NEW YORK LAW SCHOOL

NYLS Law Review

Volume 66
Issue 1 *RBG Tribute*

Article 7

January 2022

In re Marriage of Mullonkal

Kirsten Kovats

VOLUME 66 | 2021/22

KIRSTEN KOVATS

In re Marriage of Mullonkal

66 N.Y.L. Sch. L. Rev. 97 (2021–2022)

ABOUT THE AUTHOR: Kirsten Kovats is the Editor-in-Chief of the 2021–2022 *New York Law School Law Review*, J.D. candidate, New York Law School, 2022.

A medical student and a mechanical engineer walked down the aisle.[1] They lived happily ever after. Until they didn't.[2] It is the common tale of modern-day unions.[3] Young adults vow to start a life together with dreams of having it all—each a fulfilling career and together a lasting love—only to learn (or finally admit) a few years later that they are not meant to be.[4] Worse than splitting up, they now must split their assets.[5] For newlyweds in California, that includes reinstating a spouse's school loans even though the debt was satisfied during the marriage.[6] This was a sound principle at the time of California Family Code section 2641's enactment,[7] when the "put hubby through" practice[8] was prevalent in America.[9] Contemporary findings of such circumstances confirm that the principle is sound.[10] But in the 2020 case of *In re Marriage of Mullonkal*, the California Court of Appeal permitted abuse

1. *In re* Marriage of Mullonkal, 265 Cal. Rptr. 3d 285, 288, 292 n.5 (Cal. Ct. App. 2020).

2. *Id.* at 288.

3. *See 48 Divorce Statistics Including Divorce Rate, Race, & Marriage Length*, It's Over Easy (Apr. 19, 2021), https://www.itsovereasy.com/insights/divorce-statistics ("[T]he younger one is when they get married, the more likely they are to ultimately get divorced."); Alison Bowen, *The Ups and Downs of Getting Divorced in Your 20s*, Chi. Trib. (Jan. 30, 2018), https://www.chicagotribune.com/lifestyles/sc-fam-divorce-in-20s-0213-story.html (reporting that young marriages typically end between the second and fifth anniversaries).

4. *See* Roni Caryn Rabin, *Millennials in No Rush to the Altar*, N.Y. Times, May 29, 2018, D4 (reporting that millennials want "more to marriage than just love").

5. California is a community property state; all real or personal property acquired during marriage belongs equally to each spouse. Cal. Fam. Code § 760 (Deering, LEXIS through ch. 4 of 2022 Reg. Sess.). Upon divorce, courts divide community property "equally." Fam. § 2550. *But see* James R. Ratner, *Distribution of Marital Assets in Community Property Jurisdictions: Equitable Doesn't Equal Equal*, 72 La. L. Rev. 21, 23 (2011) (describing judges as "reluctant to assign" a fifty-fifty meaning to community property).

6. *See* Fam. § 2641 (providing for reimbursement to one spouse for the other's educational expenditures unless doing so would be unjust).

7. The substance of section 2641 was first codified in Civil Code section 4800.3 in 1985. Cal. Civ. Code § 4800.3 (repealed 1994). Section 2641 took effect in 1994 and replaced section 4800.3 "without substantive change." Fam. § 2641; 23 Cal. L. Revision Comm'n, 1994 Family Code 9 (1993) [hereinafter 1994 Family Code].

8. The "put hubby through" practice garnered national attention prior to and throughout the 1980s. *See, e.g.*, Mahoney v. Mahoney, 453 A.2d 527, 535 & n.5 (N.J. 1982) (finding it common for a wife to be left shortly after funding her husband's higher education); O'Brien v. O'Brien, 489 N.E.2d 712, 714 (N.Y. 1985) (describing a wife left two months after her husband graduated from the medical school program that she financed).

   A spouse who was "putting hubby through" school was said to be "getting a Ph.T." Marvin M. Moore, *Should a Professional Degree Be Considered a Marital Asset Upon Divorce?*, 15 Akron L. Rev. 543, 543 (1982).

9. *See* 17 Cal. L. Revision Comm'n, *Recommendation Relating to Reimbursement of Educational Expenses*, *in* Recommendations Relating to Family Law 229, 233 (1983) [hereinafter CLRC, *Recommendation*] (responding to the "put hubby through" predicament).

10. *Cf. In re* Marriage of Weiner, 129 Cal. Rptr. 2d 288, 291–92 (Cal. Ct. App. 2003) (permitting reimbursement in an amount proportional to wife's contributions to husband's medical degree, less any benefits to her from its acquisition); Roosevelt v. Ray, 220 F.3d 1032, 1041 (9th Cir. 2000) (rejecting the notion that any funds put toward a spouse's education are "community funds" meriting reimbursement).

of that well-intentioned principle.[11] The result in effect forced a medical school graduate to repay her student loans not once, but twice.[12]

When Carolyn Mullonkal ("Carolyn") filed for divorce, the California Court of Appeal was asked to decide a matter of first impression: Does a trial court have discretion to deny reimbursement to the community for one spouse's educational expenses[13] if acquisition of that education was not the fruit of community efforts? In other words, if Carolyn worked to put herself through school and to support the community during her marriage to Sithaj Kodiyamplakkil ("Sithaj"), may the trial court deny Sithaj reimbursement for payments Carolyn made on her student loans while married?[14]

This Case Comment contends that the *Mullonkal* court erred when it held that Carolyn must reimburse Sithaj.[15] First, the court discounted section 2641's legislative history and applicable California precedent,[16] both of which demonstrate that the trial court considered proper criteria when it exercised its discretion to deny reimbursement.[17] Second, the court erred when it made a categorical rule out of the rebuttable presumption that a marriage does not "substantially benefit[]" from a spouse's education if it ends within ten years of its acquisition.[18] The court therefore failed to give due consideration to several benefits that Sithaj enjoyed during his nearly four-year marriage.[19]

Carolyn began repaying her student loans at the start of her medical residency in 2009, having borrowed roughly $120,000 to put herself through medical school.[20] She earned about $45,000 in salary at the time and moved home to live with her parents in Michigan while completing the program.[21] On August 27, 2011, Carolyn married Sithaj, whom she met in India.[22] For the next two or so years, everything about the pair remained separate: Sithaj lived in India, Carolyn lived in Michigan;

11. *See* 265 Cal. Rptr. 3d 285, 296 (Cal. Ct. App. 2020).

12. *Id.* at 297.

13. California's "reimbursement right" permits one spouse to recover money and other resources expended on the other's education if that education "substantially enhanced" the earning capacity of that other spouse. 1994 Family Code, *supra* note 7, at 292–93.

14. *See Mullonkal*, 265 Cal. Rptr. 3d at 288–89, 291–92.

15. *Id.* at 297.

16. *See* CLRC, *Recommendation*, *supra* note 9 (recommending reimbursement for spouses who put the other through school); *In re* Marriage of Sullivan, 691 P.2d 1020, 1022–23 (Cal. 1984) (considering whether wife's "economic sacrifices" merited reimbursement); *In re* Marriage of Slivka, 228 Cal. Rptr. 76, 77 (Cal. Ct. App. 1986) (considering whether wife's payment of husband's medical school expenses merited reimbursement).

17. *Mullonkal*, 265 Cal. Rptr. 3d at 296.

18. *See id.* at 296 (citing Fam. § 2641(c)(1)).

19. *Id.*; *see* discussion *infra* pp. 100–01, 113–15.

20. 265 Cal. Rptr. 3d at 289.

