

COURT GUTS THE MANDATORY RETROACTIVE CHILD SUPPORT
STATUTE BY AN EXPANSIVE INTERPRETATION OF GOOD CAUSE

By Mitchell A. Jacobs and Robert Burch*

In a case of first impression, the court in *Bayes v. Leonard*, 2004 DJDAR 7192 (Sixth District), examined the meaning of the "good cause" requirement set forth in Family Code Section 3653(b). This statute states that if an order modifying or terminating child support is entered due to the unemployment of either party, absent good cause the order must be made retroactive to the later of the date of unemployment or date of service of the motion. The Bayes court held that determining good cause requires a balancing of the interests of children in receiving sufficient support and the burden on the supporting parent resulting from a denial of retroactivity, with the primary focus being to ensure that the children receive fair, timely and sufficient support.

In Bayes, Mark Leonard and Leslie Bayes divorced after nine years of marriage. Mark paid Leslie \$2,223 per month in child support for their two minor children, ages 16 and 15, pursuant to a stipulation that required the payments to start in December 2002.

In January 2003, Mark was laid off from his job as a

software salesman. That same month he filed a motion seeking to reduce his child support obligation and to make the new child support order retroactive to the date his motion to modify was served on Leslie, pursuant to Family Code Section 3563(b).

Prior to Mark's termination, his company had been making layoffs for over six months. According to Mark, the high tech field had been devastated and his chances of getting re-hired by his company or by another company in that field were very poor. Mark testified that because of the conditions in the high tech field he decided to begin a new career as the owner and operator of a Subway sandwich shop, a venture that would provide profit of only \$10,000 in the first year, but would provide a more stable income over time.

Mark's gross income in 2002 was \$15,742 per month. However his gross income in January and May of 2003 was \$8,700 and \$1,480, respectively. Mark's monthly expenses in January and June of 2003 were \$7,655 and \$7,505, respectively, including the sum of \$850 per month that Mark was voluntarily paying for the college tuition of the parties' elder daughter. Finally, Mark owned real and personal property with a combined value of \$620,000, including a one-half interest in a sailboat and stocks, bonds and other liquid assets of \$55,000.

In contrast Leslie had a gross income of approximately \$900

per month and expenses of \$4,638 per month, including \$183 per month in educational expenses for the two minor children. The only asset owned by Leslie was equity in her residence of approximately \$175,000.

On August 1, 2004, the court granted Mark's motion to modify child support, ordering child support to be reduced from \$2,223 per month to \$423 per month. However, the court denied Mark's request that the child support order be made retroactive to the date of service of his motion. Mark filed alternative motions for new trial; for reconsideration or to vacate the Court's order denying retroactivity.

The court denied Mark's alternative motions. In denying the motions the court set forth four reasons for denying retroactivity: 1) that the order made was equitable to both parties; 2) the reasoning in *In Re Marriage of Padilla* (1995) 38 CA4th 1212; 3) Mark's "other resources"; and 4) evaluation of the needs of the children.

On appeal, the Bayes court first identified the standard of review for orders denying a retroactive child support order. The court found that such an order is reviewed under an abuse of discretion standard, but that this deferential standard is tempered by the uniform child support guidelines, which limit a trial court's discretion by requiring that the court not "ignore

or contravene the purpose of the law regarding child support.”

Turning to Section 3653(b), the Bayes court noted that it was not aware of any cases either discussing the statute generally or analyzing its “good cause” requirement for retroactivity. The court commented that while there were numerous examples in the Family Code where the concept of good cause has been adopted, in “nearly all instances” there is no decisional authority construing “good cause.”

The Bayes court identified only one case construing a Family Code statute which included the concept of good cause. In *Marriage of Drake* (1997) 53 CA4th 1139, the court concluded that there was good cause to require security for a 71 year old father’s future child support payments for his adult disabled child. The Drake court held that good cause existed under Family Code Section 4012 despite the father having never missed a payment of child support because there existed “concerns” about the ability of the father’s estate to pay child support following the father’s death.

The Bayes court found that aside from the focal point of good cause resting with the court’s concern that the child would continue to receive support, the Drake decision was of little assistance in interpreting the good cause requirement in Section 3653(b). The court, therefore, turned to decisional authority

outside the Family Code.

The Bayes court discussed cases dealing with unemployment insurance statutes and wrongful termination actions. In those areas, the courts held that good cause turned on an evaluation of "real circumstances, substantial reasons and objective conditions" including a balancing of the competing interests of the parties involved.

Applying these cases to Family Code Section 3653(b), the Bayes court held that good cause under Family Code section 3653(b) requires the court to make a good-faith finding that non-retroactivity is justified by "real circumstances, substantial reasons and objective conditions."

The court held that in making this determination, there must be an evaluation of the children's needs and the potential hardship resulting to them from a retroactive modification of child support. This factor must be balanced against the interest of the supporting parent not to be faced with an unjust and unreasonable financial burden, including an evaluation of the supporting parent's "financial resources" and ability to pay child support during the period of retroactivity.

In balancing these competing interests the Bayes court held that the primary focus must be to ensure that children receive fair, timely and sufficient support since the fundamental

purpose of the Family Code is to place the children's needs as the first priority. Hence, where retroactivity would result in demonstrable hardship to the children, good cause would exist to deny retroactivity where the supporting parent has the financial ability to bear that burden.

Applying these principles to the trial court's decision in *Bayes*, the court found that there existed good cause to deny retroactive support. The court cited the fact that during the period of retroactivity Leslie's expenses exceeded her income; Mark's lifestyle was significantly higher than Leslie's; Mark had \$676,000 in assets; and that if a retroactive order were granted the children would not receive child support for 5 months due to the credit towards child future support that Mark would receive under a retroactive order. In light of these circumstances, the court found that the minor children would have suffered significantly from a retroactive support order and hence good cause existed for the denial of retroactivity.

In conclusion, the *Bayes* court's decision is very significant because it is the first case to examine the meaning of good cause under Family Code Section 3653(b). In addition, other than a very limited discussion of good cause in *Marriage of Drake*, the *Bayes* court is the first court to analyze the concept of good cause as it is used in the Family Code. As

discussed in Bayes, the concept of good cause has been adopted throughout the Family Code. It is evident from the reasoning set forth in Bayes that interpretations of good cause in Family Code statutes will rely heavily on what is in the best interests of children.

This author does not believe the Bayes decision was correctly decided. Although the Family Code places a heavy emphasis on ensuring adequate child support, the Bayes court did not give any consideration to the purpose of Family Code Section 3653(b) in reaching its decision. By requiring retroactive child support in cases of modification due to unemployment, the Legislature clearly intended to lessen the burdens a supporting parent incurs upon loss of his or her job.

The Bayes expansive interpretation of "good cause" guts the remedy the Legislature was intending to offer to unemployed parents. It would have been more appropriate for the court to allow retroactivity, but lessen its impact by imputing Mark with a reasonable rate of return on the \$620,000 in assets he held. Such an approach would have balanced the interests of children in receiving sufficient support without ignoring the Legislature's efforts to assist unemployed parents.

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