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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

In re Marriage of AMIE and
JEFFREY RUBIN.

B282793

(Los Angeles County
Super. Ct. No. KD074715)

AMIE GREENBERG,

Appellant,

v.

JEFFREY RUBIN,

Respondent.

APPEAL from an order of the Superior Court of
Los Angeles County, Shirley K. Watkins, Judge. Affirmed.

Amie Greenberg, in pro. per., for Appellant.

Jeff Rubin, in pro. per., for Respondent.

* * * * *

Plaintiff Amie Greenberg (mother) appeals an order modifying a joint custody order to grant sole legal and physical custody of son M.R. (son) and sole legal custody of daughter R.R. (daughter) to their father, defendant Jeffrey Rubin (father). Mother has failed to demonstrate the court abused its discretion, so we affirm.

BACKGROUND

Mother and father obtained a final judgment dissolving their marriage in February 2011. They have two children: son (born 2001) and daughter (born 2004). In the dissolution judgment, the parties were awarded joint legal and physical custody of both children.

Five months after the divorce judgment, mother sought an order to show cause to modify the custody order to grant her legal and physical custody of the children, claiming father was physically and verbally abusing the children. The court denied her application, finding mother's evidence was "contrived," "entirely without merit as to whether [father] 'abused' the children," and "cynical and manipulative." Mother herself "was not credible and reliable" in her testimony, and "she knew these latest allegations of alleged abuse were not true when she made them." The court noted mother "has tried three times (including the instant OSC) to change the custodial plan so that the children live primarily in her home area," and mother "acted to sabotage" therapy for the children. Her conduct "continues to adversely affect the emotional well-being of the children." The court awarded father sole decision-making authority over medical and mental health matters with the children, as well as fees and a monetary sanction against mother.

The incident leading to the custody order at issue here occurred on September 26, 2015. According to mother, on that day, father “grabbed [son] by his ankles, pulled him off the couch where he landed on the hardwood floor on his wrist. Tremendous force was utilized and [father] was angry at the time.”

On December 23, 2015, Mother filed an ex parte request to modify the custody order to obtain sole legal and physical custody of son and “primary care, custody and control” of daughter. The court held a hearing on the same day, during which father admitted the incident occurred, but testified he was simply attempting to get son to get ready to leave, and son was refusing. He indicated son never complained about being injured. Son testified that father had gotten mad at him, threw him down, and hurt his arm. He also said he was living with his mother and wanted to transfer to Beverly Hills High School closer to her home. The court concluded son had been “coached” and that some of his statements were “rehearsed.” At the end of the hearing, the court did not allow son to change schools but allowed him to stay with mother temporarily until the next hearing.

The court eventually held eight hearings on the ex parte. On June 7, 2016, the court initially issued an order rejecting mother’s claim that the September 26, 2015 incident constituted abuse. The court noted that father had been attempting to get son into therapy, but mother had “sabotaged” son’s therapy and had “emotionally bribed” him with a promise to go to Beverly Hills High School near where mother lived if he said he wanted to live with her. Although the September 26, 2015 incident was not child abuse, the incident in mother’s mind was “what she needed” to “find another basis for [son’s] move” with her.

The court found “mother is continuing her pattern of falsely accusing [father] of child abuse,” and she “is causing her son serious[] emotional injury.” In particularly forceful language, the court wrote: “[I]t is a shame that instead of helping her son’s behaviors, mother has taught him to—and is encouraging—[son] to use the power of his father’s love for him as a weapon against his father. This is one of the worst types of emotional abuse and mother is the perpetrator of this abuse.” The court ordered father to have sole legal and physical custody of son and ordered them to begin conjoint therapy. The court did not change any custody orders for daughter.

Mother moved for reconsideration of the June 7, 2016 order. The court granted the motion in order to hold further evidentiary hearings as requested by mother.

The court held several more hearings. At an October 28, 2016 hearing, father testified again, maintaining that he did not intend to discipline or harm son during the September 26, 2015 incident. The court denied mother’s request for son to testify, noting son had already testified twice and it would not be in his best interests to bring him into court a third time.

Due to illness, mother was not present at the March 28, 2017 hearing leading to the order at issue here. The court noted son had not seen father since January of 2016 and his “situation has deteriorated in [mother’s] care.” Mother had “done everything in her power to not follow the court’s orders” for son to attend therapy with father. The court found mother “has taken every step known to make sure the child’s relationship with the other parent is obliterated.” The court explained son had been willing to work on his relationship with father, but “under his mother’s care and control, he has gradually basically said, no, I

don't really want to, you can't make me and I don't have to. And I don't think [mother] is fostering a relationship between her son and his father. And she is not acting in his best interests. To the contrary, she is specifically taking steps to cause the gap between [son] and his father to become even greater, to an abyss." The court also noted there was a "fear articulated many times that mother will do the same thing with [daughter] that she's done with [son]."

