

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

COUNTY OF LOS ANGELES
CHILD SUPPORT SERVICES
DEPARTMENT,

Plaintiff and Appellant,

v.

DARREN TURNER,

Defendant and Respondent,

MEYA HART,

Other Parent and Respondent.

B276032

(Los Angeles County
Super. Ct. No. BZ144441)

APPEAL from an order of the Superior Court for Los Angeles County, Mitchell Block, Commissioner. Affirmed.

Xavier Becerra, Attorney General, Julie Weng-Guitierrez, Assistant Attorney General, Linda M. Gonzalez and Ricardo Enriquez, Deputy Attorneys General, for Plaintiff and Appellant.

No appearance for Defendant and Respondent Darren Turner.

No appearance for Other Parent and Respondent Meya Hart.

County of Los Angeles Child Support Services Department (the County or the Department) appeals from an order directing it to reimburse defendant Turner for overpayment of child support, and allowing the County to seek reimbursement only from Other Parent Meya Hart (who received direct payment of child support from Turner while also receiving public assistance). We affirm the order.

BACKGROUND

The Department filed a form summons and complaint regarding parental obligations in September 2013. The complaint named Turner as defendant/respondent and Hart as Other Parent, and sought an order that Turner pay \$820 per month in child support for his and Hart's son, Connor. The complaint noted that the child was receiving or had received public assistance since December 3, 2012, and asked the court to order Turner to make all payments to the California State Disbursement Unit (the CSDU).

Turner was not personally served with the complaint. Instead, on November 7, 2013, the complaint was served by substituted service on "Jane Doe" at an undisclosed address (the address was kept confidential under Fam. Code, § 17212); the address was verified by a child support officer of the Department using ACCURINT, a Lexis Nexis Public Records Search Company. Turner did not respond to the complaint, and his default was taken on January 31, 2014.

Judgment was entered that same day. The judgment ordered Turner to pay monthly child support in the amount of \$820, beginning on October 1, 2013. On page three of the 13-page judgment, there is a

subparagraph stating that all payments must be made to the CSDU. The judgment was served on Turner by mail, at an undisclosed confidential address, on April 14, 2014.

Turner testified that he did not receive the judgment, and was unaware that there was a judgment, for more than a year. He did, however, receive a letter from the human resources department in January 2014, informing him that his wages would be garnished \$800 per month. At that time, he was paying Hart \$300 per month by mutual agreement. He contacted Hart and told her that he could not afford to pay \$800. She told him that if he agreed to pay her \$675 per month, she would “drop the case.”

Beginning in January 2014, Turner paid Hart \$675 directly every month. He assumed the child support case was closed because Hart told him it was closed, and he received a letter from the human resources department stating that his wages would not be garnished.¹ Hart did not tell Turner that she was receiving any aid from the County, and he was unaware that she was, in fact, receiving aid.

More than a year later, on April 23, 2015, Turner received a “Child Support Warning Notice” from CSDU stating that he was past due in paying child support. The notice indicated that he owed \$8,526.31, and warned him that CSDU would use any authorized collection method to collect the past due amount.

¹ It appears, however, that the Department garnished a total of \$1,230 from Turner’s wages in 2014, and \$3,280 in 2015.

That same day, Turner also received a letter from Luetricia A. Jefferson, a child support representative with the Department, asking him to complete a declaration of support payment history to confirm any direct payments he made to Hart for child support from February 2014 to April 2015. The letter asked him to return the completed declaration by May 20, 2015 “so that you can be given credit for all payments that you have made and for us to audit your case for the correct balance.”

Turner timely completed the declaration, indicating that he had paid Hart \$675 every month; Hart also completed a declaration showing the same payments. The Department, however, did not give Turner credit for any of his payments. Instead, on June 10, 2015, the Department levied on Turner’s bank account and withdrew \$9,793.47 for past due child support payments.²

After the levy, Turner called Ms. Jefferson, who told him that Hart had been receiving County aid and failed to report that he was paying her child support. She said that he had to request a hearing in order to get credit for the payments he made directly to Hart. Turner and Hart went to the Department to meet with Ms. Jefferson to try to straighten things out. At that meeting, Ms. Jefferson gave Turner a copy of the judgment; he testified that he had not seen the judgment before Ms. Jefferson gave it to him, and was not aware there was a judgment until then.

