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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
SIXTH APPELLATE DISTRICT

COUNTY OF SANTA CLARA,

Plaintiff and Respondent,

v.

GREGORY D. EDWARDS,

Defendant and Appellant.

H037402

(Santa Clara County

Super. Ct. No. DA026924)

Gregory D. Edwards appeals from an adverse September 2011 order in favor of the County of Santa Clara, which entity appeared through its Department of Child Support Services (Department). (See Fam. Code, § 17304 [requiring each county to establish a department of child support services “responsible for promptly and effectively establishing, modifying, and enforcing child support obligations”].)<sup>1</sup> In that order, the court found that Edwards owed the sum of \$169.50 in child support arrearages, rejecting his claim that he had made substantial overpayments for back child support. It also rejected his claim that the Department’s accounting of child support payments was significantly in error.

On appeal, Edwards argues that he established below that the Department’s accounting of child support arrearages was significantly in error, and that it had

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<sup>1</sup> All further statutory references are to the Family Code unless otherwise specified.

improperly levied on his bank account in 2010 to collect back child support. We conclude that there was substantial evidence to support the court's express and implied factual findings and that it did not abuse its discretion in denying the relief sought by Edwards. We will therefore affirm the order.

#### FACTUAL AND PROCEDURAL BACKGROUND

On January 17, 1995, the County of Santa Clara filed a motion seeking an order of child support from Edwards. Edwards acknowledged that he was the father of the girl. On February 7, 1995, the court issued an order of child support which fixed a monthly obligation of \$347, along with the payment of arrearages determined to be \$3,470.00 to be paid at the rate of \$100 per month.

On July 19, 2010, Edwards filed an application for an order to show cause, seeking a modification of his child support obligation and requesting reimbursement for "overpayment for over ten years" in an unspecified amount. (Capitalization omitted.) The essence of his contention was that he had been making support payments to two states, California and Nebraska, "covering the same period of time." (Capitalization omitted.) After a hearing on September 1, 2010, the court ordered the Department to provide a responsive declaration which would include an accounting.

At the continued hearing on January 5, 2011, the Department provided an accounting. After argument, the court again continued the case, indicating that there were two remaining issues of concern: (1) the child's emancipation date; and (2) whether any support payments made by Edwards to Nebraska were properly credited in the Department's accounting.

A further hearing took place on April 12, 2011, in which the court received into evidence exhibits offered by both parties. After the parties submitted the matter, the court issued an order on May 9, 2011, in which it found that Edwards had been overcharged for child support and interest and that he was entitled to a credit of \$13,509 as of April 30, 2011.

The Department filed a request for a statement of decision or, alternatively, a motion for new trial, pursuant to Code of Civil Procedure section 657, subdivision (6).<sup>2</sup> On July 25, 2011, the court granted the Department's motion for new trial. On September 1, 2011, following a short-cause trial occurring two days earlier, the court issued its order finding that Edwards owed back child support of \$169.50 as of May 31, 2011 (the Order). In so holding, the court adopted an audit of the account previously prepared by the Department and introduced as an exhibit. Edwards filed a timely appeal of the Order.<sup>3</sup>

## DISCUSSION

### I. *Appellant's Noncompliant Brief*

Before addressing any substantive issues that may have been raised by Edwards in this appeal, we are compelled to identify the serious procedural deficiencies existing in his filing with this court. Edwards's opening brief is not compliant with the California Rules of Court.<sup>4</sup> The opening brief does not include a requisite summary of the relevant procedural history of the case, including a plain statement of "the nature of the action, the relief sought in the trial court, and the judgment or order appealed from," all as required by rule 8.204(a)(2)(A). Similarly, the brief fails to include a plain statement of appealability, i.e., that "the judgment appealed from is final, . . ." (Rule 8.204(a)(2)(B).)

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<sup>2</sup> A party may move for new trial on the basis of "[i]nsufficiency of the evidence to justify the verdict or other decision, or [where] the verdict or other decision is against law." (Code Civ. Proc., § 657, subd. (6).)

<sup>3</sup> The Order is an appealable matter. (See *In re Marriage of Brinkman* (2003) 111 Cal.App.4th 1281, 1287 [postjudgment order concerning child support arrears appealable]; § 17407, subd. (a).) Of course, the court's previous order granting a new trial had the effect of vacating its prior May 9, 2011 order in favor of Edwards (*Beavers v. Allstate Ins. Co.* (1990) 225 Cal.App.3d 310, 329), and Edwards did not appeal the new trial order (Code Civ. Proc., § 904.1, subd. (a)(4)). This appeal therefore concerns only the propriety of the court's September 1, 2011 Order.

