APPENDIX

APPENDIX A

1 A

Court of Appeal, Second Appellate District, Division Two - No. B289864

S257175

IN THE SUPREME COURT OF CALIFORNIA

En Banc

COUNTY OF LOS ANGELES, Plaintiff and Respondent,

v.

RATHA OEUR, Defendant and Appellant.

The petition for review is denied.
The request for an order directing publication of the opinion is denied.

CANTIL-SAKAUYE

Chief Justice

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION TWO

COUNTY OF LOS ANGELES, Plaintiff and Respondent, v. RATHA OEUR, Defendant and Appellant.	B289864 (Los Angeles County Super. Ct. No. BZ182208)

APPEAL from an order of the Superior Court of Los Angeles County. Angela Villegas, Judge. Affirmed.

Ratha Oeur, in pro. per., for Defendant and Appellant.

Xavier Becerra, Attorney General, Cheryl L. Feiner, Acting Assistant Attorney General, Linda M. Gonzalez and Marina L. Soto, Deputy Attorneys General, for Plaintiff and Respondent.

Ratha Oeur (appellant) appeals from an order requiring him to pay child support of $159 per month to support his four minor children. Appellant argues that the trial court abused its discretion in proceeding with the hearing without a current income and expense declaration from the children's custodial parent, Channa Oeur.[1] Further, appellant argues that the trial court abused its discretion in declining to continue the hearing to a future date and that his due process rights were violated by the denial of a continuance to allow the opportunity to seek additional information from Channa.

We find no error, and affirm the judgment.

FACTUAL AND PROCEDURAL BACKGROUND

Appellant and Channa married on May 9, 1998. The two separated on May 9, 2015. They have five children together.[2]

Initial complaint and order

In July 2015, the Los Angeles County Department of Child Support Services (Department) filed a summons and complaint regarding parental obligations against appellant.[3] The complaint

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1 Because the parents share the same last name, Channa will be referred to by her first name, as is customary in family law cases. (*Rubenstein v. Rubenstein* (2000) 81 Cal.App.4th 1131, 1136, fn. 1.)

2 The oldest of the five children, Micah, was 19 years old at the time of the hearing in February 2018. The four minor children at the time of the hearing were Elijah (age 17); Joshua (age 16); Jonathan (age 14) and Ethan (age 12).

3 Title IV-D of the Social Security Act mandates that states provide specific child support enforcement services in order to receive federal funding for public assistance. (42 U.S.C. §§ 601,

requested that the court order appellant to pay child support for the children in an amount totaling $733 per month, commencing August 1, 2015. The complaint also sought an order that appellant provide health insurance for the children and pay half of the uninsured health care costs for them. The Department filed the complaint against appellant because the children had been receiving public assistance in Los Angeles County since May 8, 2015. (Fam. Code § 17400, subd. (a).)

The Department served appellant, who failed to file an answer. A request for entry of a default judgment followed. On November 4, 2016, the trial court entered a default judgment against appellant, granting the orders requested by the Department.

Appellant's request to set aside order

In January 2017, appellant filed a request for order to set aside the judgment. Appellant claimed he did not receive the summons and complaint, and was unaware of the support action until his disability benefits were intercepted in November 2016. Appellant requested that the court set aside the default and grant him leave to file an answer. He also requested that the trial court preclude the Department from receiving retroactive

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602, 654.) In California, the duty to establish paternity and establish, modify, and enforce child support orders at public expense has been assigned to a local child support agency in each county. (Fam. Code, §§ 17304, 17400, subd. (a), 17404, subd. (a).) These agencies are required to provide support services to children for whom public assistance is being provided, as well as to any child who is not receiving public assistance if an individual requests such services for the child. (42 U.S.C. § 654(4)(A); Fam. Code, §§ 4002, subd. (a), 17400, subd. (a).)

support under Family Code section 4009.[4] The Department opposed appellant's requests.

The request to set aside the judgment was heard on March 9, 2017. Appellant, Channa, and an attorney for the Department were present. The trial court found that service was valid, but granted appellant's request because of lack of actual knowledge. The trial court reserved retroactivity to October 1, 2016.

The Department's motion and initial hearing

On September 8, 2017, the Department filed a motion for judgment on the reserved issues of child support, health care, and child care. The Department asked that the court set child support for the four remaining minor children, commencing October 1, 2016, and order appellant to provide health insurance and child care expenses for the children. The Department provided a declaration from child support officer Karen S. Tite, which set forth that Channa was receiving CalWORKS for the minor children; that aid was ongoing since December 1, 2016; and there had been assignment of all rights to child support, past and present, to the County of Los Angeles by operation of law.[5]

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[4] Family Code section 4009 provides: "An original order for child support may be made retroactive to the date of filing the petition, complaint, or other initial pleading. If the parent ordered to pay support was not served with the petition, complaint, or other initial pleading within 90 days after filing and the court finds that the parent was not intentionally evading service, the child support order shall be effective no earlier than the date of service."

