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**NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS**



IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

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| RONALD KEVIN WIGGINS,<br><br>Petitioner and Respondent,<br><br>v.<br><br>COUNTY OF LOS ANGELES CHILD SUPPORT SERVICES DEPARTMENT,<br><br>Appellant. | B271513<br><br>(Los Angeles County Super. Ct. No. BD256503) |

APPEAL from a judgment of the Superior Court of Los Angeles County, Maria Puente-Porras, Commissioner. Reversed and Remanded.

Xavier Becerra, Attorney General, Julie Weng-Gutierrez, Assistant Attorney General, Linda M. Gonzalez and Jennevee H. De Guzman, Deputy Attorneys General, for Appellant.

No appearance for Petitioner and Respondent.

This appeal is taken by the Los Angeles County Child Support Services Department (Department) from a child support order entered on January 7, 2016.[1] As we explain in more detail, below, on January 21, 2011, the trial court ordered respondent Felicia Lynn Ford to pay petitioner Ronald Kevin Wiggins child support in the amount of $500 per month commencing on August 1, 2010, and reduced the child support arrears owed by Ronald to Felicia to zero.[2] However, on September 15, 2011, the court modified the child support obligation by vacating the January 21, 2011 order, modifying Felicia's child support obligation to $250 a month, and continuing the matter for a new determination of arrears. On January 12, 2012, the court found that as of November 30, 2011 (with an offset for Felicia's arrears) Ronald owed Felicia $16,554.58 in arrears.

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1 The Department is the local child support agency in Los Angeles County (every California county has such an agency), created to comply with Title IV-D of the Social Security Act, which requires states to provide specific child support enforcement services in order to receive federal funding. (42 U.S.C. §§ 601, 602, 654.) The Department has the duty to establish paternity and establish, modify, and enforce child support orders at public expense (LCSA). (Fam. Code, §§ 17304, 17400, subd. (a); 17404, subd. (a).) It must provide such services to children for whom public assistance is being provided, as well as to any child who is not receiving public assistance if an individual requests such services for the child. (42 U.S.C. § 654(4)(A); Fam. Code, §§ 4002, subd. (a); 17400, subd. (a).)

The Department's appeal in the instant case is an exercise of its child support enforcement duty. The Department represents the public interest; although it acts on behalf of the child and custodial parent, it has no attorney client relationship with them. (Fam. Code, § 17406, subd. (a).)

2 As is the custom in Family law matters, we refer to the parties by their first names. No disrespect is intended.

More than three years later, on October 15, 2015, Ronald filed a request to enforce the previously vacated January 21, 2011 order, insofar as it reduced his arrears to zero. On January 7, 2016, the trial court (through a different bench officer) granted the request, vacated the orders of September 15, 2011 and January 12, 2012, and enforced the previously vacated order of January 21, 2011.

The Department appeals from the January 7, 2016 order, contending that under the doctrine of res judicata, the court had no authority to vacate the September 15, 2011 and January 12, 2012 orders. We agree and reverse.

## BACKGROUND

*Initial Child Support Orders*

Ronald and Felicia are the parents of D.W. (date of birth July 1997). The circumstances of their dissolution are not contained in the record, and are not relevant to the issue in this appeal.

On August 25, 1997, based on the parties' stipulation, the trial court ordered that Felicia would have primary custody of D.W., and Ronald would pay Felicia child support in the amount of $654 per month, commencing August 15, 1997. That order was modified on October 18, 2005 directing Ronald to pay child support in the amount of $646 per month.

*Orders by Commissioner Pogue*

At some point in 2009, Ronald gained custody over D.W. (the record is unclear as to when or why). On July 20, 2010, Ronald filed a

request for modification of child support, based on the change in custody. In October of 2010, the trial court, Commissioner Nancy S. Pogue, temporarily ordered Felicia to pay Ronald child support in the amount of $150 per month, and continued the matter to January 21, 2011, for an evidentiary hearing.

Ronald and the Department appeared at the January 21, 2011 evidentiary hearing. Felicia did not appear. The trial court found a material change in circumstances, ordered Felicia to pay Ronald child support in the amount of $500 per month commencing on August 1, 2010, and (based on an audit submitted by the Department) reduced Ronald's child support arrears to zero.

