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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

T.L.,

Respondent,

v.

T.V.,

Appellant.

D060509

(Super. Ct. No. D512372)

APPEAL from a judgment of the Superior Court of San Diego County, Maureen F. Hallahan, Judge. Affirmed.

T.V. (Father) appeals a judgment deciding child custody, visitation and other issues involving his child with T.L. (Mother). On appeal, Father apparently argues the trial court erred by adopting the custody and visitation recommendations set forth in a Family Court Services (FCS) report, coercing him into waiving his right to make a closing argument at the end of the three-day trial, and taking other improper actions.

FACTUAL AND PROCEDURAL BACKGROUND

Following Mother's petition to determine parentage of K.L. (Child), the trial court apparently issued a January 27, 2010, order finding Father to be Child's father and Mother to be Child's mother.¹ That order apparently left for future determination the issues of child support, child custody and visitation.

On August 8, 2011, following a three-day trial (held on March 25, March 28, and July 14, 2011), the trial court entered a judgment (Judgment) deciding the remaining issues of child support, child custody and visitation. The Judgment adopted, as modified by the court, the recommendations set forth in a FCS report dated February 9, 2011.² The Judgment awarded legal custody to Mother and ordered Child's primary residence be with her. The Judgment awarded Father supervised visits with Child up to six hours per week and 15-minute telephone calls with Child three days per week. The Judgment also ordered Father to pay Mother \$275 per month for child support, as well as child support arrears of \$1,375. Father timely filed a notice of appeal.

¹ The record on appeal does not contain a copy of either Mother's paternity petition or the trial court's January 27, 2010, order.

² The record on appeal does not contain a copy of that FCS report.

DISCUSSION

I

Presumption of Correctness and Appellant's Burden on Appeal

A trial court's judgment or order is presumed to be correct. In *Denham v. Superior Court* (1970) 2 Cal.3d 557, the court stated:

"[I]t is settled that: 'A judgment or order of the lower court is *presumed correct*. All intendments and presumptions are indulged to support it on matters as to which the record is silent, and error must be affirmatively shown [by the appellant]. This is not only a general principle of appellate practice but an ingredient of the constitutional doctrine of reversible error.' " (*Id.* at p. 564.)

"The burden of affirmatively demonstrating error is on the appellant." (*Fundamental Investment etc. Realty Fund v. Gradow* (1994) 28 Cal.App.4th 966, 971.) "An appellant must provide an argument and legal authority to support his contentions. This burden requires more than a mere assertion that the judgment is wrong. 'Issues do not have a life of their own: If they are not raised or supported by argument or citation to authority, [they are] . . . waived.' [Citation.] It is not our place to construct theories or arguments to undermine the judgment and defeat the presumption of correctness. When an appellant fails to raise a point, or asserts it but fails to support it with reasoned argument and citations to authority, we treat the point as waived." (*Benach v. County of Los Angeles* (2007) 149 Cal.App.4th 836, 852.)

"Where a point is merely asserted by [appellant] without any [substantive] argument of or authority for its proposition, it is deemed to be without foundation and requires no discussion." (*People v. Ham* (1970) 7 Cal.App.3d 768, 783, disapproved on

another ground in *People v. Compton* (1971) 6 Cal.3d 55, 60, fn. 3.) "Issues do not have a life of their own: if they are not raised or supported by [substantive] argument or citation to authority, we consider the issues waived." (*Jones v. Superior Court* (1994) 26 Cal.App.4th 92, 99; see also *Landry v. Berryessa Union School Dist.* (1995) 39 Cal.App.4th 691, 699-700 ["[w]hen an issue is unsupported by pertinent or cognizable legal argument it may be deemed abandoned and discussion by the reviewing court is unnecessary"]; *Ochoa v. Pacific Gas & Electric Co.* (1998) 61 Cal.App.4th 1480, 1488, fn. 3 [contention was deemed waived because "[a]ppellant did not formulate a coherent legal argument nor did she cite any supporting authority"]; *Colores v. Board of Trustees* (2003) 105 Cal.App.4th 1293, 1301, fn. 2 ["[t]he dearth of true legal analysis in her appellate briefs amounts to a waiver of the [contention] and we treat it as such"]; *Bayside Auto & Truck Sales, Inc. v. Department of Transportation* (1993) 21 Cal.App.4th 561, 571.) Appellants acting in propria persona are held to the same standards as those represented by counsel. (See, e.g., *City of Los Angeles v. Glair* (2007) 153 Cal.App.4th 813, 819.)

