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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
SECOND APPELLATE DISTRICT  
DIVISION TWO

FRED ESTRADA,

Plaintiff and Appellant,

v.

STEPHANIE MARIE LETO,

Defendant and Respondent.

B283092

(Los Angeles County  
Super. Ct. No. BD554643)

APPEAL from orders of the Superior Court of Los Angeles  
County. Patrick A. Cathcart, Judge. Affirmed.

Fred Estrada, in pro. per., for Plaintiff and Appellant.

No appearance for Respondent.

Fred Estrada (father) appeals from two orders modifying a child custody arrangement. The first order, issued after a hearing on April 10, 2017, clarified how father and the child's mother, Stephanie Marie Leto (mother), should determine the fifth weekend of the month. The second order, issued after a hearing on May 15, 2017, modified the child custody arrangement as to (1) which parent drove for custodial changes; and (2) the length of the Thanksgiving holiday. On May 15, 2017, the trial court also denied father's request to vacate all orders going back to 2013. We find no abuse of discretion in the trial court's orders, therefore we affirm the orders.<sup>1</sup>

### **BACKGROUND**

Father and mother were married in August 2007 and divorced in April 2012. Their son Freddie was born in February 2011.

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<sup>1</sup> Father, who appears before this court in pro. per., purports to appeal from "every modification stemming from the January 9th, 2015 evidentiary hearing." However, father's notice of appeal only designates the April 10, 2017 and May 15, 2017 orders. The notice of appeal must "identif[y] the particular judgment or order being appealed." (Cal. Rules of Court, rule 8.100(a)(2).) We therefore have no jurisdiction to consider any other orders. (*Ellis v. Ellis* (2015) 235 Cal.App.4th 837, 846 ["Our jurisdiction is 'limited in scope to the notice of appeal and the judgment appealed from. [Citation.]'"].) Further, a notice of appeal must be served 60 days after service of notice of entry of judgment or 180 days after entry of judgment. (Cal. Rules of Court, rule 8.104(a)(1).) Father's notice of appeal was filed May 26, 2017, over two years after the January 9, 2015 hearing. Father has failed to address the apparent untimeliness of his purported appeal from earlier orders. Therefore, we restrict our review to the two orders designated in the notice of appeal.

### **Child custody expert evaluation**

In 2013, when Freddie was two and a half years old, father requested an order (RFO) that he be permitted to move to New York with the child. In connection with this RFO, the court ordered a child custody evaluation with an expert pursuant to Evidence Code section 730. Father later withdrew his request to relocate. However, the child custody evaluation went forward. The expert recommended that mother have final decision-making authority in several areas. Father took the position that the expert report was biased and that the expert ignored evidence father presented regarding mother's mental health and its impact on mother's parenting ability. Following the evaluation and hearing on father's RFO, which took place on January 9, 2015, the court ordered joint physical custody and joint legal custody for medical issues but ordered sole legal custody to mother for educational decisions.

### **February 3, 2016 order**

Mother filed an RFO in December 2015 which was heard on February 3, 2016. Following the hearing, mother was awarded primary physical custody and sole legal custody of Freddie. The court's order was based on its observation that "the parties are unable to co-parent at the present time . . . they cannot make decisions on even so much as noneducational matters." The court was "hearing no cooperation between the two." Father was permitted visitation on the first, second, third and fourth weekends of each month.

### **April 10, 2017 order**

Mother filed another RFO regarding clarification of the fifth weekend that was referred to in the February 2016 order. Father was refusing to allow mother any weekends with her son, taking the position that there was "no such thing" as a fifth weekend in any month. At a hearing on April 10, 2017, the court

clarified that the fifth weekend was determined by the fifth Thursday of the month. Mother was to have custody on the fifth Thursday of the month until the following Sunday at 6:00 p.m. At the end of the hearing, mother asked permission to make an inquiry of the court. She inquired whether father had a 30-minute window on Sunday evenings. The court clarified that 6:00 p.m. was the deadline to bring the child to mother on Sunday evenings. Mother inquired, "What is my recourse?" To which the court responded, "You will have to consider a contempt proceeding."

**May 15, 2017 order**

On May 15, 2017, the court held a hearing on father's postjudgment request that the court described as "difficult to understand." The RFO asked the court to "vacate all the matters that have gone on basically back to 2013 and even back to the date of the judgment or before the judgment." Father took issue with mother's request that all agreements between father and mother be in writing. He further requested that the parent receiving the child drive. Mother agreed to this latter request but asked that the transitions be at the Venice Police Station. The court agreed, and set the child's exchange at 5:00 p.m. at the Venice Police Station.

Father made a request pursuant to "437(d)" as the basis for vacating what father referred to as "void orders." The court pointed out that 437(d) was "nonexistent" and interpreted father's request to be made under Code of Civil Procedure section 473, subdivision (d), which permits a court to vacate void orders. The court denied father's request. The court noted that father's request to vacate all orders over the last five years, including the results of the Evidence Code section 730 evaluation, was not timely, because requests to vacate pursuant to Code of Civil Procedure section 473 must be filed within six months of a

challenged order. The court also noted that it did not find any of the orders issued over the last five years to be void.

