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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

G.C.,

Respondent,

v.

S.C.,

Appellant.

G048432

(Super. Ct. No. 07P000172)

O P I N I O N

Appeal from a postjudgment order of the Superior Court of Orange County,
David L. Belz, Judge. Affirmed.

Law Office of Ronald B. Funk and Ronald B. Funk for Appellant.

Gibson, Dunn & Crutcher, Jeffrey H. Reeves and Jennafer M. Tryck for
Respondent.

* * *

S.C. (mother) appeals from a postjudgment order that modified child custody. The trial court originally awarded mother sole legal custody and primary physical custody of R.C. (the child). Nearly four years later, the court awarded G.C. (father) sole legal custody of the child with the parties sharing joint physical custody of him. Mother contends the latter ruling constituted an abuse of the trial court's discretion because the evidence fails to support a finding of a significant change in circumstances justifying the modification of custody. We conclude the evidence supports the trial court's order and affirm its decision.

FACTS

The parties are the parents of the child who was born in mid-2004. In February 2007, father filed this paternity action to formally establish his parental status and to obtain orders concerning custody and visitation. The court found California has jurisdiction over the child and established a temporary custody and visitation arrangement between the parties.

After a trial, the court issued a formal decision in March 2009. The court rejected shared joint custody, concluding that arrangement is "usually workable when the parties can cooperate and communicate" with each other and, in this case "the[] parties have not been able to communicate well in the past." It awarded sole legal custody and primary physical custody to mother, but stipulated each parent "shall be entitled to information concerning the well-being of the child."

The order contained custody and visitation schedules for the school year, holidays and summer vacations, and prohibited the parents from "mak[ing] any disparaging or derogatory remarks to or about" each other. The court directed both parents to subscribe to and use Ourfamilywizard.com, a "website for separated parents"

to “advise each other of their own schedule” and “communicate concerning scheduling issues or changes.”

Mother was also given authority to make educational decisions for the child, including the right to “choose the school . . . the child shall attend.” However, the order directed her to “confer with [father] regarding all educational decisions” and that “nothing in this order shall be construed as to terminate any right . . . to challenge any such decision.”

Finally, the order established a procedure for the appointment of a special master to assist in expeditiously resolving communication problems and relationship conflicts between the parties.

In mid-2010 and early 2011, father filed orders to show cause concerning custody and visitation. Mother also filed an order to show cause seeking permission to move to Oklahoma with the child, claiming she had been offered a job as the manager of a pizza restaurant in that state. The parties subsequently agreed to appoint Dr. David J. Mann to evaluate the issues of custody, visitation, and mother’s relocation request.

Before the hearing on these matters, mother decided to change the child’s school. She did not inform father of her decision or discuss the matter with him. The court conducted a hearing on the issue. After questioning the child and receiving testimony from Mann, the court ordered that the child remain at his current school pending a hearing on the remaining issues. At this hearing, mother withdrew her request to relocate to Oklahoma.

Mann submitted a report that recommended the parties share joint legal and physical custody of the child and proposed a weekly schedule to implement it. He also proposed the parties participate in a program focused on communication problems between parents and their children and that the court reappoint a special master to facilitate communication between the parties. Mann also recommended the child remain at his current school.

According to Mann, the child was bonded with both parents. However, he displayed “a lot of anxiety and stress” because of “the conflict between [his] parents,” particularly mother’s “getting upset and yelling.” The child’s concern “about pleasing” both parents was causing him “to keep a lot of his feelings inside,” thereby placing him at increased emotional harm.

Mann found mother to be manipulative and noted she frequently failed to accurately report events or withheld significant information from father. He described her as self-focused with her needs and identity “wrapped up” with the child. In support of this conclusion, he cited mother’s plan to relocate and her “unilateral decisions,” such as changing the child’s school without informing father, or considering how these actions would impact the child. In his report, Mann concluded mother’s explanation for moving to Oklahoma was “not a sound reason” because, although she claimed it was due to a “lack of employment,” she “has not actively and consistently sought employment” locally “for the last several years.”

Mann also concluded mother was not supportive of father’s relationship with the child. He testified mother appeared to restrict father’s time with the child. On one occasion, she refused father’s summer vacation request because he was a day late in giving her notice of the dates he wanted to have the child. On the other hand, Mann believed father would be more likely to encourage the child’s relationship with mother.

Nonetheless, Mann recognized the parties had serious difficulty communicating with each other. As a consequence, he recommended reappointment of a special master who could quickly resolve impasses between them and reduce the stress on the child.

