[ms-0404.009.006.001]

FILED
Robert D. Zumwalt, Clerk
JUN 28 1978
BY R. PRICE, Deputy

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO

SHIRLEY ANN FAESSEL, Plaintiff, vs. JOHN L. FAESSEL, et al., Defendants.	)	No. 414296 MEMORANDUM OPINION

This matter came on for hearing on May 24, 1978, in Department 3 of the Superior Court, the Family Law and Motion Department, on petitioner's order to show cause, both parties being present; petitioner Shirley M. Faessel being represented by her attorney, Michael A. Clark, and respondent represented by his attorney, Thomas Ashworth III.

At the hearing, declarations of the parties and attorneys were submitted and filed with the Court. In addition thereto, points and authorities were filed on behalf of both parties.

Following oral argument the matter was taken under submission by the Court to determine the issue of whether or not the

Court has jurisdiction to grant to petitioner a pendente lite order for temporary support. Petitioner has heretofore prior to this hearing filed a complaint seeking relief re breach of contract, specific performance, quasi-contract, etc. (numerous other actions other than a cause of action under the Family Law Act). Respondent at the time of this hearing has not filed an answer to the aforementioned complaint.

Petitioner alleges that the petitioner and respondent have lived together as husband and wife for approximately six years and that there is an agreement for the division of assets acquired during said relationship.

Respondent admits living with petitioner for six years but denies any agreement re the division of assets and further alleges that he informed the petitioner that he was disillusioned in the status of matrimony.

Petitioner and respondent never participated in a marriage ceremony of any kind nor were any children born to or during said relationship.

The issue to be resolved is whether the Court has jurisdiction to award temporary support to one party of a meretricious or nonmarital relationship, pending the judgment and outcome of a lawsuit, in the absence of an agreement and/or absence of a marriage ceremony and/or the absence of children born to said relationship.

As of this date the Court is unaware of any appellate decisions on said issue; however, several trial courts have considered the same and their decisions are in conflict.

In 1976 the Supreme Court of this State decided the case of Marvin v. Marvin, 18 Cal.3d 660, wherein the property rights of parties to a meretricious or nonmarital relationship were considered and defined.

At the time of the Marvin decision, the appellate courts were in conflict as to whether or not such a person had a right to interest in property acquired during such a relationship. One line of cases such as In re Cary, 34 Cal.App.3d 345 decided in 1973, held the Family Law Act (Code of Civil Procedure 4000) was applicable to custody of children born to a couple who lived in a nonmarital relationship without the benefit of matrimony, and said case further required an equal division of property acquired by said couple during said relationship. The Estate of Atherley, 44 Cal.App.3d 758 (1975), followed the ruling of Cary in theory and rationale.

On the other hand, another district court of appeal decided Beckman v. Mayhew, 49 Cal.App.3d 529 (1975), and refused to follow Cary and Atherley and held that such a spouse could not recover any of the assets acquired during the nonmarital or meretricious relationship, except in the case of an express agreement to pool funds, or in the absence of an agreement that said spouse contributed funds toward the acquiring of said property. The Mayhew case followed the lead of the earlier cases of Vallera v. Vallera, 21 Cal.2d 681 (1943); and Keene v. Keene, 57 Cal.2d 657 (1962). It must be noted that none of the foregoing cases decided dealt directly with the issue of whether or not the court had jurisdiction in such cases to award a pendente lite order for temporary support. The Marvin case disapproved

and rejected the reasoning set forth in Cary and held that the Family Law Act did not apply to a meretricious or a nonmarital relationship.

> "No language in the Family Law Act addresses the property rights of nonmarital partners, and nothing in the legislative history of the act suggests that the Legislature considered that subject. The delineation of the rights of nonmarital partners before 1970 had been fixed entirely by judicial decision; we see no reason to believe that the Legislature, by enacting the Family Law Act, intended to change that state of affairs." Marvin, supra at p. 681.

However, Marvin did not recognize that if a party to such a relationship does have certain rights, they may be protected, and therefore rejected the views of Vallera and Keene and Mayhew.

