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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS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

M.K., Plaintiff and Appellant, v. J.M., Defendant and Respondent.	B275404 (Los Angeles County Super. Ct. No. LF007483)

APPEAL from an order of the Superior Court of Los Angeles County. Virginia Keeny, Judge. Affirmed.

M.K., in pro. per., for Plaintiff and Appellant.

Lisa-Jayne Rosengren for Defendant and Respondent.

M.K. (Father) appeals from the juvenile court's order modifying the custody and visitation of his twins G.K. and S.K. (DOB 8/2013) (collectively, the children).[1] Following an evidentiary hearing, the juvenile court ruled a substantial change of circumstances warranted granting sole legal custody of the children to J.M. (Mother) in South Carolina and terminating the children's visits to California until they turned five years old. Because of deficiencies in the Father's opening brief, his failure to designate a reporter's transcript, and the limited documents he designated for inclusion in the Appellant's Appendix, we affirm.[2]

BACKGROUND[3]

On August 28, 2014, Father filed a petition for paternity of the children.[4] In response, Mother filed a request for an order allowing her to relocate the children to South Carolina. Both parties filed declarations with the court, each accusing the other of being an unfit parent, the details of which are not relevant on appeal.

On October 9, 2014, at the initial hearing on the matter, the juvenile court set the case for trial. During the interim, it ruled Father had primary

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[1] To protect their privacy, and for clarity, we refer to the parties by their status in the case. We mean no disrespect.

[2] This appeal was filed on behalf of Father by his counsel, Richard J. Sullivan; however, on May 9, 2017, Attorney Sullivan filed a motion for leave to withdraw as counsel, which we granted. Father is now self-represented on appeal.

[3] The factual and procedural background is derived from the juvenile court's order, dated April 8, 2016, a copy of which is included in Respondent's Appendix.

[4] The issue of paternity is not part of this appeal.

physical custody of the children, and "tie-breaking authority" with respect to legal custody.

Trial was held the afternoons of February 25 and March 13 and 17, 2015. The parties were represented by counsel. The juvenile court heard testimony from Mother, Father and third party witnesses. At the conclusion of trial, the juvenile court directed the parties to appear on March 20, 2015, at which time it announced its decision (March 2015 Order). On that day, it ruled Father and Mother had joint legal custody of the children, and Mother had primary physical custody and was allowed to move them to South Carolina. It further ruled Father had visitation rights with the children in both California and in South Carolina.[5]

Following the March 2015 Order, the parties filed several ex parte requests regarding the "move away" order. Father sought to block the ruling, while Mother sought to enforce it. The juvenile court eventually set the matter for an evidentiary hearing on September 15, 2015. On that date, Father filed a motion to modify custody of the children and attached multiple exhibits in support. Given the new evidence, the juvenile court rescheduled the evidentiary hearing to November 13, 2015. In the meantime, the parties continued to file various petitions and declarations with the court.

The evidentiary hearing took place on November 13 and December 1, 2015, and January 11, 2016. Both parties were represented by counsel. The juvenile court heard testimony from Mother and Father and admitted numerous exhibits. At the conclusion of the hearing, it took the matter under submission and ordered both parties to file post-trial briefs.

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[5] On September 28, 2015, the juvenile court entered judgment regarding the custody and visitation of the children, consistent with its rulings in the March 2015 Order.

On April 8, 2016, the juvenile court issued a 35-page order (April 2016 Order), granting sole legal custody of the children to Mother and terminating the children's visits to California until they turned five years old. It concluded, inter alia, that Father's conduct towards the children following the March 20, 2015 hearing was "very concerning," "inconsistent with good parenting," and constituted a "significant change in circumstances" warranting modification of the custody and visitation of the children.

On June 6, 2016, Father filed a timely appeal.[6]

The record on appeal consists of an Appellant's Appendix and a Respondent's Appendix. The Appellant's Appendix contains numerous minute orders, exhibits and documents related to the juvenile court's March 2015 Order, all of which have no bearing on this appeal. Although the Respondent's Appendix includes a copy of the April 2016 Order, none of the exhibits referenced in that order have been included in the record. Father also elected to proceed on appeal without a reporter's transcript.

