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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

COUNTY OF SAN BERNARDINO,

Plaintiff and Respondent,

v.

G.V.,

Defendant and Appellant;

S.N.,

Real Party in Interest and Respondent.

E073933

(Super.Ct.No. CSKS1206760)

OPINION

APPEAL from the Superior Court of San Bernardino County. Michael J. Gassner, Temporary Judge. (Pursuant to Cal. Const., art. VI, § 21.) Affirmed.

G.V., in pro. per., for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

No appearance for Real Party in Interest and Respondent.

This case started out as a governmental child support proceeding, but it has become a child custody proceeding between G.V. (father) and S.N. (mother). In 2018, it appeared that the mother had abducted the children to Texas. The trial court therefore awarded the father sole custody. In 2019, however, the mother explained that she had gone to Texas because she needed the financial support of relatives there, and she believed she was not violating any court orders by doing so. Moreover, she gave several reasons why the father should not have custody. As a result, the trial court awarded her sole custody and allowed her to keep the children in Texas.

The father appeals. We will hold that he has forfeited all of his contentions, by failing to raise them under separate headings and, indeed, by failing to raise them clearly at all. To the extent that we can guess at what they might be, they lack merit.

I

STATEMENT OF THE CASE

This case involves three of the parents' children. In 2009, in previous family law proceedings, the mother was granted custody of the two older children; the father was granted only supervised visitation.[1]

In 2012, the County of San Bernardino (County) filed this action against the father, naming the mother as the other parent, and seeking a declaration of paternity and child support. It obtained a default judgment against the father.

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[1] This was not necessarily the status quo ante. There are mentions in our record of additional proceedings that may have affected custody.

In 2015, the youngest child was born.

In September 2017, the mother appeared in this action for the first time, by filing a request for orders (the request is not in the record, but inferably she sought custody of the youngest child). Initially, the trial court granted the mother temporary custody. In May 2018, however, it denied the mother's request. It noted some of the parties' allegations and counter-allegations, including that "Mother has been alleged to have committed domestic violence." It ruled, "The Court cannot find . . . it's in the best interest of the children to award custody to either parent."[2]

In August 2018, the father filed a request for orders (also not in the record). Meanwhile, in September 2018, the mother moved to Texas with the children.[3]

In January 2019, the trial court held a hearing on the father's request. The mother did not appear. The trial court found that the mother had abducted the children to Texas. It therefore awarded the father sole custody of them; it reserved jurisdiction over visitation. In March 2019, it entered a formal written order to that effect.

In March 2019, the mother filed a divorce proceeding in Texas. As a result, in May 2019, the trial court set a hearing regarding jurisdiction under the Uniform Child

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[2] We confess ourselves uncertain of the effect of this. Apparently, it left the mother with de facto custody.

[3] On this record, we cannot tell for certain whether this violated any court order. As mentioned, however, the most recent previous custody order effectively left the children in the mother's custody. Moreover, because this is a governmental child support proceeding, rather than a divorce, the mother was never served with a summons, and therefore presumably there was no automatic restraining order against her removing the children from the state. (Cf. Fam. Code, §§ 231, 233, 2000, 2040, subd. (a)(1).)

Custody Jurisdiction Enforcement Act (UCCJEA). At that hearing, in June 2019, the mother had counsel. Her counsel explained that the mother went to Texas because she had no means of support in California and needed the support of relatives who lived in Texas. At the time, she had had the mistaken belief that the trial court had given the father temporary custody, but that later she had been given sole custody. The trial court granted the mother temporary custody of the youngest child. It also ordered both parents to file a request to modify child custody.

They duly did so. They each requested sole legal and physical custody of all three children; the mother asked to be allowed to keep them in Texas.

In her request, the mother stated: "I believe that without my presen[ce] or other supervision my children are not safe with their father. He is medically/mentally unstable. He has [an] extensive history of being an abuser. He has been convicted of corporal abuse in a 2009 case . . . . He has never followed any previous orders . . . ." "[He] lost custody of 3 children from a different relationship." "The children are currently in a stable environment . . . and thriving in school."

In his request, the father stated only that the mother had taken the children to Texas in violation of a court order.

A mediator filed a report. Although it is not in the record, apparently it recommended giving the mother custody and allowing her to live in Texas with the children.

In August 2019, the trial court found that California was the children's "home state" and that it had jurisdiction under the UCCJEA. It granted the mother's requests and denied the father's.

II

DISCUSSION

We begin with some of the fundamental principles of appellate law.

First and foremost, "'"[a] judgment . . . 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."' [Citation.]" (*Wilson v. Sunshine Meat & Liquor Co.* (1983) 34 Cal.3d 554, 563.)