21. *Id.* at 288–89. Carolyn's parents also paid for her first year of medical school. *Id.* at 289.

22. *Id.* at 288.

Sithaj worked in mechanical engineering, Carolyn worked in medicine; Sithaj kept his own bank accounts and paid his own bills, Carolyn kept and paid hers.[23] Carolyn completed her residency in June 2012 and immediately went to work at a Michigan hospital.[24] She earned $225,000 annually but continued to live with her parents to save money and paid them for expenses as her budget permitted.[25]

In May 2013, Carolyn leased a two-bed, two-bath apartment in California for herself and Sithaj.[26] He joined her that July after she paid the legal and filing fees necessary for him to obtain a green card.[27] Sithaj was a business analyst with a mechanical engineering degree and thirteen years of work experience between India and the United States.[28] Yet Sithaj did not—and made no meaningful attempt to—work after the move, and his job-hunting façade came to a screeching halt when he let his green card, which gave him legal work status, "inexplicably" expire in 2015.[29] He lived off of Carolyn, who took a pay cut to work as an emergency room physician at a local hospital and paid all of the couple's expenses, including rent, utilities, auto, and food.[30] Sithaj "did not financially support [Carolyn] in any way,"[31] even though he held securities in excess of $100,000 and "stashed" money in bank accounts across India.[32] And when he received stock dividends, he deposited them into his personal bank account, to which Carolyn had no access.[33] Sithaj also took out loans totaling more than $150,000 prior to, during, and after his marriage, some of which he

23. *Id.* at 288, 292 n.5. The couple maintained separate bank accounts throughout their marriage. Respondent's Brief at 6, *Mullonkal*, 265 Cal. Rptr. 3d 285 (No. C085825).

24. 265 Cal. Rptr. 3d at 288.

25. *Id.* Carolyn paid a total of $75,000 to her parents and brother between September 2011 and July 2013. *Id.* at 289. Of that, $9,500 was to her brother: $9,000 to repay a loan and a $500 gift. *Id.* The remainder was to her parents for living expenses throughout her medical residency and for repair of their roof. *Id.* At times, she paid certain travel expenses for her parents, brother, and other family. *Id.*

26. *Id.* at 288; *see also* Respondent's Brief at 16, *supra* note 23 ("[T]he lease was in Carolyn's name alone.").

27. 265 Cal. Rptr. 3d at 288. A green card permits non-U.S. citizens to permanently work in the United States. *Green Card*, U.S. Citizenship & Immigr. Servs., https://www.uscis.gov/green-card (last visited Apr. 21, 2022). "Carolyn had to fill out forms stating he was her husband to allow him to come to the United States." Appellant's Opening Brief at 4, *Mullonkal*, 265 Cal. Rptr. 3d 285 (No. C085825).

28. Respondent's Brief, *supra* note 23, at 6–7; 265 Cal. Rptr. 3d at 292 n.5.

29. Respondent's Brief, *supra* note 23, at 15 ("[Sithaj] made no effort to restore his legal work status.").

30. 265 Cal. Rptr. 3d at 288–89; Respondent's Brief, *supra* note 23, at 6. Carolyn paid $1,200 a month in rent and leased a car for the couple for $350–$400 a month. 265 Cal. Rptr. 3d at 288.

31. 265 Cal. Rptr. 3d at 292 n.5; *see* Respondent's Brief, *supra* note 23, at 6, 8 (establishing Sithaj's intent to live off Carolyn).

32. Respondent's Brief, *supra* note 23, at 4–6 (adding that Sithaj held joint bank accounts with his father).

33. Appellant's Opening Brief, *supra* note 27, at 21.

managed to repay while married but from what source he was "unsure."[34] He never told Carolyn about any of his loans.[35]

The couple also took several vacations at Carolyn's expense.[36] In 2014, they went on a cruise,[37] took two trips to Hawaii,[38] and Sithaj made a three-month return to India.[39] That same year, Carolyn satisfied her institutional debt, began digging herself out of the debt owed to her parents,[40] and gave birth to the couple's first child for whom she was the sole provider.[41] In January 2015, she filed for divorce.[42] The trial court relied on the foregoing to deny Sithaj's request[43] for reimbursement of money Carolyn paid on her student loans,[44] holding that the remedy would be contrary to legislative intent[45] and unjust under subsection 2641(c).[46]

34. Appellant's Opening Brief, *supra* note 27, at 20, 22–23. Sithaj testified as follows: Prior to his marriage, he borrowed $100,000; during his marriage, in 2014, he borrowed $30,000 from his father and repaid that in full in May 2015, after separating from Carolyn; and between August 2014 and August 2015, he borrowed $24,000, also from his father. *Id.* at 22–23.

35. Appellant's Opening Brief, *supra* note 27, at 19.

36. *Mullonkal*, 265 Cal. Rptr. 3d at 289.

37. Carolyn also paid for her parents to join her and Sithaj on the cruise. *Id.*

38. They went to Hawaii in 2013 as well for Carolyn's work; she paid all costs not covered by her employer. *Id.*

39. *Id.* at 288 n.2, 289 (specifying that Carolyn paid for Sithaj to visit India for two-to-three months).

40. Carolyn owed more than $100,000 to her parents for her college education. *Id.* at 289. Beginning in 2014, she paid $2,000 a month until satisfying the debt with two installments, first in December 2014 for $48,080.37 and then in January 2015 for $60,000. *Id.* Not only did she tell Sithaj about all except the final installment, but she also "gave Sithaj access to all of her financial information whenever he requested it." *Id.*; Respondent's Brief, *supra* note 23, at 3, 6.

41. Respondent's Brief, *supra* note 23, at 21.

42. *Mullonkal*, 265 Cal. Rptr. 3d at 288. Carolyn paid for Sithaj to stay at their home while he looked for new living arrangements; ten months later, she voluntarily gave him $15,000 to help that effort but ultimately had to obtain a court order for him to reside elsewhere. Respondent's Brief, *supra* note 23.

43. For Sithaj's additional claims, see Respondent's Brief, *supra* note 23, at 3–5.

44. 265 Cal. Rptr. 3d at 289–90. Sithaj was awarded $10,000 in attorneys' fees. *Id.* at 289.

45. The trial court reasoned that the legislature intended to reimburse a working spouse who "devotes substantially all their time and work . . . to support the . . . community and . . . education of the student spouse." *Id.* at 294.

46. *Id.* at 290–91. Section 2641 provides, in part:

> (b) [U]pon dissolution of marriage . . . (1) The community shall be reimbursed for community contributions to education . . . of a party that substantially enhances the earning capacity of the party. . . . (c) The reimbursement . . . required by this section shall be reduced or modified to the extent circumstances render such a disposition unjust, including, but not limited to, any of the following: (1) The community has substantially benefited from the education, training, or loan incurred for the education or training of the party. There is a rebuttable presumption, affecting the burden of proof, that the community has not substantially benefited from community contributions to the education or training made less than 10 years before the commencement of the proceeding, and that the community has substantially benefited from community contributions to the education or training made more than 10 years before the commencement of the proceeding. . . .

Long before California became the first U.S. state to enact no-fault divorce as the exclusive means to "the end,"[47] its family courts exercised broad discretion over marital disputes to produce equitable results consistent with social change.[48] California courts gave expansive readings to statutory rigors that otherwise forbade divorce absent a showing of criteria[49] reminiscent of that which stalled Henry VIII's annulment during the pre-Reformation era.[50] In old England, canon law invalidated a union only if there were impediments attendant to its formation, such as a criminal act or incestual ties; this decree would strip from the female spouse her title as "lawful wife."[51] Likewise, in 1872, California passed fault divorce legislation limiting marital dissolution to situations in which one spouse charged that the other was a felon or guilty of, for example, "adultery"[52] or "extreme cruelty."[53] In response, the courts broadened the

---

Cal. Fam. Code § 2641 (Deering, LEXIS through ch. 14 of 2022 Reg. Sess.).

