

Executive Director
DEANNA (DEE) ROLEWICZ

President
DIANNE M. FETZER

Vice President
MICHELE BROWN

Treasurer
MARY MOLINARO

Secretary
COURTNEY SHEPARD

Past President
JILL L. BARR

Journal Editor
NAGHMEH BASHAR

Associate Journal Editor
STEPHEN MONTAGNA

Legislative Director
AVI LEVY

Associate Legislative Director
DORIE A. ROGERS

Technology Director
STEPHEN D. HAMILTON

Associate Technology Director
DAVID M. LEDERMAN

Education Director
SHERRY PETERSON

Membership and Benefits Director
KELLY CHANG RICKERT

Outreach Director
RICHARD KLIEVER

Regional Director
JASON M. SCHWARTZ

Chapter Director (1)
MELINDA SAMMIS

Associate Chapter Director (1)
HENRY LEWIS

Chapter Director (2)
FREDRICK S. (RICK) COHEN

Associate Chapter Director (2)
STEPHANIE L. WILLIAMS

Chapter Director (3)
CATHERINE GOODROW

Associate Chapter Director (3)
LISA MCCALL

Coordinating Director (1)
CHRISTOPHER MELCHER

Coordinating Director (2)
STERLING E. MYERS

Coordinating Director (3)
DIANE WASZNICKY

REPLY TO: Leslie Ellen Shear (lescfls@me.com)

December 26, 2018

Hon. Associate Justice Joan Irion
Hon. Associate Justice Cynthia Aaron
Associate Justice William Dato
Court of Appeal of the State of California,
Fourth Appellate District Division One

Re: *Lief v. Superior Court (Nissan)* D074947
Via Truefiling

Dear Justices:

The Association of Certified Family Law Specialists requests publication of this Court's opinion in *Lief v. Superior Court*. The opinion succinctly resolves two procedural questions that frequently cause confusion for the family law bar and bench – the automatic character of the Code Civ. Proc. §917.7 and the effect of a tentative decision in a family court.

When this decision was circulated amongst the members of the ACFLS amicus committee, we found that many of us had experienced trial courts and counsel mis-applying §917.7, including the commencement of the 30-day period. The family law bench has a rapid turnover, which means that the judge often has little or no experience with the automatic and discretionary stay of orders for removal of children from California.

We have observed confusion in family courts about whether a party must request orders for the stay, and whether a family law judge can deny a stay, shorten the duration of the stay or specify when the stay commences.

December 26, 2018
Fourth District Court of Appeal, Div. One
Re: *Lief v. Superior Court*
Page 2

We have also observed recurring confusion about the effect of an oral or written tentative decision where the statement of decision process will precede entry of a written order after hearing or judgment.

Publication of *Lief* would pair nicely with *Jane J. v. Superior Court* (2015) 237 Cal.App.4th 894 to clarify the application of Code of Civ. Proc. §917.7 and the role of tentative decisions in family law matters. The decision meets the criteria of Cal. Rules of Court, rule 8.1105(c)(3), (6) and (8), and will have significant value to the family law courts.

The prejudice caused by errors in the application of §917.7 is especially grave where it results in removal of children from the United States, and thus beyond the enforceable jurisdiction of the California courts. The U.S. is not party to any treaty for international recognition and enforcement of child custody orders, as it has not adopted the 1996 Hague Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children. Enforcement of U.S. child custody orders is discretionary in some nations, and prohibited in others. Even where the child is removed to a jurisdiction that is one of our partners under the 1980 Hague 1980 on the Civil Aspects of International Child Abduction, there are often formidable to insurmountable obstacles to securing prompt return of the child. Parents face similar obstacles when children are removed to Native American sovereign nations.

There is an 83-year-long unbroken line of California appellate authority requiring our courts to stay removal of children from California until all appellate remedies are exhausted beginning with *Foster v Superior Court* (1935) 4 C2d 125, 127. The progeny of *Foster* have applied this requirement in a broad range of situations. *Foster v. Foster (Foster II)* (1936) 5 Cal.2d 669, 671-72 (The Fosters returned to the Supreme Court again in 1936 after the trial court order now provided “Nothing herein contained shall have the effect of placing, or shall place, Whitney Foster beyond the operation of the process of the courts of the State of California prior to the final determination of this action.” The Supreme Court affirmed that ruling, noting that at that time, all custody orders were automatically stayed pending appeal under former Code Civ. Proc. §949, rendering the writ petition unnecessary.) *Huston v. Huston*

