Court of Appeal, Fifth Appellate District - No. F079228

S267962

IN THE SUPREME COURT OF CALIFORNIA

En Banc

In re the Marriage of JAIMEE CAROLE and JON MARK FINLEY.

JAIMEE CAROLE FINLEY, Appellant,

v.

JON MARK FINLEY, Respondent.

The petition for review is denied.

CANTIL-SAKAUYE

Chief Justice

Filed 3/8/21 Marriage of Finley CA5

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIFTH APPELLATE DISTRICT

In re the Marriage of JAIMEE CAROLE FINLEY and JON MARK FINLEY.	
JAIMEE CAROLE FINLEY, Appellant, v. JON MARK FINLEY, Respondent.	F079228 (Super. Ct. No. 8001550) **OPINION**

APPEAL from a judgment of the Superior Court of Stanislaus County. Alan K. Cassidy, Judge.

Jaimee Carole Finley, in pro. per., for Appellant.

Jon Mark Finley, in pro. per., for Respondent.

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In this family law dissolution matter, Jon Mark Finley (father) and Jaimee Carole Finley (mother) have been engaged in an ongoing custody battle over their now five-year-old daughter, K.F.[1] Father currently has sole legal and physical custody of K.F. and mother has supervised visitation. After a contested hearing, the trial court denied mother's request to modify the existing custody order. We affirm.

FACTS AND PROCEDURAL HISTORY

A. *Mother's December 23, 2015 Request for Order Regarding Custody and Visitation*

Mother and father were married on August 6, 2015, and K.F. was born later the same month. The parties resided in Stanislaus County. They separated in November 2015, and on December 22, 2015, mother filed a petition for dissolution of marriage in Stanislaus County Superior Court.

On December 23, 2015, mother filed a request for order (RFO) on the issue of custody of K.F. The family court held a hearing on the RFO on February 17, 2016; both mother and father were present in court for the hearing. The same day the court, Judge Alan Cassidy, entered, upon agreement of the parties, a findings and order after hearing (FOAH) as to custody and visitation concerning K.F. (The record shows that father was previously charged in Stanislaus County Superior Court, on December 11, 2014, with committing a felony on December 6, 2014, "Battery on Spouse or Cohabitor," namely mother, in violation of Penal Code section 273.5, subdivision (a).)

As reflected in the FOAH, dated February 17, 2016, the court granted sole legal custody and sole physical custody to mother. The FOAH reflected that "[t]he parties shall arrange care, custody, and control as they can agree and, if there is no agreement," then "[t]he Mother shall have all non-designated time with the child" and father shall have supervised visitation at Sierra Vista Child and Family Services (Sierra Vista). The

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1 Both parties are pro per on appeal.

FOAH further provided: "Neither party shall change the child's current county of residence from Stanislaus County, without providing the other party 45 days prior written notice." In addition, the court ordered the parties to participate in "child custody counseling" and father to complete "a domestic violence course." Finally, the court set the matter for a review hearing on March 2, 2016.

Both mother and father were present for the March 2, 2016 review hearing regarding the RFO filed by mother on December 23, 2015. The court, Judge Alan Cassidy, issued the findings and order after hearing the same day, in which it renewed the prior custody and visitation order, unchanged. The court documented father's objection to the order and continued the matter to August 11, 2016. Specifically, the FOAH noted: "The matter is continued to 8/11/16 at 10:30 a.m. for long cause hearing on the Father's objection to the child custody order."

B. Father's May 13, 2016 RFO Seeking Modification of Custody/Visitation Order

On May 13, 2016, father filed an RFO requesting a temporary emergency order. In a declaration filed with the request, father stated that, on or about May 3, 2016, he received an email from mother in which she wrote that the email would serve as a 45-day written notice of her intent to relocate away from Stanislaus County, with K.F., effective June 18, 2016. Accordingly, father sought a temporary emergency order prohibiting mother from removing K.F. from Stanislaus County, pending a hearing on his RFO.

In his RFO of May 13, 2016, father also sought modification of the existing custody order of March 2, 2016, which had granted sole legal and sole physical custody to mother and supervised visitation to father. Father requested the court to grant joint legal custody to both parents but to grant sole physical custody to father. Father noted that following the court's order of March 2, 2016, mother never completed a required orientation at Sierra Vista (which failure served to preclude father from effectuating supervised visitation at Sierra Vista, as specified in the court's March 2, 2016 custody

order). Father further noted that while he nonetheless managed to have contact with K.F. in other settings (for example, when mother needed childcare), he had been unable to see K.F. since mother sent him the email declaring her intention to leave the county with K.F.

Father's RFO was received by the court on May 12, 2016, and, on the same day, Judge Jack Jacobson granted the requested temporary emergency order. The temporary emergency order directed mother not to change K.F.'s residence from Stanislaus County and specified that violation of the order would result in civil or criminal penalties, or both. The RFO, with the temporary emergency order attached, was filed immediately thereafter, on May 13, 2016. The matter was set for hearing on June 8, 2016.

On May 18, 2016, while the parties were in court on a separate child support matter, father's counsel personally served mother with father's May 13, 2016 RFO and related documentation. On May 20, 2016, mother filed a responsive declaration to father's May 13, 2016 RFO. In the responsive declaration, mother stated she and K.F. would be "out of town" at the time of the hearing on father's RFO and that she had filed a request to appear telephonically at the hearing. Mother noted that, on May 3, 2016, she had provided father "with a 45 day notice to change [K.F.'s] residing address." Mother further stated: "According to the orders dated March 2, 2016, that was all that I needed to do. It did not say I needed to provide a new address. I don't feel it is safe to provide it after [father's] threats." Mother also stated: "I am moving [K.F.] for her safety, to remarry, and because [father] has not helped me financially with my baby which has put me in a huge financial hardship, resulting in state assistance. (I have already given notice to move out of my apartment and job. Travel arrangements have been set and it would cause an even greater hardship to change the orders at this point.)" Mother also alleged that father had subjected her to threats and abuse at various points.

On May 17, 2016, mother requested permission to appear by telephone at the June 8, 2016 hearing on father's May 13, 2016 RFO. On May 26, 2016, Judge Jack Jacobson granted mother's request to appear by telephone for the June 8, 2016 hearing (the

document memorializing the ruling noted the requestor resided out of state). The parties were also scheduled for a hearing on a separate issue (unrelated to the custody matter) to be held on June 15, 2016. On May 17, 2016, mother also filed a request to appear telephonically at the June 15, 2016 hearing. In her request, mother stated she was moving "out of state" to Texas and would be "on the road traveling to new residence." Mother noted she had provided "45 day notice" of her move to father, as required under the court's March 2, 2016 custody order.[2] On June 1, 2016, Judge Jacobson granted this request as well (the document memorializing his ruling noted the requestor resided out of state).

The hearing on father's May 13, 2016 RFO for modification of the March 2, 2016 custody order, was held on June 8, 2016, before Judge Alan Cassidy. Father was present in court with counsel, while mother appeared telephonically and in pro per. Following the hearing, on the same day, the court issued its findings and order after hearing. The FOAH notes the court "admonished" mother regarding "the current orders" (i.e., the temporary emergency order prohibiting mother from changing [K.F.'s] residence from Stanislaus County). The court further "issue[d] an Order to Show Cause to [mother] to appear on June 15, 2016, as to why she should not be sanctioned for her failure to comply with the court orders." The court continued the hearing on father's May 13, 2016 RFO to June 15, 2016, and ordered mother "to appear in person at the next hearing on June 15, 2016." The court further stated: "[T]he minor child is ordered to be in Stanislaus County on June 15, 2016. [Mother] is advised that her failure to comply with the court's order will lead to a warrant being issued." In addition, the court rescinded any prior permission granted to mother to appear telephonically on June 15, 2016. Finally, the court ordered

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2 Mother referred to the March 2, 2016 order as the February 17, 2016 order (as the March 2, 2016 order originated as the February 17, 2016 order).

mother "to provide proof on June 15, 2016, of her completion of orientation at Sierra Vista."

A hearing was held on June 15, 2016, before Judge Alan Cassidy, on matters that were continued from the June 8, 2016 hearing, including father's RFO for modification of child custody and visitation, the order to show cause regarding mother's failure to abide by the court's temporary emergency order, and to ascertain whether K.F. had been returned to Stanislaus County per the court's June 8, 2016 order. Father appeared at the June 15, 2016 hearing with counsel; mother failed to appear. The court issued a minute order on the same day as the hearing. The minute order noted: "[Mother] contacted the courtroom prior to the hearing to request a continuance to obtain counsel. The request for a continuance is DENIED." The minute order further noted: "The Court shall issue a Warrant of Attachment for [mother], in the amount of $50,000.00, day or night service." Finally, the minute order noted: "Court grants SOLE LEGAL AND PHYSICAL CUSTODY of [K.F.] ... to Respondent/Father. Court denies visitation to Petitioner/Mother at this time."

