

19-7085
No. _____

ORIGINAL

Supreme Court, U.S.
FILE

DEC 23 2019

In the **SUPREME COURT OF THE UNITED STATES** OFFICE OF THE CLERK

Ratha Oeur, Petitioner,

v.

State of California, Respondent.

On Petition for a Writ of Certiorari to the
Supreme Court of the State of California

PETITION FOR A WRIT OF CERTIORARI

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PETITIONER IN PRO PER

QUESTIONS PRESENTED

1. Does this Court of Appeal's Opinion, to affirm the Trial Court's decision to make or modify a child support order without a current Income and Expense Declaration from both parties, conflict with the Court of Appeal's decision in *In re the Marriage of Tydlaska*?
2. When issues on appeal are matters of law or interpretation of statutes which standard of review will be used? Will it be the Abuse of Discretion standard or the De Novo standard?
3. Is the appellant's right to due process violated when the appellant's request for a continuance during trial was denied by the court? An unexpected event occurred during the trial that rendered the court and all parties unprepared to make a child support order. The unexpected event was not the fault of the appellant.

PARTIES TO THE PROCEEDING

Petitioner is Ratha Oeur, which was the defendant at trial court and appellant at the California Court of Appeal Second Appellate District. The parties to the proceedings in the California Court of Appeal Second Appellate District were Appellant Ratha Oeur and Respondent the County of Los Angeles.

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IN THE SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner Ratha Oeur respectfully request that a writ of certiorari be granted to review the judgment of the Supreme Court of the State of California.

OPINION BELOW

The order of the California Supreme Court appears at Appendix A to this petition. The order was filed without opinion. The order was a single page document denying Ratha Oeur his request for review.

JURISDICTION

The California Supreme Court issued its decision on September 25, 2019. A copy is attached at Appendix A. The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a).

STATEMENT OF THE CASE

On July 15, 2015 the child support case was filed concerning The County of Los Angeles vs. Ratha Oeur. (CT pg. 01)

On November 4, 2016 a Default Judgement was made and filed. (CT pg.

01, 02)

On March 9, 2017 was the first time I was in court for a hearing concerning Child Support. (CT pg. 02)

On November 21, 2017 I was present for the Notice of Motion (Modification) hearing. I filed a current Income and Expense Declaration (CT pg. 03)

On February 21, 2018 I was present for the hearing concerning child support and also filed a current Income and Expense Declaration. Guidelines Calculations presented by the county and the Court enters Judgement on this day. (CT pg. 03)

The records reflect that Channa Oeur did not file a current Income and Expense Declaration. (CT pg. 01 – 05)

On February 26, 2018 The Judgement for Parental Obligations concerning the hearing held on February 21, 2018 is filed by the County. (CT pg. 04)

On April 23, 2018 I filed the Notice of Appeal. (CT pg. 04)

On July 27, 2018 The County files Notice – Entry of Judgement. (CT pg. 05) I do not understand why it took 5 months for the Judgement to be entered. The court did not mail a Judgement order to me after the February 21, 2018 hearing.

On June 25, 2019 the court of appeal filed an opinion affirming the trial court's decision to make a child support order without a current income and expense declaration from both parties.

On July 18, 2019 my petition for rehearing was denied

On July 19, 2019 I sent a request to publish the opinion to the court of appeals.

On July 24, 2019 the court of appeals filed the order denying publication

On July 24, 2019 the court of appeals sent a letter and memo to the supreme court concerning the denial of request for publication. Included documents; request to publish, denial to publish order and opinion.

On September 25, 2019 Clerk Jorge Navarrete of the Supreme Court of California file the order denying my petition for review and my request for an order directing publication of the Court of Appeal's opinion.

REASONS FOR GRANTING THE PETITION

I

THE COURT SHOULD GRANT CERTIORARI TO RESOLVE
THE CONFLICT BETWEEN THE OPINION OF THE COURT
OF APPEAL IN THIS CASE WITH THE OPINION OF THE
COURT OF APPEAL IN THE FOURTH APPELLANT DISTRICT
IN “IN RE MARRIAGE OF TYDLASKA” (2003) 114
CAL.APP.4TH 572

Does this Court of Appeal's Opinion, to affirm the Trial Court's decision to make or modify a child support order without a current Income and Expense Declaration from both parties, conflict with the Court of Appeal's decision in In re the Marriage of Tydlaska?

A grant of review in this case is necessary to secure uniformity of decision, within the meaning of Rule 8.500 (b), between the opinion in this case and the conflicting opinion of the Court of Appeal for the Fourth Appellant District in In re Marriage of Tydlaska (2003) 114 Cal.App.4th 572.

