Court of Appeal, Fourth Appellate District, Division Two - No. E071428

S259858

IN THE SUPREME COURT OF CALIFORNIA

En Banc

In re the Marriage of MAURICE and ISABEL GILBERT.

MAURICE GILBERT, Appellant,

v.

ISABEL BARRIOS-GILBERT, Respondent.

The petition for review is denied.

CANTIL-SAKAUYE

Chief Justice

Filed 12/12/19 Marriage of Gilbert CA4/2

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

In re the Marriage of MAURICE AND ISABEL GILBERT. MAURICE GILBERT, Appellant, v. ISABEL BARRIOS-GILBERT, Respondent.	E071428 (Super.Ct.No. RID211542) ORDER MODIFYING OPINION; AND DENIAL OF PETITION FOR REHEARING [NO CHANGE IN JUDGMENT]

The petition for rehearing filed by appellant on December 3, 2019, is denied. The opinion filed in this matter on November 19, 2019, is modified as follows:

On page 2, the last sentence of the first paragraph is changed to "In July 2014, per the parties' stipulation, the family court ordered Mother to pay $338 per month for child support."

On page 3, the fourth sentence of the first paragraph is changed to "On July 7, 2014, per the parties' stipulation, a child support order was entered requiring Mother to pay $338 per month."

On page 7, the following footnote No. 1 is added to the end of the second paragraph after the words [Father] to [Mother]":

"Mother wrote that the child support order was for Father to pay Mother, but it appears the order was for Mother to pay Father." The subsequent footnotes are renumbered accordingly.

Except for these modifications, the opinion remains unchanged. The modifications do not effect a change in the judgment.

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MILLER
Acting P. J.

We concur:

McKINSTER
J.

RAPHAEL
J.

Filed 11/19/19 Marriage of Gilbert CA4/2 (unmodified opinion)

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

In re the Marriage of MAURICE AND ISABEL GILBERT.	
MAURICE GILBERT, Appellant, v. ISABEL BARRIOS-GILBERT, Respondent.	E071428 (Super.Ct.No. RID211542) OPINION

APPEAL from the Superior Court of Riverside County. H. Ronald Domnitz, Judge (retired judge of the San Diego Super. Ct. assigned by the Chief Justice pursuant to art. VI, § 6 of the Cal. Const) and Belinda A. Handy, Temporary Judge (pursuant to Cal. Const., art. VI, § 21). Affirmed.

Maurice Gilbert, in pro. per., for Appellant.

No appearance for Respondent.

4e

This opinion constitutes this court's second time addressing this matter. (*In re Marriage of Gilbert* (July 9, 2019, E070292) [nonpub. opn.] [2019 Cal. App. Unpub. LEXIS 4565].) Appellant Maurice Gilbert (Father) and respondent Isabel Barrios-Gilbert (Mother) share a son, who was born in August 2004. In August 2005, Father petitioned for dissolution of his marriage to Mother. The family court's termination of Father and Mother's marital status became effective on November 29, 2006. In July 2014, per the parties' stipulation, the family court ordered Father to pay $338 per month for child support.

In November 2016, in a single request for an order, Mother (1) requested to modify the child support order, and (2) requested an order for a forensic accounting of Father's business. In January 2017, the family court ordered a forensic accounting of Father's business. (Evid. Code, § 730.) In May 2017, the family court ordered Father to pay $1,233 per month in child support. Father contends the family court erred by modifying the child support order. Father raises 16 issues on appeal. We affirm the order.

FACTUAL AND PROCEDURAL HISTORY

A. BACKGROUND INFORMATION

In August 2005, Father petitioned for dissolution of his marriage to Mother. On August 22, 2006, Mr. Isles filed a motion to be relieved as Father's counsel. On October 19, 2006, the family court held a hearing on Mr. Isles's motion to be relieved, and the family court granted the motion.

