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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

ANGUS DORBIE,

Respondent,

v.

MARY FALES,

Appellant.

D059338

(Super. Ct. No. D495975)

APPEAL from a judgment of the Superior Court of San Diego County, Robert C. Longstreth, Judge. Affirmed.

I. INTRODUCTION

In this appeal, Mary Fales (Mother) challenges the judgment entered by the trial court awarding sole legal and primary physical custody of her minor child (Daughter) to respondent Angus Dorbie (Father), permitting Father to relocate Daughter to the San Francisco Bay area, and ordering Mother to pay various sums in child support, costs and sanctions. Mother contends that the trial court erred in failing to grant her request for a trial continuance, in awarding costs and sanctions, and in denying her postjudgment

motion for reconsideration. Mother also asserts that the trial court was biased against her and should be disqualified from presiding over future proceedings in this case. We conclude there was no legal error or abuse of discretion. Accordingly, we affirm the judgment.

II. FACTUAL AND PROCEDURAL BACKGROUND

A. *Family History*

Daughter was born in October 2005, the result of a brief relationship between Mother and Father, who never married. At that time, Mother was separated from her first husband, Chris Fales, with whom she had two sons. She now shares legal custody of the boys with her ex-husband, but has primary physical custody of them. Mother is currently married to David Corbett and recently had another child from that marriage. At the time of the trial court judgment, Father was employed as a software engineer in San Francisco and Mother was employed in San Diego as a patent agent.

The parties' interactions with each other regarding Daughter largely have been strained and contentious since Daughter was an infant. Daughter resided primarily with Mother during her infancy and early years. Mother and Father participated in a private mediation in June 2006, which resulted in a visitation schedule for Father. When Daughter was several months old, she came home from a visit with Father with a large bruise on her ankle and leg. Because Father could not immediately explain what had happened, Child Protective Services (CPS) was notified. The ensuing investigation resulted ultimately in a finding of "inconclusive." According to Father, Daughter slipped while he was attempting to change her diaper in the car, and he grabbed her leg to prevent

her from falling and injuring herself. Following the CPS investigation, Father completed a parenting course and participated in therapy for stress. In addition, the parents unsuccessfully participated in coparenting counseling.

B. 2008—Initial Custody Proceeding

After the 2006 incident, the parents' interactions were often tense and marked by conflict. Mother accused Father of drug and alcohol abuse and of being late with his exchanges. Father said the drug and alcohol abuse allegations were proved false. He accused Mother of trying to discredit him to his employer and of misusing the reporting system. From the meager appellate record, it appears that Father first petitioned the court regarding custody and visitation in 2006. The Family Court Services (FCS) counselor recommended that the parents share joint legal custody of Daughter, that Mother have primary physical custody, that a visitation schedule be set with exchanges to be supervised by a third party, and that the parents complete a high conflict intervention program. In October 2008 the trial court adopted these recommendations with certain modifications.

A period of relative peace followed the entry of the court's custody and visitation order, but it was short-lived. Mother and Father followed the court's visitation schedule until May 2010. Mother claimed that in the months preceding that time, Father lost his job and Daughter became uneasy, had difficulty going to sleep, and made statements that Father mistreated her. When these behaviors continued, she placed the child in therapy without consulting Father. According to Mother, Daughter then disclosed to her that Father touched her private parts, among other inappropriate behavior. Mother thereafter

obtained a restraining order against Father, and the visitations stopped. The investigators, however, became convinced that Mother had inappropriately "coached" the child regarding the alleged sexual abuse, and those allegations were ultimately deemed to be "unfounded." Father's visits with Daughter resumed with supervision, although no order required it. Father indicated he preferred supervised visits because the absence of supervision merely provided a vehicle for Mother to continue to make false allegations about him.

C. 2010—The Change-of-Custody Proceeding

After the 2010 incident involving abuse allegations, Father sought a change in custody and visitation. He had obtained a new job in the Bay Area and wanted Daughter to move there with him. Father maintained that obtaining custody had become necessary in his view because Mother was "poisoning" Daughter against him and had a history of making false allegations of abuse and lying about his alcohol use. He acknowledged that, were it not for the poisonous atmosphere Mother had created, he probably would not have sought to remove Daughter from Mother's care because he knew it would be difficult for Daughter. The parties participated in a mediation with FCS counselor Kathy Lang, and a separate child custody evaluation was performed by Dr. Lori Love. In their reports, both Lang and Dr. Love recommended that Father be given sole legal and primary physical custody of Daughter, that he be allowed to relocate Daughter to the Bay Area, and that Mother be permitted to have supervised visits with Daughter.

The trial court held a one-day hearing on the custody issue on December 16, 2010. The parties were both represented by counsel, and Daughter's court-appointed counsel,

Robert Lesh, also was present. The court heard testimony from Mother, Father, Chris Fales (Mother's ex-husband), David Corbett (Mother's current husband), Lang and Dr. Love. The trial court also had before it the Lang and Love reports, Mother's and Father's declarations, and other documents the parties stipulated could be received into evidence.¹

1. *Dr. Love's testimony*

In her report and testimony, Dr. Love concluded that Daughter had lived with a high level of conflict all her life and continuing to do so would be harmful to her. She attributed much of that conflict to Mother, citing in her report and/or in her testimony at trial the following factors and incidents: Mother's depression, anxiety, "hypervigilance" and "paranoia" that caused her initially to think the worst about situations and led her to take actions that might result in passing on her fears to Daughter; the evidence that Daughter had been coached by Mother regarding the latest abuse allegations; encouraging Daughter to take out her anger by beating her bed with a tennis racket; spanking Daughter when Mother felt she really needed to get a message across to her; putting a GPS tracking device into a stuffed toy when Mother believed the supervised

¹ Many of these documents, including the parties' declarations, were not included in the appellate record. The declarations apparently served as the parties' direct testimony at trial, thus allowing counsel to use the trial principally to supplement the parties' testimony or cross-examine them on statements contained in the declarations. As will become apparent from the discussion and analysis that follows, the absence of these and other documents from the appellate record has made it more difficult to understand the full scope of the parties' testimony and the bases for their respective arguments on appeal. (See, e.g., *Bianco v. California Highway Patrol* (1994) 24 Cal.App.4th 1113, 1125 [it is the appellant's burden to include in the appellate record those portions of the trial court record relevant to the issues on appeal].)

visits with Father had ended and encouraging Daughter to form a deep attachment to that toy, even though there were no allegations that Father was a "flight risk"; and Daughter's school reports indicating that she was underperforming and not getting the support she needed at home.

