

support order, incarceration, and request for adjustment of arrears, the statutory relief awarded was unavailable to the father under current § 4007.5. At the time the Legislature repealed former § 4007.5, the father did not have a vested statutory right, and in enacting current § 4007.5, the Legislature did not intend to save the statutory protections previously available under former § 4007.5. That said, the father's request, even though presented on a form intended for use under current § 4007.5, sufficiently put at issue a claim for an adjustment of arrears under former § 4007.5.

References: CALIFORNIA FAMILY LAW PRACTICE AND PROCEDURE, 2nd ed., § 42.27 (incarceration of child support obligor).

Third Party Custody

Briefly Noted

County of San Diego Dept. of Child Support Services v. C.A.
(No. E070089; Ct. App., 4th Dist., Div. 1, 4/22/19)
__Cal. App. 5th__, __Cal. Rptr. 3d __, 2019 Cal. App. LEXIS 365
By Huffman, Acting P. J. (Haller, O'Rourke, JJ., concurring)

A child support agency had standing to seek support from a mother after her child's grandmother was awarded sole legal and physical custody of the child.

Procedural Posture. After a grandmother was awarded custody of a minor child and support from the father, the trial court denied a local child support agency's request for a support order against the mother.

Overview. The Court of Appeal vacated the order and remanded. The court held that the agency could seek support from the mother, because the grandmother's support was no longer voluntary [Fam. Code § 3951(a)] but was court-ordered, and there was no evidence of any agreement between the mother and the grandmother for compensation. Case law holding that a custodial parent had no duty to compensate relatives who were not under court order and were not obligated to continue

providing care was distinguishable because the mother was a noncustodial parent and the grandmother was not free to cease providing care. The grandmother's assumption of sole custody did not eliminate the mother's legal obligation to support the child [Fam. Code §§ 3900, 4053(a)], because the mother's parental rights had not been terminated.

References: CALIFORNIA FAMILY LAW PRACTICE AND PROCEDURE, 2nd ed., § 40.08[2] (parent's obligation to support child in relative's custody).

Third Party Reimbursement

Mother's Boyfriend Could Not Recover Cost of Necessaries Provided to Child When Father Regularly Paid Court-Ordered Support

Look v. Penovatz
(No. H044754; Ct. App., 6th Dist., 4/8/19)
__Cal. App. 5th__, __Cal. Rptr. 3d __, 2019 Cal. App. LEXIS 324
By Greenwood, P. J. (Bamattre-Manoukian, Danner, JJ., concurring)

When a child's father regularly paid court-ordered child support to the child's mother, the mother's boyfriend, with whom the mother and child lived, was not entitled to reimbursement from the child's father for the child's expenses. If the child support was inadequate, the proper remedy would have been for the mother to seek modification of the support order.

Facts and Procedure. When Mother and Father dissolved their marriage in 2006, Father, who lived in Hollister, was awarded primary residential custody of their son, Christopher. Father was ordered to pay Mother \$400 per month in child support, based on Mother's 31 percent time share.

In 2011, Mother began living with her boyfriend, Plaintiff William Look, in his house in Carmel Valley. Plaintiff did not expect Mother to pay any household expenses, including room and board. In August 2011, Mother and Father informally agreed to change the custody arrangement so that Mother's

home would be Christopher's primary residence. Christopher lived with Mother and William through his high school graduation.

At the time they discussed changing the custody arrangement, Mother and Father also discussed modifying the support order. According to Father, the parties signed a written agreement to increase his support payments to \$540 per month, but Mother's attorney failed to file the agreement with the court. Mother denied having reached an agreement regarding child support, stating that she responded to Father's offer of \$540 per month with a counteroffer of over \$1,500 per month, which represented the guideline amount of support. Mother and Father never obtained a court order modifying child support, and Father continued to pay \$400 per month until Christopher graduated from high school.

William testified at trial that he decided to continue supporting Christopher rather than encourage Mother to seek modification of child support, for several reasons. According to William, Father "childnapped" Christopher when he learned his statutory support would be over \$1,500 per month, allowing him to return to Mother only when he believed Mother had agreed to accept a lower amount of child support. William was concerned that Father would detain Christopher again if Mother sought increased child support, or that Father would take Christopher to Serbia, where he owned property. William also alleged that Mother could not afford an attorney to represent her in support modification proceedings.

