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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION ONE

KENNETH D. JOHNSON, Plaintiff and Appellant, v. TAMARA K. THREADGILL, Defendant; CONTRA COSTA COUNTY DEPARTMENT OF CHILD SUPPORT SERVICES, Intervener and Respondent.	A123314 (Contra Costa County Super. Ct. No. F95-04780)

Appellant Kenneth Johnson is the father of two children by respondent Tamara Threadgill. In 1991 and 1994, Johnson was ordered to pay child support to Threadgill by the San Mateo County Superior Court, orders later registered in Contra Costa County. In 2008, the Contra Costa County Department of Child Support Services (Agency) filed a motion seeking, among other relief, a determination of child support for the two children. Over Johnson's objection, the matter was heard before a court commissioner, who treated the motion as a request for modification of the earlier child support order and issued an order considerably increasing Johnson's support obligation. Johnson then objected to that order.

Johnson raises several objections to the proceeding and order and contends he was entitled to trial by a superior court judge. We agree with the latter contention and remand for a de novo hearing before a judge.

I. BACKGROUND

A 1993 order from San Mateo County Superior Court recognizing Johnson's child support obligation for his two children by Threadgill was registered as a foreign support order in Contra Costa County in 1995, when Johnson was residing in Richmond. Johnson was provided written notice of the registration. Again in 2004, a 1991 child support and paternity judgment, filed before the birth of the second child, and a 1994 paternity and child support judgment regarding the second child, both from San Mateo County, were also registered in Contra Costa County. Again, Johnson was provided written notice of the registration.

In 2006, Johnson was the subject of a petition to compel him to seek employment, filed in Contra Costa County. At that time, Johnson and Threadgill executed separate stipulations stating that Commissioner Josanna Berkow, acting as a temporary judge under article VI, section 21 of the state Constitution, could hear "all proceedings, including trial and the adjudication of contempt in the above-entitled matter." Threadgill's stipulation bore the caption, "*Tamara K. Threadgill v. Kenneth D. Johnson*," while Johnson's stipulation had no caption but merely listed his name, "*K. Johnson*"; both were assigned the docket number given to the 1995 registration in Contra Costa County of the 1993 San Mateo County order. Johnson participated in the 2006 proceeding, which resulted in the entry of a seek-work order by Commissioner Berkow on October 19, 2007.

On February 28, 2008, the parties entered into a second stipulation, essentially identical to the stipulation mentioned above but permitting Commissioner Ronald K. Creighton to hear the matter. On the same day, Commissioner Creighton issued an order confirming Johnson's employment, setting aside the seek-work order, directing genetic paternity testing, and vacating a bench warrant that had been issued for Johnson.

In April 2008, the Agency filed a motion for a determination of Johnson's parentage of the children, child support, and health insurance.[1] Commissioner Berkow presided at a hearing on the motion, held July 10, 2008. Johnson opened the proceedings by objecting to venue in Contra Costa County due to the pendency of a custody matter in San Mateo County. After extended discussion, the commissioner rejected the claim as untimely on the basis of Johnson's failure to object to the registration of the San Mateo County support orders. After further discussion and a request by Threadgill for the court to enforce the existing support orders, Johnson objected to the commissioner's hearing the matter, saying, "I would prefer to just be heard in front of a judge." The commissioner rejected the request, construing Johnson's stipulation, executed in connection with the seek-work proceedings, to cover the pending matter as well.

The commissioner then found Johnson's monthly gross income to be $2,813, based on an earnings verification that does not appear to have been entered into evidence or into the appellate record. According to the Agency's representative, the finding of $2,813 was based on earnings from the last quarter of 2007 and the first quarter of 2008, although no documents reflecting these quarterly earnings are included in the record. The commissioner set child support at $892 per month based on this level of income. Although Johnson pleaded for a lower level of child support, he did not dispute the level of income attributed to him by the Agency's documents or otherwise object to their use. The commissioner thereafter entered a minute order reflecting these rulings.

Johnson filed a written objection to the commissioner's ruling, claiming the support order was excessive, objecting to venue, and requesting a hearing before a judge. Commissioner Berkow overruled the objections.

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[1] In fact, Johnson's paternity had long since been established in San Mateo County, and the resulting orders had been registered in Contra Costa County. Recognizing this, the commissioner concluded it was unnecessary to adjudicate paternity. In any event, the evidence submitted by the Agency confirmed Johnson's paternity.

