

APPENDICES

APPENDIX A
CASE# C090504

**IN THE COURT OF APPEAL OF THE STATE OF
CALIFORNIA
THIRD APPELLATE DISTRICT**

**AMEENAH McAULEY (SALAAM),
Appellant**

v.

**JEFFREY McAULEY,
Respondent**

UNPUBLISHED OPINION

APP. 1

Filed 6/28/21 Marriage of McAuley CA3
NOT TO BE PUBLISHED

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IN THE COURT OF APPEAL OF THE STATE OF
CALIFORNIA
THIRD APPELLATE DISTRICT
(Sacramento)

In re the Marriage of
AMEENAH and JEFFERY
ALLEN MCAULEY.

C090504

AMEENAH SALAAM,
Appellant,

(Super. Ct.
No.
12FL07094)

v.

JEFFERY ALLEN MCAULEY,
Respondent.

Ameenah Salaam (mother) appeals from an
order changing primary physical custody of her

minor son, A., from mother, in Maryland, to father, Jeffery Allen McAuley (father), in California.

Although mother had been the child's primary physical caretaker since birth, the trial court decided a change of custody was in A.'s best interest after finding mother had engaged in a continuous course of conduct designed to frustrate father's visitation rights and alienate A. from father.

On appeal, mother argues the trial court erred by (1) conducting a hearing without proper service of father's initial request for order, (2) granting relief in excess of what was requested in the initial request for order, (3) rendering a decision without considering all the relevant facts, (4) improperly excluding relevant evidence, and (5) failing to properly weigh the evidence adduced at trial.¹ Finding no error, we affirm.

FACTUAL AND PROCEDURAL BACKGROUND

Mother and father were married in July 2011, and separated in December 2012. They had one son, A., born in September 2012. Father stipulated to a five-year domestic violence restraining order in April 2013, which expired in April 2018. After dissolution, mother and father were awarded joint legal custody of A. Mother was given sole physical custody, with father having visitation rights three days a week and during specified holidays.

In November 2017, mother filed a request for an order allowing her to relocate to Virginia. In December 2017, over father's objection, the court granted the "move-away" request and awarded

¹ Although father did not file a respondent's brief, we reverse only if prejudicial error is found. (*Lee v. Wells Fargo Bank* (2001) 88 Cal.App.4th 1187, 1192, fn. 7.)

mother sole legal custody of A. Father was awarded visitation/parenting time with A. in California during the month of July, Thanksgiving holidays in odd-numbered years, winter break in even-numbered years, and spring break every year. The court also ordered that each parent shall have the right to "reasonable Facetime or Skype communication . . . when [A.] is with the other parent."

As ordered, A. visited father in July of 2018. Around the same time, mother moved from Virginia to Maryland without seeking court approval. Mother told father about her move, but would not disclose her new address.

Father alleged that after A.'s summer visit, his parenting time with A. was significantly reduced. He also claimed that he was no longer able to speak with A. on a regular basis. Video calls failed because A.'s tablet always was set to "do not disturb." Father would sit and wait for hours for A. to call him. Sometimes the phone would ring only once and, if father missed the call, A. would not call again.

Father claimed that he would ask mother to have A. call, but mother would tell him A. was busy or did not want to call. Mother told him that she was unwilling to force A. to call if he did not want to. As a result, father claimed he was only able to speak to his son approximately seven or eight times between August and December 2018. Father produced a call log to support his claim.

On November 30, 2018, a few weeks before A. was scheduled to fly to California for winter break, mother e-mailed father stating that A. would no longer be allowed to visit or communicate with him in any way. Mother explained to father, for the first time, that "[u]pon [A.'s] return home from his [July

2018] visit . . . , A. told me on August 7th [that] ‘Daddy pulled my penis and made it bleed.’” In response, father sent mother a text message calling the accusation “ridiculous” and accusing her of deliberately interfering with his relationship with A.

Father’s requests for court orders

On December 19, 2018, father filed an ex parte request for an emergency order compelling mother to (1) comply with the previously established visitation schedule, (2) pay for the next visit and split the cost of future visits equally, and (3) ensure A. has at least a 15-minute visit with father every two days. Father also asked the court to reinstate joint legal custody and order mother to provide him with A.’s school and medical information.

At the December 19, 2018 hearing on the ex parte request, the court referred the parties to Family Court Services for mediation, temporarily halted father’s visitation and parenting time, and set a further hearing on February 5, 2019.

Both parties appeared for the February 5 hearing. At the hearing, the court heard father’s explanation of the alleged sexual abuse. According to father, A. came into father and his fiancée’s bedroom one night and said that his “‘pee pee hurts.’” Father asked A. to pull down his “pull-ups” training pants, which A. wore because of a bed-wetting problem, noticed that the pull-up was wet, and saw that A. had mild redness on the tip of his penis. Father cleaned up A., applied ointment, and told A. not to wear the pull-ups for the next few days until the soreness went away.

The court learned that mother had arranged for A. to be interviewed at the Children’s National Hospital, Child and Adolescent Protection Center

(Children's National), in August 2018. The report from that interview stated: " 'Patient made no direct disclosure about anyone touching his body in a way that made him feel uncomfortable or that he considered to be inappropriate.' "

Several weeks after the Children's National interview, mother arranged for A. to be interviewed by Maryland police. A recording of that interview was forwarded to the Sacramento Sheriff's Department, and a detective was assigned to review the recorded interview. The detective concluded there was insufficient evidence of sexual abuse, and declined to open a criminal investigation. Both Maryland and Sacramento Child Protective Services (CPS) also declined to take action.

The court, unpersuaded by mother's sexual abuse allegations, restored father's visitation/parenting time and ordered mother to pay the transportation costs for A.'s upcoming 2019 spring break visit. In addition, mother was to allow father to have video calls with A. on Mondays, Wednesdays, and Fridays, and ordered both parents to "exert every effort to maintain free access and unhampered contact" between A. and the other parent. The court also ordered, "[s]hould either parent engage in conduct which undermines the shared custody arrangement, it shall be considered that the parent is not acting in the best interests of the child and such non-conformance may be the grounds for modification of this order." At mother's request, the matter was set for trial on June 13, 2019.

After the February 5 hearing, mother informed father that despite the court's orders, she would not allow A. to visit during spring break due to

the alleged sexual abuse. Thus, on February 22, 2019, father filed another ex parte request seeking an order to show cause regarding contempt for violating the February 5 order, sanctions, costs and attorney fees. Although father did not check the "child custody" box on the form, father checked the box indicating that he was requesting an order relating to "physical custody," and explained that "[t]he law allows for changing primary physical custody away from the parent who refuses to comply with visitation orders."

At the February 22 ex parte hearing, mother told the court that she could not afford to pay for A.'s spring break travel and did not think A. should have to go because the sexual abuse allegations had not been (in her mind) adequately investigated. The court did not change its prior order, and set the matter for further hearing on March 26.

On or about March 15, 2019, mother applied for and was granted a 15-day temporary protective order (TPO) by a Maryland court. Relying on the Maryland TPO, mother refused to allow father any visitation/parenting time with A. In response, father again requested emergency relief, seeking an order to show cause for contempt, sanctions and attorney fees, as well as sole physical custody of A. The court set the matter for hearing on March 26, the same day as the continued hearing on the prior request for order.

At the March 26 hearing, mother promised she would follow the prior orders and deliver A. to father for his spring break visit. At the time, mother intended to seek an extension of the Maryland TPO,

but she concealed this fact from the court.² Mother later defended the nondisclosure by claiming she did not know whether the extension would be granted.

On March 29, the Maryland court granted mother's request to extend the TPO through April 30, 2019. Mother then relied on the Maryland TPO to deny A.'s spring break visit with father.

In early April, father filed yet another request for an emergency order, seeking sole physical custody of A., an order to show cause for contempt, sanctions, and attorney fees. In response, the court slightly increased father's parenting time and ordered mother to pay the transportation costs for A.'s summer visit.³

Arguments at trial

Trial was held on June 13, and July 10-11, 2019. Mother's position at trial was that father sexually abused A. Mother testified that shortly after A. returned from visiting father in July 2018, she took A. to his pediatrician, and then to a therapist at Children's National to be interviewed about the alleged abuse. She contacted law enforcement and child protection agencies in California and Maryland, but none were willing to take action against father. Mother testified that she

² Mother also filed a request for an order changing jurisdiction of the case from California to Maryland, which was denied.

³ The court also ordered mother to pay \$1,500 in attorney fees, which was in addition to fees awarded at the March 26 hearing. These fee orders are beyond the scope of this appeal. (*In re Marriage of Weiss* (1996) 42 Cal.App.4th 106, 119; *In re Marriage of Tharp* (2010) 188 Cal.App.4th 1295, 1311.)

was not satisfied with the results of the investigations into the alleged sexual abuse and believed A. was not safe around father.

Mother denied that she intentionally frustrated father's visitation rights. She claimed that father received regular calls from A. prior to the alleged abuse. She argued that her actions after the alleged abuse were taken to protect A.'s health, safety, and welfare.

Mother admitted that she violated California court orders to produce A. for the 2019 spring break visit. She testified that she believed the Maryland TPO superseded the California orders, even though the California court had told her otherwise.

Mother also admitted that there were many missed calls with father. She testified that it was not her obligation to ensure that A. called father or to have A. return missed calls from father. Mother left it up to A. If A. wanted to call, he would call; if he did not want to call, she did not make him call. Mother claimed that A. did not want to talk with father due to the alleged abuse.

Mother argued it would not be in A.'s best interest to change custody to father. In addition to the alleged sexual abuse, mother argued that father had posttraumatic stress disorder (PTSD) and a history that includes "home drinking" and a domestic violence restraining order.⁴ In contrast, she argued that she has been with A. since birth and has

⁴ Father denied current treatment for PTSD. A 2014 forensic evaluation indicated that father stopped drinking in February 2013. Father testified that he was tested for alcohol as part of the domestic violence restraining order and that he never had a positive test.

provided consistency, continuity, and stability. Mother asked for sole legal and physical custody of A., while allowing father only limited, supervised visits.

In her case-in-chief, mother called Family Court Services counselor Marie Sims (Sims). Sims testified that after interviewing mother and father, reviewing the Children's National report, and speaking to the Sacramento Sheriff's Department, she concluded the sexual abuse allegations could not be substantiated.

Sims testified that it is detrimental for a child to have no contact with the noncustodial parent and that a parent who prevents contact with the other parent is not acting in the best interest of the child. But Sims also testified that a sudden change in custody is hard on a child and, before ordering a change in custody based on interference with visitation rights, she first would want to work with the custodial parent to try to help the parent understand how important it is to facilitate contact with the other parent. Depending on the circumstances, she testified she also might recommend a more "in-depth" evaluation by a licensed private mental health professional to determine why visitation was being blocked.

Father's position at trial was that the sexual abuse allegation was part of a broader effort by mother to alienate him from his son.

Father called his fiancée, Megan Daniel (Daniel), who had lived with father for four years and knew A. well. Daniel testified that she had acted as a stepmother to A. and had a good relationship with him. Daniel is employed as a social worker for CPS. She deals with allegations of sexual abuse and has

been trained to recognize signs of sexual abuse. She testified it is not uncommon for parents to use allegations of sexual abuse to gain an advantage in custody cases.

With regard to the sexual abuse allegations against father, Daniel testified there was nothing out of the ordinary during A.'s July 2018 visit. She recalled an incident in which A. came into their bedroom and said, "[M]y penis hurts." Father pulled down A.'s pull-up training pants and they saw that A. had redness on the tip of his penis that looked like diaper rash. Father told A. not to wear the pull-ups for a few days to let the area heal, and that was the end of it.

Daniel testified that not having consistent contact with father had been traumatic for A. She recalled a call in 2019 when A., who had not spoken to his father for many months, asked father, "[D]id you miss me? Did you forget about me?" On cross-examination, Daniel admitted it also could be "traumatic" to remove A. from mother's physical custody.

Coleman Daniel (Mr. Daniel), Megan Daniel's 32-year-old brother, also testified for father. Mr. Daniel testified that he lived in the home during the summer of 2018 and recalled the incident with A. His account was consistent with his sister's. Mr. Daniel testified that A.'s demeanor did not change after the incident and that A. was sad to leave at the end of July.

Father also called Detective Campoy from the Sacramento Sheriff's Department, Child Abuse Bureau, to testify. Detective Campoy reviewed the written reports and watched the recorded interview of A. conducted by Maryland police. He testified that

the victim did not make a proper disclosure of any criminal conduct and there was insufficient evidence to warrant an investigation in Sacramento. In his opinion, it was extremely unlikely that sexual abuse occurred.

Father testified on his own behalf. He denied sexual abuse of A. and asserted that mother had been trying to exclude him from A.'s life since shortly after A. was born. Father testified that mother had on more than one occasion asked him to relinquish parental rights. Mother also told him that if he requested shared physical custody, she would move away, which is what happened.

Father testified that he disagreed with the merits of the 2013 domestic violence restraining order, but stipulated to it because he did not understand its significance and did not want to speak to mother anyway. After the restraining order was issued, mother threatened to send a copy to his employer unless father relinquished his parental rights. When father refused, mother followed through on her threat, and father lost his job. Mother did this more than once and, as a result, father has not been employed full time since 2013. Father testified that if he received custody, he would be available to care for A., as his work is sporadic and occurs primarily in the evenings.

Father acknowledged that mother is a good mother, but claimed she had deliberately interfered with his visitation rights and tried to alienate A. from him. He argued that mother not only does not care whether he has a meaningful relationship with his son, she has actively sought to diminish and destroy the relationship. Father testified that after mother and A. moved to the east coast, mother gave

him very little information about his son and he had not seen and had very little contact with A. for approximately 11 months.

Father argued that mother's sabotage of his visitation rights justified reversing the custody and visitation order to give him sole physical custody of A., with mother having parenting time on specified holidays and school breaks. He argued such relief was necessary due to mother's history of violating court orders with which she does not agree.

Father argued that giving him sole physical custody would be in the child's best interest because, among other reasons, A. would have a better living situation in a stable home with two parents and access to stepsiblings, would attend a better school, and would have no need for daycare. Father argued that, unlike mother, he would comply with all court orders and facilitate contact between A. and mother.

Trial court's ruling

The trial court found the testimony of Detective Campoy, Ms. Daniel, Mr. Daniel, Sims, and (for the most part) father to be balanced and credible. In contrast, it found mother's testimony to be self-serving and not credible. The court found that mother has consistently and intentionally frustrated father's visitation rights, in violation of court custody orders. The court found that mother had no interest in allowing A. to have a relationship with father, that she "manipulated" court processes to defeat father's visitation rights, and that she is only willing to follow court orders when she agrees with them.

The court found mother's conduct to be "unacceptable" and "detrimental" to A. Considering all the facts and circumstances, and bearing in mind the importance of preserving parental relationships,

the trial court concluded that it was in the best interest of A. to modify the custody arrangement and give father joint legal and sole physical custody of A., with mother having visitation/parenting time on specified holidays and school breaks.

DISCUSSION

I

Service of the Initial Request for Order

Mother argues the trial court's order must be overturned due to father's failure to properly serve the December 2018 request for order. She argues that rules 5.92 and 5.167 of the California Rules of Court required father to personally serve the papers supporting the request for order "at the first reasonable opportunity before the hearing." (Cal. Rules of Court, rules 5.167(a) & 5.92(f).) She contends that father violated these rules because she did not receive the papers supporting the request until February 8, 2019, at the earliest. She contends this prejudiced her ability to respond to father's request and to participate in the mediation.

We conclude that mother's challenge is moot because the February 5, 2019 ruling on father's initial request for order is no longer in effect, having been superseded by later requests for orders and the eventual August 2, 2019 decision and order after trial, which is the subject of this appeal. (*Lester v. Lennane* (2000) 84 Cal.App.4th 536, 566; see also *Enrique M. v. Angelina V.* (2004) 121 Cal.App.4th 1371, 1378.)

II

Granting Relief in Excess of the Request for Order

Mother contends that the trial court abused its discretion because it granted relief exceeding what father requested in his request for order. In

particular, mother complains that the trial court ordered a change of custody from mother to father even though custody was not “in dispute” until father “verbally” requested it on “the first day of trial.” The record belies her claim.

Although mother is correct that father’s *initial* request for order only sought to enforce father’s visitation rights, father’s later requests for orders explicitly requested that he be granted sole physical custody of A. And mother had actual notice father was requesting a change in custody well before trial. In her petition for the Maryland TPO, filed in March 2019, mother expressly acknowledged that the “issue of visitation and custody is set for trial in late June 2019.” There is nothing in mother’s trial testimony to suggest she was unfairly surprised when father requested physical custody in his opening statement. In sum, the evidence shows that mother had notice that father was requesting a change of custody. We therefore reject her claim that the trial court exceeded its authority when it granted that request.⁵

III Evidentiary Rulings

Mother contends the trial court erred in excluding evidence relevant to the issue of custody. In particular, she contends the court improperly excluded (1) a recorded video of A. refusing to call father, (2) a recorded video showing “verbal abuse” of father towards mother, and (3) a copy of the

⁵ Mother also argues that the court abused its discretion by ordering her to post a \$5,000 bond, instead of the \$3,000 bond requested in the December 2018 request for order. Because she fails to cite any legal authority to support her contention, we deem the argument forfeited.

Sacramento CPS “‘evaluated out’ ” report of child abuse. Mother contends the court improperly excluded the first two items because the transcripts were not certified, and improperly excluded the CPS report on hearsay grounds.

We deem mother’s contentions to be forfeited because she has not supported them with adequate citations to legal authority or the record. (*Fernandes v. Singh* (2017) 16 Cal.App.5th 932, 942-943; Cal. Rules of Court, rule 8.204(a)(1)(B) & (C).) We are not required to search the record to determine whether it contains support for her contentions. (*Mansell v. Board of Administration* (1994) 30 Cal.App.4th 539, 545.)

In any event, mother’s contentions appear to lack merit. As far as we can ascertain, both the CPS report and the recorded calls were properly excluded, both on hearsay grounds and because there was no evidence that the call participants consented to the recording. (Pen. Code, § 632, subd. (d); *Kearney v. Salomon Smith Barney, Inc.* (2006) 39 Cal.4th 95, 117-120 [Penal Code section 632 applies when the communication takes place in part in California and in part in another state].)⁶

IV

Failure to Consider All Relevant Evidence

⁶ Although mother is correct that under rule 2.1040(b)(1) of the California Rules of Court, the transcripts were not required to be certified, mother did not object to the certification ruling at trial, thereby forfeiting the issue. (*Smith v. County of Los Angeles* (1989) 214 Cal.App.3d 266, 284 [questions relating to the admissibility of evidence will not be reviewed on appeal absent a specific and timely objection at the trial on the ground sought to be urged on appeal].)

Mother further contends the trial court abused its discretion by failing to consider all the facts relevant to a determination of what was in the best interest of A. We are unpersuaded.

A. *Legal Background*

The focus of California's statutory scheme governing child custody and visitation determinations is the "best interest of the child." (*In re Marriage of Brown & Yana* (2006) 37 Cal.4th 947, 955 (*Brown*); Fam. Code, § 3040; see also Fam. Code, §§ 3011, 3020.) When making an initial custody determination, a trial court has broad discretion to determine what arrangement serves the child's best interest. (*In re Marriage of Burgess* (1996) 13 Cal.4th 25, 34 (*Burgess*).) It must consider all relevant factors, including the health, safety, and welfare of the child; any history of abuse by one parent against the child or the other parent; and the nature and amount of the child's contact with the parents. (*Brown, supra*, 37 Cal.4th at pp. 955-956.)

Once a particular custody arrangement is deemed to be in a child's best interest, the "paramount need for continuity and stability in custody arrangements . . . weigh heavily in favor of maintaining' that custody arrangement." (*Brown, supra*, 37 Cal.4th at p. 956.) Thus, a party seeking to modify a permanent custody order can do so only if he or she demonstrates a significant change of circumstances justifying the modification. (*Montenegro v. Diaz* (2001) 26 Cal.4th 249, 256.)

This "changed circumstance rule" is not a different test, but a "variation on the best interest standard . . . that the trial court must apply when a parent seeks modification of a final judicial custody determination." (*Brown, supra*, 37 Cal.4th at p. 956.)

The rule protects the interest in stable custody arrangements by preserving the established mode of custody unless some significant change of circumstances indicates that a different custody arrangement would be in the child's best interest. (*Ibid.*; *Montenegro v. Diaz, supra*, 26 Cal.4th at p. 256.)

Our Supreme Court has considered the changed circumstances rule in the context of a custodial parent's request to move a child to a distant location (sometimes called a "move-away" case). (*In re Marriage of LaMusga* (2004) 32 Cal.4th 1072 (*LaMusga*).) The court held that the mere fact that a custodial parent proposes to move the child does not by itself constitute "'changed circumstances'" requiring a reevaluation of an existing custody order. (*LaMusga, supra*, 32 Cal.4th at p. 1096.) Thus, in a typical move-away case in which the custodial parent seeks to relocate, the noncustodial parent has the initial burden to show the move will cause some detriment to the child. (*Brown, supra*, 37 Cal.4th at pp. 959-960; accord, *LaMusga*, at p. 1096.) If the noncustodial parent makes the threshold showing of detriment, warranting reevaluation of the existing custody arrangement, the trial court is then obligated to "perform the delicate and difficult task of determining whether a change in custody is in the best interests of the [child]." (*LaMusga*, at p. 1078; accord, *Brown, supra*, 37 Cal.4th at pp. 960.)

Among the factors a court ordinarily should consider when deciding whether to modify custody in light of a proposed move are: the child's interest in stability and continuity in the custodial arrangement; the distance of the move; the child's

age; the child's relationship with both parents; the relationship between the parents, including their willingness to put the child's interests above their own; the child's wishes (if the child is mature enough for this inquiry to be appropriate); the reasons for the proposed move; and the extent to which the parents currently share custody. (*LaMusga, supra*, 32 Cal.4th at p. 1101; accord, *Brown, supra*, 37 Cal.4th at pp. 960-961.)

The California Supreme Court has clarified that the noncustodial parent in a typical move-away case has no burden to prove that a change of custody is "‘essential’" to prevent detriment to the child from the planned move.⁷ (*LaMusga, supra*, 32 Cal.4th at

7 The relevant language, from its earlier ruling in *Burgess, supra*, 13 Cal.4th at page 38, stated that a change of custody in a move-away case is justified "only if, as a result of relocation with that parent, the child will suffer detriment rendering it ‘essential or expedient for the welfare of the child that there be a change.’" In *LaMusga*, the California Supreme Court

pp. 1078, 1097-1098.) After overcoming the initial hurdle of showing the proposed relocation would cause detriment to the child, the noncustodial parent's burden instead is to show that, under all the circumstances, a change of custody would be in the child's best interest. (*Ibid.*; *Brown, supra*, 37 Cal.4th at p. 956; *Burgess, supra*, 13 Cal.4th at p. 37; *Speelman v. Superior Court* (1983) 152 Cal.App.3d 124, 129; see also *Burchard v. Garay* (1986) 42 Cal.3d 531, 535-536 [under policy favoring stable custodial arrangements, the noncustodial parent has the burden to show a change is in the child's best interest].)

Here, unlike a typical move-away case, it is the noncustodial parent requesting a change of custody that would require the child to relocate. Nevertheless, we conclude that the standard is the

welfare and best interest of the child, and held that a change in custody is "‘essential or expedient’" within the meaning of *Burgess* if it is in the best interest of the child. (*LaMusga, supra*, 32 Cal.4th at pp. 1097-1098.)

same as any other change of custody case involving a proposed relocation. The noncustodial parent must satisfy an initial burden by showing that, due to a significant change of circumstances, there will be detriment to the child unless custody is changed. Once the noncustodial parent meets this threshold showing of detriment, the court must exercise its discretion to decide whether, in light of the change in circumstances and all other relevant factors (health, safety, and welfare of the child, any history of abuse, the child's age, community ties, etc.), a change of custody is in the child's best interest. (*LaMusga, supra*, 32 Cal.4th at pp. 1078, 1089, 1095, 1101; *Brown, supra*, 37 Cal.4th at pp. 960-961.)

Although the need for continuity and stability weighs heavily in favor of existing custody arrangements, courts enjoy "wide discretion" to order a custody change based upon a showing of detriment . . . if such a change is in the best interest of the child in light of all the relevant factors." (*Brown, supra*, 37 Cal.4th at p. 961.) We review the trial court's order for an abuse of discretion.

(*Burgess, supra*, 13 Cal.4th at p. 32.)

Frustration of the other parent's visitation rights is a circumstance that has been held to justify a change in custody. (*Brown, supra*, 37 Cal.4th at p. 960, citing *LaMusga, supra*, 32 Cal.4th at pp. 1083-1085; *Speelman v. Superior Court, supra*, 152 Cal.App.3d at p. 132; *In re Marriage of Wood* (1983) 141 Cal.App.3d 671, 682, questioned on unrelated grounds in *In re Marriage of S.* (1985) 171 Cal.App.3d 738, 749, *In re Marriage of Ciganovich* (1976) 61 Cal.App.3d 289, 293-294; see also *Moffat v. Moffat* (1980) 27 Cal.3d 645, 652 [deliberate sabotage of visitation rights furnishes ground for custody

modification and is a significant factor bearing on the fitness of the custodial parent].)

B. Analysis

In this case, the trial court heard testimony from several witnesses about the importance of maintaining stability and continuity in A.'s custody arrangement. Nevertheless, the trial court impliedly found that there had been a significant change of circumstances warranting a change of custody based on mother's frustration of father's visitation rights and attempts to alienate A. from father, which the court found to be detrimental to the child. After considering all the evidence, including the evidence about A.'s proposed living situation in California and father's pledge to ensure A. maintains his relationship with mother, the court concluded that giving father physical custody would be in the child's best interest.

Mother contends the trial court abused its discretion by failing to consider all the facts relevant to a determination of what was in A.'s best interest. In particular, she contends the court failed to consider (1) how disrupting the existing custodial arrangement might affect A.'s mental and emotional stability; (2) whether father's PTSD presents safety and welfare concerns for the child; (3) father's (alleged) sexual abuse of A. in July 2018; and (4) father's history of domestic violence and alcohol abuse.

Before turning to the substance of her claim, we return to the issue of mother's failure to comply with the rules of appellate procedure, namely, her failure to provide any record citations in the argument portion of her brief. Rule 8.204 of the California Rules of Court requires *any reference* to a

matter in the record to be supported by a citation to the volume and page number of the record where the matter appears. (Cal. Rules of Court, rule 8.204(a)(1)(C).) Although mother included citations to the record in the factual portion of her brief, such citations do not cure her failure to cite evidence in the argument section of her brief. (*City of Lincoln v. Barringer* (2002) 102 Cal.App.4th 1211, 1239; *Alki Partners, LP v. DB Fund Services, LLC* (2016) 4 Cal.App.5th 574, 590, fn. 8.) As a result, we may disregard her arguments.

But even if not forfeited, mother has failed to demonstrate error. Mother assumes the court did not consider evidence that was not specifically addressed in the court's ruling. However, under established rules of appellate procedure, when the record is silent, we presume that the trial court weighed the evidence and that the trial court's order is correct. (*Young v. Rosenthal* (1989) 212 Cal.App.3d 96, 123; *Cable Connection, Inc. v. DIRECTV, Inc.* (2008) 44 Cal.4th 1334, 1362.) The burden of demonstrating error rests on the appellant. (*Winograd v. American Broadcasting Co.* (1998) 68 Cal.App.4th 624, 631-632.)