In February 2015, William filed a complaint against Father for relief under Family Code § 3950, which provides that "[i]f a parent neglects to provide articles necessary for the parent's child who is under the charge of the parent, according to the circumstances of the parent, a third person may in good faith supply the necessaries and recover their reasonable value from the parent." After a two-day bench trial, the court issued a statement of decision in favor of Father. The court found that Mother had never sought a court order modifying support, that Father continued to pay Mother \$400 per month pursuant to the court order, and that Mother never asked him to pay more. The court did not believe William's allegations that Mother did not seek modification of support because she feared that Father would abduct Christopher and because she could not afford an attorney.

The court further found that Father did not neglect Christopher, noting that he had always paid his court-ordered child support. Finally, the court stated that William was attempting to seek a modification of support on behalf of Mother, retroactive to 2011. However, a modification may only be made retroactive to the date the request for order is served and William did not file his action until February 2015. The court concluded that "equity would not be served if Plaintiff were allowed to step in the shoes of [Mother] or if he were awarded relief" to which Mother would not be entitled.

William Did Not Have Right to Reimbursement because Father Paid Court-Ordered Child Support. William argued on appeal that he had a right to reimbursement despite Mother's failure to seek modification of child support, because Father had a duty to support Christopher according to his means, as determined under the child support guidelines.

Relying on cases discussing the predecessor to section 3950 [former Civil Code § 207 (continued by Fam. Code § 3950 without substantive changes)], the appeals court concluded that a third party does not have a right to reimbursement from a parent who is paying court-ordered child support. In such situations, if the parent is paying inadequate support, the proper remedy is to seek modification of the support order.

In reaching this conclusion, the court relied on a 1927 case, *Blair v. Williams* [86 Cal. App. 676]. In *Blair*, a married couple hired a nurse to provide care for their disabled infant. After the parents separated, the child lived with the mother and the father continued to pay the nurse's salary. In the dissolution proceeding, the court ordered the father to pay child and spousal support, with the understanding that the mother would pay the nurse, who was fully aware of the court order. The nurse subsequently brought an action against the father for compensation for her services. The Court of Appeal determined that the father was not obligated to pay any more than the amount ordered by the court, which was "the legal measure of the father's liability for the support of his child," until it was reversed or modified [*Blair* at 684-685]. The appeals court "gave great credence to the fact the nurse was fully aware of the trial court's order."

In the instant matter, William knew the amount of support Father was paying and knew that Mother and Father had attempted, but failed, to negotiate increased support when Christopher moved into William's house. William testified that he decided not to force the issue and to continue supporting Christopher. The appeals court found that this case "falls squarely within the rule of *Blair*," and the amount of support that Father paid pursuant to the support order was presumed to be just and reasonable.

The appeals court rejected William's argument that *Blair* was an "obsolete authority" that was "out of phase with the modern law of child support." While *Blair* is an older case, the appeals court stated, it has never been overruled. Moreover, the court's reading of *Blair* did not undermine the "modern policies" of California's statutory child support scheme, which requires the parents "to support their child in the manner suitable to the child's circumstances" [Fam. Code § 3900]. Father was performing his duty under the law by paying his court-ordered child support.

Mother Should Have Sought Modification. The court concluded that Mother could and should have sought a modification in court, based on changed circumstances. To the extent she was concerned about a possible abduction, the court reasoned, she could have raised her concerns in the modification proceeding and obtained orders preventing Father from abducting Christopher. If she was truly unable to afford representation, she could have sought attorney fees under provisions designed to give family law litigants access to representation and could have utilized the services of the family law facilitator's office. Mother's failure to seek modification did not give William the right to seek reimbursement from Father.

Commentary

Stacy D. Phillips and Erica Swenson

As family law practitioners, we find it self-evident that parents have an ongoing obligation to support their children [Fam. Code § 3900]. We also know that when an abandoned child's needs are met by a third party, the parent is not relieved of the obligation to support his or her child.

Family Code § 3950 authorizes a third party who provides financial support for someone else's child to

seek a civil remedy against the abandoning parent. *Look* is an example of such a case. Long before there was the Department of Child Support Services or the child support guideline, there was former Civil Code § 207. Civil Code § 207, enacted in 1872, was the precursor to Family Code section 3950, which "continues former Civil Code section 207 without substantive change" [23 Cal.L.Rev.Comm. Reports 1 (1993)].

