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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT

In re the Marriage of JOE EUGENE HAMRICK
and KIMBERLY LYNN HAMRICK.

JOE EUGENE HAMRICK,

Appellant,

v.

KIMBERLY LYNN HAMRICK,

Respondent.

F062903

(Stanislaus Sup. Ct. No. 401976)

OPINION

APPEAL from a judgment of the Superior Court of Stanislaus County. Jack M. Jacobson, Judge.

Law Offices of Daniel L. Mitchell and Daniel L. Mitchell, for Appellant.

No appearance on behalf of Kimberly Lynn Hamrick, Respondent.

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INTRODUCTION

In a marital dissolution action, father challenges a finding under Family Code, section 3427,¹ that California is an inconvenient forum for child custody issues. For the reasons stated below, we reverse and remand for further proceedings.

STATEMENT OF THE CASE

On November 7, 2006, appellant Joe Eugene Hamrick petitioned for dissolution of marriage from respondent Kimberley Lynn (McFadyen) Hamrick in Stanislaus Superior Court. Appellant alleged that he and respondent had been married for 11 years 6 months and had two children, ages 10 and 3, respectively.

On April 11, 2007, the court filed findings and an order after hearing granting the parties joint legal and shared physical custody. The findings and order designated respondent as the primary caretaker of the children, set forth detailed orders regarding custody and visitation, and allowed respondent to relocate the minor children to the state of Oregon.

On or about May 31, 2007, appellant filed an order to show cause requesting that child custody and visitation orders remain “status quo” pending a July 30, 2007, trial date.

On July 30, 2007, the court conducted the contested long cause hearing and took the matter under submission. On August 7, 2007, the court filed a tentative decision finding “the best interest of the children will be served by allowing the children to reside with respondent in Oregon.”

On April 1, 2008, the court conducted a trial on reserved issues, including “division of community assets and debts, child support, spousal support, and attorney’s

¹ All further statutory references are to the Family Code unless otherwise stated.

fees and costs.” On May 28, 2008, the court filed a tentative decision addressing these issues.

On February 26, 2009, July 9, 2009, and April 19, 2010, the court conducted additional hearings regarding custody and visitation. After the April 19, 2010, hearing, the court filed a tentative decision denying appellant’s request for modification of child custody. The court found that appellant “presented evidence that there has been a significant change in circumstances since the Court’s decision in 2007 allowing mother to move with the children in Oregon.” The court nevertheless found the children’s best interest was served by maintaining mother as the children’s primary caretaker.

On July 27, 2010, respondent filed an order to show cause (OSC) for modification of child custody and visitation orders, injunctive relief, and an ex parte order regarding their 10-year-old son’s mandatory summer school. On August 10, 2010, appellant filed responsive pleadings.

On September 3, 2010, appellant filed an order to show cause for contempt, alleging respondent systematically ignored and failed to follow court orders.

On September 7, 2010, appellant filed a supplemental declaration to request a change in the custodial parent.

On December 6, 21, and 27, 2010, January 11 and 21, 2011, and September 9 and 29, 2012, appellant filed additional orders to show cause for contempt/affidavits for contempt.

On February 24, 2011, appellant filed another order to show cause for modification of child custody and visitation. On March 21, 2011, respondent filed a responsive declaration.

On March 22, 2011, the court conducted a contested hearing on the February 24, 2011, OSC, filed findings and an order after hearing, and continued the matter to March

28, 2011, for a “long cause hearing on contempts.” On March 29, 2011, the court amended its March 22 order to continue the “contempt hearing.”

On July 11, 2011, the court conducted a contested hearing and filed findings and an order, stating in relevant part: “41. Pursuant to Family Code section 3427, California is now an inconvenient forum for child custody issues. All child custody proceedings are stayed. The Mother, within 45 days of this order, will register this order with the trial court in Albany, Oregon.”