Here, mother has failed to meet her burden to show the court failed to weigh all the evidence at trial. The court expressly stated that it considered "all of the facts and circumstances" bearing on the best interest of the child and the court referred, specifically, to father's domestic violence restraining order, the alleged sexual abuse, and testimony that changing custody would be traumatic for A. There is nothing in the record to indicate the court ignored this evidence or failed to consider the other factors cited by mother. A trial court's failure to discuss

every factor in its ruling is not error and does not indicate the court failed to properly discharge its duties. (*LaMusga, supra*, 32 Cal.4th at p. 1093 [court's failure to state on the record consideration of child's interest in stable custodial and emotional ties with custodial parent not error].) Accordingly, we find no abuse of discretion.

V

Weight of the Evidence

Mother also claims the court failed to properly weigh the evidence and determine the credibility of the witnesses. In particular, she contends father was not credible and that the court should not have believed his version of the events regarding the alleged sexual abuse.

As discussed, we review a custody and visitation order for abuse of discretion. (*Burgess, supra*, 13 Cal.4th at p. 32.) In evaluating the factual basis for a court's exercise of discretion, broad deference is required. “ ‘The trial judge, having heard the evidence, observed the witnesses, their demeanor, attitude, candor or lack of candor, is best qualified to pass upon and determine the factual issues presented by their testimony.’ ” [Citation.]” (*Heidi S. v. David H.* (2016) 1 Cal.App.5th 1150, 1163.) It is not our role as the reviewing court to reweigh the evidence, redetermine the credibility of the witnesses, or resolve conflicts in the testimony. (*Catherine D. v. Dennis B.* (1990) 220 Cal.App.3d 922, 931; accord, *Morgan v. Imperial Irrigation Dist.* (2014) 223 Cal.App.4th 892, 916.) We may reverse only if under all the evidence, viewed most favorably in support of the trial court's action, no reasonable person could have reached the same conclusion. (*In re Robert L.* (1993) 21 Cal.App.4th 1057, 1067.)

Here, mother has failed to show that the trial court's findings are not supported by substantial evidence or that they exceeded the bounds of reason. She simply refers (without citation) to evidence supportive of her position and invites us to reweigh the evidence and reach a different conclusion. This is beyond the scope of our review. Accordingly, we conclude the trial court did not abuse its discretion in finding that a change in custody was in the child's best interest.

DISPOSITION

The trial court's order is affirmed. There is no prevailing party for purposes of costs on appeal.

KRAUSE, J.

We concur:

RAYE, P. J.

HOCH, J.

APPENDIX B
CASE # 12FL07094

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF SACRAMENTO**

**AMEENAH McAULEY (SALAAM),
Petitioner**

v.

**JEFFREY McAULEY,
Respondent**

DECISION AND ORDER

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SACRAMENTO

AMEENAH McAULEY (SALAAM), **Case No.**
Petitioner, **12FL07094**
v. **DECISION AND**
ORDER
JEFFREY McAULEY,
Respondent

The above-entitled matter came before the Honorable Scott L. Tedmon, Judge in Department 120 by assignment from the Supervising Judge for Court Trial. Petitioner AMEENAH McAULEY (SALAAM) hereinafter referred to as "Mother," was self-represented. Respondent JEFFERY McAULEY, hereinafter referred to as "Father" was represented by his counsel, Jacqueline Mittelstadt.

Trial was held on June 13, 2019 and July 10-11, 2019 where witnesses testified and evidence was received. On July 11, 2019 each party provided oral closing arguments and the matter was submitted to the court for its decision. On July 12, 2019, the Court orally pronounced its decision in open court on the record.

I. ISSUE- CUSTODY AND VISITATION

A. – 6 (DOB: 9/2/2012) The issue before the Court is the custody and visitation of the parent's

minor child, A. age 6. Mother lives in Maryland and Father lives in Sacramento. The current order dated February 5th 2019 states parents shall have joint legal custody. Father shall have parenting time with A. during his spring break each year, six weeks during the summer, Thanksgiving on odd years, and

Christmas one week in 2019, and then even years thereafter. Mother shall pay for the cost of transportation for Father's 2019 Spring break parenting time in Sacramento. Mother shall pay for all of the round trip transportation costs to and from Maryland for Father's 2019 summer vacation time with A. in Sacramento. Mother shall have physical custody at all other times.

Father has Skype communications with A. on Mondays, Wednesdays, and Fridays, for up to 15 minutes between 6:00 p.m. and 7:30 p.m. Eastern Standard Time.

The order dated May 1, 2019 orders Father has additional telephone calls with A. on Saturdays. Father's telephone calls with A. shall not be monitored by Mother.

All prior custody and visitation orders not inconsistent remain in full force and effect.

II. Decision

On June 13, 2019 Father's counsel request a Statement of Decision. On July 12, 2019, the Court orally pronounced it decision in open court on the record. The relevant portions of the trial transcript containing the Court's analysis, and order is attached hereto and made a part hereof as though fully set forth herein. After the Court orally pronounced its decision on the record, Father's counsel withdrew the request for a Statement of Decision.

III. Order

After reviewing the evidence presented and considering the arguments of each party, the Court finds it is in the best interest of A. to issue the following order.

1. Father and Mother shall have joint

legal custody of A.. "Joint legal custody" means that both parents shall share the right and responsibilities to make decisions related to the health, education, and welfare of A.. The parents shall make good faith efforts to reach mutual agreement in making decisions on non-emergency issues related to the health, education, and welfare of A.. In the event there is no agreement between the parents, Father shall have final decision-making authority.

2. Effective, July 12, 2019, Father shall have sole physical custody of A..

3. Mother, shall have parenting time with A. as follows:

- 1) Spring break from Saturday after school is out to the Sunday before school begins.
- 2) Summer break from the day after school is out to seven (7) days before school begins.
- 3) Saturday before Thanksgiving weekend through the Sunday after Thanksgiving in ODD years. Father has Thanksgiving holiday in EVEN years.
- 4) Winter break from Saturday after school is out through Sunday before school starts beginning 2021, with Mother having Winter break in EVEN years. Father has Winter break in ODD years.
- 5) A.'s birthday (9/2) - If Mother pays to travel to California, parenting time from 9:00 a.m. to 8:00 p.m. If Mother does not travel to California, Mother shall have a call with A..

- 6) Mother's Day - If Mother pays to travel to California, parenting time from 9:00 a.m. to 8:00 p.m. If Mother does not travel to California, Mother shall have a call with A..
- 7) Mother shall have weekend parenting time with A. in Sacramento the third weekend of September 2019, from Saturday at 8:00 a.m. to Sunday at 6:00 p.m. Mother shall pay the cost of her transportation to and from Sacramento and her lodging while in Sacramento. Mother's parenting with A. shall occur in Sacramento.
- 8) Beginning in 2020 and continuing each year thereafter, Mother shall have weekend parenting time with A. in Sacramento the third weekend of February, April, and October, from Saturday at 8:00 a.m. to Sunday 6:00 p.m. Mother shall pay the cost of her transportation to and from Sacramento and her lodging while in Sacramento.

4. Exchanges shall occur at Sacramento International Airport, unless otherwise agreed upon by Mother and Father in writing dated and signed by both parents, or by court order. All exchanges shall be peaceful and conflict-free.

5. The custodial parent shall make A. available to the non-custodial parent for a completed call every Monday, Wednesday, and Friday from 3:00 p.m. to 5:00 p.m. (Pacific Time), and for a completed call every Sunday at 5:00 p.m., Pacific Time. If either the parent or A. is not available, the custodial parent shall ensure A.

returns the call and speaks to the non-custodial parent before bedtime. Skype shall be on all the time and is not placed on “Do Not Disturb” status. FaceTime shall be utilized for all calls and shall be on all the time.

6. Mother shall ship A.’s iPhone to Father by overnight mail, Federal Express, or UPS immediately upon return to Maryland, or by no later than July 16, 2019. A.’s iPhone shall be on all the time, with Mother’s number and Father’s number programmed into it. A photo of Mother and a photo of Father shall be put on A.’s iPad screensaver.

7. Each parent shall notify the other parent of any change in home address, mailing address, email, home phone number, cell phone number, or change in A.’s school within 5 days of any such change.

8. Each parent shall notify the other parent 60 days before any planned changes in residence of A.. The notification must state, to the extent known, the planned address of A., including the county and state of the new residence. The notification must be sent by certified mail, return receipt requested. Federal Express, UPS, or other private carriers are authorized and must provide written proof of delivery.

9. Mother and Father shall ensure A. is not left alone without age-appropriate supervision.

10. Mother and Father shall be fully licensed and insured when transporting A. in a vehicle, and shall comply with all Vehicle Code laws including vehicle registration. Mother and Father shall ensure A. is in an age-appropriate, Federally-approved car seat when he is being transported in a

vehicle, irrespective of who is driving or what car A. is in.

11. A. shall attend Antelope Meadows Elementary School.

12. Mother and Father shall each be provided A.'s educational information, including but not limited to the following:

- 1) A.'s school information including the name, address, telephone number, teacher's name and contact information.
- 2) A.'s emergency contact at the school, including a complete copy of A.'s emergency contact card.
- 3) A.'s educational planning programs, such as IEP, 504, etc., and provided copies of all documentation related thereto.
- 4) A.'s parent-teacher conferences, open house, back-to-school, promotion/graduation ceremonies, and any other school-related activities in which A. is participating
- 5) A complete copy of A.'s grade reports and progress reports within 10 days of receipt.
- 6) The name and contact information of any and all of A.'s daycare providers and, if applicable, A.'s before and after school programs.

13. Mother and Father shall each be provided A.'s medical information, including but not limited to the following:

- 1) A.'s pediatrician and dentist, and shall include the name, address, telephone number, and other contact information.

- 2) Mother and Father shall each be included in A.'s file as a party authorized to receive medical information from each of A.'s medical or dental providers.
- 3) Mother and Father shall be notified of A.'s medical or dental appointments within 24 hours of making such appointment.
- 4) Mother and Father shall be notified of A.'s medical or dental procedures or surgery within 24 hours of making such an appointment. Mother and Father shall each have the right to be present for any of A.'s medical or dental procedures or surgery.

14. Each parent shall provide the other parent with the name address and phone number of A.'s regular child care providers.

15. Based on the evidence received at trial the court finds mother has violated prior custody and visitation orders, not cooperating with the father and parenting, and the child abduction prevention orders are justified and appropriate as follows:

- 1) Mother shall post a bond of \$5000. If Mother takes A. without permission, Father can use this money to bring A. back.
- 2) Mother may not move with A. without Father's written permission for a court order.
- 3) Mother may not travel with A. outside the United States without a court order.
- 4) Mother shall register this order in the

state of Maryland, or any other state Mother move to and/or resides in the future, and provide this Court with proof of the registration before airing can travel to Maryland or any other state Mother moves to and/or resides in the future for Mother's parenting time with A..

- 5) Mother shall turn over A.'s passport or other documents (such as visas, birth certificates, and other documents used for travel) in her possession to Father forthwith, or in no event later than August 1, 2019.

16. Each parent shall provide the other parent A.'s itinerary, copies of round trip airline tickets, addresses and phone numbers where A. can be reached at all times, and Mother shall have an open airline ticket for Father in case A. is not returned. Mother shall pay for the cost of travel and light of financial disparity between the parties. If the parties can mutually agree in writing 30 days in advance of travel, Father can meet A. in Maryland at the airport on his receiving trip. If there is no agreement, Mother shall travel with A. two and from Maryland with a 14-day notice of A.'s arrival time in Sacramento and providing the airline and flight number.

17. Neither parent shall make or allow others to make any negative comments about the other parent or about their past or present relationships, family, or friends within hearing distance of A..

18. Other than age-appropriate discussions of the parenting plan and A.'s roll in mediation or

other court proceedings, Mother or Father shall not discuss with A. any court proceedings related to custody, visitation, or parenting time

19. Mother and Father shall communicate directly with each other on matters concerning A. and shall not use A. as a messenger between them.

20. Mother or Father shall not expose A. to secondhand cigarette or marijuana smoke.

21. Mother or Father shall not schedule activities for A. during the other parent's scheduled visitation or parenting time without the other parent's prior agreement.

22. Each parent shall exert every effort to maintain free access and unhampered contact between A. and the other parent, and to foster a feeling of affection between A. and the other parent. Neither parent shall do anything which would estrange A. from the other parent, which would injure the opinion of A. as to his Mother or Father, or would impair the natural development of A. love and respect for the other parent.

23. Should either parent engage in conduct which undermines this custody and visitation order, it shall be considered the offending parent is not acting in the best interest of A. and such nonconformance may be the basis for modification of this order

24. The terms and conditions of this order may be modified by mother and father as the needs of A. change. Any such modification shall be agreed upon by Mother and Father in writing, and shall be dated and signed by Mother and Father. Absent such an agreement in writing, dated and signed by Mother and Father, the terms and conditions of this order may be modified by court order only.

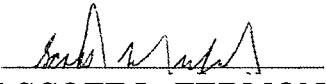
25. with this order, shall remain in full force and effect.

26. Law enforcement is authorized to enforce this order.

27. Trial exhibits shall be returned to the offering party.

IT IS SO ORDERED.

DATED: August 2, 2019


HONORABLE SCOTT L. TEDMON
JUDGE OF THE SUPERIOR COURT
COUNTY OF SACRAMENTO

Attached: Transcript in relevant part:

admitted into evidence, and states in pertinent part that the parents shall have joint legal custody.

Father shall have parenting time with A. during his spring break each year, six weeks during the summer, Thanksgiving on odd years, and Christmas for one week in 2019, and then even years thereafter. Mother shall have physical custody at all other times.

Father shall have Skype communication with A. on Mondays, Wednesdays, and Fridays, for up to 15 minutes between 6:00 p.m. and 7:30 p.m., Eastern Standard Time. Mother shall pay the cost of transportation for father's 2019 spring break parenting time in Sacramento.

The order dated May 1st, 2019, was admitted into evidence and states in pertinent part that father has an additional telephone call with A. on Saturdays. Father's telephone calls with A. shall not be monitored by mother. And mother shall pay all of the roundtrip transportation costs to and from Maryland for father's 2019 summer vacation time with A. in Sacramento.

All prior custody and visitation orders not inconsistent remain in full force and effect. That's the status of the current orders regarding the custody and visitation.

In summary, father's position and argues that mother has violated court orders, has intentionally interfered with his relationship with A., and engaged in the process of alienating A. from his father.

The father contends mother has engaged in misrepresentations to the Court regarding promises to follow court orders, relating specifically to father's

2019 spring break parenting time with A., as well as not fully disclosing to the Maryland court relevant information in her petition for a temporary protective order relating to California court matters.

Father argues mother only follows court order's she agrees with and ignores or violates those orders she disagrees with.

Father contends he has a stable home where A. can live, thrive, and enjoy his step-siblings, particularly Nehemiah, who is entering his last year of high school.

Father requests joint legal custody and sole physical custody, with mother having parenting time as follows: spring break, summer break, Thanksgiving in even years, winter break in odd years. A.'s birthday on September 2nd, if mother pays to travel to California, Mother's Day, if mother pays to travel to California.

And father additionally requests the custodial parent make A. available to the noncustodial parent for a completed call every Monday, Wednesday, and Friday from 3:00 p.m. to 5:00 p.m., Pacific Time, and for a completed call every Saturday and Sunday between 8:00 a.m. and 5:00 p.m.

Father requests an order that if either parent or A. is not available, the custodial parent must ensure A. returns the call and speaks to the noncustodial parent before bedtime.

Father requests that Skype is on all of the time and is not placed on "Do Not Disturb" status. Father requests FaceTime is used for calls and is on all of the time.

Father requests that A.'s iPhone is on all of the time, with father's number programmed into it. Father requests a photo of father is put on A.'s iPad desktop.

Those are the summary of father's requests. There are other specific requests that the Court will not get into at this time.

With regard to the mother's position in summary, mother contends father sexually abused A. and is not trustworthy.

Mother argues the investigation and the allegation of father's alleged sexual abuse of A. was incomplete.

Mother contends her actions throughout the time period of August 2018 to present were to protect the health, safety, and welfare of A..

Mother contends father's motivation for seeking a modification of custody relates to child support.

Mother argues she's been with A. since birth and has provided consistency, continuity, and stability.

Mother requests the order of December 19th, 2017 be reinstated, granting mother sole legal custody and sole physical custody of A..

Mother requests that father has supervised parenting time.

Mother requests that father has Skype calls with A. every Monday, Wednesday, Friday, and Sunday, from 6:00 p.m. to 7:30 p.m., with mother facilitating the calls; and agrees to stay in the room with A. during the calls if requested to do so by father.

With regard to the evidence produced at trial, the Court is going to summarize the testimony of each witness, beginning with Detective Campoy. Detective Campoy was called in father's case-in-chief.

Detective Campoy is with the Sacramento

Sheriff's Department. He has been in that department for several years. He has training in child abuse investigations.

In 2018, he testified he had 60 cases that were clear or closed. And in 2019, there were 15 cases active.

Detective Campoy testified that he has interviewed children relating to abuse and has observed approximately SAFE interviews.

As to the current case, Detective Campoy testified that he reviewed written reports and media, specifically a DVD interview of a forensic interview conducted in Maryland with A..

After reviewing all of the information provided, Detective Campoy concluded there was no hard evidence to conclude that investigation needed to be conducted or opened in Sacramento.

Further, Detective Campoy stated there were no documented incidents of injury to the victim regarding the allegation of sexual assault. Specifically, dad touching victim's penis inappropriately.

With regard to the forensic interview, Detective Campoy stated the victim did not make a proper disclosure of any criminal conduct. There were problems with the interview and they lacked proper context. There were leading questions used, there were props used. And with the age of the child being five at the time, leading questions suggest answers, and the forensic interview was tainted and could not be used in Detective Campoy's view.

Additionally, Detective Campoy stated the child indicated in the forensic interview that he "killed his father". He testified that this is an exaggeration that

sometimes applies in these types of interviews and bears on the credibility of the base allegations.

Further, Detective Campoy testified that with regard to the statement made by A., there was no physical injury. He finds it extremely unlikely that the allegation occurred, as alleged.

There were multiple slight exaggerations in A.'s story. And Detective Campoy concluded that there was nothing in the case to say that dad should not have contact with A. -- and that dad should not have contact with A..

The Court finds Detective Campoy's testimony to be credible.

Father called Megan Daniel, who is his fiancée. They've been in a relationship for approximately five years. Ms. Daniel indicated she's lived with father for four years and knows A. well.

Ms. Daniel testified that A. has been with father and herself in the home after their move and has been here for the summer, as well as the summer of July 2018.

Ms. Daniel testified she acts as a stepmother, she has a good relationship, and there are other individuals in the home that have a good relationship with A..

Ms. Daniel testified that she is employed with Child Protective Services; it will be five years in March. She worked with the courts to help parents mitigate issues, but only deals with allegations of sexual abuse, which are substantiated. She indicated that she has training in showing signs of sexual abuse and works with collaborative efforts of law enforcement and other persons in her job.

She testified that it is possible to use a

sexual abuse allegation to give advantage in custody cases, at the very beginning or sometimes during the process.

Specifically, with regard to the summer of 2018, Ms. Daniel testified that A. made friends in the neighborhood, that he had a good time, that he's close with Nehemiah, Jeff's oldest son, who will be starting his last year of high school this fall.

She testified that A. and Nehemiah mirror each other. And it's been a long time, until this summer, that Nehemiah and A. have had contact.

With regard to anything that happened in the summer of 2018, Ms. Daniel testified that there was nothing out of the ordinary during A.'s visit with father and his family. And that the notice of the sexual abuse allegations occurred, as far as she knew, right before the Christmas visit was to occur.

Ms. Daniel testified she knows none of this is true in terms of the allegations. She testified as to this one incident, that A. came into the bedroom and said to herself and daddy, "my penis hurts". Daddy said, "I won't touch it". And then dad took the Pull-Ups off of the child, noted that he had a rash on the tip of his penis that resembled a diaper rash. There was ointment used, and A. didn't complain of anything else.

They then went on a trip -- weekend trip to the beach with no problems, and there were no other issues relative to this allegation of A. having an abuse of his penis during that summer.

Further, Ms. Daniel testified that A. was sad when Nehemiah left for the summer, as they have a close relationship. Ms. Daniel testified that if A. was to live with father, there would be no need for daycare; that he has a room in the home,

and he would fit in well.

Ms. Daniel testified that father and A., when they're together, are very close and were so before mother moved to Maryland.

Ms. Daniel testified that in approximately February of 2019, there was a phone call between A. and father by Skype, wherein A. told his father, "Daddy, did you forget about me," and indicated that he missed his father.

Finally, Ms. Daniel testified that at one point, A. had said that "mommy won't let him come" to go to dad's house, and that father needed an order to have A. come to Sacramento.

On cross-examination, Ms. Daniel was asked by mother why mother wasn't called about this diaper rash on the penis. And Ms. Daniel testified that as a social worker, there was no need to call mom because it was a run-of-the-mill issue and not a significant health concern. And as Ms. Daniel testified, there was no further complaints by A. after it was addressed. Ms. Daniel testified that A. would potty prior to bedtime, and that was not uncommon.

Ms. Daniel testified there are three bedrooms in the home and A. would have his own room.

Ms. Daniel was asked about the effect that the proposed changes in Sacramento would have on A.. And she indicated it would be a significant change. She testified it was traumatic to have the child removed from father's life, and there will be some traumatic effect on the child if custody were to be switched, since mother has had the child since birth.

The Court finds Ms. Daniel's testimony balanced, objective, and credible.

Father called Coleman Daniel, Junior, as a witness in his case-in-chief. He's the 32-year-old

brother of Megan Daniel. Coleman indicated he is an uncle figure to A.. With regard to the date in question, Coleman Daniel testified that it was an unremarkable day, that A. loved to play Xbox, a Batman game, that there was nothing out of the ordinary that day.

At one point, Mr. Daniel testified that A. came out sad, that Nehemiah tried to help, and A. said his privates were hurting, but he wouldn't show his father. Mr. Daniel testified that there was an issue about the rash and that father indicated he would take care of the diaper. And they went with the Jeep pajama bottoms without the diaper to allow it to air out. And after that was addressed, A. went back to playing video games.

Mr. Daniel testified there was no further discussion after that. A. was fine, there was nothing else, and his demeanor did not change to any sort of negative behavior. And in fact, testified he had a good time. He, being A..

Mr. Daniel was cross-examined regarding the time of the day that this occurred, and Mr. Daniel confirmed he was not questioned by Child Protective Services.

The Court finds Mr. Daniel's testimony balanced and credible.

Mr. McAuley testified on his own behalf in his case-in-chief. He testified that the date of separation was 2012, when A. was three months old. Mr. McAuley testified that mother asked him to give up his parental rights to A. within months of him -- A. being old. And that this offer was repeated on more than one occasion thereafter, where mother was offering one possibility as long as father would give up his parental rights.

Father testified that he stipulated to a five-year domestic violence restraining order that was filed in 2012 and issued in 2013, and testified he didn't contest the DVRO issuance. He didn't want to talk to the mother.

Father testified that mother had brought dad to court a previous time about a diaper rash when the child was approximately age two, and requested an ex parte order, which was denied.

Father testified that his profession is as an elite track and field coach at the college level. And that in September of 2013, he was employed full-time at the Academy of Art University, making approximately \$45,000 a year plus bonuses.

Father testified that mother told father she would send a copy of the domestic violence restraining orders to his employer, and she did. Wherein, father was terminated, was given two months severance pay.

Father testified that in the area in which he works, which is Division 1 track and field coaching, it's a small community. And after mother displayed and distributed the domestic violence restraining order information throughout the coaching community, he has really had no position of employment since 2013.

Father testified that the mother sent the DVRO information to more than one employer, including a result of not being employed with the Sacramento County Parks and Recreation District.

Father testified he works sporadically with the Marines in the Wounded Warrior Project about four to five times a year now.

Father testified that there have been two orders for mother to pay attorney's fees by the Court in Sacramento, and neither has been paid.

In addition, father testified that he had Ms. Mittlestadt pay \$1,500 to represent him in the temporary protective order process in Maryland, which was ultimately dismissed.

Father testified that if A. were allowed to live in Sacramento, he would be available. He works primarily in the evenings. Currently it's 5:00 p.m. to 8:00 p.m., training children for free or for limited money, three days a week or so. And then his work is word of mouth.

Father testified he is involved with the Warrior games, the Marine Corps trials, which is four to five weeks out of the year. And the Armed Services Corporation is his employer, with his direct supervisor being Tom Marks.

Father testified he has little to no information about his son's life in Maryland. And that if the custody was changed to Sacramento, that he would ensure that mother was informed of how A. is doing.

Father testified that A. is currently in kindergarten, will be entering first grade. And that as opposed to the childcare in Maryland currently, there will be no need for daycare if the child was in Sacramento.

Father testified the last time he saw A. was August 1st, 2018. Testified it was a sad day.

Father denies any impropriety of abuse of any kind with regard to his son.

Father testified that the domestic violence restraining order expired in April of 2018. But since August of 2018, he has had little to no success in maintaining a relationship with A..

Father testified mother's income is \$160,000 a year, and it's a hardship on father financially to travel to Maryland and back to try to see his son.

Father testified he had good Skype communication with A. between December of 2017, the spring of 2018, and through the summer. That thereafter, as indicated in one of the exhibits, once A. went back to Maryland after August 2018, the Skype was a "Do-Not-Disturb" sign and the contacts were limited.

Father testified that the spring break 2018 visit was planned, everyone was excited to see A., including Mariah, Jordan, Caleb, Nehemiah. They were looking forward to seeing A., but that did not occur -- strike that. That did occur. And in the summer of 2018, they also had a good time.

Father testified upon A.'s return to Maryland, mother did not indicate that anything was wrong with A.. There was no indication at all that there was anything wrong, until father received a letter or an e-mail from mother dated November 30th, 2018, when he first learned of the problem and mother's position that there would be no further contact between A. and father, and that there would not be a visit at Christmas, despite a current court order that allowed for that.

Father testified A. was supposed to come to California on December 18th of last year and visit for three weeks or so.

With regard to contacting A., father said he doesn't have his son's iPhone number and mother will not provide the number, and only found out about the iPhone only two weeks before the trial started.

Father testified as to the visits currently; they're going awesome. They had a good exchange at the airport and A. was excited to see father.

He's been participatory in family events, video games, and is excited to see his step-siblings. And his father testified that when A. arrived this summer, it was the first time he had seen him in 11 months.

Father has maintained a concern that mother is not allowing court-contact or communication since August of last year and points to exhibits, Respondent's K, which is a call log, which has been gone through in detail and the Court has reviewed.

Respondent's Exhibit Y, which is a February 15th, 2019, text message exchange where father testified that he had to wait for an hour and a half to be called. And then if the time frame went by, that mother would simply not allow father contact with A..

And in Respondent's Exhibit Y, mother's response to "can you call him back, please" was: "He called already between the hours ordered. He is watching a movie with his friend."

Father also points to Respondent's Exhibit L, which is a series of photographs, which include a September 4th, 2018, picture of A. standing in front of a home, it appears. A home father says he didn't even know the address for.

