

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

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 This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

In re the Marriage of KEITH and
HOLLY R.

KEITH R.,

Respondent,

v.

HOLLY A.,

Appellant.

G044921

(Super. Ct. No. 06D008776)

O P I N I O N

Appeal from a judgment of the Superior Court of Orange County,
Kazuharu Makino, Judge. Affirmed.

Holly A., in pro. per, for Appellant.

Law Offices of William J. Kopeny and William J. Kopeny for Respondent.

* * *

INTRODUCTION

Holly A. (Holly) and Keith R. (Keith) had one child, B.R. (Daughter), before dissolving their two-year marriage.¹ After a trial on custody and visitation, the trial court awarded primary physical custody of Daughter to Keith. Holly challenges the court's judgment on custody and visitation. We affirm.

Substantial evidence supports the trial court's finding that Daughter's best interest is served by vesting primary physical custody with Keith. Nothing in the appellate record supports Holly's claims that the trial court abused its discretion.

STATEMENT OF FACTS AND PROCEDURAL HISTORY

Holly and Keith married in 2004. Daughter was born in September 2005. Shortly before Keith filed to dissolve the marriage in September 2006, Holly moved with Daughter to Arizona without Keith's knowledge or consent. While in Arizona, Holly obtained a restraining order against Keith. Later orders of the California trial court required Holly to return Daughter to Orange County, and to dismiss the Arizona restraining order.

In his petition for dissolution of the marriage, Keith sought joint legal custody and sole physical custody of Daughter, with visitation to Holly. Holly's response to the petition for dissolution requested that the court grant her sole legal and physical custody of Daughter, and that visitation be granted to Keith.

Holly and Keith each filed their own declarations, as well as those of other family members, accusing the other of erratic behavior, and of actions that were detrimental to Daughter's well-being.

¹ To preserve the minor child's privacy while allowing researchers and others to track and differentiate appellate opinions, we identify the parties by their first names and last initials, and we do not use the child's given name. In so doing, we follow the approach suggested by the court in *In re Edward S.* (2009) 173 Cal.App.4th 387, 392, footnote 1.

In October 2006, Holly applied for a protective order, based on Keith's alleged physical abuse. As part of her application, Holly attached a copy of a temporary restraining order obtained by one of Keith's former girlfriends. In February 2008, Holly sought a temporary restraining order against Keith, based on allegations of stalking.

A judgment of dissolution (status only) was filed in April 2008. Holly and Keith were granted joint legal and physical custody of Daughter on a temporary basis.

In May 2008, the trial court granted Holly's request for a restraining order against Keith, terminated the order granting Holly and Keith joint custody of Daughter, gave sole legal and physical custody to Holly, and ordered that Keith's visitation with Daughter be monitored. Keith was also ordered to participate in a 52-week batterer's intervention program. The reports of Keith's monitored visits were positive, and the court continued to increase Keith's visitation. Ultimately, the court ordered that Keith's visitation would be unmonitored. Keith successfully completed the batterer's intervention program.

On January 27, 2009, following a hearing on custody, the trial court issued a move-away order, permitting Holly to move to Arizona with Daughter and awarding sole legal and physical custody to Holly. The court found Keith had failed to meet his burden of establishing changed circumstances. In a published opinion, this court issued a peremptory writ of mandate directing the trial court to vacate the January 27 order granting sole custody to Holly and permitting her to move to Arizona with Daughter, because the trial court had used the wrong legal standard. (*Keith R. v. Superior Court* (2009) 174 Cal.App.4th 1047, 1050-1051.) We further directed the trial court to conduct a new trial before issuing a final custody determination. (*Id.* at p. 1059.)

The new trial on the issue of custody was conducted over several days in August and September 2010. In her trial brief, Holly asked that the court award the parties joint legal custody of Daughter, with Holly being awarded primary physical custody. Keith argued in his trial brief that he should be granted sole custody of