2. Lang's Testimony

Lang testified, consistent with her report, that her recommendations rested principally on concerns about Mother's parenting and continued belief in Father's abuse of Daughter, notwithstanding that these allegations were ultimately deemed to be unfounded. She referenced repeated and generally unfounded reports to CPS about Father; Mother's decision to put Daughter into therapy without first consulting Father, notwithstanding their joint legal custody arrangement; the conclusion by investigators that Mother likely had coached Daughter regarding the allegations against Father; and the support and reinforcement Mother received from her own therapist regarding the unfounded allegations. These factors led Lang to the conclusion that Mother would have difficulty coparenting with Father in the future and that she might continue to make false allegations against him unless changes were made.

Both Lang and Dr. Love acknowledged that a change in custody would be a significant transition for Daughter and would be difficult for all concerned.

3. Mother's testimony

Mother testified that if Daughter moved away she would experience significant instability, and it would have a negative impact on their close relationship and devastate her whole family. Daughter, she explained, had developed very tight bonds with her and

with her half-brothers. She testified that if she retained custody, she would encourage frequent communication with Father through telephone or video calls and letters, and would try counseling to improve their communication. Contrary to the conclusions in Dr. Love's report, she testified that she had been very active in supporting Daughter's education, and she would keep Father apprised of Daughter's school progress if she retained custody. She acknowledged that she was not a "perfect" parent, but stated that she had just learned that she "had the paranoia or hyperprotective mode" and asked the court to give her time to seek a new counselor who could better help her to address her own emotional and psychological issues and change her behavior.

Responding to the allegations of sexual abuse that had prompted Father's request for change of custody, Mother explained that she obtained a temporary restraining order against Father because he failed to give her an adequate explanation for Daughter's statements about his mistreatment of her, and she was not sure what had happened. She denied ever coaching Daughter regarding the abuse allegations, but admitted that once she learned that Daughter had not fully disclosed all the alleged abuse to the investigator, she encouraged Daughter to do so and told her that she would be rewarded with a trip to Knott's Berry Farm if she did. Notwithstanding the reports indicating that Mother continued to harbor the belief that Father abused Daughter, she initially testified at trial that she no longer believed that to be the case. After further questioning, however, she stated that it was more accurate to say that she was not sure whether the abuse occurred. And later, when asked about certain allegations of abusive conduct, Mother testified she believed that the conduct actually occurred because Daughter "told [her therapist Cheryl

Putt] that and Cheryll [*sic*] thought it was a credible statement." She then testified that she believed Father had inflicted "emotional and verbal abuse" on Daughter, but claimed never to have reported it because the prior trial court judge told her to "stop accusing and stop having conflict" with Father.

She acknowledged that she put a tracking device in Daughter's toy because she "didn't trust [Father]." She claimed Father previously had threatened to "kidnap [Daughter] to the U.K.," but admitted she never sought court relief to protect Daughter. She admitted having taken Daughter out of school for a while after the restraining order was put in place because she was "a little bit" concerned that Father would come and take her. He had just lost his job, and she "didn't know what was going on." On cross-examination, she acknowledged that she still is concerned that Father will take Daughter out of the country, but now believes she would have a remedy in court. Later, she testified that she felt compelled to put the GPS tracking device in the toy because the school staff had told her that Father had called the school, told them that he had custody, and was coming to pick her up. Based only on what the school told her, she was "concerned." She believed Father had done this because the FCS mediation report was favorable to him, and he believed he was going to get custody.

She admitted accusing Father of drug and alcohol abuse and, although she could not affirmatively state that he had a problem at the time of trial, she admitted that she may have implied to Lang that he still had a problem and testified that his behavior made her wonder whether he had an issue with prescription drugs. She testified that she also wondered whether Father had encouraged Daughter not to discuss with Mother what

happened at his house, but acknowledged she had no reason to believe that other than Daughter was reluctant to discuss such things with her.

4. *Father's Testimony*

Father acknowledged that he was fired from his previous job because he had difficulty prioritizing and remembering tasks. His tendency to become distracted was noted by Dr. Love in her report. He testified, however, that "it's a manageable issue." He testified that Mother falsely accused him of being late to pick Daughter up on numerous occasions, although he acknowledged it had been difficult to get from work to Daughter's school or daycare by the scheduled time. He does not call Daughter frequently when she is not in his care because he "perceive[s] it as a hostile environment" and he knows Daughter "is at times reluctant to talk on the telephone to anyone." After moving to his current residence, he investigated which school Daughter would attend and spoke to the principal.

With respect to the phone call to Daughter's school in October 2010, Father testified that he was in San Francisco at the time, and he contacted the school not to tell them he had custody and was going to pick her up from school that day, but to begin to investigate her educational needs and "start to lay the groundwork" for her education in the Bay Area. He testified that Daughter's statements about Father touching her private parts, which Mother interpreted as possible abuse, stemmed from the fact that she had suffered a rash on her buttocks and he had applied ointment there.

He testified that he did not see the same problems with Daughter that Mother reported, such as trouble sleeping. Moreover, although Mother told him that a doctor had

recommended a tonsillectomy for Daughter, that same doctor told Father that Daughter was fine and would only require treatment if she had a problem with snoring.

He testified that he believed Mother had been poisoning Daughter's mind about Father, notwithstanding their successful visitations. He acknowledged some culpability in the difficulties with communication between himself and Mother, but maintained that things had gotten worse, and it "[hadn't] been [his] doing." He tried, before the most recent round of allegations of abuse, to be accommodating to Mother and her current husband in sharing Daughter.

5. The Trial Court Grants the Move-Away

At the close of testimony, the trial court asked counsel for closing arguments. Daughter's counsel spoke first and requested that Dr. Love's recommendations be approved. Mother's attorney offered his closing remarks next. Having surmised from the court's exchange with Daughter's counsel that the court was inclined to grant the move-away, Mother's attorney focused his remarks on the details of visitation and various other recommendations made by Dr. Love. Father's counsel then joined in the discussion of the details of the custody and visitation order.

The trial court then summarized its findings. The court concluded that the move-away was not in bad faith and, while acknowledging that there would be some detriment, "the balance is that the interests are in favor of granting the move-away." In particular, the court concluded that "the actions of the mother have, I think, as Dr. Love stated, caused damage to the child just through the turmoil and procedures that she's had to go through. And that certainly creates a risk of severe damage to the bond between the child

and the father. That's the primary factor." The court also found that while a move-away was not ideal, the steps already taken by Father with respect to Daughter's residence and schooling provided the court with "a significant degree of comfort that she'll be in good hands up there." The court ordered that the move-away be effective the following Saturday, which was two days after the trial. Finally, the court ordered that child support and Father's requests for reimbursement of costs and sanctions would be considered at a future hearing.

D. *Subsequent Proceedings*

Just days after the effective date of the move-away, Mother sought an order seeking a stay of that decision. The moving papers were not made part of the appellate record, so it is unclear precisely what arguments were made in support of that application. The trial court denied the stay.

