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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS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 THREE

SEGALIT McROBERTS, Petitioner, v. THE SUPERIOR COURT OF LOS ANGELES COUNTY, Respondent; STEVEN LESSERSON, Real Party in Interest.	B234877 (Los Angeles County Super. Ct. No. BD450081)

PETITION for writ of mandate from an order of the Superior Court of Los Angeles County, David Cunningham, Judge. Petition denied.

Patricia J. Barry for Petitioner.

Jones Day, Erica L. Reilley and Katie A. Richardson for Domestic Violence Legal Empowerment and Appeals Project et al., as Amicus Curiae on behalf of Petitioner.

No appearance for Respondent.

Joel S. Seidel for Real Party in Interest.

INTRODUCTION

Petitioner Segalit McRoberts (mother) and real party in interest Steven Lesserson (father) have four minor children.[1] Mother filed a petition for writ of mandate challenging an order awarding sole custody of the three younger children to father for 30 days, and denying mother any visitation or contact with these children during that time period. Mother argues that the order must be vacated because father allegedly sexually molested their two daughters. A court-appointed evaluator, however, determined that it was very unlikely the girls were sexually molested. The evaluator further found that father's relationship with the children had deteriorated as a result of mother's hostility toward him, and that it was in the children's best interest to temporarily live with father without visitation by mother. We shall conclude that the trial court did not abuse its discretion by issuing the custody and visitation order mother challenges. Accordingly, we shall deny the petition.

FACTUAL AND PROCEDURAL BACKGROUND

1. *The Children and the Two Households of Their Parents*

Mother and father were married in 1998 and separated in 2006. They had four children together: Ra., Ri., H. and C. were born in 2000, 2001, 2003 and 2005, respectively.[2] C. has dwarfism and serious health problems.

Father and mother both remarried. Mother is married to Nicholas McRoberts. Father is married to Leah Lesserson. Leah has custody of three children from a prior marriage who are approximately 12, 10 and 7 years old. Father and Leah also have one child who was born in late 2010.

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1 The record does not clearly indicate whether mother's official name is "Sarah," "Sara" or "Segalit."

2 The children also have Hebrew names. Mother refers to the children by their Anglicized names and father refers to the children by their Hebrew names.

2. *Appointment of Dr. Katz and the Initial Custody and Visitation Order*

In 2006, pursuant to a stipulation of the parties, the court appointed psychologist Stan J. Katz, Ph.D. to conduct a custody evaluation for the former couple's four children. Mother told Dr. Katz that she was concerned about safety issues. Earlier that year, father was arrested for domestic violence. He eventually pled guilty to disturbing the peace and was placed on probation.

In 2006, mother did not accuse father of sexually molesting any of the children The children also did not accuse father of sexual molestation, though the two girls complained about father tickling them, which they did not like. Dr. Katz admonished father about tickling.

Before Dr. Katz issued a report, mother and father resolved their differences regarding custody and visitation. Pursuant to a stipulation, the court entered an order regarding custody and visitation in March 2008. Although the order is not in the record, it appears that the children visited father every other weekend.

3. *Mother's Alleged Hypervigilance Regarding Sexual Abuse*

According to Dr. Katz, mother is "hypervigilant" about sexual abuse. This hypervigilance allegedly existed while mother and father were married. When overnight guests stayed at their home, for example, at mother's request father slept in front of the girls' room in order to prevent guests from molesting the girls in the middle of the night. Father claims this happened about five to ten times from 2002 to 2006. Mother contends this only occurred on one occasion.

In June 2008, during psychotherapy, mother remembered that she had been molested by her own father when she was six years old. She previously had a very good relationship with both of her parents. After this discovery, however, her relationship with her parents deteriorated.

Mother also alleges that she was the victim of inappropriate sexual advances by two different rabbis and an employer. Additionally, mother contends that a nurse hired to care for C. abused Ra. by placing a finger in her anus.

4. *Mother's Initial Allegations of Sexual Molestation*

Father had a very close relationship with Ra. and Ri. through the end of 2008. In the beginning of 2009, however, that relationship deteriorated.

In January 2009, mother and the children met father and the children's paternal grandmother at a Starbucks. Ra. began hitting and kicking father and her paternal grandmother and Ri. ran around saying that father and her paternal grandmother were "bad." Mother did nothing to restrain the girls and, in response to paternal grandmother's criticism, started shouting that father was a "child molester."

On or about January 9, 2009, mother filed a request for a restraining order against father on the grounds that he sexually molested Ra. and Ri. The trial court granted a temporary restraining order (TRO) and appointed Dr. Katz to conduct an evaluation.

When Dr. Katz interviewed Ra. and Ri., they did not make any specific allegations of sexual molestation against father. He found, however, the girls were "aligned" with mother, and Ra. was very angry at father.