On May 12, 2011, Felicia filed a request to set aside the January 21, 2011 order. In her supporting declaration, she stated that her income consisted of cash aid assistance and her daughter's SSI income, and that the child support order of $500 was impossible for her to pay given her income. She asked for a reduction in the support order that would be fair to herself and her other children. Further, she complained that Ronald's arrears had been erased, even though she did not receive a copy of the audit and thus was unable to contest it. She asked the court to reinstate the arrears Ronald owed her.

The matter was heard on September 15, 2011. There is no reporter's transcript of the hearing, but the court's order of that date reflects that both parties were present. In the order, Commissioner Pogue vacated the January 21, 2011 child support order she had previously entered, ordered Felicia to pay Ronald child support in the

amount of $250 per month commencing August 1, 2010, and continued the matter for a determination of arrears.

On January 12, 2012, the court (Commissioner Pogue) held a hearing regarding arrears. Felicia and the Department were present at the hearing, but Ronald was not. Based on the Department's audit, the court found that, as of November 30, 2011, Ronald owed Felicia $16,554.58 in arrears, and Felicia owed Ronald $3,602.33 in arrears. The court ruled that the amount of arrears owed by Felicia would be offset against the amount of arrears owed by Ronald. With such an offset, the court reduced Felicia's arrears to zero, and found that Ronald owed Felicia $12,952.25 in arrears. The court ordered that the "[a]rrears are set with prejudice."

*Orders of Commissioner Puente-Porras*

More than three years later, on October 15, 2015, Ronald filed a request for order to enforce the January 21, 2011 order (which Commissioner Pogue had vacated on September 15, 2011), insofar as it reduced his arrears to zero. On December 17, 2015, the Department filed a responsive declaration stating that it would provide the trial court with an audit to assist it in determining the amount of arrears currently owed by Ronald to Felicia. In support of its Responsive Declaration, the Department filed a Declaration of Child Support Officer (Case Auditor) and attached its audits to the declaration. The audit reflected that Ronald owed Felicia $2,449.24 in arrears.

On January 7, 2016, Commissioner Maria Puente-Porras presided over the hearing on Ronald's request for order to enforce the order of

January 21, 2011. Ronald and the Department were present, but Felicia was not. The Department noted that Commissioner Pogue had vacated the January 21, 2011 order which Ronald sought to enforce, but Commissioner Puente-Porras was troubled by Commissioner Pogues's failure to state a basis for vacating the January 21, 2011 order. The following colloquy occurred:

"[THE DEPARTMENT]: Your Honor, I actually looked at the Court's file, and it looks like there's a September 15, 2011 order that states that the January 21, 2011 order was vacated.

"THE COURT: Right. And I don't have a basis for it.

"[RONALD]: Right.

"THE COURT: And that's the problem that I'm facing. I agree that there's a subsequent order. I don't dispute that. But I don't have–let me just point it out for you here. [¶] So the subsequent order of January 12, 2012, brought up a separate dollar amount different from what the 2011 order indicated. And I have the Exhibit A, which is the transcript that reflects what the Court's thought process was and the finding that it was a zero arrears with prejudice. . . .

"[THE DEPARTMENT]: Your Honor, however, I mean the Court on September–September 15, 2011, appears to have vacated that order. I'm not entirely sure how the court–with all due respect, I'm not entirely sure under what authority the Court can ignore that order.

"THE COURT: Well, I'm looking at the January 12th order. . . . Prior to that the September 15, 2011 order which you say vacated the January–

"[THE DEPARTMENT]: From my reading vacated the January 21, 2011 order.

"THE COURT: '11, order. I don't have any rationale for why it was vacated. Do you have anything?

"[THE DEPARTMENT]: I don't, Your Honor. That's the first time I looked at the order.

"THE COURT: There was nothing about there being untimely service. There was nothing about qualifying why it was vacated given that it was set at zero with prejudice eight months prior; less than eight months prior.

"[THE DEPARTMENT]: I don't have the underlying motion, Your Honor. So I wouldn't be able to tell the Court why the mother had requested it because I believe it was the mother's motion.