On July 15, 2011, appellant filed a timely notice of appeal from the July 11, 2011, findings and order after hearing.²

² An appeal may be taken from an order made appealable by the provisions of the Family Code. (Code Civ. Proc., § 904.1, subd. (a)(10).) Section 3554 states: “An appeal may be taken from an order or judgment under this division [governing spousal and child support] as in other civil actions.” The Family Code does not contain an express provision governing appeals of child custody orders, except for those enforcing an order for the return of a child under the Hague Convention (§ 3454). Thus, the right to appeal a child custody determination is generally limited to final judgments and—as here—an order made after final judgment. (*Enrique M. v. Angelina V.* (2004) 121 Cal.App.4th 1371, 1377.)

STATEMENT OF FACTS³

On November 7, 2006, appellant initiated proceedings to dissolve his marriage to respondent. The couple had been married for 11 and one-half years and had two sons, 10 and three years of age. Respondent had removed herself and their sons to the state of Oregon on September 27, 2006. Two days after appellant filed his petition for dissolution of marriage, he filed an order to show cause for temporary child custody and visitation. On November 30, 2006, the parties commenced mediation and the matter was referred out for a move-away evaluation. Pending this evaluation, the superior court ordered respondent to return with the children to Stanislaus County.

In April 2007, Steven R. Carmichael, Ph.D., a licensed psychologist and court-appointed child custody evaluator, completed a court-ordered child custody/move away evaluation (§§ 3110, et seq.). Dr. Carmichael met with the parents separately on multiple occasions and jointly on one occasion. He reviewed relevant documents, interviewed their friends and family members, and had telephone conferences with health care professionals and educators who were familiar with the family's situation. Dr.

³ Although each respondent must file and serve a respondent's brief, Kimberly Hamrick has failed to do so in this case. (Cal. Rules of Court, rule 8.200(a)(2).) Where the respondent fails to file a brief, the court will decide the appeal solely on the record, the opening brief, and any oral argument by appellant. (*Conservatorship of Pamela J.* (2005) 133 Cal.App.4th 807, 815-816.) Moreover, we will address the appellant's contentions without setting forth the traditional statement of respondent's position on the issues. (*D.H. Williams Construction, Inc. v. Clovis Unified School Dist.* (2007) 146 Cal.App.4th 757, 763 [opn. of Vartabedian, J.]) Some courts have treated the failure to file a respondent's brief as, in effect, a consent to a reversal. However, the better rule is for an appellate court to examine the record on the basis of appellant's brief and to reverse only if prejudicial error is found. (*In re Bryce C.* (1995) 12 Cal.4th 226, 232-233.) "Trial court error is prejudicial, warranting reversal, if in the absence of the error, the appealing party would have probably obtained a more favorable result." (*Greenspan v. LADT, LLC* (2010) 191 Cal.App.4th 486, 526-527.) A "probability" in this context means a reasonable chance, more than an abstract possibility. (*Cellphone Termination Fee Cases* (2009) 180 Cal.App.4th 1110, 1126.)

Carmichael noted that respondent had a history of panic disorder without agoraphobia, major depression and anxiety, and a history of post-traumatic stress disorder. Dr. Carmichael acknowledged that “such diagnoses do not insinuate that a person cannot effectively function nor that they are incapable of providing for the care of children.” In the “summary and conclusions” portion of his report, Dr. Carmichael stated: “Her level of emotionality overrides her more rational thinking, and when the issues are related to the purported protection and safety of her children, she loses any sense of objectivity. When she is in such a heightened state of protection, she fails to use good judgment in her public expressions In his tentative decision filed August 7, 2007, the court acknowledged that respondent had “some mental health issues that required her to be medicated and impacted her ability to parent at times.” Citing the evidence of Dr. Carmichael and respondent’s licensed marriage and family therapist, the court noted that “neither of them believes that these problems interfere with her ability to properly care [for] and supervise the children.”