47. *See* Denese Ashbaugh Vlosky & Pamela A. Monroe, *The Effective Dates of No-Fault Divorce Laws in the 50 States*, 51 Fam. Rels. 317, 322 tbl.2 (2002). The term "no-fault divorce" is defined as "[a] divorce in which the parties are not required to prove fault or grounds beyond a showing of the irretrievable breakdown of the marriage or irreconcilable differences." *Divorce*, Black's Law Dictionary (11th ed. 2019).

48. *See* Herma Hill Kay & Carol Amyx, Marvin v. Marvin*: Preserving the Options*, 65 Cal. L. Rev. 937, 938 (1977) (pointing to California courts as leaders in recognizing that various family relationships exist); Howard A. Krom, *California's Divorce Law Reform: An Historical Analysis*, 1 Pac. L.J. 156, 156 (1970) (opining that California ended fault divorce because it was "outmoded and irrelevant").

49. *See* Meredith A. Nelson, *California Family Law Act*, 3 U. Mich. J.L. Reform 425, 427 (1970) (listing crime, "adultery," and "extreme cruelty" as bases for fault divorce prior to the 1970s).

50. *See* Paul J. Goda, *The Historical Evolution of the Concepts of Void and Voidable Marriages*, 7 J. Fam. L. 297, 297–98 (1967). Simply put, the mid-sixteenth century Reformation era symbolizes Europe's break from the Roman Catholic Church, led primarily by German Augustinian monk Martin Luther in defense of Protestantism. Jacob Wisse, *The Reformation*, *Essays*, *Heilbrunn Timeline of Art History*, *Learn with Us*, Met (Oct. 2002), https://www.metmuseum.org/toah/hd/refo/hd_refo.htm. King Henry VIII headed the Church of England after his break with the Roman Catholic Church for the pope's refusal to annul his first marriage. *Id.* (chronicling King Henry VIII's ascent).

51. Goda, *supra* note 50, at 298. Canon law was established by and evolved with the Church of Christianity in the early sixteenth century. Vivan A. Peterson, *The Development of the Canon Law Since 1500 A. D.*, 9 Church Hist. 235, 242–51 (1940). Rooted in tradition, discipline, and salvation, canon law governed nearly all legal disputes during pre-Reformation Europe. *Id.*; Wisse, *supra* note 50. At that time, Roman clergy courts (ecclesiastical courts) had exclusive jurisdiction over canonical, or relational, dissolutions, whereas the King's Court (temporal courts) typically had jurisdiction over disputes related to marital property rights. *See* Goda, *supra* note 50, at 298, 302, 304. Through a series of retreats from and returns to this dual system, English law, for which canon law was the framework when England broke from Rome, finally merged in the mid-sixteenth century to preside over both property and canonical disputes. *Id.* at 301.

52. Prior to California's enactment of Civil Code section 43.5 in 1939, acts of adultery also enabled the "alienated" spouse to state a claim for damages against "the other woman." Cal. Civ. Code § 43.5 (Deering, LEXIS through ch. 14 of 2022 Reg. Sess.); *see* Shaddock v. Medoff, 53 P.2d 385, 386 (Cal. Dist. Ct. App. 1936) (seeking damages from husband's mistress for "alienating [her] husband's affections"). For a history of these so-called "heartbalm" laws, see Comment, *California Reopens the 'Hearthalm' Action: Marriage. Breach of Promise. Fraudulent Promise. 'Anti-Heartbalm' Statute*, 9 Stan. L. Rev. 406 (1957).

53. Civ. § 92 (repealed 1970).

conditions for fault divorce, particularly the "extreme cruelty" condition,[54] into ordinary grounds for divorce as a matter of law.[55] The courts also developed a public policy rationale to circumvent the statutory rigors altogether through application of the "marital breakdown test."[56] This judicially activistic approach calmed an aspiring divorcée's motivation to falsely claim that the other cheated on the marriage or had been gratuitously cruel—a perjurious offense—in a bid to satisfy the statute.[57] It also triggered California's divorce reform efforts in the 1960s.

With a focus on equitable division of property,[58] California passed the Family Law Act of 1969 (FLA) after finding that fault divorce no longer served the public interest.[59] The act confronted increasing divorce rates, collusive efforts to prevail on fault grounds, and inequitable division of marital property.[60] In sum, the act got rid of the punitive aspect of fault divorce in favor of a neutral claim: irreconcilable differences.[61]

The "put hubby through" practice[62] rose to prevalence in the 1980s, when wives worked to put their husbands through school with the expectation that they would enjoy a better life in return but instead received divorce papers shortly after their husbands received diplomas.[63] A breach of this kind left wives at a loss for which

54. "Extreme cruelty" is defined as "the wrongful infliction of grievous bodily injury, or grievous mental suffering, upon the other by one party to the marriage." Civ. § 94 (West 1872) (repealed 1970); Nelson, *supra* note 49, at 428 (adding that California courts broadened the "extreme cruelty" condition "beyond recognition").

55. *See* Nelson, *supra* note 49, at 428–29, 428 n.15 (reporting that 96 percent of California divorce filings claimed "extreme cruelty").

56. *Id.* at 429. The marital breakdown test provided for divorce as a matter of public policy "where the relations between husband and wife [we]re such that the legitimate objects of matrimony ha[d] been utterly destroyed." *Id.* (quoting De Burgh v. De Burgh, 250 P.2d 598, 601 (1952)).

57. *See id.* at 428–29 (illustrating staged hotel scenes proffered by spouses to satisfy statutory divorce standards).

58. *See* Krom, *supra* note 48, at 161–62 (detailing legislative concerns related to the division of marital property).

59. Cal. Fam. Code §§ 2000–2452 (Deering, LEXIS through ch. 14 of 2022 Reg. Sess.); *see* Richard G. Osborn, *Dissolution and Voidable Marriage Under the California Family Law Act*, 4 Loy. L.A. L. Rev. 331, 331 (1971) (FLA revolutionized divorce).

60. Ruth B. Dixon & Lenore J. Weitzman, *Evaluating the Impact of No-Fault Divorce in California*, 29 Fam. Rels. 297, 297–98 (1980) (FLA objectives).

61. *Id.* The "irreconcilable differences" concept was inspired by the 1952 landmark case *De Burgh v. De Burgh*, in which the California Supreme Court held that it would make "a mockery of marriage" to adhere to the literal mandate of fault divorce because doing so would bar divorce despite the "irremediable breakdown of the marriage." 250 P.2d at 603, 606; *see* Krom, *supra* note 48, at 167, 174–75.

