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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FIVE

In re the Marriage of SUZANNE S. and
ALAN W.

SUZANNE S.,
Respondent,

v.

ALAN W.,
Appellant.

A137687

(San Mateo County
Super. Ct. No. FAM 0105651)

Family law courts are often required to make difficult child custody decisions. Those decisions may be particularly troublesome when one parent seeks to relocate with a child. Permitting relocation of the child inevitably results in significant detriment to the child’s relationship with the noncustodial parent. The law is clear, however, that the best interest of the child, not the parent, is paramount in such circumstances. Here, Suzanne S. (Mother) and Alan W. (Father) engaged in an extended and contentious battle over custody of their daughter, Christina. Mother ultimately sought leave to move with Christina to the East Coast. Noting that it was a “very hard decision to make,” the trial court granted the motion. Father challenges the court’s order on legal and factual grounds. Because the court’s findings are supported by substantial evidence and its custody order was an appropriate exercise of discretion, we affirm.

I. BACKGROUND

A. *Family History*¹

After Christina was born, Mother took maternity leave and provided most of the child's care. Although Father was unemployed at the time, he devoted most of his time to a job search and played a secondary role in Christina's care. When Mother returned to work, Christina entered day care even though Father was still unemployed.

Mother and Father separated in about August 2009, when Christina was approximately nine months old. Mother obtained an ex parte restraining order against Father under the Domestic Violence Protection Act (DVPA; Fam. Code, § 6200 et seq.).² Mother testified that Father had grabbed and twisted her forearms in January 2009 and poked her in the chest with his finger the following August. Father admitted placing his hands on Mother's forearms and brushing his raised finger against her, but denied using force or aggression in either incident. Parents underwent psychological evaluations, and Father participated in therapy and anger management classes. In March 2010, following an evidentiary hearing, the trial court found that Father had engaged in domestic violence, issued a two-year restraining order, and directed Father to complete a 52-week batterer's treatment program.³

¹ Most of the following facts are taken from the trial court's statement of decision.

² Undesignated statutory references are to the Family Code.

³ In March 2012, Mother requested a five-year extension of the restraining order. She "did not contend [Father] had used physical force against her since the issuance of the original order. Instead, she cited the ongoing and contentious litigation over her requested relocation and certain behavior she characterized as 'bullying.'" (*Sims v. Woo* (Dec. 12, 2013, A137279) [nonpub. opn.].) After an evidentiary hearing, the court "found none 'of the [new] contact that was alleged to be abusive.' However, it relied upon evidence from the hearing on the original restraining order that the court 'did find to constitute domestic violence including the finger hitting [Mother] in the chest and the twisting of the arms.' The court also considered the current circumstances, including that '[t]here is a move away order contemplated.' The court concluded, '[Mother's] fear in this case is well beyond that which you would expect in a case given the incidents that have occurred; however, the incidents that the court found were such that a reasonable person . . . would have reasonable apprehension that given the situation of arguing in the future that, yeah, that might occur again.' The restraining order was renewed for five

The August 2009 ex parte DVPA order granted sole legal and physical custody to Mother with six hours of weekly visitation for Father. After conflict erupted over custody exchanges and scheduling, Mother sought a no-contact order and restrictions on Father's visitation in April 2010. The court granted the former but not the latter. In October 2010, the parties stipulated to an increase in Father's visitation (to about 14 hours per week) pursuant to a mediator's recommendation. In March 2011, following another expert report, the parties agreed that Father could have a weekly overnight visit with Christina. In April 2011, Father's visitation increased to about 25 percent of Christina's time. The increased visitation time strengthened Father's relationship with Christina. However, Mother continued to manage Christina's routines and daily care, and Father cared for Christina within the structure established by Mother. Christina flourished.

