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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FIVE

PATRICIA SKIDMORE, Plaintiff and Appellant, v. GEORGE MACIAS et al., Defendants and Respondents.	A126973 (Solano County Super. Ct. No. FFL106692)

In 2009, Patricia Skidmore, acting in propria persona, sought to enforce a 1981 child support order. Skidmore then requested that the Solano County Department of Child Support Services (DCSS) pay over to her all funds it collected in child support from the father of her child. She asserts that the trial court improperly relied on laches to deny the latter request. We affirm.

I. FACTUAL AND PROCEDURAL BACKGROUND

George Macias and Skidmore are the parents of a son who was born in April 1981. Before the child was born, Skidmore filed a complaint for support and to establish paternity. In May 1981, pursuant to a stipulated judgment and order, Macias agreed to pay $100 in monthly child support to Skidmore. Macias also agreed to establish and fund a trust fund for the child.

An order, dated July 2, 1985, provides: "The parties' minor child is receiving Public Assistance from the Solano County Department of Public Welfare. [¶] . . . [¶] IT IS ORDERED that [Macias] pay all sums previously ordered as child and/or spousal support in this action . . . to the Solano County Office of the District Attorney, Family

Support Division . . . ." On July 30, 1990, Macias signed a stipulation in which he admitted he owed child support arrears and agreed to pay the Solano County District Attorney, Family Support Division (the predecessor agency of DCSS) $250 per month for current support and arrearages, commencing August 1, 1990.

In January 2009, Skidmore filed an order to show cause (OSC) against Macias to "address arrears."[1] Macias's response to Skidmore's OSC asserted: "I do not owe [Skidmore] any support since it was not hers to receive. She was on welfare and said funds were paid by me to the appropriate agency to reimburse them for said aid[]. . . . [¶] I have paid all the support I was obligated to pay for the periods of time that our son was actually in her care."

On October 8, 2009, the parties appeared for court trial on Skidmore's OSC. At trial, Skidmore admitted that her real complaint was against DCSS. She conceded that Macias paid the required child support to DCSS, but asserted that DCSS never paid her. Although DCSS was not named as a party to Skidmore's OSC, the trial court allowed Skidmore to orally amend the OSC to join DCSS. DCSS advised the court that it closed its file in 1993 and that a letter sent to Macias, in March 2009, suggested that the case, when opened, "was a welfare reimbursement case because there is a welfare case number associated with it." DCSS argued that laches barred Skidmore's claim.

After hearing argument and sworn testimony, the trial court found that Macias paid all of the support due to DCSS until 1993, when Skidmore no longer had custody of the child. Accordingly, the trial court ruled that "[Macias] is not on the hook for one penny of this money."[2] With respect to DCSS, the trial court stated: "I do find that the

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[1] The child, now an adult, also filed his own OSC and motion for joinder, demanding the principal and accrued interest due to his trust fund. That OSC was resolved by separate hearing and order and is not at issue in this appeal.

[2] In her opening brief, Skidmore does not challenge the trial court's ruling with respect to Macias. Macias has not filed a respondent's brief. We do not address Skidmore's belated attempts, in her reply brief, to challenge this aspect of the court's ruling. (*Julian v. Hartford Underwriters Ins. Co.* (2005) 35 Cal.4th 747, 761, fn. 4; *Tilton v. Reclamation Dist. No. 800* (2006) 142 Cal.App.4th 848, 864, fn. 12.)

defense of Latches [*sic*] does apply to DCSS. [¶] The fact that you waited for 16 years to file this, I have not seen any just reason for it. . . . [¶] So I am making a finding that in fact DCSS did collect that money and didn't turn it over to you. It went to the welfare fund, or where ever it went; that because of the defense of Latches [*sic*] that you are not entitled to bring this up some 16 years after the fact . . . ." On November 12, 2009, Skidmore filed a notice of appeal.

On January 7, 2010, the court entered its findings and order after hearing. That order provided: "Based on the argument of . . . DCSS that due to the passage of time—a period of 16 years since closure of their case for purposes of enforcement and subsequent purge of their physical file and destruction of all documents therein relevant to the issues before the court, the court finds that the doctrine of laches applies as a defense to [Skidmore's] claim that she is owed monies by [DCSS] for child support collected but not paid to her. [¶] Accordingly, [Skidmore's] motion as it applies to her and her claims against . . . DCSS, a joined party, is denied."[3]

II. DISCUSSION

Skidmore argues on appeal that "[she] should be awarded the collected child support" and that "the [l]aches defense does not apply. . . ." "Laches is an equitable defense to the enforcement of stale claims. It may be applied where the complaining party has unreasonably delayed in the enforcement of a right, and where that party has either acquiesced in the adverse party's conduct or where the adverse party has suffered prejudice thereby that makes the granting of relief unfair or inequitable." (*In re Marriage*

[3] "Postjudgment orders relating to child support arrears are appealable. [Citation.]" (*In re Marriage of Brinkman* (2003) 111 Cal.App.4th 1281, 1287.) Although DCSS does not raise the point, Skidmore's notice of appeal from the October 8, 2009 minute order was arguably premature, given the court's later filing of its findings and order after hearing. To the extent that Skidmore's notice of appeal was premature, we exercise our discretion and treat it as having been filed immediately after the rendition of judgment or the making of the order. (Cal. Rules of Court, rules 8.100(a)(2), 8.104(d), 8.308(c).)

of Fogarty & Rasbeary (2000) 78 Cal.App.4th 1353, 1359, superseded by statute on another point as stated in *In re Marriage of Fellows* (2006) 39 Cal.4th 179, 185.)