Daughter: “An order for [Daughter] to be in [Keith]’s custody will protect [Daughter]’s health, safety and welfare, by, among other things, preventing the relentless parental alienation by [Holly] against [Keith], aimed at destroying [Daughter]’s relationship with [Keith], and also aimed at destroying [Daughter]’s relationship with her paternal family. ¶ An order awarding [Keith] custody would also allow [Daughter] to be in the care of the more stable parent in this matter and in the care of the parent who is more willing to share [Daughter]. ¶ [Holly]’s pattern of alienation against [Keith] includes, but is not limited to, [Holly] fleeing the state with [Daughter] at the inception of this case in 2006 and hiding [Daughter] from [Keith], [Holly] surreptitiously moving to La Quinta with [Daughter] after the Appellate Court restrained her from moving to Arizona, [Holly] making completely false allegations of child sexual abuse against [Keith] to Child Protective Services . . . , [Holly] making completely false allegations about [Keith] to the Medical Board of California . . . , and [Holly] filing excessive and false reports to various police departments and law enforcement agencies throughout this entire case.”

A confidential child custody evaluation was completed before trial by W. Russell Johnson, Ph.D. Dr. Johnson’s ultimate recommendation was that Keith and Holly be awarded joint custody of Daughter, and that Holly should have primary physical custody, with Keith receiving liberal visitation. Dr. Johnson also recommended that Holly’s request to relocate with Daughter to Arizona be denied; if Holly were to move to Arizona, Dr. Johnson concluded, “[Daughter]’s best interests require that she be placed in her father’s physical custody because he is more likely than her mother to support her relationship with her non-residential parent.”

At the conclusion of trial, the court made orders regarding child custody, visitation, child support, and attorney fees. Holly, in propria persona (although she was still represented by counsel), filed written objections to the court’s orders.

A judgment consistent with the court’s orders was entered on January 19, 2011, awarding Holly and Keith joint legal custody, and awarding primary physical

custody of Daughter to Keith, with visitation for Holly. In relevant part, the judgment provides as follows:

“A. The court finds that Petitioner, Keith R[.], has rebutted the presumption under Family Code Section 3044(a), that an award of sole or joint physical or legal custody of the minor child . . . to Petitioner, is detrimental to the best interest of the minor child, pursuant to Section 3011.

“B. The court finds that . . . Holly [A.]’s . . . testimony is not credible and that [Holly] is not a credible witness. The court finds that [Holly]’s testimony was motivated by what [Holly] believed would help her, and that the truth was secondary.

“C. The court finds that [Holly]’s moving to La Quinta with the minor child, and her motivation to do so, was not in the best interest of the minor child. The court finds that [Holly] did not take into consideration the best interest of the minor child when she moved to La Quinta.

“D. The court finds that the best interest of the minor child is not [Holly]’s priority. Instead, [Holly]’s priority is her own best interest. This is evidenced by [Holly] moving to Arizona, causing a complete cutoff of the minor child from [Keith], and by [Holly] moving to La Quinta, resulting in the minor child having to travel two to three hours in a car to go from one parent to another.

“E. The court finds that [Keith] would clearly provide a more stable and secure home environment for the minor child than would [Holly].

“F. The court finds that [Keith] is clearly the more supportive parent of the parenting role of the other parent.

“G. The court finds that it is in the best interest of the minor child for [Keith] to be the primary custodian and that the minor child attend school in Irvine.”

Holly timely appealed from the judgment.

DISCUSSION

“The standard of appellate review of custody and visitation orders is the deferential abuse of discretion test.” (*In re Marriage of Burgess* (1996) 13 Cal.4th 25, 32.) “In 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.’ (Fam. Code, § 3040, subd. (b).) It must look to *all the circumstances* bearing on the best interest of the minor child.” (*Id.* at pp. 31-32.) We do not reweigh conflicting evidence or determine whether we would have made the same findings as the trial court: “Our function has been fully performed when we find in the record substantial evidence which supports the essential findings of the trial court.” (*In re Marriage of Birnbaum* (1989) 211 Cal.App.3d 1508, 1513.) “[R]eversal [of a child custody order] is warranted only if there is no reasonable basis upon which the trial court could conclude that its decision advanced the best interests of the child.” (*In re Marriage of Melville* (2004) 122 Cal.App.4th 601, 610.)

The trial court’s determination of custody is ultimately determined by considering the best interest of the child. (Fam. Code, § 3011.) The court may consider any relevant factors in making that determination (*In re Marriage of Burgess, supra*, 13 Cal.4th at pp. 31-32), but it must consider the health, safety, and welfare of the child, and any history of abuse by one parent of the other. (Fam. Code, § 3011, subs. (a), (b).)