II

Waiver of Appellate Contentions

Mother asserts, and we agree, that Father has waived his appellate contentions by not presenting any coherent or comprehensible, substantive legal arguments supported by citations to the record and legal authorities. He has not presented any coherent, substantive arguments or analyses showing the trial court erred by adopting the child custody and visitation recommendations set forth in the FCS report dated February 9,

2011. He likewise has not presented any coherent, substantive arguments or analyses showing the trial court improperly coerced him into waiving his right to make a closing argument at the end of the trial. To the extent Father makes other contentions on appeal, his briefing is so fragmented that we cannot discern their substance. Accordingly, we need not discuss the merits of each contention and conclude Father has waived his appellate contentions. (*Benach v. County of Los Angeles*, *supra*, 149 Cal.App.4th at p. 852; *People v. Ham*, *supra*, 7 Cal.App.3d at p. 783; *Jones v. Superior Court*, *supra*, 26 Cal.App.4th at p. 99; *Landry v. Berryessa Union School Dist.*, *supra*, 39 Cal.App.4th at pp. 699-700; *Ochoa v. Pacific Gas & Electric Co.*, *supra*, 61 Cal.App.4th at p. 1488, fn. 3; *Colores v. Board of Trustees*, *supra*, 105 Cal.App.4th at p. 1301, fn. 2; *Bayside Auto & Truck Sales, Inc. v. Department of Transportation*, *supra*, 21 Cal.App.4th at p. 571; *Berger v. Godden* (1985) 163 Cal.App.3d 1113, 1119-1120; cf. *In re Marriage of Green* (1989) 213 Cal.App.3d 14, 29 ["[f]rom the point of view of grammar and syntax as well as logic, [appellant's] briefs are almost impenetrable".])

We further note that Father's opening brief does not contain any summary of significant facts and its assertions of fact are supported by very few citations to the record on appeal, violating California Rules of Court, rule 8.204(a)(2)(C). (All rule references are to the California Rules of Court.) Statements of fact not part of, or supported by citations to, the record on appeal are improper and cannot be considered on appeal. (Rule 8.204(a)(2)(C); *Pulver v. Avco Financial Services* (1986) 182 Cal.App.3d 622, 632; *Kendall v. Barker* (1988) 197 Cal.App.3d 619, 625.) We disregard any statements of fact

set forth in Father's brief that are outside of the record on appeal. (*Pulver*, at p. 632; *Kendall*, at p. 625; *Gotschall v. Daley* (2002) 96 Cal.App.4th 479, 481, fn. 1.)

Furthermore, to the extent his assertions of fact and procedure ostensibly refer to matters within the record on appeal, his brief does *not* contain adequate citations to the appellate record in violation of rule 8.204(a)(1)(C). Like in *Nwosu v. Uba* (2004) 122 Cal.App.4th 1229, at page 1246, Father's briefs are, in large part, "devoid of citations to the [record on appeal] and are thus in dramatic noncompliance with appellate procedures." "It is the duty of a party to support the arguments in its briefs by appropriate reference to the record, which includes providing exact page citations." (*Bernard v. Hartford Fire Ins. Co.* (1991) 226 Cal.App.3d 1203, 1205.) "If a party fails to support an argument with the necessary citations to the record, that portion of the brief may be stricken and the argument deemed to have been waived." (*Duarte v. Chino Community Hospital* (1999) 72 Cal.App.4th 849, 856; see also *City of Lincoln v. Barringer* (2002) 102 Cal.App.4th 1211, 1239; *Guthrey v. State of California* (1998) 63 Cal.App.4th 1108, 1115.) To the extent Father's contentions do not contain adequate supporting citations to the record on appeal, we consider those contentions to have been waived. (*Nwosu*, at p. 1247; *City of Lincoln*, at p. 1239; *Duarte*, at p. 856; *Guthrey*, at p. 1115.) Finally, we again note the fact that Father filed this appeal in propria persona does not exempt him from compliance with established appellate rules. (*Nwosu*, at pp. 1246-1247 [in propria persona litigants must follow the same procedural rules as attorneys]; *City of Los Angeles v. Glair, supra*, 153 Cal.App.4th at p. 819 [same].)

In any event, assuming *arguendo* Father has not waived his appellate contentions, we conclude his appellate arguments are insufficiently understandable, specific and/or nonconclusory and therefore he has *not* carried his burden on appeal to present persuasive substantive argument and analysis showing the trial court prejudicially erred. (*Denham v. Superior Court, supra*, 2 Cal.3d at p. 564; *Fundamental Investment etc. Realty Fund v. Gradow, supra*, 28 Cal.App.4th at p. 971; *Paterno v. State of California* (1999) 74 Cal.App.4th 68, 105 [conclusory claims did not persuade appellate court].)

DISPOSITION

The judgment is affirmed. Mother is entitled to costs on appeal.

McDONALD, J.

WE CONCUR:

NARES, Acting P. J.

O'ROURKE, J.