Matter of Bertha Savoy Living Trust	Case No. 16PR00364
Hearing Date:	February 25, 2026
Petition to Enforce Child Support Money Judgment	Unopposed

Posted Probate Notes:

Appearances required. Respondent must file written objection before the hearing. The court has authority to require all objectors to file a written objection pursuant CRC, Rule 7.801, or else deem the failure to do so a waiver.

Further briefing required. According to the law of this state, DCSS does not have standing to pursue the Child Support debt at issue in this case, because DCSS admits that it represents no one other than the "public interest," and the children in this case are now adults.

The following analysis must be addressed by further briefing:

On December 23, 2025, the Department of Child Support Services filed a pleading in this case titled a "Petition to Enforce Money Judgement Against Trust Beneficiary." Upon review of the petition, there are several troubling allegations that relate to whether DCSS have standing to pursue the relief it requested.

Among other issues, the pleading 1) expressly states DCSS alleged to be "representing the public interest ***and no natural person*** in establishing, modifying and enforcing support obligations . . . " 2) expressly states the "support obligations" at issue were ***child*** support arrears that were now between 26 and 24 years old, with the last payment being due in 2020, 3) expressly stated the ***children*** were now past the age of majority by 8 and 6 years, and 4) are admittedly seeking the arrears solely for payment to the parent who supported the child during the child's minority, not for payment to the child.

Perhaps most concerning is the fact that the petition cited no authority giving DCSS standing to pursue the very uncommon relief requested. The accompanying memorandum of points and authorities did cite to Code of Civil Procedure section 709.010; in what appears to be an allegation that DCSS can somehow qualify as a "judgment creditor" under that statute. But section 709.010 cannot reasonably be interpreted as granting standing to DCSS as a judgment creditor in light of the relevant statutory scheme where section 709.010 resides.

Code of Civil Procedure section 709.010(b) grants authority to a "judgment creditor" to enforce a judgment against a "judgment debtor's interest in the trust." Since the prosecution of the claims involved in DCSS' petition is governed by CCP section 709.010, DCSS must first qualify as a "judgment

creditor" in order to have standing to continue. CCP section 680.240 offers that definition:

> "Judgment creditor" means the person in whose favor a judgment is rendered or, if there is an assignee of record, means the assignee of record. Unless the context otherwise requires, the term also includes the guardian or conservator of the estate, personal representative, or other successor in interest of the judgment creditor or assignee of record.

DCSS did not explain how it qualifies as a "judgment creditor" with standing under CCP section 709.010(b) or (c). DCSS also cited no statutory authority that assigns the right to pursue the underlying arrearages in this case to DCSS as an assignee of record or other successor in interest. Even more damning to DCSS' standing, as discussed in great detail below, there is an overwhelming amount of caselaw in this state (and a majority of sister state courts) that holds the child—not the parent—is "the person in whose favor a [child support] judgment is rendered." Thus, the Petition filed by DCSS calls for this Court to determine whether some other authority grants DCSS standing to pursue its claims against the "judgment debtor" in this case; the obligor father of child support payments that are in arrears.

DCSS does not have standing to prosecute this action, because the only other way DCSS could gain standing in this case is via Family Code section 17400, which requires either express permission of the child support judgment creditor or requires a ***minor*** child to be receiving public assistance.

> . . . The local child support agency shall take appropriate action, including criminal action in cooperation with the district attorneys, to establish, modify, and enforce child support and, if appropriate, enforce spousal support orders ***if the child is receiving public assistance***, including Medi-Cal, and, ***if requested***, shall take the same actions on behalf of a child who is not receiving public assistance, including Medi-Cal.

(Fam. Code, § 17400(a)(1) [emphasis added].)

DCSS does not allege requesting reimbursement for public funds expended for the support of the child, and does not allege the child did not request DCSS to pursue this action. Thus, DCSS does not appear to have "enforcement" standing pursuant to Family Code section 17400(a)(1).

Further problematic for DCSS' standing is its admission on the record that any funds recovered by its petition will be paid to the *parent* of a child to whom support is owed, not the child itself. This admission implies an argument that the parent at issue is the "judgment creditor" of the child support judgment

DCSS seeks to enforce, not the child. Stated more precisely, DCSS seems to believe a payee parent of child support is a "judgment creditor" for purposes of CCP section 709.010 (even after the child becomes an adult), and as that judgment creditor, the payee parent holds the right to grant DCSS the permission to enforce the child support judgment pursuant to Family Code section 17400(a)(1)'s "if requested" provision. In support of that position, DCSS claimed the mother of the child requested enforcement.

If the mother of the child were the proper judgment creditor pursuant to CCP section 709.010, the "if requested" provision in section 17400 could be interpreted to allow the mother in this case to grant standing to DCSS. But since the language of Family Code section 17400(a)(1) does not specify who must request DCSS to take the enforcement action, but does allow DCSS to pursue enforcement actions after a child reaches the age of majority (*Id.* at subd. (e)), this Court must turn to caselaw in order to determine the real party in interest that holds the right to child support payments, thus the right to request DCSS to enforce child support payment arrears after the child reaches the age of majority.

As discussed below, holding that the mother is the right-holder of child support arrears is contrary to well established law in our state, and the majority of sister-state jurisdictions. Since DCSS cannot qualify as the "judgment creditor" for purposes of CCP section 709.010, it appears DCSS does not have standing to proceed under Family Code section 17400 without the child's permission.

The Judgment Creditor is the owner of the child support judgment

This Court should find, as a matter of law, that the child, not the parent, is the judgment creditor who owns the right to collect child support arrears, and therefore enforce child support judgments against the obligee parent in arrears.

In California, child support is a legal right owned by the child. The California rule was cited as early as 1907 by our Supreme Court:

> When it declares a duty or a right, it means a legal duty or right. Section 206 is a part of the substantive law of the land, and establishes and declares a legal duty of the parents to maintain their children who are within its provisions, and establishes the right in such children to have such maintenance. ***As the duty runs to the children, the latter are the persons to whom the right imposed by the duty accrues, and they are the proper parties to an action to enforce such right and compel the performance of such duty.***

(*Paxton v. Paxton* (1907) 150 Cal. 667, 672 [emphasis added].) The rule was also published as recently as 2020. (*County of San Diego v. P.B.* (2020) 55

Cal.App.5th 1058, 1070 [“because “a child support obligation ‘... runs to the child and not the parent.”].)

Jurists older than Blackstone explained what California recognizes as a legal right, is also a natural right:

> The duty of parents to provide for the *maintenance* of their children is a principle of natural law; an obligation, says Puffendorf laid on them not only by nature herself, but by their own proper act, in bringing them into the world: for they would be in the highest manner injurious to their issue, if they only gave their children life that they might afterwards see them perish. By begetting them, therefore, they have entered into a voluntary obligation to endeavour, as far as in them lies, that the life which they have bestowed shall be supported and preserved. And thus the children will have the perfect *right* of receiving maintenance from their parents.

(1 Blackstone's Commentaries, p. 447 [emphasis in original].)

