NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

FRED S. PARDES, Plaintiff and Appellant, v. ANDREW S. WIENICK et al., Defendants and Respondents.	G057362 (Super. Ct. No. 16FL000271) OPINION (Filed Mar. 11, 2020)

Appeal from a judgment of the Superior Court of Orange County, Salvador Sarmiento, and Linda Lancet Miller (retired judge of the Orange Super. Ct. assigned by the Chief Justice pursuant to art. VI, § 6 of the Cal. Const.), Judges. Affirmed.

Fred S. Pardes, in pro. per., for Plaintiff and Appellant.

Law Office of Robert Newman and Robert Newman for Defendants and Respondents.

* * *

Appellant Fred S. Pardes appeals from the trial court's order denying his petition for grandparent visitation under Family Code section 3102.[1] Pardes is the maternal grandfather of N.W. and S.W. (the grandchildren), and the father of Jennifer Wienick (mother) who died in 2015 and was the children's natural mother. Respondents Andrew S. Wienick and Darshann M. Wienick (the Wienicks) are the children's natural father and adoptive stepmother.

Pardes asserts 19 grounds for appeal in his table of contents, asserting each constitutes "prejudicial and reversible error." His opening brief lists 22 "significant and novel issues in Grandparent Visitation law." Many of these grounds and issues are reiterations of Pardes's view of the underlying facts and are in effect requests for us to reweigh the evidence, which is something we cannot do.

In addition, many of Pardes's grounds are not supported by citations to the record; others are not accompanied by any legal argument or authority. (See Cal. Rules of Court, rule 8.204(a)(1)(c).) Based on such violations, we could dismiss the appeal or strike Pardes's briefs. (*Spangle v. Farmers Ins. Exchange* (2008) 166 Cal.App.4th 560, 564, fn. 3.) We decline to do so.

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[1] All further statutory references are to the Family Code unless otherwise indicated.

Instead, we shall disregard any unsupported factual claims and treat any arguments not based on accurate citations to the record and legal authority as forfeited. (*Butte Fire Cases* (2018) 24 Cal.App.5th 1150, 1169, fn. 10; *Provost v. Regents of University of California* (2011) 201 Cal.App.4th 1289, 1294.)

We find Pardes has not shown the trial court erred by denying his petition for visitation based on his failure to meet the applicable burden of proof under section 3102. We therefore affirm.

FACTUAL AND PROCEDURAL HISTORY

In 2016, Pardes filed a "Petition for Grandparent Visitation." The Wienicks opposed it. A subsequent evidentiary hearing occurred over several days in 2017 and 2018.

Pardes called Alice Nelson as a witness. Nelson had a personal relationship with Pardes since 2013. Between 2013 and mother's death in June 2015, Nelson was at Pardes's house at times when mother had her post-dissolution custodial visitations with her children. Nelson observed what she described as "loving" interactions between Pardes and the grandchildren, and said they called him "Papa." Nelson authenticated photographs from this time period as either being taken by her or by mother. The photos depicted Pardes and the grandchildren in a variety of settings in and around Pardes's residence in Dana Point.

Nelson stated that, on all but two or three occasions, the children's visits with Pardes occurred during mother's custodial visitation time. The few occasions, when mother was not present, and Pardes was "babysitting," lasted "maybe an hour." Nelson was unaware of any occasion when Pardes was the only adult taking care of the grandchildren.

Pardes testified. He authenticated additional photographs depicting him and the grandchildren, which he stated were taken in 2012, 2013, and 2014.

Before recessing the matter, the trial court told Pardes that when the hearing resumed he was to focus on the "second part of [section 3102], which is best interest [of the grandchildren] in terms of exercising visitation with you; . . . [¶] I want you to spend the next time we're back on detriment [to the grandchildren]." The court also appointed an attorney, Diane Vargas, to represent the grandchildren.

When the evidentiary hearing resumed, Vargas told the court "the children are not of sufficient age nor of sufficient maturity to render an opinion as to whether or not they should see or not see their grandfather." She added, "They have a relationship with their maternal grandmother [from] whom [Pardes] is divorced, and they don't have a relationship with [Pardes] now. . . . [t]hey say that they do not want to see [Pardes]." One grandchild told Vargas, "I don't remember my grandfather, but he turned out to be mean, stole my grandmother's money." The other grandchild told her "he did not want to see [Pardes]," and stated,

"he speaks with a pseudo-New York accent, he is burly and he tickles me, and I don't like to be touched." Vargas added the grandchildren were aware of and "involved in" the ongoing litigation between the parties.

Pardes attempted to present expert testimony from Dr. Leslie Drozd, an expert in child custody evaluations and parental alienation issues; he stated Dr. Drozd had not spoken to the Wienicks or to the grandchildren. The court excluded the testimony stating, "I do not believe that the expert that [Pardes] has brought in can give us any opinions as to the best interest or detriment to these children in that the expert has not spoken to the children or the parents . . . [and she] cannot give any opinions, which, in reality, is what I would need from an expert."

Pardes resumed his testimony, and introduced a series of e-mails showing the hostile interactions between Pardes and the Wienicks. He testified that, despite the animosity, he had made unsuccessful attempts to reconcile with the Wienicks.

The court reminded Pardes the focus of the inquiry was the grandchildren, not his relationship with the Wienicks. Pardes finally explained that "[b]y not having a loving grandparent, grandfather in their lives, I believe the children are suffering an injury." He offered a list of things he could and would do that would benefit the grandchildren if he were given visitation rights; he did not offer any evidence of doing such things in the past.

Pardes acknowledged his last visit with the grandchildren was in June 2015, just before mother died. He introduced e-mails showing attempts after mother's death by the parties to create an agreeable visitation arrangement. Pardes testified he had brief, five-minute telephone and FaceTime contacts with the grandchildren between October 2015 and early December 2015. He stated these were his last contacts with the grandchildren. Pardes concluded by introducing additional pre-2015 photographs, again taken during mother's custodial visits with the grandchildren.

