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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

NAZMI QUTAMI et al., Plaintiffs and Appellants, v. YANNI VOURGOURAKIS, Defendant and Respondent.	B269232 (Los Angeles County Super. Ct. No. BD598510)

APPEAL from an order of the Superior Court of Los Angeles County. Tamara Hall, Judge. Affirmed.

Law Office of Lisa A. Sale and Lisa A. Sale; Ferguson Case Orr Paterson and Wendy C. Lascher for Plaintiffs and Appellants.

Horvitz & Levy, Jeremy B. Rosen and Eric S. Boorstin; Wendy A. Herzog for Defendant and Respondent.

Nazmi and Georgia Qutami (collectively "grandparents") appeal from a sanctions order imposed after grandparents filed a request for order (RFO) seeking modifications to a stipulated judgment permitting the grandparents visitation with their grandchildren, Emmanuel and Zoe (collectively "grandchildren").[1] Yanni Vourgourakis (father), the father of the grandchildren, sought the sanctions pursuant to Code of Civil Procedure section 128.5 (section 128.5) in light of the grandparents' history of harassment directed at father and his family. We find that the trial court did not abuse its discretion in imposing the sanctions, therefore we affirm the order.

FACTUAL AND PROCEDURAL BACKGROUND[2]

Father's first marriage and the death of his first wife

Father married grandparents' daughter Miriam in 2005.[3] They had two children, Emmanuel (Manos) (born in 2007) and Zoe (born in 2008).

In July 2010, Miriam was diagnosed with a rare and aggressive cancer. As Miriam became more ill, father spent more time caring for her, and grandparents spent more time caring for the grandchildren.

Miriam died in October 2012.

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[1] Grandparents do not appeal the trial court's denial of the RFO. This appeal is limited to the sanctions order.

[2] The facts in this section are taken from declarations filed in this proceeding.

[3] As is customary in family law cases, individuals will be referred to by their first names to avoid confusion. No disrespect is intended.

The deterioration of father's relationship with the grandparents following Miriam's death

After Miriam's death, father and the children moved into the grandparents' home and primarily lived there until July 2013.

Father's relationship with the grandparents began to deteriorate almost immediately after Miriam's death. Father felt that it was not good for the grandchildren to witness the grandparents' "constant crying and despair." He also felt that the bickering and yelling that went on in the grandparents' household was not good for the grandchildren. He made the decision to transition the grandchildren to living in their own home with him.

Father's efforts to separate the children from the grandparents were met with immediate resistance from the grandparents. The grandchildren reported to father that the grandparents pressured them to report to father that they wanted to go back to the grandparents' home. Father informed the grandparents that he appreciated all they had done for him over the years, but he felt that he had to do what was best for his family. In response, Georgia accused father of trying to take the children away from her. Georgia also began making unreasonable financial demands upon father, such as requesting access to his bank account and estate plan.

Within several months after Miriam's death, father began a romantic relationship with Demetra Karpodinis, who is now father's wife.[4] Demetra's sister, Marilena, is married to the grandparents' son, Ari. Georgia began to attempt to sabotage father's relationship with Demetra. She told Zoe to "kick out"

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[4] The grandchildren refer to Demetra as "mom" and refer to father and Demetra collectively as their parents.

Demetra. When father called Georgia to talk with her about these statements, she threatened to interfere with Demetra's job. Georgia also threatened to "cut the kids out."

Georgia contacted one of father and Miriam's mutual friends and told her that if she was Miriam's friend she would not visit with father. Georgia also contacted father's godfather, as well as Miriam's former boss, saying that father was ungrateful and that his relationship with Demetra was immoral. Georgia called Demetra's parents and referred to Demetra and Marilena as "gold diggers." Georgia then threatened father's job as a school teacher by saying that it would be easy to make trouble for him since he works with young girls. Georgia informed Demetra's parents that she did not care if she never won but would pursue legal action until father exhausted Miriam's life insurance money. Georgia informed Demetra's parents that if father did not break off his relationship with Demetra, Ari would divorce Marilena. Georgia ended the conversation with, "I will destroy him."

In August 2013 father received a text from Nazmi which stated, "Miriam knows you [sic] holding as hostages the kids and emotionally abusing them." Father immediately brought the grandchildren to Nazmi's place of work (a restaurant grandparents own) to talk to him. Nazmi asked that father allow him to take the grandchildren home. Father refused, stating that he wanted them to sit down and talk first. Nazmi threatened: "all that money you are supposed to be spending on the kids, we will end up wasting in court."

