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APPENDIX A

Mandate

United States Court of Appeals for the Ninth Circuit
March 15, 2024

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED

MAR 15 2024

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

JUSTIN G. REEDY,

Plaintiff - Appellant,

v.

CALIFORNIA DEPARTMENT OF
SOCIAL SERVICES; et al.,

Defendants - Appellees,

and

STATE OF CALIFORNIA and
GAVIN NEWSOM,

Defendants.

No. 22-16214

D.C. No. 2:21-cv-00223-TLN-CKD
U.S. District Court for Eastern
California, Sacramento

MANDATE

The judgment of this Court, entered December 11, 2023, takes effect this

date.

This constitutes the formal mandate of this Court issued pursuant to Rule
41(a) of the Federal Rules of Appellate Procedure.

FOR THE COURT:

MOLLY C. DWYER
CLERK OF COURT

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APPENDIX A

Order
United States Court of Appeals for the Ninth Circuit
March 5, 2024

UNITED STATES COURT OF APPEALS

FILED

FOR THE NINTH CIRCUIT

MAR 5 2024

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

JUSTIN G. REEDY,

Plaintiff-Appellant,

v.

CALIFORNIA DEPARTMENT OF
SOCIAL SERVICES; MARK GHALY,
Secretary of the California Health and
Human Services, in his official and
individual capacity; KIM JOHNSON,
Director of the California Department of
Social Services, in her official and individual
capacity; ELOY ORTIZ OAKLEY,
Chancellor of the California Community
Colleges; ANN EDWARDS, Previous
Director of the Sacramento County
Department of Human Assistance, in her
official and individual capacity; ETHAN
DYE, Acting Director of the Sacramento
County Department of Human Assistance, in
his official and individual capacity,

Defendants-Appellees,

and

STATE OF CALIFORNIA; GAVIN
NEWSOM,

Defendants.

No. 22-16214

D.C. No.

2:21-cv-00223-TLN-CKD

Eastern District of California,
Sacramento

ORDER

Before: BRESS and JOHNSTONE, Circuit Judges, and EZRA,* District Judge.

* The Honorable David A. Ezra, United States District Judge for the

The panel unanimously voted to deny the petition for panel rehearing. Judge Bress and Judge Johnstone voted to deny the petition for rehearing en banc, and Judge Ezra so recommended. The full court has been advised of the petition for rehearing en banc and no judge has requested a vote on whether to rehear the matter en banc. Fed. R. App. P. 35. The petition for panel rehearing and rehearing en banc, Dkt. No. 57, is DENIED.

District of Hawaii, sitting by designation.

APPENDIX A

Memorandum
United States Court of Appeals for the Ninth Circuit
December 11, 2023

FILED

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

DEC 11 2023

FOR THE NINTH CIRCUIT

**MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS**

JUSTIN G. REEDY,

Plaintiff-Appellant,

v.

**CALIFORNIA DEPARTMENT OF
SOCIAL SERVICES; MARK GHALY,
Secretary of the California Health and
Human Services, in his official and
individual capacity; KIM JOHNSON,
Director of the California Department of
Social Services, in her official and individual
capacity; ELOY ORTIZ OAKLEY,
Chancellor of the California Community
Colleges; ANN EDWARDS, Previous
Director of the Sacramento County
Department of Human Assistance, in her
official and individual capacity; ETHAN
DYE, Acting Director of the Sacramento
County Department of Human Assistance, in
his official and individual capacity,**

Defendants-Appellees,

and

**STATE OF CALIFORNIA; GAVIN
NEWSOM,**

No. 22-16214

**D.C. No.
2:21-cv-00223-TLN-CKD**

MEMORANDUM*

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

Defendants.

Appeal from the United States District Court
for the Eastern District of California
Troy L. Nunley, District Judge, Presiding

Submitted December 4, 2023**
San Francisco, California

Before: BRESS and JOHNSTONE, Circuit Judges, and EZRA,*** District Judge.

Justin Reedy, now proceeding pro se, appeals the district court's dismissal of his federal and state claims against the California Department of Social Services (CDSS) and state and county officials responsible for administering the California Work Opportunity and Responsibility to Kids Act (CalWORKs) benefits program. We review de novo the district court's dismissal under Federal Rule of Civil Procedure 12(b)(6) and can affirm on any basis supported by the record. *McGinity v. Procter & Gamble Co.*, 69 F.4th 1093, 1096 (9th Cir. 2023). We assume the parties' familiarity with the facts. We have jurisdiction under 28 U.S.C. § 1291, and we affirm.