There's a photograph of October 31st, 2018, from Halloween, in which there's two photos in which father testified that he does not know the person who A. is with.

Among other exhibits, father points to in support of his position, Respondent's Exhibit AA, which is a lengthy, nine-page exhibit, which references the "Do Not Disturb" on the Skype and the frequency of

missed calls and paucity of calls between father and A..

Father testified that beyond not seeing A. personally for 11 months, he had no contact with A. between September 21, 2018, and February of 2019. On cross-examination, there was information by way of a log that father did have contact with A. on Christmas day.

Father testified that as regards to A. talking to father, it appears to him his mother's position is she'll simply let A. decide at the age of five or six years old if he's going to talk to his father.

Father reviewed the various orders during his testimony. He understood on September 19, 2019, there was not a no contact order, but still could not get ahold of A., other than the one phone call on Christmas day.

Father testified he understood A. was to come to his home on spring break in 2019, specifically February 22nd, but it didn't happen.

When the protective orders came from Maryland, father had no idea about those orders until he received an e-mail on March 15, 2019. Father testified he immediately contacted Prince George County to find out what was going on and learned that the order was effective through March 29, 2019.

Father testified that at the Sacramento court hearing on March 19, 2019, mother stated to the Court she doesn't have to follow the order.

Father testified that on April 15, 2019, mother's request to transfer jurisdiction to Maryland was denied. It was not until April 22nd that he got a call with A..

As indicated previously, father testified that his counsel, Ms. Mittlestadt, had to pay \$1,500 to have

counsel represent him on April 30th, 2019, in the Maryland action, at which time over the objection of the mother, the petition was dismissed.

Father testified that summer break began on June 13, 2019, and is going well.

Father stated in his direct examination that if A. is allowed to live in California, he would attend Antelope Meadows Elementary School, which is a six out of ten rating, as opposed to the four out of ten for the current school A. is attending in Maryland.

Father also testified that Junction Elementary in Roseville, which is ten out of ten, is being looked into or considered if that would be the best school for A..

Father testified daycare is not needed, as he has himself and Megan and others to ensure that A.'s needs are met and gets to where he needs to go in a timely manner.

Father testified at one point he felt like giving up, but decided he couldn't do that, focusing on the best interest of his son.

Father testified that he would ensure consistent and continuance contact with both parents and testified unlike what his position is, that that's not happening now. Mother would be fully informed and involved with A.'s life if A. were to be in Sacramento.

Father testified there would be no need for daycare. His school in Sacramento is better. There is a stable relationship and environment in the family home.

The dad will comply with all court orders and will foster a relationship between A. and mother and would focus on the relationship of both parents in terms of the best interest of their son. And is requesting the Court to modify custody accordingly.

With regard to the history of the relationship between mother and father beyond what's already been reviewed by this Court this morning, father testified that while he was under the domestic violence restraining order terms and testing, that mother requested that father be tested when he was on the road. Father testified he believed that was an intentional act on mother's part, but father ended up having to go to Denver to comply and did comply with the test.

And mother stated, if you don't give up your rights, I will contact all of your employers.

The Court finds father's testimony balanced, for the most part straightforward, and credible.

In mother's case-in-chief, she called Family Court Services mediator Marie Sims, who testified she's been with family court services for 17 years, that she remembers the case, that the parties were "pretty far apart" in terms of the relative positions.

With regard to the issue in August of 2018 and the child's penis, Ms. Sims' recollection was that there was ointment put on the child's penis and there was no pickups -- strike that -- Pull-Ups used for the next few days.

In her investigation, Ms. Sims indicated that she talked to Detective Campoy, she talked to mother and father, and received input accordingly.

Ms. Sims testified that it is detrimental to the child to have no contact with the noncustodial parent. And the longer the contact is withheld, the higher the detriment is to the child.

Ms. Sims testified that in terms of the custody decisions in her view, it is important that the parents facilitate contact with each parent, particularly the

noncustodial parent. And if that is not done, it is not done in the child's best interest.

Ms. Sims testified that as the child gets older, and if the noncontact continues, a greater risk of alienation continues. The younger the child is, the more they're capable of being influenced. And the older they get, the more likely it will become they will not want to see the noncustodial parent.

Ms. Sims' report completed January 20th, 2019, was introduced by stipulation into the court record and evidence.

And specifically, with regard to the sexual abuse allegation, one of mother's supporting documents provided to Ms. Sims from the Children's National Hospital Child and Adolescent Protection Center described their interview with A. on August 28th, 2018, which is the most contemporaneous statement made by the child to the alleged event, based on the Court's review of the evidence produced in this trial.

And Ms. Sims states in the report, "patient made no direct disclosure about anyone touching his body in a way that made him feel uncomfortable or that he considered to be inappropriate." Ms. Sims then goes on to say that Detective Campoy's decision of declining to open an investigation was followed thereafter.

Child Protective Services received a referral and evaluated the referral out, which happens when there is insufficient evidence.

And according to Ms. Sims, on the basis of that information, the sexual abuse allegations made by mother against father cannot be substantiated, and that father's unsupervised parenting time be restored.

The Court finds that Ms. Sims' testimony be direct and credible.

Mother testified in her own behalf in her case-in-chief and testified that after returning from California in August of 2018, A. relayed to her that father pulled his pee-pee and made it bleed, and from that point, began to contact law enforcement and other agencies.

Mother testified that she did not contact father to advise him of this immediately or inquire as to what had happened, based on her testimony as to what the child recalled to her.

Mother confirmed that it was not until November 30th of 2018 by e-mail that father would not have the visit at Christmas due to this sexual abuse allegation issue.

One of the issues that father raises is mother's inability or unwillingness to follow court orders, and mother testified in that regard. Mother testified that on March 26th of 2019, she was in court in Sacramento, personally present before Commissioner Haukedalen and later before Commissioner Harmon. And at each hearing promised to have A. delivered to father for spring break, despite the fact that mother knew at the time that she had a temporary order out of Maryland that expired on March 29th, 2019. And then subsequently followed, and as the evidence clearly showed, A. did not get delivered to father for the spring break of 2019.

Mother contends that the reason for not delivering A. to father for spring break is because there was a protective order out of Maryland.

Respondent's Exhibit F was introduced and admitted into evidence. And attached to that exhibit, which comes from the District of Maryland from

Prince George County, is the petition for protection from child abuse, received on March 15th, 2019, filed by mother.

In section six, it indicates to the person seeking protection that "I know of the following court cases involving me or the person that I want protected and the respondent." And lists as follows: Superior Court, divorce, 2012; Superior Court of California, custody, 2012; Sacramento County case 12FL07094; visitation and child support 2012, 2013.

There is an entry that she had received -- mother had received a protective order April 2nd, 2013, that expired on April 2nd, 2018, out of Sacramento County.

As to section six, there is no specific information provided to the Maryland court that there was an ongoing custody matter or appearances were being held contemporaneous to consider a similar time to her request for a protective order.

There is one reference in the petition continuation sheet where Ms. Salaam, the mother, indicates Mr. McAuley recently testified in a child support hearing on February 12th, 2019, that he was unable to work due to diminished mental capacity. The issue of visitation and custody set for trial in late June, 2019, of Sacramento, California. And there was no reference to the ongoing appearances, at or around the time that she sought the protective order.

Respondent's Exhibit H was admitted into evidence, which was an e-mail, advising Ms. Mittlestadt from mother, that the temporary protective order for A. has been extended to April 30th, 2019, and that she's canceling the airline tickets to Sacramento for spring break.

The Court took judicial notice of the District Court of Maryland Prince George County order, where a hearing was held on April 30th, 2019, and the petition was dismissed.

Mother testified as to the attorney's fees issue, that she hasn't paid either of the court-ordered attorney's fees, one in the amount of \$2,500 and the other in the amount of \$1,500, because she has an inability to pay. But agreed that in a reconsideration hearing, Commissioner Haukedalen denied the request and ordered the fees to be paid. And it has not been paid to this date.

There was significant time spent during the trial going through the various call logs, and mother testified that either A. did not want to talk to dad or was not available or the calls were simply missed, but she was not intentionally or otherwise interfering with father's relationship with A..

And there are numerous exhibits from mother indicating that she'll have A. call dad tomorrow. But if he doesn't want to talk to dad due to the abuse, then he doesn't have to. And that's the mother's testimony.

Mother testified with regard to the Skype calls that she has no obligation to ensure that son and dad have contact with each other. If the calls go forward, they go forward; if they don't, they don't.

Mother's requesting that the father has supervised visits for dad in Maryland and father pay for the costs of the transportation. Mother testified she believes dad's motivation is related to child support and is not at all linked to a lack of contact.

With regard to the investigation regarding the sex abuse allegations -- or the child abuse allegations,

mother stated she's not satisfied with the California process. She wasn't satisfied with Ms. Sims or the Family Court Services process. And disagrees with the orders, that father have contact with A..

With regard to the recent orders in March, mother testified that Judge Haukedalen did order her not to rely on the Maryland order. But it's clear from her conduct that she did so anyway. And the spring break that was ordered did not commence.

The Court finds mother's testimony self-serving. It's clear she has not followed court orders, and indicated she has no obligation to ensure that A. and father communicate, it's up to the child.

With regard to mother's version of why the spring break visitation for father was cancelled, and that she was relying on Maryland orders and following those orders, despite being advised by the California court that that order was to be followed and that she promised to have A. in Sacramento for spring break. The Court finds that piece of mother's testimony not credible.

And this Court finds that mother was using the Maryland court to defeat father's right to have the child for spring break. And effectively, it was a manipulation of the court process, knowing full well what the actual facts were and the fact that she would ensure A. would appear in Sacramento for spring break.

That's a summary of the testimony in the trial.

And considering the best interest of any child, the Court must consider Family Code Section 3011 and 3020. And among those considerations is the health, safety, and welfare of the child; the other parent; and the nature and the amount of contacts with both parents.

The Court must look at all of the facts and circumstances bearing on the best interest of the child, see Burchard v. Garay, B-U-R-C-H-A-R-D, v, G-A-R-A-Y, 1986, 42 Cal.3d 531 at 543.

Father is alleging alienation or parental interference by mother in this case. Family Code Section 3040 becomes a key factor in the Court's analysis in this case. Family Code Section 3040(a)(1) states "Custody should be granted in the following order of preference, according to the best interest of the child, as provided in sections 3011 and 3020:

"1, both parents jointly, pursuant to Chapter Four, commencing with section 3080, or to either parent. In making an order granting custody to either parent, the Court shall consider, among other factors, which parent is more likely to allow the child frequent and continuing contact with a noncustodial parent, consistent with Sections 3011 and 3020, and shall not prefer a parent as custodian because of that parent's sex."

The Court in its discretion may require the parents to submit to the court a plan for the implementation of the custody order.

The Court finds that in this case that the evidence established mother consistently and continually denied father parenting time and regular contact with A.. This is particularly egregious, given that there were several custody orders providing father parenting time and contact with A., which mother did not follow.

As concerning, mother represented to the Court that there was an order suspending father's parenting time in Maryland. But as I already covered, that was specifically addressed in California court. And Commissioner Haukedalen advised

mother that the California courts had jurisdiction, and in fact, ruled that that was the case at one of the hearings earlier this year.

Mother's request that she have sole legal and physical custody of A., with father having agency supervised parenting time, in this Court's view, confirms mother's efforts to mute father's relationship with A..

In looking to and assessing all of the circumstances bearing on the best interest of A., it is clear to this Court from the evidence presented at trial that mother has little to no interest in allowing A. frequent and continuing contact with father.

Mother's conduct as testified to and presented at trial is unacceptable and not in the best interest of A..

And the Court finds that the mother has engaged in a continuous process of parental interference regarding the relationship between father and A..

The Court has reviewed the cited case of *In Re Marriage of Ciganovich*, C-I-G-A-N-O-V-I-C-H, Third District Court of Appeal, 1976, 61 Cal.App.3d 289. In that case, the Court held that mother's objective to frustrate father's visitation rights were not appropriately considered. And the Court abused its discretion in not considering mother's conduct.

That case in pertinent part held "when a mother granted custody of a child has attempted to frustrate the father's visitation rights, such conduct furnishes no ground from withholding child support payments.

"The Court, however, has power to transfer the custody, regardless if the mother is unfit, or otherwise modify the custody support provisions. And the father need not show a change of conditions when he seeks such remedial aid."

The principal holding of the case is found in footnote three. It indicates that when a parent granted custody of a child has shown an intent to frustrate the other parent's visitation rights, the Court should be concerned of the child's welfare as the paramount consideration. Bearing in mind that preservation of parental relationships is in the best interest of the child, as well as the parent, and that the custodial parent's attempt to frustrate the Court's order has a bearing upon the fitness of that parent.

Failure of the Court to consider in the Ciganovich case, the mother's deliberate frustration of the father's visitation rights as a judicially recognized ground for changing custody constitutes reversible error.

As the Court has already indicated and has found in this trial, the mother has engaged in a process to frustrate father's visitation rights and is a judicially recognized ground for changing custody.

The Court must fundamentally bear in mind that preservation of parental relationships is in the best interest of the child, as well as the parent. And if that is attempted to be defeated by one parent, it provides a ground to modify the decree, and the Court consider it as part of an array of circumstances regarding custody.

In reviewing the call logs, and this was spoken to in closing argument, from August 1st, 2018, to February 5th, 2019, there were eight dates in six months where father had a call with A.. And those dates were enumerated by counsel in her closing argument.

In reviewing the testimony on February 22nd, 2019; March 19, 2019; and March 26th, 2019;

according to the testimony here in Sacramento, mother promised to comply with the California orders. But as the evidence showed, she did not in some part, and it was not an insignificant noncompliance. Particularly, in light of the fact that Commissioner Haukedalen ultimately advised her that California has jurisdiction.

In addition to those orders, mother has failed to follow the Court's order for payment of attorney's fees. And from the Court's review of the evidence, finds that at least in this case, mother follows orders that she agrees with and doesn't follow orders she doesn't agree with.

And that lack of following these court orders in this case have served to the detriment of A. and his relationship with his father and likely has served to the detriment of A.'s relationship with his mother.

A. is six years old. And father testified one of A.'s first comments was "Daddy, did you forget me". Children also know who they're with and who they're not with, and why they're in some place and not in some other place that they're told they're supposed to be. That's detrimental to the child to both parents, and most important importantly to the child himself.

The Court would finally note on the issue of this alleged sexual abuse by father of the child, given mother's efforts to raise this issue repeatedly in multiple jurisdictions is one thing. But for a mother to be told, if credible, that there was an allegation of sexual abuse and to not immediately contact father and question as to what did you do, is not consistent with the significant efforts made to keep father from his son. It doesn't add up.

If mother believed in August of 2018, that father had actually sexually abused A., to sit silent and not

confront the person that she believes offended her son in a horrific way, makes no sense.

Beyond that, in this trial, mother continues to assert that this occurred. And that she simply is unsatisfied with the results of Detective Campoy, Child Protective Services, and other investigating agencies, and holds steadfast that this occurred.

This is the time and date set for the trial. And other than mother's own opinion that it occurred, she presented no evidence, affirmatively, to counter the professional testimony of an experienced detective, Child Protective Services. And ultimately, her own protective order was dismissed in Maryland.

The children's hospital, as I indicated and as testified to by Marie Sims, indicated that there were no statements made of any inappropriate touching of any kind.

This is the trial. And the centerpiece of mother's argument is sexual abuse, but brought no evidence before this Court to counter what the expert said and what the testimony is as presented at trial. And is left simply with her own opinion, which is her right, but is not consistent with the evidence presented at this trial. And there was nothing presented by mother to counter the testimony of the experts and their findings.

The Court must consider the totality of the circumstances in issuing any custody order. And the Court has reviewed the evidence presented, considered the arguments of each party.

And the Court finds it is in the best interest of A. to issue the following order: Father and mother shall have joint legal custody of A.. Joint legal custody means that both parents shall share the right and

responsibilities to make decisions related to the health, education, and welfare of A..

The parents shall make good faith efforts to reach a mutual agreement in making decisions on nonemergency issues, related to the health, education, and welfare of A..

In the event that there is no agreement between the parents, father shall have final decision-making authority.

Two, effective immediately, father shall have sole, physical custody of A..

Three, mother shall have parenting time with A. as follows: spring break from Saturday after school is out to Sunday before school begins.

Summer break, from the day after school is out to seven days before school begins.

Saturday before Thanksgiving weekend to Sunday after Thanksgiving in odd years. Father has Thanksgiving holidays in even years.

Winter break from Saturday after school is out to Sunday before school starts, beginning in 2021, with mother having winter break in even years. Father has winter break in odd years.

With regard to A.'s birthday on September 2nd, if mother pays to travel to California, parenting time from 9:00 a.m. to 8:00 p.m. If mother does not travel to California, mother shall have a call with A..

Mother's Day if mother pays to travel to California, parenting time from 9:00 a.m. to 8:00 p.m. If mother does not travel to California, mother shall have a call with A..

With regard to weekend visitation time in 2019, mother shall have the third weekend in September in Sacramento. Weekend defined as Saturday at 8:00 a.m. to Sunday at 6:00 p.m. Mother shall pay for the

cost of her own travel and lodging in Sacramento. And the visits shall occur in Sacramento.

In 2020 moving forward, mother shall have the third weekend in the months of February, April, and October in California, with a weekend defined as Saturday at 8:00 a.m. to Sunday at 6:00 p.m. Mother shall pay for the cost of her own transportation and lodging in Sacramento.

The exchanges shall occur at Sacramento International Airport, unless otherwise agreed upon by father and mother in writing, dated and signed by both parents or by court order. All exchanges shall be peaceful and conflict free.

The custodial parent shall make A. available to the noncustodial parent for completed calls every Monday, Wednesday, and Friday, from 3:00 p.m. to 5:00 p.m., Pacific Time, and for a completed call every Sunday at 5:00 p.m. Pacific Time.

If either parent or A. is not available, the custodial parent shall ensure that A. returns the call and speaks to the noncustodial parent before bedtime. Skype shall be on all the time and not to be placed on "Do Not Disturb" status. FaceTime shall be utilized for all calls and shall be on all the time.

Mother shall ship A.'s iPhone to father immediately upon return to Maryland. But in any event, no later than July 16th, 2019. A.'s phone shall be on all the time, with mother's number and father's number programmed into it. A photo of mother and a photo of father will be put on A.'s iPad screensaver.

Mother shall ship A.'s iPhone either by overnight mail, federal express, or UPS next-day delivery.

Each parent shall notify the other parent of any change in the home address, mailing address, e-mail,

home phone number, cell phone number, or change in A.'s school within five days of any such change.

Each parent shall notify the other parent of 60 days before any plan change in residence of A.. The notification must state to the extent known the planned address of the child, including the county and state of the new residence. The notification must be sent by certified mail and return of receipt requested. Federal express, UPS, or other private carriers are authorized and must provide written proof of delivery.

Father shall ensure and mother shall ensure when they have custody that A. should not be left alone without age-appropriate supervision.

Mother and father shall be fully licensed and insured when transporting A. in a vehicle. And shall comply with all Vehicle Code laws, including vehicle registration. Mother shall ensure A. is in an age-appropriate readily approved car seat when he is being transported in the vehicle, irrespective of who is driving or what car A. is in.

A. shall attend Antelope Elementary School. Mother and father shall each be provided A.'s educational information, including but not limited to the following:

1. A.'s school information, including the name, address, telephone number, and teacher's name and contact information.
2. A.'s emergency contacts at the school including a complete copy of A.'s emergency contact card.
3. A.'s educational planning program, such as IEP, 504, et cetera, and provide copies of all documentation related thereto.
4. A.'s parent-teacher conferences, open house, back-to-school, promotion, graduation ceremonies,

and any other school-related activities in which A. is participating.

A complete copy of A.'s grade reports and progress reports within ten days of receipt.

The name and contact information of any and all of A.'s daycare providers, and if applicable, A.'s before-school or after-school programs.

Mother and father shall each be provided A.'s medical information, including but not limited to the following: A.'s pediatrician and dentist. And shall include the name, address, telephone number, and other contact information.

Mother and father shall each be included in A.'s file as a party authorized to receive medical information from each of A.'s medical or dental providers.

Mother and father shall be notified of A.'s medical or dental appointments within 24 hours of making such an appointment.

Mother and father shall be notified of A.'s medical or dental procedures or surgery within 24 hours of making such an appointment.

Mother and father shall each have a right to be present for any of A.'s medical or dental procedures or surgery. Each parent shall provide the other parents with the name, address, and phone number of A.'s regular childcare providers.

Based on the evidence received at trial, the Court finds that mother has violated prior custody and visitation orders and other court orders, has not cooperated with father in parenting, and a child abduction prevention order is justified and appropriate as follows: Mother shall post a bond of \$5,000. If mother takes A. without permission, father can use his money to bring A. back. Mother may not

move with A. without father's permission or a court order. Mother may not travel with A. outside of the United States without a court order.

Mother shall register this order in the State of Maryland or any other state mother moves to or resides in the future and provide this Court with proof of registration before A. can travel to Maryland or any other state mother moves to and/or resides in the future for mother's parenting time with A..

Mother shall turn over A.'s passport and other documents, such as visas, birth certificates, or other documents used for travel in her possession to the father forthwith, or in no event, later than August 1st, 2019.

Each parent shall provide the other parent A.'s itinerary, copies of roundtrip airline tickets, addresses and phone numbers where A. can be reached at all times, and an open airline ticket for father in case A. is not returned.

Mother shall pay for the cost of travel in light of the financial disparity between the parties.

If the parties can mutually agree in writing within 30 days in advance of travel, father can meet A. in Maryland at the airport on his receiving trip.

If there is no agreement, mother shall travel with A. to and from Maryland with a 14-day notice of A.'s arrival time in Sacramento and providing the airline and flight number.

Neither parent shall make or allow others to make any negative comments about the other parent or about their past or present relationships, family or friends within hearing distance of A.. Other than age-appropriate discussions of a parenting plan and A.'s role in mediation or other court proceedings, father and mother shall not discuss with A. any court

proceedings relating to custody, visitation, or parenting time.

Mother and father shall communicate directly with each other on matters concerning A., and shall not use A. as a messenger between them.

Mother and father shall not expose A. to secondhand cigarette smoke or marijuana smoke.

Mother and father shall not schedule activities for A. during the other parent's scheduled visitation or parenting time without the other parent's prior agreement.

Each parent shall exert every effort to maintain free access and unhampered contact between A. and the other parent and to foster a feeling of affection between A. and the other parent.

Neither parent should do anything which would estrange A. from the other parent, which would injure the opinion of A. as to his mother or father, or would impair the natural development of A. for love and respect for the other parent.

Shall either parent engage in conduct which undermines the custody and visitation order issued today, it shall be considered the offending parent is not acting in the best interest of A., and such nonconformance may be the basis for modification of this order.

This has been stated to both parents in prior orders, and the Court is emphasizing it once again: Should either parent engage in conduct which undermines this custody and visitation order, it shall be considered the offending parent is not acting in the best interest of A.. And any such nonconformance will be the basis of modification of this order.

The current terms and conditions of this order may be modified by mother and father as the needs

of A. change. As to such modification, any such modification shall be agreed upon by mother and father in writing and shall be dated and signed by both mother and father.

Absent such an agreement in writing dated and signed by both mother and father, the terms and conditions of this order may be modified by court order only.

All prior orders not in conflict with this order shall remain in full force and effect.

Law enforcement is authorized to enforce this.

And finally, the trial exhibits shall be returned to the offering parties.

With the Court's pronouncement of its order, Ms. Mittlestadt, are you withdrawing your request for a statement of decision?

MS. MITTELSTADT: Yes.

THE COURT: That is so noted.

The parties are directed to stay to obtain the exhibits, and this order will be made available online. Court is adjourned.

MS. MITTELSTADT: Thank you, your Honor.

(Proceedings concluded.)

--OOO--

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CERTIFICATE OF MAILING

I, E. Chang Deputy Clerk, hereby certify that I am not a party to the within action and that I deposited a copy of this **DECISION AND ORDER** in sealed envelopes with first class postage prepaid addressed to each party below in the U.S. Mail at 3341 Power Inn Road, Sacramento, California, on

Dated: 08/02/19



Courtroom Clerk

Ameenah McAuley (Salaam) 1918 Turleygreen Place
Upper Marlboro, MD 20774

Jeffrey McAuley
C/O Jacqueline Mittelstadt Tahoe Law Center, Inc.
3960 West Point Lorna Blvd. San Diego, CA 92110 **

APPENDIX C
CASE# S270250

IN THE SUPREME COURT OF THE STATE OF
CALIFORNIA
En Banc

Ameenah Salaam,
Appellant

v.

Jeffery McAuley,
Respondent

DENIAL OF REVIEW

Court of Appeal, Third Appellate District –
No. C090504

S270250

IN THE SUPREME COURT OF CALIFORNIA
En Banc

**In re the Marriage of AMEENAH and JEFFERY
ALLEN McAULEY**

AMEENAH SALAAM, Appellant,

v.

JEFFERY ALLEN McAULEY, Respondent

The petition for review is denied.

CANTIL-SAKAUYE

Chief Justice

Filed Sep 22, 2021

APPENDIX D
CASE# C090504

IN THE COURT OF APPEAL OF THE STATE OF
CALIFORNIA
THIRD APPELLATE DISTRICT

AMEENAH McAULEY (SALAAM),
Appellant

v.

JEFFREY McAULEY,
Respondent

APPELLANT'S OPENING BRIEF

IN THE COURT OF APPEALS OF THE STATE OF
CALIFORNIA
THIRD APPELLATE DISTRICT

In RE: The Marriage of McAuley

Ameenah McAuley (Salaam),

Appellant

Court of Appeals

No. **C090504**

v.

Sacramento County
Superior Court No.