At that point, and without taking any evidence from the Wienicks, the trial court "invite[d] argument on a nonsuit," ordered additional briefing, and scheduled oral argument. The Wienicks responded by filing a "Motion for Judgement Under CCP § 631.8," alleging Pardes had failed to meet his burden of proof for grandparent visitation under section 3102. Pardes filed a lengthy opposition. After argument, the court granted the Wienicks' motion.[2]

In its statement of decision, the court made factual findings: (1) Pardes's argument that visitation is always in the best interests of the grandchildren does not "equate or equal" what is in the best interests of the

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[2] Pardes argues the Wienicks' motion was "grossly inadequate" because it did not specify the purported defects in his case. He cites as support cases involving Code of Civil Procedure (CCP) section 581c, which applies in *jury* trials. The Wienicks' motion was properly brought as a motion for judgment under CCP section 631.8, which is applicable to court trials. (*Lingenfelter v. County of Fresno* (2007) 154 Cal.App.4th 198, 204-205.)

grandchildren; (2) Pardes "has not had contact" with the grandchildren in three years; (3) the younger grandchild was seven years old at the time of the hearing and was only four when he last saw Pardes; (4) any earlier bonding between the younger grandchild and Pardes is "likely no longer present"; (5) the older grandchild was 12 years old at the time of the hearing and he had not had "meaningful contact" with Pardes since he was nine; (6) Pardes's evidence regarding his earlier "relationship with the grandchildren" was "very, very weak"; (7) Pardes did not submit "any evidence whatsoever" of a current relationship with the grandchildren; (8) Pardes's evidence showed his only prior contacts with the grandchildren were "during their mother's custodial time"; (9) Pardes failed to establish any "detriment to the [g]randchildren in not having visitation with [Pardes]"; and (10) Pardes "failed to establish that it would be in the best interests of the grandchildren to have visitation."

As conclusions of law, the court found: (1) Pardes failed to meet his burden of proving by clear and convincing evidence that it was in the best interests of the grandchildren to have visitation; (2) the Wienicks were presumed to act in the best interests of their children in deciding visitation issues, and Pardes failed to provide any evidence the Wienicks failed to act in their children's best interests; (3) the Wienicks' decision to deny Pardes visitation does not indicate they are unfit parents, and Pardes failed to introduce any evidence the Wienicks were unfit; and (4) in order to obtain visitation, Pardes was required to satisfy both prongs of

the two-part test found in section 3104, subdivision (a), which he failed to do by clear and convincing evidence.

DISCUSSION

1. *Legal Background*

"Grandparents' rights to court-ordered visitation with their grandchildren are purely statutory." (*In re Marriage of Harris* (2004) 34 Cal.4th 210, 219 (*Harris*).) "If either parent of an unemancipated minor child is deceased, the . . . parents . . . of the deceased parent may be granted reasonable visitation with the child during the child's minority upon a finding that the visitation would be in the best interest of the minor child." (§ 3102, subd. (a).) As for the rights of a *surviving parent*, however, there are important constitutional considerations.

Troxel v. Granville (2000) 530 U.S. 57 (*Troxel*) involved grandparents who sought visitation rights with their deceased son's children over the objection of the surviving parent.

A plurality of the high court found "the Due Process Clause of the Fourteenth Amendment protects the fundamental right of parents to make decisions concerning the care, custody, and control of their children." (*Troxel, supra*, 530 U.S. at p. 66 (plur. opn. of O'Connor, J.).) ' "The law's concept of the family rests on a presumption that parents possess what a child lacks in maturity, experience, and capacity for judgment required for making life's difficult decisions.

More important, historically it has recognized that natural bonds of affection lead parents to act in the best interests of their children." ' (*Id.* at p. 68 (plur. opn. of O'Connor, J.).) Thus, "so long as a parent adequately cares for his or her children (*i.e.*, is fit), there will normally be no reason for the State to inject itself into the private realm of the family to further question the ability of that parent to make the best decisions concerning the rearing of that parent's children." (*Id.* at pp. 68-69 (plur. opn. of O'Connor, J.).)[3]

" 'Encompassed within [this] well-established fundamental right of parents to raise their children is the right to determine with whom their children should associate.' " (*Punsly v. Ho* (2001) 87 Cal.App.4th 1099, 1107 (*Punsly*), disapproved on other grounds in *Conservatorship of Whitley* (2010) 50 Cal.4th 1206, 1226, fn. 4.)

After *Troxel*, section 3102 has been held unconstitutional as applied where trial courts disregarded the weight to be given to the surviving parent's desires regarding visitation. (See, e.g., *Zasueta v. Zasueta* (2002) 102 Cal.App.4th 1242, 1253 (*Zasueta*) [court erred in dismissing surviving parent's concerns about visitation instead of according them special weight]; *Punsly, supra*, 87 Cal.App.4th at p. 1109 [trial court erred because it did not apply a presumption that the surviving parent's visitation decisions were in the child's best interest]; cf. *Kyle O. v. Donald R.* (2000) 85 Cal.App.4th

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[3] Souter, J. and Thomas, J. concurred in the judgment. (*Troxel*, at pp. 75, 80.)

848, 864 (*Kyle O.*) [parent was willing to allow grandparent visitation; he simply did not want a court-imposed visitation schedule; such schedule violated *Troxel*].)

Even so, while "[a] custodial parent's decisions regarding visitation are entitled to presumptive validity and must be accorded 'special weight,' . . . they are not immune from judicial review." (*Guardianship of L.V.* (2006) 136 Cal.App.4th 481, 493.) As a result, "[c]ourts have construed section 3102 as requiring a rebuttable presumption in favor of a fit surviving parent's decision that grandparent visitation would not be in the best interest of the child." (*Rich v. Thatcher* (2011) 200 Cal.App.4th 1176, 1180 (*Rich*).) "To overcome the presumption that a fit parent will act in the best interest of the grandchild, a grandparent has the burden of proof and must show, by clear and convincing evidence, that denial of visitation is not in the best interest of the grandchild, i.e., denial of visitation would be detrimental to the grandchild. The fair import of the word 'detriment' is damage, harm, or loss. [Citation.] If grandparent visitation is in the grandchild's 'best interest,' it is not 'detrimental.' If grandparent visitation is not in the grandchild's 'best interest,' it is 'detrimental." (*Ibid.*; see Evid. Code, § 606 ["The effect of a presumption affecting the burden of proof is to impose upon the party against whom it operates the burden of proof as to the nonexistence of the presumed fact"].)

