

## *In re Marriage of Morton*

One may legitimately wonder why it is necessary to slog through a 61 page opinion, part published, the majority of which is not. Nevertheless, there is something here for everyone. Be certain to check Footnote 1 on Page 1 to be certain to separate the published portions of the opinion from those segments ordered not published.

The published parts of this opinion address issues related to determining income available for child support and an award of attorney's fees under Family Code section 2030. The unpublished parts of the opinion deal with interesting issues concerning characterization of husband's interest in his father's business, miscellaneous issues regarding calculation of child support, inclusion of federal income tax refunds for the calculation of spousal support, voluntary contributions to a 401(k) plan and health savings account, and miscellaneous subsidiary issues.

Chief take-aways from the published portion of the opinion involve child support, where the Appellate Court determined that Husband's income tax refunds and voluntary 401(k) contributions constituted income available for child support. With respect to attorneys fees, the Court found that the 2010 Amendment to Family Code section 2030 modified the statute to make findings with respect to an attorney fee award mandatory, rather than the previously permissive standard. The *Morton* Court held that the Legislature imposed limitations on trial court discretion and it is no longer accurate to refer to broad discretion when describing a trial court's responsibilities under section 2030, as currently in effect. On a "novel question" of statutory interpretation, the Court concluded that a trial court must make *explicit* findings on the issues listed in section 2030(a)(2). Findings regarding disparity of income and an ability-to-pay analysis are mandatory under the requirements of section 2030(a)(2).

Many of our cases involve separate or community property characterization of a business interest. This section of the opinion was ordered non-published and thus non-citable, but its discussion of characterization, i.e., was transfer of the interest a gift, whether or not consideration existed, credibility of the forensic accountant who testified, discussion of the concept of a remuneratory gift (meaning the transfer was voluntary and without consideration but the transfer is regarded as remunerative for services rendered and the property characterized as community). The Appellate Court affirmed the trial court's ruling that the ownership interest transferred from father to husband was a gift and constituted husband's separate property.

Whether or not this type of lengthy judicial opinion, only partially published, serves a greater judicial purpose than resolving the marital dispute between the contesting parties, is open for continuing debate. In any event, the *Morton* opinion, in all its byzantine length, is on the books for review and reference.

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