<sup>4</sup> Further rule references are to the California Rules of Court unless otherwise specified.

More significantly, the opening brief contains no citation to the record in support of Edwards's assertions of fact and his recitation of procedural matters allegedly occurring below, in violation of rule 8.204(a)(1)(C). (*See Dietz v. Meisenheimer & Herron* (2009) 177 Cal.App.4th 771, 800-801 [failure to include citations to appellate record in brief may result in forfeiture of claim].) We will disregard any factual assertions made by Edwards which are not contained in the record. (See rule 8.204(a)(2)(C); *McOwen v. Grossman* (2007) 153 Cal.App.4th 937, 947.)

Edwards's challenges, unsupported by citations to the record, are wide-ranging. This court has gleaned, based in part upon the respondent's brief filed on behalf of the Department, that Edwards's central challenge is to the September 1, 2011 Order in which the court rejected his claim that he was entitled to reimbursement of substantial funds he claims were overpaid by him for child support arrearages.

We acknowledge that Edwards is representing himself in connection with this appeal and therefore has not had formal legal training that would be beneficial to him in advocating his position. However, the rules of civil procedure apply with equal force to self-represented parties as they do to those represented by attorneys. (*Rappleyea v. Campbell* (1994) 8 Cal.4th 975, 984-985.) Thus, "[w]hen a litigant is appearing in propria persona, he is entitled to the same, but no greater, consideration than other litigants and attorneys." (*Nelson v. Gaunt* (1981) 125 Cal.App.3d 623, 638; see also *Nwosu v. Uba* (2004) 122 Cal.App.4th 1229, 1246-1247.)

Based upon the wholly noncompliant nature of Edwards's brief, it would be appropriate to disregard his contentions as having been forfeited. (See *State Comp. Ins. Fund v. WallDesign Inc.* (2011) 199 Cal.App.4th 1525, 1528-1529, fn. 1.) We are, however, able to glean the essential claims of error Edwards makes relative to the Order, and the Department has filled many of the gaps by including relevant citations to the record concerning the procedural history of this case. Furthermore, we are appreciative of the fact that Edwards—notwithstanding geographical challenges of living out-of-state

and the difficulties of dealing with support calculations that are admittedly complex—was an active, respectful, and professional participant in both the proceedings below and in this appeal. Therefore, in the interests of addressing the merits of the case—and without impliedly minimizing the significance of Edwards’s noncompliance with appellate procedures—we will address below his contention that the Order was erroneous.

## II. *Standard of Review*

Neither party assists this court by enunciating the standard of review applicable to this appeal. Because the standard of review “is the compass that guides the appellate court to its decision” (*People v. Jackson* (2005) 128 Cal.App.4th 1009, 1018), and “ ‘prescribes the degree of deference given by the reviewing court to the actions or decisions under review’ [citation]” (*San Francisco Fire Fighters Local 798 v. City and County of San Francisco* (2006) 38 Cal.4th 653, 667), its identification is a critical threshold matter for this appeal.

It is a fundamental proposition that a judgment or order is presumed correct on appeal. (*In re Marriage of Arceneaux* (1990) 51 Cal.3d 1130, 1133.) “ ‘All intendments and presumptions are indulged to support it on matters as to which the record is silent, and error must be affirmatively shown.’ ” (*Denham v. Superior Court* (1970) 2 Cal.3d 557, 564.) It is appellant’s burden to overcome this presumption of correctness, which burden includes providing an adequate record demonstrating error. (*Id.*, See also Eisenberg et al., Cal. Practice Guide: Civil Appeals and Writs (The Rutter Group 2010) ¶ 8:17, p. 8-5, rev. #1, 2009.) The doctrine of implied findings is “a natural and logical corollary” to (1) the presumption of the correctness of the judgment, (2) the fact that all intendments and presumptions are made in favor of that correctness, and (3) appellant’s bearing the burden of demonstrating error with an adequate record. (*Fladeboe v. American Isuzu Motors, Inc.* (2007) 150 Cal.App.4th 42, 58 (*Fladeboe*)). This “doctrine requires the appellate court to infer the trial court made all factual findings necessary to

support the judgment. [Citation.]” (*Ibid.*; see *Michael U. v. Jamie B.* (1985) 39 Cal.3d 787, 792-793, superseded by statute on other grounds as stated in *In re Zacharia D.* (1993) 6 Cal.4th 435, 438.)

