SUPREME COURT CASE NO. S245395

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

ANGIE CHRISTENSEN,

PLAINTIFF AND RESPONDENT,

v.

WILL LIGHTBOURNE, DIRECTOR, CALIFORNIA DEPARTMENT OF SOCIAL SERVICES; CALIFORNIA DEPARTMENT OF SOCIAL SERVICES,

DEFENDANTS AND APPELLANTS.

After a Decision by the Court of Appeal for the First Appellate District, Division Two, No. A144254

Reversing a Judgment of the Superior Court of San Francisco County Case No. CPF-12-512070, Honorable Ernest H. Goldsmith, Judge

OPENING BRIEF ON THE MERITS

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Issues Presented for Review

1. California's CalWORKs program supports children in the homes of very poor families. Eligibility for and the amount of aid depends on the amount of income already available to the household. May income that is paid as court-ordered child support for children in other homes be considered available to children in the home of the paying parent?

2. Welfare and Institutions Code section 11005.5[1] prohibits one family's "income or resources" from being considered in determining the amount of aid to any other family. Where garnished child support is the direct or indirect income of the receiving children, does the state violate section 11005.5 when it allows the garnished income to also be considered in determining the amount of aid to the paying family?

Introduction

Angie Christensen's family was denied public assistance because the Department of Social Services counted the family as having money it never will receive: her husband's wages and unemployment garnished to pay child support owed to another family. The result for the Christensens and similar families throughout California thwarts the legislative purpose behind both CalWORKs and child support: to secure adequate financial support to all California children.

For more than 40 years, California's welfare and child support systems have operated in tandem with the single overarching goal of ensuring sufficient financial support for the state's children. Each statutory scheme

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[1] Section or § refers to the Welfare and Institutions Code unless otherwise stated.

calculates an amount intended to meet that goal, whether funded by the government, private sources, or a combination.

The Legislature has recognized that robbing from children in one system to pay for the needs of children in the other undermines both systems. The detailed statutory guideline for calculating child support specifies that the amount a parent pays to support another family does not count as income available to that parent. Fam. Code §4059(e). It is inconceivable that if the family of the paying parent happens to be so poor as to potentially qualify for CalWORKs, the same Legislature would turn around and permit that family to be penalized.

In fact, no statute authorizes the Department's policy at issue here, and a long line of opinions from this Court and the Court of Appeal prohibit counting phantom funds in public benefits programs. In the absence of express legislative authorization, this Court should not infer that the Legislature intended such an outcome in this case.

Contrary to the Department's expressed fears, the Court can invalidate the Department's policy without necessarily changing the treatment of other garnished debt. Child support is uniquely intertwined with CalWORKs for the purpose of securing adequate financial support to all California children. Moreover, child support is a different kind of debt which takes priority over all other debt, cannot be compromised without both agency and court approval, and cannot be discharged in bankruptcy. Child support paid to another family *never* benefits the paying family. It is simply unavailable to the paying parent's family. The Department's policy of pretending otherwise cannot withstand scrutiny.

In addition, the Department's policy violates §11005.5, which prohibits consideration of income received by one group of public benefits recipients as also available to a different group. When garnished child support goes to

another family receiving CalWORKs, the Department violates §11005.5. The Department's policy allows counting the same money twice: once to reduce or deny aid to the family of the paying parent, such as the Christensens; and then to reduce CalWORKs for the family that receives the child support. The Department's policy is invalid.

Statement of the Case

CalWORKs supports poor families whose "reasonably anticipated" income "to be received" falls below specified amounts.

CalWORKs, the California Work Opportunity and Responsibility to Kids Act, provides cash assistance to low-income families. §§11200, 11250. The Legislature enacted CalWORKs after Congress replaced the old welfare system known as AFDC (Aid to Families with Dependent Children) with a block grant program known as Temporary Assistance for Needy Children. AB 1542, Stats. 1997, ch. 270.

To qualify for CalWORKs, a family must be poor; its "reasonably anticipated income, less exempt income" must be less than the maximum CalWORKs benefit for a family of its size. §11450.12(b); MPP §44-207.2.[2] The maximum benefit is called the Maximum Aid Payment, §11450.12(b), which in October 2010 (when Ms. Christensen applied) was $828 per month for a family of four. *Christensen v. Lightbourne*, 15 Cal.App.5th 1239, 1249, n.13 (2017), *review granted*, Jan. 10, 2018. This was 45% of the federal poverty line. 75 Fed.Reg. 45628, 45629 (Aug. 3, 2010).

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[2] The MPP, the Department's Manual of Policies and Procedures, constitutes the Department's official regulations and is available at http://www.cdss.ca.gov/inforesources/Letters-Regulations/Legislation-and-Regulations/CalWORKs-CalFresh-Regulations/Eligibility-and-Assistance-Standards.

