Filed 6/6/19 Vandeventer v. Vandeventer CA4/2

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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA**

**FOURTH APPELLATE DISTRICT**

**DIVISION TWO**

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| TAMMY VANDEVENTER,<br><br>Plaintiff and Respondent,<br><br>v.<br><br>DARIN VANDEVENTER,<br><br>Defendant and Appellant;<br><br>SAN BERNARDINO COUNTY DEPARTMENT OF CHILD SUPPORT SERVICES,<br><br>Intervener and Respondent. | E069831<br><br>(Super.Ct.No. SDASS150897)<br><br>OPINION |

APPEAL from the Superior Court of San Bernardino County. John A. Crawley, Temporary Judge. (Pursuant to Cal. Const., art. VI, § 21.) Affirmed.

Darin Vandeventer, in pro. per., for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

No appearance for Intervener and Respondent.

I.

INTRODUCTION

Defendant and appellant, Darin Vandeventer (Father), appeals from an order entered on September 29, 2017, in which the trial court determined that Father owes plaintiff and respondent, Tammy Vandeventer (Mother),[1] child support arrears in the amount calculated in the September 11, 2017, audit submitted by intervener and respondent, San Bernardino County Department of Child Support Services (DCSS).[2] According to the audit, as of September 7, 2017, child support arrears totaled $35,435.58.

Father contends that because there were two simultaneous child support orders in effect, from which Mother was collecting child support, Father is entitled to a credit for the duplicative child support payments. Father also asserts that the court erred in not giving him child support credits for two cash deposits and a $1,420 check from Father deposited in Mother's bank account. In addition, Father argues he should have received

[1] Father is in propria persona and Mother has not filed a respondent's brief.

[2] DCSS provided child support services in this matter pursuant to Family Code section 17400 et seq. In doing so, DCSS has appeared as an independent party in this matter. (Fam. Code, § 17406, subd. (a) [department represents the public interest in matters where it is providing services].) DCSS, however, has not been listed as a party in this matter but, at DCSS's request, is listed as an intervener and respondent. (Fam. Code, § 17400, subd. (k); Code Civ. Proc., § 387, subd. (b); Cal. Rules of Court, rule 5.360 [authorizing department's intervention in child support matters].) DCSS has not filed a respondent's brief.

relief from child support while he was directly supporting his son, Allen (*Trainotti* credits).[3] We reject Father's contentions and affirm the September 29, 2017, order.

II.

FACTS AND PROCEDURAL BACKGROUND

Mother and Father (Parents) have four adult children, born in 1986, 1988, 1991, and 1994. Parents separated, and in June 1995 the San Luis Obispo County Superior Court entered a default judgment ordering Father to pay Mother $723 in monthly child support, beginning on July 1, 1995. The court also ordered Father to pay Mother $3,615 in arrears.

In September 1995, DCSS filed a statement for registration of a foreign support order. In January 1996, the court entered a dissolution judgment and ordered Father to pay $1,276 in monthly child support beginning on September 1, 1995, superseding the $723 support order. It is unclear from the record on appeal which court entered the order.

In August 1996, the San Luis Obispo County Superior Court ordered, in accordance with Parents' stipulation, modifying child custody by granting Father primary physical custody of Allen.

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[3] *In re Marriage of Trainotti* (1989) 212 Cal.App.3d 1072, 1075-1076.

In November 2015, Father filed in the San Bernardino County Superior Court[4] a motion to determine child support arrears (Arrears Motion). In April 2016, the court heard Father's Arrears Motion and found that in June 1995 the San Luis Obispo County Superior Court ordered Father to pay $723 in monthly child support, beginning on July 1, 1995. The court further determined that, when Parents' dissolution judgment was entered in January 1996, Father was ordered to pay $1,276 in monthly child support, beginning on September 1, 1995. The court ordered all child support payments credited towards the previous two child support orders. The court continued the hearing on Father's Arrears Motion and directed the parties to file responses to DCSS's audit of paid child support.