62. The highly publicized 1985 case of *O'Brien v. O'Brien* illustrates the "put hubby through" practice nicely: Loretta contributed most of the support during the marriage. 489 N.E.2d 712, 713–14 (N.Y. 1985). Michael received his license to practice medicine in 1980 and filed for divorce two months later. *Id.*

63. *See In re* Marriage of Graham, 574 P.2d 75, 78 (Colo. 1978) (Carrigan, J., dissenting) (finding a pattern of cases in which a wife funded her husband's education but received divorce papers instead of a brighter future).

there was no clear legal recourse.[64] The issue reached the California Supreme Court in the 1984 case of *In re Marriage of Sullivan*.[65] *Sullivan* crystalized the challenges that encumbered the judiciary's efforts to construct an equitable remedy for suits of this nature without having to broaden the definition of "community property" to include a professional degree.[66] The California Law Revision Commission (the "Commission") proposed a solution in 1983,[67] while *Sullivan* was pending.[68] The Commission advised the legislature to enact a remedy whereby the "working spouse" who supported the "student spouse" would be reimbursed for that support if the latter filed for divorce shortly after graduating.[69] Civil Code section 4800.3 was passed in 1984 to provide for this reimbursement.[70]

Section 4800.3's legislative history repeatedly distinguished spouses by referring to them as the "working spouse" and the "student spouse."[71] Not once did the legislature or the Commission refer to spouses as the "non-student spouse" and the "student spouse."[72] Both legislative arms, then, envisioned a spouse who worked to support the couple and the student spouse's educational endeavors.[73] This is made clear by the

64. *See* CLRC, *Recommendation*, *supra* note 9.

65. 691 P.2d 1020, 1022 (Cal. 1984).

66. *See id.* at 1022 (questioning whether the trial court was correct to follow an intermediate court's decision that "professional education does not constitute community property" (citing *In re* Marriage of Aufmuth, 152 Cal. Rptr. 668, 677–78 (Cal. Ct. App. 1979))); Todd v. Todd, 78 Cal. Rptr. 131, 135 (Cal. Ct. App. 1969) (declining to accord monetary value to a spouse's legal education for purposes of dividing marital assets upon divorce).

67. CLRC, *Recommendation*, *supra* note 9. The Commission is an independent California state agency established to "assist[] the Legislature and Governor by examining California law and recommending needed reforms." *General Information*, Cal. L. Revision Comm'n, http://www.clrc.ca.gov/ (last visited Apr. 21, 2022).

68. *Sullivan* granted a hearing in 1982 "primarily to determine whether a spouse who has made economic sacrifices to support the other spouse's education is entitled to compensation upon dissolution of the marriage." 691 P.2d at 1022. The California legislature enacted Civil Code former section 4800.3 in 1984, which generally applied to all related decisions pending at the time, including *Sullivan*. *See id.*

69. *See* CLRC, *Recommendation*, *supra* note 9.

70. Cal. Civ. Code § 4800.3 (repealed 1994). In 1994, Family Code section 2641 replaced Civil Code section 4800.3 "without substantive change." Cal. Fam. Code § 2641 (Deering, LEXIS through ch. 14 of 2022 Reg. Sess.); 1994 Family Code, *supra* note 7, at 292.

71. *See* CLRC, *Recommendation*, *supra* note 9.

72. Civ. § 4800.3; CLRC, *Recommendation*, *supra* note 9; Memorandum from Nathaniel Sterling, Assistant Exec. Sec'y, Cal. L. Rev. Comm'n, Reimbursement of Educational Expenses (Aug. 8, 1983) [hereinafter Sterling Memorandum], http://www.clrc.ca.gov/pub/1983/M83-072.pdf (recommending statutory solutions to the "put hubby through" problem).

73. *Cf.* Gen. Dynamics Land Sys., Inc. v. Cline, 540 U.S. 581, 599 (2004) (interpreting a statute in light of its "tide of context and history"); *see also In re* Marriage of Mullonkal, 265 Cal. Rptr. 3d 285, 290–91 (Cal. Ct. App. 2020).

Commission's express intention for the working spouse to recover only monies expended, and for the student spouse to return only monies gained.[74]

The legislature also adopted the Commission's recommendation that "the amount to be reimbursed should be reduced to the extent circumstances (rather than 'extraordinary' circumstances) render the reimbursement unjust."[75] Specifically, the legislature authorized trial courts to deny reimbursement whenever "circumstances render the disposition unjust."[76] Subsection 4800.3(c) listed non-exclusive examples of these circumstances. Subsection 4800.3(c)(1), for example, noted that it would be unjust to burden the student spouse with reimbursement for their education if the marriage had "substantially benefitted" from that education.[77] For "simplicity," this exception was guided by a rebuttable presumption that the marriage had not benefitted if it ended within ten years of that education.[78] However, the Commission admitted that this presumption was "arbitrary" and advised courts to avoid reimbursement as needed.[79]

Sullivan was first to construe section 4800.3 and held that trial courts must assess the "economic sacrifices" made by the working spouse in support of the student spouse's education to determine whether the working spouse is entitled to reimbursement.[80] It defined "economic sacrifices" as including the work of one spouse

74. *See* CLRC, *Recommendation*, *supra* note 9, at 235 ("[Reimbursement] takes from the student spouse only what was actually given and restores to the working spouse only what he or she actually lost."); *see also id.* at 236 ("[T]he student spouse is educated at the working spouse's expense.").

75. Meeting Minutes, Cal. L. Revision Comm'n, (Sept. 19, 1983) (on file with *New York Law School Law Review*). *Compare* Sterling Memorandum, *supra* note 72, at 3 (proposing that the Commission recommend to the state legislature an "extraordinary circumstances" standard for purposes of reducing reimbursement, consistent with the standard then existing "in the statute requiring educational loans to be assigned for payment to the spouse receiving the education"), *with* Civ. § 4800.3(c) ("The reimbursement . . . required by this section shall be reduced or modified to the extent *circumstances* render such a disposition unjust . . . .") (emphasis added).

The California legislature's omission of the "extraordinary circumstances" language from the reimbursement statute despite its use in neighboring provisions of the Civil Code, for example in subsection 4800(b)(4) regarding the assignment of student loans, indicates the legislature's intent to accord trial courts broad discretion in the reimbursement context. *Cf.* FDA v. Brown & Williamson Tobacco Corp., 529 U.S. 120, 148, 159–60 (2000) (holding that Congress's omission of "tobacco" from a food and drug law, in contrast to its inclusion in related laws, demonstrated congressional intent to exclude tobacco matters from the law's ambit).

76. Cal. Fam. Code § 2641(c) (Deering, LEXIS through ch. 14 of 2022 Reg. Sess.).

77. Civ. § 4800.3(c)(1). Subsections 4800.3(c)(2) and (3) gave additional examples of situations in which reimbursement would be unjust, such as the community funding the education of both spouses. §§ 4800.3(c)(2)–(3).

78. *See* CLRC, *Recommendation*, *supra* note 9, at 237 (pointing out that the ten-year timeline guiding the no-substantial-benefit presumption is to "achieve simplicity" and mitigate the potential for "unreliable evidence of expenditures").

79. *Id.* ("The [ten]-year limitation is admittedly arbitrary . . . .").