C. Mother's RFOs to Modify Child Custody and Visitation After Arrest in Oklahoma

On October 14, 2016, mother was arrested in Oklahoma. On October 18, 2016, law enforcement officials from Stanislaus County traveled to Oklahoma to retrieve K.F. (who was temporarily placed in foster care) and bring her back to California. The Stanislaus County law enforcement officials interviewed mother in Oklahoma, on October 18, 2016. K.F. was brought back to California on October 19, 2016, where she was reunited with father.

On October 21, 2016, mother, now represented by counsel, filed a request for temporary emergency orders seeking temporary physical custody, care, and control of K.F. The request was received by the court on October 18, 2016; on October 20, 2016, the court denied the request pending a hearing and mediation; the papers were filed on

October 21, 2016. Mother's request for temporary emergency orders was accompanied by an RFO seeking modification of the child custody and visitation order entered by the court on June 15, 2016, in which the court had granted sole legal custody and sole physical custody to father. In the RFO, which was filed on October 21, 2016, mother sought both legal custody and physical custody of K.F. Mother filed declarations in support of her request dated October 13, 2016, with one declaration specifying that she had signed it in Salida, California. The matter was set for hearing on November 17, 2016.

On October 18, 2016, father filed a responsive declaration to mother's RFO regarding child custody and visitation, in which he opposed mother's RFO to modify the June 15, 2016 custody order. Father stated in his declaration: "I have not had physical contact with our daughter since May 2016, when [mother] abducted her from the State of California. I am informed and believe that despite [mother's] declaration which she alleged to have executed on October 13, 2016, under penalty of perjury under the laws of the State of California that she was in Salida, California, that [mother] was out of state with our daughter."

On November 17, 2016, the court held a hearing on mother's October 21, 2016 RFO; both mother and father were present with their respective counsel. The court issued its findings and order after hearing on custody and visitation on the same day, "based upon the agreement of the parties." The FOAH specified that father would have sole legal custody and sole physical custody of K.F. The order further specified that the parties could "arrange care, custody, and control as they can agree." Failing that, father would have "all non-designated time with the child" and mother would have supervised visitation at Sierra Vista.

On January 26, 2017, mother filed another RFO seeking modification of the child custody and visitation order entered on November 17, 2016, granting sole legal and sole physical custody to father and supervised visitation to mother. Mother sought a

modification of the November 17, 2016 order to provide for joint legal custody and joint physical custody. In a declaration filed with her RFO, mother alleged that father had violated the November 17, 2016 order, which required both parties to complete orientation at Sierra Vista within seven days of the order. Mother alleged that father "took two months to complete the paperwork and register for Sierra Vista," whereby it had been "over 100 days" since mother had seen K.F. Mother further stated: "Sin[c]e the last hearing, I have completely established myself locally. I am now employed in Modesto, CA, and am now residing in Manteca, CA." The matter was set for hearing on March 22, 2017.

In the meantime, the court entered a judgment of dissolution in the underlying dissolution action. As to custody and visitation arrangements, the November 17, 2016 custody and visitation order was attached to the judgment of dissolution.[3]

On March 17, 2017, father filed a responsive declaration to mother's January 26, 2017 RFO, in which he opposed mother's request for modification of the November 17, 2016 custody and visitation order. At the hearing on March 22, 2017, the court denied mother's modification request. The court's FOAH stated: "Upon motion of [father], the matter is dropped from calendar. The Court finds that there has not been a material change of circumstance to merit modification of the current custody and visitation order."

D. Mother's RFO to Modify Custody and Visitation Culminating in Contested Hearing

On April 4, 2017, mother filed an RFO seeking to modify the November 17, 2016 child custody and visitation order as encompassed in the February 17, 2017 judgment of dissolution. Mother requested that she be granted sole legal custody and sole physical custody of K.F. and that father be granted supervised visitation. The matter was set for

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[3] The judgment appears to have been entered as a default judgment as to mother.

hearing on June 21, 2017. Father filed a responsive declaration in which he opposed mother's request for modification of the existing custody and visitation order.

A hearing on the matter was held on June 21, 2017. Both parties were present with their respective counsel. The court ordered the parties to mediation and set a further hearing on July 26, 2017. Following the hearing on July 26, 2017, the court issued a FOAH, based on the agreement of the parties, in which the court referred the matter for "a focused Family Court Services Evaluation of limited scope," so that documentation and allegations presented by the parties could be investigated. The court maintained sole legal custody and sole physical custody with father and supervised visitation with mother. The court continued the matter to October 12, 2017, "for hearing on the Family Court Services Evaluator's Report."

The court held a hearing on the matter on October 12, 2017; both parties were present with their respective counsel. The court received the report of the family court services evaluator. The evaluator recommended the court maintain sole legal custody and sole physical custody with father and supervised visitation for mother but noted that multiple relevant issues needed further exploration. The court adopted the evaluator's custody recommendation with a limited modification (the court permitted mother to have a double visit with K.F. on one Saturday every month). Mother objected to the evaluation and recommendation and the court's adoption thereof. The matter was therefore set for contested hearing on the issue of custody and visitation. The same day, the court issued a FOAH regarding custody and visitation, pending the contested hearing. The FOAH adopted the evaluator's recommendation with the limited modification described above. This was the operative custody order (dated October 12, 2017) at issue in the contested hearing.[4]

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[4] The order provided that "[t]he parties shall arrange care, custody, and control as they can agree." The order further specified, as to visitation, that, "if there is no agreement," then "[t]he father shall have all non-designated time with the child," and

E. Three-Day Contested Hearing Held (September 10-11, 2018, and January 22, 2019)

A contested hearing on the operative custody order was held over three days: September 10, 2018, September 11, 2018, and January 22, 2019. The contested hearing was held before Judge Alan Cassidy, who had handled the prior substantive proceedings in the matter as well. Mother called six witnesses: herself; an expert on intimate partner battering; a child abduction investigator from the Stanislaus County District Attorney's Office; K.F.'s pediatrician; a Sierra Vista staff member; and father. As for father's case, father testified on behalf of himself and called no other witnesses.

1. Mother's Testimony

Mother testified that she and father started dating in May 2014. They were married in July 2014 (the marriage was later found to be invalid) and lived together in Turlock. Father committed domestic violence against mother on December 6, 2014, whereupon, on December 7, 2014, they separated. Three weeks later mother discovered she was pregnant. Subsequently, in August 2015, mother and father got remarried; the second marriage was legal. K.F. was born later that month. Mother then moved out on November 1, 2015. On December 22, 2015, she filed a petition for dissolution of the marriage.

While mother was on the witness stand, the court stepped in to add that custody orders in the matter were issued on March 2, 2016; the court went on to describe the orders. Pursuant to the orders, mother had all undesignated time with K.F. and father had supervised visits at Sierra Vista; the order further provided that "[n]either party shall change the child's current county [of] residence from Stanislaus County without

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mother would have supervised visits with the child "at the discretion of the designated supervisor." The order did not otherwise restrict the number of supervised visits mother could have with the child. In addition, the order provided that mother was permitted to have a double visit with the child once a month, on a Saturday.

providing the other party 45 days prior written notice." At the time mother had sole legal and physical custody of K.F.

The court then went over the procedural history of the case starting in May 2016, when father obtained a temporary emergency order prohibiting removal of the child from Stanislaus County, and filed a request to modify the then-existing custody order, which request was set for hearing on June 8, 2016. The court stated: "On May 16th [mother] filed two requests for telephone appearances. They were both considered by Judge Jacobson. And in it she states on the front page of her request for telephone appearance ... moving out of state. Will be on the road traveling to new residence. 45-days notice provided to [father]." The court added that Judge Jacobson granted the requests for telephone appearances.

The court then described what occurred at the June 8, 2016 hearing on father's request for modification, at which mother appeared by telephone and father appeared in person with counsel. The court observed: "The Minute Order from that appearance date reads, '[Mother] is admonished as to the current orders. [Mother] is ordered to appear in person at the next hearing on June 15th, 2016. The minor child is ordered to be in Stanislaus County on June 15th, 2016. [Mother] is advised that her failure to comply with the court order will lead to a warrant being issued.' [¶] Now, this is noted as paragraph one. [¶] Paragraph two. 'The court issues an order to [show] cause [mother] to appear on June 15, 2016 as to why she should not be sanctioned for her failure to comply with the court order.' [¶] Three. '[Mother's] request to appear telephonically on June 15th is rescinded.' [¶] Four. '[Mother] is ordered to provide proof on June 15th, 2016 of her completion of the orientation at Sierra Vista.'"

The court further noted that the record showed mother had been served in court, on May 18, 2016, with the papers regarding father's request for a temporary emergency order prohibiting removal of K.F. from Stanislaus County. The court then described what occurred at the June 15, 2016 hearing. The court noted that mother called the courtroom

prior to the June 15, 2016 hearing to request a continuance to obtain counsel, which continuance was denied. The court also observed that a warrant of attachment was issued for mother in the amount of $50,000, day or night service, and that the court granted sole legal and physical custody of K.F. to father and denied visitation to mother. Finally, the court turned to mother's trial counsel and stated: "So with that background [as] to where we are. If you would like to inquire of [mother] about those facts."