December 26, 2018
District Court of Appeal, Div. One
Re: *Lief v. Superior Court*
Page 3

(1948) 87 Cal.App.2d 8 (stay of order awarding custody to parent who had previously removed children from the state and thus court's jurisdiction and returned only with court order, and there was a risk that taking parent would do so again and deprive left-behind parent of appellate rights); *Lerner v. Superior Court* (1952) 38 Cal.2d 676, 684 (Granted writ of prohibition to restrain the Superior Court of from making any order which would permit temporary removal of child from the state prior to final determination of an appeal involving the custody of child); *Gantner v. Superior Court* (1952) 38 Cal.2d 688 (reversing order for visitation in Australia pending appeal); *Bender v. Superior Court* (1957) 152 Cal.App.2d 817 (jurisdiction lost because child taken to Philippines before writ petition filed); *Rude v. Rude* (1957) 148 Cal.App.2d 793 (denial of request of European father to keep children in Europe pending appeal); *Milne v. Goldstein* (1961) 194 Cal.App.2d 552 (orders for visitation in South Africa stayed pending appeal); *Denham v. Martina* (1962) 206 Cal.App.2d 30 (stay of orders changing custody to out-of-state parent pending appeal); *Foley v. Foley* (1963) 214 Cal.App.2d 802 (stay of orders changing custody to out-of-state parent pending appeal); *In re Manuel P.* (1989) 215 Cal.App.3d 48, 72 (failure to secure stay of orders transferring minor to Mexican authorities mooted appeal); *In re Adolfo M.* (1990) 225 Cal.App.3d 1225 (stay of juvenile court orders transferring minor to Mexican juvenile authorities pending appeal); *Zenide v. Superior Court* (1994) 22 Cal.App.4th 1287 (stay pending appeal of order recognizing and enforcing French custody orders awarding custody to left-behind parent in France); *In re Marriage of Abargil* (2003) 106 Cal.App.4th 1294, 1303-1304 (stay of removal to Israel granted pending appeal and remand) [1]; *Arce Gonzalez v. Gutierrez* (9th Cir. 2002) 311 F.3d 942, 948 (stay of Hague Abduction Convention return order granted pending appeal); *In re M.M.* (2007) 154 Cal.App.4th 897 (jurisdiction on appeal lost by minor's counsel's failure to secure stay of orders returning child to sovereign Indian nation pending appeal); *In re Karla C.* (2010) 186 Cal.App.4th 1236, 1260 FN 10 and FN 17 (dependency court placement of child with father in Peru stayed pending appeal then reversed to determine whether placement in Peru would preserve California jurisdiction); *J.M. v. G.H.* (2014) 228 Cal.App.4th 925 (relocation to Israel stayed pending appeal).

The Association of Certified Family Law Specialists (ACFLS) is a nonprofit, statewide bar association with 724 members certified by the State Bar of California, Board of Legal Specialization as family law specialists. Since its founding at the inception of the certification of family law specialists by the State Bar, ACFLS has played an active public policy role when

December 26, 2018
District Court of Appeal, Div. One
Re: *Lief v. Superior Court*
Page 4

the appellate courts, legislature and Judicial Council consider matters of significance to family courts, family court populations or the family law bar. ACFLS has appeared as amicus in many family law appellate cases, including cases where the organization's participation was invited by the appellate court. Its briefs have been cited in appellate opinions.

ACFLS has an active, all-volunteer amicus committee that reviews cases and makes recommendations to the Executive Committee and Board of Directors regarding letters in support of publication or de-publication of opinions, letters supporting or opposing California Supreme Court review, and amicus curiae briefs. ACFLS has appeared as amicus curiae in approximately 16 intermediate court of appeal and California Supreme Court cases. Lawyers and family court judges throughout California bring cases to the committee for consideration. The amicus committee includes all three lawyers in the state who are dual-certified as family law and appellate law specialists, as well as one of the state's foremost family law continuing education lecturers (Garrett C. Dailey) and the co-author of a major family law treatise (Dawn Gray).

Committee Co-Chair E. Steven Temko was recused from consideration of this matter as his office represents the petitioner.

Respectfully Submitted,



Leslie Ellen Shear, CFLS*, CALS*, IAFLç
Co-Chair, ACFLS Amicus Committee

*State Bar of California, Board of Legal Specialization

** International Academy of Family Lawyers