

*In re Marriage of Stupp and Schilders*

There seem to be an increasing number of post-judgment disputes reaching the Court of Appeal. Here, approximately a year after entry of a stipulated judgment, while an appeal was pending, husband sought a number of orders, including an order for his ex-wife to undergo an examination by a Vocational Training Counselor, under and pursuant to Family Code section 4331, which the trial court granted. In reversing, the Court of Appeal determined that the trial court erred in ordering a vocational exam, holding that no good cause existed (section 4331(b)) because there was no support-related controversy before the family court at the time the order was made.

Vocational exams are often sought for the legitimate purpose of establishing that the spouse seeking support is capable of work, is unemployed or underemployed, and to establish earning capacity. Such a motion is also used on occasion as a tactic to intimidate the other spouse. The text in section 4331 provides that the “focus” of the examination is “an assessment of the party’s ability to obtain employment that would allow the party to maintain herself or himself at the marital standard of living.” The Court of Appeal opined that there can exist no good cause for a vocational examination under section 4331 if the examination is not relevant to a determination of support. Thus, in this case, where there was no support-related motion pending, there existed no good cause to order a post-judgment vocational examination.

In considering the risk and benefit of seeking a vocational examination, where circumstances permit, care should be given to specifying the scope of the exam, admissibility of the report, permission or not to contact collaterals, protection of any applicable privileges, and, of course, the qualifications and experience of the evaluator. Vocational examinations can be an important piece of evidence, where appropriate and where properly drafted.

MARSHALL S. ZOLLA