The following day, Georgia went to father's house just as he and Demetra had put the children in the car to attend a party. Georgia blocked the driveway and yelled, "You'll see what is going to happen." She sarcastically congratulated Demetra for ruining Ari and Marilena's marriage. Georgia announced: "I put

the down payment for this house. I have proof. I am going to the Courts." Georgia then demanded to see the grandchildren. Father told her they were in the car. Georgia turned to Demetra and said "sluts don't have rights in my grandkid's lives" and "I want to spit on you bitch; you destroyed your sister's house and family." Manos was in the back of the car with his head down and his knees up, shaking. When Georgia tried to speak with him, he pushed her away and turned away from her. Georgia then went to Zoe and said "your father speaks against me doesn't he?" Georgia told Zoe not to listen to father. Father told Georgia she should not say such things. Georgia said, "the kids are not important, their feelings are not important." Father continued to demand that Georgia leave until she finally left.

At 10:00 p.m. the same evening two police officers arrived at father's home, following up on a report of child abuse. After hearing father's side and talking with Manos, the officers expressed their belief that the report was retaliatory.

Georgia arrived at father's home the following Tuesday. Father attempted to intercept her because the grandchildren were at home. He finally convinced her to leave but she stated, "You are going to lose a lot. This is going to child services!"

Father was at work the following day when he got a call from his mother, saying that a social worker from child services was at his home to interview him and the grandchildren. Father immediately went home. The social worker claimed that she was there on a report that father lifted the children up and brought them down hard on the ground when he was angry. The investigation concluded as unfounded.[5]

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[5] Although grandparents initially denied making the report of abuse, Nazmi admitted at his deposition that he had called the Sheriff's Department and the Department of Children and Family Services to report abuse.

In mid-August 2013, father retained an attorney who sent letters to the grandparents informing them that they were not to contact father, stop by his place of residence, or interact with the grandchildren until a proper cooling off period had passed and the matter was settled. The grandparents ignored father's request and continued to show up at his home unannounced.

In late September 2013, father wrote a letter to the grandparents informing them that he had hired a family counselor to help them move forward in a way that did not involve attorneys. His goal was to try to get together with a trained professional to work towards a solution. The grandparents continued to try to contact father directly.

In December 2013 father was driving down his street when he saw Nazmi driving toward his home. He asked Nazmi where he was going, and reiterated his request that Nazmi not go to his home. Nazmi began to pursue father, in a highly agitated state. He stated "You have ruined my family," and "You have ruined Ari's family." Nazmi informed father that he would never leave father alone and physically threatened father.

The same day, Georgia telephoned father and asked him if she could stop by with some Christmas gifts for the grandchildren. Father spoke with her and they agreed to try to work towards a resolution. Father agreed to meet with Georgia, Ari, Marilena and their children at a local park. Nazmi was not invited, as father felt he needed to cool off. Although father believed that the situation was improving, in January 2014 grandparents retained an attorney to assist them with visitation issues.

Father attempted to avoid the courts and delivered a letter to Georgia the following day offering visitation every other week. However, the grandparents' threatening behavior increased. In late January 2014 father's realtor received a letter from an

attorney demanding that he pay grandparents $40,000 that they had purportedly "loaned" father and Miriam to purchase their home. Father was forced to hire an attorney to respond.

In March 2014, the grandparents filed their petition in this case, along with an RFO to establish grandparent visitation under Family Code section 3102.

The stipulated judgment

In December 2014, father and grandparents stipulated to a judgment regarding the grandparents' visitation with the grandchildren. The judgment provided that "[t]he parties agree and the Court finds that [father], is a fit parent and is acting in the best interests of the two minor children involved." The grandparents were permitted one visit per month with the grandchildren each month for three hours on a Sunday. Father was permitted to designate the Sunday. The visits were to be monitored by a professional monitor, and would take place in a public setting. Father retained the power to curtail, limit or suspend visitation. After nine months, father was permitted to make a good faith determination as to whether the monthly visits should be increased to two visits per month. In addition, father could make a good faith determination as to whether the monitoring should be discontinued. The judgment provides:

> "If a dispute arises as to whether [father] has made a reasonable good faith determination as to provisions in this Judgment and/or if a dispute arises as to the provisions and/or implementation of the terms of this Judgment, the Court retains jurisdiction to decide any such issues."