Jeffery McAuley,
Respondent

12FL07094

Appeal from Judgment of the Superior Court
State of California, County of Sacramento

Honorable Scott Tedmon, Judge

APPELLANT'S OPENING BRIEF

Ameenah Salaam
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Upper Marlboro, Maryland 20774
Telephone (412) 874-0805
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Appellant In Pro Per

STATEMENT OF THE CASE

On December 18, 2018, Mr. McAuley filed an emergency ex parte request for visitation and custody orders regarding the Parties' son. (I CT 175-229) The request was to change to joint legal custody, compliance with the winter break visit, and modifications to payment for travel to the visits. (I CT 176,179,189) The disposition following the emergency hearing was no parenting time, referral to Family Court Services for mediation, (I CT 174) and scheduled a return for hearing on February 5, 2019. (I CT 175)

At the return for hearing on February 5, 2019, Commissioner Haukedalen issued new orders changing custody to joint legal, physical custody remains with Ms. Salaam and Ms. Salaam to pay for travel expenses for spring 2019 school break. Ms. Salaam requested a trial, and this matter was set for trial on June 13, 2019. (I CT 164-168)

Mr. McAuley and his attorney, Jacqueline Mittelstadt, requested an emergency ex parte hearing on February 22, 2019. (I CT 134-162), on Order to Show Cause for Contempt #1, which was continued to March 26, 2019. (I CT 131,163)

On March 15, 2019, Ms. Salaam requested an order of protection in Prince George's County Maryland for A. McAuley. A temporary order of protection was granted and effective from March 15, 2019 to March 30, 2019. (I SuppCT 153-165)

On March 19, 2019, Mr. McAuley requested an emergency ex parte hearing for the second and third Order to Show Cause for Contempt for sanctions, attorney's fees, and costs. (I CT 111-130) This matter was continued to March 26, 2019. (I CT 107-108)

On March 26, 2019, the court finds no cause for Contempt but orders \$2,500.00 in attorney's fees and costs payable from Ms. Salaam to Mr. McAuley. (I CT 98)

On March 26, 2019, Ms. Salaam files a request for orders to change jurisdiction of the family law case to Maryland. The hearing is scheduled for May 21, 2019. (I CT 99-106)

On March 30, 2019, the Order of Protection for A. McAuley remained effective and was extended to April 30, 2019. (II SuppCT 169-181)

On April 3, 2019, Mr. McAuley requested another emergency hearing for order to change in visitation, (parenting time) to sole custody for father, sanctions, attorney's fees, and shortening of time on Ms. Salaam's hearing for change of jurisdiction hearing. This hearing was scheduled for April 15, 2019. (I CT 82-97)

On April 8, 2019, Mr. McAuley filed another Order to Show Cause for Contempt #3, and a hearing was scheduled for May 21, 2019. (I CT 77-81)

On April 29, 2019, the court's finding and orders from the hearing on April 15, 2019, denied Ms. Salaam's request to transfer jurisdiction to Maryland and continued the April 3, 2019, request for orders to May 1, 2019. (I CT 76)

On May 9, 2019, Ms. Salaam filed her Petitioner's statement of issues (I CT 66) and the Proof of Service. (I CT 65)

On May 14, 2020, the court filed orders from the May 1, 2019, hearing ordering an additional visitation call, Ms. Salaam to pay for transportation to Father's 2019 summer visit, and to pay Mr.

McAuley \$1,500.00 in attorney's fees and costs. (I CT 63)

The trial was held on June 13, 2019, and July 10-11, 2019. (I CT 16:13) On July 12, 2019, the decision and orders pronounced granted Mr. McAuley sole physical custody of A.. (I CT 17:20) Ms. Salaam and Mr. McAuley to share joint legal custody with Mr. McAuley having final say. (I CT 17:15-19) Visitation awarded to Ms. Salaam at her sole cost and expense. (I CT 21:6) No visitation was permitted until Ms. Salaam posted a \$5,000.00 bond (I CT 20:19), registered the new orders in Maryland (I CT 20:24), and purchased an open ticket for Mr. McAuley. (I CT 21:6)

On September 18, 2019, Ms. Salaam filed an appeal of the orders issued August 2, 2019. (I CT 12-113) The proof of service for the appeal was filed on October 1, 2019. (I CT 14-15)

STATEMENT OF APPEALABILITY

This appeal is from the order of the Sacramento County Superior Court and is authorized by the Code of Civil Procedure, Section 904.1, subdivision (a)(1).

STATEMENT OF FACTS

On July 1, 2018, A. McAuley ("A."), went to Sacramento, California to visit with his father, the respondent, Jeffery McAuley ("Jeff") until August 1, 2018. Ameenah Salaam ("Ameenah"), the appellant had 3 phone calls with A. for the 30 days he was away. Shortly after A.'s return from California, on August 7, 2018, A., then 5 years old, divulged to Ms. Salaam that his "father pulled his penis and made it bleed." Ms. Salaam took A. to his pediatrician on

August 17, 2018, who referred him to Children's National Hospital. On August 28, 2018, A. was seen at Children's National where he didn't divulge anything but was diagnosed with adjustment disorder. (1 RT 76:20-25) Ms. Salaam was told to report the incident to the 24-hour Child Abuse Line in Sacramento. Ms. Salaam spent several months trying to report the incident and was being bounced around between Maryland and California CPS, Sheriff's, and Police. Ms. Salaam emailed Mr. McAuley on November 30, 2018, to advise Mr. McAuley of these allegations and expressed her desire to not have A. visit for the December 2018 winter break in California, given A.'s desire to not speak with him over the telephone. (I SuppCT 60) Mr. McAuley did not deny the claims or provide details of a similar incident. (I SuppCT 62-67)

On December 18, 2018, Mr. McAuley filed an emergency ex parte request for visitation and custody orders regarding the Parties' son. (I CT 175-229) The request for orders was to change to joint legal custody, compliance with the winter break visit, and modifications to payment for travel to the visits. There was no request to change physical custody from mother to father. (I CT 176,179,189) Ms. Salaam received notice to appear, which she did by telephone from Maryland. (I SuppCT 60) The disposition following the emergency hearing was no parenting time, referral to Family Court Services for mediation, (I CT 174) and scheduled a return for hearing on February 5, 2019. (I CT 175)

At the return for hearing on February 5, 2019, the court issued new orders changing custody to joint legal, physical custody remains with Ms. Salaam and Ms. Salaam to pay for travel expenses for spring

2019 school break. The matter was set for trial on June 13, 2019. (I CT 164-168) Mr. McAuley did not provide unconfirmed copies of the request for orders to Ms. Salaam until February 8, 2019, after the mediation and after the orders reinstating visits and modifying existing custody and visitation arrangements, were pronounced on the February 5, 2019. Ms. Salaam made the courts aware at the February 5, 2019, hearing that she had not received the request for orders and did not agree with the pronounced orders. The orders and the issue of proof of service was referred to trial. (2 RT 261:18-261:5)

On March 15, 2019, Ms. Salaam requested an order of protection in Prince George's County Maryland for A. McAuley. A temporary order of protection was granted and effective from March 15, 2019, to March 30, 2019. (I SuppCT 153-165)

On March 30, 2019, the Order of Protections for A. McAuley remained effective and was extended to April 30, 2019. (II SuppCT 169-181)

On April 3, 2019, Mr. McAuley requested another emergency hearing for order to change in visitation (parenting time) to sole custody for father (for the first time), sanctions, attorney's fees, costs, and shortening of time on Ms. Salaam's hearing for change of jurisdiction hearing. This hearing was scheduled for April 15, 2019. (I CT 82-97) On April 29, 2019, the court's finding and orders from the hearing on April 15, 2019, denied Ms. Salaam's request to transfer jurisdiction to Maryland and continued the April 3, 2019, request for orders to May 1, 2019. (I CT 76)

On May 9, 2019, Ms. Salaam filed her Petitioner's statement of issues, (I CT 66) and the Proof of Service. (I CT 65)

On May 14, 2020, the court filed orders from the May 1, 2019, hearing ordering an additional visitation call, Ms. Salaam to pay for transportation to Father's 2019 summer visit, and no change in physical custody from Ms. Salaam to Mr. McAuley.

On June 13, 2019, the first day of the trial, (I CT 16:13) Attorney Mittelstadt requested the court move forward with the orders to show cause for contempt (1 RT 2:4-13) for the emergency hearings from February 22, 2019 (I CT 134-162), and March 19, 2019, for the second and third Order to Show Cause for Contempt for sanctions, attorney's fees, and costs (I CT 111-130), and the April 8, 2019, Order to Show Cause for Contempt #3. (I CT 77-81) The court discovered that Attorney Mittelstadt failed to file all of the orders and never had the emergency orders and the request for orders personally served on Ms. Salaam. (1 RT 1:23-13:13) (1 RT 82:14-88:15) These are the same unfiled and unserved orders that resulted in the court ordering Ms. Salaam to pay Mr. McAuley \$2,500.00 in attorney's fees and costs (I CT 98) on March 26, 2019, and an additional \$1,500.00 in attorney's fees and costs on May 1, 2019. (1 RT 63)

On this first day of the trial, Attorney Mittelstadt exceeds the request for orders filed on December 18, 2018, which was moved to this trial, by requesting Mr. McAuley have sole custody of A. in her opening statement (1 RT 20:4-10) and additional judicial counsel forms that delineate a variety of orders. (1 RT 179:19-24) The revised judicial form differed from the original forms filed with the December 28, 2018, request for orders (I CT 190-196) and were provided to Ms. Salaam for the first time that day and included versions if A. lives in

Maryland and if he lives in California. (1 RT 180:12-16)

Detective Campoy, of the Sacramento County Sheriff's Office of Child Abuse Bureau testified (1 RT 23:53) that he didn't know when Prince Georges County initially took the report (1 RT 30:7-10), the documents in the file from Prince George's County did not provide much information regarding a criminal investigation (1 RT 31:27-1), and while there was substance to them, there was no hard evidence or information leading him to conclude that an investigation based solely on the documents, needed to be conducted. (1 RT 32: 3-6) He did not know how old A. was at the time of the interview (1 RT 34:24-26), he did not know how close in time the Prince George's County interview was to the alleged conduct (1 RT 35: 11-14), he stated he could not say that the victim was coached in any fashion (1 RT 36:28), during the forensic interview the child stated that he had killed his father (1 RT 37: 25-28), he stated that he could not state with certainty that anything was a physical impossibility, and he was not a medical professional (1 RT 38:21-26), he said he could not say if weeks later, there would be evidence of a scab or something with the actions described. (1 RT 39:13-28) On cross examination, Detective Campoy testified that he only looked at the information to determine if he would investigate to file criminal charges, it was the job for CPS to put something in place to protect the child, not the Sheriff's Office. (1 RT 44: 21-45:1) He stated he never reached out to the interviewer to ascertain, why leading questioning was being utilized (1 RT 45: 6-9), the entire interview was odd and concerning and he deemed the interview was documented, tainted, and

there was no further information for him to get. (1 RT 45:13-24) He stated Mr. McAuley spoke with him a few times over the phone and visited his office and Mr. McAuley indicated the allegations were untrue and he denied it happening altogether (1 RT 46:6-17), he recalled Ms. Salaam's concern regarding the upcoming December visit (1 RT 47: 27-28) and told Ms. Salaam it was her right to obtain a protective order in Maryland. (1 RT 48:18-22) Detective Campoy went on to clarify that it is a person's right to get a protective order in whichever state they reside in. (1 RT 49:8-13) Detective Campoy explained he believed that Prince George's County acted within their policy as far as their end of the investigation. (1 RT 52:16-17)

Megan Daniel, the fiancée of Mr. McAuley testified that she has known Mr. McAuley for nearly five years (1 RT 55:28), she has lived with Mr. McAuley for almost four years (1 RT 56: 27), and has known A. for about 4- and one-half years. (1 RT 56: 11-13) Ms. Daniels has worked for five years as a social worker for the Department of Child, Family and Adult Services, CPS. (1 RT 60:19-28) Ms. Daniels stated in her role, her primary job functions is to work with the court to help parents work through the issues and mitigate the issues that brought them before the court that substantiated removal. (1 RT 61:1-5) Typically, when she gets a case it has been investigated by the emergency response unit and has been sustained by the court. (1 RT 61:16-18) Ms. Daniels stated with investigations they work with parties, like the sheriff's department, forensic social workers that do the interviewing, doctors; people to help understand and substantiate or not substantiate sexual abuse. The court inquired

of Ms. Daniels the standard of review in evaluations whether it is substantiated, unsubstantiated or inconclusive, or the threshold used to make a determination (1 RT 63:20-25) for safety plans (1 RT 64:14-65:4) and petitions. (1 RT 65:5-22) Ms. Daniel's testified that when she became aware of the allegations, she knew immediately, what the incident was. (1 RT 69:15-18) (1 RT 96:16-20) She explained that Mr. McAuley laid A. on the bed and removed his pull-up and he had noticed redness on the tip of his penis. (1 RT 71:1-4) She recalled her grandmother saying you need ointment. (1 RT 72:20-22) Ms. Daniels stated Mr. McAuley did not touch his penis at all. Ms. Daniels stated they never made Ms. Salaam aware of this incident at the time it happened (1 RT 96:21-27) and after the allegations came forward, she thought it would be a good idea to tell Ms. Salaam about this incident (1 RT 97:23), however, neither she nor Mr. McAuley ever shared this information with Ms. Salaam. Ms. Daniels states she knows in her job especially any removal from a parent is traumatic, removal is traumatic. (1 RT 76:13-17) She specifically states that with A. being in Ms. Salaam's custody from birth that removing him from someone with significance in his life is traumatic. (1 RT 104:20-238) Ms. Daniels, who lives in the home with Mr. McAuley, testified that Skype calls were happening between A. and Mr. McAuley when Ms. Salaam relocated to Virginia and subsequently to Maryland. She recalls the spring break 2018; visit took place. (1 RT 92:15-22) Ms. Salaam on cross examination offered Exhibit 21 (I SuppCT 184-196) titled "3/29/2019 Request for CA CPS record file for A. McAuley and information provided – no CA CPS investigation done" however,

the court refused to admit this evidence as hearsay.
(1 RT 107:4-109:21)

Coleman Daniel, brother of Megan Daniel, who lived in the home during the summer of 2018, and was present when A. was there. (1 RT 110:28-111:20) Mr. Daniel witnessed the commotion and A. saying his private area hurts. (1 RT 113: 17-35) On cross examination Mr. Daniel stated that CPS never questioned him about the incident. (1 RT 116:27-117:1)

Mr. McAuley testified, that he and Ms. Salaam separated in 2012 (1 RT 118:7-8), and a five-year restraining order was issued to protect Ms. Salaam. (1 RT 123:3-6) Mr. McAuley stated that two months before Ms. Salaam moved to Virginia for her job, he requested 50-50 visitation from Ms. Salaam, and when Ms. Salaam denied the request, she told him she would move out of town if he sought that. (1 RT 135:15-25) Mr. McAuley also stated A. wasn't doing great in preschool in California and with the move to Virginia the laws placed him in kindergarten, and he was subsequently held back another year and had to repeat kindergarten. (1 RT 136:11-15) Mr. McAuley usually works three days a week from 5:00 pm to 8:00 pm. (1 RT 137:12-27) Mr. McAuley said in January-February 2019, he had no idea of the address of Ms. Salaam and A., so he did an online search for property transferences and had some indication as to what address they might live at, but he had no way of verifying it and ultimately it was the wrong address. (1 RT 145:7-14) Mr. McAuley said from Christmas 2017, to spring break, as far back as he can remember A.'s Skype was always on do not disturb. (1 RT 151:6:28) Mr. McAuley stated from December 2017, he could not initiate a call with A..

(1 RT 152:15-19) For the summer visit, Mr. McAuley stated the way the clothes were packed he believed Ms. Salaam was directing him on what A. needs to wear every day for the 30-day visit in July. (1 RT 157: 26-158:7) The Court inquired of Mr. McAuley about the information in an email regarding the food A. eats and Mr. McAuley said he believed from the email that this is what Ms. Salaam wanted him to feed A. for the month. (1 RT 158:26-159:10)

The second day of trial was held on July 10, 2019. (I CT 16:13) Mr. McAuley said he didn't have A.'s iPhone number or an ability to call him on his iPhone. (1 RT 184:3-7) Mr. McAuley said he sent a text on A.'s birthday and received no call back; therefore, he was unable to wish A. a happy birthday. (1 RT 200:2-8) Mr. McAuley said he didn't get to speak with A. at all for Thanksgiving. (1 RT 208:15-18) Upon hearing of the sexual abuse allegations, Mr. McAuley immediately called the Detective in Maryland to talk to her and Detective Campoy and said there was no investigation; everything was thrown out. (1 RT 214:24-215:7) After the no parenting time order on December 18, 2018, Mr. McAuley said he never got to talk to A. on Christmas 2018. (1 RT 217:27-28) On cross examination, Ms. Salaam questioned Mr. McAuley about the proof of service of the documents that initiated the trial (2 RT 259:23-262:24) specifically, he did not recall when he served Ms. Salaam (2 RT 261:5-8), he recalled stating to Commissioner Haukedalen on February 5, 2019, that he Googled Ms. Salaam's address and later found out it was the wrong address, but it was later delivered to Ms. Salaam by a neighbor. (2 RT 261:18-261:5) Mr. McAuley could not recall if these documents were

delivered before the February 5th, hearing and Mr. McAuley did not know if he had filed a proof of service. (2 RT 262:11-24) The court acknowledged at the hearing that, "At some point of the date of the hearing [Ex parte] or sometime afterward, there would be a requirement of notice or service, to which Ms. Salaam, replied "I was not served --". (2 RT260:23-28) Ms. Salaam requested the proof of service for the December 18, 2018, Ex parte Request for orders be provided in the clerk's transcript and be included in the record, but it could not be found. Mr. McAuley was questioned regarding a 2013 restraining order, he filed against Ms. Salaam (2 RT 263:2:265:-8) over the objection of Attorney Mittelstadt because the court stated this goes to Mr. McAuley's credibility. (2 RT 263:22-23) Mr. McAuley confirmed the basis for the denial of the restraining order was because he failed to present evidence of harassment or any other unsubstantiated claims. (2 RT 265:3-8) Mr. McAuley previously testified regarding the list of food A. eats, but Ms. Salaam provided proof that Mr. McAuley requested she provide this list. (2 RT 267:5-27) Ms. Salaam questioned Mr. McAuley about his prior testimony about packing 30 days of clothing that was marked and had to be worn on specific days that came with a whole list of instruction; (2 RT 268:7-20) however, upon cross examination after review of the emails, Mr. McAuley revises his testimony, (2 RT 269:12-27) and ultimately Mr. McAuley admits Ms. Salaam's email advised A. would have two weeks of clothing and there were no instructions on what was to be worn on specific days. (2 RT 270:14-17) Mr. McAuley also stated in his testimony that when he requested 50/50 custody, Ms. Salaam said she would take A.

and he would never see him again, but the review of the text exchange (2 RT 270:18-272:4) led Mr. McAuley to change his testimony to there was no written response from Ms. Salaam regarding the request for 50/50 custody but asserts it was verbally communicated. (2 RT 271:26) Mr. McAuley was asked to review the Skype call logs (2 RT 272:7-273:6) and in general define the meaning of terms such as "missed call", "call", and "missed call from A.". Mr. McAuley testified to missed calls from A. to him and he gave up on trying to call A.'s phone because the status said, "do not disturb." (2 RT 273:1-2,13-15) Mr. McAuley previously testified to not getting to speak with A. on his birthday, but after a review of the Skype log (2 RT 273:28-275:2), Mr. McAuley admits (2 RT 274:14-19) that he did have a call on A.'s birthday. Mr. McAuley wrote a letter in December 2012, a few months after the birth of the child that stated that he didn't want his kid and he was tricked into having him, and Ms. Salaam said that was the basis for asking Mr. McAuley to give up his parental rights. (2 RT 276:15-25) (I SuppCT 13) Mr. McAuley testified that he was required through the restraining order to do anger management counseling and was deemed a "home drinker" defined as someone who drinks at home. (2 RT 277:9-28) After the review of the text messages (I SuppCT 62-67), Mr. McAuley admits that he was never aware of an incident that happened (unlike Ms. Daniels, who knew immediately of the incident) so there was nothing to report to Ms. Salaam (2 RT 280:16-24) and Mr. McAuley went on to say that at no time from when A. complained of his penis hurting to today [July 10, 2019] he never told Ms. Salaam of that incident. (2 RT 281:22-27)(2 RT

282:20-283:4) Mr. McAuley testified to having post-traumatic stress disorder and wasn't currently being treated for this disorder. (2 RT 284: 4-18) Mr. McAuley admits that he had the spring break visitation in 2018, and he was getting very frequent calls and of good duration up to and slightly after his spring break visit. (2 RT 286:9-17)

Marie Sims, the Family Court Services, custody recommending counselor (2 RT 290:1,13,17), testified that she does not frequently deal with custody cases where the child lives outside of their 'home state', maybe once a month. (2 RT 291:8-13) Ms. Sims referred to her report (I SuppCT 26-30) (2 RT 292:2-14) and recalled the Parties were scheduled to meet at the same time however, Mr. McAuley arrived late, so the interview was done separately with Ms. Salaam over the phone and Mr. McAuley later, in person. (2 RT 292:15-22) Ms. Sims said during the interview Mr. McAuley stated, he cleaned up his son, put ointment on, and advised he not wear Pull-ups the next few days. (2 RT 297:19-23) With regard to the CPS records in California, Ms. Sims stated she did a record's check and one referral called in on October 3, 2018, alleging general neglect by the father was evaluated out; (2 RT 297:24-298:1) however, she never actually physically looked at the report and did not know whether the person from CA CPS who evaluated out the report interviewed A., Ms. Salaam, or Mr. McAuley, and she couldn't offer any other details regarding the report being evaluated out, nor who made the referral. (2 RT 298:4-26) Ms. Sims confirmed that she did not reach out to Maryland (2 RT 298:27-299:1) but she did speak with Detective Campoy, after she spoke with Ms. Salaam, so she wasn't able to share his findings

with Ms. Salaam. (2 RT 299:6-8) In addition, she never reviewed the videotape interview of A. (2 RT 300:11-14) nor did she interview A. McAuley because if a child does not reside in California, they are not typically interviewed over the phone. (2 RT 300: 2-10) Ms. Sims, testified to making a recommendation for joint legal custody, but didn't know if this was a change from the existing custody order and later stated she assumed legal custody was joint but didn't know for sure. (2 RT 300:17-301:4) Ms. Sims stated Ms. Salaam's input in the recommendations was her interview with Ms. Sims (2 RT 301:6-8) and Ms. Sims went on to say, "we didn't discuss what the father wanted because she might not have known yet." (2 RT 301:9-11) Ms. Sims stated that when the court ordered no parenting time, she believed that would include no phone calls too. (2 RT 305:1-9) Ms. Sims acknowledged that if it has been determined that there's not a danger then A. should be allowed to speak to Mr. McAuley. (2 RT 305:24-306:2) Ms. Sims testified that she probably wasn't aware at the time of the mediation that Mr. McAuley never provided details of the incident to Ms. Salaam, and supposed that was odd for him not to communicate this to Ms. Salaam. (2 RT 310:19-27) Ms. Sims testified in cases where a parent is preventing contact, prior to returning the child to the non-custodial parent there would still need to be a bit more review to really understand why the custodial parent isn't facilitating, and try to get a deeper grasp on that because the other consideration too, is that if you just make a sudden change of custody, that is going to be hard on the child and in this case it may warrant a 3111 evaluation with a private licensed mental health professional trained in this specialized

evaluation to interview the parties and collateral contacts in depth to make a very educated assessment, what the factors are and what would be in the best interest of the child based on that. (2 RT 312:7-313:23)

Ms. Salaam was admonished by the court to not rely on any notes or the petitioner's list of exhibits, but she could point to any exhibit she wanted and ask for it to be considered for admission; (2 RT 327:6-27) however, previously when Ms. Salaam, inquired about Mr. McAuley's admitted use of bullet points during his testimony, no similar admonishment ensued by the courts, in fact it was ignored. (2 RT 259:14-21) Ms. Salaam testified to requesting a protective order in Maryland for A. McAuley and a no-contact order was granted on March 15, 2019, which was extended to April 30, 2019, and with the initial request the Judge in Maryland ordered Maryland CPS to do an investigation, and CPS came to my home on or about March 22nd, and interviewed A. by himself and then interviewed me and subsequently contacted Mr. McAuley. (2 RT 332:6-11) Ms. Salaam stated that with no protective order in place Commissioner Haukedalen reiterated the previous orders and she has been in compliance since May 1st, including a flight from California to Maryland and back to California and Maryland to deliver A. for the summer visit all within a 24-hour period. (2 RT 333:5-23) Ms. Salaam also stated that since A. has been with Mr. McAuley, he has been calling on the Mondays, Wednesdays, Fridays, and Saturdays as ordered and not every day as Mr. McAuley stated. (2 RT 333:24-334:1) Ms. Salaam testified to her fear of not adhering to every iota of the orders such as she

was going to be out of town and had A. call early because she would be there to facilitate the call, and she was brought into the judge for that, but the only other option was to risk him not making the call which would have gotten her in trouble for that also. Ms. Salaam stated all of her contact with Mr. McAuley is through email and text because Mr. McAuley is not honest as shown here today with his accusations that, there was not a call on the birthday and it was shown that there was a call on the birthday; he framed a narrative that Ms. Salaam was telling him exactly what A. had to wear on specific days and what he had to eat, when in fact she was complying with Mr. McAuley's request for what A. does eat, what his routine was and that she describes herself as a very detailed -oriented person. (2 RT 334:14-335:7) Ms. Salaam stated she has been very lenient with court orders that Mr. McAuley has not been living up to. (2 RT 336:26-28) Ms. Salaam states from the February 5, 2019, orders she has been in compliance with all orders with the exception of the periods when a temporary no contact protective order was in place from March 15th, when the order was initially granted in Maryland through April 30th, when it had expired. (2 RT 342:21-343:2) The courts stated that the December 2017, orders did not change the legal custody of the previous order and it was for physical custody only. (2 RT 345:12-13)

The third and final day of the trial was held on July 11, 2019. (I CT 16:13) Ms. Salaam requested a review the previous discussion of the December 18, 2017, orders because her understanding was the order gave her both sole legal and physical custody of A., and if that wasn't in fact the case, she would need to retract her statement of compliance; (2 RT 347:22-

348:6) however, after much discussion the court determined that Ms. Salaam did not have joint legal custody as previously stated, but she did indeed have sole legal custody and sole physical custody of A.. (2 RT 349:13-352:26) Ms. Salaam testified that Mr. McAuley had A.'s iPhone cell phone number and he has put the number on several court documents as Ms. Salaam's phone number. (2 RT 356:3-6) Ms. Salaam testified that during the entire 30-day summer visit, Mr. McAuley had A. call Ms. Salaam three times. (2 RT 401:7-14) Ms. Salaam said the Maryland protective orders were effective regardless of service on Mr. McAuley, (2 RT 443:5-8) only the court can change the order and this protective order shall be recognized by the courts of any state, the District of Columbia, and U. S. territory, tribal lands, or Department of Defense Installations so it superseded the orders in California. (2 RT 443:20-444:4)

On July 12, 2019, the court summarized the request of Mr. McAuley as joint legal custody and sole physical custody with mother having parenting time as follows: spring break, summer break, Thanksgiving in even years, winter break in odd years, A.'s birthday on September 2nd (if mother travels to California); Mother's Day (if mother pays to travel to California), and completed calls on Mondays, Wednesdays, and Fridays from 3:00 pm to 5:00 pm Pacific Time and for Saturdays and Sundays between 8:00 am and 5:00 pm and other orders. (2 RT 482:16 – 483:13) The summary of Ms. Salaam's request includes the order of December 19, 2017, be reinstated, granting mother sole legal and sole physical custody of A., the father have supervised visits and Skype calls with A. on Mondays,

Wednesdays, Fridays, and Sundays from 6:00 pm to 7:30 pm with mother facilitating the calls; and agrees to stay in the room with A. during calls if requested to do so by father. (2 RT 483:28-484:9)

The court's decision is void of any decision or discussion of the facts regarding the lack of service and no proof of service of the filed request for orders from December 18, 2018. The court states it must look at all of the facts and circumstances bearing on the best interest of the child and refers to Family Code Section 3040 as a key factor as provided in Family Code Sections 3011 and Family Code Section 3020. (2 RT 505:1-11) The decision and orders pronounced granted Mr. McAuley sole physical custody of A.. (I CT 17:20) Ms. Salaam and Mr. McAuley to share joint legal custody with Mr. McAuley having final say. (I CT 17:15-19) The additional orders from trial required numerous and expensive monetary obligations in order for Ms. Salaam to visit with her son including:

1. to register the certified California custody orders in Maryland (I CT 20:24) and
2. the purchase of an "open plane ticket" for Mr. McAuley (I CT 21:5-6) and
3. securing a \$5,000.00 bond (I CT: 20:19-20) and
4. for Spring break visitation, two round-trip flights for Ms. Salaam from Maryland to California to drop off and pick-up A., and one round-trip flight from California to Maryland for A. (I CT 17:22, 21:6-7) and
5. for Summer break visitation, two round-trip flights for Ms. Salaam from Maryland to California to drop off and pick-up A., and one round-trip flight from California to Maryland for A. (I CT 17:23, 21:6-7) and

6. in odd years for Thanksgiving visitation, two round-trip flights for Ms. Salaam from Maryland to California to drop off and pick-up A., and one round-trip flight from California to Maryland for A. (I CT 17:24-25, 21:6-7) and
7. in even years for winter visitation, two round-trip flights for Ms. Salaam from Maryland to California to drop off and pick-up A., and one round-trip flight from California to Maryland for A. (I CT 17:26-28, 21:6-7) and
8. for A.'s birthday (9/2) visitation one round-trip flight from Maryland to California for Ms. Salaam, two days lodging, and meals (I CT 18:1-3) and
9. for Mother's Day visitation one round-trip flight from Maryland to California for Ms. Salaam, two days lodging, and meals (I CT 18:4-5) and
10. for the third weekend of September 2019, one round-trip flight from Maryland to California for Ms. Salaam, three days lodging, and meals (I CT 18:6-9) and
11. for the third weekend of February visitation, one round-trip flight from Maryland to California for Ms. Salaam, three days lodging, and meals (I CT 18:10-13) and
12. for the third weekend of April visitation, one round-trip flight from Maryland to California for Ms. Salaam, three days lodging, and meals (I CT 18:10-13) and
13. for the third weekend of October visitation, one round-trip flight from Maryland to California for Ms. Salaam, three nights lodging, and meals. (I CT 18:10-13)

On August 13, 2019, Ms. Salaam was ordered to pay child support for A. to Mr. McAuley in the amount of \$1813 per month. On September 18, 2019, Ms. Salaam filed an appeal of the orders issued August 2, 2019. (I CT 12-113) The proof of service for the appeal was filed on October 1, 2019. (I CT 14-15)

ARGUMENTS

I. THE TRIAL COURT ERRED IN HAVING A HEARING WITHOUT ADHERING TO THE CALIFORNIA RULES OF COURT RULE 5.167(a) REGARDING THE SERVICE OF EMERGENCY REQUEST FOR ORDERS.