B. Child Custody Proceedings and Move-Away Request

Mother filed for divorce in February 2010,⁴ and the following September she sought leave to relocate with Christina to New Jersey. The trial court appointed a child custody evaluator, who began her investigation in November 2010 and issued a report in February 2011. The evaluator's findings did not suggest the move-away request was made to frustrate Father's relationship with Christina. Assuming the move would occur, the custody evaluator recommended that the parents have joint legal custody and Mother retain sole physical custody, and she proposed a time share schedule. Father contested the recommendation, and trial on custody, visitation and the move-away request was conducted over several days extending from June 2011 to April 2012. Mother and Father each called an expert to review the custody evaluation report, and Mother called another expert in psychological testing. The court issued a tentative decision from the bench on

years. However, the court specifically noted [Father] 'may move for a modification for termination of the restraining order once the move-away is either finalized or [Mother] decides not to move away.' ” (*Ibid.*) The court lacked discretion to renew the restraining order for less than five years. We affirmed. (*Ibid.*)

⁴ Marital status was terminated in March 2011.

May 9, 2012, granting the move-away request. Father requested a statement of decision, Mother's counsel drafted a proposed statement and custody order, Father filed objections, and the court filed a final statement of decision and "Permanent Order for Custody, Visitation, and Relocation" in November 2012.

C. *Statement of Decision*

In the statement of decision, the court ruled that a de novo best interest of the child standard applied because a permanent parenting plan had not yet been ordered—affording it the widest possible discretion to fashion an appropriate plan. The court also ruled that it had to presume Mother would move and that it could not make a custody order designed to discourage the move.

The court found it was in Christina's best interest that Mother have sole physical custody if Mother moved to the East Coast, with Father having specified visitation rights. The main supporting factor was Christina's interest in maintaining her relationship with Mother, whom the court found was Christina's primary caregiver and attachment figure. "[C]onsiderable weight" was given to the recommendations the court's appointed custody evaluator, who opined, "[It] is clear that there would be greater detriment for this [then] two year old child to switch custody to [Father's] home, than for her to have a reduction in the frequency of her contacts with her father. . . . [S]eparating a child from her primary attachment figure results in very serious emotional difficulties for the child, that are both short-term and long-term in their impact."⁵ Joint physical custody was found to be impractical in light of the distance of the move, as well as the conflicts that interfered with Mother's and Father's ability to coordinate joint physical custody even if they were to reside in the same community. If they lived in the same community, it was in

⁵ The court found that its appointed custody evaluator "thoroughly assessed the case and considered all of the evidence presented to her," citing her written report, trial testimony, and the documentary evidence she produced. The court specifically found that the evaluator did a competent job of assessing Christina's best interest under the governing professional standards for child custody evaluators, citing the testimony of Mother's expert regarding the custody evaluation report.

Christina's best interest to remain in Mother's sole physical custody but increase her time with Father.

The court also made several subsidiary findings of fact, including the following.

Relocation Request

Mother's relocation plan was motivated by legitimate reasons, not a desire to reduce Christina's time with Father. Mother had been raised on the East Coast; her uncle, aunt, two first cousins and many other extended family members lived there; her parents might follow her there; and Mother wanted family support as she raised Christina. As a young preschooler, Christina did not yet have strong ties to the community in the Bay Area.

Section 3044⁶

Father rebutted the negative custody presumption of section 3044 with evidence of the quality of his relationship with Christina, his completion of batterer's treatment and a parenting class (even though the latter was not court-ordered), the district attorney's decision not to pursue criminal prosecution, and Father's compliance with the restraining orders. (See § 3044, subd. (b).)

Attachment and Caretaking Ability

Christina was bonded with Father and had an interest in continuing her meaningful relationship with him. As stated by the custody evaluator, "[o]ther than not changing diapers frequently and not maintaining a wardrobe for Christina, . . . [there was] no evidence . . . 'that would suggest that [Father's] parenting judgment is questionable. He has been warm, attuned, and attentive toward Christina . . . and she responds by being loving and appropriately attached toward [him] as her father.'" However, Mother was Christina's primary attachment figure, and Father had failed to prove that Christina was

⁶ Section 3044 provides, in relevant part, that "Upon a finding by the court that a party seeking custody of a child has perpetrated domestic violence against the other party seeking custody of the child . . . within the previous five years, there is a rebuttable presumption that an award of sole or joint physical or legal custody of a child to a person who has perpetrated domestic violence is detrimental to the best interest of the child."

equally bonded to him, that he was an exemplary parent, or that it was in Christina's best interest to spend equal time with each parent even if both parents lived in the same community.

