

PROFESSIONAL LIABILITY UPDATE

August 29, 2005

Issue No. 224

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LIABILITY TO A LITIGATION ADVERSARY

California Law

By Jessica B. Rudin

In re Marriage of Dupre (2005) 127 Cal.App.4th 1517 (rev. denied 7/13/05)

The Third District holds that a petitioner need not establish that a report of child abuse was false prior to seeking sanctions against an attorney under Family Code Section 3027.1

A father of an eight-year old daughter accused his former wife of failing to protect their daughter from sexual molestation and abuse. He informed his attorney, Christopher Peterson, that his daughter had reported being molested by the daughter of her mother's live-in boyfriend. The mother denied that any molestation occurred.

Mr. Peterson initiated an *ex parte* hearing to determine custody on behalf of his client where he repeated the facts he learned from his client and asserted that the mother had permitted and failed to protect her child from child abuse. The mother's custody and visitation with her daughter was suspended temporarily. Family Court Services determined no molestation had occurred. Within eight days of the initial *ex parte* hearing, the Court adopted the FCS report. It then issued a mandatory OSC to determine whether sanctions under Family Code § 3027.1, which permits a court to impose sanctions against any person who makes a knowingly false accusation

of child abuse, should be imposed against Mr. Peterson.

Mr. Peterson succeeded in persuading the court to dismiss the OSC based on his assertion that a determination of falsity in the underlying temporary custody proceeding was a prerequisite for the OSC. The mother appealed.

The Court of Appeal held that a finding of falsity in the underlying temporary custody proceeding was not a prerequisite for seeking sanctions under Family Code § 3027.1. To hold otherwise would render the specific authority for an OSC found in that statute superfluous.

Comment: An attorney can face potential liability to a litigation adversary in the form of sanctions when presenting allegations of child abuse. Attorneys should proceed with caution when presented with such allegations, as an exonerated adversary is more than likely to seek sanctions against counsel

regardless of the good faith of counsel. Sanctions, which can include the attorney's fees incurred in defending against an allegation of abuse, historically have not been covered by errors and omissions insurance.

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