The clear and convincing burden requires evidence that is '"'"sufficiently strong to command the unhesitating assent of every reasonable mind.'"'"

(*Harris, supra*, 34 Cal.4th at pp. 248, 250 (conc. & dis. opn. of Chin, J.).) Such a substantial burden of proof preserves and promotes a parent's constitutionally protected choice as to the best interests of the child. It also preserves the constitutionality of section 3104 and insures against erroneous and overreaching judicial factfinding. (*Harris*, at p. 250 (conc. & dis. opn. of Chin, J.).)

Section 3104 codifies additional procedures related to grandparent visitation under section 3102: "On petition to the court by a grandparent of a minor child, the court may grant reasonable visitation rights to the grandparent if the court does both of the following: [¶] (1) Finds that there is a preexisting relationship between the grandparent and the grandchild that has engendered a bond such that visitation is in the best interest of the child. [¶] (2) Balances the interest of the child in having visitation with the grandparent against the right of the parents to exercise their parental authority." (§ 3104, subd. (a)(1), (2).) In addition, "[t]here is a rebuttable presumption affecting the burden of proof that the visitation of a grandparent is *not* in the best interest of a minor child if the parent . . . with whom the child resides . . . objects to visitation by the grandparent." (§ 3104, subd. (f), italics added.)

2. *Standard of Review*

We review an order for grandparent visitation using the deferential abuse of discretion standard, viewing the evidence most favorably in support of the

court's order. (*Rich, supra*, 200 Cal.App.4th at p. 1182; cf. *Montenegro v. Diaz* (2001) 26 Cal.4th 249, 255 ['"review of custody and visitation orders is the deferential abuse of discretion test"'].) When evaluating a trial court's ruling for an abuse of discretion, we review its findings of fact for substantial evidence and its conclusions of law de novo. The trial court's "application of the law to the facts is reversible only if arbitrary and capricious." (*Haraguchi v. Superior Court* (2008) 43 Cal.4th 706, 712.) "The appellant bears the burden of showing a trial court abused its discretion." (*F.T. v. L.J.* (2011) 194 Cal.App.4th 1, 16.)

3. *Analysis and Application*

A. *The Presumption against Grandparent Visitation*

Pardes contends the only applicable presumptions in this matter favor him, not the Wienicks. We disagree.

Throughout his briefing, Pardes refers to what he calls a "rebuttable presumption in favor of grandparent visitation," and claims that because the Wienicks failed to overcome this presumption below, reversal is required. He never identifies the source or nature of this presumption, or any authority showing its existence. We can find no such presumption in any California case or statute.[4]

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[4] Pardes also claims "[g]randparent visitation is a fundamental right." Again he provides no authority to support his claim. In

Pardes elsewhere refers to a rebuttable presumption that grandparent visitation is always in the best interests of the grandchild. Again he provides no relevant authority to support such a presumption.[5] Once more, we can find none.

The authority Pardes offers for this supposed presumption does not help him. The trial court's anecdotal comments how grandparent visitation *might be* beneficial in a particular case do not "clearly establish" such a presumption. Neither do attorney Vargas's off-hand comments to the court about how, as a grandmother herself, "[i]t's just good for kids to have grandparents if those grandparents don't have, you know, problems." Finally, the 1975 pre-*Troxel* New Jersey case—which was based on a New Jersey statute almost identical to the Washington statute found unconstitutional in *Troxel*—is not persuasive.

Because the Wienicks objected to Pardes's visitation with the grandchildren, we must presume that

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fact, "[g]randparents' rights to court-ordered visitation with their grandchildren are purely statutory." (*Harris, supra*, 34 Cal.4th at p. 219; cf. *White v. Jacobs* (1988) 198 Cal.App.3d 122, 124-125 [there are no "general or inherent rights of grandparents or authority of superior courts to mandate visitation with a grandchild over that child's parents' objection"].) Indeed, prior to the enactment of section 3102 (or its pre-Family Code predecessor, Civil Code section 197.5), there was no vehicle for grandparent visitation at all.

[5] Pardes argues the trial court erred by refusing to allow Dr. Drozd's expert testimony to purportedly "establish" this presumption. He misconstrues the meaning of a presumption. By its very nature, a presumption does not require "establishing"; that is why it is a presumption.

visitation with Pardes was not in the best interest of the grandchildren. (§ 3104, subd. (f); *In re Marriage of W.* (2003) 114 Cal.App.4th 68, 74-75; *Fenn v. Sherriff* (2003) 109 Cal.App.4th 1466, 1479, fn. 4; *Zasueta, supra*, 102 Cal.App.4th at p. 1253.) No other presumptions apply.

B. *Pardes Did Not Show the Wienicks Were Unfit Parents*

Pardes argues he short-circuited any parental *Troxel* presumption by proving at the outset the Wienicks were unfit parents and therefore not entitled to the benefit of the presumption against grandparent visitation. Again, we must disagree.

It is true section 3102's presumption only applies in favor of a *fit* surviving parent's decision that grandparent visitation would not be in the best interest of the grandchild. (*Rich, supra*, 200 Cal.App.4th at p. 1180; *Troxel, supra*, 530 U.S. at p. 68 (plur. opn. of O'Connor, J.) ["so long as a parent adequately cares for his or her children (i.e., is fit)" the presumption applies].) However, Pardes did not establish the Wienicks did not adequately care for the grandchildren in the sense Justice O'Connor's opinion discusses.