Father's "rigidity" contributed to coparenting difficulties and the custody evaluator had noted that Father had a history of angry and violent conduct in his marriage, within his family of origin, and in the workplace; that he "lack[ed] self-awareness when he is raising his voice and becoming physically forceful"; and that he denied all responsibility for his violent and aggressive conduct toward Mother and blamed her for the events that led to the restraining order. Additionally, Father was not prepared to assume primary physical custody of Christina because he had never cared for Christina for an extended period of time, had never acted as "managing parent" who made and carried out the myriad decisions necessary for her daily care, and did not establish at trial that he had the expertise or experience necessary to recognize and meet Christina's changing needs.

Willingness to Foster Other Parent's Relationship with Christina

Mother could be trusted to protect Christina's relationship with Father, but the converse was not true. As stated by the custody evaluator, Mother had shown "no signs of alienating Christina's affections for [Father], and it is clear from Christina's positive reactions to [Father] that [Mother] is not imparting her own feelings about [Father] to Christina." Mother had agreed to increase Father's visitation time and accepted experts' rejection of her concerns about Father's mental health. At trial she expressly acknowledged Father's importance to Christina's development. By contrast, Father maintained an unfounded belief that Mother had psychological problems that impaired her judgment and parenting skills. Mother's expert on psychological testing provided credible testimony that evidence was insufficient to find either parent suffered from a psychological condition that would interfere with an ability to care for Christina.

Distance of Move

Despite the distance between California and New Jersey, availability of direct flights between major airports in the two communities and the parties' economic

resources would allow Christina to maintain frequent contact with Father and sustain her relationship with him. Increased visitation with Father had deepened the attachment between Christina and Father such that Christina would be able to sustain the relationship even with less frequent visits following a move, and Christina’s prior experience of overnight visits with Father reduced the risk of distress at exchanges from Mother’s to Father’s care.

D. *Custody Order*

In its Permanent Order for Custody, Visitation, and Relocation, the court granted joint legal custody to Mother and Father, and sole physical custody to Mother. Mother was granted permission to relocate Christina to New Jersey on 30 days’ notice. If Mother did so, she was required to fly to California and back with Christina each month for a seven-consecutive-day visit with Father at her own expense. Father had the right to an additional weekend visit with Christina in New Jersey, with his travel expenses credited against his child support obligations. If the parents lived within a one-hour commute of each other, Mother would have sole physical custody and Father’s visitation would include Tuesday evenings, alternating Thursday overnights, and alternating weekends. Under both scenarios, Father had visitation on specified holidays and vacations and a daily phone call.

II. DISCUSSION

“In an initial custody determination,^[7] the trial court has ‘the widest discretion to choose a parenting plan that is in the best interest of the child.’ [Citation.] It must look to all the circumstances bearing on the best interest of the minor child. [Citation.]

⁷ This initial custody standard applies as long as the court has not yet made a permanent custody determination. “A custody order based on a stipulation of the parties does not constitute a final, existing judicial custody determination unless ‘there is a clear, affirmative indication the parties intended such a result.’ ” (*F.T. v. L.J.* (2011) 194 Cal.App.4th 1, 19 [finding no such intent].) Neither interim nor DVPA custody orders are final custody determinations. (*Keith R. v. Superior Court* (2009) 174 Cal.App.4th 1047, 1053–1055.) The parties agree that the initial custody standard applies in this case.

[Section] 3011 lists specific factors, ‘among others,’ that the trial court must consider in determining the ‘best interest’ of the child in a proceeding to determine custody and visitation: ‘(a) The health, safety, and welfare of the child. [¶] (b) Any history of abuse by one parent against the child or against the other parent [¶] (c) The nature and amount of contact with both parents.’ ” (*In re Marriage of Burgess* (1996) 13 Cal.4th 25, 31–32, italics omitted.)