Mother testified she had sent an email to father on May 3, 2016, stating she was leaving with K.F. Mother testified the email served as 45-day notice to father of mother's intention to change K.F.'s county of residence, as required by the then-existing custody order. Mother testified she believed she legitimately could leave the county with K.F. upon providing the above-described notice. In the end, mother ended up leaving the county about a week before the 45 days were up. Mother said father subjected her to numerous threats upon receiving the notice. For example, father said mother would never have K.F. again and would never see K.F. again. Mother believed K.F.'s life was in danger. Mother was thinking of father's prior acts of domestic violence against mother.

Mother testified she was served with paperwork regarding father's requests to change custody in response to her notice to him to the effect she was leaving with K.F. Mother did not recall seeing, in that paperwork, any order prohibiting her from taking the child out of Stanislaus County. In fact, when mother made the requests to appear by telephone at the related hearings, mother disclosed the fact that she was relocating out of state. Mother obtained permission to appear by telephone at the hearings. And mother appeared by telephone at the June 8, 2016 hearing, before Judge Cassidy. Mother was in Texas and Judge Cassidy ordered her to return to California for a hearing on June 15, 2016. Judge Cassidy told her he would issue a warrant should she fail to return. Mother was not able to return to California as she had no money and no way to get back. Mother made attempts to secure counsel to appear on her behalf at the June 15, 2016 hearing but

was unsuccessful. Mother paid one attorney for a consultation, but that attorney was unavailable to appear on the requisite date. Mother called the court on June 15, 2016, for a continuance to enable her to find counsel, however, her request for a continuance was denied. Thereafter, mother continued to make efforts to hire an attorney, but was unsuccessful as she was out of funds.

Mother testified that before she left California, father made several threats. Mother filed a police report regarding the threats. Mother made several calls to the district attorney's office in connection with her police report. Mother was also working with the district attorney's office in an effort to file a "good cause" report with the court. Eventually, on September 28, 2016, someone at the district attorney's office told mother a felony arrest warrant had been issued for her, for child abduction. Mother then talked to Investigator Cristina Magana, who was with the child abduction unit of the district attorney's office. Magana told mother that Magana had been looking for mother for the last four months. Mother hired an attorney the very next day to represent her in both the family and the criminal matter. Mother told the attorney to put the family law matter on calendar immediately.

In the meantime, mother was arrested in Oklahoma as she was driving to McDonald's with K.F. Mother gave a statement to Investigator Magana, who had come out to Oklahoma to interview mother. After 11 days, mother was returned to California to face criminal charges related to child abduction. At that point, in October 2016, the custody order in effect precluded any visitation for mother; that was subsequently changed, in November 2016, to allow mother to have supervised visits at Sierra Vista. Mother completed her orientation with Sierra Vista within seven days as ordered by the court. Mother tried to see K.F. as soon as possible but did not see her until February 1, 2017, through no fault of her own. Mother tried to see K.F. as much as possible thereafter, but the visits were not always "accepted."

The existing custody order permitted mother to see K.F. "one Saturday a month [for a] double visit." Mother explained visits were "normally 45 minutes," but mother was permitted to see K.F. for "an hour and a half." However, mother had not been able to see the child every month despite her efforts to do so; several visits were denied. Counsel asked mother to describe the process of setting up visitation at Sierra Vista. Mother testified: "I call Sierra Vista and I ask for an appointment. They have to call [father] to see that he can make it. And then they call – they call me back if he denies it ... [¶] [a]nd to reschedule another." Father frequently denied visitation. Counsel asked mother: "From November 17th when the order was made, 2016, November 17th, 2016, how many hours have you visited with your child?" Mother responded: "About 24." Counsel asked: "Would you like to visit more with your child?" Mother replied: "Yes." Mother noted that her bond with K.F. had changed over time given the limited visitation. Mother now had to regularly inform K.F. that mother was K.F.'s mother because K.F. was confused on the issue.

Mother's counsel circled back to question mother again about the period when mother left California in May 2016. Counsel showed mother the court filings father made at the time to obtain an emergency order prohibiting mother from changing mother's residence out of Stanislaus County and to obtain modification of the existing custody order. Mother said the paperwork looked familiar to her. Mother said she was in the court on May 18, 2016, for a hearing on a child support issue; that day father's counsel handed mother a packet of paperwork. Mother testified the paperwork provided by father's counsel did *not* contain the order signed by Judge Jacobson to the effect that mother shall not change the residence of K.F. Mother testified that when she left California, she was not in receipt of Judge Jacobson's order. Mother's counsel then had the following exchange with the court:

"[Mother's Counsel]: I would ask the Court to take judicial notice of the family law file filing May 18, 2016. It's a

Proof of Service where [father's counsel] signed under penalty of perjury that she served this packet. And she lists the things that she served. One was a request for order. One was a declaration. But nowhere on this is an order listed. I would like the Court to take judicial notice.

"THE COURT: I'll take judicial notice that's what it says. And I'll also take judicial notice that that order is physically attached to the Request for Order that you're making reference to."

After mother was extradited from Oklahoma, mother remained in California for a year, living in Salida in Stanislaus County, before relocating to Utah in October 2017. Mother worked as an insurance agent the entire time she was in California. Mother made efforts to increase visitation and to change visitation to unsupervised visitation away from Sierra Vista. In Utah, mother worked as a payroll clerk for a company; she had been employed there for a year.

Mother had the following exchange with counsel at the end of her testimony:

"Q. If this Court were to allow you to visit your child in Utah, how would you assure the Court that you would bring her back to [father] when it's his time to see the child?

"A. I mean, I wouldn't go through this again.

[¶] ... [¶]

"Q. Do you have the means to bring her back to California when the Court orders you to?

"A. Yes.

[¶] ... [¶]

"Q. ... [I]f the Court says you can see [K.F.] away from Sierra Vista but you have to live in California and you have to stay in California, would you do that?

"A. Yes."

"Q. Okay. [¶] Do you think that over the last amount of time since you've been visiting with your daughter at the Sierra Vista[,] do you in your opinion for yourself, is that a sufficient amount of time to help raise your child?

"A. No."

2. Testimony of District Attorney Criminal Investigator Cristina Magana

Mother called Stanislaus County District Attorney's Office Criminal Investigator Cristina Magana. As part of her duties, Magana, a peace officer, worked with the child abduction unit of the district attorney's office. Magana testified that father sought the assistance of the child abduction unit, whereupon Magana was assigned to the matter and began an investigation. Magana discovered that the body attachment warrant issued by Judge Cassidy would not "show up in the national database," and would not be effective outside of California. Accordingly, around September 8, 2016, Magana secured an arrest warrant that was entered into the national database and would immediately be effective nationwide.

Thereafter, on September 27, 2016, mother reached Magana on the telephone. Magana testified: "Her phone call to me was regarding completing a good cause report and to be able to get back on the calendar for her [body attachment] warrant." Magana explained that "[a] good cause report is a defense for the person taking the child," in the case of criminal charges against that person. Mother told Magana she was seeking a good cause report on the advice of an attorney.

During the phone call, Magana repeatedly asked mother for mother's contact information, but mother refused to provide it. Mother's tone was "careless" during the discussion; mother just wanted to focus on getting a good cause report. Magana testified: "At one point [mother] told me that she didn't want to tell me her location unless I guaranteed her that I wouldn't send somebody out to find her and arrest her for the warrant that Judge Cassidy had issued for her and that I wouldn't take her baby." In a

subsequent phone call to the district attorney's office, mother provided a receptionist with a physical address in Salida, California, and a phone number with a local area code. Magana determined the address was invalid and the phone number was actually father's phone number.

On October 14, 2016, Magana was informed that mother had been arrested in Oklahoma. Magana flew out to Oklahoma on October 18, 2016. That same day, Magana interviewed mother. Mother told Magana that she had left California because she was a victim of domestic violence at the hands of father and father had threatened her. Mother also said she was trying to get her matter back on calendar to get it resolved.

K.F. had been in foster care since mother's arrest. On October 19, 2016, Magana brought K.F. back to California to father. K.F. did not display any fear and Magana did not have any difficulties flying with her. Father met them at the Sacramento airport. Magana observed the interaction between K.F. and father. Magana testified: "Dad was very happy, in tears. And the baby seemed to take very well to him as well."

Magana also investigated father to some extent. Magana testified: "I had found that there had been domestic violence that had been sometime past." On cross-examination, Magana was asked by father's counsel: "What was the purpose of your investigating his criminal history?" Magana responded: "When I do child abduction cases, I look at all potential reasons as to why the mother might flee. And it may be domestic violence, in which case when I reach out to those females, or a male, I essentially advise them of the good cause if there is a valid reason as to why they have left the area to then try to proceed with them and get them to come to court." Father's counsel then asked Magana: "Okay. Did you explore the possibility of placing the child in foster care rather than returning [her] into the custody of the father." Magana answered: "I didn't feel I needed to." Magana followed up with father and father's girlfriend to inquire into K.F.'s welfare. Magana did not have any concerns about K.F. remaining with father. Magana subsequently clarified she was under court orders to

bring K.F. to California, and hand her into father's custody. Magana said she did not question the court's order.