[5] CalWORKS provides aid to families with related children under the age of 18, whose parents are unable to support them.

The motion was scheduled to be heard on November 21, 2017. Both appellant and Channa were served by mail, with notification that child support is based on ability to pay. The parties were advised to file income and expense reports (I&E).

Appellant filed an I&E on November 21, 2017, in which he indicated that he was receiving V.A. Disability Benefits in the amount of $264 per month; had received vocational training as an aircraft electrician and in "T.V. Production," but was no longer in school. He had recently applied for a business license to operate a retail business. Appellant was also teaching himself to invest in penny stocks, and his holdings were worth $304. His mother and girlfriend helped him meet his monthly expenses of $524. Appellant estimated Channa's income at $1,000 per month from food stamps and cash aid. Channa did not file an I&E.

Appellant and an attorney for the Department appeared at the November 21, 2017 hearing. Channa was not present. After appellant testified, the trial court continued the matter to February 21, 2018. Appellant was ordered to seek work at five places per week, keep a log of all job searches, and report to the Work Source Center by December 8, 2017. The trial court also ordered appellant and Channa to comply with Local Rule 5.9 and provide updated I&Es, tax returns for 2016 and 2017, and copies of their last four paystubs.[6] The court retained jurisdiction to make orders retroactive to December 1, 2016.

(Welf. & Inst. Code, §§ 11200, 11250; *Barron v. Superior Court* (2009) 173 Cal.App.4th 293, 296, fn. 1, 299.)

[6] Los Angeles County Superior Court Local Rule 5.9 provides: "The parties must completely fill in all blanks on financial declarations (including the Income and Expense

The Department mailed notice of the continued hearing date to both appellant and Channa, and served both parties with a copy of the formal order.

February 21, 2018 hearing and order

On February 21, 2018, appellant filed an updated I&E, containing substantially the same information that was in his prior I&E. His V.A. benefits had increased slightly, to $269 per month, and his penny stocks increased to $2,000. However, appellant changed his estimate of Channa's monthly income. He now estimated her income at $3,000 per month, based on her career as a licensed nurse. Channa did not file an I&E for the February 21, 2018 hearing.

Appellant and an attorney for the Department were present for the February 21, 2018 hearing. Channa again did not appear. The trial court found notice was properly given, and the hearing could proceed without her.

The Department provided several proposed guideline calculations of child support for the trial court to review. Two of the calculations were based on appellant's disability benefits of $269 plus an imputation of minimum wage. One of the calculations imputed no income to Channa, because she was

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Declaration), as required by California Rules of Court, rule 5.92. If a party claims that a previously-filed financial declaration is 'current' within the meaning of California Rules of Court, rule 5.427(d), a copy must be attached to the moving or responding papers. [¶] In addition to the schedules and pay stubs required to be attached to the Income and Expense declaration, the parties must bring to the hearing copies of state and federal income tax returns (including all supporting schedules) and all loan applications (whether or not the loan was granted) for the last two years."

receiving aid for the children at the time of the hearing. The second calculation imputed minimum wage to her because the Department's records indicated that her aid would cease in March 2018.[7] The first calculation would result in appellant owing guideline support of $919 per month, while the second would result in appellant owing guideline support of $159 per month.

The trial court questioned appellant. In addition to inquiring about his efforts to search for work and his plans to start a business, the court asked appellant whether he knew if Channa was working. Appellant testified that his children told him that Channa was employed "late last year," but quit that job. However, she had found another job with a $3 increase in salary. Appellant was informed that Channa had become a licensed nurse, so he believed it was inappropriate to use minimum wage for her. The trial court explained to appellant that in order to impute more than minimum wage to Channa, it would need "some pretty specific information that we might not have available today." The trial court also explained that technically, it should not impute income to Channa because she was receiving aid, but it would consider doing so because aid would soon cease and there was some evidence that she was working.

Appellant then inquired about a continuance to permit Channa to appear with her paperwork. The trial court denied the request, on the ground that Channa had not appeared for either hearing, and it would not continue the matter on the mere

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[7] It is against public policy to impute income to a recipient of CalWORKS, as doing so could interfere with the recipient's ability to comply with the requirements of the program. (*Mendoza v. Ramos* (2010) 182 Cal.App.4th 680, 686.)

chance that she would show up the next time. The trial court informed appellant that it was going to proceed with the information it had available that day.

Following additional testimony and argument, the trial court found that appellant was capable of earning at least minimum wage, making it appropriate to impute minimum wage earnings to appellant, as well as using his benefits, to calculate support. Based on the representations regarding Channa's status, the court was also willing to impute minimum wage to her.