Pursuant to Family Code section 3044, because of the restraining order protecting Holly against Keith, he faced a rebuttable presumption that it would be detrimental to Daughter’s best interest to be awarded physical or legal custody. The presumption could be rebutted by a preponderance of the evidence. (*Id.*, § 3044, subd. (a).) The court was required to consider the following factors in determining if the presumption had been rebutted: (1) whether Keith had demonstrated that giving him sole or joint physical or legal custody of Daughter was in her best interest, without consideration of Family Code section 3020’s preference for frequent and continuing contact with both parents; (2) whether Keith had successfully completed a batterer’s

treatment program; (3) whether Keith had successfully completed a drug or alcohol abuse program, if such counseling had been required by the court; (4) whether Keith had successfully completed a parenting class, if such a class had been required by the court; (5) whether Keith was on probation or parole, and whether he had complied with the terms and conditions of probation or parole; (6) whether Keith was subject to a protective order or restraining order, and whether he had complied with its terms and conditions; and (7) whether Keith had committed any further acts of domestic violence. (*Id.*, § 3044, subd. (b).) “[W]here the section 3044 presumption has been rebutted, there is no statutory bar against an award of joint or sole custody to a parent who was the subject of the order.” (*Keith R. v. Superior Court, supra*, 174 Cal.App.4th at p. 1055.) We review the trial court’s finding that the presumption had been rebutted to determine whether it is supported by substantial evidence. (*In re Marriage of Saslow* (1985) 40 Cal.3d 848, 863.)

The court must also consider two overriding public policies announced by the Legislature in cases where custody must be determined: (1) assuring the health, safety, and welfare of the children, and (2) assuring that the children have frequent and continuing contact with both parents. (Fam. Code, § 3020, subds. (a), (b).)

The trial court’s conclusion that primary physical custody of Daughter should be awarded to Keith was based on its analysis and application of those two public policies. Substantial evidence supports the court’s findings that awarding primary physical custody to Keith would be in Daughter’s best interest, because it would assure her health, safety, and welfare, and because it would assure Daughter’s frequent and continuing contact with both parents.

This case presents an issue that would vex Solomon himself. There is no disagreement that both Keith and Holly love Daughter and are good parents. Dr. Johnson opined that the best situation would be one in which Keith and Holly shared physical custody equally. Because of the distance between Keith’s and Holly’s residences, and

Daughter recently starting kindergarten, however, it was not possible for Keith and Holly to have equal time with Daughter during the school year. (Keith resides in Irvine, and Holly resides in La Quinta.) The onus therefore falls on the custodial parent to ensure Daughter has regular and consistent contact with the noncustodial parent. There was substantial evidence supporting the trial court's finding that Keith would be better at facilitating Daughter's contact with Holly than vice versa, and that he should therefore be awarded primary physical custody.

Holly argues there was insufficient evidence supporting the trial court's finding that awarding custody to Keith was in Daughter's best interest. Holly misunderstands the substantial evidence rule, and omits any discussion of the evidence favoring the trial court's decision, while relying entirely on the evidence supporting her own argument. Although Dr. Johnson recommended that Holly be awarded primary physical custody, the trial court was not required to accept that recommendation without question. "Custody evaluators, like mediators, are not judicial officers and thus cannot make binding fact determinations or decisions on a custody/visitation issue. At best, as admissible evidence . . . , the evaluator's report is simply probative of relevant facts the court must consider and weigh along with all other evidence in the case" (Hogoboom & King, Cal. Practice Guide: Family Law (The Rutter Group 2012) ¶ 7:256, pp. 7-86 to 7-86.1 (rev. #1, 2012).)

Substantial evidence was presented to the trial court supporting a finding that Daughter's best interest would be served by awarding primary physical custody to Keith rather than to Holly. The evidence showed that Keith's home environment was more stable than Holly's, and that he had a "larger and broader family support system in place" than Holly had in La Quinta. The evidence also established that moving to La Quinta, whether or not it was permitted under the terms of the temporary custody orders, was not in Daughter's best interest.