² Following an audit, on August 5, 2015, the Department refunded \$337.16 to Turner for overpayment.

On September 9, 2015, Turner filed a motion for credit for the direct payments he made, asking that he be reimbursed a total of \$9,361.31. Turner testified at the hearing on the motion, and presented evidence that, as of September 1, 2015, the total amount of child support he had been ordered to pay was \$19,680, that he had paid a total of \$15,075 directly to Hart, and that the Department had levied or garnished a total of \$14,303.47 (and refunded \$337.16), resulting in an overpayment of \$9,361.31.³

The trial court granted Turner's motion. It found that Turner paid \$15,075 in direct support to Hart, and that the Department's levy on Turner's bank account and garnishment of his wages created an overpayment. The court ordered the County to reimburse Turner the difference between the amount ordered in the judgment and the amounts taken by the Department plus the amounts Turner paid to Hart directly. Finally, the court found that Hart was unjustly enriched because she received direct payments from Turner at the same time she was receiving welfare, and ordered that the County seek reimbursement from Hart and not from Turner.

The County timely filed a notice of appeal from the order.

³ Hart also testified at the hearing. Although she admitted signing declarations under penalty of perjury stating that she had received the child support payments from Turner, she testified that the payments were not for child support, but were payments for damage Turner allegedly did to her car. The trial court did not find her testimony to be credible.

DISCUSSION

In 1975, the United States Congress enacted Title IV-D of the Social Security Act (42 U.S.C., §§ 651-660) which required the states to establish a comprehensive program for both child support enforcement and determination of paternity. (*In re Marriage of Shore* (1977) 71 Cal.App.3d 290, 295.) Federal law requires that, under that program, parent recipients of public assistance assign to the state as a condition of receiving benefits any rights to support that they or their children may have. (*City and County of San Francisco v. Thompson* (1985) 172 Cal.App.3d 652, 656.) “[T]he primary reason underlying the public enforcement of support rights is to insure that the moneys disbursed by the county for the aid of a needy child be returned to the public source from which they were disbursed.” (*In re Marriage of Shore, supra*, 71 Cal.App.3d at p. 298.)

In compliance with federal law, California enacted Welfare and Institutions Code section 11477, which requires applicants for public assistance to “assign to the county any rights to support from any other person the applicant or recipient may have on his or her own behalf, or on behalf of any other family member for whom the applicant or recipient is applying for or receiving aid.” (Welf. & Inst. Code, § 11477, subd. (a)(1)(B).) In fact, the statute provides that receipt of public assistance operates as an assignment by operation of law. (*Ibid.*) Another provision enacted to ensure compliance with federal law is Welfare and Institutions Code section 11457, which provides, in relevant part, that “[m]oney from noncustodial parents for child or spousal support with respect to whom an assignment under Section

11477 has been made shall be paid directly to the local child support agency and shall not be paid directly to the family.” (Welf. & Inst. Code, § 11457, subd. (a).)

On appeal, the County in essence argues that the trial court’s order is erroneous because it interferes with California’s federally-mandated child support enforcement program. First, the County contends the trial court abused its discretion by granting Turner credit for the payments he made directly to Hart because (a) under Welfare and Institutions Code section 11477, those child support payments were assigned to the County while Hart was receiving public assistance; (b) Turner knew or should have known that the payments were supposed to be made to CSDU; and (c) Hart retained all of the payments Turner made to her while she was on public assistance. Second, the County contends that Hart’s unilateral actions in accepting child support payments directly from Turner cannot interfere with the County’s right to reimbursement for public assistance payments it made to Hart for the child. Finally, the County contends that by requiring the County to seek restitution from Hart only, the trial court improperly “converted the child support debt that Turner owed to the [C]ounty into a regular, civil debt owed by Hart,” causing the Department to incur delays and greater expenses.

