Filed 1/27/26 Marriage of Shia CA2/1

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

In re the Marriage of GUNTHER and LILY SHIA.	B340280
GUNTHER SHIA, Respondent, v. LILY SHIA, Appellant.	(Los Angeles County Super. Ct. No. LD071307)

APPEAL from an order of the Superior Court of Los Angeles County, Gary D. Roberts, Judge. Affirmed.

Lily Shia, in pro. per., for Defendant and Appellant.

Gunther Shia, in pro. per., for Plaintiff and Respondent.

Lily Shia (mother) appeals from the denial of her request for primary physical and legal custody of her daughter I.S. (child). The family law court denied mother's request without an evidentiary hearing because it found her request contained no competent evidence justifying a change of the court's previous order granting respondent Gunther Shia (father) legal and primary physical custody of child.

On appeal, mother contends she had a statutory right to an evidentiary hearing at which she could call witnesses in support of her custody request. Based on the witness list she provided, along with a description of each witness's anticipated testimony, it appears none of the witnesses had information relevant to mother's claim of changed circumstances that would justify modifying the custody orders. The family law court did not abuse its discretion in declining to hear from these witnesses.

Mother further contends the trial court erred by not seeking child's input before denying mother's request for order. Mother has not provided an adequate record for us to assess this challenge — the hearing on the request for order was not recorded, and the settled statement for the hearing does not address whether mother and/or child requested to be heard, and if mother or child had so requested, how the family law court dealt with that request.

Accordingly, we affirm.

BACKGROUND[1]

Mother and father were married in May 2011. Child was born in July 2013. In May 2015, father filed a petition for dissolution of the marriage.

On February 22, 2016, the family law court entered a stipulated judgment granting mother and father joint legal custody of child, and granting mother primary physical custody. On August 5, 2021, the family law court changed the custody arrangement and granted father sole legal custody of child. On September 2, 2022, the family law court granted father primary physical custody as well.

On April 17, 2024, mother filed a request for order seeking primary physical and legal custody of child. Her request stated: "Mother has already successfully completed the three criteria listed by the court to restore legal custody. Father has used legal custody to make drastic changes in all aspects of Child's life which has disrupted her stability and continuity. Child has

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[1] This is the fifth appeal we have heard in this case. In *In re Marriage of Shia* (Mar. 26, 2019, B286864) [nonpub. opn.], we affirmed the denial of mother's request for a restraining order against father. In *In re Marriage of Shia v. Shia* (Jun. 29, 2020, B290859) [nonpub. opn.], we held a settlement agreement between the parties did not bar mother from introducing evidence of domestic violence in support of her claim for additional spousal support, and remanded for the family law court to consider that evidence. In *In re Marriage of Shia* (July 30, 2024, B324260) [nonpub. opn.], we affirmed the order granting father primary physical custody of the parties' daughter. In *In re Marriage of Shia* (Jan. 27, 2025, B331531) [nonpub. opn.], we affirmed the denial of another request by mother for a restraining order against father.

repeatedly begged to return to Mother's custody; Child should be reunited with her previous primary family of 9 years for her emotional and mental stability and to stop her suicidal ideation; Child reports instances of mild to moderate neglect at Father's; Child reports nightmares and is discontent with her living situation at Father's; Child was wrongfully accused of being remedial and traumatized in order to remove Child from Mother's custody; etc."

Father did not file a response to mother's request for order.

On May 22, 2024, mother filed a witness list for the hearing on her request for order. The list included four psychiatrists who had evaluated mother; a social worker from the Los Angeles County Department of Children and Family Services (DCFS); three doctors who could "[c]onfirm Child was present for all fertility treatments under their care; Child was enthusiastic for Doctor to make her a sibling"; two homeschooling instructors "who can confirm Child was not remedial"; a "[d]irector who can confirm Child was not remedial and completed her proficiency exam"; two "[p]arents" who took mother to the emergency room in 2020 following a psychiatric evaluation and can "confirm Child's mental state"; two police detectives and two bank employees "to negate [father's] ongoing false allegations"; a "Haven Hills Representative" to "[c]onfirm [mother] completed [a] mindful parenting program"; and a "Peace Over Violence Representative" to "[c]onfirm [mother] completed intensive psychotherapy."

The family law court held a hearing on mother's request for order on June 5, 2024. The minute order states, "The parties are sworn and testify." The court denied the request for order. Mother timely appealed.

Because no court reporter was present at the June 5, 2024 hearing, after filing her appeal, mother requested the family law court provide a "settled statement" regarding the hearing. The court provided the following statement: "[Mother's] request for order was denied without a hearing, because the request for order contained no competent evidence of the material change of circumstance required prior to consideration of a modification of a final (Montenegro) custody and visitation order."[2]

Mother filed an objection to the settled statement requesting that the family law court specify in the settled statement "[t]hat [mother's] 19 witnesses were not heard" and "the evidence [mother] brought to court was not considered." The family law court did not amend the settled statement.