The evidence also showed that Keith would be the parent who was more supportive of Daughter's relationship with the other parent. Holly moved to Arizona without notice to Keith, completely cutting off contact between Daughter and Keith, which was not in Daughter's best interest. Holly later moved to La Quinta, again without notice to Keith, which significantly disrupted contact between Keith and Daughter. Holly enrolled Daughter in preschool in La Quinta without prior notice to Keith, and scheduled medical appointments for Daughter, also without prior notice to Keith. Holly filed police reports, in which she might have identified Keith as a suspect in various disturbances at her home; although Holly repeatedly testified that she could not remember whether she had identified Keith as a suspect, the trial court found that testimony to be not credible.² Holly also accused Keith of sexually abusing Daughter, and reported him to the California Medical Board. Holly refused to let Keith have unmonitored visits with Daughter, despite the terms of the court's order permitting such visitation. All of this evidence supported the court's finding that, over the course of Daughter's minority, Keith would be more likely to maintain Daughter's contact with Holly than vice versa, which was in Daughter's best interest.

² In her reply brief on appeal, Holly challenges the trial court's finding that she was not a credible witness, claiming there was no "actual evidence" of her lack of credibility. Credibility is always a matter for the trial court to decide: "[T]he factfinder [is] free to decide [the witness]'s credibility for itself, based on such factors as his demeanor and motives, his background, his consistent or inconsistent statements on other occasions, and whether his statements . . . had the essential 'ring of truth.'" (*People v. Melton* (1988) 44 Cal.3d 713, 744-745.) "It is not our role to interfere with the trial court's assessment of the witnesses' demeanor and credibility." (*In re Naomi P.* (2005) 132 Cal.App.4th 808, 824.) "[T]he court is better positioned than are we to observe a witness's demeanor and discern his or her credibility. Testimony can be uncontroverted and yet be presented in a fashion that is unpersuasive for reasons not evident on a written record." (*City of Manhattan Beach v. Superior Court* (1996) 13 Cal.4th 232, 262.) "When . . . 'a witness's claim of lack of memory amounts to deliberate evasion, inconsistency is implied.' [Citation.] The trial court had the opportunity to view [the witness]'s demeanor and therefore was in the best position to assess the credibility of her claimed nonrecollection." (*People v. Coffman and Marlow* (2004) 34 Cal.4th 1, 78.)

Dr. Johnson testified the move to La Quinta was not in Daughter's best interest. Through counsel, Holly admitted her move to La Quinta was a relevant fact in determining custody. Dr. Johnson also testified, consistent with the recommendation in his report, that if Holly moved to Arizona, Keith should have primary physical custody, "[b]ecause if mother chooses to move despite the fact that it's definitely not in [Daughter]'s best interests, then she's certainly not prioritizing the child. The child needs to be with her father because he would be more likely, if there's that much distance between them, to support the child's relationship with both parents."

Holly also raises a number of issues on appeal, which, she contends, demonstrate the trial court abused its discretion in awarding primary physical custody to Keith. Holly argues the court failed to consider Daughter's health, safety, and welfare. Her argument is premised on the conclusion that a parent with custody of a minor child has a presumptive right to change his or her residence, citing *In re Marriage of Burgess*, *supra*, 13 Cal.4th at page 32. Holly fails to fully and accurately quote that opinion, however. In *In re Marriage of Burgess*, the Supreme Court held: "[I]n a matter involving immediate or eventual relocation by one or both parents, the trial court must take into account the presumptive right of a custodial parent to change the residence of the minor children, *so long as the removal would not be prejudicial to their rights or welfare*. [Citation.] Accordingly, in considering all the circumstances affecting the 'best interest' of minor children, it may consider any effects of such relocation on their rights or welfare." (*Ibid.*, italics added.) The evidence was essentially uncontradicted that Holly's move to La Quinta had not been in Daughter's best interest, and that Holly's contemplated move to Arizona would also be contrary to Daughter's best interest. Further, it was appropriate for the trial court, in determining Daughter's best interest at this point, to consider the likelihood of Holly's future attempts to relocate to Arizona.