There was an exchange during the hearing regarding the possibility of a future dispute regarding location in the event that visits ceased to be monitored. Father stated: "I can decide where we are going to have visits. I'm not going to commit to say we are

having visits in a particular spot." Grandparents' attorney stated: "If they run into disputes over the location--" and father's attorney stated, "If you run into the dispute over the location, ultimately the court will resolve it if you can't." When father expressed his concern that this would land them all back in court, the court stated:

> "You want to just stick in the same language that if monitored visits are discontinued, that [father] shall be required to also make a reasonable good faith determination as to whether there should be any requirement that they have to occur in public?"

The parties agreed, and the provision was added.

The court added, "If there is a dispute as to that provision as well, it would be within the court's jurisdiction to resolve that dispute."

The child therapist

After stipulating to the judgment, father hired a child therapist, Dr. Judi Rowe, so that his children would have a place to speak openly about their feelings. Father hired Dr. Rowe to provide a professional opinion on how the children were doing with the visits and to assist father with his decisions regarding the visits.

The visits

Father decided that the visits should occur at the same Corner Bakery restaurant each month and that the grandparents should not bring anything to the visits.

Between November 2014 and June 2015, the grandparents and grandchildren spent three hours together at the Corner Bakery each month in the monitor's presence. Grandparents cooperated with father's conditions. The monitor thought the visits went well and reported that the children seemed to be having a good time. There were no problems. On the first or

second visit, Georgia took earrings and a bracelet from her purse for Zoe, but the monitor explained that there could be no gifts. The monitor observed that the children asked several times for a change of location.

Dr. Rowe reported that the children fluctuated in their feelings about the visits with the grandparents. However, the children reported that they did not want to see the grandparents as much as they had been. Several times, starting in April 2015, the children reported that they did not want to see the grandparents at all, and they had cut short two visits. The children reported that they always did what the grandparents wanted, otherwise the grandparents would yell at them. The children reported incidents where the grandparents asked the children to hold secrets from their parents and to lie to their parents about certain things. The children had expressed anger to Dr. Rowe about how the grandparents had treated father and Demetra. Dr. Rowe opined that the visits should not be increased and, if anything, should be decreased. The children specifically informed Dr. Rowe that they wanted to keep the location of the visits the same.

On May 22, 2015, the grandparents' attorney sent father a letter asking that the grandparents be permitted to vary the location of the visits, that grandparents be allowed to give the grandchildren small birthday gifts, and that the grandparents be allowed to bring games and other activities to the visits. Father provided a responsive letter denying the grandparents' requests.

Grandparents' RFO

The grandparents filed their RFO in June 2015, asking that they be permitted to select the location for the visits from a list including public parks. In addition, the grandparents asked that they be permitted to give the children small gifts for their

birthdays and Christmas, and that they be permitted to bring activities such as board games to the visits.

In support of the RFO, Georgia filed a declaration. Georgia expressed that the visits had been going well and she and Nazmi were "overjoyed" that they had been able to visit with the grandchildren. However, she indicated that "Having the visits at a restaurant, the same restaurant, for a period of three hours has presented challenges." The grandchildren were restricted to sitting in a booth the entire time, and the restaurant was very busy and noisy. Georgia indicated that father denied their requests to vary the public visitation location, stating that the children had no desire to change locations.

A visitation report from the professional monitor, Patricia Fuller, was also filed in support of the RFO. In March, 2015, Demetra had asked the monitor to come to their home to talk about the visits. She was concerned about some of the conversations that were going on and also indicated that the grandchildren were showing different kinds of behavior after the visits. The monitor was concerned that she was not hearing everything going on between the grandparents and the grandchildren at the visits. The monitor felt that it was best to keep the location of the visits the same at that time, so that she could be sure to hear everything that was said at the visits.

The children had recently asked to change the seating arrangements at the visits. Previously, one grandchild would sit next to one grandparent in the booth. The children asked that they be seated across from the grandparents, facing them. The grandparents agreed without any problem. The monitor opined, "The children are trying to please everyone."

In August 2015, father's attorney wrote to the grandparents' attorney. Father had just received a copy of the RFO, having recently returned from vacation, and did not have

time to respond by the scheduled date of August 21. Thus, father's attorney requested that grandparents agree to continue the matter.

Further, father's attorney pointed out several ways in which grandparents had misstated the judgment. The letter reiterated father's power to "'curtail, limit or suspend visitations based upon a good faith reasonable basis.'" The letter further explained that father had retained a therapist for the grandchildren, and that his decisions were made in good faith based on his review of the monitor's reports, his communications with the monitor and the grandchildren, and "especially on the advice he receives from the children's mental health expert." Father's attorney stated that grandparents had "absolutely no basis" on which to bring the RFO and that it was brought in "bad faith."