In a tentative decision filed May 10, 2010, the court observed: “Father has conflicts with mother regarding the exercise of his visits and the transportation of the children for these visits. In January o[f] this year, mother stated that she could not drive to Weed, CA for the exchange. Therefore, father had to drive 600 miles from his residence to mother’s residence to see his children. He spent the weekend with the children in a motel room in Oregon. He feels that this is an inconvenient arrangement and would rather have the children in his home where they are more comfortable and have more room to play.”

In that same tentative decision, the court noted that respondent had “ongoing medical conditions,” including “short term memory loss, tremors, fibromyalgia, depression, and chronic fatigue syndrome.” The court further noted that she was taking several prescription medications, including Vicodin. The court also noted that the

parties' 10-year-old son, "completely bombed in school" in the six weeks preceding his tentative decision and that respondent recognized this fact. According to the court, "She testified that [her 10-year-old son] has gone through some stressful events, including the death of their dog, the problems in her current marriage, and the stress of the ongoing custody dispute." In denying a modification of custody requested by appellant, the court observed: "Both parents would benefit from additional counseling to improve their parenting skills and their ability to co-parent. The litigation over the children needs to stop and the parents need to focus their attention and financial resources on the children's emotional and physical well-being."

On June 14, 2010, the court filed an order stating that the Stanislaus County Superior Court "retains exclusive continuing jurisdiction over the matter so long as one party resides in California and has a significant connection with the children.... Petitioner [appellant father] continues to reside in California and exercises significant visitation with the children in California. Accordingly, the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA) precludes Oregon from assuming jurisdiction over custody and visitation disputes in this matter."

On the afternoon of July 11, 2011, after conducting a contested hearing, the court found respondent not guilty of six contempts and acquitted her of three remaining contempts. After addressing the nine alleged contempts, the court brought up the topic of inconvenient forum and concluded, "Oregon is a more convenient forum and, therefore, for any future custody or visitation matters, it should be the State of Oregon that should hear the matter."

DISCUSSION

THE MATTER SHOULD BE REMANDED FOR FURTHER PROCEEDINGS TO DETERMINE WHETHER CALIFORNIA IS AN INCONVENIENT FORUM FOR CHILD CUSTODY ISSUES UNDER FAMILY CODE SECTION 3427.⁴

Appellant contends the trial court prejudicially abused its discretion in determining that California was an inconvenient forum for child custody issues and further contends that substantial evidence did not support the ruling of the trial court.

A. Proceedings of July 11, 2011

After ruling on the nine orders to show cause for contempt, the court addressed the issue of inconvenient forum, stating: “I had deferred that and I’m going to make a ruling now on that. [T]he parties had an opportunity pursuant to Family Code Section 3427, and that was back in September of last year [2010], to submit pros and cons for the Court’s consideration of whether or not California is still a convenient forum for issues of custody and visitation.” The court went on to explain, “So the Court has to consider certain factors in deciding whether or not California is now an inconvenient forum and whether Oregon might be a more convenient forum.” The court determined that courts of the state of Oregon should hear future custody or visitation matters and gave its reasons why Oregon was a more convenient forum.

The court cited as a significant factor the length of time the children have resided outside of the state: “[A]lthough they were out briefly in September of ’06, they came back for a period of time since basically June of ’07 for ... four years now, their residence has been in the State of Oregon and they’ve been going to school in the State of Oregon.”

⁴ Appellant presents the same issue in two different ways. First, he contends the trial court prejudicially abused its discretion in determining that California was an inconvenient forum for child custody issues under section 3427. Second, he contends that insufficient evidence supported a change in jurisdiction to the state of Oregon. In the interests of judicial economy, we will address appellant’s contentions as a single issue.

The court also cited the distance between the two courts—the court situated in Modesto and the court situated in Albany, Oregon. The court noted an Internet search that revealed a 590-mile distance “or a ten-hour drive using one route.” The court considered the distance “a significant difference” for respondent because “90 percent of the Order to Show Causes having to do with custody and visitation have been filed by Mr. Hamrick, forcing [respondent] to participate in California.”

