

SUCHERMAN • INSALACO LLP

ATTORNEYS

SAN FRANCISCO OFFICE
101 MISSION STREET, SUITE 1640
SAN FRANCISCO CA 94105

EAST BAY OFFICE
3569 MT. DIABLO BLVD, SUITE 220
LAFAYETTE CA 94549

TELEPHONE (415) 357-5050
FACSIMILE (415) 357-5051
www.Sucherman-Insalaco.com

MICHELENE INSALACO *

JANET SIMMONDS
PARTNER
SASHA FAHIMI
SENIOR ASSOCIATE
DIANE NGUYEN
ASSOCIATE
TOM EBERHART
PARALEGAL

LOWELL H. SUCHERMAN *†

* CERTIFIED SPECIALIST - FAMILY LAW
(STATE BAR OF CALIF Bd OF LEGAL SPECIALIZATION)
† FELLOW AMERICAN AND INTERNATIONAL ACADEMIES
OF MATRIMONIAL LAWYERS
‡ AMERICAN COLLEGE OF FAMILY TRIAL LAWYERS

May 29, 2018

The Honorable Jim Humes
The Honorable Sandra Margulies
The Honorable Robert L. Dondero
Court of Appeal, First Appellate District, Division One
350 McAllister Street
San Francisco, CA 94102-7421

**Re: In re Marriage of Turnbaugh
Case No. A149615 & A151080**

Dear Presiding Justice Humes and Associate Justices Dondero and Margulies:

I represent Jeffrey Turnbaugh in the above-mentioned appeal. On May 24, 2018 the Court issued an opinion affirming the trial court's decision, determining, among other things, that Mr. Turnbaugh was a prevailing party within the meaning of Family Code section 3652. This section permits a trial court to award attorney fees to the prevailing party in litigation involving support. I am writing to respectfully request that the opinion be partially published, relating to the issue of prevailing party fee awards.

Rule 8.1105(c) of the California Rules of Court lays out the grounds for publication of appellate decisions. The Turnbaugh opinion qualifies under subdivision (c)(4) because, with respect to defining which party is the prevailing party in cases wherein a party seeks to modify support, it "advances a new interpretation, clarification, criticism, or construction of a provision of a constitution, statute, ordinance, or court rule." (Cal. Rules of Court, rule 8.1105(c)(4).)

Family Code section 3652 permits a trial court to award fees to a prevailing party but without defining that term. Counsel has located no published cases in California that discuss the definition of prevailing party in the context of section 3652. In the appellate briefing, counsel were required to rely on and cite to cases from outside the family law setting, involving other prevailing party fee statutes. The *Turnbaugh* opinion discusses precisely this point, and so would provide much needed guidance to family law parties and practitioners.

Note that the prevailing party analysis is unique in family law, because most support decisions involve numerous sub-issues, and hence mixed results. For example, one party may prevail in having income imputed to the other, while the other party may attain a more favorable division of child support add-ons. The *Turnbaugh* opinion again discusses precisely this point, and again provides much needed guidance.

The Turnbaugh opinion further qualifies for publication under subdivision (c)(3) of rule 8.1105, because it “[m]odifies, explains, or criticizes with reasons given, an existing rule of law.” (Cal. Rules of Court, rule 8.1105(c)(3).) This opinion cites supporting cases on the subject of the awarding of attorney’s fees, including *Galan v. Wolfriver Holding Corp.* (2000) 80 Cal.App.4th 1124, and *Gilbert v. National Enquirer, Inc.* (1997) 55 Cal.App.4th 1273. Furthermore, this Court restated the practicality approach used in *Heather Farms Homeowners Assn.* (1994) 21 Cal.App.4th 1568. In sum, this Court explained that these cases all allowed for the recovery of attorney’s fees based on “whether the party seeking the attorney fees had achieved its *main litigation objective*.” (Op. at p. 16, emphasis added.) This Court then applied this clearer standard to the case at bar, and noted that, despite her minor victories during litigation, appellant “had *largely failed* in her intensive efforts . . .” to modify the support order. (Op. at p. 16, emphasis added.) Thus the Court affirmed that respondent was the overarching prevailing party, and he had achieved his main litigation objectives. This better explains an existing rule of law.

In sum, the Turnbaugh opinion, if published, would be the first citable case on the important issue of prevailing party fee awards under section 3652.

Best regards,

Micheline Insalaco

cc: (Via e-mail)
Jeffrey Turnbaugh
Robert Roth