

## *Guardianship of Vaughan*

The intersection of family law and probate court jurisdiction seems to appear with increasing frequency. When custodial disputes require minor children to be placed with non-parents, questions of guardianship often enter the picture and are governed by overlapping and cross-referenced provisions of the Probate Code and the Family Code [*Probate Code* sections 1510(a), 1514(a)(b) and *Family Code* sections 3041(c)(d)]. Thus, sections of the two Codes often need to be harmonized. This is *Guardianship of Vaughan*.

*Family Code* Section 3041(d) contains a rebuttable presumption that a “stable placement” with a non-parent, as referenced in section 3041(c), is in the child’s best interest and removal to parental custody would be detrimental to the child. The appellate court held in *Vaughan* that the stable placement provision of section 3041(c) is not dependent on a finding of parental abandonment. The court reviews and quotes at length from a recent opinion of the California Supreme Court in *Guardianship of Ann S* (2009) 45 Cal.4th 1110, summarizing the law dealing with probate guardianships. Emphasis is placed on the point that *Probate Code* section 1514(b) specifies that appointment of a guardian for minor children is governed by sections 3020 and 3040 of the *Family Code*. Thus, under *Family Code* 3041(d), a showing of de facto parent status with stable placement of a child creates a rebuttable presumption that it would be detrimental to place the child in the custody of a parent, and that the best interest of the child requires non parental custody unless the presumption is rebutted by a preponderance of the evidence to the contrary.

Broadening the discussion, the opinion notes the significant differences between probate guardianships [initiated by private parties, not the state] and dependency proceedings [initiated by the state with the necessity to establish proof of specific statutory grounds demonstrating substantial risk of harm to the child].

Apart from guardianships, there are many crucial crossover issues involving Family Law and Probate, including Prenuptial Agreements, Marital Property (Postnuptial) Agreements, the intersection of ATRO’s and Estate Planning during a marital dissolution proceeding, as well as the impact of divorce on existing estate planning documents. Careful, concerned and competent counsel must be aware of these nuanced issues. *Vaughan* serves and should be noted as a timely reminder of the important crossovers between the two disciplines.

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