> "We conclude that the judicial barriers that may stand in the way of a policy based upon the fulfillment of the reasonable expectations of the parties to a nonmarital relationship should be removed." Marvin, supra at p. 684.

Marvin did not decide the issue of temporary support, but did mention same in a footnote.

> "We do not pass upon the question whether, in the absence of an express or implied contractual obligation, a party to a nonmarital relationship is entitled to support payments from the other party after the relationship terminates." Marvin, supra at p. 685, fn. 26.

Civil Code Section 4359 (part of the Family Law Act) provides:

> "During the pendency of any proceeding under Title 2 (commencing with Section 4400) or Title 3 (commencing with Section 4500) of this part, upon application of either party in the manner provided by Section 527 of the Code of Civil Procedure, the superior court may issue ex parte orders (1) restraining any person from transferring, encumbering, hypothecating, concealing, or in any way disposing of any property real or personal, whether community, quasi-community, or separate, except in the usual course of business or for the

> necessities of life, and if such order is directed against a party, requiring him to notify the other party of any proposed extraordinary expenditures and to account to the court for all such extraordinary expenditures; (2) enjoining any party from molesting or disturbing the peace of the other party <u>or any person under the care, custody, or control of the other party</u>; (3) excluding either party from the family dwelling or from the dwelling of the other upon a showing that physical or emotional harm would otherwise result, as provided in Section 5102; and (4) determining the temporary custody of any minor children of the marriage."

The cause of action of the petitioner is based on contract and other civil cause of action and not on an allegation of marriage nor child support nor child custody.

The rights of the parties to a lawsuit are not determined by the face of the pleadings which are filed in said action, but rather by the relief granted pursuant to a judgment which comes after a hearing on the merits generally. See Code of Civil Procedure Section 577:

> "A judgment is the final determination of the rights of the parties in an action or proceeding."

This Court, in light of <u>Marvin v. Marvin</u>, holds that the Family Law Act is not applicable in the case at bar.

If the Court were to grant petitioner's motion for temporary support, it would be taking respondent's property without due process of law and in essence respondent would be faced with paying over his property without a decision on the merits of this lawsuit.

> Example: Suppose, as in this case, the Court were to grant petitioner's motion for temporary support pendente lite based merely on the pleadings and declarations filed herein, prior to a determination on the merits of petitioner's claim. Then, after the trial, the Court should find on behalf of respondent, i.e., no agreement, and that respondent was

entitled to retain all of said property as his separate property, the Court would have granted to petitioner respondent's property without a prior decision in said suit.

Such a result would be that respondent would have paid over his property to petitioner before due process and/or trial of the matter on its merits.

For the foregoing reasons, the Court finds that it is without jurisdiction in such a case as the one at bar to grant petitioner any orders for temporary support and said matter is transferred to the Civil Law and Motion Department of this Court.

Dated: June 28, 1978.

EARL B. GILLIAM

Judge of the Superior Court

Wife By Pact Fails In Suit For Support

By BILL OTT
Staff Writer, The San Diego Union

Six years ago, Shirley and John began living together as husband and wife, but without actually being married.

It was all under terms of an oral agreement in which the couple allegedly consented to project themselves to the community, friends, business associates and relatives as John L. and Shirley Ann Faessel, with Shirley agreeing to take the last name of Faessel in the relationship.

Faessel is a dentist and owner of two clinics here.

On March 28, the relationship fell apart.

Shirley — who claims she was forced out of the home at 1630 Mimulus Way, La Jolla — filed suit in Superior Court for temporary support pending a settlement of community property.

But Judge Earl B. Gilliam yesterday declined to grant temporary support pending a trial, saying the relationship between Shirley and John did not fall within the state's Family Law Act, under which such support can be granted pending property settlement.

Gilliam did, however, transfer the dispute to the court's civil department, where it is now headed for trial as a breach of contract suit for damages.

Attorney Thomas Ashworth, representing John Faessel, told the court to grant temporary support would amount to awarding damages before a civil dispute goes to trial.

Shirley Ann is represented by attorneys Michael Clark and Robert Wood. Wood said Gilliam's ruling would be appealed.