However, recently articulated statements of the California rule do not seem to consider the natural rights inherent in awards of child support:

> We recognize that, unlike spousal support laws, which are considered a form of equitable relief [citations], child support is strictly a legal right. (Fam. Code, §§ 3585 & 3591(a) & (b).)

(*In re Marriage of Dancy* (2000) 82 Cal.App.4th 1142, 1148.)

The property right to child support vests upon the due date of each support payment. (*In re Marriage of Comer* (1996) 14 Cal.4th 504, 542 [“When a judgment calls for installment payments as does a child support order, each installment becomes enforceable from the date the installment is due and is a debt if not paid.” (Internal citations omitted.) See also *In re Marriage of McClellan* (2005) 130 Cal.App.4th 247, 257 [“It has long been the law that an enforceable money judgment comes into existence at the time that a child support payment is missed.”]). Thus, once child support payments become vested, they cannot be modified or forgiven by the courts for the same reasons child support cannot be contracted away by the parents. (*Stover v. Bruntz* (2017) 12 Cal.App.5th 19, 26 [“The Legislature has established a bright-line rule that accrued child support vests and may not be adjusted up or down.”)

As a result of this concrete authority, it is incontestable that child support payments made during the child’s minority are owned by the child. As Justice Mosk explained in 1996, child support payments are made to the payee parent

"in trust," the child being the beneficiary and the payee parent being the trustee:

> A court orders the noncustodial parent to pay money to the custodial parent periodically for the support of their child. In so doing**, it effectively creates a kind of "trust" out of the noncustodial parent's monetary obligation,** appoints the custodial parent as a kind of "trustee," and names the child as a kind of "beneficiary."

(*In re Marriage of Comer* (1996) 14 Cal.4th 504, 530 [Mosk, S. concurring, emphasis added].) However, when modern courts discuss the ownership of child support after the child reaches the age of majority, the opinions of those courts cast a proverbial cloud on title to what should be clearly vested property rights.

Before Family Code section 291 (which bars the use of laches as a legal defense to child support arrearages) was amended in 2007, the caselaw of this state is confidently interpreted to hold that the right to child support *arrearages* was held by the child. The rationale articulated in these cases varied, but was all closely related to the child's right to receive support from the parents, and this State's unwavering public policy that all matters related to the support of a child take into account the best interest of the child as the paramount consideration. (*In re Marriage of Comer, supra,* 14 Cal.4th at p. 517 ["In any proceedings involving custody and support it is axiomatic that the 'court should always adopt the course that is for the best interests of the child." Citing *Evans v. Evans* (1960) 185 Cal.App.3d 566, 572.].)

That rationale is why the defense of laches was previously allowed in cases where a child was over 18, and the child's mother was still seeking arrearages:

> Mother [was] seeking payment of the arrearages to *herself,* not to the child. The harm mother did to the child by denying it father's companionship and financial support should not now entitle her to arrearages, many years later, that can no longer benefit the child."

(*In re Marriage of Dancy, supra,* 82 Cal.App.4th at p. 1157.)

However, since our Legislature forbade laches as a defense to arrearages, the caselaw of this state has been conspicuously silent about who owns child support arrears, likely due to 1) the many equitable considerations that were previously required to apply laches, but are no longer necessary to consider due to the legislative change; and 2) the failure of the courts to keep in mind natural right character of the award.

Despite our courts of review seemingly avoiding the topic since laches against arrearages was outlawed, several notable decisions are still good law that

should guide this Court's decision in the current case, and confirm that children own the right to arrears in California, ***especially*** after they reach the age of majority. The following is a non-exhaustive list:

In re Marriage of Hamer (2000) 81 Cal.App.4th 712, 720 [97 Cal.Rptr.2d 195, 200] at fn. 7:

> The *Graham* court did not explain how the right to receive *child* support may be deemed an " 'advantage of a law intended solely for his [or her] benefit,' " such that a parent may validly waive that right. (*Graham v. Graham, supra,* 174 Cal.App.2d at pp. 683–684, 345 P.2d 316.) On the contrary, ***even in 1959, we would have thought it well settled that child support is owed to the child***, not to the spouse identified in the support order as the recipient of child support payments. (See *Jackson v. Jackson* (1975) 51 Cal.App.3d 363, 367, 124 Cal.Rptr. 101, and cases cited therein; see also *Evans v. Evans* (1908) 154 Cal. 644, 645–646, 98 P. 1044 [a mother may not forfeit her children's right to support from their father].) This analytical flaw in the reasoning of the *Graham* court may explain why no other published case has upheld a finding of post-judgment "waiver" of *child* support, much less invoked *Graham* to bar enforcement of a final judgment containing an order for payment of child support, and may well relegate *Graham* to the status of "sport."

(Emphasis added.)

In re Marriage of McCann (1994) 27 Cal.App.4th 102, is a case where the District Attorney sought enforcement of arrearages re: a child support order against a father ***after the mother's death*** (children lived with grandma), the First District of the Court of Appeal held at p. 108:

> ***The child support obligation runs to the child and not the parent.*** (*Williams v. Williams* (1970) 8 Cal.App.3d 636, 640.) The district attorney may act to enforce a child support order on behalf of a child who is not receiving public assistance. [Citation.] The custodial parent is not a necessary party to such an action. [Citation.] ***Leslie McCann's death affects neither the children's right to enforce the child support order nor the district attorney's statutory authorization to act in their behalf.***

(Emphasis added.)

Williams v. Williams (1970) 8 Cal.App.3d 636, 640:

> Indeed, child support is not the type of cross-demand contemplated by section 440 because the obligation is due to the child rather than the mother. ***If it be considered a debt it is, in essence, a debt owing to the child since a father's duty to support his minor children is a continuing obligation 'during the minority of the children of the marriage.'*** (Estate of Goulart, 218 Cal.App.2d 260, 263, 32 Cal.Rptr. 229, 231; Civ.Code, s 138.) ***In essence, the parent, to whom such support is paid, is but a mere conduit for the disbursement of that support.***

(Emphasis added.)

In re Marriage of Copeman (2001) 90 Cal.App.4th 324, 332 [overruled on other grounds in *In re Marriage of Fellows* (2006) 39 Cal.4th 179]:

> We make our holding keeping in mind the public policy argument ***that child support is owed to the child*** rather than the dilatory parent, which strongly militates against the application of laches in the child support context (except, perhaps, where the child has reached adulthood and thus will not benefit from the arrearages collection).

(Emphasis added.)

Not only was the contention that the debt is owed to the payee parent expressly rejected in a case before the Fourth District Court of Appeal:

> Nor do we accept the main idea behind the categorical no-credit cases: that allowing credit effects an improper retroactive modification of support. **The essential underpinning of this idea is that child support is a vested debt owed *to the payee parent* and accumulates automatically with time**, independent of whether a parent discharges the duty of child support that exists anyway. But, like the estoppel cases, **that analysis focuses on the payee parent and not the children who are the recipients of support**. The main point of the *Gregory* and *McCann* cases is that ***the duty continues independent of the death of the payee parent because the focus should be on the actual support provided, not the mechanics of the order***. (See *Tavares, supra,* 151 Cal.App.4th at p. 625, 60 Cal.Rptr.3d 39.)