"THE COURT: See. And that's my problem as well because I have an incomplete file.

"[THE DEPARTMENT]: Yeah.

"THE COURT: So that's a big problem."

Despite the Department's challenge to the trial court's authority to disregard the two previous child support orders, the court granted Ronald's request, took judicial notice of the January 21, 2011 order, vacated the orders dated September 15, 2011, and January 12, 2012, and reduced the amount of arrears owed by Ronald to Felicia to zero.

The Department timely appeals.

## DISCUSSION

The Department argues that Commissioner Puente-Porras' January 7, 2016 order granting Ronald's request to enforce the January 21, 2011 child support order, and vacating the prior orders of September 15, 2011 and January 12, 2012, must be reversed. The Department argues that the September 15, 2011 order (which vacated the January 21, 2011 order) and the January 12, 2012 order (which fixed Ronald's arrears at $12,952.25) were long final. Ronald failed to appeal from those orders, and under principles of res judicata, Commissioner Puente Porras lacked the authority to vacate them. We agree.

"'The doctrine of res judicata precludes parties or their privies from relitigating a cause of action that has been finally determined by a court of competent jurisdiction. Any issue necessarily decided in such litigation is conclusively determined as to the parties or their privies if it is involved in a subsequent lawsuit on a different cause of action.' [Citation.] The same rule applies to final adjudications rendered in the course of a divorce proceeding over which a court may have continuing jurisdiction and which may require several orders for its ultimate disposition. [Citations.]" (*Wodicka v. Wodicka* (1976) 17 Cal.3d 181, 188 (*Wodicka*).) "[A] prior appealable order becomes 'res judicata' in the sense that it becomes binding in the same case" if no appeal is taken. (*Lennane v. Franchise Tax Bd*. (1996) 51 Cal.App.4th 1180, 1185-1186.)

In the instant case, the September 15, 2011 order became final on March 13, 2012, 180 days from the date of the order, due to Ronald's failure to appeal. (Cal. Rules Court, rule 8.104(a)(3).) Similarly, the January 12, 2012 order became final on July 10, 2012, 180 days from

the date of the order, because Ronald failed to appeal. (*Ibid.*) Thus, the orders were final for res judicata purposes. Ronald's motion to enforce the previously vacated order of January 21, 2011 was, in substance, a collateral attack on two final orders and an attempt to relitigate the issue of arrears, which had been determined against him in the September 15, 2011 order (vacating the order Ronald wished to enforce) and the January 12, 2012 order (which set his arrearages at $12,952.25). However, such an attempt to relitigate the issue of arrears was barred by res judicata. (*Wodicka, supra*, 17 Cal.3d at p. 188; see also *Melbostad v. Fisher* (2008) 165 Cal.App.4th 987, 998; *Machado v. Superior Court* (2007) 148 Cal.App.4th 875, 884.) Even if (as Commissioner Puente-Porras apparently believed) the orders had been entered in error, Ronald's failure to timely appeal foreclosed relitigation of the child support issues previously adjudicated. (*Smith v. Smith* (1981) 127 Cal.App.3d 203, 209 ["For the purpose of the doctrine of res judicata, "'[an] erroneous judgment is as conclusive as a correct one. [Citations.]'"'].) The trial court, therefore, was without authority to grant Ronald's request. We reverse the trial court's order of January 7, 2016, direct the court to reinstate the orders of September 15, 2011 and January 12, 2012, and remand for further proceedings as appropriate to determine child support arrears and consider any requests for modification of child support the parties may submit.[3]

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[3] Because we resolve the case on this ground, we need not consider the Department's additional argument that the order appealed from constituted an improper retroactive modification of child support.

## DISPOSITION

The order of January 7, 2016 is reversed. The matter is remanded with directions that the court reinstate the orders of September 15, 2011 and January 12, 2012, and conduct further proceedings as appropriate to determine the amount of child support arrears and consider any requests for modification of child support the parties may submit. The Department shall bear its own costs on appeal.

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WILLHITE, J.

We concur:

EPSTEIN, P. J.

MANELLA, J.