The court cited as “another very significant factor, the degree of financial hardship to the parties ... litigating in one for[u]m as opposed to the other forum.” The court observed that respondent had transportation problems and had limited funds and resources. In contrast, appellant had been able to drive and to obtain financial assistance throughout the case to afford counsel to litigate his various motions and orders to show cause. The court added, “[I]f this is in Oregon and he [appellant] still needs to go forward in Oregon, he’ll have the resources; he’ll be able to find a way to get up there. I mean he’s gone up there and he’s offered to go pick up the children on a number of occasions when Mother says: I cannot meet you in Weed [the agreed exchange point]. And he’s done that.”

The court also acknowledged that the nature and location of evidence required to resolve pending litigation tended to favor Oregon as the forum state. The court explained: “... Mr. Hamrick has made it a point that the educational system in Oregon is inferior to California. One of the problems Mother has had in these cases is that she can’t bring people ... can’t subpoena them, can’t subpoena records from the State of Oregon necessarily to come to California and to provide that information.” The court pointed out that Oregon had been the residence of the children for the preceding four years and “the most relevant evidence these days having to do with the children clearly is in the State of Oregon.”

Although the court acknowledged that he had the most familiarity with the parties' case, he maintained an Oregon judge "would be much more familiar with the school system up there than I would." He ultimately ruled:

"So based upon my own motion that I had made and after giving the parties an opportunity to argue this back in September, although I deferred it, I've come to ... the inescapable conclusion ... that I don't think this litigation will be forever over on the issue of the child custody and visitation, that pursuant to Family Code Section 3427, the Court determines that California is an inconvenient forum and that Oregon is the most convenient forum for any future matters having to do with child custody.

"So one of the provisions of the section [3427] says that the Court will stay this proceeding and that ... I probably should be directing one of the parties, probably [respondent], to promptly register with the court whatever that current custody order is in the State of Oregon so any litigation that can be filed can be initiated to modify this order. And then the court in Oregon would have the jurisdiction to make that modification."

B. Family Code section 3427

The determination of which state can and should exercise jurisdiction to determine the custody of children is governed by the UCCJEA (§§ 3400, et seq.). (*Brossoit v. Brossoit* (1995) 31 Cal.App.4th 361, 367.) The UCCJEA is the exclusive method in California for determining subject matter jurisdiction in custody cases. (*Pieri v. Superior Court* (1991) 1 Cal.App.4th 114, 118.) The UCCJEA "authorizes a court to relinquish jurisdiction or to stay proceedings in favor of the proceedings in the court of a sister state if it finds it is an inconvenient forum or if there is misconduct." (*Palm v. Superior Court* (1979) 97 Cal.App.3d 456, 465, fns. omitted.)

The issue of inconvenient forum involves a discretionary decision upon a complex, highly individualized factual matter. The determinations of courts in other cases, while providing guidance, can rarely lead to a resolution of a separate case. A trial court's exercise of discretion will be upheld if it is based on a reasoned judgment and

complies with the legal principles and policies appropriate to the particular matter at issue. (*Pieri v. Superior Court, supra*, 1 Cal.App.4th at pp. 121-122.)

A court that properly acquires initial jurisdiction has exclusive, continuing jurisdiction unless one of two subsequent events occurs: (1) a court of the issuing state determines that “neither the child, nor the child and one parent, nor the child and a person acting as a parent have a significant connection with this state and that substantial evidence is no longer available in this state concerning the child’s care, protection, training, and personal relationships,” (§ 3422, subd. (a)(1)) or (2) there is a judicial determination by either the issuing state or any other state that “the child, the child’s parents, and any person acting as a parent do not presently reside in” the issuing state. (§ 3422, subd. (a)(2)); *In re Marriage of Nurie* (2009) 176 Cal.App.4th 478, 491.)