On January 12, 2011, the court conducted a hearing on the financial issues that were deferred during the December custody trial. Father and Mother had provided their income and expense declarations (I&E's) and pay stubs. Mother, through her counsel, requested hardship deductions because of the needs of her two sons by her first marriage. The court denied the hardship deductions, without explanation. Based on the parties' I&E's, and using the statutory guidelines and Dissomaster, the trial court ordered Mother to pay \$1,270 monthly in child support. Support arrearages created by virtue of the earlier effective date of the move-away were to be paid at the rate of \$100 per month.

Father sought reimbursement of various expenses incurred during the course of the custody proceeding. He had paid all the fees of Daughter's counsel, Robert Lesh, and

those incurred by Dr. Love, and sought reimbursement of 50 percent of that amount. He also sought reimbursement of 100 percent of the expense he incurred when he opted for supervised visitation after the 2010 abuse allegations. Finally, he requested that the court order sanctions against Mother in the form of attorney fees "primarily" under Family Code section 271. Mother objected to these requests on the ground that she could not afford them and would "have nothing left" after the support, arrearages, add-ons and taxes were paid, especially given the court's denial of hardship deductions.

The trial court observed, however, that Mother had provided the court with no information on her current husband's income, which seemed to the court to have been "deliberately omitted" from her I&E. The court stated, "That makes it difficult for me to make an inability to pay argument." The court reallocated to Mother 50 percent of the fees for Lesh and Dr. Love. It also found appropriate Father's request for reallocation to Mother of 100 percent of the supervised visitation expense, noting: "Dad wanted that and agreed to that even though it was not a court order to protect himself. As it turned out, he needed that for the GPS incident if no other."

Finally, as to sanctions, Father sought well over \$50,000 in fees, arguing that even though Mother had acknowledged her problems, she essentially sought to "blame the child" by asserting that everything she did was done just to protect Daughter. The court agreed and observed that Mother had adopted a "scorched earth" approach to dealing with Father. Still, the trial court indicated a reluctance to make such a large award. In particular, the court declined to award fees related to the initial custody proceeding and observed that even in the absence of Mother's scorched earth conduct, the change-of-

custody proceeding was bound to be contested and Mother should not be penalized for not agreeing immediately to the move-away. Some award was warranted, the court observed, because Mother was focused on herself and not on Daughter's best interests, and had an all-or-nothing, "win[] or lose[]" mentality that exacerbated tensions and blew events out of proportion. The court recognized, however, that this may have been driven in part by Mother's diagnosed emotional and psychological issues. Taking all these considerations into account, the court awarded \$10,000 in attorney fees to Father. The court ordered that this award, together with the reallocated costs representing Mother's share of Dr. Love's, attorney Lesh's, and the supervised visitation fees, be paid at the rate of \$250 per month.

A written judgment incorporating the court's findings and orders from both the custody trial and the later hearing on financial matters was entered on February 18, 2011. Among the court's significant findings regarding its decision to modify the custody arrangements and permit the move-away were the following:

"4. The best interests of the minor child . . . favor granting [Father's] move-away request.

"5. The contact between [Mother] and [Daughter] is a problem.

"6. There needs to be less contact between [Mother] and [Daughter].

"7. [Mother's] visitation must be supervised because of her actions as described in Dr. Love's evaluation, in [Father's] Declarations and the testimony of the parties and witnesses.

"8. The turmoil and procedures to which [Mother] subjected [Daughter] have caused damage to [Daughter] and her relationship to [Father].

"9. The aforementioned damage and the risk of on-going severe damage to [Daughter] and to the bond between [Daughter] and [Father] created by [Mother's] actions is the primary factor in the Court's determination.

"10. Although moving [Daughter] approximately 500 miles away from her home in San Diego is not ideal, on balance, appropriate arrangements have been made with respect to [Daughter's] schooling and residence.

"11. The Court has considered [Father's] ability to care for [Daughter] when she is not in school.

"12. The Court has a significant degree of comfort that [Daughter] will be in good hands with [Father].

"13. The custody arrangement before trial was not working for [Daughter] relative to her relationship with [Father], her education and in terms of the turmoil and procedures to which [Mother] subjected [Daughter].

"14. Father's request for a move-away was not made in bad faith."

On March 4, 2011, Mother, in propria persona, filed a motion for reconsideration, asserting the court had erroneously denied her a continuance of the custody trial and thus had denied her the opportunity to submit important evidence, had erred in awarding costs and sanctions, and had erred in denying her hardship deductions. The trial court denied the motion on March 7, 2011, on the ground that Mother provided "no new facts or new law" and made "no showing that [the] previous order was clearly erroneous." Mother then filed a petition for writ of supersedeas, requesting a stay, on March 14, 2011. That writ petition essentially incorporated the substance of the denied motion to reconsider, with the added argument that the trial court had been biased against Mother. The petition was summarily denied on March 22, 2011.

III. DISCUSSION

A. The Trial Court Did Not Abuse Its Discretion in Denying Mother's Request for a Continuance of the Trial

Mother first contends that the trial court erred in refusing to grant a continuance of the December 16, 2010 trial, which she argues deprived her of sufficient time to respond to Dr. Love's custody evaluation report and obtain certain CPS records. We review the denial of a request for continuance for abuse of discretion. (*In re Karla C.* (2003) 113 Cal.App.4th 166, 180.) "Discretion is abused when a decision is arbitrary, capricious or patently absurd and results in a manifest miscarriage of justice." (*Ibid.*, citing *People v. Franco* (1994) 24 Cal.App.4th 1528, 1543.)

There is no arbitrariness or injustice in the trial court's decision to proceed with the trial on the scheduled date.² The California Rules of Court specify that continuance requests "are disfavored" and may be granted "only on an affirmative showing of good cause requiring the continuance." (Cal. Rules of Court, rule 3.1332(c).) Mother insists that a continuance was necessary to be able to respond properly to Dr. Love's report, and because she had not yet received certain CPS records (the precise nature of which are not clearly described, but appear to be related to Mother's previous reports to CPS regarding Daughter). (See Cal. Rules of Court, rule 3.1332(c)(6) ["good cause" includes a party's "excused inability to obtain essential testimony, documents, or other material evidence despite diligent efforts"].) Mother's counsel initially requested a continuance of the

² According to Father, two previous continuances were granted in this matter, but no citation to the record is provided that might clarify who requested these continuances.

December 16 trial date on December 9, but the basis for that request is not apparent from the record, and it was denied. Critically, however, when Mother's counsel renewed the continuance request at the commencement of the trial on December 16, he did so with the "caveat" that "the *only information that we're missing still* is the . . . [CPS] records that the juvenile court ordered on November 5th be released and sent to the court." (Italics added.) Counsel indicated that he might want to examine certain witnesses in connection with those records and reserved his right to do so. He said nothing at all about Dr. Love's report. The trial court responded, "[W]e'll see, when we're finished today, where we are in terms of that" and denied the continuance request "without prejudice to being renewed at the end of the proceedings today." Mother's counsel did not renew the request at the end of the trial.

