

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS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 This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.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 SIX

SHANNA J. HAMM,

Plaintiff,

v.

CHARLES A. HAMM,

Defendant and Appellant;

VENTURA COUNTY
DEPARTMENT OF CHILD
SUPPORT SERVICES,

Intervener and Respondent.

2d Civil No. B278972
(Super. Ct. No. SD037480)
(Ventura County)

Father appeals in propria persona two orders relating to child support. One order dismissed his motion accusing mother of fraud. The other order modified child support. We affirm both.

FACTS

Charles and Shanna Hamm were married for 10 years before separating in 2008. There are three minor children of the

marriage. The parties share legal and physical custody. Currently one child resides with each parent with only the youngest child dividing his time between both parents.

(a) Fraud Action

Since 2008, the parties have filed numerous income and expense declarations concerning Charles's mostly unsuccessful attempts to reduce child support.

On February 29, 2016, Charles filed a motion for damages based on fraud, alleging that Shanna had understated her income at least since 2011. In a declaration attached to Charles's motion, he stated he discovered the fraud in April 2014.

The Ventura County Department of Child Support Services (County) intervened. On the County's motion, the trial court dismissed Charles's motion under Family Code section 3691, requiring a motion to relieve a party from a support order or any part thereof to be brought within six months.¹

(b) Child Support Modification

On August 3, 2016, the County filed a motion for modification of child support. Both parties submitted declarations of income and expenses. The County presented its support calculations to the court. Charles again accused Shanna of understating her income, claiming bank deposits showed more income than Shanna was declaring. The trial court accepted the County's calculations and ordered Charles to pay \$302 per month in child support.

¹ All statutory references are to the Family Code unless otherwise stated.

DISCUSSION

(a) Fraud

Charles's motion is in essence an attack on child support orders dating back at least to 2011. Section 3691, subdivision (a) provides, however: "The grounds and time limits for an action or motion to set aside a support order, or any part or parts thereof, are governed by this section and shall be one of the following: [¶] (a) Actual fraud. Where the defrauded party was kept in ignorance or in some other manner, other than his or her own lack of care or attention, was fraudulently prevented from fully participating in the proceeding. An action or motion based on fraud shall be brought within six months after the date on which the complaining party discovered or reasonably should have discovered the fraud."

Section 3691 applies to allegations that a party committed fraud or perjury in obtaining child support in the amount ordered by the trial court. (*In re Marriage of Tavares* (2007) 151 Cal.App.4th 620, 627.)

Here Charles declared he became aware of the alleged fraud in April 2014. His action filed in February 2016 is barred by section 3691.

Charles claims the County failed to raise the defense in a timely manner. He cites without elucidation Code of Civil Procedure section 591. That section provides in part, "[F]ailure on the part of any person filing any demurrer to prosecute the same may be considered as a waiver of such demurrer"

First, the County did not fail to prosecute its demurrer; it successfully argued the demurrer to the trial court. Second, Code of Civil Procedure section 591 provides the demurrer "may" be

considered as waived. The court is not mandated to treat the demurrer as waived.

Charles argues that he should have been given more notice that the County was raising section 3691 as a defense. But he does not explain how more notice would have helped. His own declaration in support of the motion shows it is untimely.

(b) Child Support Order

Charles's challenge to the child support order is made without citation to the record or citation to authority. A trial court's order is presumed correct, and we indulge in all presumptions in support of the order on matters on which the record is silent. (*Estate of Goulet* (1995) 10 Cal.4th 1074, 1077, fn. 1.) It is not our task to search the record for errors; it is the duty of appellant to cite to the portion of the record that supports his argument. (*Fox v. Erickson* (1950) 99 Cal.App.2d 740, 742.)

Charles argues the trial court did not read his moving papers. But he fails to cite the record to support his argument. We presume the trial court read and considered his moving papers. Similarly, he failed to cite the record to support his arguments that the trial court rushed the hearing and failed to calendar a hearing date after issuing what it considered temporary support orders. Nor does he cite to any place in the record where he requested any such hearing date.

Charles claims he did not have notice of Shanna's finances or the County's recommendation to the court. Shanna filed a financial declaration dated September 15, 2016. The hearing was on October 25, 2016. Charles does not explain why he did not have time to review it. In any event, he cites nowhere in the record that he requested a continuance to review Shanna's financial declaration. Charles apparently requested time to

review the County's calculations. The trial court suggested he meet with the County's counsel at 1:30 p.m. that day. Counsel stated he would not be available then. Charles did not request a different time or a further continuance.

Finally, Charles requests that we conduct a de novo review of whether Shanna should benefit from parental alienation and whether the trial court should have considered non-guideline support. But the standard of review for child support orders is abuse of discretion. (*In re Marriage of Cheriton* (2001) 92 Cal.App.4th 269, 282.) Charles fails to show any such abuse.

The orders are affirmed. Costs are awarded to respondent.

NOT TO BE PUBLISHED.

GILBERT, P. J.

We concur:

YEGAN, J.

PERREN, J.

William R. Redmond, Commissioner

Superior Court County of Ventura

Charles A. Hamm, in pro. per., for Defendant and Appellant.

Xavier Becerra, Attorney General, Julie Weng-Gutierrez, Senior Assistant Attorney General, Linda M. Gonzalez, Supervising Deputy Attorney General, Monique S. Seguy, Deputy Attorney General, for Plaintiff and Respondent.