On June 20, 2009, a qualified domestic relations order was filed in the case by Father's attorney, Mr. Scott. In that document, Father's address is listed as "P.O. Box 542 San Bernardino, CA 92402." In June 2014, Father, who was self-represented, filed an income and expense declaration listing the same address. On July 7, 2014, per the parties' stipulation, a child support order was entered requiring Father to pay $338 per month. The July 2014 child support order was based upon Father having a monthly gross income of $1,950.

B. MODIFICATION OF CHILD SUPPORT

On November 28, 2016, in a single request for an order, Mother (1) requested the court modify the child support order, and (2) requested the court order a forensic accounting of Father's business. Mother estimated Father's monthly gross income was $10,000. Mother sought a forensic accounting of Father's "business for both value and cash flow to determine [Father's] true income." Mother's notice for her request reflected a hearing would be held on January 31, 2017 in Department F501. A proof of personal service reflects a registered California process server personally served Father on January 13, 2017, with Mother's November 2016 request for a child support modification and request for a forensic accounting.

On January 31, in Department F402, the family court, in particular Judge Harmon, held a hearing in the case. Father did not appear at the hearing. The family court ordered a forensic accounting of Father's business. (Evid. Code, § 730.) The court continued the matter to March 28 in Department F402 for Mother's request to modify child support. Mother's attorney drafted a combined notice of (1) the continued

hearing date, and (2) the order for a forensic accounting. Connie Billings mailed the notice to Father at P.O. Box 542 San Bernardino, CA 92401.

On March 28, the family court, in particular Judge Harmon, held a hearing in the case in Department F402. Father was not present at the hearing. Mother's attorney discussed issues with the court. The court ordered Father "to file and serve an Income and Expense Declaration 10 days prior to the next court date." The court continued the matter to May 16 in Department F402. Mother's attorney drafted a combined notice of (1) the continued hearing date, and (2) the order for Father to file and serve an income and expense declaration. Connie Billings mailed the notice to Father at P.O. Box 542 San Bernardino, CA 92401.

On May 16, the family court, in particular Judge Domnitz, held a hearing in the matter. Father was not present at the hearing. The family court asked how Mother arrived at the estimate that Father had a gross monthly income of $10,000. Mother's attorney responded, "That was based on [Mother's] knowledge from being married to him. We also hired a private investigator who has determined he's making close to $200 an hour . . . ." The private investigator's report reflected Father performed heating and air conditioning repair work and charged approximately $200 per hour for labor. The private investigator was O & O Investigations.

Mother explained to the family court that Judge Harmon ordered a forensic accounting of Father's business. The family court responded, "Yeah, but [Father is] not participating." The family court said, "Child support is based upon the printout, Xspouse, based upon the information and evidence that is in the record, and [Father's]

total lack of cooperation. The Court finds that he is earning at least $10,000 a month." The family court ordered Father to pay $1,233 per month in child support.

On May 16, 2017, the family court directed Mother's attorney to prepare the order for the court. Mother's attorney responded, "Yes, I will." Mother's attorney filed the order approximately one year later, on May 14, 2018.

DISCUSSION

A. STANDARD OF REVIEW

"A decision modifying a child support order will be affirmed unless the trial court abused its discretion, and it will be reversed only if prejudicial error is found upon examination of the record. [Citation.] . . . In reviewing the exercise of that discretion for abuse, we consider whether or not the trial court exceeded the bounds of reason, all of the circumstances before it being considered. [Citation.] When two or more inferences can reasonably be deduced from the facts, we will not substitute our deductions for those of the trial court. [Citation.] The burden is on the complaining party to establish abuse of discretion. [Citation.] The showing on appeal is insufficient if it presents a state of facts that affords only an opportunity for a difference of opinion." (*In re Marriage of Rothrock* (2008) 159 Cal.App.4th 223, 229-230.)

B. ISSUE SANCTION

Father asserts the family court modified child support as an issue sanction due to Father not participating in hearings at the family court and then appealing the family court's rulings.