In an initial custody matter “involving immediate or eventual relocation by one or both parents, the trial court must take into account the presumptive right of a custodial parent to change the residence of the minor children, so long as the removal would not be prejudicial to their rights or welfare. (. . . § 7501 [‘A parent entitled to custody of a child has a right to change the residence of the child, subject to the power of the court to restrain a removal that would prejudice the rights or welfare of the child.’].) Accordingly, in considering all the circumstances affecting the ‘best interest’ of minor children, it may consider any effects of such relocation on their rights or welfare.” (*In re Marriage of Burgess, supra*, 13 Cal.4th at p. 32.)

Factors relevant to the best interest of the child in a move-away case include “the children’s interest in stability and continuity in the custodial arrangement; the distance of the move; the age of the children; the children’s relationship with both parents; the relationship between the parents including, but not limited to, their ability to communicate and cooperate effectively and their willingness to put the interests of the children above their individual interests; the wishes of the children if they are mature enough for such an inquiry to be appropriate; the reasons for the proposed move; and the extent to which the parents currently are sharing custody.” (*In re Marriage of LaMusga* (2004) 32 Cal.4th 1072, 1101.) The parent seeking to relocate with a child does not have to show the proposed move is “ ‘ ‘necessary.’ ” ” (*Id.* at p. 1088.) Nevertheless, “the court still may consider whether one reason for the move is to lessen the child’s contact with the noncustodial parent and whether that indicates, when considered in light of all the relevant factors, that a change in custody would be in the child’s best interests.” (*Id.* at p. 1100, fn. omitted.) On the other hand, “a court must not issue . . . [an] order . . .

[changing custody to the noncustodial parent] for the purpose of coercing the custodial parent into abandoning plans to relocate. Nor should a court issue such an order expecting that the order will not take effect because the custodial parent will choose not to relocate rather than lose primary physical custody of the children.” (*Id.* at p. 1098.) Instead, “[t]he court must decide de novo what physical custody arrangement would be in the child’s best interests, *assuming that the requesting parent will relocate.*” (*Mark T. v. Jamie Z.* (2011) 194 Cal.App.4th 1115, 1127.)

“The standard of appellate review of custody and visitation orders is the deferential abuse of discretion test. [Citation.] The precise measure is whether the trial court could have reasonably concluded that the order in question advanced the ‘best interest’ of the child. We are required to uphold the ruling if it is correct on any basis, regardless of whether such basis was actually invoked.” (*In re Marriage of Burgess, supra*, 13 Cal.4th at p. 32.) “A discretionary order that is based on the application of improper criteria or incorrect legal assumptions is not an exercise of informed discretion, and is subject to reversal even though there may be substantial evidence to support that order.” (*Mark T. v. Jamie Z., supra*, 194 Cal.App.4th at pp. 1124–1125.) On factual issues, “[a]ll conflicts in the evidence are drawn in favor of the judgment. [Citation.] When supported by substantial evidence, we must defer to the trial court’s findings. [Citation.] ‘We may not reweigh the evidence or determine credibility. [Citation.]’ [Citation.] ‘Credibility is a matter within the trial court’s discretion,’ and the reviewing court must defer to the trial court’s findings on credibility issues.” (*Niko v. Foreman* (2006) 144 Cal.App.4th 344, 364–365.)

A. *Adequacy of Statement of Decision*

As a preliminary matter, Father argues the statement of decision was inadequate because it did not expressly consider all of the evidence Father presented at trial and cited in his objections to the proposed statement of decision. A statement of decision must “explain[] the factual and legal basis for its decision as to each of the *principal controverted issues at trial* The request for a statement of decision shall specify those controverted issues as to which the party is requesting a statement of decision.”

(Code Civ. Proc., § 632, italics added.) Father identified 14 “principal controverted issues” in his request (which he phrased as findings in his favor), which included for example: “Mother has demonstrated an inability to ‘let go’ of her anger toward the father”; “Father is the parent who is more likely to allow the child frequent and continuing contact with the other parent”; and “Mother’s reasons for her professed desire to move to New Jersey are insubstantial compared to the detriment to the child resulting from the move.” The proposed statement of decision (drafted by Mother’s counsel) addressed the listed issues, albeit not with Father’s enumeration or phrasing. Father objected to many specific findings in the proposed statement and drew the court’s attention to evidence that would support contrary findings. On appeal, Father complains that the trial court did not address all of the factual disputes he raised in his objections, but a statement of decision only needs to “set out the ultimate *facts* supporting [its] determination[s], and the legal basis for its decision. . . . [The court] [is] *not* required to address how it resolved intermediate evidentiary conflicts” (*Muzquiz v. City of Emeryville* (2000) 79 Cal.App.4th 1106, 1125–1126.) There was no error in the form of the trial court’s statement of decision.