By limiting the basis for the continuance request at trial to the as-yet-unobtained CPS records, Mother indicated to the court that she had no other basis for requesting a continuance at that juncture. In other words, if Dr. Love's evaluation had once been a reason for needing more time, Mother indicated it no longer was an issue as of the trial date. Mother may not now assert a lack of time to respond to that report as grounds for appealing the denial of the continuance. (See *In re Marriage of Falcone & Fyke* (2008) 164 Cal.App.4th 814, 826 ["Appellate courts are loath to reverse a judgment on grounds that the opposing party did not have an opportunity to argue and the trial court did not have an opportunity to consider."].) Mother's proffer of the additional evidence she

would have introduced to impeach Dr. Love's findings and recommendations therefore comes too late.³

Furthermore, although given the opportunity to do so, Mother's counsel did not renew the continuance request at the end of the trial based on the lack of the CPS records. As far as we can determine from the appellate record, Mother also did not attempt to supplement the trial evidence with any CPS records she may have received after the trial date or with any argument demonstrating their *specific* significance. If, as she now claims, those records were necessary "to disprove many of the false allegations against" her regarding her prior reporting to CPS, it is reasonable to assume her counsel would have made that clear after the trial testimony had ended and would have renewed the continuance request on that basis. He did not do so. Accordingly, Mother has waived any argument on appeal that the court abused its discretion in failing to give her additional time to obtain and respond to the CPS records. (See *In re Marriage of Falcone & Fyke, supra*, 164 Cal.App.4th at p. 826 [failure to properly object to procedural defects or erroneous rulings in trial court waives that objection for purposes of appeal].)

B. The Record Amply Supports the Trial Court's Decision To Grant Father Sole Legal Custody of Daughter and Permit the Move-Away

Upon an initial custody determination, the trial court has "the widest discretion to choose a parenting plan that is in the best interest of the child." (*In re Marriage of*

³ Mother also notes that Dr. Love's report was issued on December 3, 2010, suggesting that nearly two weeks was insufficient time for her to adequately respond to the findings of the report. However, the report was issued within the statutorily required time period. (See Fam. Code, § 3111, subd. (a) [providing such custody evaluations are to be filed and served at least 10 days before the custody hearing].)

Burgess (1996) 13 Cal.4th 25, 31.) Once an initial order has been entered, the interests of stability and continuity take on greater importance, as does concern about the harm that may result from disrupting established patterns of care and emotional bonds. (*In re Marriage of Brown & Yana* (2006) 37 Cal.4th 947, 956.) In that situation, the trial court generally should order a change of custody only where the parent seeking modification demonstrates "a significant change of circumstances" indicating that the change would be in the child's best interest. (*Ibid.*; see also *In re Marriage of LaMusga* (2004) 32 Cal.4th 1072, 1088; see also *F.T. v. L.J.* (2011) 194 Cal.App.4th 1, 15.) Where a move-away is involved, the trial court is obliged to consider, among other factors, the potential detrimental impact of the relocation on the child and the child's relationship with the noncustodial parent. (*In re Marriage of Brown & Yana, supra*, 37 Cal.4th at p. 961; *In re Marriage of LaMusga, supra*, 32 Cal.4th at p. 1101; *In re Marriage of Burgess, supra*, 13 Cal.4th at pp. 38-39; *F.T. v. L.J., supra*, 194 Cal.App.4th at pp. 18, 20-21.)

In all events, broad discretion remains with trial courts "to fashion orders that best serve the interests of the children in the cases before them." (*In re Marriage of LaMusga, supra*, 32 Cal.4th at p. 1101; see also *In re Marriage of Brown & Yana, supra*, 37 Cal.4th at p. 961.) We therefore review change-of-custody determinations for abuse of discretion. (*In re Marriage of Brown & Yana, supra*, 37 Cal.4th at pp. 961, 965; *In re Marriage of LaMusga, supra*, 32 Cal.4th at pp. 1096, 1101.) "Generally, a trial court abuses its discretion if there is no reasonable basis on which the court could conclude its decision advanced the best interests of the child." (*F.T. v. L.J., supra*, 194 Cal.App.4th at p. 15.) Consistent with well-settled principles of appellate review, "[a]n appellate

tribunal is not authorized to retry the issue of custody, nor to substitute its judgment for that of the trier of facts. Only upon a clear and convincing showing of abuse of discretion will the order of the trial court in such matters be disturbed on appeal. Where minds may reasonably differ, it is the trial judge's discretion and not that of the appellate court which must control." (Catherine D. v. Dennis B. (1990) 220 Cal.App.3d 922, 931.)

In her brief, Mother discusses at length the great emotional turmoil and stress the change of custody and Daughter's move to San Francisco has caused and will continue to cause her family. The thrust of Mother's argument appears to be that we should reverse the trial court's order and order a retrial of the custody issue to prevent additional "irreparable harm" to Mother and her family, including Daughter.

We have no doubt that the changes wrought by the trial court's order have been difficult and have required significant adjustments for all concerned. But such challenges are inherent in child custody determinations. No one disputes that, as a general matter, it is preferable not to uproot a minor child from the environment he or she has known for some time. (See, e.g., *In re Marriage of Brown & Yana*, *supra*, 37 Cal.4th at p. 956; *In re Marriage of Burgess*, *supra*, 13 Cal.4th at p. 37.) In this case, it is apparent that when the professionals involved made their recommendations, and when the trial court made its decision, they were all keenly aware of the difficulties of removing Daughter from the environment she had known for so long and placing her in a new home and new city. But the question facing the trial court was whether, under all the circumstances then existing, Daughter's best interests would be served by placing her with Father and permitting the move-away. (*In re Marriage of Brown & Yana*, *supra*, 37 Cal.4th at p. 955 ["the

overarching concern is the best interest of the child"'].) We observe that Mother, in her brief, seems to lose sight of this fact when she focuses more on her own distress and that of her husband and sons than on how this move has impacted Daughter.

The trial court determined that any detrimental impacts of this change were outweighed by the risk posed to Daughter if custody remained primarily with Mother. Thus, the trial court concluded that the "turmoil and procedures" to which Mother had subjected Daughter "had caused damage to Daughter and her relationship to [Father]" and created the risk of on-going damage. This was the "primary factor" in its determination. The court also acknowledged that "moving [Daughter] approximately 500 miles away from her home in San Diego is not ideal," but added that, "on balance, appropriate arrangements have been made with respect to [Daughter's] schooling and residence."