Both parties testified at the hearing. Mother described the parents’ relationship as “very bad,” claiming it was due to father’s unwillingness to “cooperate” with her and “want[ing] to have control over everything.” She testified the child had nightmares because father allows him to watch “scary movies.” She claimed Mann’s

report was biased because it did not mention many of the concerns she had expressed to him about the parties' relationship. According to mother, she wanted to move the child to a different school because he was being bullied by another student and had received a death threat, but the school had failed to take action to solve the problem.

Father denied the specific allegations of misconduct cited by mother. He acknowledged the lack of communication with mother, claiming she yells at him "50, 75 percent of the time." He testified mother failed to comply with the March 2009 order's requirement that she subscribe to Ourfamilywizard.com. Father wanted the child to remain at his current school. He said the school did investigate mother's bullying and death threat complaints, determined it concerned "a hostile exchange between" the child and another student, and resolved the matter by telling the child and the other student not to play together.

At the completion of the hearing, the trial court ordered the prior custody order modified to give father sole legal custody of the child with the parents jointly sharing physical custody. The court found Mann and father, but not mother, to be credible witnesses. It rejected her claim that Mann was biased. The court acknowledged the "lengthy statement of decision" contained in the March 2009 custody ruling and its finding "these parents don't look like they can get along" as the basis for awarding custody to mother. But the court found "[t]hat [approach] hasn't worked" and concluded father "needs to be the sole legal custodial parent, because that's the only way . . . this judicial officer sees that we can move forward, so that you can both parent" and "have quality time" with the child. It also ordered the child to remain at his current school, finding mother's claim "there's an issue with the school" lacked credibility.

As changed circumstances supporting the custody modification, the court cited the "ongoing regular effort by mother to . . . limit father's involvement with the [child] and to increase the . . . presence of conflicts between th[e] . . . parties," her failure to comply with the March 2009 custody order's requirement that she subscribe to the

Ourfamilywizard.com website to facilitate communication with father, and her failure to discuss with father the proposed change in the child's school.

DISCUSSION

Mother claims the trial court erred in modifying the original custody order because it made the ruling “without making any findings[] and without hearing any evidence[] of any change in circumstances which had occurred after the entry of the” prior ruling. She argues “when the evidence is reviewed, it is clearly apparent that the court did not actually appropriately find changed circumstances, because there was no such substantial evidence presented,” and it “instead attempted to shoehorn a best-interests analysis into this case.” We reject these contentions.

In all cases where there are “competing parental claims to custody, the court must make an award ‘according to the best interests of the child.’” (*Burchard v. Garay* (1986) 42 Cal.3d 531, 535; Fam. Code, § 3040, subd. (c).) However, once a final custody decision has been entered, “principles of res judicata” and “the dual goals of judicial economy and protecting [a] stable custody arrangement” (*Keith R. v. Superior Court* (2009) 174 Cal.App.4th 1047, 1053) impose on “a party seeking to modify a permanent custody order” the added burden of “demonstrat[ing] a significant change of circumstances justifying a modification” (*Montenegro v. Diaz* (2001) 26 Cal.4th 249, 256). This latter adjunct to the best interest of the child rule “provides, in essence, that once it has been established that a particular custodial arrangement is in the best interests of the child, the court need not reexamine that question,” but “[i]nstead, it should preserve the established mode of custody unless some significant change in circumstances indicates that a different arrangement would be in the child's best interest.” (*Burchard v. Garay, supra*, 42 Cal.3d at p. 535.)

On appeal, the trial court's ruling is reviewed under "the deferential abuse of discretion test." (*Montenegro v. Diaz, supra*, 26 Cal.4th at p. 255.) "The precise measure is whether the trial court could have reasonably concluded that the order in question advanced the 'best interest' of the child." (*In re Marriage of Burgess* (1996) 13 Cal.4th 25, 32.) "We draw all reasonable inferences in support of the court's ruling and defer to the court's express or implied findings when supported by substantial evidence." (*J.M. v. G.H.* (2014) 228 Cal.App.4th 925, 935.) "All conflicts in the evidence are drawn in favor of the judgment," and "[w]hen supported by substantial evidence, we must defer to the trial court's findings," including its finding on the credibility of witnesses. (*Niko v. Foreman* (2006) 144 Cal.App.4th 344, 364-365; *Bush v. Bush* (1947) 81 Cal.App.2d 695, 697 ["In accordance with the time-honored rule that conflicts in the evidence are settled in the trial court we must accept [the respondent's] version and that of his witnesses as true"].)