On April 19, 2016, Mother filed a motion requesting an order increasing arrears (request to increase arrears).

In June 2016, the court ordered DCSS to file an updated audit. During a hearing in August 2016, DCSS's counsel provided the court with a verbal update of Father's child support payments. The parties disagreed over Father's payments and arrears. During the August 2016 hearing, the court also heard and continued Mother's request to increase arrears.

In November 2016, DCSS's counsel provided the court with another verbal audit update. The court continued and set for trial Father's Arrears Motion and Mother's request to increase arrears. During the two-day trial of Parents' arrears motions,

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[4] The "court" refers herein to the San Bernardino County Superior Court unless stated otherwise.

beginning on April 27, 2017 (April trial), Parents testified and submitted evidence. DCSS introduced into evidence its July 14, 2016, audit. The court found that "there is zero child support arrears owed and there are no credits to be given from the period of July 1995 through January 2004."

The trial court made findings on the amount of child support owed and paid for each month, beginning in February 2004 through May 2012. The parties agreed that DCSS's calculation of child support owed and paid was correct for the period of April 2012 through April 2013. The court made a finding of child support owed and paid for the month of May 2013, and the parties agreed there were no disputes to payments made from June 2013 onward. The court ordered DCSS to prepare an updated accounting and continued the trial to July 20, 2017.

On May 5, 2017, DCSS filed an updated audit. On May 10, 2017, the court ordered that the determination of arrears would be bifurcated for a separate determination for each year. The court found, after the first day of trial on April 27, 2017, that "pursuant to testimony of the parties and interpretation of the letter which is [Father's] exhibit #38, there is zero child support arrears owed and there are no credits to be given from the period of July 1995 through January 2004."

The court entered a second order on May 10, 2017, stating its findings as to the second day of trial on April 28, 2018. The court itemized the amount of child support owed and paid each month from February 2004 through May 2013. The court noted the

parties agreed there were no disputes to payments made from June 2013 onward. The court continued the trial of Parents' arrears motions to July 20, 2017.

In May 2017, Father filed a motion for reconsideration and to vacate the May 10, 2017, child support arrears order (May Reconsideration/Vacate Motion). On July 20, 2017, the trial court heard and denied Father's motion on the ground Father failed to submit any new evidence that was not available at the time of the trial.

On July 20, 2017, the trial court continued to September 28, 2017, the trial of Parents' child support arrears motions for the purpose of allowing the parties to compare and address any discrepancies between the court's May 10, 2017, findings and DCSS's audit report prepared on July 19, 2017.

On July 31, 2017, Father filed a second motion for reconsideration (Code Civ. Proc. § 1008)[5] and motion to vacate the July 20, 2017, order (§ 473, subd. (b))[6] (July Reconsideration/Vacate Motion).

On September 11, 2017, DCSS filed a declaration by a DCSS child support officer II attaching a corrected audit report, prepared as ordered on July 20, 2017. The declaration states that, "[a]s of 09/07/17 the arrears total is $35,435.58 of which $11,630.83 is principal and $23,804.75 is interest."

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[5] Unless otherwise noted, all statutory references are to the Code of Civil Procedure.

[6] We refer to this statute herein as "section 473(b)."

During the continued trial of Father's Arrears Motion on September 28, 2017, the court adopted DCSS's September 11, 2017, audit, finding the audit accurately reflected the current owed arrears. The court ordered Father to pay arrears at the rate of $750 per month, beginning October 1, 2017. On September 28, 2017, the court also heard and denied Father's request for reconsideration in his July Reconsideration/Vacate Motion on the ground Father failed to submit any new law or evidence that was not previously available. On September 29, 2017, the court entered an order on the court's September 28, 2017, rulings. Father filed a notice of appeal of the September 29, 2017, order.

III.