The County of Los Angeles is prosecuting a child support case against, appellant, Ratha Oeur. California Rules of Court mandates that the party requesting support orders must include a current, completed Income and Expense declaration that is filed with the court and served on all parties. It also states that for all hearings involving child support both parties must complete, file and serve a *current* Income and Expense declaration.

California Rules of Court, rule 5.260 (a) states that for all hearings involving child support both parties must complete, file and serve a *current* Income and Expense declaration. (Cal. Rules of Court, rule 5.260 (a) .) California Rules of Court, rule 5.260 (a) (3) defines *current* as being completed within the past three months of the hearing. (Cal. Rules of Court, rule 5.260 (a) (3) .) California Rules of Court, rule 5.260 (a) (1) states that the party requesting support orders must include a current, completed Income and Expense declaration that is filed with the court and served on all parties. (Cal. Rules of Court, rule 5.260 (a) (1) .)

The County of Los Angeles is the party that is requesting the support order. The County of Los Angeles did not file a current Income and Expense Declaration from Channa Oeur with the court and did not serve a current Income and Expense Declaration on all parties.

The child support hearing was held on February 21, 2018. Channa Oeur was not present at the hearing and did not file a current Income and Expense Declaration with the court. Ratha Oeur, the respondent-appellant, was present at the hearing and filed a current Income and Expense Declaration with the court on February 21, 2018.

On February 21, 2018 the trial court made a child support order without Channa Oeur's current Income and Expense Declaration. The child support order judgement was filed on February 26, 2018.

Appellant, Ratha Oeur, filed an appeal with the Court of Appeals. The Court of Appeals filed an opinion affirming the trial court's decision on June 25, 2019.

In Lee Tydlaska, Appellant v. Darlene Tydlaska, Respondent, Lee filed an order to show cause (OSC) seeking to modify child and spousal support December 2001. Lee attached an income and expense declaration dated December 24, 2001. The trial court eventually held a hearing on August 8, 2002 and denied Lee's request to modify spousal and child support because Lee did not have a current income and expense declaration on file as required by local rules of court.

“In requesting modification of spousal and child support, Lee was required to present the trial court with evidence of how his circumstances had materially changed since the original support order was made. However, he produced no evidence at the hearing, specifically a current income and expense declaration... Because Lee failed to present an “evidentiary yardstick” with which the court could determine the appropriateness of a modification order (In re Marriage of Laube (1988) 204 Cal.App.3d 1222, 1226, 251 Cal.Rptr. 745), his request to modify support was properly denied.” (In re Marriage Tydlaska (2003) 114 Cal.App.4th 572)

The court of appeals affirmed the order made by the trial court of denying Lee Tydlaska's request to modify spousal and child support.

In Los Angeles County v. Ratha Oeur the trial court made a child support order without a current income and expense declaration from the custodial parent Channa Oeur. Ratha Oeur appealed the decision and the court of appeals filed an opinion that affirmed the trial court's decision of making a child support order without a current income and expense declaration from Channa Oeur.

In Lee Tydlaska v. Darlene Tydlaska the trial court denied Lee's request to modify child support because Lee did not have a current income and expense declaration on file at the time of the hearing. In "In re the Marriage of Tydlaska" the court of appeal affirmed the the trial court's decision to deny Lee's request to modify child support because Lee did not have a current income and expense declaration on file.

The opinions of two court of appeals concerning the the requirement of a current income and expense declaration for making or modifying a child support order contradict one another. Therefore the court should grant review in this case to secure uniformity of decision, maintain integrity of the courts of appeal and maintain the confidence of the public.

II

THE COURT SHOULD GRANT CERTIORARI TO RESOLVE IMPORTANT MATTERS OF LAW CONCERNING STANDARD OF REVIEWS

When issues on appeal are matters of law or interpretation of statutes which standard of review will be used? Will it be the Abuse of Discretion standard or the De Novo standard?

Typically, an appellate court's review of child support orders is limited to whether the trial court abused it's discretion. (In re Marriage of Chandler (1997) 60 Cal.App.4th 124, 128, 70 Cal.Rptr.2d 109.) However when an issue on appeal is strictly the interpretation of a statute, we traditionally exercise de novo review. (Sonoma State University v. Worker's Comp. Appeals Bd. (2006) 142 Cal.App.4th 500, 503, 48 Cal. Rptr.3D 330.) In context of child support orders, the rule is no different. (In re Marriage of Pearlstein (2006) 137 Cal.App.4th 1361, 1371-1372, 40

Cal.Rptr.3D 910)

California Rules of Court, rule 5.260 (a) states that for all hearings involving child support both parties must complete, file and serve a *current* Income and Expense declaration. The trial court did not have a current income and expense declaration from both parties but still proceeded to make a child support order. The trial court's interpretation of the law guided the trial court in making a child support order without a current income and expense declaration from both parties. Matters of law and interpretation of statutes are traditionally reviewed *de novo*.