The court, for its part, also briefly questioned Magana about her interview of mother in Oklahoma. Magana did not recall whether mother acknowledged receipt of the court order prohibiting her from removing K.F. from Stanislaus County. Mother did tell Magana that Judge Cassidy had ordered mother, at a hearing on June 8, 2016, to return to California and appear in person at the June 15, 2016 hearing. Magana testified that she had queried mother about her failure to appear at the June 15, 2016 hearing. Specifically, Magana said: "I had asked [mother] why she had taken so long to get back into court after she had failed to appear at the June 15th hearing. And she essentially told me [whether] I didn't think she had done enough already considering her divorce and all the child custody issues that she was having." The court asked Magana: "So did she relate to you that was – she felt justified [in] not returning because she had done enough?" Magana responded: "Correct."

3. Testimony of Jessica Bush, Sierra Vista Staff Member

Jessica Bush, a program assistant and supervised visit facilitator at Sierra Vista, testified as a witness in mother's case. Bush was familiar with the matter and both parties. Bush testified that father underwent orientation at Sierra Vista on January 17, 2017. The first child visit in the matter occurred on February 2, 2017. Bush said mother and the child enjoyed their visits together.

4. Testimony of Mother's Expert Witness on Intimate Partner Battering

Dr. Linda Barnard testified as an expert witness on intimate partner battering in mother's case. Dr. Barnard testified that domestic violence is caused by the perpetrator's need to exercise "power and control" over the other person in a relationship. She testified use of threats is one aspect of the way in which the abuser exerts power and control. She testified the pattern often persists even after the relationship has ended, because the

abuser does not want to lose control even if the other person leaves. The victim becomes more desperate, over time, to stay safe and to figure out ways to get away from the abuser.

Dr. Barnard testified that victims of domestic violence experience "low self-esteem, depression, anxiety, and many times posttraumatic stress disorder." Communication with the abuser can act like a trigger for the victim. Dr. Barnard testified: "[Victims] are hypervigilant about scanning for trauma. So they may have a heightened sense of danger as part of the trauma response so that something they see that might not be to someone else a traumatic or threatening event may be threatening to them because they have that heightened sense of danger that they've learned from their past experience." Children who are exposed to domestic violence in any form also consequently develop trauma responses. A victim of domestic violence, who interprets communications from the abuser as a threat, may leave with her child to put distance between herself and the abuser.

5. Testimony of Minor's Pediatrician, Dr. Liza Marie Pham

After K.F. was returned to California and placed in father's custody, she was seen by pediatrician Dr. Liza Marie Pham of Kaiser Permanente. Mother called Dr. Pham as a witness in her case. Dr. Pham performed K.F.'s "18-month physical" on March 14, 2017. This was K.F.'s first visit to Dr. Pham; Dr. Pham became K.F.'s primary care provider at that point. Dr. Pham found K.F. to be a normal, healthy child.

Dr. Pham was asked, with reference to a medical record, about K.F. being seen by another Kaiser Permanente medical provider, Dr. Indu Gupta, on July 13, 2017. Dr. Gupta documented that K.F. had a possible vaginal tear. During K.F.'s earlier, 18-month physical, Dr. Pham had not noted a vaginal tear. However, Dr. Pham emphasized she did not normally inspect the genitals during these physicals "unless there was a concern" of some sort, and no concern was brought to her attention in K.F.'s case.

Dr. Pham was still K.F.'s pediatrician at the time of her testimony. She had seen K.F. for a physical as recently as the prior week. Dr. Pham had no concerns regarding K.F.'s overall health and well-being.

6. Father's Testimony

Father testified that, at the time of the contested hearing, K.F. was three years old and was attending a full-day preschool program, five days a week. Father had K.F. "full time," while mother saw K.F. "for an hour and a half once a month at Sierra Vista." This arrangement had been in effect for at least "[a] year and a half," or so. Father testified that he wanted to maintain the existing child custody and visitation arrangement. He testified he had cooperated with scheduling visits for mother at Sierra Vista and intended to continue to cooperate in that regard. Father acknowledged that at the beginning of the existing custody arrangement, he had canceled visits at Sierra Vista on various occasions. For example, he canceled a visit in February 2017, because he was going to be out of town. Then, in March 2017, he canceled a visit because of his work schedule. He canceled another visit in March 2017, because K.F. was sick.

Father noted that when K.F. was first returned to him, she was very afraid of men and strangers. Over time, that fear had subsided. Regarding the vaginal tear diagnosed on K.F. at Kaiser Permanente, father said that determination was not made by Dr. Pham, K.F.'s regular doctor, but by another Kaiser physician who was filling in for Dr. Pham. Father was in the room when the physician made her observation. Father explained: "The reason we took [K.F.] to the doctor was because she was having night terrors for months, and we weren't sure the reason for it. And so we took her to the doctor. [¶] And after we described what [K.F.] was going through, she asked if she could take a look at her physically. And that's when she noticed the tear or she said it was a tear." Mother's counsel asked father: "Isn't it true though that the tear was observed by a doctor some ten months after you brought the child back or had the child back in your

custody? The tear was noticed some ten months later?" Father responded: "She said it was an old tear."

Regarding the time period before mother took K.F. out of state, father recalled receiving an email from mother in which she gave him notice that she was moving the child's residence. Father turned the email over to his attorney, and they filed paperwork in court to prevent that. Father denied threatening mother and sending her threatening texts. Father pleaded no contest to domestic violence charges involving him and mother. Father testified mother's report was fabricated, the charges were false, and he only pleaded to the charges because the case was taking too long and was interfering with his work. However, father acknowledged there was physical contact between him and mother during the incident underlying the charges. Father said he did not trust mother because she fabricated the report that caused him to be arrested for domestic violence.

Prior to mother leaving the state with the child, father did not have any concerns about her fitness as a mother. However, at this point, father was concerned about mother having unsupervised visits with K.F. because mother could "run away with [K.F.] again." Father was, however, willing for mother to have visits with K.F. under the supervision of father's parents. Father's parents were agreeable to supervising mother's visits with K.F. Father believed it would be feasible for mother to visit with K.F. "for a few hours once a month on a Saturday." Father clarified that after a few more months at Sierra Vista, mother could switch to seeing K.F. for "six hours on a Saturday," under the supervision of father's parents. Father also said that he could see mother having unsupervised time with K.F. "down the road."

7. Exhibits

During the contested hearing, mother moved several exhibits, including relevant records from the trial court's docket, into evidence.

(a) Minor's Medical Records

Mother's Exhibits B and C consisted of K.F.'s medical records from Kaiser Permanente in Modesto. The records reflected that on July 13, 2017, K.F. was seen by Dr. Gupta, for a "behavioral problem." Dr. Gupta documented the history at the time as follows: "Biological mom kidnapped [K.F.] at the end of May 2016 (10 mo). Was found in October 2016 (15 mo). Came back with bad diaper rash, very fearful. She is very fearful with males—won't go to anyone except dad. Doesn't like stranger. She used to love baths, after getting her back, would scream when getting in the tub. Wakes up 3-4 times a night wanting milk. Sometimes wakes up screaming with eyes closed. Bio mom now has supervised visits at Sierra Vista, nightmares more common after visiting mom." Dr. Gupta conducted a genital-urinary examination. With respect to this examination, she noted: "There is a well-healed vaginal tear on left inferior margin. Otherwise normal female external genitalia." Dr. Gupta noted: "[A]dvised [family] to have evidentiary exam done. There is no way that I am aware of to say when or exactly how tear occurred, and sexual abuse cannot be ruled out. I advised taking patient to Doctors Medical Center for evidentiary exam. They will not be able to date or find DNA, but STD testing should be done with chain of evidence." Dr. Gupta further noted she had provided a "psych referral for separation and attachment issues." Finally, Dr. Gupta noted: "CPS called 6 times—4 times they hung up/call dropped, twice I left my information, agent on call has yet to call me back 2 hours later."

(b) Records Pertaining to Mother's Criminal Matter

Mother's Exhibits D and E contained records of a criminal case filed against mother on September 8, 2016. A criminal complaint filed in the Stanislaus County Superior Court alleged as follows: "On or about and between June 15, 2016 through September 1, 2016, defendant(s) did commit a Felony, CHILD STEALING, a violation of Section 278 of the California Penal Code, in that the defendant(s) did unlawfully, maliciously, and not having a right of custody, take, entice away, detain and conceal a

minor child, to wit, [K.F.], NINE (9) MONTHS OF AGE, with intent then and there to detain and conceal such minor child from the person having the lawful charge of such child." On March 20, 2017, mother reached a plea agreement whereby she conditionally pleaded no contest to "willfully and unlawfully disobeying a lawful court order issued by Judge Cassidy" in the family law matter, in violation of Penal Code section 166, subdivision (a)(4). The child stealing count was dismissed. The remaining count was to be dismissed as well, if mother avoided any new law violations and abided by all court orders, including those in a family law case, for one year. A protective order requiring mother to stay away from father for that duration would also be issued. On March 20, 2018, the case against mother was dismissed.