MOTION FOR RECONSIDERATION AND TO VACATE ORDER

Father's notice of appeal states that he is appealing the September 29, 2017, order. The September 29, 2017, order includes the court's rulings on both the Arrears Motion and July Reconsideration/Vacate Motion. Father's appellant's opening brief indicates Father is challenging the trial court's rulings on both his Arrears Motion and July Reconsideration/Vacate Motion.

A. *July Reconsideration/Vacate Motion*

Father asserts in his July Reconsideration/Vacate Motion that the July 20, 2017, order "finalized" orders entered in October 1997; January, March, August, and November 2004; January, July through November 2005; and October 2011 through March 2012. Father also objected to not receiving child support credit for "The Wall," which he built for Mother in March 2004. Father requested in his July Reconsideration/Vacate Motion

that the court vacate these listed orders on the ground they were entered through Father's mistake, inadvertence, and excusable neglect, and Mother's fraud. Father further argued there were new or different facts and evidence supporting his motion.

Father's July Reconsideration/Vacate Motion and appeal challenging the listed 1997, 2004, 2005, 2011, and 2012 orders were not timely filed under either section 1008 or 473(b). Under section 1008, a party may file a motion for reconsideration of an order "*within 10 days after service upon the party of written notice of entry of the order and based upon new or different facts, circumstances, or law, make application to the same judge or court that made the order, to reconsider the matter and modify, amend, or revoke the prior order*." (Italics added.) The July Reconsideration/Vacate Motion was not filed within 10 days of the 1997, 2004, 2005, 2011, and 2012 orders.

Under section 473(b), a motion to vacate an order must be brought within six months. Section 473(b) provides, in relevant part: "The court may, upon any terms as may be just, relieve a party . . . from a judgment, dismissal, order, or other proceeding taken against him or her through his or her mistake, inadvertence, surprise, or excusable neglect. Application for this relief . . . *shall be made within a reasonable time, in no case exceeding six months, after the judgment, dismissal, order, or proceeding was taken*." (Italics added.) The 1997, 2004, 2005, 2011, and 2012 orders Father challenged in his July Reconsideration/Vacate Motion, were entered years before Father filed his motion. The trial court therefore did not have jurisdiction to reconsider those orders when ruling on Father's July Reconsideration/Vacate Motion.

The only order that was timely challenged by Father's July Reconsideration/Vacate Motion is the July 20, 2017, order. We therefore will only consider the merits of the trial court's ruling with regard to that order.

B. *Motion for Reconsideration of July 20, 2017, Order*

The September 29, 2017, order denying Father reconsideration of the July 20, 2017, order is not an appealable order. The majority of courts, including the instant court, have concluded an order denying a motion for reconsideration is not appealable, even when based on new facts or law. (*Powell v. County of Orange* (2011) 197 Cal.App.4th 1573, 1576.) "'[O]rders denying reconsideration are not appealable because "[s]ection 904.1 of the Code of Civil Procedure does not authorize appeals from such orders, and to hold otherwise would permit, in effect, two appeals for every appealable decision and promote the manipulation of the time allowed for an appeal."' [Citation.] We agree and conclude an order denying a motion for reconsideration is not appealable, even when based on new facts or law." (*Id.* at p. 1577.)

C. *Motion to Vacate the July 20, 2017, Order*

We further conclude the trial court did not abuse its discretion in denying Father's motion to vacate the July 20, 2017, order (July Motion to Vacate). The first portion of section 473(b), which Father relies on, provides that the court "may" relieve a party from a dismissal or from an order, based on a party's "mistake, inadvertence, surprise, or excusable neglect." (*Ibid.*; see also *Huh v. Wang* (2007) 158 Cal.App.4th 1406, 1418.) "'Excusable neglect is that neglect which might have been the act of a reasonably prudent

person under the same circumstances.'" (*Huh v. Wang*, *supra*, at p. 1419, quoting *Alderman v. Jacobs* (1954) 128 Cal.App.2d 273, 276, 274.)

