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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

In re Marriage of JOSHUA SAKOV and
ESTER ADUT.

B253333

JOSHUA SAKOV,

(Los Angeles County
Super. Ct. No. BL069129)

Respondent,

v.

ESTER ADUT,

Appellant.

APPEAL from an order of the Superior Court of Los Angeles County,
Scott M. Gordon, Judge. Reversed with directions.

Ester Adut, in pro. per., for Appellant.

No appearance for Respondent.

INTRODUCTION

Ester Adut appeals from a postjudgment order taking off calendar and denying as moot her request for an order to show cause to modify child support. Adut sought to modify a child support order entered on March 3, 2011 in the San Mateo County Superior Court, Family Law Division (San Mateo family court), which she had later registered in the Los Angeles County Superior Court, Family Law Division (Los Angeles family court) by filing a statement of registration pursuant to Family Code section 5602. She had also appealed the child support order by the San Mateo family law court, challenging the imputation of income to her. While Adut's request for an order to show cause was pending in Los Angeles family court, the First District Court of Appeal reversed the San Mateo family court's child support order and remanded the matter for an evidentiary hearing to determine the proper amount of imputed income. The Los Angeles family court concluded that Adut's request for an order to show cause to modify child support was moot in light of the First District's reversal of the San Mateo family court's order. We conclude that Adut's request for an order to show cause in Los Angeles family court was not moot, and therefore reverse the order taking off calendar and denying that request for an order to show cause.

FACTUAL AND PROCEDURAL BACKGROUND

On July 18, 2002 Joshua Sakov petitioned to dissolve his marriage to Adut. On August 26, 2005 the San Mateo family court entered a judgment of dissolution, followed on August 8, 2006 by a judgment on reserved issues, including child support.¹ The court ordered Sakov to pay monthly child support of \$1,550 for the couple's three children (triplets born in 1996) beginning in May 2005. The parties continued to litigate

¹ We take judicial notice of the San Mateo family court's register of actions in San Mateo Superior Court case No. FAM071155. (See Evid. Code, §§ 452, subd. (d), 459.)

child support and other issues, and they filed several appeals and writ petitions in the First District Court of Appeal.²

On January 10, 2007 the San Mateo family court ordered Sakov to pay monthly child support of \$1,529 beginning in November 2006. On February 28, 2011 the court entered an order stating, “All prior orders shall remain in effect.” Adut appealed that order.

On March 3, 2011 the San Mateo family court entered an order increasing to \$5,276 the monthly income imputed to Adut and reducing Sakov’s monthly child support payments to \$1,241 beginning in December 2010.³ Adut also appealed that order.

On July 13, 2011 Adut filed a Statement for Registration of California Support Order in the Los Angeles family court. She attached a copy of the March 3, 2011 order and stated that it was the most recent support order.

On July 22, 2011 Adut filed a request for an order to show cause in the Los Angeles family court seeking to modify child support based on changed circumstances. She sought \$4,000 in excess of the guideline amount and an increase (from 13 percent) of any bonus.

Sakov and the Los Angeles County Child Support Services Department filed responses stating that Adut’s appeal from the March 3, 2011 order deprived the court of jurisdiction to modify child support. Sakov asserted: “Jurisdiction lies with the court of appeal, and is terminated in the trial court.” The Department later filed an amended response, citing *In re Marriage of Horowitz* (1984) 159 Cal.App.3d 377, 384, rescinding its “prior position that this Court is divested of power to act on [Adut’s] request for modification of support” and acknowledging that the court had jurisdiction to modify

² The First District Court of Appeal stated in an opinion filed in June 2013 that it had considered 10 appeals and writ petitions by the parties since 2008. (*In re Marriage of Sakov and Adut* (June 10, 2013, A131936) [nonpub. opn.] p. 2, fn. 2.)

³ The San Mateo family court also ordered Sakov to pay \$2,871 in monthly child support for April through August 2010, \$3,161 for September 2010, \$3,324 for October 2010, and \$1,930 for November 2010.

child support based on changed circumstances despite the appeal from the existing support order.

A commissioner of the Los Angeles family court conducted hearings on Adut's request for an order to show cause on September 12, 2011, December 12, 2011, April 13, 2012, and June 8, 2012.⁴ Adut objected pursuant to Family Code section 4251, subdivision (b) to the commissioner acting as a temporary judge. On June 8, 2012 the commissioner filed her findings and recommendation to increase monthly child support to \$1,800 for the period from August 1, 2011 through May 30, 2012, and \$1,500 from June 1, 2012 forward.⁵ Adut timely objected to the commissioner's findings and recommendation and she requested a trial de novo before a family court judge pursuant to Family Code section 4215, subdivision (c).