The record reflects the family court modified child support based upon the changed circumstance that Father's income increased. (Fam. Code, § 3651; *In re Marriage of Bodo* (2011) 198 Cal.App.4th 373, 390 [changed circumstances].) The July 2014 child support order was based upon Father's monthly gross income being $1,950. In May 2017, the family court found Father's monthly gross income increased to $10,000. Thus, the modification of child support was based upon the finding that Father's income increased, which constituted a change in circumstances; the child support modification was not an issue sanction. Accordingly, we conclude the family court did not err.

C. COLLATERAL ATTACK

Father contends the modification of child support constitutes an impermissible collateral attack because there is no declaration reflecting a change in circumstances. Mother's declaration is included in her request for order. In the declaration, Mother wrote, "[Father] is self-employed and I believe that he is now making more money." (All caps. omitted.) Mother also submitted a private investigator's report. The report reflected Father earned approximately $200 per hour. If Father worked 15 hours per week at a rate of $200 per hour, then he would be earning $3,000 per week or approximately $12,000 per month. Accordingly, there is evidence supporting the family court's finding that Father earned $10,000 per month.

D. FAILURE TO REQUEST MODIFICATION OF CHILD SUPPORT

Father contends the family court erred by modifying child support because Mother only requested a forensic accounting of Father's business—Mother did not request a modification of child support.

Mother's made two requests on a single judicial council form (FL-300). Mother requested (1) a modification of child support, and (2) a forensic accounting of Father's business. On the first page of the form Mother marked the boxes for (A) "Change," (B) "Child Support," and (C) "Other." Next to the "Other" box, Mother wrote "forensic accounting of [Father's] business." On the third page of the form, Mother checked the box next to the line reading: "I want to change a current order for child support filed on (date): July 7, 2014[.] The court ordered child support as follows (specify): $338 per month payable by [Father] to [Mother]."

The form has a line that reads, "The court should make or change the support orders because (specify)." Under that line, Mother wrote, "It is believed that [Father's] income has went up." On the fourth page of the form, in Mother's declaration, she wrote, "I am requesting that the court modify child support. [Father] is self-employed and I believe that he is now making more money and child support should be adjusted accordingly." Mother repeated her request for a modification of child support throughout the judicial council form. Therefore, we conclude Mother requested a modification of child support in her request for an order.

E. DUE PROCESS

Father contends he was denied due process because Mother did not request an order modifying child support. As set forth *ante*, Mother's request for an order explicitly and repeatedly sought an order modifying child support. As a result, we are not persuaded that Father was denied due process.

F. ATTORNEY OF RECORD

Father contends the family court erred by modifying child support because Father's attorney, Mr. Isles, was not given notice of the hearing.

"[A]fter entry of a judgment of dissolution of marriage . . . or after a permanent order in any other proceeding in which there was at issue the visitation, custody, or support of a child, no modification of the judgment or order, and no subsequent order in the proceedings, is valid unless any prior notice otherwise required to be given to a party to the proceeding is served . . . upon the party. For the purposes of this section, service upon the attorney of record is not sufficient." (Fam. Code, § 215, subd. (a).)

On August 22, 2006, Mr. Isles filed a motion to be relieved as Father's counsel. On October 19, 2006, the family court held a hearing on Mr. Isles's motion to be relieved, and the family court granted the motion. Father was present when the family court granted Mr. Isles's motion to be relieved as Father's counsel. Father contends the family court's granting of the motion was ineffective because (1) Mother was not given notice of the order; and (2) there is not a signed order from the family court.

Father does not indicate where, within the record, he raised these issues in opposition to Mother's request to modify child support. (Cal. Rules of Court, rule

8.204(a)(1)(C).) Because Father did not oppose Mother's request in the family court on the basis of Mr. Isles not receiving notice, we will not address that theory in this court. (*City of Scotts Valley v. County of Santa Cruz* (2011) 201 Cal.App.4th 1, 28 ["As a general rule, theories not raised in the trial court cannot be raised for the first time on appeal"].)