Mother also filed a motion in this court to correct or modify the record. Mother contended the settled statement was inaccurate, and requested we either remand for further proceedings to correct the settled statement or adopt mother's proposed correction, which was as follows: "[Mother's] request for order was denied after the court considered the written submissions without an evidentiary hearing; no findings were stated on the record regarding proceeding without live testimony."

We denied mother's motion, concluding the settled statement already conveyed what mother sought to add, namely that the family law court denied mother's request for order without taking testimony.

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[2] "Montenegro" refers to *Montenegro v. Diaz* (2001) 26 Cal.4th 249.

DISCUSSION

Mother argues the family law court erred by denying her request for a change of custody without hearing her witnesses' testimony or obtaining the input of child. We conclude the family law court did not abuse its discretion.

A. The Trial Court Did Not Abuse its Discretion In Denying Mother's Request for Order Without Hearing Witness Testimony

1. Governing law

a. The changed circumstance rule

"Once the trial court has entered a final or permanent custody order reflecting that a particular custodial arrangement is in the best interest of the child, 'the paramount need for continuity and stability in custody arrangements — and the harm that may result from disruption of established patterns of care and emotional bonds with the primary caretaker — weigh heavily in favor of maintaining' that custody arrangement. [Citation.] In recognition of this policy concern, [our Supreme Court has] articulated a variation on the best interest standard, known as the changed circumstance rule, that the trial court must apply when a parent seeks modification of a final judicial custody determination. [Citation.] Under the changed circumstance rule, custody 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." (*In re Marriage of Brown & Yana* (2006) 37 Cal.4th 947, 956; accord, *In re Marriage of R.K. & G.K.* (2025) 113 Cal.App.5th 14, 20–21.)

b. Family Code section 217

Family Code[3] section 217 provides that at hearings on motions under the Family Code, "the court shall receive any live, competent testimony that is relevant and within the scope of the hearing. . . ." (§ 217, subd. (a).) "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." (*Id.*, subd. (c).)

Even when a party requests to present live testimony, the family law 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." (§ 217, subd. (b).) California Rules of Court,[4] rule 5.113 sets forth factors courts "must consider . . . in making a finding of good cause to refuse to receive live testimony under . . . section 217." (Rule 5.113(b).) These factors are: "(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; [¶] (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

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[3] Further unspecified statutory citations are to the Family Code.

[4] Further unspecified rule citations are to the California Rules of Court.

complied with . . . section 217(c); and [¶] (6) Any other factor that is just and equitable." (Rule 5.113(b).)

Rule 5.113 further states that, although section 217 requires the family law court to state on the record or in writing its reasons for finding good cause, "[t]he court is required to state only those factors on which the finding of good cause is based." (Rule 5.113(c).)

c. Standard of review

Both custody orders and a family law court's determination under section 217 are reviewed for abuse of discretion. (*In re Marriage of C.D. & G.D.* (2023) 95 Cal.App.5th 433, 437 [custody orders]; *In re Marriage of Hearn* (2023) 94 Cal.App.5th 380, 390 [section 217].)

2. Analysis

Mother argues her request for order made a showing of changed circumstances that, along with her witness list, entitled her to a hearing with live testimony.

At least one assertion in mother's request for order would not constitute a changed circumstance even if true. This is the assertion that "Child was wrongfully accused of being remedial and traumatized in order to remove Child from Mother's custody." On its face this refers to the circumstances that led to the orders granting father legal and primary physical custody in the first place, and therefore cannot demonstrate a *changed* circumstance.

Mother's request for order does, however, assert two general bases that arguably could support a finding of changed circumstance. First, mother claims to have "completed the three

criteria" set by the court to restore legal custody.[5] Second, mother claims child is suffering in father's care, as indicated by child allegedly "begg[ing] to return to Mother's custody," child engaging in "suicidal ideation," child reporting "neglect," "nightmares," and "discontent" from living with father, and father "disrupt[ing]" child's "stability and continuity" by "mak[ing] drastic changes" to child's life.

Assuming arguendo these two items, if true, would constitute changed circumstances, mother's witness list fails to establish her proffered witnesses would provide "competent testimony that is relevant and within the scope of the hearing." (§ 217, subd. (a).) Specifically, the witness list does not indicate that any of the witnesses will offer testimony relevant to mother's claims of changed circumstances, namely her completion of certain unspecified requirements and child suffering in father's care.

Mother proffers four psychiatrists who evaluated her. Mother gives no indication when these evaluations occurred (and therefore whether they support a change of circumstances since father obtained custody), nor does she indicate what those evaluations say and how they are relevant to her claim of changed circumstances.

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[5] It is not clear from the request for order what these criteria are and when mother completed them. We assume arguendo mother completed them after the family law court granted legal and primary physical custody to father. If mother in fact completed the criteria before father was granted legal and primary physical custody, that completion would not constitute a changed circumstance.

Mother proffers a DCFS social worker, but does not explain what testimony the social worker will offer, and therefore does not explain how that testimony is relevant.