Shirley Ann said in her suit that she entered into an oral agreement with Faessel in December 1969.

Under terms of the agreement, she contends, she agreed to:

— Cohabitate with John L. Faessel and to hold out herself and Faessel as husband and wife to their friends, neighbors and acquaintances, business associates, and relatives.

— Take the name of Faessel as her own.

— Adopt the lifestyle of Faessel and travel with him.

— Raise and nurture his children from a former marriage.

— Be his companion, homemaker, housekeeper and cook.

— Provide services to his business enterprises as administrator and manager.

(Continued on B-2, Col. 3)

Thursday, May 25, 1978

Wife By Pact Denied Support

(Continued from Page B-1)

— Pool her earnings with his under community property laws. Shirley Ann also alleges that under the oral agreement upon ceasing to live with Faessel, the real and personal property acquired by their joint efforts would be equally divided.

She says in her suit that on March 28 Faessel breached their oral agreement by "forcibly ejecting" her from the house, failing to give her support and refusing to return her separate property.

A spokesman at Faessel's clinic said yesterday he was unavailable for comment and is on an extended leave of absence.

Gilliam's decision is in contrast to two earlier rulings by Superior Court Judge Norbert Ehrenfreund, who has granted temporary support to non-wives.

Ehrenfreund, in his decisions, noted the state Supreme Court left the question of temporary support open in the landmark case involving Michelle Triada and actor Lee Marvin.

Shirley Ann's attorneys refused to reveal yesterday where she could be reached for comment.

DRAFT - Judge Gilliam/af
June 5, 1978

In Re the Marriage of	)	
	)	
Petitioner: SHIRLEY ANN FAESSEL	)	Case No. 414296
	)	
Respondent: JOHN L. FAESSEL	)	MEMORANDUM OPINION
	)	
	)	

This matter came on pursuant to a motion by petitioner seeking temporary support from respondent. The matter was heard on Wednesday, May 24, 1978, petitioner appearing in person and with her attorney, Michael Clark, and respondent appearing personally and through his attorney, Thomas Ashworth.

At said hearing declarations were submitted by the respective parties and oral arguments were also heard.

The facts basically were that petitioner and respondent resided together for approximately the last six years. Petitioner further alleges by way of complaint and declarations that the parties hereto lived as husband and wife and further that respondent and petitioner have an agreement for the division of certain assets which were acquired during the course of said relationship.

Respondent admits in said declarations that he and the petitioner have lived together for approximately six years but denies that there was ever any agreement, but further alleges that he was disillusioned in the status of matrimony and never intended to have such a relationship.

The parties hereto never married and never entered into any type of marital ceremony.

the ct has juri

The issue involved in the case is whether or not there is jurisdiction to award temporary support to a woman who had lived with a man for six years in the absence of an agreement wherein he is to pay support on a temporary basis and/or the absence of a marriage ceremony.

The Family Law Act, Chapter 480 of the Code of Civil Procedure, provides that a spouse has a duty and raesponsibility to support the other spouse of a marital relationship and further provides that one party to a marriage may bring an action seeking support based on a ten-day lite order pursuant to an order to show cause. The Family Law Act also provides that the alleged father of the child may be ordered to pay support to the mother of said child for the support of said child or expected child prior to an adjudication as to whether or not the alleged father is the father of the child. Based on the foregoing, the law provides for temporary support in cases where the law declares an obligation and duty.

In the Marvin v. Marvin, _____ (19__) case the Supreme Court of the State of California held that a nonspouse in a similar situation as the case at bar had a right to sue and recover from another nonspouse interest in properties acquired during said relationship pursuant to (1) an agreement either expressed or implied, (2) quasi contract, (3) trust either resulting or constructive, and it must be borne in mind that said case was the sustaining of the right of the nonspouse wife to sue said nonspouse husband and provided that the trial court must hear the evidence.