G. FACIALLY VOID ORDER

Father contends the order for a forensic accounting is facially void because the family court lacked jurisdiction to order a forensic accounting after entry of the judgment. Father's notice of appeal reflects he is appealing from the order modifying child support. We will review the forensic accounting order to the extent it is a discovery order and the order modifying child support is an appealable order. (See *Pacific Tel. & Tel. Co. v. Superior Court* (1970) 2 Cal.3d 161, 169 [review of discovery orders "must be relegated to a review of the order on appeal from the final judgment"].)

Evidence Code section 730 provides, in relevant part, "When it appears to the court, at any time before or during the trial of an action, that expert evidence is or may be required by the court or by any party to the action, the court on its own motion or on motion of any party may appoint one or more experts to investigate, to render a report as may be ordered by the court, and to testify as an expert at the trial of the action relative to the fact or matter as to which the expert evidence is or may be required." It has been held that the phrase "at any time before or during the trial of an action" (Evid. Code, § 730), does not include posttrial hearings. (*People v. Stuckey* (2009) 175

Cal.App.4th 898, 913.) A judgment is void on its face if the court lacked personal or subject matter jurisdiction. (*Svetina v. Burelli* (1948) 87 Cal.App.2d 707, 709.)

Father fails to explain how an alleged error concerning the family court's application of Evidence Code section 730 deprived the family court of jurisdiction, such that the order for a forensic accounting would be facially void. The family court had personal jurisdiction over Father in the dissolution action. Father submitted himself to the family court's jurisdiction by petitioning for dissolution of his and Mother's marriage. (*Mikulski v. Mikulski* (1969) 2 Cal.App.3d 1047, 1051.) The family court has continuing personal jurisdiction over Father for matters of child support. (Code Civ. Proc., § 410.50, subd. (b); *Bergan v. Bergan* (1981) 114 Cal.App.3d 567, 570-571; *Leverett v. Superior Court* (1963) 222 Cal.App.2d 126, 132.) The family court has subject matter jurisdiction because the order concerned support of a child following the dissolution of marriage. (Fam. Code, § 2010, subd. (c).)

Father's assertion that the family court cannot order a forensic accounting postjudgment set forth an alleged error, but it does not explain how the family court was suddenly deprived of jurisdiction. Accordingly, we find Father's argument to be unpersuasive.

H. NOTICE

Father asserts the hearing on the forensic accounting was continued to May 16, 2017, but not the hearing on Mother's request to modify child support. Because the child support hearing was not continued, Father asserts he did not have notice that Mother's request to modify child support would be heard on May 16.

On January 13, 2017, Father was personally served with notice of the hearing on Mother's request to modify child support. The hearing was scheduled for January 31. On January 31, the family court "continue[d] out the RFO" to March 28, so the forensic accounting could be completed before the family court ruled on Mother's request to modify support. In other words, the forensic accounting was ordered on January 31, and it was meant to provide evidence that the family court could use in deciding Mother's request to modify child support.

On March 28, the family court ordered Father to file an income and expense declaration and continued the hearing to May 16. Because the family court ordered the forensic accounting on January 31, the only issue remaining in Mother's request for an order was the request to modify child support. Therefore, we conclude that, on March 28, the family court continued the hearing on Mother's request to modify child support.

I. EXPIRATION

Father contends Mother's request for an order expired "leaving the court without any personal or subject matter jurisdiction." Father asserts, "[California Rules of Court rule] 5.94(e) making an RFO Expire is a 'direct' restriction and limitation on the power of the court and the parties and is 'Jurisdictional.' "

California Rules of Court, rule 5.94(e) provides that a request for order will expire at the time of the scheduled hearing if the requesting party fails to (1) serve the opposing party prior to the hearing; or (2) "[o]btain a court order to continue the hearing." We have explained *ante* that the family court granted continuances for the hearing on Mother's request to modify child support. Additionally, a proof of personal

service reflects a registered California process server personally served Father on January 13, 2017, with Mother's request for an order modifying child support. Because (1) Father was served prior to the hearing; and (2) the family court continued the hearing, Mother's request for an order did not expire. Accordingly, the family court did not rule upon an expired order.

