

**NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS**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 This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.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

ANTHONY L. ENGLISH,

Plaintiff and Appellant,

v.

DEPARTMENT OF CHILD SUPPORT  
SERVICES,

Defendant and Respondent.

F089279

(Super. Ct. No. S-1501-PT-30549)

**OPINION**

**THE COURT\***

APPEAL from an order of the Superior Court of Kern County. Cynthia L. Loo,  
Temporary Judge. (Pursuant to Cal. Const., art. VI, § 21.)

Anthony L. English, in propria persona, for Plaintiff and Appellant.

No appearance for Defendant and Respondent.

-ooOoo-

---

\* Before Meehan, Acting P. J., Snauffer, J. and DeSantos, J.

Appellant Anthony L. English appeals a family court order denying his request for reimbursement of child support overpayments. English was self-represented below and is self-represented on appeal. Respondent, Department of Child Support Services (DCSS), declined to file a respondent's brief. We affirm.

### **BACKGROUND**

The record on appeal in this matter consists solely of a partial clerk's transcript that contains, in relevant part, a minute order from January 28, 2025, an order after hearing from February 7, 2025, and the register of actions for this matter.<sup>1</sup> The factual and procedural summary that follows is, therefore, drawn almost completely from the register of actions, and is necessarily limited.

On November 9, 2022, DCSS filed a motion seeking modification of an order for child support from English for a minor child. On January 31, 2023, the family court held a hearing on the motion and issued an order as reflected in the register of actions. The register of actions describes the hearing: "The Court orders as follows: The Court grants [DCSS]'s motion to modify child support. [English] to pay the sum of \$329.00 per month for the support of minor child.... Child support payments shall commence 12/01/2022.... Wage assignment ... to issue.... The Court orders payment on arrears to be set/reset in the amount of \$25.00 per month commencing 3/01/2023. Wage assignment to issue." The court followed up with a findings and order after hearing (FOAH) on February 28, 2023. The FOAH is listed on the register of actions but is not in the record on appeal.

On June 5, 2023, English filed a request for order (RFO) seeking modification of child support, as well as an adjustment to arrears pursuant to Family Code

---

<sup>1</sup> English appeals the court's order issued at a hearing on January 28, 2025, and encompassed in its February 7, 2025 order after hearing.

section 4007.5.<sup>2</sup> The family court held a hearing on the RFO on July 18, 2023. The hearing is summarized in the register of actions: “[English] duly sworn and testifies. The Court orders as follows: The Court vacates order made on 2/28/23 based on [Code of Civil Procedure section] 473[, subdivision] (d).<sup>3</sup> Pursuant to Family Code [s]ection 4007.5[,] the Court grants incarceration credits to [English] from 8/01/21 through 3/31/23 in the amount of \$50 for each month. All prior orders shall remain in full force and effect. The Court orders payment on arrears to be set/reset in the amount of \$15 per month commencing 9/01/23. Wage assignment to issue. [DCSS] is ordered to provide an updated accounting to all parties based on the Court’s findings.” The court followed up with a FOAH on August 11, 2023, based on the hearing. The FOAH is not in the record on appeal, but its issuance is reflected on the register of actions.

On June 27, 2024, English filed another RFO; this RFO sought refund of child support overpayments. The family court held a hearing on the RFO on August 6, 2024. The hearing is summarized in the register of actions: “[English] duly sworn and testifies. The Court makes the following findings and orders: The Court grants [English’s] motion. The Court adopts the SAT calculations and attaches it to the minute order. [DCSS] is to reimburse [English] in the amount of \$2,709.08 commencing 8/1/2024.” On September 9, 2024, the court followed up with a corresponding FOAH. The FOAH is not in the record on appeal, but its issuance is reflected on the register of actions.