Reedy's challenges to the denial of CalWORKs benefits generally proceed

** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

*** The Honorable David A. Ezra, United States District Judge for the District of Hawaii, sitting by designation.

from his view that the combination of the “parent who first applied” rule, MPP § 82-808.413(d), and a separate provision allowing “a pregnant person” to apply before their child’s birth, Cal. Welf. & Inst. Code § 11450(b), locks in a sex-based preference for mothers that fathers cannot dispute or overcome.¹ Reedy argues that this creates a procedural due process problem and led to him being denied CalWORKs benefits on the basis of his sex.

But contrary to Reedy’s allegations, a father can obtain individualized review of the CalWORKs benefits allocation after the child’s birth by asking a state court to “specify one parent as the primary caretaker of the child . . . for the purposes of determining eligibility for public assistance.” Cal. Fam. Code § 3086; *see also id.* § 3087 (permitting modification of the order upon the petition of one parent if it is in “the best interest of the child”).² When parents sharing joint custody of an eligible

¹ CDSS promulgates rules and regulations governing CalWORKs eligibility. Cal. Welf. & Inst. Code § 10553(e). These rules and regulations are published in the Manual of Policies and Procedures (MPP). *See* Cal. Welf. & Inst. Code § 10554. Reedy has not clearly alleged that K.M., the mother of his child, even applied for benefits while pregnant. But we will assume that she did, as the parties’ briefing appears to do.

² While defendants did not address §§ 3086 or 3087 in their motions to dismiss, we exercise our discretion to consider these provisions because the availability of these state processes is “purely [an issue] of law and the opposing party will suffer no prejudice as a result of the failure to raise the issue in the trial court.” *United States v. Carlson*, 900 F.2d 1346, 1349 (9th Cir. 1990). Here, the challenged regulation incorporates § 3086. MPP § 82-808.413(a). Reedy is not prejudiced because he had the opportunity to address §§ 3086 and 3087 in his reply brief, which was prepared by counsel.

child both apply for CalWORKs benefits, MPP § 82-808.413(a) sets benefits eligibility in accordance with the court order. In addition, even without a court order under § 3086, fathers can avoid the “parent who applied first” rule by showing they exercise greater care and control over the child. *See generally* MPP § 82-808.2. Indeed, Reedy himself unsuccessfully appealed his denial of benefits to an administrative law judge who considered whether he had shown that he “exercises the majority care and control” for his child.

In view of the availability of these state processes, Reedy has not plausibly alleged a “denial of adequate procedural protections.” *Kildare v. Saenz*, 325 F.3d 1078, 1085 (9th Cir. 2003) (citing *Hufford v. McEnaney*, 249 F.3d 1142, 1150 (9th Cir. 2001)). To the extent Reedy argues that he has not or would not prevail in these processes, “[i]t is process that the procedural due process right protects, not the outcome.” *Ching v. Mayorkas*, 725 F.3d 1149, 1156 (9th Cir. 2013). Nor was Reedy denied benefits on the basis of his sex, in violation of the Equal Protection Clause, when he had ways to challenge the initial award of benefits. Reedy has also not alleged that MPP § 82-808.413(d) discriminates against men in its application and intent. *See Toomey v. Clark*, 876 F.2d 1433, 1437 (9th Cir. 1989) (explaining that absent a sex-based classification, a plaintiff must show the challenged law “had a discriminatory effect” and that defendants “acted with discriminatory intent or purpose”).

The district court properly dismissed Reedy's remaining claims. Reedy's substantive due process claim fails because he has not alleged any deprivation of his right to parent his child, *see Lehr v. Robertson*, 463 U.S. 248, 261 (1983), and the denial of CalWORKs benefits did not contravene that right. *See Harris v. McRae*, 448 U.S. 297, 317–18 (1980) (“Although the liberty protected by the Due Process Clause affords protection against unwarranted government interference with freedom of choice in the context of certain personal decisions, it does not confer an entitlement to such funds as may be necessary to realize all the advantages of that freedom.”).

Reedy's claim that the denial of CalWORKs benefits violated Title IX because it denied him ancillary education benefits provided by California Community Colleges (CCC) likewise fails. In light of the available state processes for seeking a change to the allocation of benefits, Reedy was not denied benefits “on the basis of sex.” 20 U.S.C. § 1681(a). Nor has Reedy alleged that CCC, the federal funding recipient, had an official policy of discriminating on the basis of sex or was deliberately indifferent to any such discrimination in the CalWORKs program. *See Davis ex rel. LaShonda D. v. Monroe Cnty. Bd. of Educ.*, 526 U.S. 629, 640 (1999); *Karasek v. Regents of Univ. of Cal.*, 956 F.3d 1093, 1104 (9th Cir. 2020).

Finally, the district court did not err in denying leave to amend because amendment would be futile. *See Novak v. United States*, 795 F.3d 1012, 1020 (9th

Cir. 2015). Reedy's counseled briefing does not identify any facts that he could invoke that would cure the defects in the complaint.

AFFIRMED.