Pardes insists the Wienicks were unfit parents only because of their personal animosity towards him and their refusal to let him visit his grandchildren. "I'm not saying [the Wienicks] are grossly unfit parents on other issues," he told the trial court. "I'm saying that they are unfit as it relates to me." He added the

Wienicks' "refusal to permit visitation of [the grandchildren] by myself, clearly, shows they are unfit parents."

As his legal support for this claim, Pardes refers us to *Zasueta, supra*, 102 Cal.App.4th at p. 1248. That case does not support his argument. In *Zasueta*, it was the *trial court* that found the surviving parent unfit. Pardes's quotation from *Zasueta* in his opening brief regarding the parent's unfitness in that case is misleadingly taken from the trial court's order (*ibid.*), which the Court of Appeal went on to reverse.

The *Zasueta* court found the "[Grandparents] did not allege or present evidence that [surviving parent] did not properly care for the minor child and was thus an unfit parent. In fact, [grandmother] testified that [surviving parent] was a good mother and she had no reason to believe [she] would not act in the minor child's best interests. The court's finding of unfitness was erroneously based on the assumption that grandparent-grandchildren relationships *always* benefit children." (*Zasueta, supra*, 102 Cal.App.4th at p. 1253.)

"The [trial] court's 'announced presumption in favor of grandparent visitation' effectively placed the evidentiary burden on [surviving parent] to show the visitation was not in the minor child's best interests. [Citation.] This error violated not only constitutional principles, but also the language of section 3102, which permits visitation where there has been a finding that visitation is in a child's best interests. Here, there was no such finding. Instead, the court presumed

grandparent visitation was beneficial and, based on this presumption, made a finding that [surviving parent] was an unfit parent. . . . [T]his was not a proper basis for the court's visitation order." (*Zasueta, supra*, 102 Cal.App.4th at p. 1254.) *Zasueta* does not support Pardes's claim.

Finally, Pardes provides no authority for his proposition that parental fitness for purposes of the *Troxel* presumption is determined by the relationship the surviving parent has with the grandparent, rather than with the grandchildren. Pardes thus failed to avoid the *Troxel* presumption here.

C. *Pardes Failed to Satisfy Section 3104*

Pardes's first evidentiary challenge to overcome the *Troxel* presumption was to show there was a preexisting relationship between him and the grandchildren. (§ 3104, subd. (a)(1).) The Wienicks stipulated to this. The court accepted the Wienicks' offer to stipulate and found "that element within the statute will have been met."

Pardes nonetheless also had to show this "preexisting relationship . . . engendered a bond such that visitation is in the best interest of the [grandchildren]." (§ 3104, subd. (a)(1).) Only if Pardes carried his burden as to this threshold showing would the inquiry move on to the second step, i.e., balancing the grandchildren's interest in having visitation with Pardes against the Wienicks' right to exercise their parental authority. "[T]he nature of the *preexisting relationship*

serves to determine whether the petition may be granted, what the grandchild's best interests require, and the type of visitation that might be appropriate." (*Stuard v. Stuard* (2016) 244 Cal.App.4th 768, 787, italics added.)

To overcome the *Troxel* presumption, Pardes was obliged to show, by clear and convincing evidence, his preexisting bond with the grandchildren was so strong that denial of visitation would not be in their best interest and, in fact, would be *detrimental* to them. (*Rich, supra*, 200 Cal.App.4th at p. 1180; *Harris, supra*, 34 Cal.4th at p. 230.) Based on the record before us, Pardes failed to meet this formidable burden.

Pardes disagrees with this procedural analysis and cites *Hoag v. Diedjomahor* (2011) 200 Cal.App.4th 1008 (*Hoag*) to support his position. His reliance on that case is misplaced.[6] In *Hoag*, "the trial court found that the surviving parent's claimed reasons for objecting to visitation were not reasonable and not credible; in essence, as he practically admitted on the stand, he objected to visitation mainly to spite the grandparent. Moreover, *he admitted that grandparent visitation would be in the best interest of the children.* Thus, the

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[6] Pardes also refers us to our non-published decision in *Alma M. v. Katrina T.* (Aug. 6, 2013, G047558) [nonpub. opn.], and insists he can "cite this case, although it is not certified for publication." He is incorrect. Except for situations not present here, "an opinion of a California Court of Appeal . . . that is not certified for publication or ordered published must not be cited or relied on by a court or a party in any other action." (Cal. Rules of Court, rule 8.1115(a).)

presumption that he was acting in the best interest of his children was overcome, and the trial court constitutionally could and did grant the grandparent's visitation petition." (*Id.* at p. 1010, italics added.)

Here, the e-mail evidence Pardes himself introduced shows the Wienicks feared he would be a bad influence on the children. The Wienicks did not admit grandparent visitation would be in the best interests of the grandchildren. Indeed, Pardes's e-mail evidence again shows they were adamant in their belief it would be detrimental.

Thus unlike here, the first prong of the section 3102 test was established in *Hoag*, and the *Troxel* presumption vanished. "This not only allowed but affirmatively required the trial court to determine what visitation schedule was in the best interest of the children." (*Hoag, supra*, 200 Cal.App.4th at p. 1020.) Here, Pardes failed to make such a showing.

The trial court found Pardes failed to produce clear and convincing evidence of the preexisting bond with his grandchildren was so strong that denial of visitation would be detrimental to them. On the record before us, we cannot find this was an abuse of discretion.

D. *The Deceased Mother's "Interests"*

Pardes argues the deceased mother retained cognizable legal interests in this matter, and he is entitled

to vicariously assert them on her behalf. He claims, "A deceased parent still has some legal rights. The right to remain a memory to their children. The Wienicks do not have the right to wipe out [the grandchildren's] memory of [their mother], who regardless of her mothering skills, deeply loved both boys." He alleges section 3102 "grants a deceased person legally enforceable rights, to have a family member remain as part of their children's lives."