The court determined that the proposed guideline calling for child support of $159 per month was correct based on the information provided during the hearing. The court then gave appellant an opportunity to explain why application of that guideline may be inappropriate in this case. Ultimately the court determined there was no basis to deviate from the guideline amount.

The court ordered appellant to pay child support for the four minor children in the amount of $159 per month, commencing March 1, 2018. The court also found that appellant owed $2,385 for the period from December 1, 2016 through February 28, 2018. The arrears were to be paid at the rate of $20 per month, commencing March 1, 2018.

The formal judgment was filed on February 26, 2018. On April 23, 2018, appellant filed his notice of appeal.

DISCUSSION

I. Standard of review

A trial court's award of child support is reviewed for abuse of discretion. (*In re Marriage of Leonard* (2004) 119 Cal.App.4th 546, 555.) Under this standard, we must determine whether the

trial court acted reasonably in exercising its discretion, all circumstances considered. (*In re Marriage of de Guigne* (2002) 97 Cal.App.4th 1353, 1360.) Child support is a highly regulated area of law, thus the trial court has only the discretion provided by California's child support statutes and related policies. (*In re Marriage of Cheriton* (2001) 92 Cal.App.4th 269, 283.)

The decision whether to grant a request to continue a matter is also reviewed for abuse of discretion, as the decision lies within the sound discretion of the trial court. (*People v. Beames* (2007) 40 Cal.4th 907, 920.)

II. The child support order

Appellant attacks the child support order in three ways: first, that the court did not have a current I&E from Channa; second, that the court declined to continue the hearing; and third, that these errors led to a violation of appellant's right to due process. For the reasons discussed below, we find that no error occurred.

A. The trial court did not abuse its discretion in issuing an award without a current I&E from Channa

Channa was not a necessary party to the action. A Title IV-D child support action is brought by the local support agency, and prosecuted in the name of the county. (Fam. Code, § 17404, subd. (a).) The parent receiving support does not become a party to the action until after a support order has been entered. (§ 17404, subd. (e)(1) & (e)(2).) The parent receiving support enforcement services is thus not a necessary party to the county's action. (§ 17400, subd. (a).) Further, because Channa was receiving CalWORKS benefits at the time of the hearing, the trial court was entitled to presume that she did not have income for the purposes of establishing guideline child support. (*Mendoza v.*

Ramos, supra, 182 Cal.App.4th at p. 684.) A current I&E was unnecessary under the circumstances.

The trial court explained that because Channa was receiving cash aid, her failure to provide a current I& E was "between her and the provider of the cash aid." Generally, as a condition for receiving aid, the recipient must cooperate with the county welfare department and local child support agency. (Welf. & Inst. Code, § 11477, subd. (b)(1).) A sanction, in the form of reduced benefits, is available as long as the failure to cooperate lasts. (§ 11477.02.) However, such a sanction would likely be ineffective in this case since Channa's benefits were to cease the following month.

In sum, the trial court did not abuse its discretion in proceeding without a current I&E from Channa. She was not a necessary party to the case, and her status as a recipient of CalWORKS, as well as the current information from the Department's records, provided the court sufficient information to make the child support order.

B. The trial court did not abuse its discretion in declining to continue the matter

Appellant next argues that the trial court abused its discretion in declining to continue the matter. Appellant points out that through both his I&E declaration, and his testimony, the trial court was aware of facts suggesting that Channa was gainfully employed as a licensed nurse. Appellant insists it was an abuse of discretion for the trial court to make the child support judgment based on imputed minimum wage rather than continuing the hearing in order to obtain precise income information from Channa.

A party seeking a continuance must make a showing of good cause. Such a showing includes a demonstration that the party has prepared for the trial or hearing with due diligence, but could not obtain essential testimony, documents, or other material evidence. (*People v. Jenkins* (2000) 22 Cal.4th 900, 1037.) A trial court has broad discretion in determining whether good cause exists to grant a continuance of a trial or hearing. (*Ibid.*) When a continuance is sought to secure the attendance of a witness, the party seeking the continuance must establish that he exercised due diligence to secure the witness's attendance. (*Ibid.*)

Here, appellant was the proponent of the position that Channa was employed and making more than minimum wage. Thus, it was appellant's obligation to provide evidence of that to the court. (Evid. Code, § 500 [a party has the burden of proof as to each fact essential to his claim for relief or defense].)[8] However, appellant offered no evidence of Channa's employment or her income other than his testimony. Furthermore he did not meet the standard of good cause for a continuance, as there was no evidence that he had diligently attempted to secure Channa's presence or her employment information for the hearing.