On October 22, 2024, DCSS filed a motion to set aside and restate the ruling issued on August 6, 2024, and the corresponding FOAH filed on September 9, 2024. The

---

<sup>2</sup> Family Code section 4007.5, subdivision (a) provides for suspension of child support orders, by operation of law, for periods over 90 days in which the person ordered to pay support is incarcerated. English states in his opening brief that he was incarcerated from August 1, 2021, to March 31, 2023.

<sup>3</sup> Section 473, subdivision (d) of the Code of Civil Procedure provides, in relevant part: “The court … may, on motion of either party after notice to the other party, set aside any void judgment or order.”

family court heard DCSS's motion on January 28, 2025. The hearing is described in the register of actions: "The Court makes the following findings and orders: The Court grants [DCSS]'s motion. The Court finds that [English] has a credit balance of \$1,883.61 as of 10/31/24, pursuant to the Simple Report submitted by [DCSS]. Simple Report incorporated hereto and made a part hereof. [English's] request for a refund is denied at this time." On February 7, 2025, the court followed up with a FOAH memorializing its order.

As noted above, the family court's minute order from the January 28, 2025 hearing and its February 7, 2025 FOAH are in the record on appeal; they are the only documents related to proceedings before the family court that are included in the record on appeal. These orders align with the hearing summary set forth in the register of actions, as described above. More specifically, the court's February 7, 2025 FOAH states: "The court grants the motion of [DCSS] to restate its ruling issued on 08-06-2024 and set aside the Order After Hearing filed on 09-09-2024. [¶] The court finds that [English] has a credit balance of \$1,883.61 as of 10-31-2024, pursuant to the Simple Report submitted by the DCSS. Simple Report incorporated hereto and made a part hereof. The DCSS shall update its case balance to reflect the credit balance ordered herein, but [English's] request for a return of monies is denied in equity."

English thereafter filed this appeal challenging the family court's February 7, 2025 FOAH. He contends the court erred in declining to order DCSS to refund his credit balance to him. He notes his overpayments resulted from child support payments made during his incarceration, when his child support obligation should have been suspended.

## **DISCUSSION**

### **I. ENGLISH HAS NOT SHOWN THE FAMILY COURT ERRED**

#### **A. Standard of Review**

"Where, as here, the trial court is vested with discretionary powers, we review its ruling for an abuse of discretion." (*In re Marriage of Duncan* (2001) 90 Cal.App.4th

617, 625.) “As long as the court exercised its discretion along legal lines, its decision will be affirmed on appeal if there is substantial evidence to support it”. (*Ibid.*; *In re Marriage of Smith* (1990) 225 Cal.App.3d 469, 480.)

### B. English’s Argument

English states: “Appellant [asks] the Court of Appeals to reverse the [family] court[’]s ruling on [the] DCSS motion and grant the Appellant the \$2,709.08 [initially ordered refunded] and release all denied monies held.”

### C. Analysis

Preliminarily we note “child support proceedings are equitable proceedings in which the trial court is permitted the broadest discretion in order to achieve fairness and equity.” (*In re Marriage of Saraye* (2024) 106 Cal.App.5th 348, 359; *In re Marriage of Lusby* (1998) 64 Cal.App.4th 459, 470–471; see also *In re Marriage of Fogarty & Rasbeary* (2000) 78 Cal.App.4th 1353, 1360 [“family law courts have traditionally been regarded as courts of equity”].)

Furthermore, a trial court has the *discretion* to order or decline to order reimbursement or credit to a party who has overpaid child support. (See Fam. Code, § 3653, subd. (d) [listing factors for court to consider in ordering reimbursement for overpayment]; *In re Marriage of Peet* (1978) 84 Cal.App.3d 974, 980 [court has discretion to award credit for overpayment].) “[A] reviewing court, should not disturb the exercise of a trial court’s discretion unless it appears that there has been a miscarriage of justice.” (*In re Marriage of Dandona & Araluce* (2001) 91 Cal.App.4th 1120, 1126.)