80. 691 P.2d 1020, 1021–23, 1025 (Cal. 1984) ("[C]ompensable community contributions are defined as 'payments made with community property for education or training or for the repayment of a loan incurred for education or training.'" (quoting Civ. § 4800.3)); *see also In re* Marriage of Slivka, 228 Cal. Rptr. 76, 81 (Cal. Ct. App. 1986) (allowing for reimbursement where community property funded

to support the other's education without the opportunity to benefit from its acquisition.[81] Thus, if the *Sullivan* wife did not have the opportunity to benefit from her husband's medical school education after having worked to support him, the trial court was to award reimbursement proportionally.[82] The 1986 case of *In re Marriage of Slivka* further defined the spouse eligible for reimbursement as the "working spouse [who] supported the community and the student spouse during the acquisition of the professional education."[83] It also contemplated the measure of reimbursement as an amount proportional to the value of any support provided.[84] *Sullivan* and *Slivka* created the legal framework to ascertain whether a spouse can recover under California's reimbursement provisions, jointly holding that reimbursement may be appropriate where a "working spouse" made "economic sacrifices" to support the other's education but had no opportunity to benefit therefrom.[85]

In 1994, section 4800.3 was replaced by section 2641 "without substantive change."[86] Nine years later, the 2003 case of *In re Marriage of Weiner* applied the *Sullivan* and *Slivka* framework.[87] There, the California Court of Appeal held that reimbursement may be appropriate under section 2641 when one spouse worked and contributed to the repayment of the other's student loans.[88] *Weiner* emphasized that the couple made a joint effort to repay the debt during their roughly five-year marriage.[89] But *Weiner* also found that the wife—the working spouse in this case—may have already benefitted from her husband's education and therefore held that any reimbursement may be reduced proportionally.[90] *Weiner* credited the husband's evidence demonstrating that the couple shared in his annual bonuses, which he would not have earned had he not been a doctor.[91] Thus, the husband was entitled to a determination as to whether that evidence sufficed to rebut the no-substantial-

---

one spouse's education); *In re* Marriage of Weiner, 129 Cal. Rptr. 2d 288, 291 (Cal. Ct. App. 2003) (finding reimbursement appropriate even if the loans repaid with community property stemmed from an education obtained prior to the marriage); *In re* Marriage of Watt, 262 Cal. Rptr. 783, 789 (Cal. Ct. App. 1989) (factoring living expenses into the totality analysis employed by courts to assess the contributions made by the non-student spouse the student spouse's education).

81. 691 P.2d at 1021, 1025.

82. *Id.* at 1022–23.

83. 228 Cal. Rptr. at 81.

84. *Id.* ("[R]eimbursement [goes] to the community for expenditures made in acquisition of the student spouse's education . . . .").

85. *Sullivan*, 691 P.2d at 1021–23; *Slivka*, 228 Cal. Rptr. at 81.

86. 1994 Family Code, *supra* note 7, at 292.

87. 129 Cal. Rptr. 2d 288, 291 (Cal. Ct. App. 2003).

88. *Id.*

89. *Id.* (finding that the acquired degree was "the fruit of community effort").

90. *Id.* at 291–92.

91. *Id.* at 292.

benefit presumption set forth in subsection 2641(c)(1).[92] It was irrelevant that the couple had only been married for five or so years in contrast to the ten-year time frame guiding that presumption.[93] If the couple was found to have already benefitted from the husband's education, then the trial court had to find whether it would be unjust to award reimbursement in full or in part.[94]

Weiner is consistent with the expectations of the 1989 California Court of Appeal in *In re Marriage of Watt*.[95] Although the wife worked while her husband studied medicine and made economic sacrifices for the couple to the satisfaction of the *Sullivan* and *Slivka* standard, the *Watt* court denied reimbursement because there was insufficient evidence[96] to show that those sacrifices were necessitated by her husband's tuition payments, which he instead satisfied with student loans.[97] The wife, therefore, suffered no loss.[98] *Watt* held that the no-substantial-benefit presumption only treats the working spouse favorably when the marriage "reaps *no* advantage" from the student spouse's education.[99] The fact that the husband's education came at no cost to the wife (her funds remained free for her savings or some other use), operated as a benefit sufficiently substantial to render reimbursement unjust.[100]

Weiner and *Watt* supplement the *Sullivan* and *Slivka* framework when a student spouse submits evidence of the benefits that the couple derived from his or her education and requests for reimbursement to be reduced proportionally. *Sullivan* and *Slivka* establish that section 2641 applies when a working spouse supported the other's education but had no opportunity to benefit from its acquisition.[101] *Weiner* and *Watt* establish the two-part evidentiary inquiry to be applied under subsection 2641(c)(1) when the working spouse is alleged to have directly or indirectly benefitted from that education. First, the student spouse is entitled to a determination as to whether the no-substantial-benefit presumption has been rebutted when evidence suggests either that the couple would not have derived some benefit but for that spouse's education (a direct benefit)[102] or that economic sacrifices made by the working spouse were not necessitated by the student spouse's education (an indirect

92. *Id.*

93. *See id.* at 289, 292; Cal. Fam. Code § 2641(c)(1) (Deering, LEXIS through ch. 14 of 2022 Reg. Sess.).

94. *See Weiner*, 129 Cal. Rptr. 2d at 292.

95. 262 Cal. Rptr. 783, 792 (Cal. Ct. App. 1989).

96. The *Watt* court reviewed evidence concerning the wife's contributions to her husband's career and the couple's lifestyle. *Id.* at 787–90.

97. *Id.* at 785.

98. *Id.*

99. *Id.* at 792.

100. *Id.*

101. *See In re* Marriage of Sullivan, 691 P.2d 1020, 1021–23 (Cal. 1984); *In re* Marriage of Slivka, 228 Cal. Rptr. 76, 81 (Cal. Ct. App. 1986).

102. *Weiner*, 129 Cal. Rptr. 2d at 292.

benefit).[103] Second, if the presumption is rebutted, then the trial court must determine the extent to which reimbursement should be reduced or denied.[104]

Sullivan and *Slivka* did not preclude the possibility that reimbursement may be denied when a spouse made no economic sacrifice to support the other's education.[105] Likewise, *Weiner* and *Watt* did not give dispositive weight to the ten-year time frame that guides the no-substantial-benefit presumption.[106]

Mullonkal presented the California Court of Appeal with two issues: first, whether the trial court has broad discretion to identify circumstances in which reimbursement would be unjust, in addition to those enumerated in subsection 2641(c); second, whether Sithaj substantially benefitted from Carolyn's education to the extent that reimbursement should be reduced or denied proportionally.[107] On appeal, Sithaj contended that he was entitled to reimbursement as a matter of law and that the trial court abused its discretion[108] when it held that he substantially benefitted from Carolyn's education to the extent sufficient to deny reimbursement.[109] Carolyn sought to affirm, arguing that subsection 2641(c) grants broad discretion to the trial court to reduce or deny reimbursement when its award would be unjust.[110] In the alternative, Carolyn argued that the trial court properly found that Sithaj substantially benefitted from her education under subsection 2641(c)(1).[111]

With respect to the first issue, Carolyn contended that because Sithaj had not paid for any living or educational expenses while she repaid her student loans, denying reimbursement was within the trial court's broad discretion under subsection 2641(c).[112] Sithaj countered that the trial court abused its discretion, insisting that "the couple" is entitled to reimbursement for any funds used to pay Carolyn's student loans even if he made no direct or indirect contributions thereto.[113]

Mullonkal held that trial courts do not have broad discretion to find additional circumstances in which reimbursement would be unjust under subsection 2641(c).[114]

---

103. *Watt*, 262 Cal. Rptr. at 792.

104. *Weiner*, 129 Cal. Rptr. 2d at 292.

105. *See Sullivan*, 691 P.2d at 1021–23; *Slivka*, 228 Cal. Rptr. at 81.

106. *See Weiner*, 129 Cal. Rptr. 2d at 289; *Watt*, 262 Cal. Rptr. at 785, 792; CLRC, *Recommendation*, *supra* note 9, at 237 (noting the ten-year mark guiding now subsection 2641(c)(1) was to "limit the potential for unreliable evidence of expen[ses]").