(c) Records Pertaining to Father's Criminal Matter

Mother's Exhibit D contained records pertaining to a criminal case filed against father on December 11, 2014. A criminal complaint filed in the Stanislaus County Superior Court alleged as follows: "On or about December 6, 2014, defendant(s) did commit a felony, BATTERY ON SPOUSE OR COHABITOR [in] violation of Section 273.5[, subdivision] (a) of the California Penal Code, in that the defendant(s) did willfully, unlawfully, and feloniously inflict a corporal injury resulting in a traumatic condition upon JAIMEE FINLEY, who was then and there the spouse of the said defendant." On June 5, 2015, father pleaded no contest to a misdemeanor domestic violence charge under Penal Code section 243, subdivision (e)(1) (battery on a spouse, cohabitant, or coparent). Father was sentenced to probation.

On June 5, 2015, a domestic violence criminal protective order, under Penal Code section 136.2, was issued as a condition of father's probation in the criminal case. Pursuant to the criminal protective order, father was ordered to not "harass, strike, threaten, assault (sexually or otherwise), follow, stalk, molest ... or block [the] movements of the protected [person]," namely mother. The protective order was to stay in effect for a period of three years from the date of issuance.

(d) Records from Sierra Vista

Mother's Exhibits I, J, and K consisted of visitation records from Sierra Vista. Visitation records for 2017-2018 from Sierra Vista showed father or his wife had, on multiple occasions over the course of that period, canceled visitation appointments made by mother, indicated K.F. was not available on dates requested by mother, or not confirmed visits requested by mother. The records also revealed that mother and K.F. had positive, loving interactions during their visits.

F. Trial Court's Custody Decision After Contested Hearing

During the contested hearing, the trial court framed the question it had to decide. The court said: "[T]he big issue here really and truly is the Court is weighing the abduction of the child, removing from the State of California by [mother], and the harm that she has of subjecting the child to because of that. [¶] The big question is what justification, if any, there may have been. That will be one aspect of [mother's] battered woman's syndrome theory. And whether or not the Court should find any mitigating information as a result of that balanced against the issue of [domestic violence on the part of father]."

At the conclusion of the evidentiary phase of the contested hearing, the attorneys for both sides elected not to present closing arguments; instead, the attorneys submitted closing briefs. Thereafter, on March 11, 2019, the court issued a statement of decision (decision). The decision set forth the court's reasoning and final ruling on the matter and was incorporated into a minute order. The court ruled: "[Mother's] request to modify the current custody order is denied." Mother now appeals from that ruling or final decision.

In its statement of decision, the court extensively detailed, based on "[t]he Court file and evidence adduced at the contested hearing," the procedural history of the matter as well as the testimony presented at the contested hearing. We will not reproduce those parts of the statement of decision here. However, we will summarize below the court's reasoning and determinations, as set forth in the statement of decision:

"The matter came before the Court for a contested hearing based on [mother's] Request for Order filed April 4, 2017, requesting change in the existing custody orders. The matter proceeded to custody mediation with Mr. Trent Tilby, the assigned child custody recommending counselor. The parties agreed to take part in a Family Services Custody Evaluation which was completed[,] and the generated report was filed with the Court[,] on October 11, 2017. The filed report recommended minimal changes in the existing order, but to give Petitioner/Mother the opportunity to have two supervised visits in a given weekend, as she has to travel from Utah to take part in the visits. At [mother's] request, the matter was set for this contested hearing on her ongoing request to modify existing custody orders. At issue are the [mother's] actions occurring between May and October, 2016. [¶] ... [¶]

"The primary thrust of [mother's] justification to modify the existing custody order is that she did no wrong in leaving the state with the child, she did no wrong when she did not return the child to Stanislaus County when ordered to do so on June 8, 2016, and that even if it was wrong, it was justified. The Court finds no merit in any of these arguments.

"[Father's] RFO and emergency orders were treated as a single document by the Court. The Court notes a duly executed proof of service showing that [mother] was personally served with the RFO. The Court further notes that in her Responsive Declaration to the RFO, [mother] specifically responds to the directive to remain in the state, as she notes that her travel arrangements have already been made and it would be too much trouble to change them. The Court finds that [mother] was served with the emergency order directing that she not remove the child from the state and absconded with the child in contradiction to that order.

"Even to assume for the sake of argument that [mother] was not served with the emergency order that she not remove the child from Stanislaus County, she was clearly and unequivocally ordered on June 8, 2016, that she was to be in court on June 15, 2016 and that the child was to be in Stanislaus County on that same date. [Mother] disobeyed these orders. Instead she chose to move the child from her stated location in Texas, to the neighboring state of Oklahoma. All the while seeking to avoid her responsibility to this Court by trying to retain counsel who might run interference for her in her absence and trying to convince Investigator Magana that what she was doing was justified and trying to gain her assistance, while simultaneously lying to the Investigator and concealing information from her.

"Even if it were found that [mother] had not been properly served with the emergency order that she not remove the child from Stanislaus County, she further engaged in child abduction when she did not return the child to Stanislaus County by June 15, 2016, ran from law enforcement and was finally taken in to custody four months later and the child was returned in the protective custody of the District Attorney's Child Abduction Unit.

"As to the argument that [mother] was justified in her abduction of the child because of the conduct of the [father], this Court is fully aware of the substantial issues that [father] presents. It is for that reason that the Court had ordered, prior to the abduction, [father] have limited visitation with the child. It was for his past conduct that he had suffered a misdemeanor conviction for domestic violence. However, those failings do not then put [mother] above the law and allow her to be excused from the demands of the law. This Court and the criminal court continued to stand ready to offer [mother] further relief if [father] had continued in his past conduct, and that, was the path that [mother] should have taken, not fleeing the jurisdiction with the child. [Mother's] prosecution of this case clearly demonstrates that she has not yet gained an understanding of the danger that she put her child in, her responsibility for that act and her failure to do anything but allow time to pass to show she has rehabilitated herself and no longer poses a threat to this child.

"Accordingly, [mother's] request to modify the current custody order is denied."

DISCUSSION

Mother is proceeding in pro per on appeal (as is father). Mother's opening brief raises multiple issues in a confusing and scattershot manner; her arguments are neither properly developed, nor are they supported by citations to appropriate authorities. We will address the arguments to the extent that we can reasonably discern them.

I. The Scope of the Contested Hearing

Mother contends the trial court erred in not considering the matter at issue in the contested hearing to be a move-away determination. Mother contends the parties agreed the contested issue was a move-away determination and consequently the court erred in not treating it as such.

The question of the scope of the contested hearing was addressed by the court and the parties on the first day of the contested hearing. Mother's counsel informed the court that mother would ask for a ruling allowing her to move the child to Utah, where mother was living at the time. Mother's counsel noted: "And so I think that whatever the Court's ruling is, that we should not be precluded from asking for that during this hearing. We believe that's what this hearing is, and we believe it's been sufficient notice on all parties, including the Court, to make that determination." Father's counsel objected on grounds that the contesting hearing was "the result of the filing of a request for order by [mother] when she was pro per, that filing being made on April 4th, 2017." Father's counsel noted: "The relief that [mother] sought with that filing on April 4th, 2017 was sole legal and sole physical custody [for mother,] with supervised visitation [to father,] until [his] restraining orders expire. [¶] That is the formal request that [mother] made in the moving papers which set this matter into motion. There has not been an amended request for order seeking other relief from this court. Admittedly there have been a number of declarations and other statements made, but the operational request for order was filed on April 4th, 2017. The relief sought at that time was sole legal, sole physical custody to mother with supervised visitation to father until a restraining order expired."

The court concluded: "It is from the request [for] order on April 4, 2017 that gave rise to the evaluation by [the mediator], which then set the matter for a contested hearing. Actually, I guess this was back in April and has continued over to today. [¶] So, again, the request for the Court to consider a move away order has been unnoticed and will not be considered by the Court at this time."

The Court correctly noted that the contested hearing was the result of mother's RFO dated April 4, 2017, which RFO did *not* request a move-away order. In the operational RFO, mother only requested modification of the existing custody order to

grant sole legal custody and sole physical custody of K.F. to mother and supervised visitation to father until his restraining order expired.

Mother now argues, "if [father] does not have an issue with sharing custody in Utah, why does the superior court?" However, the record shows that father objected to characterizing the contested hearing as a move-away determination. Mother has provided no additional argument, record citations, or citations to authority to establish the court's determination of the scope of the hearing was erroneous. Accordingly, we reject mother's contention that the court erred in this regard.