Family Code section 3427 states:

“(a) A court of this state that has jurisdiction under this part to make a child custody determination may decline to exercise its jurisdiction at any time if it determines that it is an inconvenient forum under the circumstances and that a court of another state is a more appropriate forum. The issue of inconvenient forum may be raised upon motion of a party, the court’s own motion, or request of another court.

“(b) Before determining whether it is an inconvenient forum, a court of this state shall consider whether it is appropriate for a court of another state to exercise jurisdiction. For this purpose, the court shall allow the parties to submit information and shall consider all relevant factors, including:

“(1) Whether domestic violence has occurred and is likely to continue in the future and which state could best protect the parties and the child.

“(2) The length of time the child has resided outside this state.

“(3) The distance between the court in this state and the court in the state that would assume jurisdiction.

“(4) The degree of financial hardship to the parties in litigating in one forum over the other.

“(5) Any agreement of the parties as to which state should assume jurisdiction.

“(6) The nature and location of the evidence required to resolve the pending litigation, including testimony of the child.

“(7) The ability of the court of each state to decide the issue expeditiously and the procedures necessary to present the evidence.

“(8) The familiarity of the court of each state with the facts and issues in the pending litigation.

“(c) If a court of this state determines that it is an inconvenient forum and that a court of another state is a more appropriate forum, it shall stay the proceedings upon condition that a child custody proceeding be promptly commenced in another designated state and may impose any other condition the court considers just and proper.

“(d) A court of this state may decline to exercise its jurisdiction under this part if a child custody determination is incidental to an action for dissolution of marriage or another proceeding while still retaining jurisdiction over the dissolution of marriage or other proceeding.

“(e) If it appears to the court that it is clearly an inappropriate forum, the court may require the party who commenced the proceeding to pay, in addition to the costs of the proceeding in this state, necessary travel and other expenses, including attorney’s fees, incurred by the other parties or their witnesses. Payment is to be made to the clerk of the court for remittance to the proper party.”

C. Appellant’s Specific Contentions

Appellant initially contends “[t]he trial court abused its[] discretion when it unilaterally decided that jurisdiction was with the Oregon court, without consideration of the statutory mandate requiring a determination of the best interests of the children’s welfare or a significant change of circumstances—here none existed.” He further contends “[t]here was no *substantial* evidence which supported the trial court’s determination that Oregon was the most convenient forum.” (Italics in original.)

D. Analysis

“When a trial court’s factual determination is attacked on the ground that there is no substantial evidence to sustain it, the power of an appellate court *begins and ends* with the determination as to whether, *on the entire record*, there is substantial evidence, contradicted or uncontradicted, which will support the determination, and when two or more inferences can reasonably be deduced from the facts, a reviewing court is without power to substitute its deductions for those of the trial court. *If such substantial evidence be found, it is of no consequence that the trial court believing other evidence, or drawing other reasonable inferences, might have reached a contrary conclusion.* [Citations.]” (*Bowers v. Bernards* (1984) 150 Cal.App.3d 870, 873-874, original italics.)

Substantial evidence is evidence “ ‘of ponderable legal significance, ... reasonable in nature, credible, and of solid value.’ [Citations.]” (*Bowers v. Bernards supra*, 150 Cal.App.3d at p. 873, italics omitted.) “When two or more inferences can be reasonably deduced from the facts, the reviewing court is without power to substitute its deductions for those of the trial court.” (*Crawford v. Southern Pacific Co.* (1935) 3 Cal.2d 427, 429; see *Western States Petroleum Assn. v. Superior Court* (1995) 9 Cal.4th 559, 571.) An appellant’s burden to affirmatively demonstrate error, when coupled with the substantial evidence rule, leads to the “elementary and fundamental” conclusion that when “none of the evidence produced in the trial court is before us ... [¶] ... the appellate court must conclusively presume that the evidence is ample to sustain the findings” (*Kompf v. Morrison* (1946) 73 Cal.App.2d 284, 286.)