The abuse of discretion standard of review applies for child custody and visitation issues. The Court of Appeals defers to the trial court's exercise of discretion (*In re Marriage Burgess* (1996) 13 Cal.4th 25, 32). The trial court's order "will be overturned only if, considering all the evidence viewed most favorably in support of its order, no judge could reasonably make the order made." (*In re Marriage of Cueva* (1978) 86 Cal.App.3d 290, 296)

The relevant statutes in part include:
California Rules of Court Rule 5.167.
Service of application; temporary
restraining orders

(a) Service of documents requesting
emergency orders
A party seeking emergency orders and a
party providing written opposition must
serve the papers on the other party or on
the other party's attorney at the first
reasonable opportunity before the

hearing. Absent exceptional circumstances, no hearing may be conducted unless such service has been made. The court may waive this requirement in extraordinary circumstances if good cause is shown that imminent harm is likely if documents are provided to the other party before the hearing. This rule does not apply in cases filed under the Domestic Violence Prevention Act.

Mr. McAuley did not serve Ms. Salaam the papers prior to the emergency hearing on December 18, 2018 as required by Rule 5.167. The word “must” in must serve, is a mandatory clause. The request for order section regarding service of the order is completely blank. (I CT 183) Ms. Salaam received several court documents in the mail from Mr. McAuley on February 8, 2019 and an email from Attorney Mittelstadt on February 11, 2019 with court documents, which was well after the timelines required by law and after the February 5, 2019 pronouncement of the change in the custody and visitation order and scheduling of the June 2019 trial. Commissioner Haukedalen ordered the issue of service to be dealt with at the trial. This issue was woefully not address during the decision and orders by the trial court, despite the request for orders, testimony provided by Ms. Salaam and Mr. McAuley regarding the lack of proper service by someone over 18, not a party to the proceeding, the filing of the proof of service prior to the hearing.

The rule states the court may waive the written service requirement in “extraordinary

circumstances if good cause is shown that imminent harm is likely." In this case, Mr. McAuley did not present any evidence or submit a statement to the court claiming imminent harm to A. was likely, nor did the court recognize any evidence of imminent harm. Further, the Rule states that the service requirement does not apply in cases filed under the Domestic Violence Prevention Act. In this case, the emergency order was not filed under the Domestic Violence Prevention Action. Because there was no claim by Mr. McAuley or the court that imminent harm was likely, and because the emergency order request was not filed under the Domestic Violence Prevention Act, and because Ms. Salaam was not properly served the lower court erred in granting the emergency order issued on December 18, 2018.

Mr. McAuley's failure of service did not afford Ms. Salaam the ability to be fully aware of Mr. McAuley's requests, nor the opportunity to file a response to the requests for orders. Ms. Salaam's lack of receipt of service didn't allow her the ability to fully participate in the mediation process. Additionally, the denial of the ability to respond to Mr. McAuley's request for orders prejudiced the mediator's recommendations, the hearing and the orders issued on February 5, 2019. These orders were based on the recommendations of the mediation and ultimately this trial and outcome which resulted in not only Mr. McAuley's requested change in legal custody but ultimately, the change in permanent physical custody of six-year-old A., with the abrupt physical removal of A. from Ms. Salaam and his sole physical custody placement with Mr. McAuley which was never requested in the request for orders referred to trial.

Ms. Salaam requests this court reverse this miscarriage of justice by vacating these trial orders, retroactively reinstate the court orders from December 19, 2017, effective February 5, 2019 (the expiration date of unserved request for orders) and vacate any and all requests for orders, orders to show cause, findings and orders after hearing, trial decision and order, orders for attorney's fees, child support orders and payments resulting from the expired, December 19, 2018, request for orders which expired on February 5, 2019, due to failure of proper service be vacated.

II. THE TRIAL COURT ERRED IN ISSUING ORDERS AND SETTING A TRIAL WITHOUT ADHERING TO CALIFORNIA RULES OF COURT RULE 5.92 (f)(1)(A) MANDATING PERSONAL SERVICE OF REQUEST FOR ORDER WHEN TEMPORARY EMERGENCY ORDERS HAVE BEEN ISSUED AND CALIFORNIA RULES OF COURT 5.94 (b), (e)(1) AND (2) FAILURE TO SERVE REQUEST FOR ORDER.

The abuse of discretion standard of review applies for child custody and visitation issues. The Court of Appeals defers to the trial court's exercise of discretion (*In re Marriage Burgess* (1996) 13 Cal.4th 25, 32). The trial court's order "will be overturned only if, considering all the evidence viewed most favorably in support of its order, no judge could reasonably make the order made." (*In re Marriage of Cueva* (1978) 86 Cal.App.3d 290, 296)

The relevant statutes in part include:

**California Rules of Court Rule 5.92.
Request for court order; responsive
declaration**

**(f) Request for order; service
requirements**

(1) The Request for Order (form FL-300) and appropriate documents or orders must be served in the manner specified for the service of a summons in Code of Civil Procedure sections 415.10 through 415.95, including personal service, if:

(A) The court granted temporary emergency orders pending the hearing;

Under CRC Rule 5.92 (f)(1)(A) Mr. McAuley was required to personally serve the request for orders and the temporary emergency orders.

In addition, California Rules of Court Rule 5.94 (b), states,

**(b) Time for filing proof of service
Proof of service of the Request for Order (FL-300) and supporting papers should be filed five court days before the hearing date.**

Mr. McAuley's proof of personal service should have been filed five days before the hearing, or before January 29, 2019. There was no proof of service in the file the day of the hearing on February 5, 2019. In addition, when asked by Commissioner Haukedalen, Mr. McAuley nor his counsel produced a proof of service.

The lower court erred in granting the hearing, issuing orders and the referral to trial since service of the emergency orders and the request for orders

was never personally served on Ms. Salaam and Mr. McAuley provided no proof of service under rule 5.94 was not properly filed.

Finally, under California Rules of Court Rule 5.94 (e)(1) and (2), states,

(e) **Failure to serve request for order**
The Request for Order (form FL-300) or other moving papers such as an order to show cause, along with any temporary emergency (ex parte) orders, will expire on the date and time of the scheduled hearing if the requesting party fails to:

(1) Have the other party served before the hearing with the Request for Order (form FL-300) or other moving papers, such as an order to show cause; supporting documents; and any temporary emergency (ex parte) orders; or

(2) Obtain a court order to reschedule the hearing, as described in rule 5.95.

Mr. McAuley's failure of personal service and filing the proof of service five days before the February 5, 2019, hearing or at the hearing, and neither he, nor his attorney requested to reschedule the hearing under this rule the request for order and the temporary emergency orders expired on February 5, 2019. No new orders should have been issued by Commissioner Haukedalen and the December 18, 2017, orders should have been put back into effect. The lower court violated the law when the expired request for orders were referred to trial. The use of the word "will" makes expiration

mandatory absent a request for continuance being granted.

Mr. McAuley stated he googled Ms. Salaam's address and mailed them to that address however, it was the wrong address. The Family Code Section 215 states in relevant part,

(b) A postjudgment motion to modify a custody, visitation, or child support order may be served on the other party or parties by first-class mail or airmail, postage prepaid, to the persons to be served. For any party served by mail, the proof of service shall include an address verification.

Mr. McAuley, a party to the proceeding, erroneously mailed the emergency orders and request for orders in violation of CRC 5.94 (e)(1),(2); however, Mr. McAuley also violated Family Code Section 215 (b) in mailing the request for orders and emergency orders by mail without the required proof of service and address verification. Use of the word "shall" makes address verification mandatory.

In this case, Mr. McAuley did not have Ms. Salaam personally served with a filed copy of the request for orders and the emergency orders within the timeline limit required by law as required by CRC Rule 5.92(b)(5). In (Quail Lake Owners Assn. v. Kozina (2012) 204 Cal.App.4th 1132, 1137 [139 Cal. Rptr. 3d 389]) the court found that "absent an explicit argument that a procedural error caused prejudice, we are under no obligation to address the claim of error." Quail Lake Owners is not applicable in the instant case because the procedural error prejudiced Ms. Salaam and resulted in a miscarriage

of justice as Ms. Salaam was unable to prepare for the hearing. The lower court erred in granting Mr. McAuley's request for an emergency hearing and the procedural deficiencies caused by failure to meet rule 5.92 prejudiced the outcome of the hearing.

“Absent an explicit argument that a procedural error caused prejudice, we are under no obligation to address the claim of error.” (*Quail Lakes Owners Assn. v. Kozina* (2012) 204 Cal.App.4th 1132, 1137 [139 Cal. Rptr. 3d 389].) (Code Civ. Proc., § 475; see Cal. Const., art. VI, § 13 [no judgment will be set aside unless the court, after an examination of the entire cause, is of the opinion that the error has resulted in a miscarriage of justice].) A reviewing court may not reverse a judgment for a procedural error absent a miscarriage of justice. (*Quail Lakes Owners Assn. v. Kozina*, *supra*, 204 Cal.App.4th at p. 1137.)

Ms. Salaam requests this court reverse this miscarriage of justice by vacating these trial orders, retroactively reinstate the courts orders from December 19, 2017, effective February 5, 2019 (the expiration date of unserved request for orders) and vacate any and all requests for order, orders to show cause, findings and orders after hearing, trial decision and order, orders for attorney's fees, child support orders and payments resulting from the expired, December 19, 2018, request for orders which expired on February 5, 2019, due to failure of proper service be vacated.

III. THE TRIAL COURT ABUSED ITS DISCRETION AND MISINTERPRETED THE CALIFORNIA RULES OF COURT RULE 5.92(a)(1)(B) AND CFC RULE 5.151

**(c)(1)(A), CFC RULE 5.151 (d)(4) and CFC
RULE 5.151 (d)(5)(C) TO PERMIT TRIAL
ORDERS TO GROSSLY EXCEED MR.
MCAULEY'S REQUESTED RELIEF FILED
IN THE REQUEST FOR ORDERS
SUBJECT TO THIS TRIAL ON
NUMEROUS COUNTS AND MOST
EGREGIOUSLY WITH THE REMOVAL
THE CHILD FROM MS. SALAAM WITH NO
REQUEST TO DISTURB THE PHYSICAL
CUSTODY ARRANGEMENT FROM MR.
MCAULEY.**

The abuse of discretion standard of review applies for child custody and visitation issues. The Court of Appeals defers to the trial court's exercise of discretion (*In re Marriage Burgess* (1996) 13 Cal.4th 25, 32). The trial court's order "will be overturned only if, considering all the evidence viewed most favorably in support of its order, no judge could reasonably make the order made." (*In re Marriage of Cueva* (1978) 86 Cal.App.3d 290, 296)

The California Rules of Court Rule 5.92(a)(1)(B) states in relevant part under Request for court order; responsive declaration,

(a) Application

(1) In a family law proceeding under the Family Code:

(B) A Request for Order (form FL-300) must be used to ask for court orders, unless another Judicial Council form has been adopted or approved for the specific request; and

Similarly, the California Rules of Court Rule 5.151(c)(1)(A) states in relevant part, for temporary

emergency (ex parte) orders; application; required documents

(c) Required documents

(1) Request for order

A request for emergency orders must be in writing and must include all of the following completed documents:

(A) Request for Order (form FL-300) that identifies the relief requested.

Mr. McAuley's request for orders on form FL-300 (I CT 176) dated December 18, 2018, requests a change to joint legal custody with **no** changes in physical custody. The FL-300 attachment 2b, (I CT 179) requests Ms. Salaam's compliance with previously agreed upon arrangement, which was sole legal, sole physical to Ms. Salaam with reasonable visitation with Mr. McAuley.

The California Rules of Court, Rule 5.151 states,

(d)(4) and (d)(5)(c) under Contents of application and declaration

(4) Disclosure of change in status quo.

The applicant has a duty to disclose that an emergency order will result in a change in the current situation or status quo. Absent such disclosure, attorney's fees and costs incurred to reinstate the status quo may be awarded.

(5) Applications regarding child custody or visitation (parenting time)

Applications for emergency orders granting or modifying child custody or visitation (parenting time) under Family Code section 3064 must:

(C) Advise the court of the existing custody and visitation (parenting time) arrangements and how they would be changed by the request for emergency orders:

Mr. McAuley's signed declaration dated December 18, 2019 states, "I am writing to make a formal request that she comply with our previously agreed upon custody orders and arrangements with some amendments as outlined." (I CT 186) The outline of the request are captured on form FL-311 "Child Custody and Visitation (Parenting Time) Application Attachment with a requested relief of Legal Custody to Ameenah Salaam, Physical Custody to Ameenah Salaam and Reasonable right of parenting time to the party without physical custody, which was no change from the existing orders. (I CT 188) In addition the FL-311 Attachment, (I CT 189) again reiterates the request that Ms. Salaam complies with the previously agreed upon arrangement and no request for physical custody or legal custody is requested.

The trial court erred in an abuse of discretion with the issuance of trial court orders which grossly exceed Mr. McAuley's requested relief filed in the request for order and signed declarations of request for orders on numerous counts. The most egregiously was the order the immediate removal of A. from Ms. Salaam with no request to disturb the physical custody arrangement from neither Mr. McAuley nor Ms. Salaam. The list of these abusive discretions of exceeding the request for relief include:

1. #2A on Request for Orders on form FL-300 Mr. McAuley, requests Legal custody to be joint. (I

CT 176) The trial court ordered joint legal custody with father having final say.

2. #2A on Request for Orders on form FL-300 Mr. McAuley requests no change in physical custody. (I CT 176) The trial court exceed the requested relief and ordered the physical custody of A. be immediate removed from Ms. Salaam and placed with Mr. McAuley.
3. #2D (1) on Request for Orders on form FL-300. Mr. McAuley reiterates the request to change to joint legal custody. (I CT 176) There is no mention of any request to change physical custody. The trial court exceed the requested relief and ordered joint legal custody and the physical custody of A. be immediate removed from Ms. Salaam and placed with Mr. McAuley.
4. On FL-300 Attachment 2B (I CT 179) Mr. McAuley requests compliance with previously agreed arrangement (12-18-2017 Orders), make up of missed December 2018 visit during summer, payment for one upcoming visit costs and split equally future visits. The trial court ordered Ms. Salaam to pay for ALL future visitation costs, including flights, hotels, in town visitation costs and transportation.
5. #1 on the Child Custody and Visitation (Parenting Time) Application Attachment form FL-311.(I CT 188) Mr. McAuley requested orders for legal custody go to Ameenah Salaam and physical custody go to Ameenah Salaam. The trial court exceed the requested relief and ordered the physical custody of A. be immediate removed from Ms. Salaam and placed with Mr. McAuley.

6. #1 on the FL-311 Attachment 2e (4), (I CT 189) Mr. McAuley requested orders for legal custody go to Ameenah Salaam and physical custody go to Ameenah Salaam. The trial court exceed the requested relief and ordered the physical custody of A. be immediate removed from Ms. Salaam and placed with Mr. McAuley.
7. #1 on the Children's Holiday Schedule Attachment on form FL-341(C), (I CT 194) Mr. McAuley requested the non-school visits, which affirms that Mr. McAuley does not want a change in physical custody from Ms. Salaam. The trial court exceed the requested relief and ordered the physical custody of A. be immediate removed from Ms. Salaam and placed with Mr. McAuley.
8. #6 on the Additional Provisions - Physical Custody Attachment form FL-341(D) (I CT 192) Mr. McAuley reaffirms no request to change physical custody from Ms. Salaam by identifying on this form, additional provisions for the custodial parent and specifically mentions Ms. Salaam facilitating 15-minute calls a day. The trial court changes custody and orders Mr. McAuley to facilitate calls from A. to Ms. Salaam on Sunday, Monday, Wednesday and Friday from weekly.
9. #6 on the Request for Child Abduction Prevention Orders form FL-312, (I CT 191) Mr. McAuley, requested that Ms. Salaam (erroneously identified on the request for order as the respondent) post a \$3000.00 bond. The trial courts exceeds the requested relief and orders Ms. Salaam to post \$2,000.00 more than request for a total of \$5,000.00 bond.

Ms. Salaam never requested to change physical custody; therefore, physical custody was not in dispute between the parties. The trial court's order changing physical custody from Ms. Salaam to Mr. McAuley, with respect to the relief requested in comparison to the trial courts orders amounts to a violation of the laws listed above, an erroneous miscarriage of justice by changing physical custody orders that were not in dispute amongst the parties and in fact was affirmed as many as 7 times in Mr. McAuley's request for orders and related forms.

The CRC Rule 5.92(a)(1)(B) says "A request for order (Form FL-300) must be used to ask the court for orders unless another judicial council form has been adopted or approved for the specific request." Use of the word "must" makes this mandatory. Mr. McAuley and his Attorney appeared the first day of the trial verbally requesting physical custody which was not requested in the December 18, 2018 Ex parte nor the Request for orders, which were set for trial. The request for physical custody was not on the FL-300 form or any other judicial council form adopted or approved for the specific request.

The trial court erred in the issuance of trial orders which exceed the requested relief in addition to disturbing the physical custody arrangements that parties agreed upon. This violation of the law is a gross abuse of discretion. Ms. Salaam requests that this court vacates the orders as they exceed the request for orders referred to trial.

IV. THE TRIAL COURT ABUSED ITS DISCRETION BY NOT CONSIDERING ALL RELEVANT FACTS IN ITS APPLICATION

**TO FAMILY CODE SECTION 3020 AND
FAMILY CODE SECTION 3011
RESULTING IGNORING THE BEST
INTEREST OF THE CHILD BY GRANTING
SOLE CUSTODY OF THE CHILD TO MR.
MCAULEY.**

The abuse of discretion standard of review applies for child custody and visitation issues. The Court of Appeals defers to the trial court's exercise of discretion (*In re Marriage Burgess* (1996) 13 Cal.4th 25, 32). The trial court's order "will be overturned only if, considering all the evidence viewed most favorably in support of its order, no judge could reasonably make the order made." (*In re Marriage of Cueva* (1978) 86 Cal.App.3d 290, 296)

The trial court advised that the decision and orders were based upon Family Code 3020 which states,

Family Code Section 3020.

(a) The Legislature finds and declares that it is the public policy of this state to ensure that the health, safety, and welfare of children shall be the court's primary concern in determining the best interests of children when making any orders regarding the physical or legal custody or visitation of children. The Legislature further finds and declares that children have the right to be safe and free from abuse, and that the perpetration of child abuse or domestic violence in a household where a child resides is detrimental to the health, safety, and welfare of the child.

(b) 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 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 subdivisions (a) and (c) of this section and Section 3011.

(c) When the policies set forth in subdivisions (a) and (b) of this section are in conflict, a court's order regarding physical or legal custody or visitation shall be made in a manner that ensures the health, safety, and welfare of the child and the safety of all family members.

(d) The Legislature finds and declares that it is the public policy of this state to ensure that the sex, gender identity, gender expression, or sexual orientation of a parent, legal guardian, or relative is not considered in determining the best interests of the child.

Also, **Family Code 3011.**

(a) In making a determination of the best interests of the child in a proceeding described in Section 3021, the court shall, among any other factors it

finds relevant and consistent with Section 3020, consider all of the following:

- (1) The health, safety, and welfare of the child.**
- (2) (A) A history of abuse by one parent or any other person seeking custody against any of the following:**
 - (i) A child to whom the parent or person seeking custody is related by blood or affinity or with whom the parent or person seeking custody has had a caretaking relationship, no matter how temporary.**
 - (ii) The other parent.**
 - (iii) A parent, current spouse, or cohabitant, of the parent or person seeking custody, or a person with whom the parent or person seeking custody has a dating or engagement relationship.**
- (B) As a prerequisite to considering allegations of abuse, the court may require independent corroboration, including, but not limited to, written reports by law enforcement agencies, child protective services or other social welfare agencies, courts, medical facilities, or other public agencies or private nonprofit organizations providing services to victims of sexual assault or domestic violence. As used in this paragraph, “abuse against a child” means “child abuse and neglect” as defined in Section 11165.6 of the Penal Code and abuse against any of the other**

persons described in clause (ii) or (iii) of subparagraph (A) means "abuse" as defined in Section 6203.

(3) The nature and amount of contact with both parents, except as provided in Section 3046.

(4) The habitual or continual illegal use of controlled substances, the habitual or continual abuse of alcohol, or the habitual or continual abuse of prescribed controlled substances by either parent. Before considering these allegations, the court may first require independent corroboration, including, but not limited to, written reports from law enforcement agencies, courts, probation departments, social welfare agencies, medical facilities, rehabilitation facilities, or other public agencies or nonprofit organizations providing drug and alcohol abuse services. As used in this paragraph, "controlled substances" has the same meaning as defined in the California Uniform Controlled Substances Act, Division 10 (commencing with Section 11000) of the Health and Safety Code.

(5) (A) When allegations about a parent pursuant to paragraphs (2) or (4) have been brought to the attention of the court in the current proceeding, and the court makes an order for sole or joint custody to that parent, the court shall state its reasons in writing or on the record. In these circumstances, the court shall ensure that any order regarding

custody or visitation is specific as to time, day, place, and manner of transfer of the child as set forth in subdivision (c) of Section 6323.

(B) This paragraph does not apply if the parties stipulate in writing or on the record regarding custody or visitation.

(b) Notwithstanding subdivision (a), the court shall not consider the sex, gender identity, gender expression, or sexual orientation of a parent, legal guardian, or relative in determining the best interests of the child.

The trial court abused its discretion when it failed to consider relevant facts in determining what would be in the best interest of the child that ensures the health, safety and welfare of the child and the safety of all families due to the conflict between Family Code 3020 Sections (a) and (b) as outlined below:

(1) Family Code 3020(a)/Family Code 3011(a)(1) "The health, safety, and welfare of the child". A. was diagnosed with Adjustment disorder, in a Children's National report, which was identified by Detective Campoy (1 RT 49:20-50:2), mentioned in Ms. Sim's mediation report (II SuppCT 28) and testified to by Ms. Daniels. The trial court failed to consider the detrimental effect of the disruption of the long standing and existing mother child relationship on mental and emotional stability of A. and how this immediate change would complicate or exacerbate his existing diagnosis of adjustment disorder.

The trial court failed to appropriately weigh the mediator's testimony that changing the physical custody of a child is an absolute last resort given the impact on the child. Ms. Sims advised if denied visits is an issue that mediator's try several times to sit down with the parties to get to the bottom of why visitation is not being allowed. The mediator's report entered into evidence did not recommend a change in physical custody because physical custody was never requested by Mr. McAuley. Even when presented with this case and the alleged refusal for visitation, Ms. Sims still contends that more dialogue will be needed and possibly a more in-depth evaluation may be needed prior to changing custody.

Mr. McAuley testified that he suffers from Post-Traumatic Stress Disorder (PTSD) and at the time of trial was not under treatment by his testimony at trial. The uncertainty of PTSD triggers and lack of ongoing treatment presents safety and welfare concerns for A. while in Mr. McAuley's physical custody.

(2) Family Code 3020(a)/Family Code 3011(a)(2)(A)(i) "The health, safety, and welfare of the child"/A history of abuse by one parent or any other person seeking custody against any of the following: A child. A. alleged that his dad sexually abused him. The electronic evidence was unlawfully denied entrance into evidence because the transcript of the video was not a certified transcript. The court did not appropriately weigh the impact that placing A. in the physical custody and care of the parent he believes has sexually abused him would have on his mental and emotional health, especially given Detective Campoy's testimony regarding A.'s statement during the forensic interview, that he

killed his dad. This was done without any safety measures to explain the change in custody or offer of therapy to assist A. with this abrupt change in circumstances. CRC Rule 2.1040(b)(1) does not require a certified transcript. It requires a transcript be provided with a copy of the video be provided. This was served on the other party on April 11, 2019 in the fulfillment of a request for documents. The court was provided the same information on June 13, 2019, the first day of trial. The denial of the evidence was detrimental to proving the fact that Ms. Salaam was repeatedly told about the sexual abuse by A. and given no other version of events being provided by Mr. McAuley; Ms. Salaam's actions in obtaining a protective order were warranted and reasonable with the facts as she knew them.

(3) Family Code 3020(a)/Family Code 3011(a)(2)(A)(ii) "The health, safety, and welfare of the child"/A history of abuse by one parent or any other person seeking custody against any of the following: The other parent. Mr. McAuley has a history of domestic violence as evidenced by the Domestic Violence Restraining order to protect Ms. Salaam from April 2, 2013- April 2, 2018 uncontested at trial. The mediator's report evidences that Ms. Salaam has no history of domestic violence or any other kinds of violence.

(4) Family Code 3020(a)/Family Code 3011(a)(4) "The habitual or continual illegal use of controlled substances, the habitual or continual abuse of alcohol..." Mr. McAuley has a habitual or continual abuse of alcohol. Mr. McAuley is an admitted alcoholic and deemed an "at home drinker" pursuant to a May 29, 2014, forensic evaluation required by court and submitted as evidence at trial.