Father's attorney made it clear that if the grandparents continued to pursue the RFO, she would seek fees and costs as well as sanctions pursuant to section 128.5. Father's attorney asked that the grandparents withdraw the RFO.

On October 14, 2015, father's counsel sent grandparents' counsel a copy of the declaration of Dr. Rowe, to be filed with the court if the grandparents continued to insist on pursuing their RFO. Father's counsel reiterated her request that the grandparents withdraw the RFO. Grandparents' counsel replied that grandparents would take their RFO off calendar if father permitted location change, permitted grandparents to give the children small gifts, and agreed to increase the visits to twice a month.

On November 2, 2015, father filed his request for sanctions pursuant to section 128.5. Father sought $17,010 against grandparents for bringing the harassing and frivolous motion and forcing respondent to incur the fees necessary to respond. Father

argued that the grandparents continually harassed him through their false reports of child abuse and threats to force him to spend all his money in court, among other things. Father indicated that the RFO was yet another attempt to harass him and pressure him financially. Father argued that he had made reasonable, thoughtful decisions based on input from the children, their therapist, and his own judgment, and that grandparents were attempting to undermine his fundamental parental decisions. Father felt sanctions were necessary because grandparents otherwise would "continue to harass [father], and . . . continue to force [father] to drain his savings to defend himself, and . . . continue to find attorneys willing to file new false RFOs -- unless they are stopped."

In their reply brief filed on November 23, 2015, grandparents sought additional affirmative relief in the form of court-ordered conjoint therapy for grandparents and the grandchildren, as well as the appointment of counsel for the minors. Grandparents pointed out that the judgment provides that if "'a dispute arises as to whether [father] has made a reasonable good-faith determination as to the provisions in this Judgment and/or if a dispute arises as to the provisions and/or implementation of the terms of this judgment, the court retains jurisdiction to decide any such issues.'" Grandparents argued that the RFO was brought in good faith based upon their understanding of the judgment.

The trial court's decision

The matter came on for hearing on December 2, 2015. At the hearing, the court listed each of the voluminous filings it had reviewed before the hearing and announced its tentative decision was to deny the grandparents' RFO and grant father's motion for sanctions.

After hearing argument, the court adopted its tentative ruling and directed father's counsel to prepare a written order. Father's counsel prepared the order and grandparents' counsel approved and signed the order.

The court adopted the proposed order.

Father's counsel then filed a proposed corrected order, which grandparents' counsel also approved and signed.[6] The corrected order provides:

> "1. Based on the Court's review of extensive pleadings filed in connection with both RFO's, as listed and identified on the record by the Court, the Court finds there is good cause to deny [grandparents'] request for an evidentiary hearing pursuant to Family Code section 217, and so denies their request.
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> "2. Based on the Court's review of the extensive pleadings filed in connection with both RFO's and after hearing argument of counsel the Court makes the following orders:
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> "a. The Court denies [grandparents'] Request for Order re Other Orders (Change in Visitation Location, Etc.) filed June 22, 2015.
>
> "b. The Court grants [father's] request for sanctions pursuant to Code of Civil Procedure section 128.5. The Court orders [grandparents] to pay to [father] the sum of seventeen thousand ten dollars ($17,010)."

The written order was entered on January 6, 2016. Grandparents' counsel never objected or pointed out any defects

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6 The initial proposed order contained a clerical error.

in the trial court's decision or in the written order. On the contrary, grandparents' counsel explicitly approved the order.

Grandparents' appeal

On December 21, 2015, grandparents filed their notice of appeal from the court's oral ruling on December 2, 2015.[7]

DISCUSSION

I. Applicable law and standard of review

Grandparents appeal only the sanctions order awarded under section 128.5, which provides, in part:

> "(a) A trial court may order a party, the party's attorney, or both to pay the reasonable expenses, including attorney's fees, incurred by another party as a result of bad-faith actions or tactics that are frivolous or solely intended to cause unnecessary delay."

Sanctions under this section may be awarded for "bad-faith actions or tactics that are frivolous" or "for the sole purpose of harassing an opposing party." (§ 128.5, subd. (a), (b)(2).) A grant of sanctions under this section is reviewed for abuse of discretion. (*Sabek, Inc. v. Engelhard Corp.* (1998) 65 Cal.App.4th 992, 1001.)

Under the abuse of discretion standard, we may only reverse an award of sanctions if it appears that the court has exceeded the bounds of reason, "'all of the circumstances being considered.'" (*In re Woodham* (2001) 95 Cal.App.4th 438, 443.) Thus, we will not disturb a trial court's sanctions order unless the injury resulting from the order is sufficiently grave to amount to a manifest miscarriage of justice. (*Muega v. Menocal* (1996) 50 Cal.App.4th 868, 873-874.)