The Marvin theory came after numerous cases wherein a non-

spouse to a relationship which had none of the benefits of ceremony of marriage was precluded from any type of recovery of property against the other nonspouse except in exceptional circumstances wherein the prosecuting nonspouse had a duty and responsibility to show by clear and convincing evidence (1) contribution, (2) value of services, (3) agreements. Finally, in the case of In Re Cray, _____ (19__), one district court of appeal ruled that the nonspouse in such a relationship would have a right to recover, and, even without the clear and convincing evidence of the doctrine previously set forth in addition thereto, Cray also held that said nonspouse was entitled to temporary support.

As of this date the Court is unaware of any appellate decision reference the issue of temporary support for such a nonspouse. However, some trial courts in Los Angeles and another trial court in this jurisdiction have considered the issue and there appears to be a conflict.

There are no statutes in the state that the Court is aware of wherein a stranger may look to another stranger for temporary support and/or temporary payments pending the outcome of the judgment on the merits of a lawsuit except where there is either a spousal, parental, or a childlike relationship between the parties of the lawsuit. It would seem that to grant a nonspouse temporary support in such a case as at bar may well mean taking the property of said respondent without due process. That is to say that a plaintiff or petitioner in a lawsuit could make allegations setting forth either an agreement or some kind of relationship by way of declaration and in an order to show cause hearing get an order wherein

either the defendant or respondent in said lawsuit immediately must pay assets or monthly contributions over to said petitioner or plaintiff. Later, after adjudication on the merits of said lawsuit, the Court finds no contract or on behalf of said defendant the defendant would be in the position of having parted with his assets without due process.

Perhaps the appellate courts or the legislature may see fit to determine that the state has an interest in the type of relationship which we are herein concerned with, and that under the right left to the state to protect the welfare of its citizens such a petitioner as herein would be given the right to seek temporary support. Further, since there is no formal ceremony, that is,such as a marriage, perhaps declarations of two or more parties setting forth knowledge of a party's other than the parties of the lawsuit of the relationship of the parties would give the Court jurisdiction to award temporary support.

Based on the foregoing reasons, the Court finds that it has no authority or jurisdiction to award temporary support to the herein petitioner and further finds that the matter is not a domestic relations matter and should be transferred to our civil department relative to the request for temporary orders of said petitioner.

Dated:_____

_____
Judge of the Superior Court

EG:af

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO

NUMBER	9:30 A.M.	2:00 P.M.	COURT CONVENES AT	REPORTER	CLERK
414296	9:00				

DATE	JUDGE	DEPT
WEDNESDAY, MAY 24, 1978	HON.	2

PETITIONER	ATTORNEY FOR PETITIONER
SHIRLEY ANN FAESSEL	MICHAEL CLARK
RESPONDENT	**ATTORNEY FOR RESPONDENT**
JOHN L. FAESSEL	T. ASHWORTH

PRESENT/NOT PRESENT

ISSUE OF JURISDICTION

10a

THE ABOVE MATTER CAME ON FOR HEARING THIS DATE WITH ABOVE APPEARANCES: AFTER HEARING THE COURT ORDERED THAT

☐ CUSTODY _____ CHILDREN TO PTNR. CUSTODY _____ CHILDREN TO RESP.

☐ VISITATION TO PTNR/RESP _____

☐ SUPPORT: CHILD $ _____ MO/WK/PER CHILD EFFECTIVE _____ THRU REV & REC.
SPOUSAL $ _____ MO/WK. PLUS $ _____ MO. SERVICE CHARGE.
PLUS $ _____ FILING FEE WITHIN 90 DAYS/WAIVED.

☐ REIMBURSEMENT OF $ _____ COUNTY COSTS FROM _____ PAYMENTS.

☐ POSSESSION OF: PTNR _____
RESP _____

☐ R/O: MUTUAL/PTNR/RESP/ANNOY/HARRASS/COMING ABOUT/NEW DEBTS/DISPOSE PROP/HEALTH INS/LIFE INS

☐ PAYMENTS: PETITIONER _____
RESPONDENT _____

☐ REFERRED TO PROB. OFF. FOR CUSTODY INVESTIGATION. PTNR/RESP TO PAY $ _____ FEE. REPORT DUE _____
HEARING DATE _____

☐ FEES $ _____ COSTS $ _____ @ $ _____ MO/WK BY PTNR/RESP.