These findings are supported by the record. Dr. Love and Lang both described Mother's hypervigilance and paranoia, which have caused her to view situations involving Father in the worst possible light and, during Daughter's early years, led her to overreact, file unfounded reports with the authorities, subject Daughter to multiple evaluations and procedures, and possibly taint her with misinformation about Father. By way of example, Mother admitted that she placed Daughter into therapy without first consulting Father, notwithstanding their joint legal custody arrangement, simply because she "knew he would refuse her getting counseling." With respect to the 2010 abuse allegations, Mother' efforts to encourage Daughter to "tell the truth" to the investigators and her promise to reward her for doing the same were viewed as coaching, and the allegations were ultimately deemed to be unfounded. When Father sought to resume

visits with Daughter, Mother placed a GPS tracking device in a stuffed toy and encouraged Daughter to bond with the toy and keep it close. She did this, she said, because she did not trust Father and feared he would abduct Daughter—although there was no objective evidence that he was even contemplating such a move. Finally, Mother frequently has made accusations of substance abuse against Father. Even at the trial, while acknowledging on the one hand the absence of any evidence of such abuse, Mother seemed unable to let go of the notion, speculating that he could have a prescription drug problem because well before that time she had witnessed him with "slurred speech," and he had "several surgeries and knee injuries" requiring him to be on painkillers, "so there's a possibility he could have abused them." According to Dr. Love, by continuing to view Father in a negative light and take hasty and drastic steps in reaction to her concerns, Mother already had subjected Daughter to substantial conflict and multiple procedures and threatened to pass on her unfounded fears to Daughter and adversely impact her relationship with Father. Lang reached a similar conclusion.

As Mother correctly points out, Dr. Love acknowledged that Father's relationship with Daughter had "[a]mazingly . . . remained intact," notwithstanding the years of conflict and unfounded accusations against Father. She added, however, that "at some point" that was going to change if Daughter remained exposed to Mother's ongoing issues. Additionally, the professionals recognized, as did Father, that Father has certain weaknesses that would need to be addressed, such as a tendency to become distracted and lose focus, and that he shared some of the culpability for the parents' communication

difficulties. But they also noted his healthy attachment to the child, and the fact that Daughter enjoyed her visits with him.

Where the evidence is conflicting, it is the duty of the trial court to weigh that evidence and make credibility determinations. (*Catherine D. v. Dennis B.*, *supra*, 220 Cal.App.3d at p. 931.) We may not second-guess those findings. (*Ibid.*) Rather, on review, we ""must accept as true all evidence tending to establish the correctness of the [trial court's findings], taking into account, as well, all inferences which might reasonably have been thought by the trial court to lead to the same conclusion."" (*Ibid.*, citing *Board of Education v. Jack M.* (1977) 19 Cal.3d 691, 697.) Because the evidence supports the change of custody and move-away, and because Mother has identified no legal error or abuse of discretion, we affirm that portion of the trial court's judgment.

C. The Trial Court Did Not Abuse Its Discretion in Making Its Child Support, Costs, and Sanctions Orders

1. *Child support*

Mother contends that the trial court erred in ordering Mother to pay \$1,270 per month in child support.⁴ Such determinations are committed to the trial court's ""informed and considered"" exercise of discretion in accordance with the specific

⁴ To the extent Mother asserts error in the trial court's order that she pay \$100 per month in child support arrears, separate and apart from her objections to the guideline child support payment, we reject any such argument. Mother has not identified any specific error in this portion of the court's order, by providing citations to the record or case law. "The absence of cogent legal argument or citation to authority allows this court to treat the contentions as waived." (*In re Marriage of Falcone & Fyke*, *supra*, 164 Cal.App.4th at p. 830; see also *ibid.* [the appellate court is "not bound to develop appellant['s] arguments for [her]"].)

guidelines set forth by California law and will be reversed only upon a showing of abuse of discretion and prejudicial error. (*In re Marriage of Sorge* (2012) 202 Cal.App.4th 626, 640; see also *In re Marriage of Cheriton* (2001) 92 Cal.App.4th 269, 282-283; Fam. Code, § 4050 et seq.)

Mother makes two arguments challenging the child support order of \$1,270 per month. First, she insists the order placed her "in automatic contempt of Court" by forcing her to pay more than she can afford. Second, she contends that the order "increased the level of conflict" and the amount of litigation, in contravention of Family Code section 4053, subdivision (j). Neither of these arguments is sufficient to warrant reversal of the child support order.

Addressing first Mother's contention that the amount of child support ordered is simply more than she can afford, the appellate record indicates the trial court made its support calculation pursuant to the statutory guidelines, based on the information that the parties presented at the time, including their I&E's. (See Fam. Code, § 4055.) Mother does not argue otherwise. Moreover, the record before us reveals no attempt by Mother at the support hearing to object to the income and expense figures used by the court in its calculations or to argue that the evidence was insufficient for the court to rule on the issue of child support.⁵

⁵ The parties' I&E's on file with the trial court at the time of the custody hearing were not included in the clerk's transcript. (See *ante*, fn. 1, citing *Bianco v. California Highway Patrol*, *supra*, 24 Cal.App.4th at p. 1125.) Mother included a copy of Father's I&E as an exhibit to her motion for reconsideration. But as for her own financial information, she included in the clerk's transcript only the I&E she filed with her motion

Mother now contends, however, that the trial court did not have before it all the necessary information about her income and expenses, and seeks to supplement the record with the additional information she proffered with her motion for reconsideration. But she offers no explanation for why she did not submit these facts at the support hearing. Having failed to present those facts to the trial court in a timely manner, Mother cannot now claim the trial court erred in determining child support without the benefit of that information. (See *In re Marriage of Falcone & Fyke*, *supra*, 164 Cal.App.4th at p. 826 ["Appellate courts are loath to reverse a judgment on grounds that . . . the trial court did not have an opportunity to consider."]; see also discussion, *post*, at pt. III.D, regarding Mother's motion for reconsideration.)

Mother also raises in her brief the fact that the trial court noted the absence of any evidence regarding her new husband's income—an omission that the court thought was "deliberate[]." She supplied this information with her motion for reconsideration "to demonstrate," she insists, that "she is not deliberately omitting it." Mother urges that pursuant to Family Code section 4057.5 the income of her current spouse may only be used to determine her tax bracket and may not be used to calculate child support for Daughter. The trial court, however, did *not* use Mother's spouse's income in the child

for reconsideration—not the one that was presented to the trial court in connection with the custody and support hearings. Father refers to this as Mother's "updated" I&E in that it includes her current husband's income. We have no basis for determining whether this later-filed I&E contains the same income and expense numbers for Mother as the original, although we note that Mother claimed in her 2011 I&E that her gross monthly income was \$8,120, not the \$8,762 the trial court used in its calculation. Mother offers no explanation for this discrepancy, and Father does not challenge it in his brief. Because Mother claims no error with respect to the numbers actually used by the trial court, and her counsel made no objection at the time, we must assume those numbers are correct.

support calculation. The trial court mentioned the lack of any information regarding Mother's husband's income only in connection with Mother's assertion that she could not afford to pay the reallocated costs and sanctions sought by Father, in addition to child support, arrears and add-ons. The court merely observed that it was difficult for it to determine Mother's inability to pay those costs and sanctions when it did not have before it a complete picture of her family's income. Mother also makes no argument that the trial court used incorrect information regarding her federal tax status. In short, Mother's arguments regarding the proper use of her current husband's income identify no error in the trial court's child support calculation.

