

*N.S. v. D.M.*

Family Code 3452, under the UCCJEA, and Family Code section 7605, under the Uniform Parentage Act, are not statutes we encounter with regularity. Section 3452 is a prevailing party statute which covers an award of necessary and reasonable expenses, including costs, communication expenses, attorneys fees, travel expenses and other costs incident to jurisdictional and enforcement disputes. Section 7605 under the UPA deals with attorney's fees and access to representation in a non-marital setting involving minor children.

In this case, there were child custody proceedings in Santa Clara County, concurrent proceedings in Illinois, transfer of the California case to the trial court in San Diego. The Court of Appeal held that Mother was not entitled to an order for attorneys fees and costs under Family Code section 3452 (a), because the California–Illinois dispute was a jurisdictional issue, not an enforcement issue within the ambit of section 3452 of the UCCJEA. Section 3452 was held inapplicable.

How about recovery under section 7605(a)? Here the court held Mother may be entitled to fees and costs under the fee-shifting provisions of 7605 in both an initial proceeding to establish custody or visitation under the UPA and in any subsequent proceeding after entry of judgment. Both Illinois and California fees could be recovered if Mother could prove both were necessary and reasonable and if the proceedings were determined to be “related” as that term is used in section 7605.. The trial court's denial of fees in this regard was vacated and the case remanded for a need and ability determination.

Even with less than familiar statutes and less than clear precedent, admirable perseverance in testing trial court discretion proved well worth the effort in this case. Good lesson for us all.

MARSHALL S. ZOLLA