Mr. McAuley testified to work only 3 hours per day for 3 days out of the week which equates to 9 hours of work outside the home per week. This limited time working out of the home leaves a lot of time to be at home. Mr. McAuley testified that "at home drinker" is someone who drinks at home. Ms. Salaam has no alcohol or substance abuse issues.

In conclusion, given the facts and evidence, it is clear that it is not in the best interest of A., diagnosed with mental health issues at the time of trial and alleged his father sexually abused him, to be uprooted from an established physical familiar custody arrangement since birth, spanning 6 years with Ms. Salaam, to be placed in the sole custody of Mr. McAuley, who has a history of domestic violence, underemployment, classified as a "home drinker" with a history of alcohol abuse, suffers from untreated PTSD and has shown he's not credible during trial. Ms. Salaam is none of those things, she is a working, single parent, with no history of violence or abuse of alcohol and has provided a stable home environment for A.. And as stated in, (Goto v. Goto (1959) 52 Cal.2d 118 [338 P.2d 450]), "Section 138 of the Civil Code relied upon by the plaintiff provides: "In awarding the custody the court is to be guided by the following considerations: (1) By what appears to be for the best interest of the child in respect to its temporal and its mental and moral welfare; and if the child is of a sufficient age to form an intelligent preference, the court may consider that preference in determining the question;". The (Munson v. Munson (1946) 27 Cal.2d 659, 666 [166 P.2d 268]) case supports an award of custody to Ms. Salaam as the facts best interest of the child being

best served with the continued familiar custody with Ms. Salaam.

Further the courts reliance on (Burchard v. Garay (1986) 42 Cal.3d 531) to support the order for a change in custody is flawed. Burchard v. Garay is a very different case that was for an initial determination of custody for a 2 ½ year old child, a stark contrast from this case for a 6 year old in which Ms. Salaam has maintained continuing physical custody since birth, two prior custody determination confirming physical custody to Ms. Salaam and a recent move away order with sole physical and legal custody granted to Ms. Salaam. In Burchard, the courts cited the Carney case that "Instead, [Carney] spoke of the importance of protecting established modes of custody, however created, not by limiting the breadth of the evidence, but by requiring the noncustodial party to show that a change would be in the best interests of the child." Mr. McAuley has not showed how uprooting A. would be in his best interest given the facts.

Ms. Salaam requests this court correct this abuse in discretion by vacating these trial orders, retroactively reinstate the court orders from December 19, 2017, effective February 5, 2019 (the expiration date of unserved request for orders) and vacate any and all requests for orders, orders to show cause, findings and orders after hearing, trial decision and order, orders for attorney's fees, child support orders and payments resulting from the expired, December 19, 2018, request for orders which expired on February 5, 2019, due to failure of proper service and the abuse of discretion in determining the best interest of the child under Family Code Section 3011 and 3020.

**V. THE TRIAL COURT ERRED IN REFUSING
EVIDENCE AND SUCH REFUSAL
RESULTED IN RELEVANT FACTS NOT
BEING CONSIDERED IN THE DECISION
TO CHANGE CUSTODY.**

The abuse of discretion standard of review applies for child custody and visitation issues. The Court of Appeals defers to the trial court's exercise of discretion (*In re Marriage Burgess* (1996) 13 Cal.4th 25, 32). The trial court's order "will be overturned only if, considering all the evidence viewed most favorably in support of its order, no judge could reasonably make the order made." (*In re Marriage of Cueva* (1978) 86 Cal.App.3d 290, 296)

California Rules of Court, Rule 2.1040.

Electronic recordings presented or offered into evidence

(a) Electronic recordings of deposition or other prior testimony

(1) Before a party may present or offer into evidence an electronic sound or sound-and-video recording of deposition or other prior testimony, the party must lodge a transcript of the deposition or prior testimony with the court. At the time the recording is played, the party must identify on the record the page and line numbers where the testimony presented or offered appears in the transcript.

(2) Except as provided in (3), at the time the presentation of evidence closes or within five days after the recording in

(1) is presented or offered into evidence, whichever is later, the party presenting or offering the recording into evidence must serve and file a copy of the transcript cover showing the witness name and a copy of the pages of the transcript where the testimony presented or offered appears. The transcript pages must be marked to identify the testimony that was presented or offered into evidence.

(3) If the court reporter takes down the content of all portions of the recording in (1) that were presented or offered into evidence, the party offering or presenting the recording is not required to provide a transcript of that recording under (2).

(b) Other electronic recordings

(1) Except as provided in (2) and (3), before a party may present or offer into evidence any electronic sound or sound-and-video recording not covered under (a), the party must provide to the court and to opposing parties a transcript of the electronic recording and provide opposing parties with a duplicate of the electronic recording, as defined in Evidence Code section 260. The transcript may be prepared by the party presenting or offering the recording into evidence; a certified transcript is not required.

(2) For good cause, the trial judge may permit the party to provide the

transcript or the duplicate recording at the time the presentation of evidence closes or within five days after the recording is presented or offered into evidence, whichever is later.

(3) No transcript is required to be provided under (1):

(A) In proceedings that are uncontested or in which the responding party does not appear, unless otherwise ordered by the trial judge;

(B) If the parties stipulate in writing or on the record that the sound portion of a sound-and-video recording does not contain any words that are relevant to the issues in the case; or

(C) If, for good cause, the trial judge orders that a transcript is not required.

(c) Clerk's duties

An electronic recording provided to the court under this rule must be marked for identification. A transcript provided under (a)(2) or (b)(1) must be filed by the clerk.

(d) Reporting by court reporter
Unless otherwise ordered by the trial judge, the court reporter need not take down the content of an electronic recording that is presented or offered into evidence. Evidence Code 260. A "duplicate" is a counterpart produced by the same impression as the original, or from the same matrix, or by means of photography, including enlargements

and miniatures, or by mechanical or electronic rerecording, or by chemical reproduction, or by other equivalent technique which accurately reproduces the original.

The trial court refused to allow electronic evidence of A. refusing to make calls to Mr. McAuley. The videos had been transcribed and a copy of the original video was shared with the other party on April 11, 2019, in the fulfillment of a request for production of documents. The trial court's refusal was based on the transcript not being certified.

The trial court refused to allow electronic evidence from January 2018 of Mr. McAuley's verbal abuse of Ms. Salaam in front of A. in a recorded video call. The video had been transcribed and a copy of the original video was shared with the other party on April 11, 2019, in the fulfillment of a request for production of documents. The trial court's refusal was based on the transcript not being certified. Ms. Salaam was cut off while trying to explain that Attorney Mittelstadt had requested all videos and they were provided along with the transcribed account of the videos.

CRC Rule 2.1040(a)(3)(b)(1) clearly states the transcript may be prepared by the party presenting or offering the recording into evidence; a certified transcript is not required. Evidence Code 360 and CRC Rule 2.1040(a)(3)(b)(1) was complied with by Ms. Salaam and the video evidence should have been allowed to be admitted

Ms. Salaam was denied the ability to present the CPS "evaluated out" report on the basis of hearsay. Ms. Salaam was cut off by the trial court as

she tried to overcome the objection by explaining that the packet contained her written request for records and a signed deposition from the person who prepared the documents. This was extremely relevant because it showed, what was "evaluated out" was not, an investigation but Ms. Salaam's telephone call to report the allegations and the safety net in place that justified the closure was that the child resided in Maryland with the mother who has sole custody and the father lives in California. Given these circumstances and looking at the totality of the records, we are left with Detective Campoy relying on California CPS to do an investigation to protect the child and Mediator Sims, relying on Sacramento Sheriff's and California CPS to investigate the allegations and California CPS not actually doing an investigation but closing out a telephone incident report based on the safety protocol of the child being with mother in Maryland and these trial orders basically unraveling the safety net and protocols by disturbing the physical custody arrangement.

Ms. Salaam requests this court vacate the decision and order based on the abuse of discretion in not allowing relevant and permissible evidence at the trial. These discretionary actions had a direct impact and prejudiced the trial

**VI. THE TRIAL COURT FAILED TO
PROPERLY WEIGH THE EVIDENCE AND
CREDIBILITY IN THIS CASE WHICH
PREJUDICED THE OUTCOME
RESULTING THE CHANGE IN CUSTODY.**

The substantial evidence standard of review applies as the trial court did not consider all of the

evidence, misunderstood the evidence, erred in assessing credibility or failed to properly weigh the evidence. The Court of Appeal will reject these arguments if there is any substantial evidence, contradicted or not, which will support the finding of fact. (*Gray v. Don Miller & Associates, Inc.* (1984) 35 Cal.3d 498, 503.)

During the trial Mr. McAuley is not credible and his statements were proven to be perjurious testimony under oath. Some of these perjurious events are listed below and this is not an all-inclusive list:

(a) Mr. McAuley claimed when he requested 50/50 custody, that Ms. Salaam responded she would move and take A. with her. This was proven to be a lie through evidence submitted at trial.

(b) Mr. McAuley testified under oath that Ms. Salaam packed 30 days of clothing for the July 2018 visit and mandated what clothes were to be worn daily. This was proven to be a lie through evidence submitted at trial of an email stating Ms. Salaam was only able to pack two weeks of clothes due to the baggage restrictions.

(c) Mr. McAuley testified under oath that Ms. Salaam required him to feed A. only certain limited foods. This was proven to be a lie through evidence submitted at trial of an email where Mr. McAuley requests Ms. Salaam provide him with a list of A. likes to eat.

Additionally, the trial court overlooks the testimony that Mr. McAuley admits he never told Ms. Salaam the details around the events that led to him touching A.'s penis. Absent an explanation by Mr. McAuley, combined with the knowledge that no interview by California CPS of herself or A.

regarding the allegations ever took place and Ms. Sims report stating an investigation had been evaluated out. The trial courts questioning regarding the standard of review for CPS investigations during Ms. Daniels testimony should have peaked the court's curiosity on how an investigation could be evaluated out without at a minimum conducting an interview with the alleged victim, accused and the person initiating the complaint; given that both Ms. Salaam and Mr. McAuley testified that they were not interviewed by the California CPS.

Mr. McAuley's version of events regarding the sexual abuse incident has changed over time:

- (1) Accused Ms. Salaam of making up the allegations as evidenced by text messages entered into evidence at trial.
- (2) Told Sacramento Sheriffs the incident never happened as evidenced in the December 18, 2018, request for order.
- (3) Told the mediator that he did touch A.'s penis to apply ointment as evidenced by the Mediators report from January 20, 2019.
- (4) Testified in court that he only visually looked at his penis in the presence of his fiancé, but never touched A.'s penis.
- (5) Testified in court that he never communicated these events to Ms. Salaam. The trial was the first time he was explaining this to Ms. Salaam.

It should also be noted that in the trial court's decision, Mr. McAuley's testimony was described as "balanced" even with the undeniable evidence of perjury on the record. Mr. McAuley lies about these minor issues listed in (a)-(c) above, should have had the trial courts question the truthfulness regarding the allegations of sexual abuse amid his ever-

evolving and changing testimony in items 1-5 listed above.

Ms. Salaam's efforts to protect A., with her request for protective orders are reasonable and logical steps any normal parent would take, given the facts and circumstances. On the crucial issue of proof service, the trial court's rather lengthy decision is noticeably silent.

Ms. Salaam request this court vacate any and all requests for orders, orders to show cause, findings and orders after hearing, trial decision and order, orders for attorney's fees, child support orders and payments resulting from the expired, December 19, 2018, request for orders which expired on February 5, 2019, due to failure of proper service and the trial court's failure to properly weigh evidence of the no contact protective order, assessing the credibility of Mr. McAuley with regard to the allegations of sexual abuse and the failure of service of the request for orders prior to the hearing on February 5, 2019.

CONCLUSION

Ms. Salaam believes the trial court abused its discretion by ordering physical custody of A. changed from Ms. Salaam to Mr. McAuley without requiring Mr. McAuley to meet his burden of establishing that moving A. from Maryland to California would not cause detriment and that the change in physical custody was in A.'s best interest. The appellate courts have vacated custody changes when that burden hasn't been met as in the similar case (*In re Marriage of C.T. & R.B.* (2019) 33 Cal.App.5th 87 [244 Cal.Rptr.3d 694].)

Ms. Salaam has met her burden to show that the evidence is insufficient to support the trial court's findings. (*Adoption of Allison C. (2008) 164 Cal.App.4th 1004 [79 Cal.Rptr.3d 743].*)

For the reasons detailed in the arguments above both individually and collectively, the appellant, Ms. Salaam respectfully asks this Court to implement the remedies listed below:

1. Retroactively reinstate the courts orders from December 19, 2017, effective February 5, 2019.
2. A. be returned home to Maryland to the sole physical and sole legal custody of Ms. Salaam on the next available flight from Sacramento to Baltimore-Washington Airport or the closest airport to the Baltimore-Washington Airport.
3. Jurisdiction of the family law case 12FL07094 be given immediately to Prince George's County Courts in Maryland.
4. Any and all requests for order, orders to show cause, findings and orders after hearing, trial decision and order, orders for attorney's fees, child support orders and payments resulting from the expired, December 19, 2018, request for orders which expired on February 5, 2019, due to failure of proper service be vacated.
5. Ms. Salaam be paid all costs on the appeal and reimbursement for all vacation time, costs, and expenses associated with or related to the court orders and associated actions related to said orders listed in "4" above.

Respectfully submitted,

Date: December 6, 2020 - Ameenah Salaam
By: Ameenah Salaam
Appellant in Pro Per

CERTIFICATE OF WORD COUNT

I certify that, according to the computer program used to prepare this brief, the Appellant's Opening Brief contains **13,470** words, not including the cover, the Table of Contents and Authorities, the Certificate of Interested Entities or Persons, this certificate and the signature block.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed December 6, 2020, in Upper Marlboro, Maryland.

Ameenah Salaam
Ameenah Salaam
Appellant in Pro Per

PROOF OF SERVICE

I, the undersigned, declare as follows:

I am a citizen of the United States, over the age of 18 years, and am not a party to this action. My business address is **501 THIRD STREET, N.W.; WASHINGTON, DC 20001.**

On the date entered below, I served the attached **Appellant's Opening Brief** by placing a true copy thereof in an envelope addressed to the persons named below at the address shown, and by sealing and depositing that envelope in the United States Mail at Upper Marlboro, MD, with fully prepaid postage. There is delivery service by the United States Postal Service to each of the places so addressed.

| | |
|----------------------------|----------------------|
| Jeffery Allen McAuley | CLERK |
| Tahoe Law Center | SACRAMENTO |
| 3960 West Point Loma Blvd, | COUNTY |
| Suite H-1014 | SUPERIOR COURT |
| San Diego, CA 92110 | Room 314 |
| | 3341 Power Inn Road, |
| | Sacramento, CA 95826 |

| | |
|-----------------------|----------------------|
| Jeffery Allen McAuley | CLERK |
| 8336 Palmerson Dr | COURT OF APPEAL, |
| Sacramento, CA 95843 | THIRD APPELLATE |
| | DISTRICT |
| | 914 Capitol Mall |
| | Sacramento, CA 95814 |
| | <i>(4 copies)</i> |

I declare, under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on December 7, 2020, in Upper Marlboro,
Maryland.

Kelly Cline
KELLY CLINE

APPENDIX E
CASE# S270250

**IN THE SUPREME COURT OF THE STATE OF
CALIFORNIA**

**AMEENAH McAULEY (SALAAM),
Appellant**

v.

**JEFFREY McAULEY,
Respondent**

PETITION FOR REVIEW

**IN THE SUPREME COURT OF THE STATE OF
CALIFORNIA**

**In re the Marriage of AMEENAH and
JEFFERY ALLEN MCAULEY**

AMEENAH SALAAM,

Case No. S270250

Appellant,

v.

**JEFFERY ALLEN MCAULEY,
Respondent,**

Third Appellate District, Case No. C090504
Sacramento County Superior Court, Case No.
12FL07094
The Honorable Scott Tedmon, Judge

PETITION FOR REVIEW

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Appellant In Pro Per

**IN THE SUPREME COURT OF THE STATE OF
CALIFORNIA**

**In re the Marriage of AMEENAH and
JEFFERY ALLEN MCAULEY**

AMEENAH SALAAM,

Case No. S270250

Appellant,

v.

**JEFFERY ALLEN MCAULEY,
Respondent,**

**Third Appellate District, Case No. C090504
Sacramento County Superior Court, Case No.
12FL07094**

The Honorable Scott Tedmon, Judge

PETITION FOR REVIEW

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ameenah12@gmail.com
Appellant In Pro Per

PETITION FOR REVIEW
**TO THE HONORABLE TANI CANTIL-
SAKAUYE, CHIEF JUSTICE, AND TO THE
HONORABLE ASSOCIATE JUSTICES OF THE
SUPREME COURT OF THE STATE OF
CALIFORNIA:**

Petitioner Ameenah Salaam petitions this court for review following the decision of the Court of Appeal, Third Appellate District, filed in that court on June 28, 2021. A copy of the decision of the Court of Appeal is attached hereto as Attachment A.

ISSUES PRESENTED

- 1. DID THE COURT OF APPEAL ERR AS A MATTER OF LAW IN AFFIRMING THE TRIAL COURT ORDERS WHICH HELD A HEARING IN VIOLATION OF THE CALIFORNIA RULES OF COURT RULE 5.167(a) REGARDING THE SERVICE OF EMERGENCY REQUEST FOR ORDERS.**
- 2. DID THE COURT OF APPEAL ERR AS A MATTER OF LAW IN AFFIRMING THE TRIAL COURT ORDERS WHICH ISSUED ORDERS AND SET A TRIAL IN VIOLATION OF THE CALIFORNIA RULES OF COURT RULE 5.92 (f)(1)(A) MANDATING PERSONAL SERVICE OF REQUEST FOR ORDER WHEN TEMPORARY EMERGENCY ORDERS HAVE BEEN ISSUED AND CALIFORNIA RULES OF COURT.**
- 3. DID THE COURT OF APPEAL ERR AS A MATTER OF LAW IN AFFIRMING THE**

**TRIAL COURT ORDERS WHICH ISSUED
ORDERS AND SET A TRIAL IN VIOLATION
OF THE CALIFORNIA RULES OF COURT
CALIFORNIA RULES OF COURT 5.94
(e)(1)(2).**

- 4. DID THE COURT OF APPEAL ERR AS A
MATTER OF LAW IN AFFIRMING THE
TRIAL COURT ORDERS WHICH VIOLATED
THE CALIFORNIA RULES OF COURT
RULE 5.92(a)(1)(B) TO PERMIT TRIAL
ORDERS TO GROSSLY EXCEED MR.
MCAULEY'S REQUESTED RELIEF FILED
IN THE REQUEST FOR ORDERS SUBJECT
TO THIS TRIAL ON NUMEROUS COUNTS
AND MOST EGREGIOUSLY WITH THE
REMOVAL THE CHILD FROM MS. SALAAM
WITH NO REQUEST TO DISTURB THE
PHYSICAL CUSTODY ARRANGEMENT
FROM MR. MCAULEY.**
- 5. DID THE COURT OF APPEAL ERR AS A
MATTER OF LAW IN AFFIRMING THE
TRIAL COURT ORDERS WHICH VIOLATED
THE CALIFORNIA RULES OF COURT
RULE 5.151 (c)(1)(A), TO PERMIT TRIAL
ORDERS TO GROSSLY EXCEED MR.
MCAULEY'S REQUESTED RELIEF FILED
IN THE REQUEST FOR ORDERS SUBJECT
TO THIS TRIAL ON NUMEROUS COUNTS
AND MOST EGREGIOUSLY WITH THE
REMOVAL THE CHILD FROM MS. SALAAM
WITH NO REQUEST TO DISTURB THE
PHYSICAL CUSTODY ARRANGEMENT
FROM MR. MCAULEY.**

6. DID THE COURT OF APPEAL ERR AS A MATTER OF LAW IN AFFIRMING THE TRIAL COURT ORDERS WHICH VIOLATED THE CALIFORNIA RULES OF COURT RULE 5.151 (d)(5)(C) TO PERMIT TRIAL ORDERS TO GROSSLY EXCEED MR. MCAULEY'S REQUESTED RELIEF FILED IN THE REQUEST FOR ORDERS SUBJECT TO THIS TRIAL ON NUMEROUS COUNTS AND MOST EGREGIOUSLY WITH THE REMOVAL THE CHILD FROM MS. SALAAM WITH NO REQUEST TO DISTURB THE PHYSICAL CUSTODY ARRANGEMENT FROM MR. MCAULEY.
7. DID THE COURT OF APPEAL ERR AS A MATTER OF FACT IN AFFIRMING THE TRIAL COURT ORDERS, WHEN IT IGNORED THE RECORD WHICH STATES THAT MR. MCAULEY DISMISSED ALL AUTHORIZED AND ORDERS TO SHOW CAUSE OF CONTEMPT AT TRIAL, LEAVING ONLY THE DECEMBER 18, 2017. REQUEST FOR ORDERS AS THE MOVING PAPERS AND THE BASIS FOR THE TRIAL.
8. DID THE COURT OF APPEAL ERR AS A MATTER OF FACT IN AFFIRMING THE TRIAL COURT ORDERS, WHEN IT RELIED UPON ORDERS THAT WERE NOTICED BUT WERE NOT REFERRED TO TRIAL OR SUBSEQUENTLY DISMISSED AT TRIAL TO JUSTIFY TRIAL ORDERS TO GROSSLY EXCEED MR. MCAULEY'S REQUESTED

**RELIEF FILED IN THE DECEMBER 18,
2018, REQUEST FOR ORDERS SUBJECT TO
THIS TRIAL ON NUMEROUS COUNTS AND
MOST EGREGIOUSLY WITH THE
REMOVAL THE CHILD FROM MS. SALAAM
WITH NO REQUEST TO DISTURB THE
PHYSICAL CUSTODY ARRANGEMENT
FROM MR. MCAULEY.**

NECESSITY FOR REVIEW

Review of this case is needed to settle several important questions of law, with regard to requests for custody and visitation orders.

First, under California Rules of Court Rules 5.167(a), 5.92 and 5.94 all deal with the request for orders and the proper service of such requests including the set course of action when proper service is not made. In this case there are multiple violations of not filing orders, not serving orders and the court issuing modifications and new orders on these unfiled and unserved orders.

Second, this case requires a close review of California Rules of Court Rule 5.151, specifically when the trial order disturbs a physical custody arrangement that the Parties were in agreement on and never requested this arrangement be disturbed.

Finally, to justify disturbing the physical custody arrangement, the appeals court relied upon several procedurally defective orders that were noticed, but **not** filed with the court, **not** served on the opposing Party, yet heard and decided in a short matter hearing prior to trial. These same matters were presented again at the first day of the trial and all outstanding authorized orders of contempt were

ultimately dismissed the first day of trial and not considered as a matter of trial..

This case also presents issues of first impression, where Mr. McAuley never served the moving papers prior to the hearing which should have rendered both the request for orders and the temporary emergency orders expired at the date and time of the hearing on February 5, 2019. Instead, the court held the hearing and issued orders to modify the custody and visitation arrangement which led to Ms. Salaam's request for trial. A trial that precipitated a change in a permanent custody and visitation order ordering the child to move from Maryland to California and the only orders at issue at trial, December 18, 2018, request for orders, never requested a change in physical custody. This case is full procedural errors and violations of the California Rules of Court which ultimately prejudice Ms. Salaam and resulted in a miscarriage of justice.

Based on the above considerations, this case presents important questions of law that could impact an enormous number of families in California who come before the Family Court seeking orders regarding custody and visitation orders for their children. Ms. Salaam respectfully requests that this court grant review to decide the questions presented. (Cal. Rules of Court, Rule 8.500(b)(1).

STATEMENT OF THE CASE

On December 18, 2018, Mr. McAuley filed an emergency ExParte request for visitation and custody orders regarding the Parties' son. (I CT 175-229) The current arrangement gave Ms. Salaam sole legal and physical custody of A.. Mr. McAuley's request was to change to joint legal custody,

compliance with the winter break visit, and modifications to payment for travel to the visits. (I CT 176,179,189) At the time of filing, the ExParte application shows no service to Ms. Salaam. (I CT 183) The disposition following the emergency hearing was no parenting time, referral to Family Court Services for mediation, (I CT 174) and scheduled a return for hearing on February 5, 2019. (I CT 175). Additionally, Superior Court of CA, County of Sacramento Deputy Clerk E. Razumovskiy's Declaration to the Third District Appellate Court dated July 23, 2020, states there is no proof of service in the court file for Mr. McAuley's 12/18/2018 ExParte and Request for Orders.

At the return for hearing at 9:00am on February 5, 2019, Commissioner Haukedalen issued new orders changing custody to joint legal, physical custody remains with Ms. Salaam and Ms. Salaam to pay for travel expenses for spring 2019 school break. (I CT 164) During this hearing, Ms. Salaam stated she had not received the request for orders. At trial Mr. McAuley he did not recall when he served Ms. Salaam the 12/18/2018 ExParte and Request for Orders (2 RT 261:5-8), he recalled stating to Commissioner Haukedalen on February 5, 2019, that he Googled Ms. Salaam's address and later found out it was the wrong address, but it was later delivered to Ms. Salaam by a neighbor. (2 RT 261:18-261:5) Commissioner Haukedalen advised the issue of service could be presented at trial. It is at this is the point that the courts should have complied with CRC Rule 5.94(e) and should have deemed the temporary order and request for orders expired since there was no court order to reschedule the hearing. Any modification to existing orders and/or issuance of

new orders on February 5, 2019, was a violation of the law under CRC Rule 5.94(e). Given the courts violation of the law, and absent the moving papers, Ms. Salaam had no other recourse but to request a trial. This matter was set for trial on June 13, 2019. (I CT 164-168)

Mr. McAuley requested an emergency ExParte hearing on February 22, 2019, for Request for Orders (for custody, attorneys fees and sanctions) and an Order to Show Cause for Contempt #1 of February 5, 2019, orders (1 RT 9:6) and a hearing was scheduled for March 26, 2019. The ExParte applications (I CT 160) and request for orders (I CT 134) were not personally served prior to the hearing and under CRC 5.94(e) expired on March 26, 2019. It is at this point that the courts should have complied with CRC Rule 5.94(e) and should have deemed any temporary order and request for orders expired since there was no court order to reschedule the hearing. Any modification to existing order and/or issuance of new orders on March 26, 2019, was a violation of the law under CRC Rule 5.94(e). The March 26, 2019, findings and orders after hearing (I CT 98) ordered Ms. Salaam to pay \$2,500.00 in attorney's fees and costs.

On March 18, 2019, Mr. McAuley requested an emergency ExParte hearing for Order to Show Cause for Contempt #2 of February 5, 2019, orders (for custody, sanctions, attorney's fees, and costs (I CT 126), ExParte application (I CT 122) and request for orders (I CT 111) This matter was continued to March 26, 2019 (I CT 144). None of these orders were filed with the courts. None of these orders were personally served prior to the hearing and under CRC 5.94(e) expired on March 26, 2019. It is at this

is the point that the courts should have complied with CRC Rule 5.94(e) and should have deemed any temporary order, orders to show cause for contempt and request for orders expired since there was no court order to reschedule the hearing. Any modification to existing order and/or issuance of new orders on March 26, 2019, was a violation of the law under CRC Rule 5.94(e). The March 26, 2019, findings and orders after hearing (I CT 98) ordered Ms. Salaam to pay \$2,500.00 in attorney's fees and costs.