An appellate court generally reviews child support orders for abuse of discretion. (*In re Marriage of Alter* (2009) 171 Cal.App.4th 718, 730.) We review the court’s factual findings made in the exercise of its discretion to determine whether they “ ‘ ‘are supported by substantial evidence and whether the court acted reasonably in exercising its discretion” [Citation.] We do not substitute our own judgment for that of the trial court, but determine only if any judge reasonably could have made such an order.’ [Citation.]” (*Id.* at pp. 730-731.) And in assessing whether substantial evidence supports the trial court’s factual findings, we consider the evidence in the light most favorable to the party prevailing below. (*Plumas County Dept. of Child Support Services v. Rodriguez* (2008) 161 Cal.App.4th 1021, 1026.)

### III. *September 1, 2011 Order*

As we discern his argument—which, as noted, is unsupported by any record citations, contrary to the requirements of the California Rules of Court—Edwards contends that the September 1, 2011 Order is erroneous because it does not find (1) that he was substantially overcharged for child support arrearages erroneously claimed by the Department to have been owing; and (2) the existence of illegal levies of his bank account which occurred in 2010. We address these contentions below.

#### A. *Claimed Overpayments*

Edwards argued below that the amounts claimed by the Department as child support arrearages were inflated. The essence of his contention was that the sum of \$6,300 reflected in the Department’s accounting as constituting accrued child support arrearages prior to February 1995 were erroneously posted—that this amount was acknowledged in proceedings initiated in the State of Nebraska as having been not owed. Edwards below characterized these out-of-state proceedings as a reflection that

“Nebraska wrote off” this amount of accrued child support arrearages and the sum therefore could not be included in the Department’s accounting. The court rejected this position. It found that the Department had “proved the payments enforced by Nebraska based on the child support order from Nebraska were credited in the [Department’s] audit.” The court held further that “Mr. Edwards did not prove beyond [*sic*] a preponderance of the evidence that he was either not properly charged and/or properly credited with collections by the states of Nebraska, Michigan, and California.”

On appeal, Edwards renews the contention that “[t]he case [in Nebraska] was ultimately resolved and Nebraska dismissed the alleged amount owed of \$6273.08 on 03/19/2007”; and that notwithstanding this fact, the Department had refused to “adjust [its] figures . . .” He concludes that “[t]he family court also erred in reversing its original position . . . as the facts are clear as to the overpayment.”

We deem Edwards’s argument to challenge the sufficiency of the evidence in support of the court’s factual finding that Edwards’s support payments had been properly charged or credited by the Department in its accounting of child support arrearages. “ ‘The rule is well established that a reviewing court must presume that the record contains evidence to support every finding of fact, and an appellant who contends that some particular finding is not supported is required to set forth in his brief a summary of the material evidence upon that issue. Unless this is done, the error assigned is deemed to be waived. [Citation.] It is incumbent upon appellants to state fully, with transcript references, the evidence which is claimed to be insufficient to support the findings.’ ” (*In re Marriage of Fink* (1979) 25 Cal.3d 877,887; see also *Nwosu v. Uba, supra*, 122 Cal.App.4th at p. 1246 [“attack on the evidence without a fair statement of the evidence is entitled to no consideration when it is apparent that a substantial amount of evidence was received on behalf of the respondent”].) Because Edwards has failed to provide a summary of the material evidence on this issue, including citations to the record, we may treat his claim of error as waived.

Even were we to consider the contention not waived, it nonetheless lacks merit. A review of the record demonstrates that there was substantial evidence supporting the trial court's finding that the Department in its accounting properly charged or credited Edwards for all support payments. The court received into evidence the accounting of the Department, along with a supporting payment history which was represented as corroborating that all payments received by the state of Nebraska were properly credited in the Department's accounting. The court also considered evidence from the Department, including two declarations. Both declarants indicated that the Department properly credited in its accounting all payments made to the state of Nebraska. Further, there was evidence submitted that the Department did not include charges of statutory interest for child support arrearages accruing from a prior Nebraska order because of the difficulty of calculating this amount. We therefore reject Edwards's sufficiency-of-the-evidence challenge. In so holding, however, although we acknowledge that the court properly found a small amount of child support was still owing, the record indicates that Edwards has been a good father who has not shirked his support obligations owed to his daughter.