This court generally reviews a trial court's ruling on a discretionary motion for relief for an abuse of discretion. (*Huh v. Wang*, *supra*, 158 Cal.App.4th at p. 1419.) Father argued specific circumstances in support of his July reconsideration request, but did not state any separate grounds for vacating the July 20, 2017, order under section 473(b). Father argued regarding his reconsideration motion that he was entitled to relief because he was in propria persona and was confused during the April trial. Father stated in his motion: "There were several times [Mother] actually lied to the court, which I was unprepared to defend myself against. Due to this surprise, mistakes were made. Therefore, some issues were not addressed properly . . . and incorrect orders were made. And, since our hearing, I have received new evidence that actually proves [Mother] lied to the court regarding several issues."

Father requested the court to reconsider and vacate the 1997, 2004, 2005, 2011, and 2012 orders based on "additional evidence regarding these orders that I had not previously submitted. Some of that was my fault. I thought I submitted enough documents to support my claims. Some of this additional evidence I originally deemed irrelevant because they involved non-issues. But [Mother] misstated the facts . . . so additional documentation became necessary to refute her statements."

Father's July Motion to Vacate, in effect, requested a retrial of the April 27 and 28, 2017, trial proceedings, and also requested vacating all of the orders entered years

before. The trial court did not have jurisdiction to vacate the 1997, 2004, 2005, 2011, and 2012 orders. The trial court also did not abuse its discretion by rejecting Father's attempt, in hindsight, to submit additional evidence he overlooked during the April trial. As the trial court explained to Father when denying his request for reconsideration, "There is no newly discovered evidence that you are trying to introduce that wasn't available or could not have been available at the time of trial. You don't get to try a case, get a decision, and then say this is where the holes in the case were. I want to have an opportunity to refill them in again."

The July 20, 2017, order, which Father also requested vacated, included orders (1) continuing the trial on child support arrears for the purpose of allowing the parties to compare DCSS's July 19, 2017, audit with the May 10, 2017, order on arrears, and point out discrepancies between the two, (2) denying Father's May Reconsideration/Vacate Motion, and (3) an order deeming Mother's request to increase arrears a response to Father's Arrears Motion. Father has not demonstrated that the trial court abused its discretion in denying reconsideration of these July 20, 2017, orders.

We further note that the trial court was not required to grant Father's request to vacate any of the orders based on his assertion he made errors because he was representing himself. A party who chooses to serve as his own attorney is not entitled either to privileges and indulgences denied attorneys or to privileges and indulgences not accorded parties represented by counsel. (*Rappleyea v. Campbell* (1994) 8 Cal.4th 975, 984 ["mere self-representation is not a ground for exceptionally lenient treatment."]

Generally, the rules of civil procedure apply "equally to parties represented by counsel and those who forgo attorney representation." (*Id*. at pp. 984-985.) "[R]equiring or permitting exceptional treatment of parties who represent themselves would lead to a quagmire in the trial courts, and would be unfair to the other parties to litigation." (*Id*. at p. 985; accord, *In re Marriage of Furie* (2017) 16 Cal.App.5th 816, 824.)

The record shows the trial court properly treated Father no differently than it would a party represented by an attorney, and the court did not abuse its discretion in denying, on September 28, 2017, Father's July Reconsideration/Vacate Motion.

IV.

FATHER'S ARREARS MOTION

Father objects to the September 29, 2017, child support arrears order on four grounds: (1) the trial court erroneously found on April 27, 2017, that Father was not entitled to any credits for child support paid in excess of what Father owed during the period of July 1995 through January 2004; (2) on April 28, 2017, the trial court erred in not giving Father credit for two cash deposits made to Mother's bank account; (3) on April 28, 2017, the trial court erred in not giving Father credit for a $1,420 check deposited in Mother's bank account; and (4) on April 28, 2017, the trial court erred in not giving Father *Trainotti* credits for providing direct support for Allen while Father had custody of him from July 2005 to November 2005.