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[7] A notice of appeal made after a judgment is rendered but before it is entered is deemed filed immediately upon entry of the formal order. (Cal. Rules of Court, rule 8.104(d).)

II. No error in denying grandparents' procedural requests

Grandparents assert that they were denied due process due to the trial court's denial of two requests: to present live testimony, and that the court appoint counsel for the grandchildren. We address each contention below, and conclude that no reversible error occurred.

A. Request for live testimony

1. Applicable law

Grandparents asked the court for a hearing with live witnesses pursuant to Family Code section 217. That section provides:

> "(a) At a hearing on any order to show cause or notice of motion brought pursuant to this code, absent a stipulation of the parties or a finding of good cause pursuant to subdivision (b), the court shall receive any live, competent testimony that is relevant and within the scope of the hearing and the court may ask questions of the parties.
>
> "(b) In appropriate cases, a court may make a finding of good cause to refuse to receive live testimony and shall state its reasons for the finding on the record or in writing. The Judicial Council shall, by January 1, 2012, adopt a statewide rule of court regarding the factors a court shall consider in making a finding of good cause.
>
> "(c) A party seeking to present live testimony from witnesses other than the parties shall, prior to the hearing, file and serve a witness list with a brief description of the anticipated testimony. If the witness list is not served prior to the hearing, the court may, on request, grant a brief continuance and

may make appropriate temporary orders pending the continued hearing."[8]

California Rules of Court, rule 5.113 provides:[9]

"(a) **Purpose** Under Family Code section 217, at a hearing on any request for order brought under the Family Code, absent a stipulation of the parties or a finding of good cause under (b), the court must receive any live, competent, and admissible testimony that is relevant and within the scope of the hearing.

"(b) **Factors** In addition to the rules of evidence, a court must consider the following factors in making a finding of good cause to refuse to receive live testimony under Family Code section 217:

"(1) Whether a substantive matter is at issue -- such as child custody, visitation (parenting time), parentage, child support, spousal support, requests for restraining orders, or the characterization, division, or temporary use and control of the property or debt of the parties;

"(2) Whether material facts are in controversy;

"(3) Whether live testimony is necessary for the court to assess the credibility of the parties or other witnesses;

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[8] Grandparents filed a list of witnesses, including father, Georgia, the professional monitor, and Dr. Rowe. The witness list specified that each witness would be called to testify with regard to his or her declaration filed in this matter.

[9] Grandparents incorrectly cite Cal. Rules of Court, rule 5.113 in their opening brief as Cal. Rules of Court, rule 8.113.

"(4) The right of the parties to question anyone submitting reports or other information to the court;

"(5) Whether a party offering testimony from a non-party has complied with Family Code section 217(c); and

"(6) Any other factor that is just and equitable.

"(c) **Findings** If the court makes a finding of good cause to exclude live testimony, it must state its reasons on the record or in writing. The court is required to state only those factors on which the finding of good cause is based."

2. Background

At the hearing on December 2, 2015, the court stated, "We're here today for two purposes." First, the grandparents' "request filed June 22nd, 2015, modification as it pertains to visitation." And "number two, the motion filed by [father] pursuant to California Code of Civil Procedure section 128.5, requesting sanctions against [grandparents]."

The court stated that the two separate items on calendar "kind of go hand-in-hand," and proceeded to recite the extensive documents that the court had reviewed in preparation for the hearing. The court's recitation of the evidence it had reviewed for the hearing takes up nine pages of the reporter's transcript of the hearing that day and covers over 50 documents, including exhibits. Following the court's lengthy recitation of the evidence and pleadings it had reviewed, the court stated:

"The court has reviewed the file. Based on that review, the court is denying [grandparents'] request for a Family Code section 217 hearing. The court has thoroughly reviewed both parties' position,

appreciates both parties' position, finds good cause to deny the request for a 217 hearing."

3. No reversible error occurred

First, we question whether Family Code section 217 is relevant to the motion for sanctions at issue here. Family Code section 217 applies where there is an order to show cause or notice of motion brought pursuant to the Family Code. (Fam. Code § 217, subd. (a); see also Cal. Rules of Court, rule 5.113(a) [Family Code section 217 is relevant at a hearing "on any request for order brought under the Family Code"].) The trial court made clear that it was handling two separate motions at the December 2, 2015 hearing: the grandparents' request regarding visitation under the Family Code, and father's request for sanctions pursuant to section 128.5. The grandparents do not appeal the court's order denying grandparents' RFO pursuant to the Family Code. Thus, they have expressly waived their right to argue any issues decided in connection with the RFO, and cannot raise such issues in connection with their appeal of the sanctions motion. (*In re Marriage of Padilla* (1995) 38 Cal.App.4th 1212, 1216 [refusing to consider arguments concerning support order that was not appealed].)