II. Court's Evidentiary Rulings

Mother next challenges a number of evidentiary rulings made by the family court with respect to the contested hearing. We will address mother's evidentiary challenges in series. We review the family court's evidentiary rulings for abuse of discretion. (*People v. Thompson* (2010) 49 Cal.4th 79, 128; *In re Marriage of Dupre* (2005) 127 Cal.App.4th 1517, 1525.) It is mother's burden as appellant to demonstrate not only that the family court's evidentiary rulings were an abuse of discretion, but also that any such errors were prejudicial. (*Christ v. Schwartz* (2016) 2 Cal.App.5th 440, 446-447 [appellants must "show that it is reasonably probable that they would have received a more favorable result ... had the error not occurred"].)

A. Deposition of Oklahoma Department of Human Services Case Worker

Mother argues the trial court erroneously excluded the deposition of Liz Henninger, an Oklahoma Department of Human Services case worker. While the court was discussing the parties' motions in limine on the first day of the contested hearing, mother's counsel asked the court to admit into evidence the transcript of the deposition of Liz Henninger. When mother was arrested in Oklahoma, Henninger took custody of K.F., temporarily placed her in foster care, and handed her over to Stanislaus County District Attorney's Office Investigator Cristina Magana for return to California.

Mother's counsel contended that Liz Henninger's deposition testimony was relevant for showing K.F. was in good condition when Henninger took custody of her, following mother's arrest in Oklahoma. Mother's counsel stated: "Liz Henninger observed the baby, did a review of the child, looked at the body without a diaper to see if there was any abuse or any problems, and found that there was no diaper rash, there was no issues, and the child was in otherwise good health."[5] In response, father's counsel stated: "I am willing to remove the allegation that when the minor child was returned from Oklahoma to California that she was in some sort of a poor condition. I'm willing to take that off the table so we can just address the issue of a child sharing arrangement that is in the best interest of this child." The court ultimately ruled: "By offer of [father's counsel], [father] shall not pursue what the physical condition of the child was when the child was received by CPS in the State of California. The Court no longer finds relevant the deposition testimony of Ms. Henninger."

Mother's argument to the effect that the court's ruling was erroneous consists of three sentences. Mother contends Henninger's deposition testimony was erroneously excluded because it would have shown mother was not a threat to the child. We are not persuaded by mother's argument, given the relevant record summarized above. We conclude the court did not abuse its discretion in excluding Henninger's deposition testimony. Furthermore, even were we to assume error in this regard, mother has not shown prejudice.

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[5] In her deposition, Liz Henninger testified that she changed K.F.'s diaper when she first received the child. Henninger stated: "I remember [K.F.] was in a dress. I don't recall removing her dress, but I was able to visually see, like, her stomach. Because I was giving her a diaper change, I did see her genitals and her bottom." Henninger said in the course of changing K.F.'s diaper, she did not notice any diaper rash, bruises, or vaginal tears. Henninger's testimony did not suggest that she conducted a detailed physical examination of K.F.

B. Proposed Testimony of Father's Three Ex-Wives

Mother next argues, in one sentence, that the court erred in excluding father's ex-wives as witnesses. This issue was also discussed on the first day of the contested hearing, when the court heard the parties' in limine motions. Mother sought to call father's three ex-wives as witnesses. Mother's counsel stated, as his offer of proof, that the testimony of the three ex-wives was relevant to show mother's state of mind when she left the state. Mother's counsel noted that various third parties had alerted mother that these ex-wives had suffered abuse inflicted by father. Mother's counsel stated: "[M]y client was aware of prior abuse because other people told her that [father] had abused this person, this person, this person." The court excluded the proffered witnesses as they had not provided any information to mother that would affect her state of mind, nor were they aware of mother's state of mind. In contrast to her counsel's offer of proof as to the relevancy of the ex-wives' respective testimony, mother now simply contends: "These testimonies are relevant to disclose the severity of [father's] abuse as it relates to my defense." Mother has established neither abuse of discretion on the court's part in excluding these witnesses, nor prejudice arising from the court's ruling. Accordingly, we reject her claim in this regard.

C. Mediator Trent Tilby's Custody Evaluation Report

Mother argues, in a difficult to understand paragraph, that the court erred in excluding the custody evaluation report submitted by Family Court Services' Evaluator Trent Tilby. Mother's contention has no merit. During the contested hearing, the trial court noted it expected Trent Tilby would be called as a witness.[6] However, father's counsel told the court that father had not been "able to secure [Tilby] as a witness" at the

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[6] Tilby was the family court services evaluator who conducted a custody evaluation and submitted a report and recommendation to the court; mother had objected to Tilby's recommendation and report; the court adopted Tilby's recommendation in a custody order pending a contested hearing on the matter.

contested hearing, because father "was unable to pay his witness fee." Father's counsel proposed the parties could stipulate to admission of Tilby's report. Mother's counsel declined the invitation, stating, "We're not going to stipulate to that." The matter again came up later in the proceeding; mother's counsel again declined to stipulate to admission of Tilby's report. The record reveals no error on the part of the court regarding the admission or exclusion of Tilby's report. Had mother stipulated to admission of the report into the evidence, the court would have received it.

D. Audio Recording of Investigator Cristina Magana's Interview of Mother

Mother next complains, in two sentences, that the court erred in excluding the audio recording of Investigator Cristina Magana's interview of mother in Oklahoma, because the audio recording was necessary to "ensure the integrity of the [interview transcript]." This contention has no merit.

In cross-examining Investigator Magana, father's counsel sought to introduce into evidence a transcript of Magana's interview of mother on October 18, 2016, in Oklahoma (after mother's arrest there). Mother's counsel said he had no objection to admission of the transcript into evidence. Mother's counsel further stipulated the transcript was a fair and accurate transcription of Magana's interview of mother on October 18, 2016, in Oklahoma. Subsequently, mother's counsel stated: "If the transcript is in, I would like the audio to be in if the Court would like to listen to the conversation." The court responded: "I would prefer to read it actually." Mother's counsel responded: "Okay." Mother's counsel then stated he nonetheless wanted to admit the audio recording of the interview. Specifically, he said: "I want to make sure there are no mistakes in the transcript. That's all." Mother's counsel added he had no objection to admission of the transcript into evidence, but if any "problem with the transcript" came to light, he would bring it to the court's attention. The court said, "[o]kay," and added that either counsel could raise "any issues with the transcript and/or tape" with the court.

Mother now argues the court erred in refusing to admit the audio recording of Magana's interview with mother in Oklahoma for purposes of "ensuring the integrity" of the transcript. In light of the record set forth above, mother has established neither error on the court's part in this regard, nor prejudice.

E. Child Abduction and Judicial Bias

(1) Child Abduction

Mother appears to take issue with the court's reference, in its statement of decision, to child abduction. Mother's argument is disjointed, includes multiple scattershot points (some of which bear no relationship to others), and is unsupported by appropriate legal citations. Accordingly, we reject this argument as improperly raised and thereby waived. (See *Yield Dynamics, Inc. v. TEA Systems Corp.* (2007) 154 Cal.App.4th 547, 557 [appellants have the burden to demonstrate error, provide adequate citation to the record, and provide reasoned argument with citation to supporting legal authorities]; *Cahill v. San Diego Gas & Electric Co.* (2011) 194 Cal.App.4th 939, 956 ["'The absence of cogent legal argument or citation to authority allows this court to treat the contention as waived.'"]; *People v. Stanley* (1995) 10 Cal.4th 764, 793 [a brief must contain reasoned argument and legal authority to support its contentions or the court may treat the claim as waived]; *Foreman & Clark Corp. v. Fallon* (1971) 3 Cal.3d 875, 881 [where a brief lacks reasoned analysis, we decline to reach the merits of any claimed error].)

In any event, to the extent mother is challenging the family court's finding that she violated court orders by moving the child's residence out of Stanislaus County and/or by failing to bring the child back to California as of June 15, 2016, her claim has no merit. Mother essentially argues the family court's finding to this effect is not supported by substantial evidence. (See *Chalmers v. Hirschkop* (2013) 213 Cal.App.4th 289, 300 [trial court's factual findings are reviewed for substantial evidence].)

The family court noted in its statement of decision: "Even if it were found that [mother] had not been properly served with the emergency order that she not remove the child from Stanislaus County, she further engaged in child abduction when she did not return the child to Stanislaus County by June 15, 2016, ran from law enforcement and was finally taken in to custody four months later and the child was returned in the protective custody of the District Attorney's Child Abduction Unit." The court's findings are amply supported by the record.[7]

(2) Judicial Bias

Mother supplements her argument that the court improperly found she had violated court orders with the contention that the court was biased against her. Mother suggests the court was biased because the court made evidentiary rulings in favor of father; the court made a disparaging remark toward mother's counsel; the court noted in

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[7] In challenging the court's factual finding that mother kept the child out of state in violation of court orders, mother states the court improperly granted legal and physical custody to father on June 15, 2016, because father had never submitted proof of completion of a "batterers' course" or other evidence of rehabilitation on account of having committed domestic violence, to the court. (See Fam. Code, § 3044 [establishing rebuttable presumption against granting custody to persons found to have perpetrated domestic violence].) We cannot speak to that issue, however, because the reporter's transcript of the June 15, 2016 hearing is not included in the record on appeal. Without a reporter's transcript of the relevant hearing, we must presume the court made sufficient findings to support its decision. (*Ehrler v. Ehrler* (1981) 126 Cal.App.3d 147, 154.) Additionally, we must conclusively presume the court's findings were sufficiently supported. (*Ibid.*) On the present record, we find nothing to suggest otherwise. On the contrary, there are multiple indications in the record that father had completed a 52-week batterers' program and that the information was known to the court. Mother's own operative April 4, 2017 RFO stated that father completed a 52-week batterers' program on July 13, 2016. This would suggest that on June 15, 2016, when the court granted sole legal and physical custody of K.F. to father, the court could reasonably have concluded that father had substantially completed the course and had provided sufficient proof of rehabilitation. The family court services evaluator's report and recommendation, which triggered the instant contested hearing, also confirmed that father had completed a 52-week batterer's program.

its statement of decision that mother's expert witness on domestic violence provided no testimony to the effect that "a victim might have an ongoing response to [triggering stimuli] for a period of four months"; and the court directed a few questions to Magana when she was on the witness stand.

