

Parents Can't Submit Issue of Child Support to Binding ADR

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In *re Marriage of Bereznak*, 110 Cal.App.4th 1062 (2003), held that parties in family-law proceedings cannot agree to submit child-support disputes to binding arbitration. The court held that such agreements were void as against public policy to the extent that they restrict the court's jurisdiction over child support, because children have the right to have the court determine all matters regarding their welfare and cannot be deprived of that right by their parents' agreement.

In November 1999, the trial court held a hearing on Bradley Bereznak's post-judgment request to modify his child-support obligation. In January 2000, the court filed its order after a hearing on Bereznak's request.

This order included a requirement, stipulated to by Bereznak and his former wife, Susan Heminger, that the parties would submit any future modification of child support to binding arbitration conducted by Sherrol Cassidy. The

Bereznak's ability to pay support.

After sending this letter, Bereznak again contacted Cassidy to request that she arbitrate another request to reduce child support.

Ten days after receiving Bereznak's letter dated April 5, 2002, Cassidy replied to Bereznak, stating that she had considered his claims but that she would not change her decision. On April 22, 2002, Heminger filed a petition to confirm the arbitrator's award. On July 22, 2002, Bereznak filed an opposition to the petition to confirm the award and filed a petition to vacate or correct the award.

Bereznak's petition argued that the arbitrator exceeded her powers in issuing her decision. He further argued that the arbitrator failed to disclose grounds for her disqualification and that the arbitrator's misconduct substantially prejudiced his rights. On Sept. 9, 2002, the trial court granted Heminger's request to confirm the arbitration award but stayed the ruling pending the hearing on Bereznak's petition.

On Sept. 20, 2002, the court filed an

However, Bereznak argued that his April 5, 2002, letter to the arbitrator requesting that she reconsider and modify the award constituted an application for correction of the award under Code of Civil Procedure Section 1284 and that, because this application was pending, Code of Civil Procedure Section 1288.6 prevented Heminger from filing a request to confirm that award.

The court dismissed Bereznak's contentions on factual grounds, citing the fact that Bereznak's letter did not request a correction of the award and did not mention Section 1284.

The court considered Bereznak's argument that the stipulation to arbitrate child-support issues was void as against public policy. The court agreed with Bereznak that the agreement to arbitrate support was legally ineffective.

The court held that, although a strong public policy favoring settlement of family-law disputes exists, such agreements are void as against public policy to the extent that they restrict the court's jurisdiction over child support. The court reasoned that children have the right to have the court hear and determine all matters regarding their welfare and that parties cannot agree to deprive their children of this protection.

The court held that the trial court should have dismissed both Heminger's petition to confirm and Bereznak's petition to vacate the arbitration award because of the limited review allowed under the arbitration statutes. Code of Civil Procedure Section 1285 et seq.

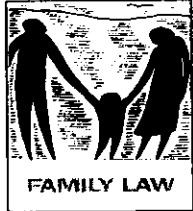
The court suggested that the proper procedure would have been for Bereznak to request that the court exercise its continuing jurisdiction over child support by seeking independent review of the arbitration award.

Because the parties did not request independent review of the arbitration award and the trial court confirmed the award solely on the legal and equitable grounds raised by the parties without considering the underlying merits of the child-support issue, the court reversed the trial court's Sept. 20, 2002, order and remanded the matter to the trial court with instructions to dismiss both petitions.

Bereznak is significant because it prevents parties from using binding arbitration to resolve their child-support disputes. The court, however, complimented the parties' efforts to resolve their dispute in a "cost-effective and efficient manner." The court also suggested that mediation and nonbinding arbitration are acceptable methods of resolving child-support disputes.

When discussing the strong public policy favoring settlement of family-law disputes, the court approved of the parties using "a third party to help them settle future disputes." The court further stated that the agreement to arbitrate was not "wholly void" because the parties did not try to deprive their children of support or otherwise compromise their parental obligations to support their children.

The objection of the court was to the parties attempting to bind the court to a decision reached out of court without allowing the court the ability to review such an award in order to determine whether the children's interests were protected. Other methods of dispute resolution appear to be acceptable.



The court held that children have the right to judicial determination of matters regarding their welfare and can't be deprived of that right by their parents.

court reserved jurisdiction only to appoint a new arbitrator should Cassidy be unable or unwilling to serve as arbitrator.

In March 2000, Bereznak contacted Cassidy regarding a further request to reduce his child-support obligation. Cassidy served as a mediator, and the parties stipulated to a reduction of Bereznak's child-support obligation.

During the mediation, Bereznak learned that Cassidy was the wife of Dr. Matt Sullivan, who had acted as a special master for the parties in a 1993-94 dispute.

In January 2001, Bereznak contacted Cassidy to request an additional reduction in child support. The matter went to arbitration, which resulted in an award of child support arrearages to Heminger and a determination of child support based on Bereznak's earning capacity.

On April 5, 2002, one week after the ruling, Bereznak sent Cassidy a letter requesting that she immediately reconsider and modify her decision on the grounds that the January 2000 order did not allow for imputation of income and that the arbitration decision reflected erroneous factual assumptions regarding

order denying Bereznak's petition, finding that the petition was untimely, that Bereznak had waived his right to disqualify the arbitrator and that no grounds to disqualify the arbitrator existed. The court also rejected Bereznak's argument that stipulations to arbitrate child-support issues are void as against public policy.

In rejecting Bereznak's argument regarding the stipulation to arbitrate, the court cited decisions from other jurisdictions upholding agreements to submit child-support disputes to binding arbitration. The court further noted that the parties' agreement did not limit child support and did not provide inadequate protection for their children.

Finally, the court observed that Bereznak was an attorney, who understood the benefits and disadvantages of arbitration but nevertheless agreed to arbitration without any judicial review.

The court also found inappropriate Bereznak's attempt to get "two bites at the apple," citing the fact that he had accepted arbitration for two years and did not object until an unfavorable ruling.

On Bereznak's appeal, the *Bereznak* court treated the Sept. 20, 2002, order as a judgment and considered the merits of Bereznak's appeal. Bereznak's first contention was that the trial court erred by finding Heminger's petition to confirm the arbitration award timely and his petition to vacate and or correct the award untimely. The court held that, under Code of Civil Procedure Sections 1288.2 and 1288.4, Heminger's petition was timely and Bereznak's petition was untimely.

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