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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

D.B.,

Petitioner and Respondent,

v.

F.M.,

Respondent and Appellant.

B249778

(Los Angeles County  
Super. Ct. No. BF038797)

APPEAL from an order of the Superior Court of Los Angeles County,

David S. Cunningham III, Judge. Affirmed and remanded.

F.M., in pro. per., for Respondent and Appellant.

No appearance for Petitioner and Respondent.

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F.M. appeals from a family law court order providing that D.B. may claim an income tax exemption for the couple's minor child for 2013 and odd-numbered years thereafter. F.M. contends that the court (1) lacked jurisdiction to make this order, and (2) erred in granting D.B. this financial benefit because F.M. is the custodial parent and pays for all of the child's financial support. We affirm on the ground that F.M. has failed to provide us with an adequate record on appeal. We also remand for the limited purpose of allowing the court to modify its order to require F.M. to execute a declaration waiving the exemption.

### ***FACTUAL AND PROCEDURAL BACKGROUND***

The family law court proceedings as evidenced by the limited record before this court were as follows. On March 1, 2010, D.B. filed a petition to establish a parental relationship with the couple's daughter. The court held a hearing on the petition and appears to have made an order on custody and visitation issues.

On May 30, 2013, D.B. filed a request for permission to claim an income tax exemption for the child on alternate years. D.B. filed a declaration stating that, on June 28, 2010, the court had orally stated that he and F.M. were to "alternate claiming our daughter [] on our tax return documents," but that F.M. "refuse[d]" to let D.B. claim the tax exemption. F.M. filed a response in which she denied that the court had made such an order. She further stated that, as the custodial parent, only she was entitled to claim the exemption.

At the hearing on July 3, 2013, D.B. claimed "back when we came in before, you told us that we were to alternate claiming our daughter [as a tax exemption] . . . ." F.M. argued that the court had never made such an "order," but acknowledged that the court had "told us that in court." The court stated "[y]ou guys will alternate years . . . that will be the court's minute order." F.M. responded, "I am confused why [D.B.] wants to claim [the tax exemption for our daughter]. He doesn't support her. I am the one that takes care of her. . . . What about the IRS regulations stating that since I am the custodial parent and she does live with me . . . ." The court replied, "I can modify my ruling to allow you to alternate, and that is what I am doing." The court then ordered

that D.B. claim the dependency exemption on odd-numbered years commencing in 2013, and that F.M. claim the exemption for even-numbered years. F.M. timely appealed.

### ***CONTENTIONS***

F.M. contends that the court (1) lacked jurisdiction over income tax matters, and (2) erred in allowing D.B. to claim the exemption because she has custody over the child for 73% of the year and provides for all of the child's financial support.

### ***DISCUSSION***

#### 1. *Applicable Law*

Between divorced or separated parents, the custodial parent is entitled to claim an income tax exemption for the couple's dependent child. (Int. Rev. Code, § 152, subd. (e)(1).) The custodial parent is the parent with whom the child resided for the longest period of time during the taxable year. (Int. Rev. Code, § 152, subd. (c)(4)(B)(i).) The noncustodial parent may only claim the exemption if the custodial parent signs a written declaration disclaiming the child as an exemption and the noncustodial parent attaches that declaration to his or her tax return. (Int. Rev. Code, § 152, subd. (e)(2).)

The Supreme Court in *Monterey County v. Cornejo* (1991) 53 Cal.3d 1271 (*Cornejo*) held that Internal Revenue Code section 152 does not "preclude[] state trial courts from exercising their traditional equitable power to allocate the dependency exemption to the noncustodial parent by ordering the custodial parent to execute a declaration waiving the exemption." (*Id.* at p. 1280.) "[A]s . . . the dependency exemption provides a financial benefit to the parent entitled to claim it . . . [it] must be considered in setting child and alimony support." (*Id.* at p. 1279.)