We are not persuaded a deceased mother has due process rights in this context, or that her progenitor has standing to raise them. Pardes gives us no authority to support this novel position. Absent authority for such a claim, we reject it. (*Ewald v. Nationstar Mortgage, LLC* (2017) 13 Cal.App.5th 947, 948.)

But even if we were to address it, the claim would fail. "[A]s a matter of law, [mother's] death did not imbue the grandparents with their daughter's parental rights or diminish [surviving parent's] parental rights." (*Kyle O., supra*, 85 Cal.App.4th at p. 863.) "To avoid a facial constitutional challenge, we can only interpret section 3102 to confer upon the blood relatives of a deceased parent standing to seek court ordered visitation. 'Nothing in the unfortunate circumstance of one biological parent's death affects the surviving parent's fundamental right to make parenting decisions concerning their child's contact with grandparents.'" (*Punsly, supra*, 87 Cal.App.4th at p. 1106, fn. 6.)

Section 3102 has nothing to do with the deceased parent's "rights," real or imagined.[7]

4. *Conclusion*

Pardes had the burden to show the Wienicks' decision regarding grandparent visitation was not in the grandchildren's best interests. The evidence he offered to support such a claim was the Wienicks' hostility toward him over matters unrelated to the interests of the grandchildren, and as the trial judge observed, a "very, very weak" showing of a previous relationship, based mainly on photographs taken while the grandchildren were visiting their mother. Pardes's testimony regarding what he could and would do for the grandchildren if he were to be given visitation privileges in

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[7] In a single line in his opening brief, Pardes suggested the derivative rights he purportedly obtained from mother when she died were violated by the Wienicks' "grandparent alienation" efforts, but offered no further authority or discussion. In his reply brief, he offers a five-page discussion of "grandparent alienation," arguing the notion of parental alienation in child-custody disputes should be imported into grandparent visitation petitions. Arguments raised for the first time in a reply brief will not be considered absent good cause for failure to present them earlier. (*Nordstrom Com. Cases* (2010) 186 Cal.App.4th 576, 583.)

In any event, Pardes has not provided any persuasive authority to import a concept from the unique context of child custody into a visitation case. As noted, grandparent visitation rights are entirely statutory (*Harris, supra*, 34 Cal.4th at p. 219), and Pardes provides us with no statutory basis from which to find "alienation" relevant to the grandparent visitation context. To the extent Pardes argues it might be good public policy to apply a similar alienation analysis to the grandparent visitation statute, that debate must be left to the Legislature.

the future adds little to the nature of the *preexisting* bond with his grandchildren.

The trial court determined Pardes's evidence failed to meet the substantial burden of proof he faced to overcome the *Troxel* presumption. The record demonstrates the trial court considered Pardes's previous relationship with the grandchildren and the nature of any bond they may once have shared. There was no evidence of an existing bond, nor any evidence the grandchildren desired to visit with Pardes. Pardes's relationship with the Wienicks is irrelevant for section 3102 purposes.

Pardes's showing below was not "'"of such a character and weight as to leave no room for a judicial determination that it was insufficient to support"'" the trial court's findings of fact and conclusions of law. (*Dreyer's Grand Ice Cream, Inc. v. County of Kern* (2013) 218 Cal.App.4th 828, 838.) This record discloses neither a miscarriage of justice nor an abuse of discretion.

DISPOSITION

The order denying Pardes's petition for grandparent visitation is affirmed. The Wienicks are entitled to their costs on appeal.

GOETHALS, J.

WE CONCUR:

MOORE, ACTING P. J.

DUNNING, J.*

*Retired Judge of the Orange Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

IN THE COURT OF APPEAL OF
THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

FRED S. PARDES, Plaintiff and Appellant, v. ANDREW S. WIENICK et al., Defendants and Respondents.	G057362 (Super. Ct. No. 16FL000271) ORDER (Filed Apr. 2, 2020)

The petition for rehearing is DENIED.

GOETHALS, J.

WE CONCUR:

MOORE, ACTING P. J.

DUNNING, J.*

*Retired Judge of the Orange Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

ATTORNEY OR PARTY WITHOUT ATTORNEY *(Name, state bar number, and address):* FRED S. PARDES, In Pro Per A Professional Corporation 34145 Pacific Coast Highway, Suite 520 Dana Point, CA 92629 TELEPHONE NO.: (949) 443-3400 FAX NO. *(Optional):* E-MAIL, ADDRESS *(Optional):* fred@fredpardes.com ATTORNEY FOR *(Name):* Fred Pardes	*FOR COURT USE ONLY* (Filed Dec. 24, 2018)
SUPERIOR COURT OF CALIFORNIA, COUNTY OF Orange STREET ADDRESS: 341 The City Drive South MAILING ADDRESS: CITY AND ZIP CODE: Orange, CA 92868-3205 BRANCH NAME: Lamoreaux Justice Center	
PLAINTIFF: Fred S. Pardes DEFENDANT: Andrew S. Wienick, [Darshann Padilla Wienick]	
[PROPOSED] **JUDGMENT**—[Grandparent Visitation] ☐ By Clerk ☐ By Default ☐ After Court Trial ☒ By Court ☐ On Stipulation ☐ Defendant Did Not Appear at Trial	CASE NUMBER: 16FL000271

JUDGMENT

1. ☐ **BY DEFAULT**

   a. Defendant was properly served with a copy of the summons and complaint.

   b. Defendant failed to answer the complaint or appear and defend the action within the time allowed by law.

   c. Defendant's default was entered by the clerk upon plaintiff's application.

   d. ☐ Clerk's Judgment (Code Civ. Proc., § 585(a)). Defendant was sued only on a contract or judgment of a court of this state for the recovery of money.

   e. ☐ Court Judgment (Code Civ. Proc., § 585(b)). The court considered

      (1) ☐ plaintiff's testimony and other evidence.

      (2) ☐ plaintiff's written declaration (Code Civ. Proc., § 585(d)).