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APPENDIX A

**Order
United States Court of Appeals for the Ninth Circuit**

November 16, 2023

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED

NOV 16 2023

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

JUSTIN G. REEDY,

Plaintiff-Appellant,

v.

CALIFORNIA DEPARTMENT OF
SOCIAL SERVICES; MARK GHALY,
Secretary of the California Health and
Human Services, in his official and
individual capacity; KIM JOHNSON,
Director of the California Department of
Social Services, in her official and individual
capacity; ELOY ORTIZ OAKLEY,
Chancellor of the California Community
Colleges; ANN EDWARDS, Previous
Director of the Sacramento County
Department of Human Assistance, in her
official and individual capacity; ETHAN
DYE, Acting Director of the Sacramento
County Department of Human Assistance, in
his official and individual capacity,

Defendants-Appellees,

and

STATE OF CALIFORNIA; GAVIN
NEWSOM,

Defendants.

No. 22-16214

D.C. No.

2:21-cv-00223-TLN-CKD
Eastern District of California,
Sacramento

ORDER

Appellant's unopposed motion to submit this case on the briefs is granted.

Dkts. 48, 51. The court is of the unanimous opinion that the facts and legal

arguments are adequately presented in the briefs and record and the decisional process would not be significantly aided by oral argument. This case shall be submitted on the briefs and record, without oral argument, on December 4, 2023, in San Francisco, California. Fed. R. App. P. 34(a)(2).

FOR THE COURT:

— MOLLY C. DWYER —
CLERK OF COURT

APPENDIX B

Judgment in a Civil Case
United States District Court, Eastern District of California
June 6, 2022

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

JUDGMENT IN A CIVIL CASE

JUSTIN G. REEDY,

CASE NO: 2:21-CV-00223-TLN-CKD

v.

STATE OF CALIFORNIA, ET AL.,

Decision by the Court. This action came before the Court. The issues have been tried, heard or decided by the judge as follows:

IT IS ORDERED AND ADJUDGED

**THAT JUDGMENT IS HEREBY ENTERED IN ACCORDANCE WITH THE
COURT'S ORDER FILED ON 6/2/2022**

Keith Holland
Clerk of Court

ENTERED: June 2, 2022

by: /s/ L. Reader
Deputy Clerk

APPENDIX B

Order
United States District Court, Eastern District of California
June 6, 2022

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

JUSTIN G. REEDY,

Plaintiff,

v.

STATE OF CALIFORNIA, et al.,

Defendants.

No. 2:21-cv-00223-TLN-CKD

ORDER

This matter was referred to a United States Magistrate Judge pursuant to Local Rule 302(c)(19). On January 14, 2022, the magistrate judge filed findings and recommendations herein which contained notice that any objections to the findings and recommendations were to be filed within fourteen days. (ECF No. 38.) Plaintiff was granted an extension of time to file objections and timely filed objections. (ECF No. 41.) Defendants Dye and Edwards filed a response to Plaintiff's objections. (ECF No. 42.)

In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C) and Local Rule 304, this Court has conducted a review of this matter. The Court finds the findings and recommendations to be supported by the record and by proper analysis.

Accordingly, IT IS HEREBY ORDERED:

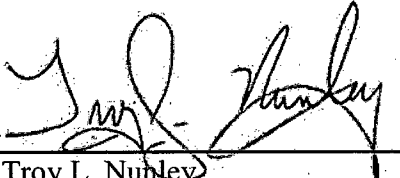
1. The findings and recommendations filed January 14, 2022, (ECF No. 38), are adopted in full;

2. The Motion to Dismiss by Defendants Oakley, Ghaly and Johnson (ECF No. 16) is
GRANTED;

3. The Motion to Dismiss by Defendants Edwards and Dye (ECF No. 17) is
GRANTED; and

4. The Clerk of the Court is directed to close this case.

DATED: June 1, 2022



Troy L. Nuhley
United States District Judge

APPENDIX B

Order
United States District Court, Eastern District of California
October 13, 2022

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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

JUSTIN G. REEDY, Plaintiff, v. STATE OF CALIFORNIA, et al., Defendants.	No. 2:21-cv-00223-TLN-CKD ORDER
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On August 18, 2021, the magistrate judge filed an order and findings and recommendations (ECF No. 10) which were served on Plaintiff and which contained notice that any objections to the findings and recommendations were to be filed within 14 days. No objections were filed. Accordingly, the Court presumes that any findings of fact are correct. -See *Orand v. United States*, 602 F.2d 207, 208 (9th Cir. 1979). The magistrate judge's conclusions of law are reviewed *de novo*. See *Britt v. Simi Valley Unified School Dist.*, 708 F.2d 452, 454 (9th Cir. 1983).