☐ PTNR/RESP FOUND GUILTY OF _____ COUNTS OF CONTEMPT. SENTENCED TO _____ DAYS CUSTODY _____ DAYS EACH COUNT.
CONSECUTIVE/CONCURRENTLY. FINE $ _____ IMPOSITION OF SENTENCE SUSPENDED ON CONDITION: _____
☐ PTNR/RESP ORDERED TO PAY $ _____ MO/WK ON ARREARAGE OF $ _____

☐ B/W ISSUE. BAIL $ _____ HOLD SERVICE TO _____

☐ STIP ORDER _____ SEND ORDER TO OPPOSING COUNSEL FOR APPROVAL PRIOR TO PRESENTING TO COURT FOR SIGNATURE.

☐ B/W RECALLED OFF CALENDAR _____ CONT'D TO _____ M. ON _____ DEPT. _____

OTHER:

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MINUTES OF THE COURT

FORM D 25 CO. CLK. (4-76)

DRAFT - Judge Gilliam:af
6/23/78

NO._____

FAESSEL v. FAESSEL

MEMORANDUM OPINION

This matter came up for hearing on May 24, 1978 in Department 3 of the Superior Court, the Family Law and Motion Department, on petitioner's order to show cause, both parties being present; petitioner Shirley M. Faessel being represented by her attorney, Michael A. Clark, and respondent represented by his attorney, Thomas Ashworth III.

At the hearing,declarations of the parties and attorneys were submitted and filed with the Court. In addition thereto, points and authorities were filed on behalf of both parties.

Following oral argument the matter was taken under submission by the Court to determine the issue of whether or not the Court has jurisdiction to grant to petitioner a pendente lite order for temporary support. Petitioner has heretofore prior to this hearing filed a complaint seeking relief re breach of contract, specific performance, quasi-contract, etc. (numerous other actions other than a cause of action under the Family Law Act). Respondent at the time of this hearing has not filed an answer to the aforementioned complaint.

Petitioner alleges that the petitioner and respondent have lived together as husband and wife for approximately six years and that there is an agreement for the division of assets acquired during said relationship.

Respondent admits living with petitioner for six years but

denies any agreement re the division of assets and further alleges that he informed the petitioner that he was disillusioned in the status of matrimony.

Petitioner and respondent never participated in a marriage ceremony of any kind nor were any children born to or during said relationship.

The issue to be resolved is whether the Court has jurisdiction to award temporary support to one party of a meretricious or nonmarital relationship, pending the judgment and outcome of a lawsuit, in the absence of an agreement and/or absence of a marriage ceremony and/or the absence of children born to said relationship.

As of this date the Court is unaware of any appellate decisions on said issue, however several trial courts have considered the same and their decisions are in conflict, ~~there is a conflict on the point~~.

In 1976 the Supreme Court of this State decided the case of Marvin v. Marvin, 18 Cal.3d 660, wherein the property rights of parties to a meretricious or nonmarital relationship were considered and defined.

At the time of the Marvin decision the appellate courts were in conflict as to whether or not such a person ~~spouse~~ had a right to interest in property acquired during such a relationship. One line of cases such as In Re Cary, 34 Cal.App.3d 345 decided in 1973, held the the Family Law Act (Code of Civil Procedure 4000) was applicable to custody of children born to a couple who lived in a nonmarital relationship without the benefit of matrimony, and said case further required an equal division of property acquired by said couple during said relationship. The Estate of Atherly, 44 Cal.App.3d 758 (1975),

followed the ruling of Cary in theory and rationale.

On the other hand, another district court of appeal decided Beckman v. Mayhew, 49 Cal.App.3d 529 (1975), and refused to follow Cary and Atherley and held that such a spouse could not recover any of the assets acquired during the nonmarital or meretricious relationship, except in the case of an express agreement to pool funds, or in the absence of an agreement that said spouse contributed funds toward the acquiring of said property. The Mayhew case followed the lead of the earlier cases of Vallera v. Vallera, 21 Cal.2d 681 (1943); and Keene v. Keene, 57 Cal.2d 657 (1962). It must be noted that none of the foregoing cases decided dealt directly with the issue of whether or not the court had jurisdiction in such cases to award a pendente lite order for temporary support. The Marvin case disapproved and rejected the reasoning set forth in Cary and held that the Family Law Act did not apply to a meretricious or a nonmarital relationship.