B. *Reasons for the Move*

Father devotes most of his brief to an argument that the trial court should have prohibited Christina’s relocation if it found that the detrimental effect of the move outweighed Mother’s reasons for the move.⁸ This is not the correct legal standard. “The court must decide . . . what physical custody arrangement would be in the child’s best interests, *assuming that the requesting parent will relocate.*” (*Mark T. v. Jamie Z., supra*, 194 Cal.App.4th at p. 1127.) “‘[T]here is inevitably a significant detriment to the relationship between the child and the noncustodial parent’ whenever the custodial parent

⁸ At one point in his appellate brief, Father argues that a finding of detriment is “dispositive.” He is incorrect. “[T]he detrimental effect of a move on [a c]hild’s relationship with [a parent] is just one factor to be considered along with all of the other factors relevant in determining the best interests of [the c]hild.” (*F.T. v. L.J., supra*, 194 Cal.App.4th at p. 24.)

relocates with the children.” (*In re Marriage of LaMusga, supra*, 32 Cal.4th at p. 1095.) Despite that detriment, the trial court must determine which custodial arrangement is in the child’s best interest in light of all the relevant factors and on the assumption the parent will move. Relevant factors *include* the reasons for the move but *also* include the child’s interest in stability and continuity with his or her primary caretaker (which most often prevails), the child’s relationship with the other parent, the child’s age, the distance of the move, and the parents’ level of cooperation. (See *id.* at pp. 1089, 1101.) If the court simply weighed the detriment against the reasons for the move, it would be improperly judging and punishing the parent rather than ruling based on the child’s best interest. (See *id.* at pp. 1098–1099.)

Father argues the trial court erred in concluding that Mother’s stated reasons for the move were irrelevant once it determined she was not motivated by bad faith. We agree with the trial court. “Even if the custodial parent has legitimate reasons for the proposed change in the child’s residence and is not acting simply to frustrate the noncustodial parent’s contact with the child, the court may consider whether one reason for the move is to lessen the child’s contact with the noncustodial parent and whether that indicates, when considered in light of all the relevant factors, that a change in custody would be in the child’s best interests.” (*In re Marriage of LaMusga, supra*, 32 Cal.4th at p. 1100, fn. omitted.) However, the court should not “inquire further into the wisdom of [the relocating parent’s] inherently subjective decisionmaking.” (*In re Marriage of Burgess, supra*, 13 Cal.4th at p. 36, fn. 5; see *Niko v. Foreman, supra*, 144 Cal.App.4th at p. 364.) Doing so would “require the trial courts to ‘micromanage’ family decisionmaking by second-guessing reasons for everyday decisions about career and family. [¶] More fundamentally, the ‘necessity’ of relocating frequently has little, if any, substantive bearing on the suitability of a parent to retain the role of a custodial parent.” (*Burgess*, at p. 36, fn. omitted.) Father argues the court erred by prioritizing Mother’s desire to move over Christina’s best interest. But the court does not judge the wisdom of the parent’s move. Rather, it determines which custodial arrangement is in the child’s

best interest assuming the parent moves, considering the parent's possible bad faith motives for the move.