(*Helgestad v. Vargas* (2014) 231 Cal.App.4th 719, 732 [emphasis added]), but that contention was also rejected as recently as 2020 by the First District Court

of Appeal in affirming a reimbursement to a father for overpayment of child support after the children moved back into his custody:

> We disagree. The ***dissent states that money paid pursuant to a child support order is lawfully that of the obligee parent***, ***implying that the support obligation runs to the obligee parent.*** (Dissent, pp. 332–33.) ***But it is well established that the support obligation is owed to the child***, not to the parent identified in the support order as the recipient of child support payments. (*Jackson, supra*, 51 Cal.App.3d at p. 367, 124 Cal.Rptr. 101; *Williams v. Williams* (1970) 8 Cal.App.3d 636, 640, 87 Cal.Rptr. 754.) "In essence, the parent, to whom such support is paid, is but a mere conduit for the disbursement of that support." (*Williams*, at p. 640, 87 Cal.Rptr. 754.) When a supported child moves completely out of the obligee parent's home to live with the obligor parent and the obligor provides in-home child support, the obligee parent cannot be said to be unaware that he or she is no longer acting as a conduit for the disbursement of child support to a child who no longer lives with him or her.

(*In re Marriage of Siva* (2020) 268 Cal.Rptr.3d 318, 328 [emphasis added].) Unfortunately, our Supreme Court ordered this case de-published in December of 2020.

The Marriage of Utigard split of authority

Despite the overwhelming precedent above, there does seem to be a split of authority on this issue created by an obscure 1981 case decided by the Third District of our Court of Appeal. In that case, the Third District narrowly held: "Where the purpose of securing the arrearages is reimbursement of a parent for having supported the children, the beneficiary is the parent and not the child." (*In re Marriage of Utigard* (1981) 126 Cal.App.3d 133, 141.) If no other case cited *Marriage of Utigard* it would hardly be worth discussion in the face of so much precedent to the contrary. But a few cases have cited to *Marriage of Utigard*, despite the poor rationale given by the Third District to support that rule statement. Thus, it must be analyzed by the Court.

The problems with the opinion in *Marriage of Utigard* are legion. To start, the case was brought by the mother of the child, not by DCSS; a fact different than when DCSS files trust-buster cases like the one before this Court. Further, the Third District cited all of the contrary-holding, contemporary cases that held the right to child support belonged to the child. Most importantly, the Third District drew a distinction between that case and prior precedent that raises questions as to how that court could craft the rule of that case without the consideration of the very issues they purposely excluded:

> ***We do not reach the question under what conditions the children might be deemed the beneficiaries of arrearages in child support.*** No such claim has here been made. ***Similarly, we do not decide how to resolve a dispute between parent and child as to entitlement to arrearages.***

(*In re Marriage of Utigard* (1981) 126 Cal.App.3d 133, 143 [emphasis added].)

As a result of the problematic reasoning above, the rule held by the court in *Marriage of Utigard* illogically divests a child of a vested property right that was well-settled before that opinion, and irrationally transfers that right to the parent. This can be seen in a more precise statement of the rule as follows: "The beneficiary of child support arrearages ***after a child reaches the age of majority*** is the parent seeking reimbursement for having supported the children."

Not only is that rule unsupported by any of the precedent the court in *Marriage of Utigard* cited, that rule is tainted by the Third District's own admission that it did not consider when children might be deemed the beneficiary of arrearages. Implicit in that admission is an acknowledgment that the court chose to ignore precedent to the contrary; precedent that the court in *Utigard* specifically cited and admitted stood for the proposition that children are the direct beneficiaries and real parties in interest of child support: *Hunter v. Hunter* 170 Cal.App.2d 576; *Krog v. Krog* (1948) 32 Cal.2d 812; *Beulac v. Beulac* (1948) 84 Cal.App.2d 649; *Allen v. Allen* (1956) 138 Cal.App.2d 706; and most importantly *Jackson v. Jackson* (1975) 51 Cal.App.3d 363, 367; and *Williams v. Williams* (1970) 8 Cal.App.3d 636, 640.

As a result of that obviously flawed analysis, the rule stated in *Marriage of Utigard* turns centuries of property law on its head by holding that a vested property right somehow magically becomes divested just because a child reaches the age of majority. Stated more simply, instead of following the logical conclusion that a child to whom is owed unpaid child support as a matter of right, and holds status as the real party in interest, would continue to maintain that status into adulthood, the court in *Marriage of Utigard* illogically chose to craft a rule that claims the rights of the child to collect those payments magically divests upon the age of majority.

The lack of support for the rule stated by the court in *Marriage of Utigard* can easily be seen by reviewing the four Supreme Court cases the Third District Court of Appeal relied upon to create the rule; none of which involved an issue that contemplated standing or a right of an adult child to be paid child support arrearages.

The first and primary authority cited to for support of the rule in *Marriage of Utigard* was the case of *Di Corpo v. Di Corpo* (1948) 33 Cal.2d 195. That case

involved a mother being denied a writ of execution against the father for child support arrearages because the record reflected a lack of diligence in enforcing the unpaid judgment. In denying the writ, our Supreme Court stated:

> Plaintiff contends that the children should not be punished because of her lack of diligence. ***Since, however, she has presumably supported the children out of her own funds since 1931, she is seeking not funds for the current support of the children but reimbursement for funds she has already expended for their support***.

(*Id*. at p. 200.) The Third District took this statement out of context by using it to support their rule statement, because the Supreme Court was merely stating the nature of the relief the mother was pursuing in *Di Corpo*; it was not taking the opportunity to develop what right to that relief the mother was entitled to. Stated simply, the issue of who owned the right to be paid the arrears was not before the Court, was not analyzed by the court, and was not opined on by the court, even in *dicta*. The Court made that statement as a mere summary of the relief being sought, and ***then summarily denied that relief for equitable reasons***. Had the Supreme Court granted that relief, courts could at least imply the parent was the right holder to support payments. But since the Court denied that relief, it had no need to consider whether the parent owned that right. Thus, *Di Corpo* cannot stand for the proposition the court in *Marriage of Utigard* cited it for.

The second case cited by the Third District was *Lohman v. Lohman* (1946) 29 Cal.2d 144, which did not even involve a child support order, but involved a property settlement agreement. Thus, citation to that case was inapplicable to the ownership/real-party in interest issue before the court in *Marriage of Utigard*.

The third case cited by the court in *Marriage of Utigard* was *Wolfe v. Wolfe* (1947) 30 Cal.2d 1, which involved a child support order, but was litigated at the trial court level before the children turned 18, and did not include any discussion of standing or real party-in-interest issues. That case turned on the trial court's jurisdiction to modify the support order at issue. Thus, citation to that case was inapplicable to the ownership/real-party in interest issue before the court in *Marriage of Utigard*.