The court issued an order after the hearing, awarding sole legal and physical custody of son to father with both of them to attend therapy together twice a week. For every therapy session son attended, he would be given a 24-hour visit with mother. If son did not attend therapy, the court ordered monitored visits with mother twice a week for four hours per visit. The court awarded sole legal custody of daughter to father and maintained joint physical custody of daughter for both parents. Mother appealed the March 28, 2017 order as to both children.¹

DISCUSSION

A court must make an initial child custody award "according to the best interests of the child." (*Burchard v. Garay* (1986) 42 Cal.3d 531, 535.) When the order provides for joint custody, it "may be modified or terminated upon the petition

¹ The court held another hearing on April 14, 2017, finding an "imminent risk of emotional harm and damage to [daughter], as the court has already found has occurred to [son], because of mother's behavior, her conduct, and her tactics." The court granted father temporary sole legal and physical custody of daughter with monitored visits for mother. Mother did not identify this order in her notice of appeal, and she could not immediately appeal it because it was a temporary custody order. (*Lester v. Lennane* (2000) 84 Cal.App.4th 536, 557-561.)

of one or both parents or on the court's own motion if it is shown that the best interest of the child requires modification or termination of the order.” (Fam. Code, § 3087.)

“[C]ustody modification is appropriate only if the parent seeking modification demonstrates “a significant change of circumstances” indicating that a different custody arrangement would be in the child's best interest.’” (*Anne H. v. Michael B.* (2016) 1 Cal.App.5th 488, 496 (*Anne H.*)). This rule “‘requires that one identify a prior custody decision based upon circumstances then existing which rendered that decision in the best interest of the child. The court can then inquire whether alleged new circumstances represent a significant change from preexisting circumstances, requiring reevaluation of the child's custody.’” (*In re Marriage of Burgess* (1996) 13 Cal.4th 25, 37.) The burden to show changed circumstances rests with the party seeking modification of the custody order. (*Anne H.*, *supra*, at p. 496.)

We review a ruling on a request to modify a custody order for abuse of discretion. (*Anne H.*, *supra*, 1 Cal.App.5th at p. 501.) “‘Generally, a trial court abuses its discretion if there is no reasonable basis on which the court could conclude its decision advanced the best interests of the child. [Citation.] “Under this test, we must uphold the trial court ‘ruling if it is correct on any basis, regardless of whether such basis was actually invoked.’ ” ’” (*Ibid.*)

Mother has not shown the trial court abused its discretion in modifying the joint custody order due to mother's worsening conduct toward son, as well as the risk of similar conduct toward daughter. The record is clear that the court repeatedly found that mother has demonstrated a pattern of disingenuous and

manipulative behavior aimed at harming son's relationship with father. In particularly forceful language, the court wrote in its June 7, 2016 order: "[I]t is a shame that instead of helping her son's behaviors, mother has taught him to—and is encouraging—[son] to use the power of his father's love for him as a weapon against his father. This is one of the worst types of emotional abuse and mother is the perpetrator of this abuse." Although the court reconsidered this order and held additional hearings at mother's request, mother's behavior only worsened. At the March 28, 2017 hearing, the court noted mother "has taken every step known to make sure the child's relationship with the other parent is obliterated," and "she is specifically taking steps to cause the gap between [son] and his father to become even greater, to an abyss." The court also feared "mother will do the same thing with [daughter] that she's done with [son]."

Mother has pointed to nothing in the record to undermine these findings. In the statement of facts in her opening brief, she has cited selective portions of the record, and in her argument section, she hardly cites the record at all. On appeal, a party is required to include adequate citations to the record. (Cal. Rules of Court, rule 8.204(a)(1)(C); *Nwosu v. Uba* (2004) 122 Cal.App.4th 1229, 1246.) She is not exempt from this rule even though she is not represented by an attorney. (*Nwosu, supra*, at pp. 1246-1247.)

Mother also contends the court abused its discretion when it did not consider new evidence after granting her motion to reconsider the June 7, 2016 order. Mother specifically points to comments from the court at later hearings that it had already concluded the September 26, 2015 incident between father and son was not child abuse, but mother overlooks that after making

these comments, the court allowed mother to question father at length about the incident. The court later stated at the March 28, 2017 hearing that it had “read everything and brought myself up to date,” indicating the court had considered the additional evidence since the June 7, 2016 order.

Finally, mother claims the court abused its discretion by resting its order modifying custody on an unreliable theory of “parental alienation.” She cites a host of articles in support of her argument. We previously denied her request for judicial notice of these articles, which mother acknowledged were not presented to the trial court. (*California School Bds. Assn. v. State of California* (2011) 192 Cal.App.4th 770, 803 [denying judicial notice of documents not part of trial court record].) We therefore reject her claim the trial court abused its discretion on this basis.

DISPOSITION

The order is affirmed. Respondent is awarded costs on appeal.

ROGAN, J.*

WE CONCUR:

BIGELOW, P. J.

RUBIN, J.

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