On April 3, 2019, Mr. McAuley requested an emergency ExParte hearing for Order to Show Cause for Contempt #3 of February 5, 2019, orders (for custody, sanctions, attorney's fees, and costs (I CT 77-81), ExParte application (I CT 95-96) and request for orders. (I CT 82-94) This matter of the ExParte application and request for orders was continued to May 1, 2019 (I CT 76). None of these orders were personally served prior to the hearing on May 1, 2019, and under CRC 5.94(e) expired on May 1, 2019. It is at this is the point that the courts should have complied with CRC Rule 5.94(e) and should have deemed any temporary order and request for orders expired since there was no court order to reschedule the hearing. Any modification to existing order and/or issuance of new orders on May 1, 2019, was a violation of the law under CRC Rule 5.94(e). The May 1, 2019, findings and orders after hearing (I CT 63) ordered Ms. Salaam to pay for the summer visit transportation and provided additional video visitation time and \$1500.00 in attorney's fees to Mr. McAuley.

On April 8, 2019, Mr. McAuley's request for Order to Show Cause for Contempt #3 (for custody,

sanctions, attorney's fees, and costs) (I CT 77-81), was filed and scheduled for hearing on May 21, 2019. At the May 1, 2019, Commissioner Haukedalen ordered Ms. Salaam to pay Mr. McAuley \$1,500.00 in attorney's fees and costs. (I CT 32) and orders the contempt to be dealt with at the June 13, 2019 trial. (I CT 63-64) The orders were not personally served prior to the hearing on May 1, 2019 or the trial on June 13, 2019, therefore under CRC 5.94(e) it expired on June 13, 2019. It is at this point that the courts should have complied with CRC Rule 5.94(e) and should have deemed any temporary order and orders to show cause for contempt expired since there was no court order to reschedule the hearing. Any modification to existing order and/or issuance of new orders on June 13, 2019, was a violation of the law under CRC Rule 5.94(e).

A trial was held on June 13, 2019, July 10-11, 2019. At the first day of trial, Attorney Mittelstadt, requested to include in the trial all previous orders to show cause for contempt (#1-#4). However, Judge Tedmon uncovered that Attorney Mittelstadt failed to file some of these orders (1 RT 9: 12-13, 16-17), failed to get some orders signed by a Judge (1 RT 9:17), never had the orders properly served on Ms. Salaam or provided an arraignment for the quasi-criminal contempt proceeding. (1 RT 9:17) (1 RT 10:4-6) After some discussion, Mr. McAuley withdrew all of these orders to show cause for contempt and moved forward with the trial based on the original moving papers from December 18, 2017, which did not request to disturb the physical custody arrangement and also which expired under CRC 5.94(e) due to failure to serve before the hearing on February 5, 2019 which precipitated the trial.

On July 12, 2019, the decision and orders pronounced on the record granted Mr. McAuley sole physical custody of A.. (I CT 17:20) Ms. Salaam and Mr. McAuley to share joint legal custody with Mr. McAuley having final say. (I CT 17:15-19) Visitation awarded to Ms. Salaam at her sole cost and expense. (I CT 21:6) No visitation was permitted until Ms. Salaam posted a \$5,000.00 bond (I CT 20:19), registered the new orders in Maryland (I CT 20:24), and purchased an open ticket for Mr. McAuley. (I CT 21:6). (I CT 72:13-16)

On September 18, 2019, Ms. Salaam filed an appeal of the orders issued August 2, 2019. (I CT 12-113)

The Court of Appeal affirmed the trial court's order on June 28, 2021, in an unpublished opinion. (Attachment A.) Ms. Salaam had served, a petition for rehearing on July 11, 2021, however, it was returned unfiled and marked untimely because it was received on July 19, 2021, after the 15-day deadline of July 13, 2021.

STATEMENT OF FACTS

The appellant, Ameenah Salaam ("Ameenah") and the respondent, Jeffery McAuley ("Jeff") were married for 17 months. (1 RT 6:17-18) The parties have a son A. McAuley ("A."), born September 2, 2012. (I CT 72:10-12, 18-20) Ms. Salaam filed for dissolution of the marriage on December 7, 2012. (I CT 22) Ms. Salaam was granted a domestic violence restraining order to protect her from Mr. McAuley. (1 RT 7:25 – 8:1)

On December 18, 2018, Mr. McAuley filed an emergency ExParte request for visitation and custody orders regarding the Parties' son. (I CT 175-

229) The current arrangement gave Ms. Salaam sole legal and physical custody of A.. Mr. McAuley's request was to change to joint legal custody, compliance with the winter break visit, and modifications to payment for travel to the visits. (I CT 176,179,189) At the time of filing, the ExParte application shows no service to Ms. Salaam. (I CT 183) The disposition following the emergency hearing was no parenting time, referral to Family Court Services for mediation, (I CT 174) and scheduled a return for hearing on February 5, 2019. (I CT 175). Additionally, Superior Court of California, County of Sacramento Deputy Clerk E. Razumovskiy's Declaration RE: Record on Appeal, to the Third District Appellate Court dated July 23, 2020, states, "After a thorough search of the court file, Proof of Service for the 12/18/18 ExParte and Request for Order... Could not be located. Nothing was omitted."

At the return for hearing at 9:00am on February 5, 2019, Commissioner Haukedalen issued new orders changing custody to joint legal, physical custody remains with Ms. Salaam and Ms. Salaam to pay for travel expenses for spring 2019 school break. During this hearing, Ms. Salaam stated she had not received the request for orders. At trial Mr. McAuley he did not recall when he served Ms. Salaam the 12/18/2018 ExParte and Request for Orders (2 RT 261:5-8), he recalled stating to Commissioner Haukedalen on February 5, 2019, that he Googled Ms. Salaam's address and later found out it was the wrong address, but it was later delivered to Ms. Salaam by a neighbor. (2 RT 261:18-261:5) Commissioner Haukedalen advised the issue of service could be presented at trial. At the request of

Ms. Salaam this matter was set for trial on June 13, 2019. (I CT 164-168)

Mr. McAuley requested an emergency ExParte hearing on February 22, 2019, for Request for Orders (for custody, attorneys fees and sanctions) and an Order to Show Cause for Contempt #1 of February 5, 2019 orders (1 RT 9:6) and a hearing was scheduled for March 26, 2019. The ExParte applications (I CT 160) and request for orders (I CT 134) were not personally served prior to the hearing.

On March 18, 2019, Mr. McAuley requested an emergency ExParte hearing for Order to Show Cause for Contempt #2 of February 5, 2019, orders (for custody, sanctions, attorney's fees, and costs (I CT 126), ExParte application (I CT 122) and request for orders (I CT 111) This matter was continued to March 26, 2019 (I CT 144). None of these orders were filed with the courts. None of these orders were personally served prior to the hearing. The March 26, 2019, findings and orders after hearing (I CT 98) ordered Ms. Salaam to pay \$2,500.00 in attorney's fees and costs.

On April 3, 2019, Mr. McAuley requested an emergency ExParte hearing for Order to Show Cause for Contempt #3 of February 5, 2019, orders (for custody, sanctions, attorney's fees, and costs (I CT 77-81), ExParte application (I CT 95-96) and request for orders. (I CT 82-94) This matter of the ExParte application and request for orders was continued to May 1, 2019 (I CT 76). None of these orders were personally served prior to the hearing on May 1, 2019. The May 1, 2019, findings and orders after hearing (I CT 63) ordered Ms. Salaam to pay for the summer visit transportation and provided additional

video visitation time and \$1500.00 in attorney's fees to Mr. McAuley.

On April 8, 2019, Mr. McAuley's request for Order to Show Cause for Contempt #3 (for custody, sanctions, attorney's fees, and costs) (I CT 77-81), was filed and scheduled for hearing on May 21, 2019. At the May 1, 2019, Commissioner Haukedalen also ordered the contempt to be dealt with at the June 13, 2019 trial. (I CT 63-64) The orders were not personally served prior to the hearing on May 1, 2019 or the trial on June 13, 2019.

A trial was held on June 13, 2019, July 10-11, 2019. At the first day of trial, Attorney Mittelstadt, requested to include in the trial all previous orders to show cause for contempt (#1-#4). However, Judge Tedmon uncovered that Attorney Mittelstadt failed to file these orders (1 RT 9: 12-13, 16-17), get the orders signed by a Judge (1 RT 9:17), never had the orders properly served on Ms. Salaam or provided an arraignment for the quasi-criminal contempt proceeding. (1 RT 9:17) (1 RT 10:4-6) After some discussion and review of the file by Judge Tedmon, (1RT 1:23- 13:13) (1 RT 82:14 - 85:19) (1 RT 87:5- 88:15) Mr. McAuley dismissed all authorized outstanding orders to show cause for contempt. (1 RT 88:5-15) With this dismissal the only request for orders before the court for trial were the December 18, 2017 ExParte and Request for orders. (I CT 175)

On July 12, 2019, the decision and orders pronounced on the record granted Mr. McAuley sole physical custody of A.. (I CT 17:20) Ms. Salaam and Mr. McAuley to share joint legal custody with Mr. McAuley having final say. (I CT 17:15-19) Visitation awarded to Ms. Salaam at her sole cost and expense. (I CT 21:6) No visitation was permitted until Ms.

Salaam posted a \$5,000.00 bond (I CT 20:19), registered the new orders in Maryland (I CT 20:24), and purchased an open ticket for Mr. McAuley. (I CT 21:6). (I CT 72:13-16)

On September 18, 2019, Ms. Salaam filed an appeal of the orders issued August 2, 2019. (I CT 12-113)

The Court of Appeal affirmed the trial court's order on June 28, 2021, in an unpublished opinion. (Attachment A.) Ms. Salaam had served, a petition for rehearing on July 11, 2021, however, it was returned unfiled and marked untimely because it was received on July 19, 2021, after the 15-day deadline of July 13, 2021.

ARGUMENT

I. THIS COURT SHOULD GRANT REVIEW BECAUSE THE COURT OF APPEAL ERR AS A MATTER OF LAW IN AFFIRMING THE TRIAL COURT ORDERS WHICH HELD A HEARING IN VIOLATION OF THE CALIFORNIA RULES OF COURT RULE 5.167(a) REGARDING THE SERVICE OF EMERGENCY REQUEST FOR ORDERS.

The relevant statutes in part include:
California Rules of Court Rule 5.167.
Service of application; temporary
restraining orders

(a) Service of documents requesting
emergency orders
A party seeking emergency orders and a
party providing written opposition must
serve the papers on the other party or on
the other party's attorney at the first
reasonable opportunity before the

hearing. Absent exceptional circumstances, no hearing may be conducted unless such service has been made. The court may waive this requirement in extraordinary circumstances if good cause is shown that imminent harm is likely if documents are provided to the other party before the hearing. This rule does not apply in cases filed under the Domestic Violence Prevention Act.

Mr. McAuley did not serve Ms. Salaam the papers prior to the emergency hearing on December 18, 2018, as required by Rule 5.167. The word “must” in must serve, is a mandatory clause. The request for order section regarding service of the order is completely blank. (I CT 183) Ms. Salaam received several court documents in the mail from Mr. McAuley on February 8, 2019, and an email from Attorney Mittelstadt on February 11, 2019 with court documents, which was well after the timelines required by law and after the February 5, 2019 hearing and pronouncement of the change in the custody and visitation order and scheduling of the June 2019 trial. Commissioner Haukedalen ordered the issue of service to be dealt with at the trial. This issue was woefully not address during the decision and orders by the trial court, despite the request for orders, testimony provided by Ms. Salaam and Mr. McAuley regarding the lack of proper service by someone over 18, not a party to the proceeding, the filing of the proof of service prior to the hearing.

The rule states the court may waive the written service requirement in “extraordinary circumstances if good cause is shown that imminent

harm is likely.” In this case, Mr. McAuley did not present any evidence or submit a statement to the court claiming imminent harm to A. was likely, nor did the court recognize any evidence of imminent harm. Further, the Rule states that the service requirement does not apply in cases filed under the Domestic Violence Prevention Act. In this case, the emergency order was not filed under the Domestic Violence Prevention Action. Because there was no claim by Mr. McAuley or the court that imminent harm was likely, and because the emergency order request was not filed under the Domestic Violence Prevention Act, and because Ms. Salaam was not properly served the lower court erred in granting the emergency order issued on December 18, 2018.

Mr. McAuley’s failure of service did not afford Ms. Salaam the ability to be fully aware of Mr. McAuley’s requests, nor the opportunity to file a response to the requests for orders. Ms. Salaam’s lack of receipt of service didn’t allow her the ability to fully participate in the mediation process. Additionally, the denial of the ability to respond to Mr. McAuley’s request for orders prejudiced the mediator’s recommendations, the hearing and the orders issued on February 5, 2019. These orders were based on the recommendations of the mediation and ultimately this trial and outcome which resulted in not only Mr. McAuley’s requested change in legal custody but ultimately, the change in permanent physical custody of six-year-old A., with the abrupt physical removal of A. from Ms. Salaam and his sole physical custody placement with Mr. McAuley which was never requested in the request for orders referred to trial.

Ms. Salaam requests this court reverse this miscarriage of justice by vacating these trial orders, retroactively reinstate the court orders from December 19, 2017, effective February 5, 2019 (the expiration date of unserved request for orders) and vacate any and all requests for orders, orders to show cause, findings and orders after hearing, trial decision and order, orders for attorney's fees, child support orders and payments resulting from the expired, December 19, 2017, request for orders which expired on February 5, 2019, due to failure of proper service be vacated. During this hearing, Ms. Salaam stated she had not received the request for orders. At trial Mr. McAuley he did not recall when he served Ms. Salaam the 12/18/2018 ExParte and Request for Orders (2 RT 261:5-8), he recalled stating to Commissioner Haukedalen on February 5, 2019, that he Googled Ms. Salaam's address and later found out it was the wrong address, but it was later delivered to Ms. Salaam by a neighbor. (2 RT 261:18-261:5) Commissioner Haukedalen advised the issue of service could be presented at trial. It is at this is the point that the courts should have complied with CRC Rule 5.94(e) and should have deemed the temporary order and request for orders expired since there was no court order to reschedule the hearing. Any modification to existing orders and/or issuance of new orders on February 5, 2019, was a violation of the law under CRC Rule 5.94(e). Given the courts violation of the law, and absent the moving papers, Ms. Salaam had no other recourse but to request a trial. This matter was set for trial on June 13, 2019. (I CT 164-168) Additionally, Superior Court of California, County of Sacramento Deputy Clerk E. Razumovskiy's Declaration RE: Record on Appeal, to

the Third District Appellate Court dated July 23, 2020, states, "After a thorough search of the court file, Proof of Service for the 12/18/18 ExParte and Request for Order... Could not be located. Nothing was omitted."

Based on these considerations, Ms. Salaam respectfully request that this court grant review to consider this issue that has widespread impact on California families and children.

II. THIS COURT SHOULD GRANT REVIEW BECAUSE THE COURT OF APPEAL ERR AS A MATTER OF LAW IN AFFIRMING THE TRIAL COURT ORDERS WHICH ISSUED ORDERS AND SET A TRIAL IN VIOLATION OF THE CALIFORNIA RULES OF COURT RULE 5.92 (f)(1)(A) MANDATING PERSONAL SERVICE OF REQUEST FOR ORDER WHEN TEMPORARY EMERGENCY ORDERS HAVE BEEN ISSUED AND CALIFORNIA RULES OF COURT.

The relevant statutes in part include:
California Rules of Court Rule 5.92.
Request for court order; responsive declaration

(f) Request for order; service requirements

(1) The Request for Order (form FL-300) and appropriate documents or orders must be served in the manner specified for the service of a summons in Code of Civil Procedure sections 415.10 through 415.95, including personal service, if:

(A) The court granted temporary emergency orders pending the hearing;

Under CRC Rule 5.92 (f)(1)(A) Mr. McAuley was required to personally serve the request for orders and the temporary emergency orders from December 18, 2017. There was no proof of service in the file the day of the hearing on February 5, 2019. In addition, when asked by Commissioner Haukedalen, Mr. McAuley nor his counsel produced a proof of service.

The court of appeals erred affirming the trial orders which granted a hearing, issued orders and the referral to trial since service of the emergency orders and the request for orders was never personally served on Ms. Salaam prior to the hearing. Additionally, Superior Court of California, County of Sacramento Deputy Clerk E. Razumovskiy's Declaration RE: Record on Appeal, to the Third District Appellate Court dated July 23, 2020, states, "After a thorough search of the court file, Proof of Service for the 12/18/18 ExParte and Request for Order... Could not be located. Nothing was omitted."

In (*Quail Lake Owners Assn. v. Kozina (2012) 204 Cal.App.4th 1132, 1137 [139 Cal. Rptr. 3d 389]*) the court found that "absent an explicit argument that a procedural error caused prejudice, we are under no obligation to address the claim of error." Quail Lake Owners is not applicable in the instant case because the procedural error prejudiced Ms. Salaam and resulted in a miscarriage of justice as Ms. Salaam was unable to prepare for the hearing. The lower court erred in granting Mr. McAuley's request for an emergency hearing and the procedural deficiencies caused by failure to meet rule 5.92 prejudiced the outcome of the hearing.

Based on these considerations, Ms. Salaam respectfully request that this court grant review to

consider this issue that has widespread impact on California families and children.

III. THIS COURT SHOULD GRANT REVIEW BECAUSE THE COURT OF APPEAL ERRED AS A MATTER OF LAW IN AFFIRMING THE TRIAL COURT ORDERS WHICH ISSUED ORDERS AND SET A TRIAL IN VIOLATION OF THE CALIFORNIA RULES OF COURT CALIFORNIA RULES OF COURT 5.94 (e)(1)(2).

Finally, under California Rules of Court Rule 5.94 (e)(1) and (2), states,

(e) Failure to serve request for order
The Request for Order (form FL-300) or other moving papers such as an order to show cause, along with any temporary emergency (ex parte) orders, will expire on the date and time of the scheduled hearing if the requesting party fails to:

(1) Have the other party served before the hearing with the Request for Order (form FL-300) or other moving papers, such as an order to show cause; supporting documents; and any temporary emergency (ex parte) orders; or

(2) Obtain a court order to reschedule the hearing, as described in rule 5.95.

Mr. McAuley's failed to personally serve the request for orders and temporary emergency (ExParte) orders the February 5, 2019, hearing, nor did Mr. McAuley did not obtain a court order to reschedule the hearing; therefore, under this rule the request for order and the temporary emergency

orders expired on February 5, 2019. The use of the word “will” makes expiration mandatory absent a request for rescheduling being granted. No new orders should have been issued by Commissioner Haukedalen and the December 18, 2017, orders should have been put back into effect. The court of appeals affirmation of the trial court orders violated the law when the expired request for orders were used to modify existing orders and then referred to trial.

Additionally, Superior Court of California, County of Sacramento Deputy Clerk E. Razumovskiy’s Declaration RE: Record on Appeal, to the Third District Appellate Court dated July 23, 2020, states, “After a thorough search of the court file, Proof of Service for the 12/18/18 ExParte and Request for Order... Could not be located. Nothing was omitted.”

Based on these considerations, Ms. Salaam respectfully request that this court grant review to consider this issue that has widespread impact on California families and children.

IV. THIS COURT SHOULD GRANT REVIEW BECAUSE DID THE COURT OF APPEAL ERR AS A MATTER OF LAW IN AFFIRMING THE TRIAL COURT ORDERS WHICH VIOLATED THE CALIFORNIA RULES OF COURT RULE 5.92(a)(1)(B) TO PERMIT TRIAL ORDERS TO GROSSLY EXCEED MR. MCAULEY’S REQUESTED RELIEF FILED IN THE REQUEST FOR ORDERS SUBJECT TO THIS TRIAL ON NUMEROUS COUNTS AND MOST EGREGIOUSLY WITH THE REMOVAL THE CHILD FROM MS. SALAAM WITH NO

**REQUEST TO DISTURB THE PHYSICAL
CUSTODY ARRANGEMENT FROM MR.
MCAULEY.**

The California Rules of Court Rule 5.92(a)(1)(B) states in relevant part under Request for court order; responsive declaration,

(a) Application

(1) In a family law proceeding under the Family Code:

(B) A Request for Order (form FL-300) must be used to ask for court orders, unless another Judicial Council form has been adopted or approved for the specific request; and

Mr. McAuley's request for orders on form FL-300 (I CT 176) dated December 18, 2018, requests a change to joint legal custody with **no** changes in physical custody. The FL-300 attachment 2b, (I CT 179) requests Ms. Salaam's compliance with previously agreed upon arrangement, which was sole legal, sole physical to Ms. Salaam with reasonable visitation with Mr. McAuley.

Based on these considerations, Ms. Salaam respectfully request that this court grant review to consider this issue that has widespread impact on California families and children.

V. THIS COURT SHOULD GRANT REVIEW BECAUSE THE COURT OF APPEAL ERRED AS A MATTER OF LAW IN AFFIRMING THE TRIAL COURT ORDERS WHICH VIOLATED THE CALIFORNIA RULES OF COURT RULE 5.151 (c)(1)(A), TO PERMIT TRIAL ORDERS TO GROSSLY EXCEED

**MR. MCAULEY'S REQUESTED RELIEF
FILED IN THE REQUEST FOR ORDERS
SUBJECT TO THIS TRIAL ON
NUMEROUS COUNTS AND MOST
EGREGIOUSLY WITH THE REMOVAL
THE CHILD FROM MS. SALAAM WITH NO
REQUEST TO DISTURB THE PHYSICAL
CUSTODY ARRANGEMENT FROM MR.
MCAULEY.**

Similarly, the California Rules of Court Rule 5.151(c)(1)(A) states in relevant part, for temporary emergency (ex parte) orders; application; required documents

(c) Required documents

(1) Request for order

A request for emergency orders must be in writing and must include all of the following completed documents:

(A) Request for Order (form FL-300) that identifies the relief requested.

Mr. McAuley's request for orders on form FL-300 (I CT 176) dated December 18, 2018, requests a change to joint legal custody with **no** changes in physical custody. The FL-300 attachment 2b, (I CT 179) requests Ms. Salaam's compliance with previously agreed upon arrangement, which was sole legal, sole physical to Ms. Salaam with reasonable visitation with Mr. McAuley.

Based on these considerations, Ms. Salaam respectfully request that this court grant review to consider this issue that has widespread impact on California families and children.

**VI. THIS COURT SHOULD GRANT REVIEW
BECAUSE THE COURT OF APPEAL ERR**

AS A MATTER OF LAW IN AFFIRMING
THE TRIAL COURT ORDERS WHICH
VIOLATED THE CALIFORNIA RULES OF
COURT RULE 5.151 (d)(5)(C) TO PERMIT
TRIAL ORDERS TO GROSSLY EXCEED
MR. MCAULEY'S REQUESTED RELIEF
FILED IN THE REQUEST FOR ORDERS
SUBJECT TO THIS TRIAL ON
NUMEROUS COUNTS AND MOST
EGREGIOUSLY WITH THE REMOVAL
THE CHILD FROM MS. SALAAM WITH
NO REQUEST TO DISTURB THE
PHYSICAL CUSTODY ARRANGEMENT
FROM MR. MCAULEY.

The California Rules of Court, Rule 5.151
states,

- (d) under Contents of application and declaration
- (5) Applications regarding child custody or visitation (parenting time)
Applications for emergency orders granting or modifying child custody or visitation (parenting time) under Family Code section 3064 must:
(C) Advise the court of the existing custody and visitation (parenting time) arrangements and how they would be changed by the request for emergency orders.

Mr. McAuley's signed declaration dated December 18, 2019 states, "I am writing to make a formal request that she comply with our previously agreed upon custody orders and arrangements with some amendments as outlined." (I CT 186) The

outline of the request are captured on form FL-311 "Child Custody and Visitation (Parenting Time) Application Attachment with a requested relief of Legal Custody to Ameenah Salaam, Physical Custody to Ameenah Salaam and Reasonable right of parenting time to the party without physical custody, which was no change from the existing orders. (I CT 188) In addition the FL-311 Attachment, (I CT 189) again reiterates the request that Ms. Salaam complies with the previously agreed upon arrangement and no request for physical custody or legal custody is requested.

The issuance of trial court orders grossly exceed Mr. McAuley's requested relief filed in the request for order and signed declarations of request for orders on numerous counts. The most egregiously was the order the immediate removal of A. from Ms. Salaam with no request to disturb the physical custody arrangement from neither Mr. McAuley nor Ms. Salaam. The list of these abusive discretions of exceeding the request for relief include:

1. #2A on Request for Orders on form FL-300 Mr. McAuley, requests Legal custody to be joint. (I CT 176) The trial court ordered joint legal custody with father having final say.
2. #2A on Request for Orders on form FL-300 Mr. McAuley requests no change in physical custody. (I CT 176) The trial court exceed the requested relief and ordered the physical custody of A. be immediate removed from Ms. Salaam and placed with Mr. McAuley.
3. #2D (1) on Request for Orders on form FL-300. Mr. McAuley reiterates the request to change to joint legal custody. (I CT 176) There is no mention of any request to change physical

custody. The trial court exceed the requested relief and ordered joint legal custody and the physical custody of A. be immediate removed from Ms. Salaam and placed with Mr. McAuley.

4. On FL-300 Attachment 2B (I CT 179) Mr. McAuley requests compliance with previously agreed arrangement (12-18-2017 Orders), make up of missed December 2018 visit during summer, payment for one upcoming visit costs and split equally future visits. The trial court ordered Ms. Salaam to pay for ALL future visitation costs, including flights, hotels, in town visitation costs and transportation.
5. #1 on the Child Custody and Visitation (Parenting Time) Application Attachment form FL-311. (I CT 188) Mr. McAuley requested orders for legal custody go to Ameenah Salaam and physical custody go to Ameenah Salaam. The trial court exceed the requested relief and ordered the physical custody of A. be immediate removed from Ms. Salaam and placed with Mr. McAuley.
6. #1 on the FL-311 Attachment 2e (4), (I CT 189) Mr. McAuley requested orders for legal custody go to Ameenah Salaam and physical custody go to Ameenah Salaam. The trial court exceed the requested relief and ordered the physical custody of A. be immediate removed from Ms. Salaam and placed with Mr. McAuley.
7. #1 on the Children's Holiday Schedule Attachment on form FL-341I, (I CT 194) Mr. McAuley requested the non-school visits, which affirms that Mr. McAuley does not want a change in physical custody from Ms. Salaam. The trial court exceed the requested relief and

ordered the physical custody of A. be immediate removed from Ms. Salaam and placed with Mr. McAuley.

8. #6 on the Additional Provisions – Physical Custody Attachment form FL-341(D) (I CT 192) Mr. McAuley reaffirms no request to change physical custody from Ms. Salaam by identifying on this form, additional provisions for the custodial parent and specifically mentions Ms. Salaam facilitating 15-minute calls a day. The trial court changes custody and orders Mr. McAuley to facilitate calls from A. to Ms. Salaam on Sunday, Monday, Wednesday and Friday from weekly.
9. #6 on the Request for Child Abduction Prevention Orders form FL-312, (I CT 191) Mr. McAuley, requested that Ms. Salaam (erroneously identified on the request for order as the respondent) post a \$3000.00 bond. The trial courts exceeds the requested relief and orders Ms. Salaam to post \$2,000.00 more than request for a total of \$5,000.00 bond.