The CalWORKs program calculates need prospectively, and the monthly benefit amount is based on income "reasonably anticipated" that "will be received" during the family's reporting period. §§11265.2, 11450.12(b). Income is considered reasonably anticipated "if the county is reasonably certain of the amount of the income and that the income will be received" during the reporting period. §11265.2(b).

Child support is money generally garnished from non-custodial parents' wages to pay the expenses of their children in amounts set by state law.

California parents must support their minor children. Fam. Code §§3900 et seq. Child support is money that a non-custodial parent pays to the custodial parent for the child's expenses. *Sneed v. Saenz*, 120 Cal.App.4th 1220, 1245 (2004).

Unlike in other areas such as consumer debt, garnishment of wages to pay child support does not suggest a last-resort collection measure only invoked against a recalcitrant debtor. Rather, Family Code §5230 *requires* a court to include in any child support order an "earnings assignment order . . ." Such an order can only be stayed for good cause. Fam. Code §5260. Most California child support is collected through garnishment. 2 CT 374 (Department of Child Support Services Handbook).

To comply with the same federal law that authorizes funding of CalWORKs, the Legislature has established a detailed uniform guideline to determine the appropriate amount of child support for each family. Fam. Code §§4050, 4055.

When child support is owed to a CalWORKs family, the money is either assigned to the state or subtracted from the CalWORKs grant.

As a condition of receiving CalWORKs, applicants often must assign their rights to child support payments to the state. §11477. When an assignment occurs, the custodial family keeps only the first $50 of current monthly support collected. §11475.3; MPP §12-425(c).[3] The state keeps the rest to offset the amount of CalWORKs benefits it pays the custodial family.

For other CalWORKs recipients, child support payments received are not assigned and count directly as income. This occurs when all adults in the home are excluded from the assistance unit because they have received 48 months of assistance, have been sanctioned for 12 consecutive months, or are ineligible because they are in violation of the terms of probation or parole. §11477(c)(1). Similarly, there is no assignment when a family collects child support for arrears that accrued before the family started receiving aid, as well as when a family collects support in excess of what is owed. §11477(a)(1)(B). In all these cases, other than the first $50, the child support paid directly to the family counts as income. §11477(c)(2) ("It is the intent of the Legislature that the regular receipt of child support ... be considered" in determining income).

The result of considering child support as income for a family is subtracting the amount of support dollar for dollar from the grant or disqualifying the family altogether.

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[3] California Department of Child Support Services regulations, contained in its Manual of Policies and Procedures, are available at http://www.childsup.ca.gov/resources/childsupportregulations/manualofpoliciesandprocedures.aspx.

The Department, reversing previous practice, adopts policy counting child support paid to another family as income to the paying parent, disqualifying the paying parent's family or reducing its grant.

No statute has ever expressly addressed the availability of garnished child support to the family of the paying parent. Before AB 1542, the legislation that enacted CalWORKs, a Department regulation did not count garnished child support as available to the family of the paying parent. *Christensen*, 15 Cal.App.5th at 1248, citing former MPP §44-113.9.

Even though AB 1542 did not expressly repeal the prior regulation, the Department, in a sub-regulatory letter to counties, adopted a rule counting income paid as child support for children in other homes as if it were available to the children in the paying home. All County Letter 97-59, 1 CT 63.

Ms. Christensen applies for CalWORKs cash aid, but is disqualified because of wages and benefits that are never received by the family but instead garnished to support her husband's children outside the home.

In October 2010, Angie Christensen applied for CalWORKs cash aid to financially support the children in her home. Director's Alternative Decision, Administrative Record (AR) 3. Although her husband Bruce had income from wages and unemployment benefits, court-ordered child support was garnished from those funds. *Id.* The garnished income provided for children in other homes – one child whose mother also received CalWORKs, one child who was not assisted by CalWORKs at that time, and one child who was an adult and for whom support payments were for arrearages. *Id.* Had the garnished child support been excluded, the Christensen children would have been eligible to receive CalWORKs cash assistance. Instead, counting the

garnished income, San Mateo County's welfare department denied aid to the Christensens. *Id.*

An administrative law judge concludes Bruce Christensen's child support payments were not available to meet the Christensen family's needs, but the Director of the Department reverses the decision.

Ms. Christensen requested an administrative hearing, asserting that the child support garnished from her husband's wages and unemployment should not count as income to her family. AR 7. The administrative law judge who heard the case agreed. The judge concluded that the garnished child support "is not available to meet the needs" of the Christensen children, and instructed the county welfare department to reevaluate the application, excluding the child support garnished from Bruce Christensen's earned and unearned income. AR 9.

But the Department's Director reversed and issued an alternate decision denying Ms. Christensen's claim. He reasoned that no regulation expressly exempts income that is paid outside the home for child support. AR 4.