Finally, Mother's contention that the order has prompted further litigation between the parties is also without merit. The record indicates that any such increase in litigation was prompted largely, if not exclusively, by *Mother's* actions or strategic decisions. For example, immediately after the trial, Mother unsuccessfully sought to have Daughter returned to San Diego. She also moved for reconsideration and filed a writ petition. Additionally, although the record does not include all the motion papers, it appears that Mother did not pay her obligations in a timely fashion and was therefore ordered to pay child support through wage assignment.

2. Hardship deductions

Mother requested hardship deductions based on her role as primary custodial parent for her two older sons by her first marriage. The trial court denied this request. The court did not detail its reasons for denying the request, and under the law is not obligated to do so. (Fam. Code, § 4072 [requiring statement of reasons only where

hardship deduction is granted].) Such deductions are entirely discretionary with the trial court. (*In re Marriage of Whealon* (1997) 53 Cal.App.4th 132, 145.) They may be granted to accommodate a responsible parent's "extreme financial hardship" due to various expenses, such as the "minimum basic living expenses" of the parent's other natural or adopted children. (See Fam. Code, §§ 4070, 4071, subd. (a)(2).)

Once again, while complaining about the financial burden created by the trial court's denial of the hardship deductions, Mother identifies no legal error or arbitrariness in the court's decision. She points to calculations she submitted with her unsuccessful motion to reconsider and writ petition purporting to detail the living expenses of her family and show that, even considering her spouse's income, they are unable to afford the additional financial burdens imposed by the court's support order.⁶ But this merely begs the question of why Mother failed to submit any of this information to the trial court at the hearing on child support. As noted previously, we do not have before us Mother's I&E that was on file with the trial court at the time of the support hearing. (See *ante*, fn. 5.) However, we observe that in the I&E filed in connection with her motion for reconsideration, Mother filled in her sons' names but failed to detail any of the expenses

⁶ Throughout her brief, Mother references documents that she included as exhibits with her motion for reconsideration and/or her writ petition, but that she did not include in the clerk's transcript for purposes of this appeal. She did, however, include in the appellate record the notice of lodgment and lodgment of exhibits filed with her motion for reconsideration. We will take judicial notice, on our own motion, of those documents referenced in that notice of lodgment, copies of most of which were filed with this court along with Mother's writ petition. (See Evid. Code, § 452, subd. (d) [allowing judicial notice of court records]; *Martin v. Inland Empire Utilities Agency* (2011) 198 Cal.App.4th 611, 621, fn. 5 [taking judicial notice of trial court ruling on attorney fee motion that defendants failed to designate for inclusion in appellate record].)

that supposedly warranted the hardship deductions. (Cf. Hogoboom and King, Cal. Practice Guide: Family Law (The Rutter Group 2011) ¶ 6.239.1, p. 6-101 [party seeking hardship deduction should be prepared to make an offer of proof regarding the expenses resulting in extreme financial hardship].) It would appear, then, that the trial court did not have before it information Mother now claims was critical to the hardship determination. Having failed to provide that information to the trial court in a timely manner, Mother cannot now complain that the court abused its discretion in denying her request for hardship deductions.

3. Reimbursement of costs

Mother asserts that she cannot afford the monthly payment she is required to make to reimburse Father for half the fees he paid to Dr. Love and to Daughter's attorney, Robert Lesh, and she asks us to order that amount reduced to \$50 per month. These arguments, unsupported in the record, fail to demonstrate any abuse of discretion by the trial court and, accordingly, we affirm the court's rulings.

With respect to her first argument, Mother does not challenge the reimbursement order itself—just the rate of reimbursement. The trial court permitted Mother to reimburse Father for 50 percent of the fees of Dr. Love and attorney Lesh over time, with a modest monthly payment, to make it more affordable. Responding to Mother's counsel's objection that she could not afford to reimburse these costs, the court observed that Mother had not provided sufficient information for it to determine she was unable to pay. Mother's attempt to now proffer such financial information comes too late.

Mother makes virtually no argument in support of her second contention—that the court erred in ordering her to reimburse Father for 100 percent of the cost of supervised visitation. Other than insisting that expense was voluntarily undertaken by Father, Mother cites no authority indicating that the trial court exceeded its discretion or erred as a matter of law in reallocating that expense to her, based on its conclusion that Father's decision to continue supervision was a reasonable one in light of Mother's conduct. ""A judgment or order of the lower court is *presumed correct.*"" (*Null v. City of Los Angeles* (1988) 206 Cal.App.3d 1528, 1532.) Accordingly, the appellant ""must affirmatively show error by an adequate record."" (*Ibid.*) Additionally, the appellant must provide citations to legal authority whenever possible and present argument in support of her claim of error or a court may deem the claim waived because we are "not bound to develop appellant[']s arguments for [her]." (*In re Marriage of Falcone & Fyke, supra*, 164 Cal.App.4th at p. 830; see also Cal. Rules of Court, rule 8.204(a)(1)(B) [each point in a brief must be supported by "argument and, if possible, by citation of authority"].) Mother provided neither sufficient argument nor relevant authority on this issue, so we deem it waived.

4. *Sanctions*

Mother further contends that the \$10,000 award in sanctions was not authorized by Family Code section 271, and she cannot afford it anyway. "A sanction order under. . . section 271 is reviewed under the abuse of discretion standard. "[T]he 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."" (*In re*

Marriage of Feldman (2007) 153 Cal.App.4th 1470, 1478, quoting *In re Marriage of Burgard* (1999) 72 Cal.App.4th 74, 82.) "In reviewing such an award, we must indulge all reasonable inferences to uphold the court's order." (*In re Marriage of Abrams* (2003) 105 Cal.App.4th 979, 991, disapproved on other grounds in *In re Marriage of LaMusga*, *supra*, 32 Cal.4th at p. 1097.)