J. MOTHER'S ATTORNEY

1. *PROCEDURAL HISTORY*

On May 16, 2017, the family court announced its ruling on Mother's request for an order modifying child support. The family court directed Mother's attorney, Ms. Fritz, to prepare the order for the court. Ms. Fritz responded, "Yes, I will." On October 18, 2017, Ms. Fritz filed a notice of withdrawal as attorney of record. After Ms. Fritz's withdrawal, Mother was self-represented. On May 14, 2018, the family court filed "Findings and Order After Hearing" for the May 16, 2017, hearing. The "Findings and Order After Hearing" was prepared by Ms. Fritz.

2. *ANALYSIS*

Father asserts the family court lacked jurisdiction to enter the order modifying child support because "the order was filed by Ann Marie Fritz of whom is not an attorney of record nor does she have any standing."

Father cites Code of Civil Procedure section 284 to support his argument. That statute provides, in part, "The attorney in an action . . . may be changed at any time before or after judgment . . . [¶] [u]pon the consent of both client and attorney, filed with the clerk, or entered upon the minutes." (Code Civ. Proc., § 284, subd. (1).)

Father's argument fails to address the fact that the family court directed Ms. Fritz to file the order pertaining to the May 16, 2017, ruling. Father does not explain why, after withdrawing as counsel, an attorney cannot comply with a court directive that was made while the attorney was the attorney of record. Father also fails to explain why, if an attorney does comply with a court directive after withdrawing as counsel, the family court would lack jurisdiction. In other words, Father appears to be asserting that because Ms. Fritz withdrew as counsel she could take no action in the case, but he fails to address the fact that the court had directed Ms. Fritz to file the order, and he fails to address the law of jurisdiction. Because Father fails to explain these matters, we find his contention to be unpersuasive.

K. FINDINGS

Father contends "findings were required." The family court's findings are set forth in the "Findings and Order After Hearing." In the "Findings and Order After Hearing," the family court found Father's gross monthly income was $10,000; Mother's gross monthly income was $1,733; Mother and Father shared one child; Father had the child 20 percent of the time; and Mother had the child 80 percent of the time. Accordingly, we conclude the family court made findings.

Father contends the family court's findings are deficient because the finding of changed circumstances was not made in the "Findings and Order After Hearing." Father cites Family Code section 4005 to support his contention. That statute provides, "At the request of either party, the court shall make appropriate findings with respect to the circumstances on which the order for support of a child is based." (Fam. Code,

§ 4005.) Father does not provide a citation to where, in the record, he requested findings. (Cal. Rules of Court, rule 8.204(a)(1)(C) [record citations].) As a result, we find Father's assertion to be unpersuasive.

Moreover, the family court found Father was earning $10,000 per month. The prior child support order was based upon Father having a monthly gross income of $1,950. Given the finding that Father's monthly income increased by $8,050, we conclude a finding of changed circumstances is implied.

L. SIGNATURE

Father contends "Judge Domnitz was a regular judge of the court even on assignment, [citation] and once leaving office under GC1770(g) the court was without any jurisdiction to sign or enter the order." We understand Father's argument as asserting Judge Harmon lacked authority to sign the May 14, 2018, "Findings and Order After Hearing" that pertained to the May 16, 2017, ruling made by Judge Domnitz.[1]

"[P]arties [have] the right to have 'the judge who hears the evidence . . . decide the case.' " (*Armstrong v. Picquelle* (1984) 157 Cal.App.3d 122, 128.) Father does not explain in what manner the order signed by Judge Harmon does not match the ruling made by Judge Domnitz. Therefore, we conclude the Findings and Order After Hearing reflects Judge Domnitz's ruling. As a result, the judge who reviewed the evidence decided the case.