2. ☐ **ON STIPULATION**

   a. Plaintiff and defendant agreed (stipulated) that a judgment be entered in this case. The court approved the stipulated judgment and

   b. ☐ the signed written stipulation was filed in this case.

   c. ☐ the stipulation was stated in open court ☐ the stipulation was stated on the record.

3. ☒ **AFTER COURT TRIAL.** The jury was waived. The court considered the evidence.

   a. The case was tried on *(date and time):* July 26, 2017, September 11, 2017, September 19, 2017*** See before *(name of judicial officer):* Hon. Salvador Sarmiento

   b. Appearances by:

   ☒ Plaintiff *(name each):*

   (1) Fred Pardes

   (2)

   ☐ Plaintiff's attorney *(name each):*

   (1) In Pro Per

   (2)

   ☐ Continued on Attachment 3b.

   ☒ Defendant *(name each):*

   (1) Andrew Wienick

   (2) Darshann Wienick

   ☒ Defendant's attorney *(name each):*

   (1) Richard Newman

   (2) Richard Newman

   ☐ Continued on Attachment 3b.

   c. ☐ Defendant did not appear at trial. Defendant was properly served with notice of trial.

   d. ☒ A statement of decision (Code Civ. Proc., § 632) ☐ was not ☒ was requested.

JUDGMENT IS ENTERED AS FOLLOWS BY:
☐ THE COURT ☐ THE CLERK

4. ☐ Stipulated Judgment. Judgment is entered according to the stipulation of the parties.

5. **Parties.** Judgment is

   a. ☐ for plaintiff *(name each):*

   and against defendant *(names):*

   ☐ Continued on Attachment 5a.

   b. ☒ for defendant *(name each):* Andrew Wienick, Darshann Wienick

   c. ☐ for cross-complainant *(name each):*

   and against cross-defendant *(name each):*

   ☐ Continued on Attachment 5c.

   d. ☐ for cross-defendant *(name each):*

6. **Amount.**

   a. ☐ Defendant named in item 5a above must pay plaintiff on the complaint:

(1) ☐ Damages	$ N/A
(2) ☐ Prejudgment interest at the annual rate of %	$
(3) ☐ Attorney fees	$
(4) ☐ Costs	$
(5) ☐ Other *(specify):*	$
(6) **TOTAL**	$

b. ☒ Plaintiff to receive nothing from defendant named in item 5b.

☐ Defendant named in item 5b to recover costs $

☐ and attorney fees $

c. ☐ Cross-defendant named in item 5c above must pay cross-complainant on the cross-complaint:

(1) ☐ Damages	$
(2) ☐ Prejudgment interest at the annual rate of %	$
(3) ☐ Attorney fees	$
(4) ☐ Costs	$
(5) ☐ Other *(specify):*	$
(6) **TOTAL**	$

d. ☐ Cross-complainant to receive nothing from cross-defendant named in item 5d.

☐ Cross-defendant named in item 5d to recover costs $

☐ and attorney fees $

7. ☒ Other *(specify):* The Court reviewed, considered and overruled all of Petitioner's Objection to Respondents' Proposed Statement of Decision. See attachment to Judgment.

Date: December , 2018

☒ see next page
JUDICIAL OFFICER
Hon. Salvatore Sarmiento

☐ Clerk, by [Illegible], Deputy

(SEAL)	**CLERK'S CERTIFICATE** *(Optional)* I certify that this is a true copy of the original judgment on file in the court. Date: [Filed Dec. 5, 2018] Clerk, by _____, Deputy

ATTACHMENT *(Number):* One
(This Attachment may be used with any Judicial Council form.)

JUDGMENT

3(A) CONTINUED:

October 10, 2017, November 14, 2017, January 23, 2018, March 20, 2018, May 7, 2018, June 21, 2018, and July 13, 2018

7-CONTINUED:

The Court finds that Petitioner has failed to prove, by clear and convincing evidence, that it is in the best interests of the grandchildren Nathan Wienick and Samuel Wienick to have visitation with Petitioner Fred Pardes or that there is any detriment to the grandchildren in not having visitation with Petitioner/Grandfather, and hereby denies Petitioner Fred Pardes' Petition for Grandparent Visitation

Respondents Andrew Wienick and Darshann Wienick are granted Judgment on Petitioner Fred Pardes' Petition for Grandparent Visitation.

December 24, 2018 /s/ [Illegible]
~~Judge Salvador Sarmiento~~
[Judge Linda Lancet Miller]

[Reviewed pursuant to CRE 3.15.90]

LINDA LANCET MILLER
JUDGE

(If the item that this Attachment concerns is made under penalty of perjury, all statements in this Attachment are made under penalty of perjury.)

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF ORANGE – LAMOREAUX JUSTICE CENTER

FRED PARDES, Petitioner, vs. ANDREW WIENICK and DARSHANN WIENICK Respondents.	CASE NO.: 16FL000271 **STATEMENT OF DECISION/NOTICE OF RULING** (Filed Sep. 10, 2018)

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD HEREIN:

Respondent's ANDREW WIENICK and DARSHANN WIENICK respectfully submit the following proposed Statement of Decision and Notice of Ruling on Petitioner FRED PARDES' Petition for Grandparent Visitation, filed on July 19, 2016.

The within matter came on and/or was set for hearing before the Honorable Salvatore Sarmiento on July 26, 2017, September 11, 2017, September 19, 2017, October 10, 2017, November 14, 2017, January 23, 2018, March 20, 2018, may 7, 2018, June 21, 2018 and July 13, 2018, Fred Pardes, Esq., in pro per representing Petitioner FRED PARDES and Robert Newman, Esq. appearing on behalf of Respondents ANDREW WIENICK and DARSHANN WIENICK. At the conclusion of Petitioner FRED PARDES' case in

chief, the court invited written briefs on a Motion for Judgment under *California Code of Civil Procedure* §631.8. Respondents submitted a written Motion for Judgment, Petitioner sumbitted a written Opposition, and Respondents submitted a written Reply to Opposition.