The last case cited by the court in *Marriage of Utigard* was *Parker v. Parker* (1928) 203 Cal. 787, where the issue of whether a minor loses the right of payment of arrears or the real party in interest standing at age 18 was also not before the Court. That case involved a question about the trial court's jurisdiction to modify a pre-existing support order that happened to include, at that late point in the litigation, a now adult child. Thus, citation to that case was

inapplicable to the ownership/real-party in interest issue before the court in *Marriage of Utigard*.

The lack of support for the rule cited in *Marriage of Utigard* was noted in the very first case that cited the rule. The First District of the Court of Appeal noted:

> It is well established that when a custodial parent brings an action for payment of child support arrearages as distinguished from an initial action for support or request for modification, the child is not the real party in interest. (*In re Marriage of Utigard*, *supra*, 126 Cal.App.3d, at p. 141.) This is so essentially because these proceedings are seen as a means of providing reimbursement to the custodial parent who is presumed to have supported the child during the period arrearages accrued. (*Di Corpo v. Di Corpo* (1948) 33 Cal.2d 195, 200, 200 P.2d 529.) ***While there may be some logical gaps in this analysis***, we recognize that it is on this basis that the district attorney becomes involved in actions to collect child support arrearages. (Civ.Code, §§ 248, 4702.)

(*In re Marriage of Lackey* (1983) 143 Cal.App.3d 698, 706 [emphasis added].) It is also noteworthy that case involved collection for public benefits.

The next case citing the rule in *Marriage of Utigard* used the circumstances of the death of the custodial parent to point out the absurdity of the rule. The First District of the Court of Appeal was faced with the question of whether child support arrearages were recoverable after the death of the custodial parent. The First District noted: "The court in *Utigard* stated that it "[did] not reach the question under what conditions the children might be deemed the beneficiaries of arrearages in child support." (*In re Marriage of McCann* (1994) 27 Cal.App.4th 102, 109.) The First District then went on to hold:

> Because the arrearages in the present case accrued after the custodial parent's death, **the presumption that the action has been brought to reimburse the custodial parent for having supported the children has no application.** Under the unique circumstances of this case, the children must be deemed to be the beneficiaries of the arrearages; ***otherwise the death of the custodial parent would render the order unenforceable***. The instant action may therefore be brought on behalf of the children by the district attorney.

(*In re Marriage of McCann* (1994) 27 Cal.App.4th 102, 109 [emphasis added].)

The First District's focus on the legal effect of the death of the custodial parent is particularly instructive to point out the absurd results that could occur if a court holds the right to receive arrearages owed by the non-custodial, obligor

parent is not owned by the child. If a court holds that the right belongs to the payee parent, then the entire purpose of California's legislative scheme would be frustrated by the death of that parent, which would extinguish the right of a child to collect the arrearages (whether that child was a minor or an adult). In no realm of public policy is losing the right to collect support that is both logically, naturally, and legally owed to a child, ***ever*** in the best interest of that child.

The only other published California case that cites the rule in *Marriage of Utigard* is *County of Shasta v. Smith* (1995) 38 Cal.App.4th 329, 335, and the Third District of the Court of Appeal only cited that rule to defeat an argument by the obligor father that his ex-wife had no interest in his motion to determine arrearages, to which she was not an originally named party, and to whom had not been served notice.

In addition to California authorities, there is also a published federal case that further illustrates the absurd results possible should the rule in *Marriage of Utigard* be followed. In 2011, the Ninth Circuit Court of Appeal reversed a District Court ruling that awarded child support arrearages to a victim of human trafficking crimes committed by a then-incarcerated parent who was owed child support arrearages. The District Court reached the absurd conclusion that a criminal restitution creditor can proceed against an obligor parent to recover *criminal* restitution owed to the custodial parent who committed the underlying crime, all because the District Court foolishly relied on the rule in *Marriage of Utigard* that held a parent owned the right to child support arrearages owed by the obligor parent. (*U.S. v. Dann* (9th Cir. 2011) 652 F.3d 1160, 1181.)

In reversing the District Court's ruling, the Ninth Circuit Court of Appeal acknowledged the split of authority created by the rule in *Marriage of Utigard*, but pointed out that the District Court failed to recognize the distinguishing fact that the children of the now incarcerated parent ***were still minors, thus were the vested right holders of the child support arrearages…not the parent.*** (*Id.* at pp. 1162, 1182 ["a restitution order simply cannot redistribute child support—or accrued child support—where minor children are involved."] The Ninth Circuit then held "we read California law as stating that, until a child reaches the age of majority, the *child* is the real party of interest in child support arrearages." (*Ibid.*)

Perhaps most importantly to the issue before this Court, the Ninth Circuit was the first court to identify a counter argument to the argument supporting a custodial parent's reimbursement claim. Namely, "accumulated unmet needs":

> If child support has not been paid for a period of time, ***it is likely that the child's needs were met at only a minimal level***. *Id*. at 517–18, 59 Cal.Rptr.2d 155, 927 P.2d 265. Thus, ***a child may have accrued needs, including educational expenses or cultural***

> ***opportunities, that may be met by an accrued child support payment***, and these needs trump the custodial parent's entitlement to reimbursement.
>
> Read together, *Damico* and *Comer* suggest that so long as the children have not reached majority, a custodial parent remains the "conduit" for child support—even accrued child support. We therefore conclude that under California law, a creditor (in this case a crime victim with a restitution order) is not entitled to accrued child support payments owed to a custodial parent of children ***who have not yet reached the age of majority***.

(*U.S. v. Dann* (9th Cir. 2011) 652 F.3d 1160, 1180 [emphasis added].)

Marriage of Utigard should be rejected

As a result of the lack of support for the rule articulated by the court in *Marriage of Utigard*, and the absurd results that holding spawns (especially in the face of that court's admitted failure to consider contemporary authority to the contrary), and the proverbial tsunami of subsequent contrary authority that followed, this Court should decline to follow the rule of *Marriage of Utigard*, and the miniscule progeny of cases citing to *Marriage of Utigard* for that rule.

Instead, the Court should hold that children do not lose either the right to payment of child support arrears, or their standing as real parties in interest to enforce that right, just because they reach the age of majority. In holding that a child's vested right to child support does not divest upon reaching the age of majority, the Court would be supported by 1) centuries of property law; 2) logical grounds in similar cases related to adult disabled children; 3) sound public policy; and 4) a majority of sister-state jurisdictions that hold an adult child is the vested right-holder to child support arrearages.

Centuries of property law holds vested rights are constitutionally protected

There is a constitutional prohibition against the disturbance of vested rights in property. (*In re Drishaus' Estate* (1926) 199 Cal. 369, 373 [249 P. 515, 516] "Once a right has vested, its impairment or destruction must comport with constitutional principles." (*Aries Dev. Co. v. California Coastal Zone Conservation Com.* (1975) 48 Cal.App.3d 534, 548.) Holding that a child's vested right to child support payments divests upon the age of majority would violate this clear prohibition, and the legislature is likely prohibited from enacting a statute giving the vested right to a parent without triggering the Takings Clause or violating Due Process.

