

CALIFORNIA COURT OF APPEAL, THIRD APPELLATE DISTRICT

In re the Marriage of Lashelle and Nicholas Capos

Marriage of Capos · No. C104120 · Decided June 12, 2026

SUMMARY

The California Court of Appeal affirmed an order denying Nicholas Capos’s request to vacate a prior order establishing child support arrears and interest owed to LaShelle Capos. The court held that the 2025 order was appealable under the void-judgment exception and that Nicholas had adequate notice of the requested child support arrears despite the forms used. The court also modified the opinion to correct a typographical error and add a footnote concerning discrepancies in the stated amounts, without changing the judgment.

CASE DETAILS

COURT	California Court of Appeal, Third Appellate District
WRITING FOR THE COURT	Earl, Presiding Justice; Mauro, Justice; Mesiwala, Justice
JURISDICTION	California Court of Appeal, Third Appellate District
DECIDED	June 12, 2026
DOCKET	C104120
DISPOSITION	affirmed
PROCEDURAL POSTURE	Nicholas Capos appealed from an order denying his request to vacate the child-support portion of a prior order establishing child-support arrears and interest. He argued that the prior order was void for lack of due-process notice and that the later order was appealable under the void-judgment exception.
STANDARD OF REVIEW	The opinion does not expressly identify a formal standard of review. It reviewed de novo the legal and jurisdictional issues concerning appealability, voidness, and due-process notice.
PRECEDENTIAL VALUE	published
PARTIES	Nicholas Capos v. LaShelle Capos

TOPICS

- child support
- family law procedure
- appellate jurisdiction
- due process
- appellate procedure

PRACTICE AREAS

family law

appellate procedure

child support

constitutional law

QUESTIONS PRESENTED

1. Whether the appeal from the 2025 order denying Nicholas's motion to vacate the 2020 child-support-arrears order was timely.
2. Whether an order denying a motion to vacate an appealable order is itself appealable when the motion asserts that the underlying order is void for lack of due process.
3. Whether the 2020 child-support-arrears order was void because the dissolution petition stated that there were no minor children and the request for order did not check the child-support boxes.
4. Whether Nicholas's absence from the 2020 hearing and lack of counsel established a due-process violation.

HOLDINGS

1. The appeal was timely because Nicholas appealed from the May 19, 2025 order within the applicable period, rather than attempting to appeal directly from the 1998 judgment or the 2020 arrears order.
2. An order denying a motion to vacate an appealable judgment or order is ordinarily not appealable, but it is appealable when the motion asserts that the underlying judgment or order is void and the order gives effect to that allegedly void judgment or order.
3. The 2020 order was not void for lack of due-process notice because Nicholas had notice of the existing child-support obligation and of LaShelle's request to confirm the amount of arrears and interest, and he appeared and defended on the merits.
4. The dissolution petition did not nullify the existing child-support order, and LaShelle was not required to request a new or modified child-support order because she sought enforcement and confirmation of arrears under the existing order.

KEY QUOTATIONS

“It is a fundamental concept of due process that a judgment against a defendant cannot be entered unless he was given proper notice and an opportunity to defend.” (7)

“opposing a motion on the merits[] ordinarily constitute[s] a general appearance” (8)

“the filing of the dissolution petition in 2019 did not nullify the child support order or absolve Nicholas of his obligation to pay child support.” (9)

“The instant case is a prime example of the foregoing; the petition which was served on [the husband] sought no monetary relief from him.” (11)

“The 2025 order is affirmed and LaShelle shall recover her costs on appeal.” (13)

FACTUAL BACKGROUND

Nicholas and LaShelle Capos married in 1991 and had one daughter, born in 1992. Their 1998 judgment of legal separation incorporated an agreement requiring Nicholas to pay \$2,000 per month in child support until the child reached the specified emancipation or age conditions. In 2020, LaShelle sought confirmation of 153 months of unpaid support and interest; Nicholas filed a written response disputing the arrears but did not attend the hearing. The superior court entered an order finding \$296,774 in principal arrears and \$471,404.65 in interest, and Nicholas later sought to vacate that order based on alleged lack of notice.

PROCEDURAL HISTORY

The parties' 1998 judgment of legal separation incorporated a marital settlement agreement requiring Nicholas to pay \$2,000 per month in child support. In 2020, after LaShelle requested confirmation of unpaid support arrears and Nicholas filed a written response on the merits, the superior court entered an order finding principal arrears of \$296,774 and interest of \$471,404.65. Nicholas did not appeal that order. In 2024, he moved to vacate it as void for lack of due process; the superior court denied the motion in 2025 as untimely, and Nicholas appealed. The Court of Appeal held the appeal timely and reviewable under the exception for orders denying relief from void judgments, but affirmed on the merits.

DISPOSITION

affirmed

CASES CITED

- New Davidson Brick Co. v. County of Riverside (1990) 217 Cal.App.3d 1146, 1149
- S.C. v. G.S. (2019) 38 Cal.App.5th 591, 597
- In re Marriage of Brinkman (2003) 111 Cal.App.4th 1281, 1287
- In re Marriage of Tibbett (1990) 218 Cal.App.3d 1249, 1250 fn. 3
- In re Marriage of Curtis (1992) 7 Cal.App.4th 1, 6-7
- Carlson v. Eassa (1997) 54 Cal.App.4th 684, 690-691
- County of Ventura v. Tillett (1982) 133 Cal.App.3d 105, 110-111
- Doe v. Regents of University of California (2022) 80 Cal.App.5th 282, 292
- Ansley v. Superior Court (1986) 185 Cal.App.3d 477, 488
- Schrage v. Schrage (2021) 69 Cal.App.5th 126, 138
- Sole Energy Co. v. Hodges (2005) 128 Cal.App.4th 199, 210
- In re Marriage of Lippel (1990) 51 Cal.3d 1160, 1163-1166
- Zaragoza v. Superior Court (1996) 49 Cal.App.4th 720, 722, 726
- Lacey v. Bertone (1949) 33 Cal.2d 649, 651
- Serrano v. Stefan Merli Plastering Co., Inc. (2008) 162 Cal.App.4th 1014, 1029
- Levine v. Berschneider (2020) 56 Cal.App.5th 916, 923
- County of Los Angeles v. Soto (1984) 35 Cal.3d 483, 488
- In re Marriage of Hubner (2004) 124 Cal.App.4th 1082, 1089

- In re Marriage of Tavares (2007) 151 Cal.App.4th 620, 626
- In re Marriage of Robinson (1998) 65 Cal.App.4th 93, 98
- Greenup v. Rodman (1986) 42 Cal.3d 822, 826
- In re Marriage of Eustice (2015) 242 Cal.App.4th 1291, 1304
- In re Marriage of Andresen (1994) 28 Cal.App.4th 873, 878
- Becker v. S.P.V. Construction Co. (1980) 27 Cal.3d 489, 493
- National Diversified Services, Inc. v. Bernstein (1985) 168 Cal.App.3d 410, 418
- Allen v. City of Sacramento (2015) 234 Cal.App.4th 41, 52

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