II. DISCUSSION

Johnson contends (1) the notice of motion was impermissibly vague, (2) venue in Contra Costa County was improper, (3) the matter should have been heard by a superior court judge, and (4) the commissioner improperly relied on a hearsay statement of his earnings. Because the first three contentions raise issues of law and contractual interpretation, we apply an independent standard of review. (*Bollinger v. San Diego Civil Service Com.* (1999) 71 Cal.App.4th 568, 572.)

A. *Adequacy of Notice*

As Commissioner Berkow noted, the relief sought at the hearing by the Agency was a modification of the San Mateo County child support order, registered in 1995. The Judicial Council form notice of motion filed by the Agency, however, was incorrectly completed and suggests the relief sought was a determination of Johnson's child support obligation, rather than a modification of an existing obligation. Although the notice noted the existence of the 1995 registration, it failed to check the available boxes indicating the Agency was seeking the modification of an existing order. Instead, the notice twice checked boxes indicating an intent to establish an initial child support obligation. Notwithstanding this error, one of the checked boxes did indicate the Agency was seeking "[m]onthly child support based on the state guideline." Further, the Agency checked another box, entitled "Other," which warned, "If support is requested . . . the [Agency] will present information regarding the amount of support at the hearing." This notice was mailed to Johnson well in advance of the hearing.

Notwithstanding the Agency's errors in completing the notice, Johnson's claim he was not provided adequate notice of the nature of the hearing is unsubstantiated. The Agency merely confused a request for modification of an existing order of support with a request to establish support. Under either scenario, the proper level of Johnson's child support obligation would be a subject of the hearing. The notice reflected this, stating expressly that the Agency would seek an adjudication of Johnson's child support obligation under state guidelines and would present evidence of his earnings as a foundation for this obligation. This put Johnson on notice that he should anticipate

addressing the amount of his child support obligation at the hearing, including the presentation of evidence about his income. The Agency was required to provide reasonable, not perfect notice (*Horn v. County of Ventura* (1979) 24 Cal.3d 605, 612), and this notice was reasonable.

B. *Venue*

Registration of a child support order issued in another county is governed by Family Code section 5600, which allows the registration of a child support order from one county in "any [other] county in which the obligor, the obligee, or the child who is the subject of the order resides, or in any county in which the obligor has income, assets, or any other property." (*Id.*, subd. (b).) The effect of registration is to shift responsibility for the enforcement of the child support order from the issuing county to the county of registration, since section 5601, subdivision (e) states that, upon registration, "[n]o further proceedings regarding the obligor's support obligations shall be filed in other counties." A party who believes a particular registration is improper must file a motion to vacate the registration within 20 days of service of the notice of registration. (Fam. Code, § 5603, subd. (a).)

Because the San Mateo County child support orders were registered in Contra Costa County in 1995 and 2004, responsibility for their enforcement was shifted from San Mateo County to Contra Costa County. Because Johnson failed to contest the registrations at the times they were made, he had waived the right to contest them at the time of the 2008 hearing. Venue was therefore proper in Contra Costa County for the Agency's motion to establish paternity and child support.

C. *Hearing Before a Superior Court Judge*

In the respondent's brief, the Attorney General concedes that Johnson should have been provided a de novo hearing before a Contra Costa County Superior Court judge. We agree and explain briefly.

In order to speed the determination of child support and paternity issues, the Family Code requires such matters to be heard by a court commissioner, if available. (Fam. Code, §§ 4250, subd. (a)(3), 4251, subd. (a).) In the absence of an objection, the

commissioner is deemed to act as a "temporary judge," and the commissioner's order on the matter becomes final without further action. (Fam. Code, § 4251, subd. (b), (c).) If a party objects at the hearing to the commissioner's acting as a temporary judge, the commissioner is still empowered to hear the matter, make findings, and issue a recommended order. (Fam. Code, § 4251, subd. (c).) That recommended order must be ratified as the order of the court by a judge if there is no timely objection to it. Only if a separate objection to the order is made does the objecting party become entitled to a hearing de novo before a judge. (*Ibid.*) As a result of this statutory scheme, a party must object twice to earn a trial de novo before a judge—first, to the appointment of the commissioner as temporary judge and, second, to his or her order. (*County of Orange v. Smith* (2002) 96 Cal.App.4th 955, 961.)