On December 12, 2012 a Los Angeles family court judge commenced a trial de novo on the request for an order to show cause Adut had filed on July 22, 2011. The trial continued on February 15, 2013 and June 26, 2013.

Meanwhile, on June 10, 2013 the First District Court of Appeal filed its opinion in *In re Marriage of Sakov and Adut, supra*, A131936. The court concluded that there was no substantial evidence supporting the trial court's imputation to Adut of \$5,276 in monthly income. (*Id.* at p. 7.) The Court of Appeal reversed the San Mateo family

⁴ On April 13, 2012 Adut filed a Statement for Registration of California Support Order in the Los Angeles family court, registering the orders of January 10, 2007 and February 28, 2011. She also filed a declaration stating that the order of March 3, 2011 was not final because it was on appeal and that "I now believe that I should have attached the most recent final support order, the one entered on January 10, 2007." On May 1, 2012 Sakov filed a motion to vacate the registrations of the January 10, 2007, February 28, 2011, and March 3, 2011 orders. Sakov argued that Los Angeles County was not the proper venue. Adut opposed the motion. On June 8, 2012 the family court denied the motion, finding that "Los Angeles County is the proper venue."

⁵ On June 8, 2012 Adut filed a request for an order to show cause regarding compensation (Fam. Code, § 3028), seeking compensation for the time that Sakov allegedly had failed to assume responsibility for the children, and a motion to set aside the order of February 28, 2011. There apparently has been no ruling on these.

court's order of March 3, 2011 and remanded the matter "for an evidentiary hearing where each side may present evidence on the employment opportunities currently available for a person of [Adut's] experience and ability, as well as the financial arrangements for such positions. Once this evidence is presented, the trial court can make proper findings to support a legitimate amount of income to impute to [Adut]." Sakov filed a copy of the Court of Appeal's opinion in the Los Angeles family court.

At the June 26, 2013 hearing in the Los Angeles family court, the Department stated that it had closed its case and asked the court to excuse it from the proceedings. The court asked Adut to explain what issues remained in the case after the Department had closed its case. Adut responded that she, not the Department, had filed the statement of registration and the request for an order to show cause to modify child support. The court asked Adut what the purpose of the hearing was in the absence of a pending Department case, and Adut answered that she, not the Department, was the applicant for the order to show cause. The court asked Adut, "If this case is closed, why is it not moot?" The court then stated, "But as we sit here, there is no [Department] case." The court asked again, "What is pending at this time? What is your argument pertaining to?" and "What do you feel is pending before this court?" Adut answered, "The case I opened here was never with the involvement of [the Department]." The court stated that this case involved objections to the commissioner's findings and recommendation, and "that case is now closed." Adut responded that she was seeking to modify child support and that her case was not closed.

The court ruled that Adut's request to modify child support was off calendar as moot in light of the Court of Appeal's reversal of the San Mateo family court's March 3, 2011 order and remand to conduct an evidentiary hearing on the imputation of income. The court stated that "the issues are moot and this matter is off calendar." After further discussion the court ruled that, because the Department had closed its case and the Court of Appeal had reversed the March 3, 2011 order, Adut's request to modify child support was moot. The court further stated, "It's fairly clear to the court that the respondent is attempting to forum shop and is pitting two different jurisdictions against one another."

The court also overruled Adut's objections and denied her request for an order to show cause as moot.

The Los Angeles family court's June 26, 2013 minute order stated, "The Court finds that the issues calendared this date are moot," and directed counsel for Sakov to prepare a formal order. On September 6, 2013 the court entered a signed order stating that the findings and recommendation by the commissioner were moot as a result of the Court of Appeal's decision reversing the March 3, 2011 order and remanding the matter for an evidentiary hearing. The order stated further, "All matters arising from BL069129 are now rendered moot."

On September 23, 2013 Adut filed a motion in the Los Angeles family court to modify child support based on changed circumstances. She sought to increase monthly child support to \$9,190. She argued that Los Angeles County was the proper venue for her motion, but stated that she had filed the same motion in the San Mateo family court just in case. On October 2, 2013 she filed in the Los Angeles family court a request for an order to show cause regarding contempt, claiming that Sakov owed her more than \$16,000 in court-ordered child support. On November 18, 2013 a commissioner conducted a hearing on the motion and the order to show cause. The commissioner dismissed several contempt counts based on the Court of Appeal's reversal of the March 3, 2011 order and continued to March 14, 2014 all other matters, including the order to show cause regarding compensation and a motion to set aside filed by Adut on June 8, 2012.