> "No language in the Family Law Act addresses the property rights of nonmarital partners, and nothing in the legislative history of the act suggests that the Legislature considered that subject. The delineation of the rights of nonmarital partners before 1970 had been fixed entirely by judicial decision; we see no reason to believe that the Legislature, by enacting the Family Law Act, intended to change that state of affairs."

Marvin, supra at p. 681.

However, Marvin did not recognize that if a party to such a relationship does have certain rights, they may be protected, and therefore rejected the views of Vallera and Keene and Mayhew.

> "We conclude that the judicial barriers that may stand in the way of a policy based upon the fulfillment of the reasonable expectations of the parties to a nonmarital relationship should be removed."

Marvin, supra at p. 684.

Marvin did not decide the issue of temporary support, but did mention same in a footnote.

> "We do not pass upon the question whether, in the absence of an express or implied contractual obligation, a party to a nonmarital relationship is entitled to support payments from the other party after the relationship terminates."

Marvin, supra at p. 685, fn. 26.

Civil Code Section 4359 (part of the Family Law Act) provides:

> "During the pendency of any proceeding under Title 2 (commencing with Section 4400) or Title 3 (commencing with Section 4500) of this part, upon application of either party in the manner provided by Section 527 of the Code of Civil Procedure, the superior court may issue ex parte orders (1) restraining any person from transferring, encumbering, hypothecating, concealing, or in any way disposing of any property, real or personal, whether community, quasi-community, or separate, except in the usual course of business or for the necessities of life, and if such order is directed against a party, requiring him to notify the other party of any proposed extraordinary expenditures and to account to the court for all such extraordinary expenditures; (2) enjoining any party from molesting or disturbing the peace of the other party or any person under the care, custody, or control of the other party; (3) excluding either party from the family dwelling or from the dwelling of the other upon a showing that physical or emotional harm would otherwise result, as provided in Section 5102; and (4) determining the temporary custody of any minor children of the marriage."

The ~~xxxxxx~~ cause of action of the petitioner is based on contract and ~~xxxx~~ other civil cause of action and not on an allegation of marriage nor child support nor child custody.

Section 577 of the Code of Civil Procedure provides:

> "A judgment is the final determination of the rights of the parties in an action or proceeding."

This Court ~~follows~~ in light of Marvin v. Marvin and holds that the Family Law Act is not applicable in the case at bar.

If the Court were to grant petitioner's motion for temporary support it would be taking respondent's property without due process of law and in essence petitioner would be faced with paying over his property without a decision on the merits of this law suit. Example: Suppose one party to a lawsuit in a relationship files declarations and/or complaint setting forth an agreement, and based on said pleadings the Court ordered payments to the other party prior to judgment. Perhaps two or three years later at the time of the trial a person in respondent's position would prevail and a court deciding that petitioner was not entitled to anything, the result would be that respondent would have paid out his property without a trial on the merits.

For the foregoing reason, the Court finds that it is without jurisdiction in such a case as the one at bar to grant petitioner any orders for temporary support. and said matter is transfer the the general law & Motion department

Dated: _____

_____
Judge of the Superior Court

hence the rights of the parties.

Thus the rights of the parties to a law suit are not determined by the face of the pleading in action but rather by the ruling granted in a judgment which comes after a hearing on the merits.

See 577 of Code of CPP

Suppose as in this case pltff ct grants Pet ~~request~~ motion of tor/sup pet lite merely based on the pleading, & declarations, and prior to determination of the merits of Pet claims, ~~after~~ after the trial on the merits the ct shld find in behalf of Resp, in ~~the court would~~ no agreement and Resp is entitled to retain all of said property as his S/P. The ct would have granted Pet Resp property without ever prior decision on the merits of said law suit.