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[1] The record reflects Judge Domnitz was "a visiting judge, he only fills in periodically."

M. PREJUDICE

Father asserts, "There is no greater prejudice than allowing one party to ask for an order verbally, the court has no jurisdiction to do so and the party could ask for any order it desired without notice to the other party, custody, sanctions and so on." Father, citing California Rules of Court, rule 5.94(e), asserts, "This jurisdictional right is a substantive right of the Petitioner and an absolute prejudice to not follow the rules, thus, depriving the Petitioner of his right to not have to respond."

Father's argument lacks clarity, but we infer Father is asserting he suffered prejudice due to the errors he alleges the family court made. (Code Civ. Proc., § 475 [reversals are only permitted upon showing of prejudice].) We have concluded *ante* that Father failed to demonstrate any error; therefore, we do not address the issue of prejudice.

N. 2017 MOTIONS

1. *PROCEDURAL HISTORY*

The hearing on Mother's request to modify child support occurred on May 16, 2017. The family court announced its ruling at that hearing. On July 17, 2017, Father filed a request for order with various motions attached to it, such as motions to quash and motions to vacate. The family court ruled on Father's request for order on October 12, 2017. Father appealed from the ruling on his request for order. This court issued an opinion affirming the order. (*In re Marriage of Gilbert*, *supra*, 2019 Cal. App. Unpub. LEXIS 4565.) Approximately one year after the ruling, on May 14, 2018, Mother's

attorney filed the order modifying child support. Father filed the instant appeal from that order modifying support.

2. *ANALYSIS*

Father raises several issues pertaining to the family court's ruling on his request for an order. First, Father contends the family court erred by denying his motions to quash, which were attached to his request for an order. Second, Father contends there were various errors in Mother's opposition to Father's request for an order. For example, Father asserts Mother made "no arguments as to the motions to vacate, Quash or strike, only as to the motion to Quash Personal Service." Third, Father contends that it appears the family court denied his various motions based upon the statements of counsel "and statements of counsel is not evidence [*sic*]."

This court reviewed the family court's ruling on Father's request for an order in a separate appeal. (*In re Marriage of Gilbert, supra*, 2019 Cal.App.Unpub.LEXIS 4565, *12-*14.) We cannot review the family court's ruling a second time. (*In re Marriage of Garcia* (2017) 13 Cal.App.5th 1334, 1345 [issue preclusion " 'prohibits the relitigation of issues argued and decided in a previous case' "].) Therefore, we do not address the merits of the issues pertaining to the family court's ruling on Father's request for an order.

O. 2018 MOTION TO VACATE

1. *PROCEDURAL HISTORY*

On June 11, 2018, Father filed a request for order seeking an order vacating the modification of child support. Father asserted, "[T]he order was filed by Ann Marie

Fritz of whom is not an attorney of record nor does she have any standing." On June 29, Mother submitted a declaration. Mother's declaration concerned accusations that Father physically abused their son, and that the child welfare agency failed to adequately investigate the allegations of abuse.

On July 5, Ms. Fritz again became Mother's attorney of record. On July 23, Ms. Fritz submitted a responsive declaration on behalf of Mother. Ms. Fritz signed the declaration on behalf of Mother, who approved of the declaration over the telephone. In the declaration, Mother asserted Father's motion to vacate was untimely because he was seeking to vacate the ruling made on May 16, 2017, rather than the "Findings and Order After Hearing" filed on May 14, 2018.

On September 17, Father filed a reply. Father asserted the July 23rd declaration "does not set forth any facts as a basis, factual or legal, against the motion." Further, Father asserted the July 23rd declaration was inadmissible because (1) it was signed by Ms. Fritz, rather than Mother; (2) there was no affidavit explaining why Mother could not sign the declaration; and (3) there was no affidavit reflecting Mother reviewed the declaration and believed the contents to be true.