Mother proffers three fertility doctors who purportedly will testify to child's enthusiasm that mother was attempting to have another child. This has no relevance to child's allegedly suffering in father's care.[6]

Mother proffers two homeschooling instructors and a "[d]irector" to testify that child is not "remedial." As discussed, child's alleged "remedial" status was among the circumstances mother claims led to father obtaining custody, and is not a changed circumstance. Testimony about child's remedial status therefore is not relevant to show changed circumstances.

Mother proffers two "[p]arents" who helped her seek medical care in 2020 and will "confirm Child's mental state." It is not clear how individuals who interacted with mother in 2020 have relevant information about child's *current* mental state.

Mother proffers police detectives and bank employees to "negate [father's] ongoing false allegations." Father's allegations, whatever they may be, are not a changed circumstance.

Mother purports to proffer "[r]epresentative[s]" from Haven Hills and Peace Over Violence to confirm mother's completion of a parental program and psychotherapy. The fact that mother fails

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[6] We take judicial notice of mother's unsuccessful appeal from the order granting father primary physical custody, which indicates the birth of child's half sibling predated that order. (See *In re Marriage of Shia*, *supra*, B324260.) It is not clear from mother's witness list if child's purported enthusiasm was for that half sibling, or for a second half sibling postdating the order granting father primary physical custody.

to identify these witnesses by name strongly suggests mother has not in fact obtained these witnesses. In any event, by not identifying them by name, she fails to demonstrate she has secured witnesses with competent, relevant testimony.

In sum, mother's witness list does not identify anyone with competent, relevant testimony regarding her claimed change in circumstances. The family law court did not abuse its discretion in declining to hear from these witnesses.

B. Mother Does Not Demonstrate Error in the Family Law Court Denying Her Request for Order Without Hearing Child's Testimony

Mother argues her assertions in her request for order that child wished to return to her custody and was suffering in father's care "triggered a mandatory duty [for the family law court] to obtain the child's input" under section 3042 and rule 5.250. Mother contends the family law court therefore erred by denying her request for order without hearing from child.

Section 3042 provides, "If a child is of sufficient age and capacity to reason so as to form an intelligent preference as to custody or visitation, the court shall consider, and give due weight to, the wishes of the child in making an order granting or modifying custody or visitation." (§ 3042, subd. (a).) That statute, however, "does not *require* the child to express to the court a preference or to provide other input regarding custody or visitation." (*Id.*, subd. (i), italics added.) Rather, section 3042 discusses procedures for when a child "*wishes* to address the court regarding custody or visitation." (*Id.*, subd. (c), italics added; see also *id.*, subd. (g) [identifying individuals, including "[a] party," that may notify the court that "the child wishes to

express a preference or to provide other input regarding custody or visitation"]).

Rule 5.250 "implement[s] . . . section 3042," and emphasizes that "[n]o statutory mandate, rule, or practice requires children to participate in court or prohibits them from doing so." (Rule 5.250(a).) Like section 3042, the subdivisions of rule 5.250 are phrased in terms of a child's wish to address the court. (See, e.g., rule 5.250(b) ["[w]hen a child wishes to participate in a court proceeding"]; rule 5.250(c) ["Determining if the child wishes to address . . . the court"]; rule 5.250(d)(1) ["When a child indicates that he or she wishes to address the court, the judicial officer must consider whether involving the child in the proceedings is in the child's best interest"].)

Mother has not provided an adequate record for us to assess her claim of error under section 3042 and rule 5.250. "It is [the appellant's] burden to provide an adequate record on appeal. [Citation.] To the extent the record is inadequate, we make all reasonable inferences in favor of the judgment." (*LA Investments, LLC v. Spix* (2022) 75 Cal.App.5th 1044, 1048, fn. 1.) There is no reporter's transcript of the hearing, and the settled statement does not address whether child indicated to the court she wished to testify or otherwise provide input, nor does the settled statement indicate mother requested that child testify.

We acknowledge mother objected to the adequacy of the settled statement. She did not, however, request the family law court modify the statement to include whether there were proceedings under section 3042 and rule 5.250, and if so, of what those proceedings consisted.

We note that at the same hearing at which the family law court denied mother's request for order, the court also appointed

counsel for child. Section 3042, subdivision (g) provides that if a child wishes to address the court, child's counsel "shall" so indicate to the court. By appointing counsel for child, therefore, the family law court has provided a means to obtain child's input should child wish to provide it.[7]

DISPOSITION

The order denying Lily Shia's request for order is affirmed. Gunther Shia is awarded his costs on appeal.

NOT TO BE PUBLISHED.

BENDIX, Acting P. J.

We concur:

WEINGART, J.

M. KIM, J.

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[7] Mother states in her briefing she and father are engaged in another custody proceeding in the family law court during the pendency of this appeal, and asks us to order the court to allow her to introduce certain evidence in that proceeding. That proceeding and any orders related to it are not before us in this appeal and we express no opinion on them.