

Filed 4/28/04

CERTIFIED FOR PUBLICATION
IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION SIX

VENTURA COUNTY DEPARTMENT
OF CHILD SUPPORT SERVICES,

Plaintiff and Respondent

v.

JEFFREY C. BROWN, as Trustee, etc.,

Defendant and Appellant,

STEPHANIE SOLACE,

Plaintiff and Respondent,

v.

KENNETH NOEL MARINOS,

Defendant.

2d Civil No. B168108
(Super. Ct. No. P069481)
(Ventura County)

ORDER MODIFYING OPINION
AND DENYING REHEARING

[NO CHANGE IN JUDGMENT]

(Super. Ct. No. D171761)
(Ventura County)

THE COURT:

It is ordered that the opinion filed herein on March 29, 2004, be modified as follows:

1. On page 2, line 3, the words "refused to satisfy" are changed to "has not satisfied" so the sentence reads:

"The trustee, Jeffrey C. Brown (appellant), has not satisfied the child support judgment, arguing that the trial court may not compel him to make trust distributions for child support."

2. On page 10, in the first full paragraph, the third sentence beginning with "Although the trial court has ordered" is deleted and the paragraph now reads:

"The facts before us are quite different than those in *Grohmann*. Here, Solace and DCSS are judgment creditors to whom Marinos owes over \$140,000 in past due support and \$1,218 in ongoing monthly support. We acknowledge that existing law gives a trustee the discretion to determine whether payments are made and in what amount. However, in exercising its discretion to make or withhold payments, a trustee may not act in bad faith or with an improper motive."

3. The paragraph commencing at the bottom of page 11 with "Marinos has acted" and ending at the top of page 12 with "behind section 15305" is modified to read as follows:

"Marinos has acted with patent disregard towards the support of his six children. He owes over \$140,000 in past-due support and has an ongoing monthly obligation of \$1,218. Appellant has refused to make any trust distributions to satisfy Marinos' child support obligation. In light of the statutory and public policy objectives in favor of the payment of support, we conclude appellant's exercise of his discretion was misdirected. To deny the trial court authority to compel the exercise of a trustee's discretion in this instance creates the very problem that the statute was enacted to remedy—avoiding the payment of child support. The statute cannot have been intended to allow a beneficiary to defraud support creditors by hiding behind the trustee's discretion. This is directly contrary to the legislative purpose behind section 15305."

[There is no change in judgment]

Appellant's petition for rehearing is denied.