107. *In re* Marriage of Mullonkal, 265 Cal. Rptr. 3d 285, 292–96 (Cal. Ct. App. 2020).

108. "An abuse of discretion occurs when . . . the court's decision is influenced by an erroneous understanding of applicable law or reflects an unawareness of the full scope of its discretion . . . ." *Id.* at 292 (quotations omitted).

109. *Id.* at 289–90.

110. *Id.* at 292–93.

111. *Id.* at 296.

112. *Id.* at 292–93.

113. *Id.* at 291.

114. *Id.* at 293.

Beginning with the rule of ejusdem generis,[115] *Mullonkal* insisted that any unenumerated circumstances relied on by the trial court must be "of the same kind" as those enumerated;[116] circumstances would be "of the same kind" if they ensured "mutual benefit" and that no "windfall" resulted.[117] *Mullonkal* held that criteria related to a spouse's work or economic sacrifices was irrelevant to ensuring that the pair would mutually benefit or avoid windfall from a denial of reimbursement.[118] As to legislative intent, the court dismissed the Commission's express distinction between "working spouse" and "student spouse" as merely descriptive.[119] Thus, *Mullonkal* refused the possibility that the legislature intended for the "working spouse" to actually work in support of the student spouse's education, and sided with Sithaj who argued that, as "the spouse of a physician[, he] was [not] expected to work."[120]

With respect to the second issue, Carolyn asserted that she sufficiently rebutted the presumption that the couple had not substantially benefitted from her education.[121] She argued that she had paid Sithaj's immigration fees, the couple's living expenses pre- and post-separation, including child care, travel expenses for the couple, and a three-month trip to India for Sithaj alone.[122] Sithaj countered that Carolyn "took advantage of" their allegedly "low standard of living" to pay her student loans.[123] Sithaj also claimed that he only enjoyed a "few family vacations" rather than a lifestyle commensurate with Carolyn's salary.[124]

---

115. The doctrine of ejusdem generis presumes that the legislature, in listing items in a statute, intended for any additional, unenumerated items to be of the same general nature or class as those expressly enumerated. *See* Kraus v. Trinity Mgmt. Servs., Inc., 999 P.2d 718, 734 (Cal. 2000).

116. *See* Cal. Fam. Code § 2641(c)(1) (Deering, LEXIS through ch. 14 of 2022 Reg. Sess.) (reducing reimbursement if working spouse substantially benefitted from student spouse's education); § 2641(c)(2) (reducing reimbursement if the community funded the education of both spouses); § 2641(c)(3) (reducing reimbursement if student spouse's education substantially reduces need for future support).

117. *Mullonkal*, 265 Cal. Rptr. 3d at 293–94. The Commission provided the following as an example of "windfall":

> [T]o give the working spouse an interest in half the student spouse's increased earnings for the remainder of the student spouse's life because of the relatively brief period of education and training received during marriage is not only a windfall to the working spouse but in effect a permanent mortgage on the student spouse's future.

CLRC, *Recommendation*, *supra* note 9, at 234.

118. 265 Cal. Rptr. 3d at 295–96.

119. *Id.* at 295.

120. *Id.* at 294; *see* Appellant's Reply Brief at 27, *Mullonkal*, 265 Cal. Rptr. 3d 285 (No. C085825) ("[T]here is no evidence in the record, let alone substantial evidence, . . . that the parties had an expectation that Sithaj—the spouse of a physician—was expected to work."). The *Mullonkal* court found the "*earn a right*" option to be inconsistent with the notion of California's community property law system—any one spouse's income "belongs equally" to both. 265 Cal. Rptr. 3d at 294.

121. 265 Cal. Rptr. 3d at 296.

122. *Id.* at 288 n.2, 296.

123. *Id.* at 291, 296.

124. *Id.*

Mullonkal held that the trial court abused its discretion in finding that Carolyn rebutted the no-substantial-benefit presumption under subsection 2641(c)(1).[125] The *Mullonkal* court reasoned that evidence of the couple's lifestyle—namely, their two-bed, two-bath apartment in the suburbs of Roseville, California—showed that it was "less than middle class."[126] The court reasoned further that they only lived in Roseville for eighteen months despite marrying two years prior.[127] *Mullonkal* also held that the value of the couple's "four trips" was insignificant against the value of Carolyn's student loans.[128] Thus, the court concluded that Sithaj did not benefit from Carolyn's education to the extent necessary to rebut the no-substantial-benefit presumption.[129] Notably, the court cited no authority in support of this conclusion.[130]

The *Mullonkal* court erred when it held that Carolyn was required to reimburse Sithaj.[131] First, the court discounted section 2641's legislative history[132] and applicable California precedent,[133] both of which demonstrate that the trial court considered proper criteria when it exercised its discretion to deny Sithaj's reimbursement request.[134] The starting point in any reimbursement inquiry is to determine whether the working spouse[135] made economic sacrifices to support the student spouse's education but was denied an opportunity to benefit from that education once it was

125. *Id.* at 296.

126. *Id.* at 288, 296; Respondent's Brief, *supra* note 23, at 13. The appellate court's description of the Mullonkals' lifestyle as "less than middle class" raises factual and legal concerns. First, the court seemingly made a subjective judgment as to the couple's way of life—at the time of its decision, the cost of living in Roseville, California, was roughly 30 percent higher than the national average and the cost of housing some 79 percent higher. *Cost of Living in Roseville, California*, Payscale, https://www.payscale.com/cost-of-living-calculator/California-Roseville (last visited Apr. 19, 2022). The court's judgment is therefore concerning as a matter of law because it is well settled that a "showing on appeal is wholly insufficient if it presents a state of facts, a consideration of which, for the purpose of judicial action, merely affords an opportunity for a difference of opinion." Brown v. Newby, 103 P.2d 1018, 1019 (Cal. Dist. Ct. App. 1940) ("An appellate tribunal is neither authorized nor warranted in substituting its judgment for the judgment of the trial judge.").

127. *Mullonkal*, 265 Cal. Rptr. 3d at 288, 296.

128. *Id.* at 296. While the court valued Carolyn's education at roughly $130,000, it did not estimate the value of Sithaj's immigration fees; the couple's 2013 cruise, three trips to Hawaii, and Sithaj's three-month trip to India; or ordinary living expenses like the couple's new car and child care for their son. *Id.* at 288–89.

129. *Id.*

130. *See id.*

131. *Id.* at 297.

132. *See* CLRC, *Recommendation*, *supra* note 9 (contemplating reimbursement for a working spouse whose support enabled the student spouse to earn a professional degree).

133. *E.g.*, *In re* Marriage of Sullivan, 691 P.2d 1020, 1022 (Cal. 1984); *In re* Marriage of Slivka, 228 Cal. Rptr. 76, 77 (Cal. Ct. App. 1986).

134. *Mullonkal*, 265 Cal. Rptr. 3d at 296.