Grandparents have failed to cite any law suggesting that Family Code section 217 applies to a motion for sanctions under Code of Civil Procedure section 128.5. Nor have they presented any law suggesting that they were entitled to present live testimony in opposition to a motion for sanctions filed pursuant to the Code of Civil Procedure. Therefore, we consider grandparents' request for live testimony to be outside the scope of this appeal.[10]

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[10] We reject grandparents' assertion that because father filed his section 128.5 motion for sanctions on a family law form

Further, we note that grandparents have failed to cite to any portion of the record suggesting that they made an offer of proof pursuant to Evidence Code section 354.[11] Such an offer of proof would include a description of "'the testimony of specific witnesses . . . to be introduced to prove the existence or nonexistence of a fact in issue.' [Citations.]" (*In re Mark C.* (1992) 7 Cal.App.4th 433, 444.) "Failure to make an adequate offer of proof precludes consideration of the alleged error on appeal. [Citations.]" (*Ibid.*) Grandparents' list of witnesses provides only very general descriptions of the testimony to be offered, and mostly repeats that such testimony would concern information in the witnesses' declarations. There is no specific offer of proof as to any live testimony. Where a trial court declines to hear live testimony that is merely repetitive of the declarations it has already read, there is "no basis for criticizing the court's ruling." (*In re Marriage of deRoque* (1999) 74 Cal.App.4th 1090, 1094-1095.)

(Judicial Council Form FL-300), that Family Code section 217 is automatically applicable to the motion. Grandparents provide no support for their position that the form on which a motion is provided dictates the applicable law.

[11] Evidence Code section 354 provides, in relevant part: "A verdict or finding shall not be set aside, nor shall the judgment or decision based thereon be reversed, by reason of the erroneous exclusion of evidence unless the court which passes upon the effect of the error or errors is of the opinion that the error or errors complained of resulted in a miscarriage of justice and it appear of record that: [¶] (a) The substance, purpose, and relevance of the excluded evidence was made known to the court by the questions asked, an offer of proof, or by any other means."

4. Finding of good cause to deny the request was sufficient

However, even if Family Code section 217 applies to father's motion for sanctions under the Code of Civil Procedure, we find that the trial court made a sufficient finding of good cause under the circumstances of this case.

As set forth above, the trial court's lengthy recitation of the numerous documents that the trial court reviewed in preparation for the hearing notified the parties that the court was well-informed as to the relevant events and the parties' positions. Nevertheless, grandparents argue that there is no indication that the trial court considered any of the factors listed in California Rules of Court, rule 5.113(b), which must be considered before a court may find good cause to deny a live hearing.

We disagree. The court's words that the court "thoroughly reviewed both parties' position," and "appreciates both parties' position," signal that the court was familiar with the facts and arguments. Implicit in the court's words is a determination that the material facts were not in controversy (Cal. Rules of Court, rule 5.113(b)(2)), and that live testimony was not necessary for the court to assess the parties' credibility (rule 5.113(b)(3)).

The court was not required to set forth its conclusion as to each of the factors listed in California Rules of Court, rule 5.113(b). It was only required to state those facts upon which the finding of good cause was based. (Rule 5.113(c).) The court's indication that it had thoroughly read the record in the case sufficiently indicates that the court considered the pertinent factors and denied grandparents' request on the grounds that material facts were not in controversy and live testimony was unnecessary.

B. Request to appoint minors' counsel

Grandparents proposed that minors' counsel be appointed in conjunction with conjoint therapy.[12] The grandparents made this request "to enable the court and the parties to have a clear picture in terms of what is going on in terms of the children's perceptions as it relates to the actual custodial and visitation periods as reported by the monitor." Father objected to grandparents' request, stating: "This goes back to the problem we've had from the beginning. They are not parents. This is not a regular custody issue. We have minor's counsel for the children. It's their father."

Again, grandparents are not appealing the denial of their RFO regarding visitation. The relevance of their request for minors' counsel to the motion for sanctions is questionable, at best. Grandparents assert that their request to appoint minor's counsel was relevant to the sanctions motion because it would have clarified the grandchildren's views. However, they do not adequately explain how the appointment of minors' counsel could have affected a decision regarding grandparents' bad faith in pursuing their RFO.