Second, "failure 'to make a coherent argument' in support of [a contention] 'constitutes a waiver of the issue on appeal.' [Citation.]" (*Friends of Juana Briones House v. City of Palo Alto* (2010) 190 Cal.App.4th 286, 313.)

Third, a brief must "[s]tate each point under a separate heading or subheading summarizing the point . . . ." (Cal. Rules of Court, rule 8.204(a)(1)(B).) "This is not a mere technical requirement; it is 'designed to lighten the labors of the appellate tribunals by requiring the litigants to present their cause systematically and so arranged that those upon whom the duty devolves of ascertaining the rule of law to apply may be advised, as they read, of the exact question under consideration, instead of being compelled to extricate it from the mass.' [Citations.]" (*In re S.C.* (2006) 138 Cal.App.4th 396, 408.) "'Failure to provide proper headings forfeits issues that may be discussed in the brief but

are not clearly identified by a heading.' [Citation.]" (*Petrovich Development Company, LLC v. City of Sacramento* (2020) 48 Cal.App.5th 963, 976, fn. 9.)

Fourth, "'[[t]he appellant] has the burden of providing an adequate record. [Citation.] Failure to provide an adequate record on an issue requires that the issue be resolved against [the appellant].' [Citation.]" (*Jameson v. Desta* (2018) 5 Cal.5th 594, 609.)

Last but not least, "[p]ro. per. litigants are held to the same standards as attorneys. [Citations.]" (*Kobayashi v. Superior Court* (2009) 175 Cal.App.4th 536, 543.)

B. *The Father's Contentions*.

The headings of the father's brief do not summarize the contention(s) that he is raising. As a result, he has forfeited any contentions whatsoever.

Even when we dig down into the text, we do not find any clearly stated contentions. By failing to make a cogent argument, the father has doubly forfeited any contentions.

Our best guess is that he may be trying to make three points.

First, he may be asserting that the trial court's finding that California was the children's "home state" should have barred the mother from taking them to Texas. However, the "home state" finding related solely to whether the trial court had jurisdiction to make an initial child custody determination under the UCCJEA. (Fam. Code, § 3421, subd. (a)(1).) By contrast, whether the mother should be given custody of the children and allowed to take them to Texas turned on whether "there ha[d] been a

substantial change of circumstances rendering it 'essential or expedient for the welfare of the children' that there be a custody change. [Citations.]" (Hogoboom & King, Cal. Practice Guide: Family Law (The Rutter Group 2022) ¶ 17:314, italics omitted.) The "home state" finding was irrelevant to that.

The trial court explained this carefully to the father below. It said, "I agree with you. The home state is California. [¶] . . . [¶] . . . That's not the decision we're making today. [¶] . . . [¶] . . . The decision we're making today is should they live in Texas or California." Its explanation, though brief, was perfectly correct.

Second, the father may be asserting that his 2018 allegation that the mother had committed domestic violence should have barred the trial court from awarding her custody. However, this was merely the father's allegation; the trial court never made any finding that it was true.

Third, the father may be asserting that there were no changed circumstances since the award of custody to him in January 2019. He has forfeited this contention by failing to give us an adequate record. Specifically, we do not have the mediator's report and recommendation in connection with the August 2019 hearing.[4] A mediator's recommendation is evidence. (Hogoboom & King, *supra*, at ¶ 7:213.) Indeed, "[w]here permitted by local rule, the recommendation of a mediator, neutral as to the parents but acting as an advocate for the best interest of the child, is significant, given the mediator's

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[4] A different mediator's report and recommendation, from 2018, is in the record.

training, education and experience." (*In re Marriage of Rosson* (1986) 178 Cal.App.3d 1094, 1104, fn. omitted, disapproved on other grounds in *In re Marriage of Burgess* (1996) 13 Cal.4th 25, 38, fn. 10.)

In any event, there are some rather obvious changed circumstances. In January 2019, the trial court granted custody to the father only because the mother had supposedly abducted the children to Texas. The mother, for whatever reason, was not at the hearing to contradict or explain this.

By contrast, in August 2019, the mother was asserting that, when she moved, she believed she was not violating any order. Moreover, she claimed a good reason for the move — she had been unable to support herself in California. She also testified that the father was mentally unstable and had a history of domestic violence. Finally, she testified that the children were settled in Texas and were doing well in school.

We therefore conclude that the father has not shown any error by the trial court.

III

DISPOSITION

The orders appealed from are affirmed. As the mother has not appeared, in the interest of justice, we do not award costs on appeal.

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RAMIREZ
P. J.

We concur:
McKINSTER
J.

FIELDS
J.