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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION THREE

DEREK A. TODD,

Plaintiff and Appellant,

v.

CRYSTAL R. ARCHER,

Defendant and Respondent.

A134445

(Solano County
Super. Ct. No. SF019635)

In January 2012, this court affirmed an order, entered in June 2011, denying father’s request to modify a final custody order that had awarded respondent Crystal Archer sole physical and legal custody of her then 17-year-old son and providing that visitation between the son and his father, appellant Derek Todd, would be at the discretion of mother with the agreement of the son. (*Todd v. Archer* (Jan. 19, 2012, A133211) [nonpub. opn.] pp. 3, 5-6.) In September 2011, while the prior appeal was pending, father filed a second modification petition seeking sole legal custody, primary physical custody and visitation for the Christmas holiday. Following a hearing in December 2011, the court denied father’s request. Father, appearing in propria persona, filed a timely notice of appeal. Mother has not filed a respondent’s brief and she has advised the court that she will not be participating in the appeal. We shall affirm.

Discussion

Once a final or permanent custody order is in place, a court may modify the custody order only upon finding changed circumstances. (*Burchard v. Garay* (1986) 42 Cal.3d 531, 535.) “Under the changed circumstance rule, custody modification is

appropriate only if the parent seeking modification demonstrates ‘a significant change of circumstances’ indicating that a different custody arrangement would be in the child’s best interest.” (*In re Marriage of Brown & Yana* (2006) 37 Cal.4th 947, 956.) The changed-circumstance rule “provides, in essence, that once it has been established that a particular custodial arrangement is in the best interests of the child, the court need not reexamine that question. Instead, it should preserve the established mode of custody unless some significant change in circumstances indicates that a different arrangement would be in the child's best interest. The rule thus fosters the dual goals of judicial economy and protecting stable custody arrangements.” (*Burchard v. Garay, supra*, 42 Cal.3d. at p. 535.) We review the trial court’s order denying modification for an abuse of discretion. (*In re Marriage of Burgess* (1996) 13 Cal.4th 25, 32.)

The only purported evidence offered in support of father’s petition is a document entitled, “Proof that the respondent lied to the court about the child having head lice.” Attached to the document are two pages of reporter’s transcript from a hearing in an action in Placer County involving the custody of a different child at which mother testified as a witness. She testified that when the son came to live with her he had head lice so she shaved most of his head and, because she didn’t “want to put chemicals on his head,” she “picked [the lice] out by hand.” Referring to this testimony, father writes, “The respondent stated that she did not put chemicals on my son’s hair. I spoke with a registered nurse, and she stated that lice cannot be killed just by picking out someone’s hair alone. The lice was dead already.” He argues that just as mother lied to the court about the son’s head lice, she also lied to the court about father physically abusing the son so that she would be awarded custody. Contrary to father’s assertion, the trial court did not abuse its discretion in concluding that this evidence did not establish changed circumstances sufficient to warrant reconsideration and modification of the existing custody order. His evidence does not establish that mother committed perjury in this or any action or that the child abuse allegations were untrue.

For the most part, father’s appeal is a belated attempt to reargue the sufficiency of the evidence on which the court relied in removing the son from his custody. He argues

in his opening brief that this court “should review the question as to whether the Solano County Court erred in taking away all [his] custody and visitation with his child based on perjurious child abuse allegations with no supporting evidence.” He repeatedly cites to testimony given in 2010 and 2011 and claims, without evidentiary support, that the testimony was “perjurious.” As we pointed out in our prior opinion, the time for challenging the sufficiency of the evidence in support of the initial orders removing the son from his father’s custody and awarding mother full custody is long past. (*Todd v. Archer, supra*, A133211, pp. 5-6.) The minor was removed from father’s custody in 2010 and mother was awarded custody in March 2011. In our prior opinion, we affirmed the denial of a motion for modification of that order. We decline father’s request to revisit the child abuse allegations at this time.

The trial court did not abuse its discretion in denying father’s request for visitation on Christmas. The court explained, “I think your son’s afraid of you, and I’m not going to order him to visit you at this point in time.” As noted above, under the existing custody order, visitation was left in the discretion of the mother with the agreement of the son. In our prior opinion, we affirmed the trial court’s finding that the best interests of the son would be served by continuing the existing visitation order. (*Todd v. Archer, supra*, A133211, pp. 5-6.) Father has not offered any evidence or argument suggesting a change in circumstances sufficient to warrant reconsideration and modification of the existing visitation order.

Contrary to father’s suggestion, the court’s order did not violate his right to exercise his religious beliefs with his family in violation of the First Amendment of the United States Constitution. While father has a right to practice his religion and discuss his religious beliefs with his son if and when he has contact with him, his freedom of religion does not extend to a constitutional right to have contact with his child. (See *In re Marriage of Weiss* (1996) 42 Cal.App.4th 106, 118, citing *Zummo v. Zummo* (1990) 574 A.2d 1130, 1148 [“ ‘parent’s religious freedom may yield to other compelling interests’ ”].) The state has a compelling interest in the welfare of the child, and the court’s order in this case was consistent with the state’s interest.

Disposition

The order denying father's request for modification of the final custody and visitation order is affirmed.

Pollak, J.

We concur:

McGuinness, P. J.

Jenkins, J.