Following the hearing, the court modified the custody arrangement to set the custody exchange for 5:00 p.m. Sunday evenings at the Venice Police Station. It also extended the Thanksgiving vacation, which would now extend from noon on Wednesday to a Monday morning return to school. The court denied all of father's other requests because there was no reasonable basis for granting them. The court found that there were no void orders, nor was there perjury or fraud in the proceedings.

On May 26, 2017, father filed a notice of appeal from the orders made on April 10, 2017 and May 15, 2017.

## **DISCUSSION**

### **I. Standard of review**

When the parents have joint physical custody of the child, the trial court has wide discretion to choose a parenting plan that is in the best interests of the child. (*Niko v. Foreman* (2006) 144 Cal.App.4th 344, 363.) Thus, "[t]he standard of appellate review of custody and visitation orders is the deferential abuse of discretion test. [Citation.]" (*In re Marriage of Burgess* (1996) 13 Cal.4th 25, 32.) "The precise measure is whether the trial court could have reasonably concluded that the order in question advanced the 'best interest' of the child." (*Ibid.*) We are required to uphold the order if it is correct on any basis. (*Ibid.*)

### **II. The April 10, 2017 modification**

On April 10, 2017, the court clarified the parameters of the fifth weekend of the month. Father makes no reasoned argument as to how the trial court abused its discretion in rendering this order. Nor does father present any legal authority suggesting that the trial court's order was in error.

“A touchstone legal principle governing appeals is that ‘the trial court’s judgment is presumed to be correct, and the appellant has the burden to prove otherwise by presenting legal authority on each point made and factual analysis.’ (*Okorie v. Los Angeles Unified School Dist.* (2017) 14 Cal.App.5th 574, 599 (*Okorie*).) Matters lacking in adequate legal discussion will be deemed forfeited. (*Id.* at p. 600.)

Because father has failed to present reasoned argument, with citation to legal authority, suggesting that the trial court abused its discretion in rendering the April 10, 2017 order, his claim of error is forfeited.

Father notes that the trial court “counseled [mother] to consider ‘contempt’ charges.” Without citation to legal authority, father asserts that “Counseling a litigant is prima facie proof of bias.” Because he has failed to provide citations to legal authority, father has again forfeited this argument on appeal. Further, the transcript of the proceedings does not suggest that the court counseled mother to consider contempt charges.

In sum, the order issued on April 10, 2017, was well within the court’s discretion.

### **III. The May 15, 2017 modification**

Father does not take issue with the trial court’s decision to extend the Thanksgiving holiday. Father requested this modification.

Father takes issue with the “forced” exchanges at Venice Police Station. Father argues that this was an abuse of discretion because it is not convenient, it exposes him to mother’s demands for timeliness and her “hair trigger” desire to create a scene in front of police, and it reduces his custody time an additional hour. Father cites no legal precedent suggesting that the court’s decision constitutes an abuse of discretion.

The evidence before the court was that mother and father had difficulty communicating. During a heated exchange of the child, father called mother a derogatory term and started banging on the roof of her car as she was getting her seatbelt on. Mother filed a police report based on the incident. Mother testified that she felt more comfortable with other people present during the drop offs. She insisted that her cousin come to her home when father was dropping off the child. Under the circumstances, the court agreed that the drop off should be done at Venice Police Station. The earlier drop off time was due to traffic between Venice and Santa Monica, where mother lives.

The trial court's decision was well-reasoned and based on the evidence before it. No abuse of discretion occurred.

The trial court's denial of father's request to vacate all orders over the last five years was also well within its discretion. The court informed father that the requests to vacate were untimely pursuant to Code of Civil Procedure section 473, which requires that such requests be filed within six months of the challenged order. Father makes no legal or factual argument suggesting that the court's timeliness reasoning was invalid. Father presents no alternative legal authority for vacating such remote orders at this time. Under the circumstances, he has not met his burden of proof on appeal.<sup>2</sup>

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<sup>2</sup> We decline to address father's unsupported argument that the trial court counseled mother to bring an action against father as a vexatious litigant. Father fails to provide either a citation to the record or a citation to any legal authority on this point. Therefore it is waived. (*Okorie, supra*, 14 Cal.App.5th at p. 599.)

Father has failed to show that the trial court abused its discretion in issuing its April 10, 2017 and May 15, 2017 orders.<sup>3</sup>

**DISPOSITION**

The judgment is affirmed.

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\_\_\_\_\_, J.  
CHAVEZ

We concur:

\_\_\_\_\_, Acting P. J.  
ASHMANN-GERST

\_\_\_\_\_, J.  
HOFFSTADT

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<sup>3</sup> On August 28, 2018, father filed a purported motion in this court to reinstate the physical visitation schedule of January 13, 2012. We decline to act on the motion, as the statutes and rules father cites do not provide this court with the authority to reinstate orders that were in effect over five years before the notice of appeal was filed in this matter.