The matter was set for oral argument, which was heard by the court on July 13, 2018, with Fred Pardes, Esq., in pro per representing Petitioner FRED PARDES and Robert Newman, Esq. appearing on behalf of Respondents ANDREW WIENICK and DARSHANN WIENICK.

At the conclusion of oral argument, the court having considered Respondent's Motion for Judgment, any Opposition and Reply thereto, as well as oral argument, the court granted Respondents' Motion for Judgment.

FINDINGS OF FACT

The court makes the following findings of fact:

1. Petitioner's statements that it is in the best interests of the children to have visitation does not equate or equal what is in the best interests of the children;

2. Petitioner has not had contact with the minor children in three years;

3. Samuel had just turned 7 as of the date of the hearing, and was only 4 when he last saw Petitioner;

4. Any bonding between Samuel and Petitioner that may have occurred is likely no longer present;

5. Nathan was 12 as of the date of the hearing, and had not had meaningful contact with Petitioner since Nathan was 9 years of age;

6. The evidence presented by Petitioner was very, very weak in terms of Petitioner's relationship with the grandchildren;

7. Petitioner did not submit any evidence whatsoever of his relationship with the grandchildren;

8. Petitioner's evidence showed that Petitioner had contact with the minor children during their mother's custodial time;

9. Petitioner has failed to establish any detriment to the Grandchildren in not having visitation with Petitioner;

10. Petitioner has failed to establish that it would be in the best interests of the grandchildren to have visitation with Petitioner.

CONCLUSION OF LAW[1]

1. Petitioner bears the burden of proof, which is by clear and a convincing evidence standard, to establish that it is in the best interests of the minor children to have visitation with Petitioner/Grandparent (*Rich v. Thatcher* (2011)

[1] Any Finding of Fact deemed to be a Conclusion of Law is hereby held to be a Conclusion of Law

200 CalApp4th 1176; *IRMO Harris* (2004) 34 Cal4th 210). Petitioner has failed to meet his burden of proof;

2. Respondents/Parents are presumed to act in the best interests of their children when deciding with whom they will have visitation (*Troxel v. Granville* (200) 530 US 57; 120 S CT 2061). There was no evidence in this matter that Respondent's have failed to act in the best interests of their children;

3. A parent's decision to deny grandparent visitation cannot be the basis for the claim that a parent is unfit (*Zasueta v. Zasueta* (2002) 102 CalApp4th 1242. Petitioner failed to present any evidence that Respondents are unfit parents;

4. *Family Code* §3104, specifically requires a grandparent to satisfy the two-prong test under Family Code section 3104(a), which states:

   "On petition to the court by a grandparent of a minor child, the court may grant reasonable visitation rights to the grandparent if the court does both the following:

   (1) Finds that there is a preexisting relationship between the grandparent and the grandchild that has engendered a bond such that visitation is in the best interest of the child.

   (2) Balances the interest of the child in having visitation with the grandparent against the right of the parents to exercise their parental authority.

Here. Petitioner has failed to meet his burden of proof under *Family Code* §3104(a) by clear and convincing evidence.

RULING/DECISION

The Court hereby incorporates by reference its Findings of Fact and its Conclusions of Law numbered.

The Court finds that Petitioner has failed to prove, by clear and convincing evidence, that it is in the best interests of the grandchildren to have visitation with Petitioner or that there is any detriment to the grandchildren in not having visitation with Petitioner-Grandfather.

The Petition of FRED PARDES is hereby died and Judgment is entered in favor of Respondents ANDREW WIENICK AND DARSHANN WIENICK on the Petition of FRED PARDES.

NOW, THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED that this is the ruling of the Court on FRED PARDES' Petition.

Dated: SEP 10 2018 /s/ [Illegible]

JUDGE SALVADOR SARMIENTO
Judge of the Superior Court

Court of Appeal, Fourth Appellate District,
Division Three – No. G057362

S261936

IN THE SUPREME COURT OF CALIFORNIA

En Banc

FRED S. PARDES,
Plaintiff and Appellant,

v.

ANDREW S. WIENICK et al.,
Defendants and Respondents.

(Filed Jun. 24, 2020)

The petition for review is denied.

CANTIL-SAKAUYE
Chief Justice

EXHIBIT NO. 18

☑ ID only (Date) OCT 10 2017

☑ **IN EVIDENCE** (Date) OCT 10 2017

☐ Plaintiff/People	☐ Defendant	☐ Joint
☑ Petitioner	☐ Respondent	☐ Court
☐ (Other)		

Atty/Party Introducing Sensitive Exhibit

Case No. 16FL000271

Pardes

Vs.

Wienick

Alan Carlson, Executive Officer and Clerk

By D.Hentschke, Deputy

NOTE: THIS ITEM IS A PERMANENT COURT RECORD. DO NOT REMOVE FROM THE COURTROOM

(CT 778)

Fred Pardes

From: Andrew Wienick <awienick@gmail.com>
Sent: Tuesday, December 08, 2015 8:23 PM
To: Fred Pardes
Cc: Darshann Wienick
Subject: In re: your voicemail to Darshann [12/08/15]

Fred,

It has been brought to my attention that it is your intent to come to my house tomorrow, Wednesday, December 9th, to give Nathan, Sophie, and Samuel some semblance of a Hannukkah present, and then spend time with them.

Let me be the first to inform you that is NOT going to be happening, for a myriad of reasons:

1. You are actively attempting to deprive Nathan and Samuel of their inheritance. You have made no bones about the fact that you feel you are due some $40-50k from Jennifer's estate. I don't know how it's possible for you to square the fact that you are proposing to deplete the majority of that which Jennifer left Nathan and Samuel while simultaneously giving them a trivial gift in order to attempt to cement yourself in their memories. And, on top of that, your counsel to Jennifer since she abandoned the household back in 2012, led me to exhaust the entirety of my savings and my trust in order to keep my children safe.