Family Code section 271 permits the award of attorney fees and costs based "on the extent to which the conduct of each party or attorney furthers or frustrates the policy of the law to promote more settlement of litigation and, where possible, to reduce the cost of litigation by encouraging cooperation between the parties and attorneys." (Fam. Code, § 271, subd. (a).) The thrust of Mother's contention regarding the sanction award is that the conduct the court identified as warranting the award did not frustrate these policies, cause delay or otherwise rise to the level of sanctionable conduct. The trial court explicitly found otherwise, observing that Mother "seemed to have a 'scorched earth' approach to things." The court specifically mentioned the incident of placing a GPS tracking device in Daughter's toy, of immediately moving for a stay of the move-away order, and Mother's overreaction when Father made inquiries at Daughter's school in preparation for a possible move-away. The court noted that Mother seemed to take an all or nothing, "win[] or los[e]," approach to the case, and with that in her mind the focus was "on her and not on the best interest of the child." The court concluded that "some component" of the litigation was "driven by that behavior and that attitude." The conduct summarized above in connection with our review of the change of custody and move-away order provides a sufficient factual basis for determining that Mother's behavior to

some extent exacerbated conflicts, unnecessarily prolonged the proceedings, and increased expenditures—and, thus, that Family Code section 271's prerequisites were met.

The trial court was cognizant of the statutory constraint that such orders not impose "an unreasonable financial burden on the party against whom the sanction" is issued. (Fam. Code, § 271, subd. (a).) The amount of sanctions awarded—\$10,000—is a measured and reasonable sum in view of the record evidence and, indeed, is a fraction of what Father initially had requested. The court denied Father's request for the fees incurred during the initial custody proceeding in 2008. In addition, it was disinclined to award fees that likely would have been incurred in the normal course of a contested change of custody proceeding not marked by the more extreme conduct Mother displayed. Finally, to make the sanctions more affordable, the court ordered that they be paid at a rate of \$250 per month, and then only after Mother had satisfied her obligation to reimburse Father for her share of the cost of Dr. Love's and attorney Lesh's services.

Mother's complaint that she cannot afford to pay this sanction fails for the same reason this argument has not succeeded on her other challenges to the court's judgment: Mother had the opportunity to provide the trial court with a more detailed picture of her financial situation at the hearing, but she did not do so. Her attempt to supplement that showing later via the motion for reconsideration simply came too late.

D. The Trial Court Did Not Abuse Its Discretion in Denying the Motion for Reconsideration

Mother contends the trial court erred in denying her motion for reconsideration of the judgment. She maintains that "about 95 [percent] of the facts and evidences [*sic*]" she

presented with her motion was "new and unknown to the Court and all relevant."

Mother's assertions have no merit.

The California Legislature recently revised Code of Civil Procedure section 1008 to expressly provide that a motion for reconsideration pursuant to subdivision (a) of that section "is not separately appealable." (Code Civ. Proc., § 1008, subd. (g).) The Legislature further provided, however, that "if the order that was the subject of a motion for reconsideration is appealable, the denial of the motion for reconsideration is reviewable as part of an appeal from that order." (Code Civ. Proc., § 1008, subd. (g).) We review the trial court's ruling on the motion for abuse of discretion. (*New York Times Co. v. Superior Court* (2005) 135 Cal.App.4th 206, 212.)

The grounds for granting a motion for reconsideration are specified in the statute. (Code Civ. Proc., § 1008, subd. (a).) The movant is required to "state by affidavit . . . what new or different facts, circumstances, or law are claimed." (Code Civ. Proc., § 1008, subd. (a).) The trial court here expressly found that the evidence Mother presented in her motion was not "new" within the meaning of the statute and that Mother failed to show that the court's order was "clearly erroneous." There was no abuse of discretion in this ruling.

Mother's motion for reconsideration largely reargued her positions taken during the custody and support hearings. For the most part, her "new" evidence—including evidence of her new husband's earnings, a more detailed picture of the family's expenses, a transcription of the October 2010 phone call from Father to Daughter's school, Daughter's progress reports at her old school, and a 2005 psychological evaluation of

Mother—was all known to Mother and *capable* of being presented at the time of trial. Mother offers no reason why this evidence was not submitted in a more timely fashion. (*In re Marriage of Herr* (2009) 174 Cal.App.4th 1463, 1468 [facts of which movant was aware at time of original ruling are not "new or different" within meaning of statute]; *Mink v. Superior Court* (1992) 2 Cal.App.4th 1338, 1342 [party seeking reconsideration "must provide . . . a satisfactory explanation for the failure to produce [the "new"] evidence at an earlier time."].)

Mother also submitted with her motion for reconsideration a one-sentence statement of the results of an investigation of a CPS worker who apparently evaluated the latest allegations of abuse against Father. Mother explains in her brief that she had filed a complaint with CPS against this worker, alleging, among other things, that the worker was biased against her, had failed to interview her and her husband, and had been unprofessional. The CPS decision (which was not included in the clerk's transcript on appeal, but which was an exhibit to Mother's writ petition) was issued the day after the custody trial and states only that "[t]he required policies, procedures and/or practices have not been appropriately followed, and this complaint was determined to be *partially* founded." (Italics added.) In her motion for reconsideration, Mother broadly asserted that this finding "places the CPS testimony and [2010 abuse allegation] investigation result of 'unfounded' into question."

Standing alone, this document provides no information on the basis of which the trial court could have determined its significance to the custody order. The document offers only a one-sentence conclusion. It does not detail the manner in which the CPS

worker in question—who did not testify at trial—failed to follow appropriate procedures, nor does it explain precisely which of Mother's allegations against the worker were deemed "founded" and which were not. Nothing in the appellate record (or even in Mother's brief) provides this missing information. Although Mother insists that this document undermines the CPS's finding that the latest abuse allegations against Father were unfounded, nothing on its face would have enabled the trial court to reach that conclusion. Finally, the CPS's conclusion that the abuse allegations against Father were unfounded was only one factor among many that compelled the recommendations of Dr. Love and Lang, and that supported the change in custody ordered by the trial court. In these circumstances, we cannot conclude that the trial court abused its discretion in denying Mother's motion to reconsider the custody order in light of this document.

Mother also told the trial court in her motion for reconsideration that there was a pending "perjury" investigation against Chris Fales, Mother's former husband, which purportedly undermines Mr. Fales's credibility as a witness. Mr. Fales was interviewed by Dr. Love and he testified at trial, but the trial court never referenced Mr. Fales's testimony in its oral findings or in the written judgment. The documents Mother included with her motion for reconsideration, purporting to substantiate her contention that Mr. Fales had lied to Dr. Love, were not included as exhibits with her writ petition and also were not included with the clerk's transcript on this appeal. A different exhibit was included with the writ petition, namely a January 2011 e-mail exchange with the San Diego County District Attorney's Office. For purposes of this discussion, we take

judicial notice of the filing of this exhibit. (See discussion, *ante*, at fn. 6.) This evidence, however, does not support Mother's contention.