In jurisdictions where arrears are held to be a reimbursement, the courts reason that the payments reimburse the custodial parent for payments equivalent to those a trustee makes out of their own funds to pay liabilities of a trust. (See

e.g. *Government of Virgin Islands ex rel. Seaton v. Appleton* (Terr. V.I. 1987) 23 V.I. 44, 46 ["Viewing the custodial parent as a trustee for the support payments of the child, the general principle is that when a trustee has discharged the liability of the trust out of her own funds, she is entitled to reimbursement out of the trust funds."].) Not only was this "trustee-reimbursement theory" cited by Stanley Mosk for the alternate proposition in California (*In re Marriage of Comer, supra*, 14 Cal.4th at p. 530), but the theory violates centuries of property law governing fiduciary relationships and vested rights.

Courts holding a parent owns child support on the trustee-reimbursement theory always fail to include in their rationale the fact that child support is a *legal duty* owed to the child by both parents jointly and severally (i.e. regardless of whether both parents are living or whether either has custody) (*Fludd v. Kirkwood* (Md. Ct. Spec. App. 2021) 265 A.3d 1169, 1180 ["The parents of a minor child are "jointly and severally responsible for the child's support, care, nurture, welfare, and education."]), and either fail or neglect to acknowledge the principle that the legal duty is owed to the child "irrespective of whether there is any child support ordered or paid." (See e.g. *Miller v. Miller* (Or. Ct. App. 1977) 565 P.2d 382, 386–387 ["The custodial parent is under a legal duty to provide for the child's care, irrespective of whether there is any child support ordered or paid."] See also *Gilmore by Gilmore v. Dondero* (Pa. Super. Ct. 1990) 582 A.2d 1106, 1111 ["We agree with that court's statement that it is the responsibility of parents to care for their children, ***without compensation***, and certainly without compensation from the fund recovered to compensate the child for his or her personal injuries."].) Parent ownership of child support on a trustee-reimbursement theory is further problematic because child support calculations purposely include a consideration of the standard of living available by both parents, and expressly do not take into consideration the ability of anyone else providing support to the child. As a result, the trustee-reimbursement theory holdings are poorly reasoned, because a trustee has no duty to "support" a trust that is comparable to a parent's duty to support a child.

The trustee-reimbursement theory crumbles when compared to various scenarios. In addition to centuries of trust law lacking a trustee duty to support the trust *out of their own funds* that is equivalent to the duty both parents have to provide support to the child, both parents have an absolute, non-delegable Family Code duty to provide support to the child regardless of whether the other parent shares the burden. (Fam. Code, §§3900, 4053(a).) This is most notable in cases where one parent dies, or both parents are found unfit and a guardian is appointed over the child. In both cases, a parent's duty to provide full support to the child is not altered or delegated, thus the support provided by each parent cannot rationally or logically be held to be owed to the other if one provides and the other does not. (See e.g. *Sidman v. Sidman* (Colo. App. 2009) 240 P.3d 360, 362 ["A guardian "has essentially the same authority and responsibilities with regard to the child as a parent would have, with the exceptions that the guardian typically does not provide the financial resources to support the child and serves solely at the pleasure of the appointing court."].

See also Unif. Prob. Code, § 5-209. Rights and Immunities of Guardian. ["A guardian need not use the guardian's personal funds for the ward's expenses."].)

Second, several California cases hold that it is almost always an abuse of discretion to place child support payments in a trust, and place strict limits on a court's discretion to make a custodial parent receiving child support to account for how that money was spent. The stated policy behind these restrictions is the burden on the courts this would create as a result of the oversight the courts would be called upon to exercise. An example of how this state does not want the process to work, is in the case of *Wright v. Wright* (Col. 1973) 514 P.2d 73, 75, where the Colorado Supreme Court held that a trust created in lieu of child support would subject the mother/trustee to accountings and subsequent scrutiny to determine if she breached her fiduciary duties to the children. ["We hold, therefore, that where a divorced spouse with custody of children is also cotrustee of a trust created in lieu of child support, the trial court may inquire into the fulfillment of the fiduciary duties owed to the children for purposes of determining whether additional child support by the other spouse is warranted."]

These limitations make it unpersuasive to categorize child support payments as held in trust, because of the practical realities that result when that path is followed to its logical conclusion.

The right to child support for adult disabled children is held by the child

To hold that a child owns child support payments is also more in line with current caselaw that holds child support payments made to support adult disabled children are owned by the child, not the parent receiving those payments on behalf of the child. (*In re Marriage of Drake* (2015) 241 Cal.App.4th 934, 941 ["A parent's duty to support an incapacitated adult child runs to the child."])

Public Policy goals of California support ownership of the right by the child

The Court would also be upholding sound public policy that places the best interests of the child as the paramount consideration in support cases, and honors several other public policy objectives found in the Family Code related to child support and custody.

- Parents' duty to support children, with or without the other parent.
- Fostering a relationship with both parents (DCSS is pouring salt in old wounds).
- Maintaining the same standard of living of both parents as close as possible.
- Focus on child's best interest necessitates putting them in driver's seat of collecting support arrearages after the age of majority.

To hold otherwise would deny children the right to recoup moneys that could grant them the opportunities in life that the non-payment of child support denied them, as the Ninth Circuit Court of Appeal noted in *U.S. v. Dann*, above.

Child support payments are more comparable to the rules governing Social Security payments to a representative payee. Children are firmly the owners of Social Security Survivor's benefits (*Weinberger v. Wiesenfeld* (1975) 420 U.S. 636, 648-50), and parents are the representative payee. Thus, holding child support is owned by the child, and must follow the child, regardless of whether both parents pay, is more akin to other statutory support than to payments made in trust for the child. (See discussion in *Ley v. Forman* (Md. Ct. Spec. App. 2002) 800 A.2d 1, 8.)

Majority of Sister States hold right to child support is owned by the child

In holding the child is the owner of child support payments before and after the age of majority, the Court would also be supported by the law in a majority of sister state jurisdictions. Out of the 23 states and one territory reviewed below, 13 states hold the child owns child support, 6 hold the payee parent is owed under the trustee-reimbursement theory, two hold the child owns at least partial amounts, and three are undecided but have published opinions in similar cases that imply the jurisdiction would hold the child owns the support, if called upon to make that determination.

Owed to the child

Alabama

"Alabama law holds that it is the child who possesses the inherent and fundamental right to support from the parent. [Citation.] A custodial parent has no right to child support but merely receives support on behalf of the child whose right it is. [Citation.]" (*Ex parte M.D.C.* (Ala. 2009) 39 So.3d 1117, 1122–1123.)

Colorado

"The same reasoning does not support precluding the application of the doctrine of laches as a defense to the interest component of child support debt. As the California Court of Appeal aptly explained, when a dilatory parent waits until the child has reached the age of majority to seek unpaid child support, reimbursing the custodial parent does not cognizably advance the child's welfare." (*Johnson and Johnson* (Colo. 2016) 380 P.3d 150, 155–156. See also *In re Marriage of Conradson* (Colo. App. 1979) 604 P.2d 701, 703 [Allowing child to pursue arrears against father.] and *Samuel J. Stoorman & Associates, P.C. v. Dixon* (Colo. 2017) 394 P.3d 691, 695 [disallowing attachment of

attorney lien to arrears because "the protection is rooted in the legal principle that the right to child support belongs to the child, not to the parents."]