Holly also argues throughout her appellate briefs that Keith failed to meet his burden of proof that a change of custody from Holly to Keith would be detrimental to

Daughter. No such burden exists before a final custody award is issued, no matter how long the child has been in the primary care of one parent. “We agree that regardless of whether the trial court is being asked to make an initial custody order or a change in an existing order, a paramount concern is the need for stability and continuity in the life of a child, and the harm that may result from disruption of established patterns of care and emotional bonds. [Citation.] ‘When custody continues over a significant period, the child’s need for continuity and stability assumes an increasingly important role.’ [Citation.] Indeed, where one custody arrangement has been in place for a significant period of time, the noncustodial parent has the ‘burden of persuading the trier of fact that a change is in the child’s best interest.’ [Citation.] But while the child’s interest in continuity and stability is a factor that weighs heavily in the equation, it does not change the fact that if there was no existing final determination of what custody arrangement was in the child’s best interest, the noncustodial parent does not have a burden to show that an existing arrangement is detrimental. In this case, that means that father had the burden of proving that even considering the length of time [the child] had lived with mother, [the child]’s interest would be best served by awarding custody to him. He might have met that burden by showing that mother’s care was seriously deficient, but under the best interest standard, the trial court’s consideration of all the circumstances was not dependent upon such proof.” (*Ragghanti v. Reyes* (2004) 123 Cal.App.4th 989, 999.)

Holly next makes two interrelated arguments that the trial court abused its discretion, by considering this to be a move-away case, and by refusing to acknowledge it was not a move-away case. Nothing in the appellate record supports an argument that the trial court treated this case as a move-away case. The court used the appropriate standard for final custody determinations. The court was authorized to consider Holly’s previous moves, and requests to move, as part of the best interest analysis. (See *In re Marriage of Ciganovich* (1976) 61 Cal.App.3d 289, 293-294 [trial court may consider whether

custodial parent “acts with an intent to frustrate or destroy” noncustodial parent’s visitation rights in determining whether custody orders should be modified].)

Holly also argues the trial court abused its discretion in finding that the presumption of Family Code section 3044 had been rebutted. The evidence established Keith had completed the required batterer’s intervention program. The trial court asked Holly about her claims that Keith had violated the terms of the restraining order, but also found that Holly’s testimony was not credible. (In her reply brief, Holly states that Keith violated the restraining order, but does not provide any citations to the appellate record supporting her claims.) Neither the restraining order, nor any other court order, required Keith to participate in any drug or alcohol abuse counseling or parenting classes. No evidence of any further alleged acts of domestic violence was admitted. Keith was never placed on parole or probation, so there was no evidence of any failure to complete the terms of parole or probation. And as described in detail *ante* and *post*, there was evidence that awarding primary physical custody to Keith would be in Daughter’s best interest. We find no abuse of discretion in the trial court’s conclusion that the presumption had been rebutted.

Notably, the trial court did not rely on Commissioner Renee Wilson’s earlier finding that the Family Code section 3044 presumption had been rebutted, when it issued its findings after trial. However, Commissioner Wilson’s concurrence in the trial court’s finding is significant, as it means two separate bench officers reached the same conclusion that the section 3044 presumption against awarding primary physical custody to Keith had been successfully rebutted.

Holly also argues the trial court abused its discretion by “discrediting the recommendations and testimony” of Dr. Johnson. The court was not required to accept all of Dr. Johnson’s recommendations. (See *People v. Engstrom* (2011) 201 Cal.App.4th 174, 187 [trier of fact “is free to reject even the uncontradicted testimony of an expert witness”]; *Howard v. Owens Corning* (1999) 72 Cal.App.4th 621, 636 [trier of fact need

not accept expert's opinion testimony that is contradicted by other substantial evidence].) In fact, to do so would have made a trial useless, and would have violated the trial court's duty to weigh the evidence and determine what was in Daughter's best interest. (See Hogoboom & King, Cal. Practice Guide: Family Law, *supra*, ¶ 7:256, pp. 7-86 to 7-86.1.)

Holly next argues that the trial court abused its discretion by relying on counsel in making its decision. Holly's contentions that Judge Kazuharu Makino "parrot[ed]" Keith's counsel's argument in his ruling and deferred to Keith's counsel the task of preparing the court's minute order setting forth its findings and conclusions are, at best, inaccurate. The trial court's minute order accurately tracks the court's oral ruling, and the judgment (prepared by Keith's counsel pursuant to the court's order) tracks the minute order. Holly fails to establish any error, much less prejudicial error.