This matter came on for hearing on May 24, 1978 in Dept 3 of the Superior Ct, the Family Law & Motion Dept, on Pet. Order to show cause with both parties being present; the pet. Sh A Fass resp by his atty. and Resp responded by his atty - Ashmith

At the hearing declarations ~~were submitted and~~ file of the parties and atty were summitted and filed with the court. In addition thereto ~~the~~ P & A were filed in behalf of both parties.

Following oral argument the matter was taken under submission by the court. to determine if ct has juri to grant to P a temp/order for S/S. Pet has heretofore filed a compl seeking relief re Breach of Contract Sep/ Property, Quasi-K etc [numbered therein other than action under the family law act]. Resp at time of this hearing had not filed an ans

Pet alleges that ~~the~~ P & R have live together as H & W for apx 6 years, and that there is an agreement for the division of asset acquired during said relationship.

Res admitts living with Pet for 6 years but denies any such agreement re division of assets and further

alleges he informed P. of his disillusion in the status of matrimony

~~The pa~~ P & R ~~were~~ never participated in a marriage ceremony of any kind nor were any children born ~~of said~~ during said relationship.

The issue to be resolved is wh the ct has juri to a party to a non marital relationship is ~~entitled to and~~ an order for T/P pending the

wh the ct has juri to award T~~PP~~/S to one party of a non-marital relationship pending the outcome of a law suit in ~~such~~ a case such as

See Pag 2 of Dmgt

~~The issue at bar has been considered by several Tr/Cts in this State and the decisions have varied.~~

As of this date the cont is unaware of any appl decision re this issue however several Tr/Ct have made decisions and some are in conflict.

In 1976 the Sup Ct decided Marvin v Ma 18 C 3d 660 which considered the property rights of parties in a nonmarital relationship.

On the date of the Marvin decision Cal ~~app~~ Ct were in conflict as to wh in no such a spouse had right to interest in property acquired during such a relationship.

In re Cary, 34 Cal 3d 345 (1973) held the Family Law Act [§ 4800 of CCP] ~~governed~~ was applicable to custody of children born to a couple who lived in a non marital relationship without the benefit of marriage and further required an equal division of property acquired by said couple. Estate of Atherley, 44 Cal App 3 758 (1975) ~~follow~~ adopted the theory of Cary and followed its rationale.

~~Also~~

On the other hand another app/Ct decided Beckman v Meighan, 49 CA 3 529 (1975) refused to follow Cary and Atherley ~~but~~ and held that such a spouse could not recover any the assets acquired during such a marriage family relationship except if express agreement to pool funds or, in absence of agreement, she contributed funds toward the acquiring of said property. Valleau v Valleau, 21 Cal 2d 681 (1943); Keane v Keane 57 C 2 657 1966

~~Cary~~

It is ~~should be~~ noted none of the foregoing cases dealt directly with issue if such a pmtg is

This matter came on for hearing on May 24, 1978 pursuant to petitioner's OSC for a pendente lite order for temporary support. Petitioner appeared in person and then her atty Clark, and resp appeared personally with his atty Ashmath

Pet filed a petition and an empl declaration ~~setting forth~~ alleging that ~~parties~~ Pt & Res have resided as H & W, held themselves out as H & W for more than 6 years, further there was a agreement and other number c/a wherein Pet is entitled to share in the properties acquired by P during said 6 year relations

at the time of said hearing Resp has not answered the compl and as Pet stat by way of declaration admit said parties lived together for said period of time but denied there was any agreement and further alleges he was disillusioned in status of marriage and no such marital relationship was intended.

There are no allegations for the ~~Wherefore parties~~ to said action petition and children allege there was ever a marriage, ~~or~~ any other status except they lived together as H & W. There are no ~~allegations of children~~

There are no allegations of children being born to said relationship nor any allegations of a marriage or other status except that said parties lived together held themselves out as H & W.

entitle to temp / support
pendente lite.

Then came Marvin
which disapproved & rejected the
reasoning of Curry and held
FMLA not applying to such relationships
" No language

But Marvin did recognized
that such a party does have
certain rights to be protected
and also rejected the views of Vallera & Keene
May have ~~vacated~~

Marvin did not decide the
of temp S/S but dicta mentioned such
in a footnote at P.