The lower court properly exercised its discretion in this case. The decision on custody was within the scope of the court's legal authority. (Fam. Code, § 3040, subd. (a)(1).) In reaching its decision, the court made credibility findings and, relying heavily on Mann's report and his testimony, substantially followed the expert's proposed recommendations. The only change made was to award father sole legal custody rather than Mann's proposal of joint legal custody. The evidence summarized above supports this conclusion. The court's interview with the minor, the testimony of both parents, along with Mann's testimony on education matters, including an interview of the child's teacher, provided the trial court with a factual basis for denying mother's request to transfer the child to a new school.

Contrary to mother's argument, the court also cited facts it found established a change in circumstances since the March 2009 order. These included mother's efforts to limit father's contact and involvement with the child, her failure to

subscribe to and use the Ourfamilywizard.com website, and her decision to transfer the child to a new school without notifying father about the change or discussing it with him.

Father notes case law supports a conclusion a change of circumstances justifying modification of a custody order exists where there is “[c]onduct by a custodial parent designed to frustrate visitation and communication.” (*Burchard v. Garay, supra*, 42 Cal.3d at p. 540, fn. 11; *In re Marriage of Wood* (1983) 141 Cal.App.3d 671, 682 [change of the children’s residence “to maintain a good relationship with both parents” supported by court’s finding “Mother had been attempting to sever the children’s relationship with their father”]; *Swenson v. Swenson* (1929) 101 Cal.App. 440, 444 [change of circumstances shown by evidence the mother “studiously and repeatedly violated the plain terms of her stipulation and the provisions of the decree by resorting to various excuses and subterfuges in order to prevent [the father] from seeing or having the children at the times and in the manner . . . provided”].) Here, the trial court cited evidence that supported its finding of a change of circumstances to justify its modification of custody.

Mother’s arguments to the contrary are unavailing. She claims Mann focused on the child’s best interests and never cited “a single item . . . address[ing] whether there has been a change of circumstances since” the March 2009 order. While true, as father notes Mann explained in his testimony that the question of whether there had been a change of circumstances was “a legal issue” for the court to decide.

Much of mother’s opening brief consists of attacks on the merits of Mann’s opinions that were adverse to her. As noted, the trial court found Mann to be a credible witness and we must abide by its finding. “‘Credibility is a matter within the trial court’s discretion,’ and the reviewing court must defer to the trial court’s findings on credibility issues.” (*Niko v. Foreman, supra*, 144 Cal.App.4th at p. 365.)

Mother asserts the parties’ inability to communicate is not a new problem and thus cannot support the change of circumstance finding. But again she ignores the

terms of the March 2009 order that were addressed to improving communication between the parents. The order directed both parties to subscribe to Ourfamilywizard.com., noting the website provided a “Message Board” whereby the parents could “document[]” “their communication[s]” and allow them to “advise each other of their own schedule and that of the child.” Father subscribed to the website, but mother did not. She claimed that she could not afford the cost of the service. But she never notified the court of this obstacle or seek to amend the order to remedy the problem.

The post-2009 attempt by mother to relocate to Oklahoma also supports the court’s finding she engaged in conduct to limit father’s contact and involvement with the child. Mann’s report noted her explanation for the proposed move, to accept a job offer, was suspect in that mother had not been seeking employment locally for several years. Another example of mother’s interference with father’s relationship with the child was her refusal to allow father to exercise his summer vacation rights with the child because his notice was one day late. The March 2009 order authorized “14 days consecutive and uninterrupted time for vacation,” but required father give mother “at least 30 days advance written notice . . . of what said time period will be.” Mother disputes Mann’s conclusions these actions support his opinion. Again, her arguments merely dispute the credibility of his testimony, an issue within the province of the trial court.

Mother attacks the trial court’s reliance on her decision to change the child’s school without notifying father or discussing the matter with him. She claims the March 2009 order authorized her conduct and argues “acting in accordance with the custody order cannot constitute a change of circumstances supporting a change of custody.” On this point, mother is simply wrong. The March 2009 order expressly declares she “shall confer with [father] regarding all educational decisions, but shall ultimately retain the responsibility to make all educational decisions pertaining to the minor child.” Thus, while mother had the final say on what school the child should attend, she was obligated to inform father of her concerns and discuss the matter with him

before doing so. Again, the record supports the trial court's finding her unilateral conduct supported its decision to modify custody.

We conclude the evidence supports the trial court's decision in all respects.

DISPOSITION

The postjudgment order is affirmed. Respondent shall recover his costs on appeal.

RYLAARSDAM, ACTING P. J.

WE CONCUR:

ARONSON, J.

IKOLA, J.