A. *Duplicative Payment of Child Support*

Father contends the trial court erred in denying him $5,256.08 in credit for payment of court-ordered monthly child support of $723, during the period of October 1, 1997, through December 31, 2004. Father argues that during this period, DCSS was enforcing collections from him under the original $723 child support order, while Father was simultaneously paying Mother child support under the subsequent child support order for $1,276 a month. Father asserts that the trial court nevertheless erroneously ruled on April 27, 2017, that "pursuant to testimony of the parties and interpretation of the letter which is [Father's] exhibit #38, there is zero child support arrears owed and there are no credits to be given from the period of July 1995 through January 2004." The letter from Mother (exhibit 38), dated January 20, 2004, states that "Darin Vandeventer does not pay nor does he owe any child support to me, Tammy S. Bowman, as of 12/97 when I closed the case in writing to the San Bernardino [D]istrict [A]ttorney."

During the hearing in April, Father testified Mother wrote the letter for the purpose of helping him qualify to refinance his home, because the local child support agency was claiming he owed thousands of dollars in child support. Mother testified this was true, except Father actually owed her the unpaid support. Father then testified he paid Mother more than she was entitled to receive by paying her down payment on her home and remodeling her garage. Father also testified that in March 2004, he paid $4,967.53 from a home equity loan to pay off child support arrears demanded by DCSS. Mother acknowledged Father made the down payment on her home and remodeled her

garage. Mother, however, denied there was ever any agreement this was for the purpose of offsetting child support Father owed.

Based on this conflicting evidence, the trial court made a factual determination on April 27, 2017, that there was no child support owed as of January 2004 and Father was not entitled to any credits for the period of December 1997 through January 2004. This court will give deference to this factual determination by the trial court, because "[w]e do not reweigh the evidence or reconsider credibility determinations. [Citation.]" (*In re Marriage of Dandona & Araluce* (2001) 91 Cal.App.4th 1120, 1126 (*Dandona*).) "[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." (*Denham v. Superior Court* (1970) 2 Cal.3d 557, 566; accord, *Dandona*, *supra*, at p. 1126.)

The record on appeal does not show there has been a miscarriage of justice. Although Father may have at times overpaid court-ordered child support, there is also evidence that, as Mother agreed in her January 20, 2004, letter, Father did not owe any support at that time, and it can also be reasonably inferred from her letter that he was not entitled to any credits. There was also evidence that thereafter Father was in arrears, and Mother never agreed that Father's payments of her home down payment and garage remodel would offset child support arrears. After the April trial on the arrears, the court required DCSS to update its audit on child support. The parties had an opportunity to refute the amended September 11, 2017, audit at the September 28, 2017, hearing. Based on the conflicting evidence and the amended audit, the trial court reasonably concluded

Father was not entitled to credits for any child support overpayments made during the period of December 1997 through January 2004.

B. *Credit for Two Cash Deposits for $1,600 and $1,150*

Father contends he should have received credit for two cash deposits made to Mother's bank account for $1,600 and $2,650. Father did not receive credit for the $1,600 payment and received only $1,500 in credit for the $2,650 payment. The trial court did not find the evidence Father submitted during the April trial sufficient to support awarding Father credit for the entire amount of the two alleged cash payments. The evidence was not conclusive.

Father argues he submitted a receipt which he asserts shows $1,600 was deposited in Mother's bank account on July 29, 2004. He also submitted a copy of a check Father's wife wrote to herself to withdraw the cash; a copy of a check for $2,200 issued on September 2, 2004, deposited in Mother's bank account and cleared, with Mother's bank account number written in the memo portion of the check; a copy of a check for $1,150 issued on October 18, 2004, deposited in Mother's bank account and cleared; copies of checks for $1,500 and $1,150, made out to "cash," issued on November 20, 2004, deposited in Mother's bank account and cleared, with Mother's bank account number written in the memo portion of the check; and Mother's declaration dated May 18, 2005, stating she received a cash deposit in February 2005. This evidence was submitted in support of Father's May and July 2017 motions for reconsideration.