Trial court rules in Ms. Christensen's favor, but Court of Appeal reverses.

Ms. Christensen filed a petition and complaint, seeking administrative mandamus (Code Civ. Proc. §1094.5), a traditional writ of mandate (Code Civ. Proc §1085) and declaratory relief. 1 CT 5-10. The trial court granted administrative mandate and declaratory relief, ruling that the Department's "policy to count court-ordered child support payments as available income of

the CalWORKs applicants and recipients who pay support, is invalid." 2 CT 619.

The trial court concluded that "child support that is transferred to children that live outside the home is not available to needy members of the family." *Id.* The court also declared that the Department's policy violated §11005.5, which prohibits consideration of the same funds in determining the amount of aid to two different recipient groups. 2 CT 618.

The Court of Appeal reversed, deferring to the Department's statutory and regulatory interpretations. Although recognizing that no statute directs the Department's policy, the Court of Appeal was concerned that "no limiting principle" would prevent a decision that garnished child support is not available income from applying equally to any other income garnishment. *Christensen,* 15 Cal.App.5th at 1247, 1256.

This Court granted review on January 10, 2018.

Standard of Review

This appeal primarily presents issues of statutory interpretation, which the Court reviews de novo. *Reid v. Google, Inc.*, 50 Cal.4th 512, 527 (2010). "Where the meaning and legal effect of a statute is the issue, an agency's interpretation is one among several tools available to the court. Depending on the context, it may be helpful, enlightening, even convincing. It may sometimes be of little worth." *Yamaha Corp. of Am. v. State Bd. of Equalization*, 19 Cal.4th 1, 7-8 (1998). "[A]n erroneous administrative construction does not become decisive no matter how long continued.'" *California Trout, Inc. v. State Water Resources Control Bd.*, 207 Cal.App.3d 585, 607 (1989), quoting *People v. Union Oil Co.*, 48 Cal.2d 476, 480 (1957).

Argument

I. Child support paid to other families is not income available to the paying family under California welfare law.

A. CalWORKs and child support operate together for the primary purpose of adequately supporting all children, a purpose which is thwarted by the Department's policy.

The Court's "'primary task in interpreting a statute is to determine the Legislature's intent, giving effect to the law's purpose . . . .'" *John v. Superior Court*, 63 Cal.4th 91, 95 (2016) (citation omitted). While that task normally begins with analyzing legislative language, no California statute expressly authorizes or prohibits the challenged policy. And leaving aside the double counting issue, *see* §II below, resolution of this case does not hinge on the meaning of a particular code section. *Cf. Azusa Land Partners v. Dep't of Indus. Relations*, 191 Cal.App.4th 1, 16 (2010) ("[j]udicial construction . . . is not accomplished by examining bits and pieces of a statute, but only after a consideration of all of its parts in order to effectuate the Legislature's intent.").

In this case, the Court should examine not just the CalWORKs statutory scheme, but also the system for calculating and distributing child support. As we now discuss, those two schemes are linked with each other; they work together with the overriding goal of providing an adequate level of support for California children; and the Department's policy at issue thwarts that goal, along with other purposes of both statutory schemes.

The welfare and child support programs have been intertwined since at least 1975, when President Ford signed into law legislation that added a new Part D to Title IV of the Social Security Act (*i.e.*, to the AFDC title). This new part, commonly referred to as IV-D, established a federal system for child

support enforcement for states participating in the AFDC program. P.L. 93-647 (Jan. 4, 1975) §101, adding 42 U.S.C. §§652 et seq.

Though a block grant to the states has replaced AFDC's cash assistance federal entitlement program, the welfare-child support link established in 1975 remains intact. States seeking federal aid for their public benefits programs must submit a "state plan for child support" which require states to establish paternity, secure collection, and disburse assigned child support funds to reimburse the state for welfare. 42 U.S.C. §§602(a)(2), 652, 654. Congress has specified that court orders or federally-approved formulas should determine the amount of support obligations, which, when owed to a state, cannot be discharged in bankruptcy. 42 U.S.C. §656.

These linked programs share the same primary purpose: adequate support of all children. Section 11205 specifies that each CalWORKs "family has the right and responsibility to provide sufficient support and protection of its children, to raise them according to its values and to provide every opportunity for educational and social progress." *See also Sneed v. Saenz,* 120 Cal.App.4th at1229 ("[a]dequate support for *all* of the needy children of California's working poor is a matter of priority" (emphasis in original); *Waits v. Swoap,* 11 Cal.3d 887, 896 (1974) (the purpose of AFDC, CalWORKs' predecessor, was "the preservation, so far as possible, of the family unit, and the more fundamental purpose of the preservation of the health of the state's children, the potential leaders of tomorrow.").