In addition, appellant failed to provide any information as to how he intended to secure Channa's presence at a continued

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[8] The Department, on the other hand, was entitled to rely on the information it had regarding Channa's status. Because Channa was receiving CalWORKs benefits effective December 1, 2016, and continued to receive such benefits at the time of the hearing, the Department was entitled to presume she was unemployed. (*Mendoza v. Ramos, supra,* 182 Cal.App.4th at p. 686.)

hearing or ensure that she would provide a current I&E. The matter had already been continued once from the initial hearing of November 21, 2017. Channa did not appear, nor did she provide an I&E for that hearing either. The February 21, 2018 hearing was the second time Channa had failed to appear or provide an I&E. Appellant provided no information as to how he would ensure her presence, or her I&E, if the hearing were continued again. The trial court reasonably refused to continue the hearing "on the chance that she'll show up this next time."

Finally, the trial court's decision to deny a continuance was appropriate because appellant's request for a continuance was untimely. California Rules of Court, rule 3.1332, requires that a party seeking a continuance of a trial date make the request by noticed motion or ex parte application as soon as the necessity for a continuance is discovered. (Rule 3.1332(b).) Although appellant had learned of Channa's employment prior to the February 21, 2018 hearing, he made no motion to continue the hearing prior to the hearing date. Instead, he waited until after the trial court decided to proceed with the hearing to make his request for continuance. The Department had already provided the court with its proposed guideline calculations; informed the court of Channa's aid status; and appellant had testified regarding his own financial status and job search efforts. The trial court did not abuse its discretion in denying appellant's untimely request for a continuance.

C. Appellant's due process rights were not violated

Appellant argues that his procedural due process rights were violated because the trial court refused a continuance and then relied on income imputed to Channa rather than her actual income information.

The procedural component of the due process clause of the Fourteenth Amendment to the United States Constitution ensures a fair adjudicatory process. (*Las Lomas Land Co., LLC v. City of Los Angeles* (2009) 177 Cal.App.4th 837, 852.) In this matter, appellant was timely notified of the hearing date. He had an opportunity to use the discovery process or subpoena any evidence he needed. He was also given the opportunity to testify, without objection, regarding his knowledge of Channa's employment status. Nothing in the record suggests that appellant was denied procedural due process.[9]

III. Appellant has failed to show a miscarriage of justice

As set forth above, the trial court did not abuse its discretion in ordering appellant to pay $159 per month to support his four minor children. We further note that appellant has failed to show any prejudice. Article VI, section 13, of the California Constitution requires that in order to obtain a reversal of a judgment, an appellant must show that the error complained of "has resulted in a miscarriage of justice."

In this case, appellant's opening brief is devoid of any argument explaining how he was prejudiced by the trial court's decision to proceed without Channa's presence or her I&E. The trial court considered appellant's evidence that Channa was, in fact, working, and for that reason, imputed income to her. The

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[9] We decline to address appellant's argument that the trial court engaged in "fraud upon the court." This argument was not raised in appellant's opening brief, but was raised for the first time in appellant's reply brief. Under the circumstances, we do not consider this argument, as the Department has been deprived of an opportunity to counter it. (*Prince v. United Nat. Ins. Co.* (2006) 142 Cal.App.4th 233, 237-238.)

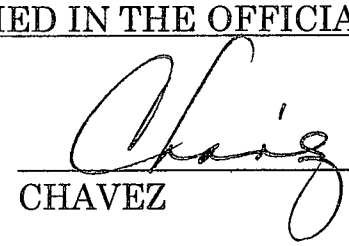
trial court would have been well within its authority to decline to impute any income at all to Channa. That the trial court chose to impute minimum wage, rather than appellant's estimate, did not constitute a miscarriage of justice. The trial court was entitled to discredit appellant's estimate of Channa's income, given there was little support for it in the record. (*People v. Superior Court (Keithley)* (1975) 13 Cal.3d 406, 410 [trial court entitled to judge credibility of testimony].)

Appellant provides no authority for his argument, made in reply, that Channa's I&E, showing her income, would "prohibit the court from awarding child support to [Channa]." Both parents have an obligation to support their minor children, according to each parent's circumstances and station in life. (Fam. Code, § 4053, subd. (a) & (b); *Mendoza v. Ramos, supra,* 182 Cal.App.4th at p. 684.) Appellant's position that he would not be required to pay child support if the court knew Channa's actual income is baseless.

DISPOSITION

The order is affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS.



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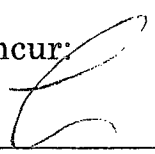
CHAVEZ

We concur:



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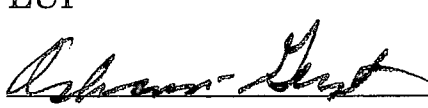

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