B. *Claim of Improper Bank Account Levy*

Edwards renews the argument made below<sup>5</sup> that the Department improperly levied against his bank account to recover child support arrearages. As we understand his position—again, made without any citation to the record in violation of the California Rules of Court—he asserts that in June and July of 2010, the Department “garnished \$8973.77 of . . . funds” he had received a year earlier as a retroactive payment of social security disability payments. He claims that he became disabled in 2008 and began

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<sup>5</sup> Edwards did not raise the improper levy claim in his initial petition filed in July 2010. And although he did not assert the objection at the hearings on September 10, 2010, and January 5, 2011, Edwards raised the claim that the bank levies were improper at the hearings on April 12, 2011, and August 30, 2011.

receiving social security disability benefits in June 2009. He argues that under both federal law (15 U.S.C. § 1673) and California law (§ 5246), any levy of his account should have been limited to five percent of his total monthly disability payment. The Department argues that Edwards is procedurally barred from asserting this claim, and that, in any event, it lacks substantive merit. We agree with the Department on both points.

1. *Procedural Bar to Claim of Improper Levy*

The levy challenged here occurred pursuant to a statutory procedure outlined by the court in *In re Marriage of LaMoure* (2011) 198 Cal.App.4th 807, 815 (*LaMoure*): “The State of California has devised a system of ensuring automatic payment of child support arrears by means of levying on support obligors’ assets in financial institution accounts. Under the Financial Institution Data Match (FIDM) system, the State DCSS provides financial institutions with the State DCSS’s files of delinquent support obligors. The financial institutions are required to determine if there is a match with their own accountholders. Upon receiving a notice or order to withhold issued by the State DCSS, financial institutions are required to notify the obligor of the notice or order, and withhold from the obligor’s accounts the amount of support arrears stated in the notice or order. [Citations. ¶] Before the funds are transmitted to the State DCSS, the obligor may file with the local DCSS a claim of exemption based on financial hardship.”

As the *LaMoure* court emphasized, it is the depository institution, pursuant to section 17456, subdivision (b)—and not the State DCSS—which provides the written notice of levy to the obligor. (*LaMoure*, at pp. 816-817.) And “[a] court order authorizing such a levy is not required. The levy is founded on an existing support order, overdue support, and the existence of an order by operation of law requiring payment of support arrears.” (*Id.* at p. 819.)

Subdivision (j)(3) of section 17453 permits an obligor whose property is the subject of a levy to submit an application for a claim of exemption, in accordance with

the procedures specified under section 703.510 et seq. of the Code of Civil Procedure. Under Code of Civil Procedure section 703.520, subdivision (a), “[t]he claimant may make a claim of exemption by filing with the levying officer a claim of exemption together with a copy thereof. The claim shall be made within 10 days after the date the notice of levy on the property claimed to be exempt was served on the judgment debtor.” The Code of Civil Procedure provides further that such claims of exemption “may be claimed within the time and in the manner prescribed in the applicable enforcement procedure. If the exemption is not so claimed, the exemption is waived and the property is subject to enforcement of a money judgment.” (Code Civ. Proc., § 703.030, subd. (a); see also Ahart, Cal. Practice Guide: Enforcing Judgments and Debts (The Rutter Group 2012) ¶ 6.868, p. 6E-15 (rev. # 1 2010) [debtor generally must assert claim of exemption “within the time and in the manner prescribed . . . [or else] the exemption is waived”].)

The record here is that Bank of America gave Edwards and his wife written notice of a levy against their two bank accounts on May 13, 2010. The bank stated in the notice that it intended to remit on May 27, 2010, the total amount of \$7,209.77 from the bank accounts, and that any questions about the underlying order or objections to the levy should be directed to Child Support Collections at a telephone number indicated. There is no evidence that Edwards submitted a written claim of exemption to the levy, either within 10 days of the written notice or at any time thereafter. Thus, his claim of exemption was waived. (Code Civ. Proc., §§ 703.030, subd. (a); 703.520, subd. (a).)<sup>6</sup>

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<sup>6</sup> We note that under section 17453, subdivision (j)(3), a claim of exemption may be submitted by the obligor “[i]f any of the conditions set forth in paragraph (1) [of subdivision (j)] exist . . .” Edwards’s belated objection to the levy does not appear to fall within any of the conditions listed in subdivision (j)(1) of section 17453. Nonetheless, his contention is waived because of his failure to comply with the Code of Civil Procedure concerning the timing and manner of serving a claim of exemption to a proposed levy.