Neither, Ms. Salaam nor Mr. McAuley filed requests for orders to be decided at this trial to change physical custody; therefore, physical custody was not in dispute between the parties. The trial court's order changing physical custody from Ms. Salaam to Mr. McAuley, with respect to the relief requested in comparison to the trial courts orders amounts to a violation of the laws listed above, an erroneous miscarriage of justice by changing physical custody orders that were not in dispute amongst the parties and in fact was affirmed as many as 7 times in Mr. McAuley's request for orders and related forms.

The CRC Rule 5.92(a)(1)(B) says “A request for order (Form FL-300) must be used to ask the court for orders unless another judicial council form has been adopted or approved for the specific request.” Use of the word “must” makes this mandatory. Mr. McAuley and his Attorney appeared the first day of the trial verbally requesting physical custody which was not requested in the December 18, 2018 Ex parte nor the Request for orders, which were set for trial. The request for physical custody was not on the FL-300 form or any other judicial council form adopted or approved for the specific request.

The issuances of trial orders which exceed the requested relief in addition to disturbing the physical custody arrangements that parties agreed upon. This violation of the law is a gross abuse of discretion, miscarriage of justice and procedural defects that prejudiced Ms. Salaam. Ms. Salaam requests that this court vacates the orders as they exceed the request for orders referred to trial.

Based on these considerations, Ms. Salaam respectfully request that this court grant review to consider this issue that has widespread impact on California families and children.

**VII. THIS COURT SHOULD GRANT REVIEW
BECAUSE THE COURT OF APPEAL ERR
AS A MATTER OF FACT IN AFFIRMING
THE TRIAL COURT ORDERS, WHEN IT
IGNORED THE RECORD WHICH STATES
THAT MR. MCAULEY DISMISSED ALL
AUTHORIZED AND ORDERS TO SHOW
CAUSE OF CONTEMPT AT TRIAL,
LEAVING ONLY THE DECEMBER 18,**

**2017 REQUEST FOR ORDERS AS THE
MOVING PAPERS AND THE BASIS FOR
THE TRIAL.**

At the beginning of the trial, Judge Tedmon uncovered that Attorney Mittelstadt failed to file order to show cause for contempt #1-#4 (1 RT 9: 12-13, 16-17), get the orders signed by a Judge (1 RT 9:17), never had the orders properly served on Ms. Salaam or provided an arraignment for the quasi-criminal contempt proceeding. (1 RT 9:17) (1 RT 10:4-6) After some discussion and review of the file by Judge Tedmon, (1 RT 1:23- 13:13) (1 RT 82:14 - 85:19) (1 RT 87:5-88:15) Mr. McAuley dismissed all authorized outstanding orders to show cause for contempt. (1 RT 88:5-15) With this dismissal the only request for orders before the court for trial were the December 18, 2017 ExParte and Request for orders. (I CT 175)

Based on these considerations, Ms. Salaam respectfully request that this court grant review to consider this issue that has widespread impact on California litigants.

**VIII. THIS COURT SHOULD GRANT REVIEW
BECAUSE THE COURT OF APPEAL ERR
AS A MATTER OF FACT IN AFFIRMING
THE TRIAL COURT ORDERS, WHEN IT
RELIED UPON ORDERS THAT WERE
NOTICED BUT WERE NOT REFERRED
TO TRIAL OR SUBSEQUENTLY
DISMISSED AT TRIAL TO JUSTIFY
TRIAL ORDERS TO GROSSLY EXCEED
MR. MCAULEY'S REQUESTED RELIEF
FILED IN THE DECEMBER 18, 2018,
REQUEST FOR ORDERS SUBJECT TO
THIS TRIAL ON NUMEROUS COUNTS**

**AND MOST EGREGIOUSLY WITH THE
REMOVAL THE CHILD FROM MS.
SALAAM WITH NO REQUEST TO
DISTURB THE PHYSICAL CUSTODY
ARRANGEMENT FROM MR. MCAULEY.**

The court of appeals opinion states, "There is nothing in the mother's trial testimony to suggest she was unfairly surprised when father requested physical custody in his opening statement. In sum, the evidence shows that mother had notice that the father was requesting a change of custody. (Opinion 12). Notice does not constitute the legal requirement of service of filed request for orders. As indicated in the statement of facts, this proceeding has been inundated with unfiled, unserved orders that still managed to get heard and orders issued based on the unfiled and unserved orders.

The other issue evidence in the record was all orders to show cause authorized were dismissed. (1 RT 88:5-15) With this dismissal the only request for orders before the court for trial were the December 18, 2017 ExParte and Request for orders. (I CT 175) This again left no orders at trial that requested a disruption of physical custody.

Based on these considerations, Ms. Salaam respectfully request that this court grant review to consider this issue that has widespread impact on California families and children.

CONCLUSION

Appellant, Ms. Salaam respectfully asks this Court to grant review.

Respectfully submitted,

APP. 161

Date: August 4, 2021

Ameenah Salaam
By: Ameenah Salaam
Appellant in Pro Per

CERTIFICATE OF WORD COUNT

I certify that, according to the computer program used to prepare this brief, the Petition for Review 7,334 words, not including the cover, the Table of Contents and Authorities, the Certificate of Interested Entities or Persons, this certificate and the signature block.

This petition for review complies with the rule that limits a brief to 8,400 words, including footnotes.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed August 4, 2021, in Upper Marlboro, Maryland.

Ameenah Salaam
Ameenah Salaam
Appellant in Pro Per

PROOF OF SERVICE

I, the undersigned, declare as follows:

I am a citizen of the United States, over the age of 18 years, and am not a party to this action. My business address is **501 THIRD STREET, N.W.; WASHINGTON, DC 20001.**

On the date entered below, I served the attached **Petition for Review** by placing a true copy thereof in an envelope addressed to the persons named below at the address shown, and by sealing and depositing that envelope in the United States Mail at Upper Marlboro, MD, with fully prepaid postage. There is delivery service by the United States Postal Service to each of the places so addressed.

| | |
|-----------------------------------|----------------------------|
| Clerk of the Court | Jeffery Allen McAuley |
| Supreme Court of California | c/o Jacqueline Mittelstadt |
| 350 McAllister Street | 960 West Point Loma |
| San Francisco, CA 94102 | Blvd, |
| <i>(1 original and 13 copies)</i> | Suite H-1014 |
| | San Diego, CA 92110 |
| | (1 copy) |
| Office of the Attorney | Jeffery Allen McAuley |
| General | 8336 Palmerson Dr |
| PO Box 944255 | Sacramento, CA 95843 |
| Sacramento, CA 94244-2550 | (1 copy) |
| <i>(1 copy)</i> | |

| | |
|------------------------|----------------------|
| Clerk of the Court | Clerk of the Court |
| Court of Appeal, Third | Superior Court |
| Appellate District | Sacramento County |
| 914 Capitol Mall | Room 314 |
| Sacramento, CA 95814 | 3341 Power Inn Road, |
| <i>(1 copy)</i> | Sacramento, CA 95826 |

(1 copy)

I declare, under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on August 5, 2021, in Upper Marlboro, Maryland.

Kelly Cline
KELLY CLINE

APPENDIX F

Transcript Excerpts from
Superior Court of California County of Sacramento
Trial

Thursday, June 13, 2019; MORNING SESSION

—oOo—

The matter of AMEENAH MCAULEY (SALAAM) versus JEFFERY MCAULEY, Case Number 12FL07094, came on regularly this day before the Honorable SCOTT L. TEDMON, Judge of the Superior Court of the State of California, County of Sacramento, Department 120.

The Petitioner, AMEENAH MCAULEY (SALAAM), appeared in propria persona.

The Respondent, JEFFERY MCAULEY, was represented by JACQUELINE MITTELSTADT, Attorney at Law.

The following proceedings were then had:

—oOo—

THE COURT: Good morning.

MS. MITTELSTADT: Good Morning, Your Honor.

THE PETITIONER: Good Morning.

THE COURT: State your appearances, please.

MS. MITTELSTADT: Good morning, Your Honor. Jacqueline Mittelstadt on behalf of Mr. Jeffery McAuley, who is present.

THE PETITIONER: Ameenah Salaam, the petitioner, in pro per.

THE COURT: Good morning. The Court has reviewed the file, and just to make sure we're clear on what we're doing today, there was a contempt OSC added to the trial today, and I will take that up

first. That is the contempt RFO that was filed on April 8th by the respondent.

I do have, Ms. Mittelstadt, a question relative to the number of counts. It's unclear to the Court if it's a one- or two-count allegation.

MS. MITTELSTADT: Your Honor, there were actually four OSCs that were filed on that date. And we did submit a proof of personal service, and - -

THE COURT: All right. Well, what was noted in the file as I got in this morning is that there was an order to show cause and affidavit for contempt, and that alleged violations of a court order issued on February 6, 2019. Are you telling the Court you filed four separate order to show cause re: contempt?

MS. MITTELSTADT: That's correct.

THE COURT: What are the dates of the filing? That's the only notation I received this morning.

MS. MITTELSTADT: We gave them all to the judge at the same time, so I suspect that they were all on that April 9th date.

THE COURT: All right. Just a moment.

MS. MITTELSTADT: Sure.

THE COURT: All right. I show an order to show cause and affidavit for contempt. It has a number and then three written in, April 8, 2019. The court has reviewed that filing. I show a filing on April 3 - - these are all filings on behalf of the respondent - - raising the issue of visitation, attorney's fees and others, Family Code 271 sanctions, order to show cause number three, which was actually filed on a separate date.

Just a moment. Do you have endorsed, filed copies of order to show cause filings one, two, three and four Ms. Mittelstadt? Because I'm looking at the court file and the only actual order to show cause re:

contempt is identified as number three, filed on April 8, raising and issue of violating by the petitioner of an order of the Court of February 6, 2019. I don't see any other orders to show cause.

There's a multitude of filings, but I don't see anything else.

MS. MITTELSTADT: Well, unfortunately, I handed the copies as well as the original to the department clerk, and we did not get conformed copies back.

THE COURT: Well, the last court appearance was May 1, according to the court file.

MS. MITTELSTADT: Yeah, that - - then that would have been the date.

THE COURT: All right, I - -

MS. MITTELSTADT: They all were on calendar.

THE COURT: Okay. Just a moment. First of all, we're not going to speak unless the Court asks you to respond. That's number one. Number two, we don't speak in tandem, because we have a court reporter present. We need to have a clean record. So we'll speak one at a time. Ms. Mittelstadt, go ahead.

MS. MITTELSTADT: Yes, Your Honor. The matters were all - - all the ones that were filed were on calendar on or about April 15 to be heard. They had been discussed at prior court hearings, and the court indicated that she needed to be personally served.

Subsequent to that, we had her personally served in Maryland, and the Court after that time asked for copies of all of them, which we provided. Unfortunately, I did not ask the clerk to provide me the conformed copies back. But once she was

personally served, then the Court did set all of the order to show cause for hearing today as well.

THE COURT: Well, it's clear there was an order to show cause re: contempt filed on April 8, but the only document that I see in the file is number three. Give me just a moment. And Ms. Mittelstadt, you're telling the Court that there were four separate and distinct orders to show cause re: contempt filed: Number one, two, three and four. Is that your recollection?

MS. MITTELSTADT: That's correct.

THE COURT: All right. I'm going to take a brief recess. The Court needs to know how many counts are involved, what the specific allegations are. I would inquire, Ms. Mittelstadt, if you don't have the moving papers, how are you going to proceed on each of the counts?

MS. MITTELSTADT: My intention, Your Honor, because of all of the evidence is the same as for what is at issue at the visitation -- for the visitation RFO and her alienation of the child from Mr. McAuley would be to have the evidence before the Court, and then at the end, submit that we have established evidence to have you make a determination on visitation, attorney's fees and the contempt order, because it's all the same facts.

Essentially, the issue for the contempt are her failing to comply with the Skype orders, allowing Mr. McAuley to talk to the child, her failing to bring him for spring break and her failing to pay attorney's fees that have been ordered -- are essentially the big picture.

There's a number of instances of her conduct that fall within those categories of orders with which she's in contempt.

THE COURT: That's fine. But this contempt matter is a quasi-criminal matter. The standard of proof is beyond a reasonable doubt, and the Court needs to make a specific finding as to each individual count, as it would in a criminal case, to the standard of proof beyond a reasonable doubt. That's number one.

Number two, the penalties are five days in jail, a \$1,000 fine, or both for any count that is sustained. So I need to know with particularity what the allegations are, as it would be in a criminal case - -

MS. MITTELSTADT: Sure.

THE COURT: - - if we were proceeding on a criminal complaint or an information or an indictment.

MS. MITTELSTADT: And I - -

THE COURT: - - and what they relate to, and then we can start to take the evidence. It's clear that custody and visitation has been an issue. The attorney's fees and sanctions are in play. That's been raised and pled.

But I want to make sure we're clear on what the contempt is specifically. So I'm going to take a brief recess. I want to make sure - - there's five volumes of files in this case, but I need to have each and every OSC re: contempt before me so I can know exactly what it is we're dealing with.

MS. MITTELSTADT: Would the Court like me to provide you copies that if I have from my files that are the unconfirmed copies?

THE COURT: Give me just about five minutes or so. I want to go through the entire court file, see if we can - - are they identified as number one, number two, number three and number four?

MS. MITTELSTADT: Yes, except number one is just OSC. So the number two is identified as number two, number three is identified as number three and number four is identified as number four. I didn't know there would be more than one at the time that I did the first one, so it's just OSC. It's just the form.

THE COURT: But were they all filed at the same time or on different dates? Because --

MS. MITTELSTADT: The were filed --

THE COURT: Just a moment. Let me tell you what I have. I have a notation here that this trial relates to an OSC re: contempt filed on April 8, 2019.

MS. MITTELSTADT: And that's not my understanding.

THE COURT: That's why I want to clarify this.

MS. MITTELSTADT: Yes. My understanding is that Mr. McAuley filed and RFO in December and a follow-up RFO in approximately February, in which he asked to change visitation. Temporary orders were issued on February 6. Ms. Salaam proceeded to ignore all of those orders, and in fact, Mr. McAuley's RFO and ex parte were originally filed because she was refusing to follow the existing court orders for Christmas break.

So she denied all contact with the child. He filed his RFO in December. It was investigated. A mediation report was issued. The parties came back on the 6th. All visitation was reinstated. She proceeded to ignore the court order. There was a number of ex parte that were filed, and with each ex parte, and order to show cause re: contempt was also filed.

Then everything was continued to March 26, and at that time, the Court issued the first attorney fee order and continued -- set the matter for trial, is my recollection, and continued everything to April 15, because she was supposed to produce the child on April 13., as ordered, for spring break. She did not. So another order to show contempt was filed on April 15 along with those documents. At that time, the court continued it again and -- because part of what Ms. Salaam did was she went to Maryland and got a temporary restraining order contrary to this Court's order, and we had to battle that. And she ignored the Court's directive that --

THE COURT: All right. Well, I'm not going to allow you to argue your case multiple times. Here's the other concern I have. It appears that, based on what you're telling me, there were multiple filings for order to show cause re: contempt.

MS. MITTELSTADT: I have that the first --

THE COURT: Just a moment.

MS. MITTELSTADT: Okay.

THE COURT: And as part of that contempt request, the petitioner will be subject to time in custody, five days for each count, a \$1,000 fine or both. And I don't see in the file where she's been arraigned on any of these counts.

MS. MITTELSTADT: I was going to mention that to the Court. And I believe you are correct. I think she needs to be arraigned.

THE COURT: And she has a right to counsel.

MS. MITTELSTADT: That's fine. If we need to -- whatever we need to do --

THE COURT: So -- well, there's a basic premise of due process here, which would go in either direction. But it appears to the Court that this

matter is not ripe for trial on the issue of contempt, because fundamentally, Ms. Salaam has a right to be arraigned, to be advised of the charges, and if she can't afford a lawyer, then a lawyer would be appointed to represent her.

MS. MITTELSTADT: That's fine. Then I think we need - -

THE COURT: Just a moment. All right. And I'm reviewing a filing, a request for order filed by Mr. McAuley, in pro per, where the petitioner appeared by phone on March 19. Mr. McAuley was present as well as Ms. Mittelstadt.

And although it's not filed, there is a stapled request for order to a disposition for an ex parte application. And this says a request for visitation, attorney's fees, Family Code Section 271 sanctions, order to show cause number two.

So I'm looking at the part of this packet that's attached all together to an umbrella order to show cause. Within that is order to show cause and affidavit for contempt number two, and there has been no signature by a judicial officer ordering Ms. Salaam to appear on that order to show cause.

And part of the concern I have is this: The form and substance are two different things. In an order to show cause, as to each count, the moving party has to establish that the citee - - in this case, the petitioner - - had knowledge of the order. This has to be pled.

MS. MITTELSTADT: Uh -huh.

THE COURT: That must be specified. The conduct required or prohibited by the order must be specifically stated. Each count must be set forth separately. Each count must be numbered consecutively, count one, count two, count three,

count four, et cetera. Each violation has to be stated concisely, in plain language, so that the cited person is able to understand the charge and is capable of defending him or herself if she chooses to do so.

If the count refers to any other documents, judgment, order, or decree which forms the basis for the contempt count, that count must set for in verbatim form the pertinent parts of the document it which the reference is made. And in reviewing this file, it is unclear to the Court -- I've been able to identify contempt number two and contempt number three.

I haven't found one or four at this point, and we move forward with this trial. Beyond all of that, the citee needs to be arraigned on each of the counts and enter a plea of guilty, not guilty, and then -- or no contest. And if it's a not guilty plea, then she's entitled to an attorney, and if she can't afford one, the Court would appoint on to represent her, and then we proceed from there.

I don't see any arraignment. Are you aware of any arraignment on any of those four OSCs?

MS. MITTELSTADT: No. I believe she needs to be arraigned as well.

THE COURT: All right. And I can't arraign her unless and until I have all of the counts before me. That's why I'm taking the time this morning.

MS. MITTELSTADT: I'd be happy at the break to spring the OSC, the initial one, and OSC four, provide it to the Court again.

THE COURT: Well, that's fine. But the Court needs to have a judicial signature that has approved the OSC re: contempt and would then order the citee -- in this case, Ms. Salaam -- into court. And I don't see a -- there's not a signature on the actual face

sheet of order to show cause re: contempt number two.

It is completely blank in terms of a judicial officer's review and approval or rejection of the OSC. And the reason I took the time to list the requirements that need to be satisfied before an OSC re: contempt is even authorized to then be served, that process, in this Court's judgment, may not have been followed either. So there's some deficiencies procedurally.

MS. MITTELSTADT: Well, I will just say that we had this conversation with the last judicial officer, and he asked for the copies. And it was my understand that all of that procedure was going to take place, and that's why it was coming back today.

THE COURT: Well, it may have been discussed. There may have been copies of documents transmitted to a judicial officer, but other than - - let me be very specific about this. In my review of the file thus far, the only order to show cause by a judicial officer in which the person cited, which is Ms. Salaam, was ordered to appear in court to give reasons why she should not be found guilty of contempt is affidavit for contempt number three.

Commissioner Haukedalen reviewed that specific order to show cause, signed it, and ordered Ms. Salaam to appear in court on May 21, 2019 at 1:00 p.m. in Department 126. So that order to show cause re: contempt number three was reviewed, and Ms. Salaam was ordered to appear on those count or counts.

I haven't found any other document in the file and I just received this morning, where that procedure was followed as to the order to show cause and affidavit for contempt number one, number two

and number four. I've only found number two. I haven't been able to locate number one or number four at this point.

So in order to move this along, the Court is not going to address for trial purposes the contempt issue. We'll take some time at the break over the noon recess to Shepardize where we are on the contempt issue. It also is clear to the Court, based on my review at least at this point, that Ms. Salaam hasn't even been arraigned, to be advised of the charges, to enter a plea, and if she can't afford a lawyer and she wants to go to trial, that she has a right to a lawyer to be appointed to represent her.

So with that understanding, the Court will not proceed on the issue of contempt today, and we will clarify that later. Now, the parties provided all exhibits to each other with a copy for the witness and the Court? Ms. Mittlestadt?

California County of Sacramento Trial

June 13, 2019

**Thursday, June 13, 2019;
AFTERNOON SESSION**

—oOo—

The matter of AMEENAH MCAULEY (SALAAM) versus JEFFERY MCAULEY, Case Number 12FL07094, came on regularly this day before the Honorable SCOTT L. TEDMON, Judge of the Superior Court of the State of California, County of Sacramento, Department 120.

The Petitioner, AMEENAH MCAULEY (SALAAM), appeared in propria persona.

The Respondent, JEFFERY MCAULEY, was represented by JACQUELINE MITTELSTADT, Attorney at Law.

The following proceedings were then had:

—oOo—

THE COURT: All right. Before we continue, I'll note both parties are present, and Mr. McAuley is present with counsel. I'm going to ask Ms. Daniel to step out. I need to take up some matters with the parties.

All right. As we discussed this morning, there is one -- as far as the Court's review of the file is concerned, there's one order to show cause re: contempt. It's number three. The Court has reviewed this over the noon hour, and as I indicated, I think, earlier, on the affidavit the facts constituting contempt, it appears there are two counts.

The boxes checked are number six and number seven. They both relate to the February 6, 2019 order. The first item indicates, "On March 29, 2019, Ms. Salaam emailed me that she would not bring my son for spring break, and she has refused all phone contact with him. The Maryland court continued the protective order because I had not been served. Ms. Salaam has refused to provide me the papers in that court and the order issued again."

That's one identified violation. The second identified violation is that on that same date of the order, February 6, 2019, that, "On February 19, 2019 petitioner refused to comply with the Court's order in an ex parte. She promised to comply. In the hearing on March 26, 2019, she again promised to comply in both Department 126 and 127. Instead, she again relies on an invalid unserved order from Maryland to refuse my spring break visit with my son."

So those are the two counts. Now, let me ask Ms. Mittelstadt. Is that your understanding, that

those are the two counts alleged in that contempt order to show cause?

MS. MITTELSTADT: Yes.

THE COURT: Now, with regard to the order to show cause and affidavit for contempt number two, as I indicated earlier, that is -- appears to be an attachment. In fact, it doesn't appear. It is an attachment to the request for order that was heard as an ex parte matter on March 19, 2019.

The order to show cause and affidavit for contempt number two has not been reviewed by a judicial officer. It has not been signed off to be able to proceed. And so that is not before the Court and, in fact, is in a status at best of being in abeyance. But there is nothing affirmative that was ordered on that OSC for contempt number two.

The Court has not been able to locate the order to show cause and affidavit for contempt number one or number four. That's the status of what the Court's file reflects, as best I can determine.

With regard to the one contempt request that was signed off by Commissioner Haukedalen, there is no reference in the file that Ms. Salaam was arraigned, which is required, because it has potential criminal penalties. I'm saying that as a basis of background

Ms. Mittelstadt, if your client is intending on proceeding with the contempt matter -- and that would be at least number three -- as I indicated when we started, that needed to be heard first. And in reviewing the law and the file, if that's his intent and, as you indicated to the Court, the facts are related in whole or in part to the custody and visitation issue, which you have represented to the Court, then Ms. Salaam has a right against self-

incrimination in this trial, because there's a pending criminal action effectively against her.

So I need to know if your client is going to go forward or intends to go forward on at least order to show cause re: contempt number three. If he is, then I need to declare a mistrial, because Ms. Salaam has a right against self-incrimination. She can't be compelled to testify in this proceeding on custody and visitation, because that could be used in the contempt that is not currently pending. That's where we are.

If you need to speak with your client, we can take a 10-minute recess, and you can determine how he wants to proceed. But I want to make it very clear that if the contempt goes forward, which he has the right to do -- and I don't know what the other three areas are, because those haven't been identified, at least in terms of contempt number one and contempt number four -- that would create an additional layer of concern for the Court.

But foundationally, if the contempt is intended to be prosecuted, then the Court has to declare a mistrial in this case, because Ms. Salaam cannot be compelled to testify against herself when there's a pending criminal action.

MS. MITTELSTADT: Understood.

THE COURT: All right. So we'll reconvene at 2:00.

MS. MITTELSTADT: Your Honor, can we perhaps talk about what happens if -- and maybe this is premature, and I'm sure you'll tell me what happens if we don't finish today.

THE COURT: Well, my policy is to not declare mistrials. The parties are here, and I respect your time. And so if we can't finish today, then the

procedure would be to identify -- I would have to check with the supervising judge, but to identify a Friday that we can come back to finish the trial.

MS. MITTELSTADT: And so existing orders would remain in place, so both parties would have to comply with the existing visitation orders?

THE COURT: That's correct

MS. MITTELSTADT: Okay. Thank you.

THE COURT: All right. We'll convene at 2:00.

MS. MITTELSTADT: Thank you.

THE COURT: And before Ms. Mittelstadt -- I'm sorry -- Ms. Salaam, do you have anything to add to what the Court's analysis is? Do you understand what I'm saying?

THE PETITIONER: I think I do. My concern is that I flew in from Maryland to do this

THE COURT: Well --

THE PETITIONER: So I'd like to --

THE COURT: I understand that, and I know you're from the other side of the country. You have constitutional rights and one of those very important rights, among other, is the right not to be compelled to testify against yourself. And the Court cannot -- even if you don't raise it, I cannot allow you to be forced to testify when there's a pending contempt action, because if you were to testify, you would have to knowingly and willingly waive your right against self-incrimination, and then you testify, and any testimony in this trial could be used against you in the contempt trial. And that's the issue.

I just want to make sure that both parties are clear about the constitutionality of where we are. All right. The Court is in recess until 2:00 p.m.

(Recess taken.)

THE COURT: All right. Both parties are present. Mr. McAuley is present with counsel. Ms. Mittelstadt?

MS. MITTELSTADT: Yes, Your Honor. I've spoken to Mr. McAuley, and we will dismiss the order to show cause number three without prejudice.

THE COURT: All right. Just a moment. All right. Any response to the motion moving to dismiss the order to show cause and affidavit for contempt number three filed on April 8, 2019, without prejudice?

THE PETITIONER: No, your Honor.

THE COURT: Which means they could refile it later if they chose to, but that would eliminate that issue. Any objection?

THE PETITIONER: I'm fine with that, Your Honor.

THE COURT: The Court finds facts sufficient to grant the request to dismiss the order to show cause and affidavit for contempt number three filed on April 8, 2019, without prejudice. As the Court has further noted, in any event, Ms. Salaam was never arraigned on that one order to show cause re contempt that was authorized by Commissioner Haukedalen to move forward, and so it would be defective as far as today's proceedings is concerned.

With the dismissal of the order to show cause and affidavit for contempt number three filed April 8, 2019 -- and if I misspoke and said 2018, it was 2019 -- there is no pending order to show cause that the Court would note.

Ms. Mittelstadt, the court could not find order to show cause number one or order to show cause number four. I think in an abundance of caution, you can confer with your client just briefly, that any

outstanding authorized orders to show cause are moving to be dismissed without prejudice so there's nothing hanging out there that would violate Ms. Salaam's constitutional rights.

MS. MITTELSTADT: That's fine, Your honor.

THE COURT: All right. OSC re contempt number three is dismissed. The motion is granted. And any other orders to show cause re: contempt in this matter are dismissed without prejudice. That will be the order, and will continue with the trial.