Holly also argues the trial court erred by admitting hearsay evidence. Holly concedes this argument was forfeited because no objection to the allegedly hearsay testimony was raised in the trial court. Even if the argument had not been forfeited, it is lacking in merit. Holly contends the trial court erred by admitting testimony that Holly had claimed Keith had molested Daughter, and that the testimony was hearsay. First, the statement that Keith had molested Daughter was not offered for its truth; to the contrary, it was offered as evidence of Holly's actions negatively affecting Keith's frequent and continuing contact with Daughter. (See Evid. Code, § 1200, subd. (a).) Second, even if the statement were offered for its truth, it would fall within the party admission exception of Evidence Code section 1220.

Holly also argues Judge Makino had primarily been on the criminal bench, implying he was unqualified to preside over this family law trial. The family law court is "not a separate court with special jurisdiction, but is instead the superior court performing one of its general duties." (*In re Chantal S.* (1996) 13 Cal.4th 196, 201.) We find no reason to suspect that any judge of the Orange County Superior Court is incapable of

handling any assignment. Holly does not contend that Judge Makino was subject to disqualification (Code Civ. Proc., § 170.1); therefore, having been assigned this case, Judge Makino had a duty to decide it (*id.*, § 170). Holly's contention that Judge Makino treated this case as a criminal case where one party—Holly—was found guilty and sentenced, is meritless.

Holly argues the trial court did not have sufficient evidence to determine awarding primary physical custody to Keith would be in Daughter's best interest because (1) Family Code section 3031, subdivision (a)(1) encourages courts not to make custody orders that conflict with existing restraining orders, and (2) Dr. Johnson's report, which the court accepted into evidence, recommended that Holly retain physical custody of Daughter. As explained in detail, *ante*, the trial court had before it substantial evidence that awarding primary physical custody to Keith would be in Daughter's best interest, as well as evidence that rebutted the presumption against awarding Keith custody.

Holly argues the trial court abused its discretion by basing its decision, in part, on the parents' relative economic factors. She cites *In re Marriage of Fingert* (1990) 221 Cal.App.3d 1575, 1580-1581, for the correct proposition that "[a] court may not decide a custody issue on the basis of the relative economic position of the parties." Holly, however, misinterprets the findings of the trial court here. The court identified as one reason for its custody decision that Keith "is in the same home now that he was in when [Daughter] was born." The court used this as evidence of the stability of Keith's living situation; such stability was acknowledged as especially important to Daughter's best interest, given the lack of stability in custody and visitation she had experienced. The court was not weighing the parties' relative financial strength.

Holly next argues the trial court erred by considering in evidence the many police reports she filed, because those reports would be hearsay. The court did not admit the police reports into evidence. Keith's counsel was properly allowed to question Holly about what she had told the police when making her reports, as that was relevant to the

issue of Holly's alleged interference with Keith's custody and visitation. Holly's statements to the police as to whom she suspected of breaking into her home and stalking her were not inadmissible hearsay, both because they were not offered for their truth, but to establish Holly's enmity toward Keith and attempts to interfere with his custody and visitation, and because they constituted admissions by a party. (Evid. Code, §§ 1200, subd. (a), 1220.)

Holly contends Judge Makino improperly failed to consider evidence of what had happened in the case before it was assigned to him. Judge Makino did make the following statement: "I think you're very optimistic about how much prior investigation a bench officer would do into the background of a case." Holly argues that statement establishes Judge Makino failed to investigate the background of the case. In context, however, Judge Makino was responding to Holly's counsel's argument that Judge Nancy Pollard investigated Judge Claudia Silbar's previous denial of a restraining order before Judge Pollard issued a restraining order. Nothing in the record supports Holly's contention that Judge Makino did not consider what had previously occurred in the case. To the contrary, Judge Makino took judicial notice of earlier court orders, the parties' briefs, and the visitation court order violation reports.

Holly also makes an argument that she was denied due process of law by an equal protection violation, in that she was somehow punished for enrolling Daughter in school in La Quinta, while Keith was not similarly punished for enrolling Daughter in a school in Irvine. Holly correctly notes that in a June 10, 2010 amendment to the temporary custody order, the court ordered that if a final custody order was not in place before the school year started, Daughter was to start the school year at Holly's home location. This order, however, did not prevent the trial court from considering the appropriateness of enrolling Daughter in school with the knowledge that a trial on custody was about to start.

DISPOSITION

The judgment is affirmed. Respondent to recover costs on appeal.

FYBEL, ACTING P. J.

WE CONCUR:

IKOLA, J.

THOMPSON, J.