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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

In re the Marriage of TIMOTHY MAPP  
and KAREN BRAKE-MAPP.

TIMOTHY MAPP,

Appellant,

v.

KAREN BRAKE-MAPP,

Respondent;

SAN DIEGO COUNTY DEPARTMENT  
OF CHILD SUPPORT SERVICES,

Intervener and Respondent.

D059498

(Super. Ct. No. D310058)

APPEAL from an order of the Superior Court of San Diego County, Lorna A.

Alksne, Judge. Affirmed.

In 2011 Timothy W. Mapp (Father), in propria persona, moved before a commissioner to vacate prior orders, entered in 1996 and 1998, imposing child support

obligations. The commissioner denied the motion, and at a de novo hearing by a judge of the San Diego County Superior Court the court also denied Father's motion. In this appeal, Father challenges the order denying his 2011 motion, contending the orders entered in 1996 and 1998 were void.

## FACTUAL AND PROCEDURAL BACKGROUND<sup>1</sup>

Father and Karen G. Brake-Mapp (Mother) are parents of a child born in 1987. Father was ordered by the trial court from time to time to pay various amounts of monthly child support to Mother beginning as early as 1991, when their marriage was dissolved and Mother obtained sole physical custody of their child, through 2005, when their child became emancipated.

### *Mapp I*

In 2006 Father filed a motion requesting an audit to determine the amount of his child support arrears obligation and for a refund of any amounts he overpaid. In 2007, following an audit, the County of San Diego Department of Child Support Services (Department) filed a motion for an order setting the amount of Father's child support arrears at \$12,990.25 in principal, plus accrued interest. Father countered with a motion requesting the court vacate certain child support orders (i.e., those in San Diego County Superior Court Case No. D405218) and order Mother to repay amounts of child support that he overpaid. The court ordered Department to conduct a combined audit regarding the amounts of Father's child support arrears obligations in Case Nos. D405218 and

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<sup>1</sup> The background information is derived largely from this court's prior opinion in *In re Marriage of Mapp* (Aug 31, 2010, D055252) [nonpub. opn.] (*Mapp I*.)

D310058 and consolidated those cases. That audit showed for the period from November 30, 1991, through September 30, 2007, Father owed child support arrearages of \$15,225.59 in principal and \$10,831.71 in accrued interest, for a total amount of \$26,057.30. The court commissioner denied Father's motion and objection, found Father owed Mother child support arrears in the principal amount of \$15,225.59 and accrued interest of \$10,831.71, and ordered him to pay \$250 per month toward that arrears obligation. Father filed a request for a de novo hearing by a judge of the San Diego County Superior Court, and also moved for an order retroactively terminating all child support orders in Case No. D405218.

The commissioner issued findings and a recommendation that the trial court deny Father's motion for retroactive termination of prior child support orders because (1) the motion was barred by res judicata, and (2) the court did not have jurisdiction under Family Code section 3653 to retroactively modify child support orders. At the de novo hearing on Father's motions, the trial court issued a written order denying Father's motions and confirming the amount owed.

In *Mapp I*, Father appealed and argued he was entitled to challenge a prior child support arrears order at any time. This court affirmed, concluding that because Father did not timely challenge the support orders entered for the years 1996 through 1998 (or the 2001 arrearages order), which were the underpinnings for the current arrearages order, his claims for relief were barred under res judicata principles. (*Mapp I, supra*, D055252.)

### *The Current Action*

After *Mapp I* was filed, Father renewed his challenges to the support orders entered for the years 1996 through 1998 in Case No. D405218, arguing they were void because they were premised on an expired 1992 order. The trial court denied the motion, and Father appeals.

### ANALYSIS

Father's current challenge asserts the orders entered for the years 1996 through 1998 in Case No. D405218 are unenforceable as void. These are the same orders that were the subject of his challenge in *Mapp I*, and we therefore conclude Father's current challenge is barred by the res judicata effect of *Mapp I*. (See *Beckstead v. International Industries, Inc.* (1982) 127 Cal.App.3d 927, 934 [final appellate decision entitled to res judicata effect and "once the validity of a judgment is so determined it is no longer subject to collateral attack"]; *In re Marriage of Sweeney* (1999) 76 Cal.App.4th 343, 346-348.) "The doctrine of res judicata rests upon the ground that the party to be affected . . . has litigated, or had an opportunity to litigate[,] the same matter in a former action in a court of competent jurisdiction . . . ." (*Roos v. Red* (2005) 130 Cal.App.4th 870, 879.) Father's current challenge in this proceeding attacks the *same orders* he challenged in the proceedings decided by *Mapp I*, with the only difference being that Father now interposes a slightly different theory for vacating the support orders. *Mapp I* upheld the orders Father now seeks to challenge. The fact Father did not raise his *current* theory in *Mapp I* is irrelevant to res judicata because "the law is clear that *actual litigation* is not necessary as long as there has been 'a fair opportunity' to litigate the claim." (*Law Offices of*

*Stanley J. Bell v. Shine, Browne & Diamond* (1995) 36 Cal.App.4th 1011, 1026.) Father could have raised this challenge in the prior proceeding, and chose not to, and his election not to raise it does not obviate application of *Mapp I's* res judicata effect on the present case. (*Mark v. Spencer* (2008) 166 Cal.App.4th 219, 229.)

As our Supreme Court noted long ago, the doctrine of res judicata "rests upon the ground that the party to be affected, or some other with whom he is in privity, has litigated, or had an opportunity to litigate[,] the same matter in a former action in a court of competent jurisdiction, and should not be permitted to litigate it again to the harassment and vexation of his opponent. Public policy and the interest of litigants alike require that there be an end to litigation. In applying the doctrine the cases recognize a distinction between the effect of a judgment operating by way of *estoppel* in a later action upon a *different* cause of action and one operating by way of *bar* against a second action upon the *same* cause of action. [Citations.] This distinction entails important consequences in the determination of what matters were adjudicated by the former judgment, and the failure to observe it has been the occasion of confusion and error. As stated in 2 Freeman on Judgments, [p. 1425, sec. 676], 'A prior judgment can operate as a complete bar to a second action only on the theory that it is a conclusive adjudication . . . as to every matter that might be urged in support of the latter. . . . Under such circumstances, in view of the rule and policy of the law which forbids a party to split his claim, the judgment is deemed to adjudicate, for purposes of the second action, *not only every matter which was, but also every matter which might have been urged in support of the . . . claim in litigation.* Where the cause of action in the second action is the same as

that in the first action, a final judgment in the latter upon the merits is a complete bar to the maintenance of the second action.' " (*Panos v. Great Western Packing Co.* (1943) 21 Cal.2d 636, 637-638, fifth italics added.)

DISPOSITION

The order is affirmed.

McDONALD, Acting P. J.

WE CONCUR:

McINTYRE, J.

IRION, J.