2. *No Merit to Claim of Improper Levy*

Edwards argues that the 2010 bank levy was improper because any such levy should have been limited to no more than five percent of his gross monthly Social Security Disability payment under section 5246. Even were the argument not procedurally barred, it is without merit.

Section 5246 provides in part: “In lieu of an earnings assignment order signed by a judicial officer, the local child support agency may serve on the employer a notice of assignment in the manner specified in Section 5232. An order/notice to withhold income for child support shall have the same force and effect as an earnings assignment order signed by a judicial officer. An order/notice to withhold income for child support, when used under this section, shall be considered a notice and shall not require the signature of a judicial officer.” (§ 5246, subd. (b).)<sup>7</sup> Here, the levy of which Edwards complains was not a notice of assignment served upon “an employer.”<sup>8</sup> Rather, the levy was upon a banking institution with which Edwards maintained bank accounts. Therefore, any limitations imposed under section 5246 had no application to the challenged levy.

Edwards also contends that the bank levy was improper under 15 U.S.C. § 1673. This contention lacks merit.

Section 1673 of title 15 of the United States Code, a part of the Consumer Credit Protection Act, provides for restrictions on “the maximum part of the aggregate

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<sup>7</sup> “Service on an employer of an assignment order may be made by first-class mail in the manner prescribed in Section 1013 of the Code of Civil Procedure. The obligee shall serve the documents specified in Section 5234.” (§ 5232.)

<sup>8</sup> The term “ ‘[e]mployer’ ” includes the United States Government (§ 5210, subd. (b)) and “[a]ny person or entity paying earnings as defined under Section 5206.” (§ 5210, subd. (c)). Regardless of whether section 5246 would theoretically apply to a notice of assignment served upon the United States Government with respect to an obligor’s Social Security Disability Insurance payments, the bank levy challenged here did not involve such a notice of assignment.

*disposable earnings* of an individual for any workweek which [may be] subjected to garnishment . . .” (15 USC § 1673(a), italics added.) For the purposes of the Consumer Credit Protection Act, the term “earnings” is defined as “compensation paid or payable for personal services, whether denominated as wages, salary, commission, bonus, or otherwise, and includes periodic payments pursuant to a pension or retirement program.” (15 USC § 1672(a).) “ ‘[D]isposable earnings’ means that part of the earnings of any individual remaining after the deduction from those earnings any amounts required by law to be withheld.” (15 USC § 1672(b).)<sup>9</sup> Given the limited application of the garnishment restrictions found in 15 U.S.C. 1673 to “earnings”—or, actually, to the more narrow subset of the term, “disposable earnings”—it has no application here to the funds located in Edwards’s Bank of America accounts. (See *Phillips v. Bartolomie* (1975) 46 Cal.App.3d 346, 354 [garnishment restrictions of 15 U.S.C. § 1673 inapplicable to garnishment of funds deposited into checking account by judgment debtor, the sources of which were benefits and pensions paid under programs of Veterans Administration, Social Security Administration, and county welfare department]; see also *John O. Melby & Co. Bank v. Anderson* (Wis. 1979) 276 N.W.2d 274, 277-278 [bank accounts, although deposits are traceable to wages, are not disposable earnings subject to garnishment restrictions under 15 U.S.C. § 1673].)

The trial court did not state its reasons for rejecting Edwards’s claim that the 2010 bank levies were unlawful. But under the doctrine of implied findings, we will infer any factual findings necessary to the court’s determination of the issue. (*Shaw v. County of Santa Cruz* (2008) 170 Cal.App.4th 229, 267-268; *Fladeboe, supra*, 150 Cal.App.4th at p. 58.) There was substantial evidence to support the implied factual findings that formed

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<sup>9</sup> And under the Consumer Credit Protection Act, “ ‘garnishment’ means any legal or equitable procedure through which the earnings of any individual are required to be withheld for payment of any debt.” (15 USC § 1672(c).)

the basis for the conclusion that Edwards's improper levy claim was without merit, both because it was procedurally barred and because the statutes upon which he relied were inapplicable to the circumstances of the bank levy here.

DISPOSITION

The September 1, 2011 Order is affirmed.

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Márquez, J.

WE CONCUR:

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Elia, Acting P.J.

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Bamattre-Manoukian, J.