

NOT TO BE PUBLISHED

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

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

SOMARI THUNDER,

Respondent,

v.

MARLO L. MCKELVY,

Appellant.

C065753

(Super. Ct. No.
FL343773)

Following a bench trial of Marlo L. McKelvy's application to obtain physical custody of her six-year-old daughter from the girl's father, Somari Thunder, the court found the child "is doing well in the primary care of her Father" and declined to modify a 2008 order to grant physical custody to McKelvy.

In this pro se judgment roll appeal, McKelvy contends, among other things, that the trial court failed to consider "pertinent information," based its decision on "erroneous information" provided by mediators, and committed reversible error in refusing to "return" her daughter. We find no error and shall affirm the order.

FACTUAL AND PROCEDURAL SUMMARY

McKelvy has elected to proceed on a clerk's transcript (Cal. Rules of Court, rule 8.122; further rule references are to the Cal. Rules of Court), and without a record of the oral proceedings in the trial court.

Accordingly, the facts we glean from the record on appeal are limited.

McKelvy is the mother of two children: a 12-year-old son by another father, and an eight-year-old daughter from her marriage to Thunder.

In 2008 both children were living with McKelvy. McKelvy was then arrested for causing corporal injury to her son; he was placed in foster care while McKelvy underwent counseling and parenting education.

After McKelvy lost custody of her son, her daughter was also removed from her custody; physical custody was awarded to Thunder, with McKelvy having supervised visitation.

When McKelvy's son was returned to her custody, she initiated the instant proceedings to modify the existing custody order to eliminate the supervised visitation requirement and transfer sole legal and physical custody of her daughter to her. McKelvy asserted Thunder had "willfully and intentionally thwarted [her] right to have [their] daughter returned to [her]" and interfered with visitation. The court issued an order to show cause, and the matter was set for hearing.

Thunder opposed McKelvy's request. He denied opposing McKelvy's visits, although he expressed concern about her rages,

her failure to complete the child abuse curriculum as well as the therapy required by the case plan imposed after she lost custody of her son, and her refusal to take responsibility for the behavior which also led to her losing custody of her daughter. Thunder also averred that his daughter is happy, well-adjusted, and an excellent student while living with him.

A hearing was held at which both parties appeared and were represented by counsel, the transcript of which is not in the record on appeal. The trial court found the parties' daughter "is doing well in the primary care of her Father. He has provided a stable environment as was reflected by her school performance. [¶] The Court adopts the Mediator's recommendation with additional time allotted to the Mother[.]" The court issued an order granting McKelvy joint legal custody, joint physical custody "with Primary to the Father," and unsupervised visitation.

McKelvy's motion for reconsideration was unavailing.

DISCUSSION

I. Standard of Review

On appeal, a judgment or order of the trial court is presumed to be correct, and all intendments and presumptions are indulged to support it on matters as to which the record is silent. Thus, an appellant has the burden to affirmatively demonstrate reversible error. (*Denham v. Superior Court* (1970) 2 Cal.3d 557, 564; *In re Marriage of Gray* (2002) 103 Cal.App.4th 974, 977-978.)

Because McKelvy has provided only a clerk's transcript of the proceedings, we treat this as an appeal "on the judgment roll." (*Allen v. Toten* (1985) 172 Cal.App.3d 1079, 1082; *Krueger v. Bank of America* (1983) 145 Cal.App.3d 204, 207.) When an appeal is on the judgment roll, we must conclusively presume evidence was presented that is sufficient to support the court's findings. (*Ehrler v. Ehrler* (1981) 126 Cal.App.3d 147, 154 (*Ehrler*).) Our review is limited to determining whether any error "appears on the face of the record." (*National Secretarial Service, Inc. v. Froehlich* (1989) 210 Cal.App.3d 510, 521; rule 8.163.)

II. McKelvy has Not Shown Reversible Error

McKelvy insists on appeal that her daughter "belongs home with her mother" and "there was no legal reason not to return her to my care at the same time as my son was returned." She argues on appeal that the court failed to consider some relevant evidence and based its decision on "erroneous information."

Given the state of the record on appeal, we cannot entertain these arguments. It is the burden of the party challenging a judgment on appeal to provide an adequate record to assess error. (*Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1140-1141.) Thus, an appellant must not only present an analysis of the facts and legal authority on each point made, but must also support arguments with appropriate citations to the material facts in the record. If she fails to do so, the argument is forfeited. (*Duarte v. Chino Community Hospital* (1999) 72 Cal.App.4th 849, 856.)

Because McKelvy fails to provide any record of the trial preceding the order from which she appeals, she cannot direct our attention to the evidence she contends should have been considered, or the information she contends was erroneous. As a result, we cannot assess her challenges to evidence the trial court considered. Instead, as we explained, we “‘must conclusively presume that the evidence is ample to sustain the [trial court’s] findings’ [Citations.]” (*Ehrler, supra*, 126 Cal.App.3d at p. 154.)

Indeed, nothing on the face of the record suggests the trial court erred. Family Code section 3020, subdivision (a) declares that “the health, safety, and welfare of children shall be the court’s primary concern in determining the best interest of children when making any orders regarding the physical or legal custody or visitation of children.” The trial court’s order suggests the court had this standard in mind when it declined to grant McKelvy primary or sole physical custody.

McKelvy suggests the court made two other “reversible” errors; neither assertion has merit.

First, she asserts the trial court mis-set the date of the hearing for December 24, 2009. But the hearing on the order to show cause was apparently continued and actually occurred on May 21, 2010; McKelvy does not show she suffered any prejudice from the originally scheduled date.

Next, she argues the court failed to determine issues in its statement of decision. The record contains no statement of decision, and no suggestion the trial court prepared one. Nor

does McKelvy cite any authority to support her suggestion it was obliged to do so. A court trying a question of fact must issue a statement of decision explaining the factual and legal bases for its decision on the principal controverted issues at trial if any party appearing at trial makes a timely request. (Code Civ. Proc., § 632.) Such a statement of decision must be in writing, unless the parties appearing at trial agree otherwise or the trial is concluded in less than one calendar day or less than eight hours over more than one day, in which case the statement of decision may be made orally on the record in the presence of the parties. (*Ibid.*) The trial here apparently lasted one day or less, and the lack of a reporter's transcript prevents McKelvy from establishing that a statement of decision was requested.

In sum, we conclude McKelvy failed in this appeal to demonstrate error "on the face of the record" sufficient to warrant reversing the order. (Cf. rule 8.163.)

DISPOSITION

The order is affirmed.

RAYE, P. J.

We concur:

BLEASE, J.

BUTZ, J.