First, the e-mail exchange is incomplete. It references a "complaint form," but no such complaint is provided in the record. Nothing on the face of this one-page printout of the e-mails informs the reader of the substance of Mother's allegations against Mr. Fales. Second, nothing in the document ties those allegations specifically to the subject matter of Mr. Fales's testimony at the custody trial or his comments to CPS or Dr. Love.⁷ And finally, nothing suggests there is an active, pending investigation against Mr. Fales (or was, when Mother filed her opening brief on appeal), or that her allegations have been deemed to have any merit. The e-mail exchange proffered by Mother merely shows that she forwarded a complaint to the district attorney's office about Mr. Fales. Without more, it does not constitute evidence of anything pertinent to the custody order, let alone evidence sufficient to warrant reconsideration of the trial court's judgment.

Finally, Mother included with her motion for reconsideration a number of reports regarding her postjudgment visitations with Daughter. These reports may be relevant to a

⁷ In her motion for reconsideration—but not in her appellate brief—Mother isolated one of Mr. Fales's statements cited in Dr. Love's report, commenting on Mother's parents. Mother submitted certain evidence with her motion to prove that Mr. Fales's comment was "an outright lie." As mentioned above, however, none of this evidence was included in the appellate record or in Mother's writ petition. We therefore cannot determine if it was "new" within the meaning of the statute or if it had any bearing at all on Mr. Fales's testimony in court or his comments to Dr. Love. Based on Mother's assertions in her motion for reconsideration, however, it would appear this evidence concerned at most only one minor background statement by Mr. Fales, and was therefore likely immaterial to any issue decided by the trial court.

future effort by Mother to modify the custodial arrangements, but they do not bear on the issues in this appeal.

For the foregoing reasons, the trial court did not abuse its discretion in denying Mother's motion for reconsideration.

E. Mother's Argument That the Trial Judge Should Be Disqualified from Further Proceedings in This Case Because of Bias Is Without Merit

Mother asks us to disqualify the trial judge from presiding over this case in the future because he has demonstrated bias against her. We decline to do so.

"When a party seeks to disqualify a judge based on actual bias, the application 'shall be presented at the earliest practicable opportunity after discovery of the facts constituting the ground for disqualification.'" (*Alhusainy v. Superior Court* (2006) 143 Cal.App.4th 385, 394, citing Code Civ. Proc., § 170.3, subd. (c)(1).) Mother's claim of bias is based primarily on comments made by the trial court at the December 16, 2010 custody trial, but also on certain comments made by the court thereafter at the December 22, 2010 hearing on Mother's motion to stay the move-away order, and at the January 12, 2011 hearing on the support, costs and sanctions issues. Arguably, if Mother was concerned about the court's impartiality, the "earliest practicable opportunity" to raise that issue was at the December 22 hearing or before the January 12 hearing on costs.⁸ Nevertheless, we have the authority to "consider whether in the interests of justice [we] should direct that further proceedings be heard before a trial judge other than the judge

⁸ Mother initially raised the disqualification issue in a petition for writ of supersedeas filed on March 14, 2012. Her petition was summarily denied on March 22, 2012.

whose judgment or order" is under review. (Code Civ. Proc., § 170.1, subd. (c); see *Alhusainy, supra*, 143 Cal.App.4th at p. 394.)

We conclude there is no basis for exercising that authority here. First, we have found no legal error or abuse of discretion in any of the trial court's rulings that Mother has challenged on appeal. Second, Mother has taken some of the trial court's comments out of context. Specifically, she suggests the court was being derogatory towards her and her claims when it used the term "crazy" in its colloquy with Mother's counsel during closing arguments at the December 16 trial. It is evident from the transcript that the court was only questioning the validity of her counsel's argument that the court could not order supervised visits with Daughter if it found that Mother acted in the subjectively good faith belief that Father actually posed a danger to Daughter, or put another way, that supervision could only be ordered if the court concluded that Mother knowingly made false allegations of abuse. Viewing the court's remarks in context, the court was engaging in a dialogue with counsel and was neither commenting on Mother's mental health nor directing the term "crazy" at her personally.

Third, the other comments made by the trial court and singled out by Mother were, in our opinion, justified by the record of Mother's conduct and the evidence before the court. For example, the trial court noted that, although Mother was making claims of inability to pay costs, she had failed to present any evidence of her spouse's income, and under the circumstances it appeared to the court as if she made that omission deliberately. It was Mother's burden to demonstrate lack of ability to pay. Her family income was a fact known to her—as shown by her submission of that information immediately after the

judgment with her motion to reconsider—and her failure to provide that information in a timely manner was not explained. The trial court's observation, made in passing, was not unwarranted under these circumstances.

Mother also complains about the court's observations, based on the evidence at trial, that Mother consistently viewed Father "in the worse possible light" and appeared focused principally on herself and not her child. Again, the evidence bears this out, as explained, *ante*. (See discussion, *ante*, pt. III.B.) Additionally, Mother contends the trial court "denied" her attorney "the right to speak on [her] behalf with closing arguments" at trial. In fact, Mother's counsel inappropriately suggested that the trial court was merely "rubber-stamping" Dr. Love's recommendations and, after he apologized for doing so, chose to limit his remarks to visitation and matters other than the move-away itself. The record shows that Mother's counsel was given ample opportunity to make his closing arguments on behalf of Mother.

At the December 22, 2010 hearing on Mother's requested stay, Mother's new counsel (apparently retained after the custody trial) objected during the brief exchange with the trial court that he had "no opportunity to speak," and the court responded: "You had more opportunity to be heard than you deserve." We were not provided with the moving papers as part of the appellate record, and it is therefore difficult to know all the arguments Mother asserted in support of her request for a stay. (See, e.g., *Bianco v. California Highway Patrol*, *supra*, 24 Cal.App.4th at p. 1125 [appellant must include in the appellate record those portions of the trial court record relevant to the issues on appeal].) However, we cannot conclude, based on the limited information Mother has

provided, that this exchange with the trial court demonstrates that the trial judge denied Mother a fair hearing on this issue.

The record indicates that almost immediately after the trial, Daughter moved up to the Bay Area with Father. The trial court's decision to deny the stay was based on its assessment that if it granted Mother the relief she sought and ordered Daughter to be returned to San Diego, and this Court thereafter affirmed the judgment (an outcome the trial court deemed likely), then Daughter would have to undergo two more moves. In other words, granting the requested relief would have subjected Daughter to even more displacement than had already occurred. The court's decision to deny the stay therefore appears reasonable under the circumstances. Contrary to Mother's argument, we perceive nothing "extreme" in this outcome, nor do we perceive any bias underlying the court's decision to deny the stay.

In short, the record does not support Mother's contention that the trial court was biased against her. Her request to disqualify the trial judge is, accordingly, denied.

IV. DISPOSITION

The judgment is affirmed. Father is awarded costs on appeal. Father's request for attorney fees on appeal is denied.

NARES, Acting P. J.

WE CONCUR:

McDONALD, J.

McINTYRE, J.