The court may allocate the exemption to the noncustodial parent when such reallocation will further the policy of ensuring sufficient support for minor children. (*Cornejo, supra*, 53 Cal.3d at p. 1280.) The example provided in *Cornejo* described the situation where the noncustodial parent fell within a higher income bracket than the custodial parent and, therefore, "the effect of awarding the exemption to the

noncustodial parent is to increase the after-tax spendable income of the family as a whole, which may then be channeled into child support or other payments. [Citation.]” (*Ibid.*)

The court of appeal in *Rios v. Pulido* (2002) 100 Cal.App.4th 359 addressed a different situation where the court found it equitable to reallocate the exemption. In that case, the family law court concluded that, as the custody arrangement between the parents was “essentially equal” and neither parent paid child support, “it [wa]s fair that the parties rotate the exemption.”<sup>1</sup> (*Id.* at pp. 361-362.) The court of appeal affirmed and held that the family law court had properly exercised its equitable powers to allocate the dependency exemption to each parent on an alternating basis. (*Id.* at p. 362.) However, the court remanded the matter to allow the family law court to order the custodial parent to execute the necessary declaration waiving the exemption. (*Ibid.*)

2. *F.M. Has Not Provided An Adequate Record On Appeal*

As stated in *Cornejo* and *Rios v. Pulido*, family law courts may allocate the dependency exemption to the noncustodial parent. Here, the court ordered that the parties alternate claiming the exemption based on the parties’ claims that the court had orally made the same order at a prior hearing. Due to the incomplete record before us, we cannot determine if there is evidence supporting the court’s conclusion that it would be equitable to provide father with this financial benefit: the record does not include the support or custody orders.<sup>2</sup>

It is the appellant’s burden to provide an adequate record on appeal. (*Amato v. Mercury Casualty Co.* (1993) 18 Cal.App.4th 1784, 1794.) To the extent the record is inadequate, we make all reasonable inferences in favor of the challenged order or

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<sup>1</sup> We note that *Rios v. Pulido* may be distinguishable from the facts present here based on mother’s allegations. For example, here, mother contends that (1) the custody arrangement is not equal because she is the primary caretaker, and (2) she pays for all of the child’s financial support.

<sup>2</sup> F.M. also argues that the court erroneously relied on a June 28, 2010 visitation order that does not address tax deductions. However, that order is also not in the record on appeal.

judgment. (*Ibid.*) Although we appreciate F.M.’s claim that it was inequitable to grant D.B. the right to claim the exemption if F.M. had 73% custodial rights and paid for all of the child’s financial support, we must make all reasonable inferences in favor of the July 3, 2013 order and assume that the prior support and custody orders supported the court’s ruling.<sup>3</sup>

In addition, both parties acknowledge that the court initially made an order permitting the parties to alternate claiming the exemption on June 28, 2010; however, we do not have a court reporter’s transcript from that hearing. Therefore, we cannot determine what evidence was presented to the court at that time but must assume that such evidence supported the court’s decision.

Accordingly, we must affirm the order. We also remand the matter to allow the family law court to modify the order to require F.M. to execute the necessary declaration disclaiming the child as an exemption on odd-numbered years. (See *Rios v. Pulido*, *supra*, 100 Cal.App.4th at p. 362; *Cornejo*, *supra*, 53 Cal.3d at p. 1285.) Our ruling is without prejudice to the parties’ filing a motion to modify the allocation of the dependency exemption should there be changed circumstances in the parties’ finances.<sup>4</sup>

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<sup>3</sup> We do not reach F.M.’s contentions that (1) the court should have required D.B. to produce “financial d[o]cuments,” and (2) the court erred in not “referenc[ing] any fact or law” in its ruling because she has not supported these contentions with argument or citation to authority. (*Huntington Landmark Adult Community Assn. v. Ross* (1989) 213 Cal.App.3d 1012, 1021.)

<sup>4</sup> For example, changed financial circumstances might include the nonpayment of child support or a party’s change in income.

***DISPOSITION***

The order is affirmed and the matter remanded for proceedings not inconsistent with this opinion.

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LAVIN, J.\*

WE CONCUR:

KITCHING, Acting P. J.

ALDRICH, J.

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\* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.