

9/16/82

First Supplement to Memorandum 82-87

Subject: New Topics

One additional topic has been suggested for Commission study by Judge Donald B. King of the San Francisco Superior Court: "The problem arises on a motion to quash for lack of personal jurisdiction when there is also pending an order to show cause for temporary support and other matters. If the motion to quash is denied, the respondent has no ability to participate in the order to show cause hearing at which temporary support and other matters may be fixed, because by doing so a general appearance is made. In family law, it seems to me that this is inappropriate. I believe there should be a procedure where the respondent in a family law action can use the special appearance to also participate in the hearing on orders to show cause as long as there is an appeal pending at the time of the order to show cause or undertaken within the appropriate time. Otherwise, the orders made under the order to show cause become due and, pursuant to the Civil Code, cannot be modified retroactively any further back than the filing of a motion for modification once an appeal has been completed. The whole case may be over by then."

See Judge King's letter attached for additional discussion of this suggestion. This problem does not appear to be within the Commission's authorized topics. Perhaps the Commission should request authority to study the topic of "family law"; our present authorization is to study "community property."

Respectfully submitted,

John H. Demouilly
Executive Secretary

Superior Court of California

San Francisco



DONALD B. KING, JUDGE

February 23, 1982

Mr. John H. DeMouilly
Executive Secretary
California Law Revision Commission
Stanford Law School
Stanford, California 94305

Dear Mr. DeMouilly:

I am writing to you to suggest an area to which the Law Revision Commission should extend its consideration. It is a subject peculiar to family law because of the fact that the court in a family law action can have jurisdiction as to one or more matters, i.e., marital status, child custody, etc., and not have jurisdiction as to other matters such as the ability to enter a money judgment against the respondent.

The problem arises on a motion to quash for lack of personal jurisdiction when there is also pending an order to show cause for temporary support and other matters. If the motion to quash is denied, the respondent has no ability to participate in the order to show cause hearing at which temporary support and other matters may be fixed, because by doing so a general appearance is made. In family law, it seems to me that this is inappropriate. I believe there should be a procedure where the respondent in a family law action can use the special appearance to also participate in the hearing on orders to show cause as long as there is an appeal pending at the time of the order to show cause or undertaken within the appropriate time. Otherwise, the orders made under the order to show cause become due and, pursuant to the Civil Code, cannot be modified retroactively any further back than the filing of a motion for modification once an appeal has been completed. The whole case may be over by then.

I have had several Iranian cases lately and the allegations of the wives at the time of the order to show cause (which is unopposed because the husband's motion to quash it had been denied and is being appealed) were presented with evidence of significant income based upon the income and expense declaration of the wives, which under our Uniform Bay Area rules are considered as received in evidence. I have felt very uncomfortable making such orders when there have been references in the motion to quash about poor economic circumstances on the part of the husband.

Mr. John DeMouilly

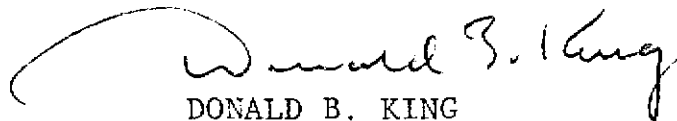
2

February 23, 1982

It seems to me in an equitable proceeding, especially one to terminate a marriage, that it is inappropriate to preclude someone from participating in an order to show cause hearing to set temporary support and making other financial orders because their motion to quash was denied. They cannot participate, pending the outcome of their appeal, without having made a general appearance. It does seem to me that the Law Revision Commission might take a look at this problem as it exists in family law cases.

Best wishes.

Very truly yours,

A handwritten signature in cursive script, reading "Donald B. King". The signature is written in dark ink and is positioned above the printed name and title.

DONALD B. KING
Judge of the Superior Court

DBK:rjm