Look instructs us that a third party is not entitled to relief under Family Code § 3950 when there is an order for the payment of child support in place and the supporting parent pays pursuant to that order, even if it is below guideline. "When in a divorce action there has been [an order for child support], that amount is presumed to be just and reasonable until it is reversed or modified by a subsequent order of the court. *The amount thus ascertained*, so long as the decree remains in full force, *is in this state the legal measure of the father's liability for the support of his child...*" While the support order "providing for an allowance for [the minor child's] support and maintenance remains in force, the father is not required to provide further clothing or shelter for his minor children, *the measure in that respect being the amount provided in the decree*" [quoting *Blair v. Williams* (1927) 86 Cal. App. 676, 684-685, italics in original].

This is both logical and fair. An action pursuant to Family Code section 3950 cannot be an end run around modification requirements. Child support recipients cannot sit on their hands and expect the law to later come to their rescue when they regret their inaction.

It also provides certainty for the payor. It would be unfair if someone could claim that you "under supported" your child and hold you liable for additional support, if you made dutiful payments pursuant to an existing court order.

Look provides us with additional insight about the differences between discovery in civil cases and family law cases. While we work under the same codes of evidence and civil procedure as our civil colleagues in the Bar, we are afforded some leeway because family law is a court of equity. Had the *Look* case been a modification of child support, Father's financial income would have been clearly discoverable. In *Look*, the plaintiff was seeking Father's

financial records to show that the support Father had paid pursuant to the judgment was inadequate. However, since child support paid pursuant to an existing order is presumptively correct, underpayment was not relevant. Thus, plaintiff could not discover Father's financial records.

Commentary

Marshall S. Zolla

We customarily act on the belief that reimbursements, once we find an applicable statute, are automatic. We are also aware that "no good deed goes unpunished." Let's take a look.

Good Samaritan William Look was cohabiting with the mother of a minor child who lived with the two of them. He contributed to the child's living expenses at the same time that the child's father paid child support to the mother pursuant to an existing court order. William eventually brought an order seeking reimbursement under Family Code section 3950 for funds he expended while his live in girlfriend's son lived in his household. The Court of Appeal affirmed the order denying William reimbursement under section 3950, reasoning that, under the circumstances in this case, the trial court properly found that the child's father did not neglect to provide for his minor child. The court's reasoning and rationale rested on existing case law indicating that a third party does not have a right to reimbursement where the parent from whom he or she is seeking reimbursement is paying child support pursuant to a court order.

During proceedings in the trial court, William filed a motion to compel financial information from the child's father, who was paying child support pursuant to the court order. William's motion to compel further interrogatory responses seeking detailed financial information from the child's father was denied. The Court of Appeal affirmed the denial, on the grounds that the father had a right of privacy with respect to the requested financial information. In the face of an objection based on privacy grounds, the party seeking discovery of the information must show that the information is directly relevant to a cause of action or defense such that disclosure is essential to the fair resolution of the lawsuit. Given the court's determination that William was not entitled to

reimbursement based on father's payment of child support pursuant to the outstanding order, the request for financial information was neither relevant to the claim nor essential to the fair resolution of the issues in dispute.

As future questions arise with respect to claims for reimbursement, and discovery disputes involving objections based on the right of privacy, this case warrants a closer look.

References: CALIFORNIA FAMILY LAW PRACTICE AND PROCEDURE, 2nd ed., § 40.08 (parent's obligation to persons supplying necessities to child).

COMMUNITY PROPERTY

Valuation Date

Court Did Not Err in Requiring Properties to Be Valued and Sold After Remand

In re Marriage of Oliverez

(No. H044451; Ct. App., 6th Dist., 2/28/19, ord. pub. 3/25/19)

33 Cal. App. 5th 298, __ Cal. Rptr. 3d __, 2019 Cal. App. LEXIS 255

By Greenwood, P. J. (Grover, Danner, JJ., concurring).

A trial court properly exercised its discretion in ordering the parties' real property to be valued following remand of the parties' dissolution case and ordering that the property be sold and the proceeds equally divided.

Facts and Procedure. The parties were married in 1993 and separated in 2007. During the marriage, the parties owned three properties: the family residence (Silverwood), a rental property (University), and an undeveloped 20-acre lot (La Madrona). In July 2007, the court gave Wife exclusive possession of Silverwood and ordered her to continue making mortgage payments. After Wife stopped making mortgage payments and moved out of Silverwood in April 2008, Husband moved in.