

### **Dom. Rel. Law § 240: Support Pendente Lite for a Child Held Available in Action to Determine the Validity of a Foreign Divorce Decree**

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## DOMESTIC RELATIONS LAW

*Dom. Rel. Law § 240: Support pendente lite for a child held available in action to determine the validity of a foreign divorce decree.*

The Court of Appeals, in *Langerman v. Langerman*,<sup>76</sup> declared that the supreme court was without jurisdiction under the New York State Constitution to award support pendente lite unless there was specific statutory authorization granting such power. The present DRL § 240 authorizes the awarding of support pendente lite for a child in only four actions: (1) annulment or declaration of nullity of a void marriage; (2) separation; (3) divorce; or (4) writ of habeas corpus or petition and order to show cause to obtain custody of, or visitation rights with, the child. In *Gontaryk v. Gontaryk*,<sup>77</sup> the appellate division, first department, held that the supreme court was without jurisdiction to award support pendente lite to a child in an action to determine the validity of a foreign divorce decree, citing *Langerman* and noting the absence of this type of action in DRL § 240 as authority for its decision.

Recently, however, in *Vazquez v. Vazquez*,<sup>78</sup> the appellate division, second department, ruled that the supreme court, under its inherent equity powers, had jurisdiction to award support pendente lite to a child in an action to declare a foreign divorce decree invalid. The court distinguished *Langerman* on the ground that that case was decided before the amendment of the New York State Constitution.<sup>79</sup>

It would seem that, if the child requires it, support pendente lite should be available in the same court in which the matrimonial action is pending since, by forcing another proceeding to be brought in another court, a great deal of time and expense would be incurred that could be detrimental to the child's welfare. Nonetheless, the fact remains that under DRL § 240 no provision is made for the award of support in an action to determine the validity of a foreign divorce decree. However, it is submitted that the welfare of the child is the underlying purpose behind DRL § 240, and that this intention can best be served by affirming the *Vazquez* decision.

## SURROGATE'S COURT PROCEDURE ACT

*SCPA Articles 2 and 3: Comparison with prior law.*

The Temporary State Commission on the Law of Estates was established to study the various sections of the Real Property

<sup>76</sup> 303 N.Y. 465, 104 N.E.2d 857 (1952).

<sup>77</sup> 20 App. Div. 2d 633, 246 N.Y.S.2d 270 (1st Dep't 1964).

<sup>78</sup> 26 App. Div. 2d 701, 273 N.Y.S.2d 12 (2d Dep't 1966).

<sup>79</sup> N.Y. CONST. art. 6, §§ 7(a), (c).