On September 27, the family court, in particular Commissioner Handy, held a hearing on Father's request for an order vacating the order modifying child support. The family court said Judge Harmon already denied Father's motion to vacate. The family court asked Father what order he was seeking to have vacated via his June 11, 2018, request for order. Father said he was seeking to have the May 14, 2018, order

vacated. The family court responded, "So it's already been heard is what I'm trying to say to you." Father replied, "No."

The family court explained that Judge Harmon already ruled on Father's motion to vacate the May 16, 2017, ruling to modify child support. Father asserted the family court lacked jurisdiction to enter the May 14, 2018, Findings and Order After Hearing. The family court asked Father if the Findings and Order After Hearing matched the ruling made on May 16, 2017. Specifically, the family court said, "So tell me what part of that is incorrect. Not jurisdiction, you tell me what part is not an order that was made on May 16, 2017." Father replied, "I wouldn't be able to dispute that."

The family court explained that Judge Harmon already ruled on Father's motion to vacate the May 16, 2017, ruling. The family court explained that the May 14, 2018, Findings and Order After Hearing matched the May 16, 2017, ruling. The family court told Father, "You don't get another bite at the apple by filing a new request for order."

Father asserted Ms. Fritz lacked standing to file the Findings and Order After Hearing because she was not Mother's attorney of record on May 14, 2018. The family court responded, "Right. Afterwards, but on May 16, 2017, she was the attorney of record, right?" Father replied, "Yes." The court said, "So she has every authority to finish out whatever she needs to do on that case."

The family court explained, "In this case, you then in the interim before a findings and orders was filed, you filed to vacate that May 16, 2017. Judge Harmon heard from you, and he denied your request. That was only some months later. In June then of 2018, you have now filed a new request for order to vacate the findings and

orders that you just told me adequately characterized the orders that were made on May 16, 2017. Therefore, your request is denied. . . . [¶] . . . You've had two shots now at the apple to vacate that May 16, 2017 order. It probably should not have even been entertained today, because Judge Harmon has already heard that. That was res judicata."

2. *ANALYSIS*

Father contends the family court erred by denying his June 2018 motion to vacate because (1) Mother did not sign the responsive declaration; (2) there is no affidavit explaining why Mother failed to sign the declaration; (3) there is no affidavit setting forth Mother's belief that the contents of the declaration are true; and (4) the declaration "does not set forth any facts as a basis, factual or legal, against the motion."

The family court denied Father's request for an order vacating the order modifying child support because the request was res judicata. In other words, the family court did not rely on the responsive declaration when ruling on Father's request. Father fails to explain how he was prejudiced by alleged errors in the responsive declaration when the family court did not utilize the declaration in reaching its ruling. Because Father does not demonstrate prejudice and does not address the issue of res judicata, we will not reverse the order. (Code Civ. Proc., § 475 [prejudice is required for reversal].)

P. *NEW EVIDENCE*

Father contends there are "two new pieces of evidence," and therefore "[Father] is allowed to put forward a motion to vacate the order upon the extrinsic fraud [*sic*]."

22e

This court cannot advise Father regarding motions he intends to file. (*People ex rel. Lynch v. Superior Court* (1970) 1 Cal.3d 910, 912 ["The rendering of advisory opinions falls within neither the functions nor the jurisdiction of this court"].) Therefore, we do not reach the merits of Father's contention.

DISPOSITION

The order is affirmed. Appellant, Maurice Gilbert, is to bear his own costs on appeal.[2] (Cal. Rules of Court, rule 8.278(a)(5).)

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

MILLER
J.

We concur:

McKINSTER
Acting P. J.

RAPHAEL
J.

[2] Respondent, Isabel Barrios-Gilbert, has not made an appearance in this court. Therefore, we do not award her costs on appeal. (Cal. Rules of Court, rule 8.278(a)(5).)

23 e