First, we reject Skidmore's argument that laches does not apply because her claim for child support was a legal claim. In California, "family law courts have traditionally been regarded as courts of equity." (*In re Marriage of Fogarty & Rasbeary*, *supra*, 78 Cal.App.4th at p. 1360.)[4]

Generally, the existence of laches is a question of fact to be determined by the trial court in light of all applicable circumstances, and in the absence of a palpable abuse of discretion, the trial court's finding will not be disturbed on appeal. (*Miller v. Eisenhower Medical Center* (1980) 27 Cal.3d 614, 624; *California School Employees Assn., Tustin Chapter No. 450 v. Tustin Unified School District* (2007) 148 Cal.App.4th 510, 521.) Because Skidmore did not request a statement of decision, we must infer findings in favor of the judgment. (*In re Marriage of Arceneaux* (1990) 51 Cal.3d 1130, 1133–1134; Code Civ. Proc., § 632.)

Skidmore testified that she never received a penny in child support, but also conceded that she waited until 2009 to assert her claim—approximately 27 years after the 1981 support order was entered, 16 years after DCSS closed its file, and almost 10 years

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[4] In 2002, former Family Code section 4502 was amended to add subdivision (c), which eliminated the laches defense in private actions to enforce child support judgments. (Stats. 2002, ch. 304, § 1.) Today, Family Code section 291, subdivision (d), provides: "In an action *to enforce a judgment* for child, family, or spousal support, *the defendant* may raise, and the court may consider, the defense of laches only with respect to any portion of the judgment that is owed to the state." (Italics added.) Our Supreme Court has held that the statute applies retroactively. (*In re Marriage of Fellows*, *supra*, 39 Cal.4th at pp. 186–188 [addressing former Fam. Code, § 4502].)

Skidmore does not argue that Family Code section 291, subdivision (d), bars DCSS from raising the laches defense. She only argues generally, in reliance on authority from other jurisdictions, that the laches defense should not apply in cases involving child support arrearages. Family Code section 291, subdivision (d), itself rejects such a broad proposition. In any event, we would conclude that Family Code section 291, subdivision (d), does not prohibit DCSS from asserting a laches defense in this case. Skidmore does not seek "to enforce a judgment for . . . child . . . support" against DCSS.

after the child had reached the age of 18. When asked why she waited so long to pursue her claim, Skidmore responded: "Nobody ever contacted me—or I contacted them periodically and they had nothing on hand to send me or anything is what they were telling me. [¶] . . . [¶] . . . [M]y son also was wanting his trust fund. He was talking to his father and was asking for it and he was telling him that he wouldn't pay it to him and he never did pay it, so we filed—I also contacted the family support and never received money either from up to 1993."

To the extent that Skidmore attempts to justify her delay on the ground that she was unaware Macias had paid any support to DCSS, we fail to see how Skidmore's understanding that Macias was *not* paying child support justifies her failure to take any action since 1981. The only documentary evidence of any inquiry made by Skidmore dates from January 2009. On this record, the trial court did not palpably abuse its discretion in implicitly finding Skidmore's delay unreasonable.[5]

The record also supports the trial court's implicit finding that DCSS was prejudiced by Skidmore's delay. The record shows that DCSS closed its file on the matter in 1993. Thus, DCSS no longer has any records with which it could attempt to defend itself from Skidmore's claim that the child did not receive public assistance. (See Welf. & Inst. Code, § 11477, subd. (a)(1) [receipt of public assistance operates as assignment to county of any rights to support].)

There is substantial evidence in the record to support the findings of unreasonable delay and undue prejudice. The trial court did not abuse its discretion when it concluded that laches prevented any recovery from DCSS.

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[5] In her appellate briefing, Skidmore attempts to present new evidence that DCSS did not notify her of the amounts collected from Macias. Skidmore's arguments do not contain any citation to the record. We need not address arguments that were not properly preserved in the trial court. (See *City of San Diego v. D.R. Horton San Diego Holding Co., Inc.* (2005) 126 Cal.App.4th 668, 684–685.) For the same reason, we cannot consider her new assertion that she did not pursue the matter sooner because she did not know Macias's whereabouts and had limited resources.

III. DISPOSITION

The trial court's findings and order after hearing is affirmed.

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Bruiniers, J.

We concur:

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Jones, P. J.

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Simons, J.