Canon 3B(5) of the California Code of Judicial Ethics provides a judge must "perform judicial duties without bias or prejudice" and should not, by words or conduct, manifest bias or prejudice. The Due Process Clause entitles an individual to an impartial and disinterested tribunal in both civil and criminal cases. (*Marshall v. Jerrico, Inc.* (1980) 446 U.S. 238, 242-243; *Offutt v. United States* (1954) 348 U.S. 11, 14.) Bias has most often been found to exist when the judge "'has a direct, personal, substantial pecuniary interest in reaching a conclusion against [one of the litigants].'" (*Crater v. Galaza* (9th Cir. 2007) 491 F.3d 1119, 1131; *Today's Fresh Start, Inc. v. Los Angeles County Office of Education* (2013) 57 Cal.4th 197, 214 (*Fresh Start*) [discussing bar against financially interested adjudicators], disapproved on other grounds by *People v. Freeman* (2010) 47 Cal.4th 993, 1006, fn. 4.) "Absent a financial interest, adjudicators are presumed impartial. [Citations.] To show nonfinancial bias sufficient to violate due process, a party must demonstrate actual bias or circumstances ' "in which experience teaches that the probability of actual bias on the part of the judge or decisionmaker is too high to be constitutionally tolerable." ' [Citation.] The test is an objective one. [Citations.] While the 'degree or kind of interest ... sufficient to disqualify a judge from sitting "cannot be defined with precision" ' [citation], due process violations generally are confined to 'the exceptional case presenting extreme facts' [citation]." (*Fresh Start, supra*, 57 Cal.4th at p. 219.)

Mother's bare assertion that the court was biased against mother because it made some evidentiary rulings in favor of Father is not persuasive. (See *Brown v. American Bicycle Group*, LLC (2014) 224 Cal.App.4th 665, 674 ["mere fact" of court's adverse

rulings, even if rulings were erroneous, "does not indicate an appearance of bias, much less demonstrate actual bias"].)

Mother next argues the court was biased against her because at one point during the contested hearing, the court, in response to a phrase used by mother's counsel, remarked: "The child didn't leave [the state] with [mother]. The child was taken by [mother]." We are not persuaded the court's admonishment to mother's counsel to use more precise phrasing reflected an appearance of bias, much less actual bias, on the part of the court. (See *People v. Snow* (2003) 30 Cal.4th 43, 78 [our role on appeal is not to decide " 'whether some comments would have been better left unsaid' "; " '[r]ather, we must determine whether the judge's behavior was so prejudicial' " that it undermined the fairness of the proceeding].)

Mother's complaint that the court's observation, in the statement of decision, that mother's expert witness on domestic violence provided no testimony to the effect that "a victim might have an ongoing response to [triggering stimuli] for a period of four months," is similarly unavailing. The court was referring to mother's argument that she moved out of state and stayed away, with K.F., from May 2016 until her arrest in October 2016, because of threatening communications from father prior to her departure. Mother does not argue the court's statement was an incorrect characterization of the record; rather, she argues the court's statement reflects bias against mother because the point made by the court was not raised by father. The court's correct, if harshly worded, characterization of the record cannot be said to reflect bias.

Finally, mother argues the court improperly directed a few questions at a witness (namely, Investigator Magana), reflecting a bias against mother. Preliminarily, mother has waived any challenge to the court's limited questioning of Magana because mother did not object below. (*People v. Corrigan* (1957) 48 Cal.2d 551, 556 ["It is settled that a judge's examination of a witness may not be assigned as error on appeal where no objection was made when the questioning occurred."]; *People v. Raviart* (2001) 93

Cal.App.4th 258, 269 [appellant waived claim of error where, "despite his contention that the trial court 'consistently displayed a bias in favor of the prosecution,'" appellant "never objected to the trial court's participation in the examination of witnesses"].)

Furthermore, we have reviewed the record and find the court did nothing improper. Both parties were fully represented by counsel and the court did not assume the role of father's attorney. Rather, the court asked a few follow-up questions of its own when it felt trial counsel had not fully elicited the information that would enable it to decide the case. (See *People v. Santana* (2000) 80 Cal.App.4th 1194, 1206-1207 [within reasonable limits, the court has a duty to see that justice is done and to bring out facts relevant to the ultimate determination].) " ' "[I]t has been repeatedly held that if the judge desires to be further informed on certain points mentioned in the testimony it is entirely proper for him to ask proper questions for the purpose of developing all the facts in regard to them. Considerable latitude is allowed the judge in this respect as long as a fair trial is indicated [to both parties]. Courts are established to discover where lies the truth when issues are contested, and the final responsibility to see that justice is done rests with the judge." ' " (*Conservatorship of Pamela J.* (2005) 133 Cal.App.4th 807, 827; see Evid. Code, § 775.) Here, the court was the entity that had to weigh the facts and make determinations about the child's best interests. (*Conservatorship of Pamela J.*, *supra*, at p. 827 ["The authority of the trial judge to question witnesses not only applies to cases tried to a jury but also to the court sitting as the fact finder."].) The court's questioning was not belabored or partisan. We see nothing in the record supporting the claim that the questions posed by the court reflected an improper bias against Mother.

F. Court's Alleged Failure to Consider Various Facts Brought Out at Hearing

Mother next appears to argue (in Arguments (4) and (5) of her opening brief) that the court did not consider various facts that were brought out at the contested hearing. Mother argues the court "overlook[ed] [father's] excessive denials of visitation." Mother

contends the court overlooked the testimony of Sierra Vista staff member, Jessica Bush, and visitation records, all of which indicated mother and K.F. enjoyed their visits and had positive interactions. Mother contends the court did not properly consider the testimony of Dr. Pham (K.F.'s primary care provider) and other evidence related to a vaginal tear documented by another provider (Dr. Indu Gupta). Mother argues the court misinterpreted the evidence on these points.

Mother has pointed to nothing in the record that would support her assertion that the trial court failed to consider the evidence delineated above. Here, the court was focused on the evidence and even questioned some of the witnesses. Indeed, the court's statement of decision addressed many of the points that mother claims were overlooked. Mother's complaint seems to be that the family court did not give some categories of evidence the weight she thought they deserved. However, the credibility and weight of the evidence is the province of the trial court, not the appellate court. (*Valero v. Board of Retirement of Tulare County Employees' Assn.* (2012) 205 Cal.App.4th 960, 965 [the trial court, as the trier of fact, is the exclusive judge of the credibility of the evidence and can reject evidence as unworthy of credence]; *Cahill v. San Diego Gas & Electric Co.*, *supra*, 194 Cal.App.4th at pp. 957-958 [on appeal, we may not reweigh the evidence or evaluate the credibility of witnesses].) No error has been demonstrated with regard to the court's assessment of the evidence.

To the extent Mother is claiming the factual findings underlying the court's decision—which maintained sole legal custody and sole physical custody with father and supervised visitation with mother—were not supported by substantial evidence, we reject the argument. Mother has failed to establish that the factual findings underlying the court's decision were not supported by substantial evidence. (See *Chalmers v. Hirschkop*, *supra*, 213 Cal.App.4th at p. 300 [trial court's factual findings are reviewed for substantial evidence]; *People v. Davis* (1996) 50 Cal.App.4th 168, 172 [appellant must affirmatively show error].)

G. Court's Alleged Failure to Consider Child's Best Interests

Finally, mother complains the court's decision conflicts with the policies articulated in section 3020, subdivision (b). Section 3020, subdivision (b) declares the public policy of assuring that children have frequent and continuing contact with both parents after parents end their relationship.

" ' "An application for modification of an award of custody is addressed to the sound legal discretion of the trial court, and its discretion will not be disturbed on appeal unless the record presents a clear case of an abuse of that discretion." ' " (*In re Marriage of McLoren* (1988) 202 Cal.App.3d 108, 111-112 (*McLoren*); see *Montenegro v. Diaz* (2001) 26 Cal.4th 249, 255 [custody and visitation orders are subject to the " 'deferential abuse of discretion test' " and must be upheld if " 'correct on any basis, regardless of whether such basis was actually invoked' "].) Generally, a trial court abuses its discretion "only if there is no reasonable basis upon which the court could conclude that its decision advanced the best interests of the child." (*In re Marriage of Melville* (2004) 122 Cal.App.4th 601, 610.)