2. You had a chance to make the right decision and make your peace with me when I emailed you back in February to alert you to WHO

exactly was living with daughter and your grandsons, and you chose to double-down repeatedly over the next 10 months, to the point of defending Jason Brimer when I had genuine concerns and harassment claims regarding his behavior towards me, to forcing me to waste time/resources going to Court to defend against your entirely frivolous lawsuits, to maligning me in legal communications which didn't even concern me. How exactly is that burying the hatchet again?

3. You seem to blame all of your legal woes at the moment on Michelle, including your rationale for attempting to evict the children with Jennifer, and for seeking the $40k+ from Jennifer's estate – let me tell you, I've been following your dissolution action closely since the 3rd Quarter of 2014, and 11111 well-aware of who's abusing the legal system and who is not; I'm not sure you're aware of this, but the boys adore Michelle, and for you to use your status as an Officer of The Court to continue to abuse your wife by circumventing the existing [and more than justified) DVTRO is simply reprehensible. While you continue to terrorize their grandmother, you will have no part in Nathan or Samuel's lives.

4. I do not want my children to spend even a millisecond with a serial adulterer, a liar, a manipulator, and a violent man whose moral compass points any which way it suits him; I am well-aware of your dalliances, your subterfuges, and your chicanery. And, as the boys' father, who is more than a fit parent, I have the

right under Troxel to make the decision to protect my children from people of such a vast ethical and moral deficit.

5. Nathan wants nothing to do with you; the thought of having to interact with you raises his anxiety to levels I have not seen since he last had to go to stay with Jennifer. Given Samuel's age, he's unlikely to have a strong opinion either way, but it's a moot point, due to #4. However, if you were to spend time with Samuel, I expect that he'd spend the majority of the time asking you why you haven't put Jason in jail yet.

My wife reached out to you in good faith, in an attempt to minimize our family's exposure to litigation. You lauded Darshann for going above and beyond in order to facilitate the establishment of a relationship with Nathan, Samuel, and Sophie. And you squandered it. For Mk Because that's apparently what your relationship with your grandsons is worth to you.

If you truly are hurting for that $40-50k (which I find laughably hard to believe), then why are you retiring? Or maybe you could sell some of your various assets, including your fancy Dana Point home. That said, if you're dead-set on taking money from Jennifer's estate, then I suggest you bring it up with Bonnie Rosen. It is beyond unconscionable that Rosen bilked Jennifer out of at least $60k this year alone by advising Jennifer to fight the 730 Evaluation when Rosen admitted to Richard Sullivan this Spring that a 730 was clearly necessary in this case.

This email requires no response. Do NOT deign to bother me or my family again, unless you're willing to make things right. Actions speak louder than words.

—Andrew

(CT 780)

EXHIBIT NO. 19

☒ ID only (Date) OCT 10 2017

☒ **IN EVIDENCE** (Date) OCT 10 2017

☐ Plaintiff/People	☐ Defendant	☐ Joint
☒ Petitioner	☐ Respondent	☐ Court
☐ (Other)		

Atty/Party Introducing Sensitive Exhibit

Case No. 16FL000271

Pardes

Vs.

Wienick

DAVID H. YAMASAKI, EXEC. OFFICER/CLERK

By D.Hentschke, Deputy

NOTE: THIS ITEM IS A PERMANENT COURT RECORD. DO NOT REMOVE FROM THE COURTROOM

(CT 781)

Fred Pardes

Subject: FW: In re: toxicity

From: Andrew Wienick [mailto:awienick@gmail.com]
Sent: Tuesday, May 03, 2016 8:50 AM
To: Fred Pardes <fred@fredpardes.com>
Subject: In re: toxicity

Fred,

I understand that you emailed my wife asking permission to send a birthday card to Nathan and some correspondence to Samuel. You do not need permission to send cards to the children (or gifts for that matter – what ever happened to the Hannuakkah presents you bought them?).

As per usual, everything is about what Fred wants. You didn't even have the decency to ask how Nathan and Samuel are doing. Rather, you issue a new threat about suing me while complaining about the "toxicity" in your life.

What is the origin of this "toxicity"? Let's examine the facts:

- **YOU** chose to have **multiple** affairs and during the course of your marriage to Michelle.
- **YOU** chose to prolong your divorce and to sue Michelle multiple times for no reason other than to punish her for daring to divorce you
- **YOU** chose a path of destruction against Nathan and Samuel's grandmother, whom they love dearly

- **YOU** chose to align with Jennifer and her despicable boyfriend, Jason Brimer, instead of looking out for the best interests of Nathan and Samuel
- **YOU** chose to proceed as a "creditor" in Jennifer's probate action to deprive Nathan and Samuel of their meager inheritance

As the above facts demonstrate, the toxicity in your life starts and ends with you. You can choose to rid yourself of such toxicity, but you won't. It's clear that this is who you really are, and who you've always been since I first met you back in 2002.

Life is simply too short for me to subject myself or my family to the negativity which surrounds you. I value my peace and serenity, much like your son, Jonathan, whose children you have never met.

Again, I pose the question: when are you going to sue Jonathan for grandparents' visitation? Why are Nathan and Samuel more important to you than Noah and Julia? I suspect it's because you enjoy harassing me, but you do not derive the same pleasure in harassing your own son.

As stated in my emails from March 11th (included below), I welcome you to file a grandparents' visitation action, which I will defend myself. If you want to see your sons and your wives on the witness stand testifying about your toxicity, by all means, go ahead and file your suit. If you want to see Jennifer's **filthy** laundry exposed for all the world to see, please, go ahead and file. If you want **everyone** to understand how you

permitted Nathan and Samuel to live in such squalor with two drug addicts, please, go ahead and file.

If you ever want to have a meaningful relationship with Nathan and Samuel, then you must take steps to purge the toxicity from your life. Settling your dissolution action, and dropping the ridiculous civil suits against Michelle would be a first good step.

Despite your narrative that Michelle is the villain in all of this, I know the truth. And deep down, so do you. Take some advice from me: move forward with your life, put the past behind you, and I promise that you will see all of that accumulated toxicity begin to dissipate.

—Andrew

(CT 783)