Father argues as a factual matter that the trial court erred in finding that Mother was not motivated by a desire to reduce Christina's time with Father. He suggests that the flimsiness of Mother's stated reasons for relocating demonstrates her bad faith. He argues, "[a] de novo review reveals substantial evidence indicating the reasons were illegitimate," but we review the trial court's decision for abuse of discretion and affirm the court's factual findings if they are supported by substantial evidence in the record even if the evidence would also have supported a contrary finding. (*Mark T. v. Jamie Z.*, *supra*, 194 Cal.App.4th at pp. 1124–1125; *Niko v. Foreman*, *supra*, 144 Cal.App.4th at pp. 364–365.) Father focuses on two reasons that he claims were insubstantial: Mother's claim that she was going to be laid off, which apparently did not materialize, and her claim that her parents were moving from Arizona to the East Coast, which apparently was contingent on Mother's own relocation. But the court cited other reasons: Mother came from the East Coast; extended family members lived there; her parents might move there; and she wanted family support as she raised Christina. These unchallenged reasons are sufficient to support the court's finding that Mother had "legitimate" reasons to move. Father suggests the court's finding is suspect because "[i]n its tentative decision, the court stated the reasons were weak and the move was voluntary." In defense of its order that Mother bear the cost of Christina's travel, the court said, "This is a voluntary move based on very insubstantial reasons. It's a voluntary reduction in income." This statement does not contradict the court's finding that Mother did not plan to move in order to reduce Father's time with Christina. Finally, Father argues evidence that Mother repeatedly tried to frustrate his relationship with Christina while still in the Bay Area compels an inference that she was relocating for bad faith reasons. However, as we explain *post*, the record supports the court's assessment of the parents' respective conduct during the custody battle and its finding that Mother could be trusted to maintain Christina's relationship with Father.

C. *Willingness to Foster Other Parent's Relationship with Christina*

Father argues evidence was insufficient to support the findings that Mother could be trusted to foster Father's relationship with Christina and Father could not be trusted to foster Mother's relationship with Christina. We disagree.

Father argues the court ignored evidence that Mother exaggerated her claims of domestic violence, falsely alleged that Christina was at risk of harm by Father, insisted on supervised visitation, and "extended the no-contact restraining order for 5 years based purely on a claim of fear." As explained in footnote 3, *ante*, this court earlier affirmed the trial court's five-year renewal of the restraining order, which was based in part on the trial court's initial finding of domestic violence. That is, we have already determined that the finding of domestic violence had an evidentiary basis. The trial court acknowledged the limited extent of the domestic violence when it allowed unsupervised visitation between Christina and Father and steadily increased Father's visitation; when it stated that Mother's fear was "well beyond that which you would expect . . . given the incidents that have occurred," attributed the fear to the high-conflict custody proceeding underway, and provided that Father could seek early termination of the restraining order after the custody proceeding was over; and when it found that Father had rebutted the section 3044 presumption against awarding custody to a perpetrator of domestic violence. Nevertheless, the custody evaluator opined that Father had unpredictable flash points of anger, that Mother genuinely felt threatened by him, and that Mother's concerns about Father's visitation arose from a fear he would also lose his temper with Christina. The court generally found the custody evaluator's opinions persuasive.

Father argues psychological evaluations of the parties and associated testimony demonstrated that Mother could not be trusted to protect his relationship with Christina. He construes the 2009 psychological evaluation report to indicate that Mother often "misperceives and misinterprets" events, but he ignores the same report's conclusion that Mother's psychological issues were generally minor in nature. In any event, the psychological evaluations were almost two years old, and the court had the opportunity to consider Mother's more recent conduct, observe her demeanor on the witness stand, and

consider a conflicting assessment by the custody evaluator. Finally, the court specifically found credible the testimony of Mother's expert that the parties' psychological test results were of limited relevance, and that there was insufficient evidence that either parent suffered from a psychological condition that would interfere with an ability to care for Christina. Father disputes the court's interpretation of the expert's testimony, but the specific testimony he cites (the court's comment that if the psychological evaluation findings are unreliable regarding Mother, they logically are also unreliable about Father) supports rather than undermines the court's finding.

Father also argues that a "[c]hecklist [used by the custody evaluator] offered insight into [Mother's] state of mind and intent to keep [Father] away from Christina." He cites the custody evaluator's testimony that Father expressed concern about the impact of the divorce on Christina, whereas Mother expressed concern about physical or psychological harm Christina might experience when alone with Father, a concern that the custody evaluator opined was unfounded. Father fails to note, however, that the custody evaluator expressly found "[t]here does not appear to be a trend in [Mother's] thinking of wanting to eliminate [Father] from Christina's life, . . . her relocation proposal does not appear to be to get away from [Father], or frustrate his access to Christina," and she "has shown no signs of alienating Christina's affections for [Father]." Moreover, Mother testified that the custody evaluation report ultimately alleviated her concerns about allowing Father extended visitation with Christina.