Even assuming that the request for appointment of minors' counsel was tenuously related to the motion for sanctions, its denial was not error. Family Code section 3150 permits a court to appoint private counsel to represent the interests of a child if the court "determines that it would be in the best interest" of the child. (Fam. Code § 3150, subd. (a).) Factors that the court should consider when determining whether to appoint counsel for the minor include: whether the issues are highly contested; whether the child is subject to stress that might be alleviated by

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[12] As father points out, grandparents' request was made in their Reply brief, thus the trial court was not even required to consider it.

appointment of counsel; whether counsel would be likely to provide the court with relevant information not otherwise readily available or likely to be presented; whether the proceeding involves allegations of abuse of the child; whether one or both parents are incapable of providing a stable, safe environment for the child; whether counsel is available who is knowledgeable about the issues being raised; whether the best interest of the child appears to require independent representation; and if there are two or more children, whether any child would require separate counsel to avoid a conflict of interest. (Cal. Rules of Court, rule 5.240(a).)

Grandparents fail to explain how appointment of counsel would be in the best interests of the grandchildren. Instead, grandparents argue that appointment of counsel for the grandchildren would be in the best interest of the grandparents, because it would have somehow illuminated their good faith in seeking the visitation modifications that they sought. This argument is irrelevant and unconvincing.

There is no evidence in the record that appointment of minors' counsel would have served the best interests of the children. The court had evidence before it of two professionals -- the monitor, and the therapist, both of whom were capable of objectively determining the viewpoints of the children and recording their observations. There was no apparent need for a third individual to express the views of the children. In addition, there was no evidence that father did not have the children's best interests in mind at all times. Father was a fit and capable parent and there were no allegations of harm to the children. The trial court's denial of grandparents' request for appointment of children's counsel was well within its discretion.

III. Grandparents forfeited their objection under section 128.5, subdivision (c)

Grandparents also assert that the trial court failed to provide detail in its written order of the conduct or circumstances justifying the imposition of sanctions pursuant to section 128.5. Section 128.5, subdivision (c) requires that "[a]n order imposing expenses shall be in writing and shall recite in detail the conduct or circumstances justifying the order." This requirement generally "contemplates some recital beyond the court's conclusions that the conduct being sanctioned comes within the statutory qualification of 'tactics or actions not based on good faith which are frivolous or which cause unnecessary delay.' [Citations.]" (*Lavine v. Hospital of the Good Samaritan* (1985) 169 Cal.App.3d 1019, 1029.)

The trial court's order states that the request for sanctions was granted "[b]ased on the Court's review of the extensive pleadings filed in connection with both RFO's and after hearing argument of counsel." Thus, it does not contain the detail required by section 128.5, subdivision (c). However, under the circumstances of this case, we find that grandparents have forfeited their right to object to the level of detail in the trial court's order by not raising it below.

Grandparents had two opportunities to review and approve the proposed order. They approved it both times. Although the express approval written on the order itself is a limited approval, stating "Approved as conforming to orders issued orally by court," grandparents should have made all their objections to the order at that time to give the trial court the opportunity to correct any errors.

"""An appellate court will ordinarily not consider procedural defects or erroneous rulings, in connection with relief sought or defenses asserted, where an objection could have been

but was not presented to the [trial] court by some appropriate method . . . ."'" (*In re Carrie W.* (2003) 110 Cal.App.4th 746, 755.) The purpose of this rule is to allow the trial court to correct and avoid such errors, particularly where the error is apparent to the objecting party at the time it was made and could have been corrected. (*Keener v. Jeld-Wen, Inc.* (2009) 46 Cal.4th 247, 264.)

Andrus v. Estrada (1995) 39 Cal.App.4th 1030 (*Andrus*), confirms that a party may forfeit the right to object to a lack of specificity in an award of sanctions under section 128.5 by failing to raise such an objection in the trial court. The appellants in *Andrus* appealed from a sanctions award under section 128.5 on the ground that it was not in compliance with subdivision (c) of the statute. (*Andrus*, at p. 1043.) The Court of Appeal held:

> "Appellants had an opportunity to review respondent's proposed order before the court signed it. Appellants made no objection to the specificity of the order. The specificity requirement of section 128.5, subdivision (c) is not jurisdictional in nature. Appellants cannot now claim on appeal that the order was deficient."

(*Andrus, supra*, at p. 1043.)