DISCUSSION

"'A judgment or order of the lower court is *presumed correct* . . . and error must be affirmatively shown.'" (*Denham v. Superior Court* (1970) 2 Cal.3d 557, 564, original italics.) "An appellant must provide an argument and legal authority to support his contentions. This burden requires more than a mere assertion that the judgment is wrong." (*Benach v. County of Los Angeles* (2007) 149 Cal.App.4th 836, 852.) "Consequently, plaintiff [also]

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6 The April 2016 Order is appealable as an order after judgment. (Code Civ. Proc., § 904.1, subd. (a)(2); *In re Marriage of Lasich* (2002) 99 Cal.App.4th 702, 705, fn. 1, disapproved on other another ground by *In re Marriage of LaMusga* (2004) 32 Cal.4th 1072 [trial court's ruling on mother's request for modification of judgment as to custody and visitation was "appealable as an order made after a judgment"].)

has the burden of providing an adequate record." (*Hernandez v. California Hospital Medical Center* (2000) 78 Cal.App.4th 498, 502.) When a party has elected to proceed with the appeal solely on a clerk's transcript [or appellant's appendix], we treat it as an appeal on the "judgment roll." (*Allen v. Toten* (1985) 172 Cal.App.3d 1079, 1082.) For an appeal on the judgment roll, we conclusively presume sufficient evidence was presented to support the trial court's findings. (*Ehrler v. Ehrler* (1981) 126 Cal.App.3d 147, 154.) Our review is limited to determining whether any error "appears on the face of the record." (*National Secretarial Service, Inc. v. Froehlich* (1989) 210 Cal.App.3d 510, 521; Cal. Rules of Court, rule 8.163.)[7]

The fundamental flaw with Father's appeal is that none of his arguments contained in his opening brief challenge any of the juvenile court's rulings in the April 2016 Order.[8] Further, "'[t]he reviewing court is not required to make an independent, unassisted study of the record in search of error or grounds to support the judgment. It is entitled to the assistance of counsel [or the litigant if, as here, the litigant chooses to represent himself]. Accordingly every brief should contain a legal argument with citation of authorities on the points made. If none is furnished on a particular point, the

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[7] These rules also apply when a person is self-represented. (*Leslie v. Board of Medical Quality Assurance* (1991) 234 Cal.App.3d 117, 121 ["Even though appellant is in propria persona, he is held to the same 'restrictive procedural rules as an attorney'"].)

[8] Father's arguments instead relate to the juvenile court's failure to issue a written statement of decision in connection with the March 2015 Order. Although Father appealed the September 28, 2015 judgment, that appeal was later dismissed for failure to follow the procedural rules. (*M.K. v. J.M.* (Sept. 26, 2016, B268644).) Father's attempt to resurrect that appeal in this proceeding is without merit as it is now untimely. (Cal. Rules of Court, rule 8.104(a)(1).)

court may treat it as waived, and pass it without consideration.' [Citation.]" (*Sprague v. Equifax, Inc.* (1985) 166 Cal.App.3d 1012, 1050.) Given the deficiencies in Father's opening brief, we treat his challenge to the April 2016 Order as waived.[9]

Accordingly, we affirm. (*In re Sade C.* (1996) 13 Cal.4th 952, 994 ["With no error or other defect claimed against the orders appealed from, the Court of Appeal was presented with no reason to proceed to the merits of any unraised 'points'—and, a fortiori, no reason to reverse or even modify the orders in question."].)

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[9] We also deny J.M.'s request for attorney fees. On October 10, 2017, J.M. filed a motion for an award of attorney fees against M.K. as sanctions, contending M.K.'s pending appeal was frivolous because it was brought to harass J.M. and lacked any merit. No opposition was filed by M.K. "A civil appeal is frivolous only when it is prosecuted to harass the respondent or delay the effect of an adverse judgment, or when any reasonable attorney would agree that the appeal is totally and completely without merit. However, an appeal that is without merit is not by definition frivolous and should not incur sanctions." (*Freeman v. Sullivant* (2011) 192 Cal.App.4th 523, 530, citing *In re Marriage of Flaherty* (1982) 31 Cal.3d 637, 649.) Here, the fact that M.K.'s brief is deficient does not by itself make the appeal frivolous, and there is no reason to believe M.K. filed the appeal in bad faith to harass J.M. The appeal of the April 2016 Order did not the delay the effect of the trial court's ruling concerning the custody rights of the children. Accordingly, we do not conclude the appeal was frivolous.

DISPOSITION

The order is affirmed. Mother shall be entitled to her costs on appeal. (Cal. Rules of Court, rule 8.278(a)(2).)

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GOODMAN, J.*

We concur:

ASHMANN-GERST, Acting P.J.

HOFFSTADT, J.

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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.