Father challenges the court's assessment of conflicts that occurred during transitions in Christina's care. He argues Mother "tried to cut off communications, prevented [Father] from accessing his Christina's information, refused to clarify legal verbiage to prevent misunderstandings, and frivolously called the police on him." We have reviewed Father's citations to the record⁹ and the citations to the record in the

⁹ Father cites in part to "XA," which he identifies as "Exhibit A (Packer's Record)." The two volumes of trial exhibits prepared by the superior court clerk do not include an Exhibit A and we have not located the exhibit elsewhere in the record. Therefore, we have ignored XA citations.

statement of decision,¹⁰ and we conclude that the trial court took a balanced view of these conflicts that is supported by the evidence. The court specifically found that *both* parents “continue to experience difficulties and challenges with effective and diplomatic co-parenting communication to the best of their abilities,” acknowledged that Mother had called the police on Father (while Father had threatened to do so), specifically found that Mother lied at trial about taking photographs to document a transition incident, and found that the conflicts arose in part from ambiguous wording in certain court orders, which was the fault of neither parent. However, it also expressly found that “Father did not prove that he is the parent who puts Christina’s needs above his own with respect to co-parenting communication. For example, [he] has moved to new residences on two occasions, without giving notice . . . to [Mother], despite the fact that this Court made lengthy remarks on the record about the importance of keeping [Mother] informed when he moves.” These are findings that we must assume are supported by the court’s citations to the record. (See footnote 10, *ante*.) Father argues the trial court unjustifiably “honed in on one 2-hour visitation regarding whether [Father] was required to use a specific location,” but our review of the record persuades us that the trial court took a balanced approach to this particular incident and acknowledged each parent’s contribution.

Father argues other behavior by Mother during the custody dispute demonstrates she was not committed to maintaining his relationship with Christina. He cites evidence that Mother requested supervised visitation and limited visitation hours in August 2009, April 2010 and during a mediation that apparently concluded in about October 2010. This evidence does not contradict the trial court’s findings that Mother thereafter had a

¹⁰ Some of the trial court’s citations are to reporter’s transcripts that have different pagination from the transcripts in the appellate record. As the appellant, Father had the burden of providing an adequate record on appeal. (See *Maria P. v. Riles* (1987) 43 Cal.3d 1281, 1295–1296.) Father has not provided transcripts with the pagination used by the trial court nor has he provided a guide to the corresponding pages in the transcripts provided on appeal. “All intendments and presumptions are indulged to support [a trial court order] on matters as to which the record is silent” (*Denham v. Superior Court* (1970) 2 Cal.3d 557, 564.)

“history of stipulating to age-appropriate increases in Christina’s visitation time with her father . . . follow[ing] recommendations of experts,” starting in October 2010 (following the mediator’s report) and continuing in March and April 2011 (following the custody evaluator’s report). Father notes that, shortly after the February 28, 2011 date of the custody evaluation report, Mother inquired about a bruise on Christina’s leg following a visit with Father and suggests this shows Mother had *not* dropped her unreasonable suspicions about Father. However, according to Mother, Christina had said Father pinched her, and the trial court could have seen the inquiry as reasonable under those circumstances. Father’s other cited evidence also is insufficient to undermine the trial court’s findings: e.g., Mother claimed Father did not bond with Christina before parents’ separation even though “pictures she took of them together showed the opposite”; she filed a civil suit in about November 2010 “claiming cracked teeth from domestic violence because she clenched her teeth from stress”; and she failed to propose a coparenting plan.¹¹

Father challenges the court’s criticisms of his own parenting behavior, but we have reviewed the court’s citations to the record and conclude they support the court’s findings. Father draws our attention to his proposal for “50/50” joint physical custody and his testimony that he would have placed Christina’s needs over his desires to move if he were in Mother’s situation, but this evidence does not compel reversal of the court’s findings.