Father argues that this additional evidence of the two cash deposits and Mother's admission she received a cash deposit in February 2005, demonstrate that she must have also received the other two cash deposits for $1,600 and $2,650. But the additional evidence was not considered because the trial court appropriately denied Father's May and July motions for reconsideration, without considering the additional evidence. Therefore, the trial court reasonably found that the evidence presented during the April trial did not establish Father is entitled to child support credits for cash payments of $1,600 and $1,150. The check for $1,600 was issued to Father's wife, not Mother. The check for $1,150 is made out to Mother, but there is no evidence it was paid for child support.

Because this court must give deference to the trial court's factual determinations of child support credits, we will not reweigh the evidence or reconsider credibility determinations. (*Dandona*, *supra*, 91 Cal.App.4th at p. 1126.) As a consequence, we will not disturb the trial court's reasonable exercise of discretion and affirm the trial court's findings in its September 29, 2017, order, which denies Father child support credits for his alleged $1,600 and $1,150 cash payments. (*Denham v. Superior Court*, *supra*, 2 Cal.3d at p. 566; accord, *Dandona*, *supra*, at p. 1126.)

C. *Credit for Payment of $1,420*

Father contends the trial court erred in not giving him child custody credit for a $1,420 payment made by check No. 1321, issued to Mother on December 24, 2004. Father's December 2004 bank statement shows the check was cashed on December 29, 2004.

Father testified during the April trial that he paid $1,420 for support in December 2004, but he did not receive any credit for the payment. Father raised this error during his motions for reconsideration, but the trial court denied his motions on the ground Father failed to provide any new evidence.

Mother asserted in her January 2017 statement (exhibit 53) that she believed check No. 1321 was returned because of insufficient funds. Father did not provide a copy of his bank statement showing the check was cashed until after the trial, when he filed his May and July 2017 motions for reconsideration, which were both denied.

Father's objection to the trial court not giving him credit for the $1,420 payment is a factual matter which the parties and court addressed during the April trial. Father did not submit any evidence during the April trial that his $1,420 check actually cleared. Although after the trial, he filed two motions for reconsideration in which Father provided a bank statement to prove the check was cashed, the court did not consider the evidence and denied the motions because the evidence could have been produced during the April trial. As discussed above, the trial court did not abuse its discretion in denying Father's motions for reconsideration.

Because this court must give deference to the trial court's factual determinations on child support credits, we will not reweigh the evidence or reconsider credibility determinations. (*Dandona*, *supra*, 91 Cal.App.4th at p. 1126.) DCSS's updated September 2017 audit shows Father did not pay any support in December 2004. The court reasonably found during the first day of trial on April 27, 2017, that, "pursuant to testimony of the parties and interpretation of the letter which is [Father's] exhibit #38, *there is zero child support arrears owed* and there are no credits to be given from the period of July 1995 through January 2004." (Italics added.) Father also testified during the April trial that Mother agreed that from October 1997 to December 31, 2004, Father was current and had paid all court-ordered child support. The trial court therefore found "pursuant to testimony of the parties and interpretation of the letter which is [Father's] exhibit #38, there is zero child support arrears owed and there are no credits to be given from the period of July 1995 through January 2004."

Based on the evidence before the trial court when ruling on Father's motion for arrears on September 28, 2017, this court will not disturb, and therefore affirms, the trial court's findings of fact and exercise of discretion, rejecting Father's claim he is entitled to a child support credit for a $1,420 payment made in December 2004. (*Denham v. Superior Court*, *supra*, 2 Cal.3d at p. 566; accord, *Dandona*, *supra*, 91 Cal.App.4th at p. 1126.)

D. *Trainotti Credits for Supporting Allen*

Father objects to the trial court's September 29, 2017, order denying him *Trainotti* credits for directly supporting his son, Allen, during the period of July 2005 through November 2005.