Grandparents had two opportunities to bring this error to the attention of the trial court before the court entered the order. Because they failed to do so, the argument is now forfeited.[13]

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[13] Grandparents attempt to distinguish *Andrus* on the ground that they are not objecting to the lack of specificity in the court's order, they are objecting to the complete absence of any explanation of the order. Whether grandparents' objection is for lack of specificity or the complete absence of explanation, the objection should have been raised in the trial court in order to give the court the opportunity to correct the error.

IV. The stipulated judgment does not prohibit sanctions

Grandparents argue that the trial court abused its discretion by sanctioning them for seeking dispute resolution as authorized by the stipulated judgment. Grandparents assert that their requests were reasonable, and that the stipulated judgment's reservation of jurisdiction to resolve disputes would be meaningless if invocation of that jurisdiction were to result in sanctions.[14]

The trial court's imposition of sanctions was not based on grandparents' act of invoking the court's jurisdiction. Instead, pursuant to section 128.5, the court's imposition of sanctions was based on grandparents' "bad-faith actions or tactics" that were "frivolous or solely intended to cause unnecessary delay." (§ 128.5, subd. (a).) The stipulated judgment does not prohibit sanctions for such actions.

V. The trial court's factual determination regarding grandparents' acts of bad faith and harassment are supported by the record

Grandparents argue that father made no subjective showing of bad faith, as required by section 128.5. (*Dolan v. Buena Engineers, Inc.* (1994) 24 Cal.App.4th 1500, 1506.) Grandparents further claim that father offered no evidence that grandparents acted in bad faith in filing their RFO. Grandparents' position ignores the record.

There were numerous incidents reported in the record demonstrating grandparents' bad faith. Among those incidents were: Georgia's threats concerning father's and Demetra's

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[14] The judgment provides: "whether [father] has made a reasonable good faith determination as to provisions in this Judgment and/or . . . as to the provisions and/or implementation of the terms of this Judgment, the Court retains jurisdiction to decide any such issues."

employment; Georgia's statement that father and Demetra should break off their relationship or Georgia would "destroy" father; Nazmi's text message suggesting that father was emotionally abusing the grandchildren; Nazmi's specific threat to father that father would end up wasting all his money in court; Georgia's new claim that money she had given father and Miriam was a loan; Georgia's threat to call child services; the grandparents' false report of child abuse; and Nazmi's physical threat against father and Nazmi's verbal threat that he would never leave father alone until Nazmi got what he wanted. This evidence, along with other evidence in the record, amply supports the trial court's determination that grandparents' action was in bad faith and designed to harass father and his family.

Grandparents argue that the events which occurred prior to the time of the stipulated judgment should not be considered in determining whether sanctions are warranted. Grandparents cite no law in support of their position that the court is restricted to a certain time frame in determining whether it should award sanctions. On the contrary, the court is entitled to consider all of the circumstances leading up to the request for sanctions. (*Wallis v. PHL Associates, Inc.* (2008) 168 Cal.App.4th 882, 893 ["'Whether sanctions are warranted depends on an evaluation of all the circumstances surrounding the questioned action. [Citation.]'"].) The trial court made it clear that it had considered every piece of evidence, and every pleading, filed in support of the motions before it. Grandparents make no argument that the trial court improperly considered any of the evidence.[15]

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[15] The record reflects that grandparents filed evidentiary objections and a request to strike portions of the declaration of father's attorney, Wendy A. Herzog. The court indicated it had made rulings as to those objections. None of the court's evidentiary rulings have been appealed.

Grandparents dispute much of the evidence contained in father's declarations. However, we must resolve any evidentiary conflicts "most favorably to the trial court's ruling." (*Ellis v. Toshiba America Information Systems, Inc.* (2013) 218 Cal.App.4th 853, 878 (*Ellis*).) As set forth above, there are multiple instances of comments and threats made by grandparents directly evidencing their improper motives and desire to harass father. The trial court was entitled to believe this evidence, and it is not our role to undermine the trial court's factual and credibility determinations.

"'A court's decision to impose a particular sanction is "subject to reversal only for manifest abuse exceeding the bounds of reason." [Citation.]' [Citation.]" (*Ellis, supra*, 218 Cal.App.4th at p. 880.) The trial court's decision to sanction grandparents in the amount of $17,010 did not exceed the bounds of reason.

DISPOSITION

The order is affirmed. Respondent is awarded his costs of appeal.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS.

_____, Acting P. J.
CHAVEZ

We concur:

_____, J.
HOFFSTADT

_____, J.*
GOODMAN

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* Retired Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.