The Court has reviewed the applicable legal standards. Good cause appearing, the Court concludes it is appropriate to adopt the findings and recommendations in full. Accordingly, IT IS HEREBY ORDERED:


1. The findings and recommendations (ECF No. 10) are adopted in full;

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2. Defendant Governor Gavin Newsom, sued in his individual and official capacity, is dismissed from this case as a defendant; and
3. This matter is referred back to the assigned magistrate judge for further pretrial proceedings.

Date: October 7, 2021



Troy L. Nahley
United States District Judge

APPENDIX C

CONSTITUTIONAL AND REGULATORY
PROVISIONS INVOLVED

Fourteenth Amendment

Section 1

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

California Constitution - Cons

Article I Declaration Of Rights [Section 1 - Sec. 32] (Article 1 adopted 1879.)

SEC. 7- (a) A person may not be deprived of life, liberty, or property without due process of law or denied equal protection of the laws; provided, that nothing contained herein or elsewhere in this Constitution imposes upon the State of California or any public entity, board, or official any obligations or responsibilities which exceed those imposed by the Equal Protection Clause of the 14th Amendment to the United States Constitution with respect to the use of pupil school assignment or pupil transportation. In enforcing this subdivision or any other provision of this Constitution, no court of this State may impose upon the State of California or any public entity, board, or official any obligation or responsibility with respect to the use of pupil school assignment or pupil transportation, (1) except to remedy a specific violation by such party that would also constitute a violation of the Equal Protection Clause of the 14th Amendment to the United States Constitution, and (2) unless a federal court would be permitted under federal decisional law to impose that obligation or responsibility upon such party to remedy the specific violation of the Equal Protection Clause of the 14th Amendment of the United States Constitution.

App. 25

(b) A citizen or class of citizens may not be granted privileges or immunities not granted on the same terms to all citizens. Privileges or immunities granted by the Legislature may be altered or revoked.

(Subdivision (a) amended Nov. 6, 1979, by Prop. 1. Res.Ch. 18, 1979.

Other Source: Entire Sec.

7 was added Nov. 5, 1974, by Prop. 7; Res.Ch. 90, 1974.)

Challenged regulation: MPP 808.413(d)

accessed online 7/31/2024

<https://cdss.ca.gov/Portals/9/Regs/Man/EAS/23EAS.docx?ver=2024-02-23-150844-473>

See next page:

MPP - Eligibility and Assistance Standards Page 906

STATUTES ARE PROVIDED FOR REFERENCE ONLY

FAMILY CODE - FAM

DIVISION 8. CUSTODY OF CHILDREN [3000 - 3465]

(Division 8 enacted by Stats. 1992, Ch. 162, Sec. 10.)

PART 2. RIGHT TO CUSTODY OF MINOR CHILD [3020 - 3204]

(Part 2 enacted by Stats. 1992, Ch. 162, Sec. 10.)

CHAPTER 4. Joint Custody [3080 - 3089]

(Chapter 4 enacted by Stats. 1992, Ch. 162, Sec. 10.)

3086.

In making an order of joint physical custody or joint legal custody, the court may specify one parent as the primary caretaker of the child and one home as the primary home of the child, for the purposes of determining eligibility for public assistance.

(Enacted by Stats. 1992, Ch. 162, Sec. 10. Operative January 1, 1994.)

3087.

An order for joint custody may be modified or terminated upon the petition of one or both parents or on the court's own motion if it is shown that the best interest of the child requires modification or termination of the order. If either parent opposes the modification or termination order, the court shall state in its decision the reasons for modification or termination of the joint custody order.

(Enacted by Stats. 1992, Ch. 162, Sec. 10. Operative January 1, 1994.)

82-808 CARETAKER RELATIVE REQUIREMENTS (Continued)**.412 Applying Parent**

When the child spends an equal amount of time with each parent and each parent exercises an equal share of care and control responsibilities, the parent who applies for aid shall be the caretaker relative, providing that the child's other parent is not currently applying for or receiving aid for the child.

.413 Equal Time

When each parent exercises an equal share of care and control responsibilities, and each has applied for aid for the child, the caretaker relative shall be determined in the following order:

(a)

The parent designated in a current court order as the primary caretaker for purposes of public assistance, under Civil Code Section 4600.5(h).

HANDBOOK BEGINS HERE

Civil Code Section 4600.5(h) states:

In making an order of joint physical custody or joint legal custody, the court may specify one parent as the primary caretaker of the child and one home as the primary home of the child, for the purposes of determining eligibility for public assistance.

HANDBOOK ENDS HERE**(b)**

When no court order designation exists and only one parent would be eligible for aid, the parent who would be eligible shall be the caretaker relative.

(c)

When both parents would be eligible, the parents shall designate one parent as the caretaker relative. The agreement shall be documented by a CA 13.

(d)

If the parents cannot reach agreement on the designation of a caretaker relative, the parent who first applied for aid for the child shall be the caretaker relative.

**Additional material
from this filing is
available in the
Clerk's Office.**