The child support statutes share the goal of securing sufficient support for all children. Courts issuing support orders must "place the interests of children as the state's highest priority." Fam. Code §4053(e). Support orders shall "take into account each parent's actual income and level of responsibility." Fam. Code §4053(c). And they "must ensure that children actually receive fair, timely and sufficient support reflecting the state's high

standard of living and high costs of raising children . . . ." Fam. Code §4053(l).

The Legislature has implemented this goal concretely by specifying amounts that must be paid both for CalWORKs and for child support. The CalWORKs statute provides that "[a]id shall be paid for each needy family" (§11450(a)(1)(A)) and then details the amount calculations.

Similarly, a formula to set the *amount* of a child support order is a required component of a state's federally approved Temporary Assistance for Needy Families plan. 42 U.S.C. §§602(a)(2); 667. To "ensure that this state remains in compliance with federal regulations," Fam. Code §4050, California has adopted a detailed uniform guideline for calculating child support. Fam. Code §§4055 *et seq.*

Critically, California's guideline prohibits the same attribution of unavailable income to the non-custodial parent that the Department is making in this case. Family Code §4059 provides, in relevant part, that the "annual net disposable income of each parent" is computed by deducting from the parent's gross income "[a]ny child or spousal support actually being paid by the parent pursuant to a court order" to another family. Fam. Code §4059(e).

Yet, under the Department's policy, when a family is so poor as to potentially qualify for CalWORKs, the same child support "actually being paid by the parent pursuant to a court order" is *not* deducted from the paying family's available income. By pretending the child support payments are available to responsible paying families like the Christensens, the Department's policy frustrates the Legislature's intent. It fails to place the interests of the Christensen children "as the state's highest priority," Fam. Code §4053(e), and fails to provide "sufficient support and protection" to them. §11205.

The Legislature has ensured that in effect there are two pots of money: one to fund the poor children in CalWORKs families; and the other to pay for the beneficiaries of child support orders. Whatever mix of government and private money is poured into these pots, the Legislature has expressed its intent that each pot remain full and available, or at least sufficient for adequate support of California's children. Thus, Family Code §17516 provides that "[i]n no event shall public social services benefits . . . be employed to satisfy a support obligation."

But that is exactly the result compelled by the Department's policy. The Department is using money needed to provide sufficient support for CalWORKs families to satisfy the obligation to pay child support to other families. The policy thwarts the primary purpose of both CalWORKs and child support.

The policy conflicts with other statutory purposes as well. One of those is "the preservation, so far as possible, of the family unit . . . ." *Waits v. Swoap,* 11 Cal.3d at 896; *see also* §11205 ("the family unit is of fundamental importance to society"); *Sneed v. Saenz*, 120 Cal.App.4th at 1229 (welfare reform statutes are "designed to insure the long-term economic viability of the family unit.").

The Department's policy provides a strong incentive for the opposite result. If Angie and Bruce Christensen were to separate, Angie's family would readily qualify for CalWORKs. The family should not be penalized for staying together. *See Waits v. Swoap,* 11 Cal.3d at 896 (AFDC grant could not be reduced by attributing in-kind income from grandparents living in the same house); *McCormick v. County of Alameda*, 193 Cal.App.4th 201, 218 (2011) (in holding that a minor living with his mother was entitled to a General Assistance grant, the court stated: "respondents propose that [the

mother] and [the child] should simply cease living as a family. Such a 'solution' cannot be deemed to have been authorized by the Legislature . . . .").

In addition, CalWORKs, as its name suggests, is a work-incentive program. *Sneed v Saenz,* 120 Cal.App.4th at 1242. But the Department's policy undermines that incentive by substantially reducing any benefit that a non-custodial parent can provide to a new family through employment.

Already, too many absent parents stop working or voluntarily reduce their income to avoid paying child support. *See, e.g., In re Marriage of Ilas,* 12 Cal.App.4th 1630, 1638 (1993), for a discussion of the statutory and case law dealing with this problem. The Department's policy encourages such behavior, while penalizing responsible parents like Bruce Christensen who work and pay support.

"'[S]tatutes must be construed in a reasonable and common sense manner consistent with their apparent purpose and the legislative intent underlying them—one practical, rather than technical, and one promoting a wise policy rather than mischief or absurdity.'" *Weidenfeller v. Star & Garter,* 1 Cal.App.4th 1, 5–6 (1991) (citation omitted). Treating garnished child support as available to the paying parent and his family interferes with those goals and is therefore illegal.

B. Neither the CalWORKs statute nor California case law authorizes treatment of phantom funds such as garnished child support as available to the person who never receives those funds.

California public benefits law prohibits the government from treating phantom income such as garnished child support as available to families such as the Christensens who will never receive or benefit from that income. Section 11265.2(b) provides that income of a family must be "reasonably