Kentucky

While not having addressed the ownership of child support after the age of majority, the Supreme Court of Kentucky makes it plain that the law of the state is that the right, and thus logically the funds, belong to the child:

> Child support is a statutory duty intended to benefit the children, rather than the parents. The right to child support belongs to the child[,] not the parents." *Gibson v. Gibson*, 211 S.W.3d 601, 609 (Ky. App. 2006) (citing *Clay v. Clay*, 707 S.W.2d 352 (Ky. App. 1986) and *Gaines v. Gaines*, 566 S.W.2d 814 (Ky. App. 1978)).

(*Seeger v. Lanham* (Ky. 2018) 542 S.W.3d 286, 298.)

Louisiana

"Since the parent's duty of support and upbringing is a legal duty owed to the child, it cannot be renounced or suspended." (*Dubroc v. Dubroc* (La. 1980) 388 So.2d 377, 380.)

Maryland

The right to arrears of an adult child has not expressly been determined. However, the prevailing case on the ownership of child support states: "The father's duty of support is owed to the child, not to the mother… The right to support is, fundamentally, a right of the child." (*Payne v. Prince George's County Dept. of Social Services* (Md. Ct. Spec. App. 1986) 507 A.2d 641, 646 [Citing *Pickett v. Brown* (1983) 462 U.S. 1, 16 at fn. 15]. Thus, it appears Maryland holds the right is owned by the child.

Mississippi

"Courts award child support to the custodial parent for the benefit and protection of the child. *Varner v. Varner*, 588 So.2d 428, 432 (Miss.1991) (citing Lawrence v. Lawrence, 574 So.2d 1376, 1381 (Miss.1991)). Such benefits belong to the child, and the custodial parent has a fiduciary duty to hold them for the use of the child. *Id*. The law remains firm that court-ordered child-support payments vest in the child as they accrue and may not thereafter be modified or forgiven, only paid." (*Smith v. Smith* (Miss. 2009) 20 So.3d 670, 674.)

New Jersey

"In New Jersey, 'child support belongs to the child,' [citations]; therefore, child support paid directly to a parent is considered an asset of the child in the

nature of unearned income and will disqualify the child for government benefits." (*J.B. v. W.B.* (2013) 73 A.3d 405, 415. See also J.S. v. L.S. (N.J. Super. Ct. App. Div. 2006) 912 A.2d 180, 183 ["The purpose of child support is to benefit children, not to protect or support either parent. Our courts have repeatedly recognized that the right to child support belongs to the child, not the custodial parent. The custodial parent brings the action on behalf of the child and not his or her own right."] {Internal citations omitted.}.)

New York

New York has a statute that is part of its child support collection scheme that contains plain language holding child support is owned by the child:

> Any and all moneys paid into the support collection unit pursuant to an order of support made under the family court act or the domestic relations law, where the petitioner is not a recipient of public assistance, shall upon payment into such support collection unit ***be deemed for all purposes to be the property of the person for whom such money is to be paid***.

(N.Y. Soc. Serv. Law § 111-h(4) [emphasis added].)

It also appears recent caselaw supports the conclusion that a child owns child support. A trial court in 2000 held: "Case law has reflected the concept that the custodial parent does not have an ownership interest in the funds." (*Shipman v. City of New York Support Collection Unit* (N.Y. Sup. Ct. 2000). Additionally, the Court of Appeal of New York recently affirmed an Appellate Division case that held child support payments counted as "income" of an adult child for purposes of federal SNAP benefits eligibility, thus are logically owned by adult children. The Appellate Division's rationale that child support payments were owned by the adult child was "based on a common law principle that child support is a duty that runs from the payor-parent to the beneficiary-child, and the intermediary custodial parent is merely a conduit or trustee of the funds." (*Leggio v. Devine* (2020) 34 N.Y.3d 448, 459–460.) The Appellate Division stated:

> A child support obligation differs from alimony or spousal support, in that it is an obligation "to the child, not to the payee spouse, [therefore] the death of the payee spouse does not terminate the obligation" (*Matter of Modica v. Thompson*, 300 A.D.2d 662, 663, 755 N.Y.S.2d 86). "A custodial parent, a foster parent or the Commissioner of Social Services are no more than conduits of that support from the noncustodial parent to the child" (*id*. at 663, 755 N.Y.S.2d 86, quoting *Matter of Commissioner of Social Servs. v. Grifter*, 150 Misc.2d 209, 212, 575 N.Y.S.2d 259 [Fam. C.t, N.Y. County]).

(*Leggio v. Devine* (N.Y. App. Div. 2018) 158 A.D.3d 803, 804.)

While criticizing the lack of administrative deference the Appellate Division showed the agency involved, the Court of Appeal affirmed the outcome of the case on grounds of administrative deference without expressing opinion on the Appellate Division's holding that the adult child was the owner of the child support payments at issue. Thus, it is arguably the law of New York that child support is owned by the child.

Oklahoma

While specifically leaving rights to arrearages undecided, the Supreme Court of Oklahoma cited to one of its previous opinions holding "the right to proceed in an action for support belongs to the child, and that it cannot be bargained away by a settlement between the father and the mother. . . " (*Hedges v. Hedges* (Okla. 2002) 66 P.3d 364, 367, fn. 3; [citing *State Dept. of Human Services ex rel. K.A.G. v. T.D.G.* (Okla. 1993) 861 P.2d 990, 993]:

> Today's opinion deals solely with a parent's right to enforce decreed child support against another parent after the children have reached majority. The child's own right to support recovery is not addressed. As the court made clear in *State Dept. of Human Services ex rel. K.A.G. v. T.D.G.*, 1993 OK 126, ¶ 10, 861 P.2d 990, 994–95, no parent may, through settlement, agreement, or otherwise, compromise the child's right to enforce a support obligation against its parent. [text of fn. 3.]

Pennsylvania

Pennsylvania does not seem to have addressed the question head-on, but has a statute allowing "a person…to whom a duty of support is owing" to pursue enforcement (Pa. R. Civ. P. 1910.3), and the Supreme Court of Pennsylvania held that "a parent owes an absolute duty of support to his or her minor children." (*Larson v. Diveglia* (Pa. Sup. Ct. 1997) 700 A.2d 931, 932-33 ["The right to child support belongs to the child and should only be asserted by a party who possesses a legal right to act on behalf of the child."].)

It is likely Pennsylvania would allow such an action for arrears, because the Supreme Court allows adult children to enforce the portion of a marriage settlement agreement that benefits them. (*Weber v. Weber* (Pa. Super. Ct. 2017) 168 A.3d 266, 272 ["It is clear that our Supreme Court's holding, expressly disallowing children from seeking to enforce their parents' settlement agreement where "the agreement provides for support payments to the custodial parents[,]" did not foreclose a child's ability to enforce a provision that

provided a direct benefit to the child, such as an agreement to pay college tuition."].)