135. Indeed, there may even be a step zero—whether there exists a "working spouse" within the meaning of *Slivka*. *See* 228 Cal. Rptr. at 81.

acquired.[136] Even if the legislature did not contemplate limiting the "working spouse" to one that actually works, courts have only held that reimbursement is appropriate when that spouse made some economic sacrifice to support the other's education, usually by providing financial support or by forgoing their own education or career.[137] And even when the working spouse has made a sacrifice of some kind, courts may still credit evidence to reduce or deny reimbursement under subsection 2641(c) as is just.[138]

Sullivan held that the wife was the working spouse and ordered the trial court to determine whether her alleged economic sacrifices entitled her to reimbursement.[139] There, the wife worked to financially support the couple so that her husband could become a doctor; she also gave up her full-time career so that they could relocate for his residency program and she obtained new part-time employment after the move.[140] *Slivka* likewise ordered the trial court to determine whether the wife's employment to support herself and her husband during their five years of marriage while her husband attended medical school entitled her to reimbursement.[141]

Sullivan and *Slivka* properly instructed their respective trial courts to evaluate the economic sacrifices made by the working spouse to support the student spouse's education for purposes of determining whether reimbursement was just. In contrast, *Mullonkal* did not ask whether Sithaj made economic sacrifices to support Carolyn's education.[142] Instead, *Mullonkal* focused on whether Carolyn would receive windfall if she did not reimburse Sithaj—without considering whether that gain, if any, was at

136. *See Sullivan*, 691 P.2d at 1022–23; *Slivka*, 228 Cal. Rptr. at 77, 81.

137. *Compare Sullivan*, 691 P.2d at 1021 (instructing the trial court to find whether reimbursement applied when a wife financially supported the couple during her husband's medical school program), *and Slivka*, 228 Cal. Rptr. at 81 (finding that reimbursement was appropriate because the wife helped her husband pay his medical school tuition), *with In re* Marriage of Weiner, 129 Cal. Rptr. 2d 288, 291 (Cal. Ct. App. 2003) (awarding the difference between wife's financial contributions to husband's education and the benefits she enjoyed after its acquisition as reimbursement), *and In re* Marriage of Watt, 262 Cal. Rptr. 783, 791–92 (Cal. Ct. App. 1989) (finding reimbursement inappropriate when the working spouse did not need to financially contribute to the student spouse's education).

Family courts across the country have also enforced the reimbursement remedy as turning on whether a spouse worked or made some sacrifice to put the other through school. *E.g.*, *In re* Marriage of Olar, 747 P.2d 676, 680–81 (Colo. 1987) (en banc) (reimbursing a wife after she "sacrifice[d] . . . her own educational goals to support . . . her spouse"); Petersen v. Petersen, 737 P.2d 237, 242 n.4 (Utah Ct. App. 1987) (reimbursing a spouse who "sacrificed" for the other's education); Mahoney v. Mahoney, 453 A.2d 527, 536 (N.J. 1982) (reimbursing a wife who supported her husband's education).

138. Cal. Fam. Code § 2641(c)(1) (Deering, LEXIS through ch. 14 of 2022 Reg. Sess.) (permitting courts to reduce reimbursement as is just).

139. 691 P.2d at 1021–23.

140. *Id.* at 1022.

141. 228 Cal. Rptr. at 77, 81 (adding that the wife set aside her career for a dead-end job to support the couple and raise their first child, and relocated to California for her husband's career shortly thereafter).

142. *See* 265 Cal. Rptr. 3d 285, 295 (Cal. Ct. App. 2020).

Sithaj's expense.[143] *Mullonkal* examined whether it is not inconsistent with legislative intent to reimburse a working spouse who did not financially support the couple or the student spouse.[144] The court concluded that whether the working spouse financially contributed to the other's education, or even to the couple's livelihood, is irrelevant.[145] The court reasoned that the legislative history[146] used the term "working spouse" merely to distinguish the student from the non-student spouse.[147] If it were that simple, though, surely the legislature would have referred clearly to the non-student spouse as exactly that—the "non-student spouse." *Mullonkal* also concluded that the working spouse did not need to "earn" reimbursement.[148] Rather, it was enough for Sithaj to argue that, because California community property law considers Carolyn's income to be his own,[149] he technically contributed to her education and therefore should be reimbursed.[150]

It is inconsistent with *Sullivan* and *Slivka* to regard the economic sacrifices inquiry as irrelevant when applying section 2641, as *Mullonkal* did.[151] When properly applied, the remedy functions to make whole any working spouse who suffered an actual loss.[152] There is no case law or legislative history suggesting that it is appropriate

143. *Id. But see* CLRC, *Recommendation*, *supra* note 9, at 233 (noting that reimbursement kicks in when the student spouse was put through school "at the [other's] expense"). Notably, *Mullonkal* failed to consider the reverse—whether Sithaj would receive a windfall if awarded reimbursement, in full or in part. 265 Cal. Rptr. 3d at 292–94.

144. 265 Cal. Rptr. 3d at 295.

145. *Id.* at 295–96.

146. *See* CLRC, *Recommendation*, *supra* note 9 (referring to spouses only as the "working spouse" and the "student spouse" after finding that "[i]t is not uncommon for one spouse to work so the other can attend school").

147. *See Mullonkal*, 265 Cal. Rptr. 3d at 295 (citing CLRC, *Recommendation*, *supra* note 9). The court reckoned that the legislature and the Commission termed the non-student spouse a "working" one only "to describe the relevant party in a typical scenario the proposed legislation was designed to address: where the education was received during the marriage and the nonstudent spouse was the sole worker." *Id.* That, coupled with the omission of the term "working spouse" from the provision recommending reimbursement—which also omitted the term "student spouse" and referred to both only as "parties"—sufficed to convince the court that the term itself was immaterial. *Id. But see* Holy Trinity Church v. United States, 143 U.S. 457, 463 (1892) (interpreting a statute to cure only the evil for which it was designed to address).

148. 265 Cal. Rptr. 3d at 295.

149. Cal. Fam. Code §§ 760, 2550 (Deering, LEXIS through ch. 14 of 2022 Reg. Sess.) (splitting all real and personal property acquired during marriage).

150. *See Mullonkal*, 265 Cal. Rptr. 3d at 294–95.

151. *Id.* at 295.

152. CLRC, *Recommendation*, *supra* note 9, at 235 ("[Reimbursement] takes from the student spouse only what was actually given and restores to the working spouse only what he or she actually lost."). Anything exceeding the actual loss incurred by the working spouse risks awarding windfall, which the Commission expressly condemned. *See* text accompanying *supra* note 117.

to reimburse a *non*-working spouse,[153] and it is antithetical to section 2641's purpose to reimburse a spouse who did nothing to otherwise support the student spouse.[154] Had the *Mullonkal* court properly followed the *Sullivan* and *Slivka* framework, it would have concluded that the trial court employed proper criteria to deny Sithaj's reimbursement claim.[155]

Second, the *Mullonkal* court erred when it made a categorical rule out of the "arbitrary,"[156] rebuttable presumption that a marriage has not substantially benefitted from a student spouse's education if the marriage ended within ten years of its acquisition.[157] The court therefore failed to consider several benefits that Sithaj enjoyed during his nearly four-year marriage.[158] *Weiner* and *Watt* make clear that a student spouse's attempt to rebut the no-substantial-benefit presumption fails on the whole only when the marriage "reaps *no* advantage from the education," within the ten-year time frame.[159] If the marriage derived some benefit from the education, then the presumption may be rebutted and the court may reduce or deny reimbursement in a manner proportional to that benefit.[160]

Weiner instructed the trial court to find whether evidence that the wife shared in her husband's bonuses, which he would not have earned had he not been a doctor, sufficed to rebut the no-substantial-benefit presumption.[161] The court provided that the presumption could be rebutted and reimbursement reduced or denied accordingly even if those bonuses were of a lesser value than that of the husband's education, and despite their short-term marriage.[162] Likewise, *Watt* held that it is unjust to award

153. *See* CLRC, *Recommendation*, *supra* note 9, at 235–36 (contemplating "other situations" where reimbursement "is simply not appropriate").