In making these arguments, the County ignores the evidence before the trial court, the equitable factors present, and the scope of the trial court’s discretion. For example, in arguing that the court abused its discretion by granting Turner credit for the payments he made directly to Hart, the County asserts that the payments were assigned to

the County and Turner knew or should have known that he was supposed to make his payments to the CSDU. But the evidence before the trial court was that Turner had not seen the judgment before the County levied on his bank account, and did not know that Hart was on public assistance (and thus had assigned the child support payments to the County). The court reasonably could conclude, based on this evidence, that Turner -- who was never personally served with the complaint or judgment, and acted in good-faith reliance upon representations made to him by Hart -- should not be penalized for making his payments to Hart rather than CSDU.⁴ (*In re Marriage of Utigard* (1981) 126 Cal.App.3d 133, 145 [“The question whether a parent providing support contrary to the provisions of a court order should be granted credit for the same is one within the sound discretion of the trial court”].)

We are aware, as the County points out, that *In re Marriage of Utigard* did not involve payments made to a custodial parent who was receiving public assistance and who therefore had assigned to the County her right to receive those payments. But that fact does not preclude the trial court from balancing the equities and determining, in its discretion, whether equitable considerations weighed in favor of granting credit to an overpaying noncustodial parent. In this case, the equitable factors support the trial court’s determination. In addition to

⁴ Even if Turner had received a copy of the judgment, we note that the provision of the judgment directing that payments be made to the CSDU could easily be overlooked by a lay person. It is a single sub-paragraph on the third page of a long, form judgment.

Turner's lack of knowledge of the terms of the judgment, the evidence showed that at the time the County levied on Turner's bank account (which resulted in the overpayment), it had received sworn declarations from both Turner and Hart confirming that Turner had made the child support payments (albeit at a lesser amount than ordered). Therefore, the County knew at that time that Hart had failed to report that she was receiving child support payments and had accepted those payments in violation of her assignment of the right to receive them.

In arguing that the trial court's grant of credit to Turner was erroneous because Hart's action in accepting Turner's payments cannot interfere with the County's right to reimbursement for public assistance payments it made to Hart, the County ignores the actual effect of the court's order. In the cases upon which the County relies, courts rejected attempts to preclude the governmental agency from obtaining reimbursement at all. (See *In re Marriage of Shore, supra*, 71 Cal.App.3d 290 [court rejected custodial parent's assignment to third party of the right to collect child support that accrued while parent was on public assistance]; *County of Santa Clara v. Support, Inc.* (1979) 89 Cal.App.3d 687 [court enjoined collection agency from accepting assignments of claims for past due child support from persons who had received public assistance]); *In re Marriage of Comer* (1996) 14 Cal.4th 504 [court rejected the noncustodial parent's attempt to estop the county from collecting child support arrears for the time period in which the custodial parent concealed the children].) But here, the trial court's order does not prevent the County from obtaining reimbursement.

Instead, the trial court's order merely limits the party (Hart rather than Turner) from whom the County may seek reimbursement.

Finally, the County cites to no law (and we have found none) that precludes the court from directing the County to seek reimbursement from Hart. In balancing the equities, the trial court reasonably concluded that the reimbursement should come from the party who wrongfully converted payments to which the County was entitled and was unjustly enriched by accepting those payments, rather than from the person who made those payments in good faith and in reliance upon the other party's representation that the child support case had been closed. The court also reasonably could conclude that the County was more able than Turner to bear any costs and delays in recovering from Hart the amounts she improperly converted.

In short, to the extent the trial court's order "interferes" with California's federally-mandated child support enforcement program, that interference is de minimus, and is outweighed by equitable considerations. We conclude the trial court did not abuse its discretion in granting Turner credit for the child support payments he made directly to Hart, ordering the County to reimburse Turner for the overpayments made, and directing the County to seek reimbursement from Hart of the amounts she accepted from Turner in violation of her assignment of child support payments to the County.

DISPOSITION

The order is affirmed. No costs are awarded.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

WILLHITE, Acting P. J.

We concur:

MANELLA, J.

COLLINS, J.