errant trial judge was reversed for disparaging wife's discovery efforts taken pursuant to a case management order, for failing to follow the discovery referee's recommendations that he had been aided by wife's efforts, for failing to halt husband's continuous efforts to thwart discovery and in failing to award fees as sanctions pursuant to *Family Code* Sections 271 and 2107(c), as interpreted in *Feldman*.

That wasn't quite enough. The appellate court, on remand, directed that the case be transferred to another judicial officer, finding ample justification under *Code of Civil Procedure* Section 170.1(a)(6)(A)(iii) that the words and conduct of the trial judge created sufficient doubt that he would be able to be impartial on remand. And there's more. On remand, the trial court was ordered to award sanctions against husband pursuant to *Family Code* Sections 271 and 2107, considering husband's dilatory tactics and lack of full fiduciary disclosure.

Perhaps it's not too much to hope that *Tharp* will give trial judges impetus (they already have the power) to put some teeth into the statutory mandate and more often award allowable fees and sanctions to halt and deter the type of obfuscating, evasive, dilatory tactics seen on a regular basis in family law litigation. As the opinion observed: "Somewhere along the line, litigation must cease." It didn't happen here because the family court throughout the case failed to sanction husband's conduct appropriately. Where there's *Tharp*, there's hope. Amen!

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