D. *Primary Attachment*

Father challenges the finding that Christina had a stronger attachment to Mother. He argues her attachment to each parent was equally secure and “[t]he relevant question then becomes who is willing to jeopardize her welfare without compelling reasons.”

¹¹ Father also cites generally to a log he made of questionable behavior by Mother, which was admitted as an exhibit at trial. We are not required to pore through this document to determine whether it provides evidence that would compel reversal of the trial court’s findings. (See *Guthrey v. State of California* (1998) 63 Cal.App.4th 1108, 1115.)

Father cites extensive evidence that he was a loving, attentive, appropriate parent with whom Christina had a strong emotional attachment. The evidence included the opinions of experts including the court appointed custody evaluator, testimony of family friends and relatives, and his own accounts. The court unequivocally found that relocating Christina to the East Coast would be detrimental to her relationship with Father.

Nevertheless, the court found that Mother had provided the majority of Christina's care throughout her life, including the period before the parents' separation, and it cited deficiencies in Father's parenting as evidence he was not prepared to assume primary physical custody of Christina. The evidence cited by the court supports these findings. We do not read these findings as negating the court's conclusion that Father was a loving and attentive father who took good care of Christina and had a strong emotional bond with her. Rather, the court was faced with the difficult task of identifying the best custodial arrangement for Christina on the assumption the parents would be living 3,000 miles apart, and it reasonably found that Christina's primary attachment was to Mother and thus her primary residence should be with Mother.

Father argues that the trial court elevated continuity in primary attachment over other relevant factors. However, the Supreme Court has held that “ ‘the paramount need for continuity and stability in custody arrangements—and the harm that may result from disruption of established patterns of care and emotional bonds with the primary caretaker weigh heavily in favor of maintaining ongoing custody arrangements.’ ” (*In re Marriage of LaMusga, supra*, 32 Cal.4th at p. 1093, italics added.)

E. *Impact of Long-Distance Travel*

Father argues the trial court failed to assess the impact of travel and the visitation plan on Christina. We disagree. The trial court considered the actual time involved in Christina's traveling from New Jersey to the Bay Area, given the proximity of major airports with multiple direct flights. The court noted that the custody evaluator opined that Christina could spend a week with Father every other month, and the court found the “difference between a week every other month and a week every month is not material

for the purposes of the child's development." It required Mother to accompany Christina on each flight to and from California. We cannot conclude that the custody order was an abuse of discretion. Importantly, the court did not rule that monthly travel would not be detrimental to Christina. Rather, the court predicted that the travel arrangement would "result in the least amount of detriment" to Christina resulting from the move. The findings are supported by substantial evidence.

F. *Custody Arrangement if Parents Reside in Same Area*

Father argues the trial court erred by not ordering "50/50 physical custody" if the parents were to reside in the same community. However, evidence discussed *ante* supports the court's findings that Mother was Christina's primary caretaker and that Father was not prepared to become the primary caretaker also supports the alternative custody order. The court specifically found that Father failed to prove "that Christina's best interests would be served by a joint physical custody parenting plan in which she spends equal time in the care of each parent even if her parents reside in the same community."

Father suggests that the court inadvertently "overlooked it added 16 hours every two weeks from Sunday 5PM to Monday 9AM making [Father's] timeshare 28.6%, 30% if annualized to include Monday holidays where he receives additional 24 hours each. . . . By the court's own words, this constitutes joint, physical custody. . . . But the orders reflect sole, physical custody to [Mother]." Father cites the court's statement: "By all accounts joint physical custody occurs when the parties have approximately 28 percent of the time share with the children." However, the court did not hold that orders granting a 28 percent or greater timeshare *must* be deemed joint physical custody orders and Father cites no legal authority for such a rule. As noted, the court *expressly* found that Father had not established his right to joint physical custody. He thus has not established error, inadvertent or otherwise.

III. DISPOSITION

The November 27, 2012 Permanent Order for Custody, Visitation, and Relocation is affirmed. Father shall bear Mother's costs on appeal.

BRUNIERS, J.

WE CONCUR:

SIMONS, Acting P. J.

NEEDHAM, J.

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