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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

CYNTHIA TORRES,

Plaintiff and Respondent,

v.

JOHN TORRES,

Defendant and Appellant.

2d Civil No. B281766
(Super. Ct. No. D335734)
(Ventura County)

Self-represented appellant John Henry Torres asked the family law court to modify a child custody order. The court denied appellant's request for a continuance, made one day before the hearing. It also denied his request for custody.

Appellant contends that the trial court should have granted a continuance; however, his request was not supported by a showing of good cause. We conclude that the trial court did not abuse its discretion by denying a continuance and striking appellant's untimely reply papers. We affirm.

FACTS AND PROCEDURAL HISTORY

In March 2017, appellant filed an ex parte motion in the family law court, requesting joint physical custody of his two children, born in 2004 and 2005. Appellant's former wife, respondent Cynthia Torres, has had primary custody of the children since 2011. This was part of a stipulated judgment entered when the parties divorced.

Appellant declared that Cynthia disciplined their son inappropriately, causing the boy to run away from her home. Appellant further asserted that both children ran away from Cynthia's home in February 2017.

Cynthia opposed appellant's request for custody, observing that he does not live in an environment suitable for children. Since 2011, he has resided in a rented bedroom in someone's house, and shares the bedroom with the children when they visit. Cynthia estimated that appellant spent ten percent of his visitation time with the children, some of it at her home.

Appellant has not provided financial support for the children since the parties divorced in 2011. Cynthia believes that appellant is seeking custody because she recently applied for assistance in obtaining child support from him.

Cynthia conceded that the children ran away from her home and went to appellant. She blamed appellant for alienating the children by telling them that she is a bad mother and encouraging them to behave in a defiant and disrespectful manner toward her. Cynthia asked the court to order counseling for the children, due to ongoing parental conflict.

The court denied ex parte relief to appellant because there was "no emergency." It ordered the parties to attend child custody mediation on March 28, 2017, and a court hearing on

March 29. Though the parties and their children attended the mediation, appellant refused to participate.

Appellant filed a declaration and “request for adjournment” on March 28, 2017, which he served by mail. Cynthia’s attorney, who did not receive appellant’s documents before the court hearing, asked the court to strike them as untimely.

On March 29, 2017, the court granted the motion to strike and ordered appellant’s documents to “be removed from the court’s file and destroyed.” The court noted that appellant refused to participate in mediation and did not appear for the court hearing. Cynthia retained custody. The court ordered that the children participate in counseling.

DISCUSSION

The family law court entered a stipulated judgment on child custody in 2011. Its ruling on appellant’s 2017 request for a custody modification is appealable as an order made after judgment. (Code Civ. Proc., § 904.1, subd. (a)(2); *Enrique M. v. Angelina V.* (2004) 121 Cal.App.4th 1371, 1377-1378.)

Appellant’s challenge to the trial court’s ruling is strictly procedural. He offers no argument addressing the merits of the ruling. As we explain below, appellant attempted to file untimely and inadequate papers with the court. The court rejected the filings. This was not an abuse of discretion.

First, the court rejected appellant’s declaration. All reply papers must be filed with the court and served on each party at least *five* court days before the hearing. The reply must be served by personal delivery, facsimile, express mail, or other means “reasonably calculated to ensure delivery to the other party . . . not later than the close of the next business day” after filing. (Code Civ. Proc., § 1005, subds. (b) & (c).)

Appellant's declaration was filed on March 28, 2017, *one* day before the court hearing. His service of the declaration was not reasonably calculated to ensure delivery to Cynthia's attorney because it was sent by regular U.S. mail.

Appellant's declaration was untimely filed and served. He sought a modification and was charged with knowing the statutory deadline for filing a reply to Cynthia's opposition, regardless of his pro per status. No due process violation occurred when appellant missed the deadline and the trial court struck his declaration.

Second, the court rejected appellant's "request for adjournment." This appears to be a request for continuance. A motion for a continuance is addressed to the sound discretion of the trial court. (*Link v. Cater* (1998) 60 Cal.App.4th 1315, 1321.) The motion may be granted "only on an affirmative showing of good cause requiring the continuance," with supporting declarations. (Cal. Rules of Court, rule 3.1332(b), (c).) Good cause encompasses a variety of factors.¹

Appellant requested "an adjournment for all proceedings . . . pending the out come of [a] child services investagation." (*Sic.*) Appellant offered no explanation for his hearsay claim about an alleged investigation or proof that one was underway. Significantly, he did not identify the subject of the alleged investigation or indicate when it might be completed.

¹ Circumstances indicating good cause for a continuance include the unavailability of a witness, party or counsel because of death, illness or other excusable reason; a substitution of counsel, if required in the interests of justice; the addition of a new party; a party's excused inability to obtain essential testimony, documents or other material evidence despite diligent efforts; or a significant, unanticipated change in case status. (Cal. Rules of Court, rule 3.1332(c)(1)-(7).)

Appellant’s one-sentence-long, unsupported claim of a child services investigation—followed by his failure to appear at the court hearing to offer any further explanation—did not constitute “good cause” for a continuance, as described in the Court Rules. (See fn. 1, *ante*.) Moreover, the trial court could consider, as a basis for denying the motion, that appellant sought a continuance one day before the hearing. (Cal. Rules of Court, rule 3.1332(d)(1) [proximity of the hearing date is relevant to the court’s ruling on a motion for continuance].)

Appellant makes a vague claim about his “right to have his case heard by fair and impartial Judge and not bias and prejudice.” (*Sic*.) His claim of bias is unsupported by citation to the record, which does not disclose any unfair treatment. None of the cases appellant cites support his argument.

DISPOSITION

The post-judgment custody order of March 29, 2017 is affirmed. No costs are awarded because respondent did not participate in this appeal.

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PERREN, J.

We concur:

YEGAN, Acting P. J.

TANGEMAN, J.

Roger L. Lund, Judge

Superior Court County of Ventura

John Torres, in pro. per., for Defendant and Appellant.

No appearance for Plaintiff and Respondent.