At the July 11, 2011, hearing in this case, the court reminded the parties that in September 2010, he had granted them an opportunity under section 3427 “to submit pros and cons for the Court’s consideration of whether or not California is still a convenient forum for issues of custody and visitation.” Earlier in the proceedings, the court

characterized the contempt pleadings by themselves as “sizable” and “voluminous” and the case file as comprising “nine volumes.”

Appellant does not expressly cite to a minute order or a reporter’s transcript of the September 2010 proceeding at which the court invited the parties to submit pleadings with respect to the application of section 3427. We have independently reviewed his appendix and discovered an August 16, 2010, minute order which stated: “This matter is continued to 9/15/2010 ... for further hearing on ... the following issues[:] Judge to determine jurisdiction over this case.” The minute order further provided: “Both parties are to submit a written declaration [one] week prior to [that] date to support their argument. No changes in child custody ordered at this time.” A minute order dated September 15, 2010, continued the matter and stated: “Court will defer on the issue of jurisdiction.”

The appellant’s appendix includes appellant’s supplemental declaration in support of the superior court’s retention of jurisdiction. The cover page of the 11-page supplemental declaration is file stamped September 7, 2010, but the last page does not include a signature and date on the appropriate lines. In the body of the declaration, appellant asserted, among other things, that respondent frustrated his rights of visitation, failed to follow court orders, engaged in parental alienation, made false accusations against appellant, made misrepresentations to the court, neglected the education of the children, and exposed the children to domestic violence committed by respondent’s boyfriend against respondent. Appellant also asserted that his exercise of visitation in California created a significant connection with the state for jurisdictional purposes (§ 3422). We have carefully reviewed the record on appeal and have been unable to find a declaration or other pleading submitted by respondent pursuant to the court’s minute order of August 16, 2010.

“All presumptions indulged in are in favor of the regularity of the judgment and proceedings upon which it is based, hence it devolves upon an appellant to affirmatively show the existence of the error upon which he asks for a reversal.” (*Scott v. Hollywood Park Co.* (1917) 176 Cal. 680, 681; see *Dahlberg v. Dahlberg* (1927) 202 Cal. 295, 297.) “ “[E]rror must be affirmatively shown.” ’ ’ (*Howard v. Thrifty Drug & Discount Stores* (1995) 10 Cal.4th 424, 443.) “The burden rests upon the party complaining not only to show error but also to show that the error is sufficiently prejudicial to justify a reversal.” (*Coleman v. Farwell* (1929) 206 Cal. 740, 741.)

Appellant contends the trial court refused to entertain his arguments at the July 11, 2011, hearing. A review of the reporter’s transcript of that date reveals that the court concluded its hearing on the various contempts and then asked respondent’s counsel, “Ms. Maurice, was there anything you wanted to put on the record?” Respondent’s counsel responded, “Nothing beyond thanking the Court for taking the time and care to deal with this matter.” The court then stated, “Okay. Well, you’re free to leave.” Ms. Maurice, respondent’s counsel for the multiple contempt allegations, presumably left the courtroom at that point. The court immediately brought up “the issue of the inconvenient forum, because I had deferred that and I’m going to make a ruling now on that.” From our reading of the record, it appears respondent’s counsel departed the courtroom but respondent, appellant, and his counsel remained. The court proceeded to review the statutory factors (§ 3427) governing the determination of an inconvenient forum. Although the court asked respondent a single question during his colloquy, he did not ask whether the parties had updated information bearing upon their year-old declarations and pleadings and did not invite them—or counsel—to provide oral argument on the issue of inconvenient forum.