South Dakota

"The right to support is, fundamentally, a right of the child ... [the child's] interest in the determination of his father is of primary concern, and, in this respect, he is the ultimate beneficiary of the action." (*Weegar v. Bakeberg* (S.D. 1995) 527 N.W.2d 676, 679. Accord, *In re Loomis* (S.D. 1998) 587 N.W.2d 427, 432, Konenkamp, J. dissenting; *Tovsland v. Reub* (S.D. 2004) 686 N.W.2d 392, 402.)

Texas

"The payment of child support arrearage compensates for the wrong to the child at least as much as it reimburses the custodial parent for monies spent on the child. Past due child support is properly characterized as an unfulfilled duty to the child rather than a debt to the custodial parent." *Williams v. Patton,* 821 S.W.2d 141, 145 (Tex.1991)." (*Curtis v. Curtis* (Tex. App. 2000) 11 S.W.3d 466, 471. Affirmed by *Ochsner v. Ochsner* (Tex. 2016) 517 S.W.3d 717, 724 ["We held that the Family Code prohibits settlement agreements purporting to "prospectively modify[ ] court-ordered child support without court approval." The Legislature requires courts to consider whether the proposed parental agreements serve the child's best interests—a recognition of the key tenet that child support is a duty owed by a parent to a child, not a debt owed to the other parent."].)

Utah

While it is clear the Utah Supreme Court holds the child has a right to child support;

> If the child has been the beneficiary of equivalent support and education so that the mother is entitled to receive all of said past due support money, she should be free to release, compromise or waive that which is hers. But if the child had been provided bare shelter and food, and denied the benefit of proper clothes and dental and medical care, then the mother should not be free to waive that portion of past due support money that the child has not received.

(*Larsen v. Larsen* (1956) 300 P.2d 596, 598), the courts in Utah have not opined on whether a child holds the right to arrearages after reaching the age of majority, and it is unclear whether the Utah Supreme Court would affirm that right after a child reaches the age of majority:

> In toto, Parker's claim is properly characterized as one for past support of the twins, not one for reimbursement. Thus, I would hold that equitable estoppel does not apply for claims of back child

> support, unless record evidence can show that the support that *684 should have been provided by one parent was indeed provided by the other parent and that therefore the claim should truly be labeled one of "reimbursement." In the more usual application, where the children have simply done without the noncustodial parent's support, estoppel should have no application.

(*State, Dept. of Human Services ex rel. Parker v. Irizarry* (Utah 1997) 945 P.2d 676, 683–684 [Zimmerman, Chief Justice, Dissenting].)

Thus, in Utah, there is an open question of law as to whether a child owns the right to arrearages after the age of majority, or shares that right with a parent. But, it is clear the child owns child support as a minor.

Owed to the Parent as Reimbursement

Georgia

"[T]he Court of Appeal emphasized that the custodial parent is "a mere trustee charged with the duty of seeing that [child support is] applied solely for the benefit of the children." That holding serves to reinforce the principle that the child is not a party to the decree entitled to enforce it, but is instead the intended beneficiary whose rights must be enforced by a trustee. . . . The trial court's holding that the right to enforce the child support provisions of the decree involved in this case is vested exclusively in appellee's former wife rather than in his child is a holding that ***the child is not the real party in interest.***" (*Georgia Dept. of Human Resources ex rel. Holland v. Holland* (Ga. 1994) 440 S.E.2d 9, 11.)

Kansas

"…where the father neglects to provide for the maintenance and care of the minor children and leaves that burden entirely to the mother, she is entitled to recover from him a reasonable amount for the expenditures she has made in providing for their care and support." (*State ex rel. Secretary of Social and Rehabilitation Services v. Castro* (1984) 684 P.2d 379, 386. See also *Stapel v. Stapel* (Kan. Ct. App. 1979) 601 P.2d 1176, 1178 ["The dismissal of plaintiff's complaint was affirmed on appeal in accordance with the generally accepted rule that where a child has been supported during his minority by a single parent, once that child becomes an adult any right of action for reimbursement from the noncontributing parent belongs to the parent who provided that support and not to the child."].)

Oregon

"We concluded that the satisfaction was not offensive to public policy because the accrued child support was owed to her and not to the dependent child."

(*Phillips v. Bischoff & Strooband, P.C.* (Or. Ct. App. 1996) 911 P.2d 960, 963 citing *Miller v. Miller* (Or. Ct. App. 1977) 29 Or.App. 723, 727.)

West Virginia

"Unlike present child support payments, which are obligations of the noncustodial parent to the child, the past due child support at issue here is owed to the mother as a debt—reimbursement for the funds she expended when the child was in her custody." (*In re K.S.* (2022) 874 S.E.2d 738, 745.)

Washington

The Washington Supreme Court held the trustee-reimbursement theory is law:

> This same public policy analysis does not apply to agreements concerning retrospective payments. Any money paid to the custodial parent for past due support operates to reimburse the custodian for monies actually expended. *Miller v. Miller*, 29 Or.App. 723, 565 P.2d 382 (1977). The cause of action lies with the custodial parent—not with the child. *Stapel v. Stapel*, 4 Kan.App.2d 19, 601 P.2d 1176 (1979); *Miller v. Miller,* supra; *Baker v. Baker*, 22 Or.App. 285, 538 P.2d 1277 (1975).

(*Hartman v. Smith* (Wash. 1984) 674 P.2d 176, 178.)

Virgin Islands

"Viewing the custodial parent as a trustee for the support payments of the child, the general principle is that when a trustee has discharged the liability of the trust out of her own funds, she is entitled to reimbursement out of the trust funds." (*Government of Virgin Islands ex rel. Seaton v. Appleton* (Terr. V.I. 1987) 23 V.I. 44, 46.)

Owed to both or either

Arkansas

Arkansas actually has a legislative solution to the ownership of child support on the books. This statute creates a race to the courthouse that makes great fodder for a reality show where parents battle their children for first in time, first in right:

> However, we also noted that even though the statute "contemplates one support obligation which may be pursued by different persons at different times," our cases indicate that "once a child reaches majority, whoever files the collection action first is allowed the right and ability to collect."

(*Chitwood v. Chitwood* (2014) 433 S.W.3d 245, 248 [citing *Clemmons v. Office of Child Support Enforcement* (2001) 47 S.W.3d 227, 235 {"These cases indicate

that once a child reaches majority, whoever files the collection action first is allowed the right and ability to collect."}].

This law is contrary to clear public policy in California, as discussed above. Thus, it is recommended courts in California reject this law, and try and forget they ever read it and the cases that support it.

Indiana

Indiana, in stark contrast to Arkansas, has a logical solution to this issue; evidence based reimbursement to both parent and child:

> That a custodial parent holds child support payments in trust for the child makes sense during the child's minority because the minor child has an ongoing and regular need for support. Once the child is emancipated, however, the child has been supported. If there is an arrearage remaining, the custodial parent generally had to assume more than his or her share of supporting the child. Where there is clear evidence that because of the arrearage and the custodial parent's inability to make up the shortfall, the now-emancipated child had gone without something that is still relevant—for instance, a college education—the child may arguably be entitled to some of the arrearage. However, for the most part, the arrearage should be available to compensate the custodial parent for his or her expenses in assuming more than his or her share of the cost of supporting the child until his or her emancipation.