154. *See, e.g.*, *In re* Marriage of Watt, 262 Cal. Rptr. 783, 785 (Cal. Ct. App. 1989) (denying reimbursement absent sacrifice); *In re* Marriage of Sullivan, 691 P.2d 1020, 1021 (Cal. 1984) (looking to the economic sacrifices made by the working spouse to determine whether reimbursement was warranted); O'Brien v. O'Brien, 489 N.E.2d 712, 716 (N.Y. 1985) (reimbursing a working spouse who sacrificed "her own [school] and career opportunities" to put her husband through school). *But see Mullonkal*, 265 Cal. Rptr. 3d at 296 (finding that Sithaj did not work or make financial sacrifices for Carolyn's education or their family but awarding reimbursement anyway).

155. *Mullonkal*, 265 Cal. Rptr. 3d at 296.

156. CLRC, *Recommendation*, *supra* note 9, at 237.

157. Cal. Fam. Code § 2641(c)(1) (Deering, LEXIS through ch. 14 of 2022 Reg. Sess.); *see* CLRC, *Recommendation*, *supra* note 9, at 236 ("[T]he reimbursement right should not be automatic in every case, but should be subject to reduction or modification by the court if circumstances render reimbursement unjust.").

158. *See Mullonkal*, 265 Cal. Rptr. 3d at 296.

159. *Watt*, 262 Cal. Rptr. at 792; *see also In re* Marriage of Weiner, 129 Cal. Rptr. 2d 288, 292 (Cal. Ct. App. 2003).

160. *Weiner*, 129 Cal. Rptr. 2d at 292.

161. *Id.*

162. *Id.* at 289–92 (finding that student loans totaled $12,217.14 but the wife's share in bonuses was only $9,600).

full reimbursement where it cannot be said that the marriage "reap[ed] *no* advantage" from the student spouse's education.[163]

Carolyn's "highly credible" evidence[164] detailed the substantial benefits that she and Sithaj enjoyed as a result of her education and exceeded that which sufficed for rebuttal in *Weiner* and *Watt*.[165] *Mullonkal* broke with precedent when it relied on the duration of the couple's marriage to hold that it would not be unjust to extort full reimbursement from Carolyn.[166] Unlike *Weiner* and *Watt*, *Mullonkal* gave dispositive weight to the "low" value of benefits derived from Carolyn's education and the duration of the Mullonkals' marriage.[167] Specifically, the court rejected evidence that the marriage benefitted from Carolyn's education because the likely value of the couple's four-year, "less than middle class" lifestyle was "relatively small" compared to that of Carolyn's medical degree.[168] But *Mullonkal* made no attempt to actually value their life together, unlike *Weiner*, despite emphasizing the $130,000 value of Carolyn's education.[169] The *Mullonkal* court also ignored one benefit many may consider priceless: the opportunity to join the U.S. workforce, which Sithaj relinquished when he allowed his work visa to expire.[170] It is inconsistent with *Weiner* to exploit the ten-year guideline as a means to refrain from finding that the benefits to Sithaj sufficed to rebut the no-substantial-benefit presumption.[171]

Finally, *Mullonkal*'s fixation on the length of the parties' marriage distracted the court from the most substantial benefit of all: Carolyn's education and, in turn, her enhanced earning capacity, operated to preserve Sithaj's personal piggy bank.[172]

---

163. *See Watt*, 262 Cal. Rptr. at 791–92.

164. Respondent's Brief, *supra* note 23, at 17 ("[T]he [trial] court repeatedly found [Sithaj] and his evidence not credible, while finding Carolyn and her evidence highly credible.").

165. *Compare Weiner*, 129 Cal. Rptr. 2d at 291 (crediting evidence that the student spouse shared two bonuses with the working spouse as sufficient to rebut the no-substantial-benefit presumption), *and Watt*, 262 Cal. Rptr. at 791 (denying reimbursement altogether when there was no evidence that the wife contributed to the husband's school expenses), *with In re* Marriage of Mullonkal, 265 Cal. Rptr. 3d 285, 295–96 (Cal. Ct. App. 2020) (rejecting evidence that Carolyn paid for, among other things, Sithaj's immigration fees, three vacations to Hawaii, a cruise, his nearly three-month trip to India, entertainment and dinners, a new car, child care, and the like, as insufficient to reduce reimbursement).

166. 265 Cal. Rptr. 3d at 296–97. In fact, *Mullonkal* rested its holding on no precedent at all. *See id.* at 296.

167. *See* CLRC, *Recommendation*, *supra* note 9, at 237.

168. *Mullonkal*, 265 Cal. Rptr. 3d at 296.

169. *See id.* The court failed to consider several uncontested points of evidence detailing their comfortable lifestyle—a cruise, dinners, entertainment, and a new car—all of which Carolyn paid for. *See id.*; Respondent's Brief, *supra* note 23, at 28, 35.

170. *See* Respondent's Brief, *supra* note 23, at 8, 21.

171. *Compare In re* Marriage of Weiner, 129 Cal. Rptr. 2d 288, 292 (Cal. Ct. App. 2003) (remanding to determine whether a wife's share in her husband's bonuses, though less than the value of his student loans, rebuts the presumption), *with Mullonkal*, 265 Cal. Rptr. 3d at 296 (refusing the possibility that Sithaj's all-expenses-paid lifestyle could rebut the no-substantial-benefit presumption and focusing dispositively on the ten-year guideline).

172. 265 Cal. Rptr. 3d at 292 n.5; *see* Respondent's Brief, *supra* note 23, at 36–37.

Sithaj's six-figure stock holdings and bank accounts remained effectively untouched throughout his marriage plainly because Carolyn bankrolled his life.[173] *Mullonkal* should have credited, as *Watt* did, Sithaj's ability to save resources as a direct benefit of Carolyn's education.[174] Had *Mullonkal* acknowledged that the ten-year time frame guiding the no-substantial-benefit presumption was not dispositive, it would not have ignored the several substantial benefits that Sithaj siphoned from Carolyn and it would have held that the trial court properly afforded Carolyn a determination as to whether it would be unjust to award reimbursement in full or in part.[175]

Mullonkal's exchanging legislative history and California precedent for narrow statutory rigors is a step back in time.[176] In effect, *Mullonkal* nullified the trial court's broad discretion over family matters[177] and created a new strategy to cash-in on divorce—abuse an otherwise equitable remedy intended for working spouses who suffered more than heartbreak.[178] *Mullonkal* should have applied *Sullivan* and *Slivka*'s economic sacrifices framework and *Weiner* and *Watt*'s two-part evidentiary inquiry to protect against that abuse.

173. 265 Cal. Rptr. 3d at 288–89, 292 n.5; Respondent's Brief, *supra* note 23, at 36–37.

174. Respondent's Brief, *supra* note 23, at 23 ("[Sithaj] used [his savings] for his sole benefit . . . .").

175. *Mullonkal*, 265 Cal. Rptr. 3d at 296–97.

176. *Compare id.* at 297 (enforcing the literal mandate of subsection 2641(c)(1) to refuse the possibility that reimbursement may be unjust even if the marriage lasted less than ten years), *with* De Burgh v. De Burgh, 250 P.2d 598, 606–07 (Cal. 1952) (circumventing the literal mandate of the fault divorce statute to award a more equitable remedy).

177. *In re* Marriage of Boswell, 171 Cal. Rptr. 3d 100, 101 (Cal. Ct. App. 2014) (recognizing that family courts have broad discretion).

178. *See Mullonkal*, 265 Cal. Rptr. 3d at 295 & n.9.