We acknowledge that the court reviewed and commented upon each of the eight statutory factors bearing upon a judicial determination of an inconvenient forum. Two of

the factors are of particular concern. The seventh factor (§ 3427, subd. (b)(7)) is: “The ability of the court of each state to decide the issue expeditiously and the procedures necessary to present the evidence.” The eighth factor (§ 3427, subd. (b)(8)) is: “The familiarity of the court of each state with the facts and issues in the pending litigation.” At the July 11, 2011, hearing, the court gave short shrift to the seventh factor, speculating that “... I can only assume that Oregon can give the parties quicker long cause hearing dates. I’m not sure if their calendar is much different than ours.” As to the eighth factor, the court acknowledged, “[N]o one else had more familiarity than I do since this [case] was assigned to me originally, but certainly any issues that happen now or in the future will be based upon facts and circumstances as they exist. And as I said, most of the evidence will be in Oregon. A judge would be much more familiar with the school system up there than I would. I have no information.”

Under section 3427, subdivision (b) the court “shall consider all relevant factors.” For purposes of the Family Code, “[s]hall” is mandatory. (§ 12.) Here, we have concerns as to whether the court gave due consideration to these two statutory factors. As to the ability of an Oregon court to expeditiously decide issues, the Stanislaus court asked respondent at one point, “Ms. McFad[y]en, is there an actual court in Albany [her town of residence in Oregon]?” Respondent answered in the affirmative. Nothing in the court’s comments on July 11, 2011, suggested that an analysis had been conducted of the structure, services, and administration of the Judicial Department of the state of Oregon in general or of an Albany-based branch of the Judicial Department in particular. Thus, we cannot be certain on appeal that a court in that Oregon locale had the necessary fundamental and subject matter jurisdiction to hear and decide family law issues.

As to the familiarity of an Oregon court with the case, the Stanislaus court simply concluded that future issues would be based upon the situation of respondent and her two sons in the state of Oregon. However, such an assessment overlooks or, at the very least,

minimizes the extended sequence of events that led father to file a series of orders to show cause with respect to the wellbeing of the two children and respondent's apparent inability or unwillingness to comply with court orders. A trial court's exercise of discretion will be upheld if it is based on a reasoned judgment and complies with the legal principles and policies appropriate to the particular matter at issue. (*In re Marriage of Nurie, supra*, 176 Cal.App.4th at p. 513.) We cannot say the court's ruling in this case complied with " 'legal principles and policies appropriate to the particular matter at issue' " (*ibid.*) where so much of the reasoning process was predicated upon speculation about the structure of the Oregon judicial department and assumptions about the application of Oregon family law to the facts of this case.

Moreover, the court cited as "significant" the fourth statutory factor (§ 3427, subd. (b)(4)), i.e., "The degree of financial hardship to the parties in litigating in one forum over the other." The court observed: "And clearly it's a much greater hardship for Ms. McFad[y]en. She has transportation problems. She's got limited funds and resources." The court's observation, while perhaps an accurate assessment of respondent's fiscal condition, overlooks the clear language of section 3430, subdivision (d), which states: "If a party to a child custody proceeding who is outside this state is directed to appear under subdivision (b) or desires to appear personally before the court with or without the child, the court may require another party to pay reasonable and necessary travel and other expenses of the party so appearing and of the child."

The foregoing factors, combined with respondent's need for ongoing medical care, marital strain, and the minors' academic performance in Oregon, give rise to our concerns. In our view, the matter should be remanded to the superior court for further proceedings on the issue of inconvenient forum, including the filing of updated declarations and points and authorities by the parties, adequate time for oral argument, and the court's reasoned consideration of "all relevant factors" as set forth in section

3427, subdivision (b). We recognize that the trial court has characterized father as “relentless in his efforts to be designated the primary caretaker” of the children. However, the mere fact that appellant filed multiple orders to show cause does not undermine his position where the underlying purpose of those pleadings was to assure “the health, safety, and welfare of children” (§ 3020, subd. (a)) and to assure “that children have frequent and continuing contact with both parents after the parents have separated or dissolved their marriage” (§ 3020, subd. (b).)

DISPOSITION

The findings and order after hearing filed July 11, 2011, are reversed and remanded to the trial court for further proceedings consistent with this opinion.

Poochigian, J.

WE CONCUR:

Wiseman, Acting P.J.

Franson, J.