Commissioner Berkow overruled Johnson's objection to her sitting as a temporary judge, believing him to be bound by the stipulation executed in connection with the earlier seek-work proceeding. While stipulations are normally interpreted according to the rules applicable to ordinary contracts (*Jones v. World Life Research Institute* (1976) 60 Cal.App.3d 836, 840),[2] stipulations to authorize a temporary judge are narrowly construed. (*Orange County Dept. of Child Support Services v. Superior Court* (2005) 129 Cal.App.4th 798, 807.) "This is an especially important rule . . . because the jurisdiction of the temporary judge to try a cause derives from the parties' stipulation [citation] and ' "[t]he parties have the power to define and circumscribe the authority of a temporary judge . . . ." ' [Citation.] Furthermore, construing the power of a temporary judge narrowly enforces the temporary nature of that power. [Citation.]" (*Gridley v. Gridley* (2008) 166 Cal.App.4th 1562, 1581.)

The stipulation expressly stated that it was made under the authority of article VI, section 21 of the state Constitution. Under that section, a temporary judge may be

[2] A court's fundamental goal in interpreting a contract is to give effect to the mutual intention of the parties. While clear and explicit language in a contract governs, that language must be construed in the context of the instrument as a whole. (*Bank of the West v. Superior Court* (1992) 2 Cal.4th 1254, 1264, 1265.)

appointed, upon the stipulation of the parties, to adjudicate a "cause" and any subsequent proceedings that are the " 'direct progeny' " of that cause, meaning proceedings that are a continuation of the stipulated cause or question its finality. (*Gridley v. Gridley, supra,* 166 Cal.App.4th at pp. 1582–1583.) A "cause" for purposes of section 21 is defined as a " ' "proceeding before the court." ' " (*Fine v. Superior Court* (2002) 97 Cal.App.4th 651, 662.) Illustrating the narrow construction of this constitutional authority, a contempt proceeding growing out of a particular cause is deemed *not* to be its direct progeny, but rather an ancillary proceeding not covered by the stipulation. (*Sarracino v. Superior Court* (1974) 13 Cal.3d 1, 10.)

According to its terms, the stipulation empowered the commissioner to hear "the above-entitled matter," which was identified differently in the stipulations signed by Johnson and Threadgill, although assigned the same docket number. While Commissioner Berkow apparently construed that reference as bestowing consent to her adjudication of any dispute arising between Threadgill and Johnson, such a construction is inconsistent with the requirement that stipulations to a temporary judge must be narrowly construed. (*Gridley v. Gridley, supra,* 166 Cal.App.4th at p. 1581; *Orange County Dept. of Child Support Services v. Superior Court, supra,* 129 Cal.App.4th at p. 807.) The commissioner's construction would deem the parties to have consented to her service as temporary judge in connection with proceedings neither of them had contemplated at the time they executed the stipulation. As the present dispute demonstrates, such a proceeding could arise many years after the stipulation, based on events that had not even occurred at the time the stipulation was executed.

There is no evidence Johnson and Threadgill anticipated such a broad authority when they executed the stipulation. Almost certainly, they viewed themselves as authorizing Commissioner Berkow to adjudicate the pending seek-work petition and any matters growing out of that petition. An appropriately narrow interpretation of the stipulation, consistent with the expectations of Johnson and Threadgill at the time they executed the stipulation, would equate the word "matter" in the stipulation with the term

"cause," as defined by article VI, section 21 of the California Constitution.[3] In that event, the stipulation would apply only to the proceeding pending at the time of its execution, the petition to compel Johnson to seek work, and any direct progeny of that proceeding. Because the motion to establish child support and paternity was a different and unrelated proceeding, the commissioner erred in construing the stipulation broadly to cover it.

Because Johnson objected to Commissioner Berkow's service as a temporary judge for the child support motion and objected to her order after it was issued, he satisfied the requirements for a hearing de novo before a judge under Family Code section 4251, subdivision (c) and must be afforded that hearing.

D. *Proof of Earnings*

Johnson raises evidentiary objections to the documents supporting the commissioner's child support award. Because Johnson raised no objection to the admission of the evidence at the hearing, he waived his present objections. (*Platzer v. Mammoth Mountain Ski Area* (2002) 104 Cal.App.4th 1253, 1260–1261.) Any error therefore provides no basis for finding the commissioner's order to have been unsupported by the evidence.

III. DISPOSITION

The commissioner's order is vacated. The matter, construed as an Agency request for modification of the San Mateo County child support orders, is remanded to

[3] This narrow interpretation is also appropriate as a result of the carelessness with which Johnson's stipulation was completed. While the scope of the stipulation is defined as "the above-entitled matter," Johnson's stipulation did not contain the title of a matter, rendering it ambiguous.

the trial court for a de novo hearing before a judge pursuant to Family Code section 4251, subdivision (c).

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Margulies, Acting P.J.

We concur:

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Dondero, J.

_____
Banke, J.