Typically, an appellate court's review of child support orders is limited to whether the trial court abused its discretion. But the trial court's discretion is not so broad that it "may ignore or contravene the purposes of the law regarding ... child support. (County of Stanislaus v. Gibbs (1997) 59 Cal.App.4th 1417, 1425 [69 Cal.Rptr. 2D 819].)

The most common application of the *De Novo* standard of review occurs in cases involving questions of law arising from undisputed facts. (Ghirardo V. Antonioli, 8 Cal. 5th 791, 799 (1994) The interpretation of a statute is a pure question of law. (People ex Rel. Lockyer v. Shamrock Foods Co., 24 Cal. 4th 415, 432 (2002). The *De Novo* standard of review applies to mixed questions of law and fact when legal issues predominate. (Crocker Nat'l Bank v. City & County of San Francisco, 49 Cal. 3d 881, 888 (1989).

California Rules of Court, rule 5.260 (a) states that for all hearings involving child support both parties must complete, file and serve a current Income and Expense Declaration on all parties. It also states that the party requesting a child support order must provide a current Income and Expense Declaration. The trial court made a decision to make a child support order without current Income and Expense declarations from both

parties. California Rules of Court clearly state that in hearings involving child support the court must have current Income and Expense Declarations from both parties. The trial court did not follow the clear instructions in the California Rules of Court. The trial court made a legal decision to make a child support order without a current Income and Expense Declaration from the custodial parent Channa Oeur. Legal decisions of a lower court on questions of law are reviewed *de novo*. A trial court's interpretation of a statute is reviewed *de novo*. The court of appeals erred when it used the abuse of discretion review on this case which clearly involves matters of law and interpretation of statutes.

The court should grant review in this case to resolve important matters of law and establish consistent court procedures.

III

THE COURT SHOULD GRANT CERTIORARI TO RESOLVE IMPORTANT MATTERS OF LAW CONCERNING VIOLATION OF CONSTITUTIONAL RIGHTS OF DUE PROCESS

Is the appellant's right to due process violated when the appellant's request for a continuance during trial was denied by the court? An unexpected event occurred during the trial that rendered the court and all parties unprepared to make a child support order. The unexpected event was not the fault of the appellant.

California Rules of Court, rule 3.1332 (c)(7) states that "A significant, unanticipated change in the status of the case as a result of which the case is not ready for trial" is ground for continuance. A party may have a strong basis for a continuance in a civil case when through no

fault of their own, it is taken by surprise by the conduct of its adversary and would be unjustly prejudiced if forced to proceed without being given an opportunity to prepare to meet the new situation. Channa Oeur's absence from the hearing was a surprise to Appellant and was not the fault of Appellant. Appellant did not have prior knowledge, to the court date, that Channa Oeur was not going to be at the hearing on February 21, 2018. It is not the responsibility of the appellant to procure the presence of the custodial parent. It is not the responsibility of the appellant to provide the court with Channa Oeur's current Income and Expense Declaration. Channa Oeur's absence from the hearing is an unforeseeable event that popped up during the trial period. Channa Oeur's absence from the hearing rendered the appellant unprepared for trial.

The denial of a continuance, due to a surprise unforeseeable event that popped up during the trial period, would violate appellant's rights to due process and a fair trial. None of our freedoms would be secure if any person could be deprived of his or her possessions without an opportunity to defend them "at a meaningful time and in a meaningful manner." (Fuentes v. Shevin (1972) 407 U.S. 67, 80 [32 L. Ed. 2d 556, 569-570, 92 S. Ct. 1983].)

The Fourteenth Amendment to the United States Constitution prohibits a state from depriving any person of a property without due process of law. (United States Constitution, 14th Amendment).

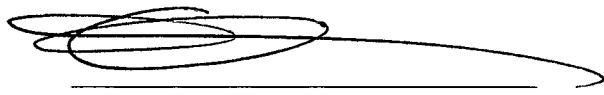
The court should grant review in this case to prevent the deprivation of due process rights and violations of the constitution against the appellant.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Dated: Dec. 23, 2019



by: Ratha Oeur

Petitioner In Pro Per