(*Roop v. Buchanan* (Ind. Ct. App. 2013) 999 N.E.2d 457, 461–462 [See also *Lizak v. Schultz* (Ind. 1986) 496 N.E.2d 40, 42 ["The husband becomes a debtor to the mother trustee as the installments accrue, and the father cannot reduce or avoid his civil liability for the accrued debt by showing the trustee has expended for the benefit of the child amounts less than ordered."].)

Undecided but leaning towards ownership by the child

Alaska

Alaska has not addressed this issue head on, but the Supreme Court of that state holds "[c]hild support awards, by their very definition, are intended to benefit the child, not provide a windfall to the parent." (*Webb v. State, Dept. of Revenue, Child Support Enforcement Div. ex rel. Webb* (Alaska 2005) 120 P.3d 197, 200.) The Alaska Supreme Court explained the rule of that state as follows:

> The death of a custodial parent does not automatically terminate the support obligation. Similarly, a child support order does not

> automatically end because a third party assumes custody of the children.

(*Skan v. State, Dept. of Revenue, Child Support Services Div.* (Alaska, Feb. 4, 2009) 2009 WL 279097, at *4.) The Alaska Supreme Court also expressly rejected the categorization of a child's ownership right in child support as a trust beneficiary:

> Read in proper context, we think it plain that the legislature did not intend by enacting AS 47.23.060 to impose on a custodial parent receiving child support the fiduciary responsibilities and attendant legal liabilities of a trustee whose expenditures of such payments would thus be subject to extensive judicial scrutiny. Nor is such a result counseled by sound public policy considerations.

(*Malekos v. Chloe Ann Yin* (Alaska 1982) 655 P.2d 728, 731.)

Thus, it appears Alaska would likely hold child support belongs to the child, not the parent.

Illinois

There are no Illinois cases that address the ownership of child support head on. The few cases that come close to addressing the issue create what appears to be a dual ownership interest in both the child and the payee parent.

It is clear Illinois allows a custodial parent to seek arrearages. (*People ex rel. Greene v. Young* (Ill. App. Ct. 2006) 854 N.E.2d 300, 308 ["Past due child support payments are vested rights, and the custodian of the children does not lose her right to collect the arrearage in support."].) But it appears that a custodial parent's right to seek arrears is not exclusive:

> Joseph cites the case of *Paredes v. Paredes* (1983), 118 Ill.App.3d 27, 73 Ill.Dec. 765, 454 N.E.2d 1014, for the proposition that *child support is an obligation which a party owes to his children and not to the custodial parent*. ***While Joseph is correct in this assertion***, his argument that the child is the only one who has standing to bring a cause of action for arrearages in child support is without merit. It is well settled that past due child support payments are vested rights and the custodian of the child holds the right to collect the arrearage for child support.

(*In re Marriage of Yakubec* (Ill. App. Ct. 1987) 507 N.E.2d 117, 120–121.)

And a recent Court of Appeal case seems to be following the modern trend showing Illinois likely considers child support owned by the child, not the parent. (*Clark v. Lay* (Ill. App. Ct. 2022) IL App (4th) 220101, ¶ 50 [". . . the

right to child support is a right of the child so as not to become the financial responsibility of the State."]).

Tennessee

In 2007, the Supreme Court of Tennessee reversed a Tennessee Court of Appeal ruling that ordered arrears to be paid to the adult children, even though those children had not been parties to the case. In doing so, the Supreme Court firmly held "the right of recovery for a child support arrearage is a vested right that lies with the parent to whom the child support is due." (*Lichtenwalter v. Lichtenwalter* (Tenn. 2007) 229 S.W.3d 690, 693.)

Six years later, however, the Tennessee Court of Appeal issued a ruling exactly opposite to the holding in *Lichtenwalter.* In *Danelz v. Gayden* (Tenn. Ct. App., Mar. 25, 2013) 2013 WL 1190818), the Tennessee Court of Appeal held an adult child that petitioned to establish parentage must be paid "retroactive child support" mandated by parentage statutes, even though the child filed the petition after the child reached the age of majority. That Court distinguished the facts from those in *Lichtenwalter* in support of the holding:

> Unlike the case at bar, Lichtenwalter involved a claim by a custodial parent; the parties' adult children were not parties to the litigation, and there was no reason for the Court to contemplate a claim by an adult child. The claim for child support at issue in Lichtenwalter arose under the divorce statutes which, unlike the parentage statutes, include no provision permitting an adult child to file his own petition for relief. We must conclude that Lichtenwalter simply does not address an independent claim by an adult child, specifically permitted under the parentage statutes.

(*Danelz v. Gayden* (Tenn. Ct. App., Mar. 25, 2013) 2013 WL 1190818, at *8.)

In addition to that opinion, the ownership rights of child support arrearages were further called into question by the Eastern District of Tennessee Bankruptcy Court:

> Analysis of relevant Tennessee law leads this Court to agree with Judge Kennedy and the majority of courts that child support arrearages do not fall within the scope of § 541(a) and, instead, are excluded from a debtor's bankruptcy case pursuant to § 541(b) and (d).

(*In re Rush* (Bankr. E.D. Tenn. 2018) 582 B.R. 729, 734.)

Thus, it appears Tennessee is at least on the fence related to who owns child support, but appears to be leaning strongly towards holding a child owns the funds.

RECOMMENDED FINDINGS AND RULING

In so holding that the child owns child support funds before and after the age of majority, and thus the right and status of real party in interest, DCSS will have to obtain that child's permission to continue prosecution of trust-buster petitions brought in probate courts after the child attains the age of majority.

Family Code section 17404(a) states:

> . . . The local child support agency shall take appropriate action, including criminal action in cooperation with the district attorneys, to establish, modify, and enforce child support and, if appropriate, enforce spousal support orders ***if*** the child is receiving public assistance, including Medi-Cal, ***and, if requested, shall take the same actions on behalf of a child who is not receiving public assistance, including Medi-Cal.***

(*Ibid*. [emphasis added].)

Since the children in this case, to which the support arrearages are owed, are now well past the age of majority, the Court should not order the payment of arrearages to the adult children's mother without that child prosecuting this Petition itself and requesting that relief, or without the child at least authorizing DCSS to prosecute this case in the child's behalf by following the required procedures outlined in Family Code section 17404 and 17524. That permission must be evinced by affidavit filed with the proceeding. (See *Codoni v. Codoni* (2002) 103 Cal.App.4th 18, 22.) Since the agency "shall enforce" only those arrearages alleged in the applicant's sworn statement, or arrearages determined by the court in a child support action, and there is not a sworn statement from the child owed the arrearages in this case, nor is there any evidence of determination of the arrearages by anyone other than DCSS, the case is subject to denial or dismissal.

Accordingly, without an allegation that DCSS is seeking the recuperation of public benefits paid, or without the child's authorization, DCSS outright lacks standing.