Under *In re Marriage of Trainotti*, *supra*, 212 Cal.App.3d 1072, a parent is entitled to child support credits if the obligor parent has furnished the child, with the approval of the other parent, a home and support that was equal to or in excess of the court-ordered child support amount. (*Id*. at p. 1076.) Although retroactive modification of child support is prohibited, "'[t]he trial court may determine that nothing is owed for child support amounts that accrued during the period the supported child was *living with the obligor parent*. . . . [A]rrearages are *deemed satisfied* by the obligor's direct provision for the child's needs during the applicable period of time.'" (*Helgestad v. Vargas* (2014) 231 Cal.App.4th 719, 733; accord, *Trainotti*, *supra*, at pp. 1074-1075.)

Father argues that he is entitled to *Trainotti* credits because Allen moved out of Mother's home in May 2005, and around Thanksgiving 2005, Allen moved in with his grandparents in Nevada. Father maintains he supported Allen from May 2005 through November 2005. Father cites the following supporting evidence: (1) Stipulation and order entered on August 6, 1996, modifying child custody, stating that in January 1996, Mother was granted primary physical custody of Allen, and thereafter Parents agreed to the court granting Father primary custody of Allen, with visitation rights granted to Mother; (2) an e-mail Father sent to Allen's school on May 31, 2005, requesting Allen be

re-enrolled in school, despite Mother's previous removal of Allen from the school; (3) Allen's 2004/2005 school attendance log, with notes regarding Mother removing Allen from school and Allen running away; (4) child custody modification stipulation dated June 1, 2005, signed by Father, but not Mother or the court, giving Father sole legal and physical custody of Allen, who was 17 years old, and allowing Allen to live with a friend's family so that he could complete high school at his current school; (5) school records showing Father had custody of Allen in August 2005 but Allen was living with another family; (6) temporary guardianship document signed in December 2005 by Mother, but not by Father, designating grandparents in Indian Wells as Allen's temporary guardians; and (7) handwritten notes listing payments Father allegedly made from June to November 2005, "to Allen" after he moved out of Mother's home.

Father submitted these documents in support of his Arrears Motion. In addition, during the April trial, Father testified that Allen was having problems living with Mother but wanted to finish high school at the school he was currently attending. Father had court-ordered custody of Allen since 1996 but lived outside the school district. As a consequence, Father allowed Allen to live with his friend's family and gave Allen money for support during that time. Father testified he did not pay Mother child support for Allen during that time. Mother testified Allen was living with her most of that time. Mother further testified that, even though the 1996 child custody judgment was not ordered modified after custody was granted to Father, Mother had actual physical custody of Allen and he was living with her during the period of July 2005 through November

2005, with the exception of when Father persuaded Allen to run away and let him stay with a friend.

During the April trial, the court found that neither parent had actual physical custody of Allen, and Father was giving Allen support money. The court credited Mother for child support for Allen, finding that Allen was in Mother's care from July 2005 until November 2005. This was a factual determination based on conflicting evidence and testimony. Father has not demonstrated the trial court's findings were an abuse of discretion.

Father argues that additional evidence submitted in support of his July Reconsideration/Vacate Motion showed that Allen was not living with Mother after she moved from Yucaipa to Perris in Riverside County in August 2005. Instead, Allen was living with his friend's family in Yucaipa while completing high school there. The trial court did not consider this evidence because it was submitted in support of his July Reconsideration/Vacate Motion, which the trial court properly denied because Father did not demonstrate the additional evidence was unavailable at the time of the April trial.

We conclude there was sufficient evidence supporting the trial court's factual findings and determination of child support arrears. Therefore, this court will not disturb the trial court's findings of fact or exercise of its discretion denying Father *Trainotti* credits as to Allen, during the period of July 2005 through November 2005. (*Denham v. Superior Court*, *supra*, 2 Cal.3d at p. 566; accord, *Dandona*, *supra*, 91 Cal.App.4th at p. 1126.)

V.

DISPOSITION

The judgment is affirmed. Mother is awarded her costs, if any, on appeal.

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

CODRINGTON
J.

We concur:

RAMIREZ
P. J.

McKINSTER
J.