" 'The burden is on the party complaining to establish an abuse of discretion, and unless a clear case of abuse is shown and unless there has been a miscarriage of justice a reviewing court will not substitute its opinion and thereby divest the trial court of its discretionary power.' " (*Denham v. Superior Court* (1970) 2 Cal.3d 557, 566; *Rich v. Thatcher* (2011) 200 Cal.App.4th 1176, 1182.) To establish an abuse of discretion, the appellant must demonstrate that the court exceeded the bounds of reason. It is not enough to argue that a different order would also have been within the range of reason. (*Denham*, at p. 566.) And it is a "settled rule of appellate review [that] a trial court's order/judgment is presumed to be correct, error is never presumed, and the appealing party must affirmatively demonstrate error on the face of the record." (*People v. Davis*, *supra*, 50 Cal.App.4th at p. 172.)

In evaluating the factual basis for an exercise of discretion, we also give broad deference to the trial judge. (*Rich v. Thatcher*, *supra*, 200 Cal.App.4th at p. 1182.) The trial court's factual findings must be upheld if supported by substantial evidence. (See, e.g., *Osgood v. Landon* (2005) 127 Cal.App.4th 425, 435-436; *In re Marriage of Edlund & Hales* (1998) 66 Cal.App.4th 1454, 1473-1474.)

"Under California's statutory scheme governing child custody and visitation determinations, the overarching concern is the best interest of the child. The court ... ha[s] 'the widest discretion to choose a parenting plan that is in the best interest of the child.' (Fam. Code, § 3040, subd. [(c)].)"[8] (*Montenegro v. Diaz*, *supra*, 26 Cal.4th at p. 255, fn. omitted.) The "best interest of the child" includes the child's "health, safety, and welfare." (§ 3020, subds. (a), (c).) We must uphold a court's custody order if it can be "reasonably concluded that the order ... advance[s] the 'best interest' of the child." (*In re Marriage of Burgess* (1996) 13 Cal.4th 25, 32 (*Burgess*).)[9]

Mother complains that the court's decision conflicts with the policies articulated in section 3020, subdivision (b). Section 3020, subdivision (b) declares the public policy of assuring that children have frequent and continuing contact with both parents after parents end their relationship.[10] Mother argues the court's decision was not in the best

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8 Undesignated statutory references are to the Family Code.

9 We will assume, based on the wording and substance of the court's statement of decision, that the operative custody order, i.e., the October 12, 2017 order adopting the recommendation of the family court services evaluator, was not intended by the court to be a "permanent" order, and that mother was not therefore required to make a showing of a "change in circumstances" in order to obtain modification of it. (See *Burgess*, *supra*, 13 Cal.4th at pp. 37-38 [party seeking to modify a permanent custody order can do so only if he or she demonstrates a significant change of circumstances justifying a modification].) Indeed, the family court services evaluator himself made clear in his report that his recommendation was not intended as a final resolution, since a number of issues needed further exploration as in, for example, a long cause hearing.

10 "The Legislature finds and declares that it is the public policy of this state to ensure that children have frequent and continuing contact with both parents after the parents have separated or dissolved their marriage, or ended their relationship, and to

interests of the child because it contravened the policy set forth in section 3020, subdivision (b). More specifically, mother complains that supervised visitation mandated by the court was too limited and was confusing for the child; the court did not consider the emotional bond between mother and the child; and the supervised visitation mandated by the court precluded the child from bonding with her maternal family. Mother suggests the court's decision resulted in a de facto termination of her parental rights.

Mother's argument is unavailing. "The policy of ... section 3020 in favor of 'frequent and continuous contact' does not so constrain the trial court's broad discretion to determine, in light of *all* the circumstances, what custody arrangement serves the 'best interest' of minor children. [¶] The Family Code specifically refrains from establishing a preference or presumption in favor of *any* arrangement for custody and visitation. Thus, ... section 3040, subdivision [(c)], provides: 'This section establishes neither a preference nor a presumption for or against joint legal custody, joint physical custody, or sole custody, but *allows the court and the family the widest discretion* to choose a parenting plan that is in the best interest of the child.' (Italics added.) Similarly, although ... section 3020 refers to 'frequent and continuous contact,' it does not purport to define the phrase 'frequent and continuous' or to specify a preference for any particular form of 'contact.' Nor does it include any specific means of effecting the policy, apart from 'encourag[ing] parents to share the rights and responsibilities of child rearing.' " (*Burgess*, *supra*, 13 Cal.4th at pp. 34-35.) "Thus, in exercising its discretion, the trial court must duly evaluate all the important policy considerations at issue in any change of custody and make its ultimate ruling based upon a determination of the best interests of the child." (*McLoren*, *supra*, 202 Cal.App.3d at p. 113.) We see no evidence that the court failed to do so here.

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encourage parents to share the rights and responsibilities of child rearing in order to effect this policy, except when the contact would not be in the best interests of the child, as provided in ... Section 3011." (§ 3020, subd. (b).)

Mother argues the decision was not in the child's best interests because of father's history of domestic violence. (See § 3020, subd. 2(A)(ii) [court must consider a parent's history of abuse toward other parent in assessing best interests of child for purposes of custody determination].) The court addressed this consideration, noting it was "fully aware of the substantial issues that [father] presents."[11] However, the court grappled with balancing the issues father presented with the risk posed to the child by mother's defiance of, and obvious disregard for, court orders. The court was extremely concerned about the harm suffered by the child as a result of mother's decision to defy court orders in moving out of state with the child, despite the existence of a court order granting father visitation rights. As a result of mother's conduct, not only was the child's contact with father disrupted, but father had no information regarding the child's whereabouts and condition for several months. It was only when father approached law enforcement authorities, and the authorities took action, that the child was returned to California. However, the process was difficult, disruptive, and risky, with K.F., who was only two years old at the time, spending several days in foster care before being handed off to law enforcement representatives from Stanislaus County. We detect no abuse of discretion in the court's decision. (See § 3040, subd. (d) [court has "the widest discretion to choose a parenting plan that is in the best interest of the child"]; *Montenegro v. Diaz*, *supra*, 26 Cal.4th at p. 255 [both our courts and Legislature have repeatedly recognized a family

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[11] Mother makes unsupported statements to the effect that father had never submitted proof of domestic violence rehabilitation to the court and that the court's decision contravened the presumption against awarding custody to persons who had perpetrated domestic violence, set forth in section 3044. However, the court first granted legal and physical custody to father on June 15, 2016, when the application of the presumption would have been addressed. As explained in footnote 4, *ante*, the reporter's transcript of the June 15, 2016 hearing is not included in the record on appeal. Without a reporter's transcript of the relevant hearing, we must presume the court made sufficient findings to support its decision. (*Ehrler v. Ehrler*, *supra*, 126 Cal.App.3d at p. 154.) Indeed, there are multiple indications in the record that father had completed a 52-week batterers' program and that the information was known to the court. (See fn. 4, *ante*.)

court's broad discretion in protecting the right of children in dissolution proceedings, and that "the overarching concern is the best interest of the child"].)

Mother further suggests the court's decision was not in K.F.'s best interests given evidence indicating K.F. had suffered a vaginal tear. Dr. Indu Gupta documented a "well-healed vaginal tear on left inferior margin" but "[o]therwise normal female external genitalia." However, Dr. Gupta did not reach definitive conclusions about when or how the tear occurred and did not testify at the contested hearing. Dr. Pham, K.F.'s primary care provider, testified at the hearing but did not appear to adopt Dr. Gupta's finding. Dr. Pham testified she had examined K.F. as part of a physical during the week just prior to her appearance in court. Dr. Pham testified she had no concerns about K.F.'s health, development, and well-being. The court factored the concern about the vaginal tear in its decision, noting that the evidence regarding this condition was "inconclusive." (§ 3022 ["[t]he court may, during the pendency of a [marital dissolution] proceeding or at any time thereafter, make an order for the custody of a child during minority that seems necessary or proper"].)

" ' "An appellate tribunal is not authorized to retry the issue of custody, nor to substitute its judgment for that of the trier of facts. Only upon a clear and convincing showing of abuse of discretion will the order of the trial court in such matters be disturbed on appeal. Where minds may reasonably differ, it is the trial judge's discretion and not that of the appellate court which must control." ' " (*Catherine D. v. Dennis B.* (1990) 220 Cal.App.3d 922, 931.) In light of record as a whole, we cannot say the court's decision to maintain sole legal custody and sole physical custody with father, and to grant supervised visitation to mother (who had relocated to the State of Utah), was an abuse of discretion or miscarriage of justice.[12]

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12 Both mother and father have attached various documents to their respective briefs. A party may only attach exhibits which are copies of documents in the appellate record. (Cal. Rules of Court, rule 8.204(d).) A party may only augment the record by timely