It is a fundamental principle of appellate practice, as well as an element of the constitutional doctrine of reversible error, that “[a] judgment or order of the lower court is *presumed correct*. All intendments and presumptions are indulged to support it on matters as to which the record is silent, and error must be affirmatively shown.” (*Denham v. Superior Court* (1970) 2 Cal.3d 557, 564; *Bennett v. McCall* (1993) 19 Cal.App.4th 122, 127 “[An] appellant must affirmatively demonstrate error by an

adequate record. In the absence of a contrary showing in the record, all presumptions in favor of the trial court's action will be made by the appellate court. '[I]f any matters could have been presented to the court below which would have authorized the order complained of, it will be presumed that such matters were presented.' "].)

Here, English, as the appellant, has the burden of showing reversible error by an adequate record. (*Ballard v. Uribe* (1986) 41 Cal.3d 564, 574; *Jameson v. Desta* (2018) 5 Cal.5th 594, 608–609 [trial court orders and judgments are presumed correct, and appellants have the burden of presenting an adequate record to demonstrate error].) He has not met his burden.

As an initial matter, English's brief does not contain adequate citations to the record; nor does he appropriately support his arguments with citations to requisite, relevant legal authorities. (See Cal. Rules of Court, rule 8.204(a)(1).) More importantly, the record on appeal is incomplete. The pleading underlying the challenged ruling, that is, the October 22, 2024 motion by DCSS to restate the ruling issued on August 6, 2024, and set aside the FOAH filed on September 9, 2024, is not in the record on appeal. Furthermore, the family court heard DCSS's underlying motion on January 28, 2025, but a reporter's transcript of the hearing is not in the record on appeal. Under these circumstances, we cannot decipher what arguments, explanations, and evidence were before the court; nor can we divine the court's reasoning in making its ruling.

In the absence of a reporter's transcript, " 'the question of sufficiency of evidence in support of the findings is not open. In such a case, the reviewing court must presume that there was substantial evidence in the oral proceedings to support the findings or the decision of the court below[.]' " (*In re Marriage of Stachon* (1978) 77 Cal.App.3d 506, 509; see also *In re Marriage of Utigard* (1981) 126 Cal.App.3d 133, 145 [when a party chooses to prosecute an appeal solely on the clerk's transcript, " 'every presumption is in favor of the validity of the judgment and any condition of facts consistent with its validity will be presumed to have existed rather than one which will defeat it' "].) Indeed, " '[t]he

absence of a record concerning what actually occurred at the [hearing] precludes a determination that the trial court [erred].’” (*Oliveira v. Kiesler* (2012) 206 Cal.App.4th 1349, 1362; *Vo v. Las Virgenes Municipal Water Dist.* (2000) 79 Cal.App.4th 440, 447.) “ ‘Failure to provide an adequate record on an issue requires that the issue be resolved against [appellant].’” (*Foust v. San Jose Construction Co., Inc.* (2011) 198 Cal.App.4th 181, 187.)

We conclude no error appears on the face of the record and the family court’s determinations are supported by substantial evidence. (See *Nielsen v. Gibson* (2009) 178 Cal.App.4th 318, 324–325 [in the absence of a reporter’s transcript, “we ‘ ‘must conclusively presume that the evidence is ample to sustain the [trial court’s] findings’ ’ [and o]ur review is limited to determining whether any error ‘appears on the face of the record’ ”]; *Bennett v. McCall, supra*, 19 Cal.App.4th at p. 127 [“[g]iven the status of the record, we will not second guess the trial court’s determination”]; see also *In re Marriage of Utigard, supra*, 126 Cal.App.3d at p. 145 [“Without benefit of a reporter’s transcript, … this court is in no position to assert that the trial court, in balancing the equities presented before it, abused its discretion in making its order”].)

## **DISPOSITION**

The family court’s February 7, 2025 order granting DCSS’s motion to restate the ruling issued on August 6, 2024, and set aside the order after hearing filed on September 9, 2024, and denying reimbursement to English of support overpayments, is affirmed. No costs are awarded.