On October 16, 2013 Adut filed a motion pursuant to Code of Civil Procedure section 663 in the Los Angeles family court to vacate the September 6, 2013 order (i.e., the order stating that all matters in the case were moot) and for a new trial. Because the family court failed to timely rule on the motion, the motion was denied by operation of law. (See Code Civ. Proc., §§ 660, 663a, subd. (b)). Adut timely appealed from the September 6, 2013 order.

DISCUSSION

A local child support agency or an obligee under a child support order may register the order in a county other than the county where the order was issued. (Fam. Code, § 5600, subd. (a).) “The orders may be registered in any county in which the obligor, the obligee, or the child who is the subject of the order resides, or in any county in which the obligor has income, assets, or any other property.” (*Id.*, subd. (b).) An obligee registers a support order by filing a statement of registration and other documents in the superior court. (*Id.*, § 5602, subd. (a).) An obligor may file a motion to vacate a registration within 20 days after service of a notice of registration. (*Id.*, § 5603, subd. (a).) The grounds to vacate a registration “shall be limited strictly to the identity of the obligor, the validity of the underlying California support order, or the accuracy of the obligee’s statement of the amount of support remaining unpaid unless the amount has been previously established by a judgment or order.” (*Ibid.*; see Hogoboom & King, Cal. Practice Guide: Family Law (The Rutter Group 2015) ¶ 18:833, pp. 18-224-18-225.) “Upon registration, the clerk of the court shall forward a notice of registration to the courts in other counties and states in which the original order for support and any modifications were issued or registered. No further proceedings regarding the obligor’s support obligations shall be filed in other counties.” (Fam. Code, § 5601, subd. (e).)

After the registration of a child support order any further proceedings regarding child support must be filed in the county of registration. Thus, an obligee seeking to modify child support must file a motion or a request for an order to show cause in the county of registration. (See *In re Marriage of Straeck* (1984) 156 Cal.App.3d 617, 622-624 [county of registration was the proper venue for modification of a child support order under the former Revised Uniform Reciprocal Enforcement of Support Act].) Los Angeles County was the proper venue for Adut’s request for an order to show cause to modify child support.

A family court may modify child or spousal support at any time based on a material change of circumstances. (Fam. Code, § 3651, subd. (a); see *In re Marriage of Rosenfeld & Gross* (2014) 225 Cal.App.4th 478, 490 [child support]; *In re Marriage of Khera & Sameer* (2012) 206 Cal.App.4th 1467, 1479 [spousal support].) Any modification is prospective only, from a date no earlier than the date of filing of the motion or request for an order to show cause to modify support. (Fam. Code, § 3651, subd. (c).) An order modifying support based on changed circumstances must be based on circumstances at the time of the order. (*In re Marriage of Khera & Sameer, supra*, 206 Cal.App.4th at p. 1480; *In re Marriage of Tydlaska* (2003) 114 Cal.App.4th 572, 575.) Such an order does not undermine the effectiveness of an appeal from a prior support order based on circumstances at the time of the prior order. Thus, the pendency of an appeal from a prior support order does not deprive the trial court of jurisdiction to modify support. (*In re Marriage of Horowitz, supra*, 159 Cal.App.3d at pp. 384-385.) Similarly, a reversal on appeal of a prior support order does not render moot a motion or order to show cause to modify support based on changed circumstances.

The First District Court of Appeal reversed the March 3, 2011 order based on the lack of substantial evidence supporting the imputation of income to Adut, with directions to conduct an evidentiary hearing to determine a proper imputation of income.⁶ Nothing in that opinion precludes a support modification based on changed circumstances or moots Adut's present request for an order to show cause to modify support. The Los Angeles family court erred by concluding that Adut's request for an order to show cause to modify child support was moot, and by taking off calendar or denying the request as moot.

⁶ This evidentiary hearing should now occur in Los Angeles family court. After Adut's registration of the March 3, 2011 order in the Los Angeles family court, that court is the proper venue for an evidentiary hearing on remand. Therefore, the Los Angeles family court must determine the amount of income imputable to Adut for the period beginning in April 2010 and ending on the effective date of any modification ordered pursuant to Adut's request for an order to show cause to modify child support filed on July 22, 2011.

DISPOSITION

The order is reversed with directions to consider the merits of Adut's request for an order to show cause to modify child support. The family court is also directed to conduct the hearing ordered by the First District Court of Appeal on the proper imputation of income to Adut. The family court should also consider consolidating any other child support modification requests filed by Adut into one proceeding, so that the court can also make a determination of the proper amount of child support based on current circumstances. Adut is to recover her costs on appeal.

SEGAL, J.

We concur:

ZELON, Acting P.J.

BLUMENFELD, J.*

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