A hearing was held on the matter on April 1, 2009. Judge Louis Meisinger presided. After Dr. Katz testified, the court concluded there was no credible evidence of sexual molestation and ordered that the custody and visitation arrangement then in place continue. The court also warned father to stop tickling the girls and ordered Ra. and father to participate in therapy. The TRO was apparently dissolved.

5. *Mother Reports Alleged Sexual Molestation to the Police and DCFS*

Ra. and father participated in therapy for a few months in the summer of 2009. Eventually Ra.'s behavioral problems and hostility toward father stabilized.

In about February 2010, Ra. became more uncooperative with father. She also began having problems with people touching her or her things. According to father, she would "freak out" when this occurred. If someone touched Ra., she sometimes would spray the place she was touched with a squirt gun.[3]

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[3] Dr. Katz opined that Ra. "seems to have developed an Obsessive Compulsive Disorder or Obsessive Compulsive Personality and demonstrates idiosyncratic behavior."

On May 14, 2010, Ra. reported to her psychotherapist Sharon Blumberg that father had touched her "private parts." Although Ms. Blumberg made a child abuse report, mother was not contacted by any authorities. So on May 23, 2010, mother went to a police station and had Ra. interviewed. That evening the Los Angeles Department of Children and Family Services (DCFS) opened an investigation.

The police investigation did not result in any criminal charges against father. The DCFS did not file a juvenile dependency petition seeking jurisdiction over the children. Unfortunately, there is very little in the record regarding the police and DCFS investigations.

After the investigations were apparently closed, at a hearing in this case, father's counsel read the following statement from a document in the DCFS file: "Detective McLean stated that at this point, he doesn't have a conclusion yet as to who the suspect is, or if there's even a suspect, but needs to interview some more people. However, Detective McLean stated that it seems that the children are being coached by their mother to say these things and that after Ra. was interviewed by him at the end of the interview she said [her recollection about father's molestation] might have been her imagination or just a dream and wasn't real, and basically halfway recanted her story." Mother did not object to the reading of this statement at the hearing.

6. *May 28, 2010, Incident: Ra. Calls the Police*

On May 28, 2010, father picked up the children from mother at a supermarket parking lot at about 5:30 p.m. Father took the children to his friend's house for a visit. Ra. refused to go inside the house and stayed on the front lawn. At about 6:30 p.m., from the front lawn Ra. called 911 and reported father had sexually abused her. Ra. then reported this call to mother. When the police arrived at the scene, Ra. explained she was afraid that father might abuse her but he did not actually do so that day. The police took Ra. and Ri. into protective custody. Subsequently, mother picked up all four children and brought them back to her home. The children did not see father again until December 2010.

7. *Warts Are Found in the Area Near Ri.'s Anus and Genitals*

On June 4, 2010, Ri.'s pediatrician, Dr. Elisha L. Hicks, found "anogenital" warts on Ri.'s body. The warts were found on Ri.'s skin near her anus and vagina. Ri. reported to Dr. Hicks that father had touched her "butt, vagina and boobs" under her clothes.

8. *Mother Obtains Another TRO*

On June 23, 2010, mother filed a request for a TRO against father on the grounds father sexually molested Ra. and Ri. The court, Judge David Cunningham presiding, granted the TRO, requiring father to stay 100 yards away from mother and the children.

9. *Dr. Katz's September 29, 2010, Child Custody Evaluation*

Pursuant to a stipulation of the parties, the court ordered Dr. Katz to conduct another custody evaluation for the children. Dr. Katz was asked to determine, inter alia, whether the girls were molested by father.

Dr. Katz interviewed mother, father, the children and additional witnesses and then filed with the court a 77-page Child Custody Evaluation dated September 29, 2010. In the evaluation, Dr. Katz stated the following.

In the last four years, Ra. "has become increasingly estranged from her father and now presents as fully alienated."[4] Like most alienated children, she cannot think of anything good about father and in fact demonizes him. She depersonalizes father by calling him, " 'He who should not be named.' " Ra. told Dr. Katz that she "was trying to teach her siblings that her father was bad" and that mother gave her permission to "beat him [father] up . . . ." She also can see nothing positive about her stepmother Leah. One

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4 In Dr. Katz's view, part of the reason Ra. does not want to be with father is that she prefers the more secular lifestyle of mother and her new spouse to the religious lifestyle of father and his new spouse. Mother argues that Dr. Katz was biased against her because he disapproved of her religious views. A fair reading of Dr. Katz's expressed opinions, however, does not support this conclusion. Dr. Katz stated he was concerned that mother did not understand how the significant religious and cultural differences between mother's household and father's household presented problems for the children. This statement does not indicate Dr. Katz was biased against mother because of her religion.

of her complaints about Leah, for example, is that she is "too nice." Conversely, Ra. idealizes mother.

Ra. has become empowered by mother and has become a parental figure to the other children. She has great influence on the other children, especially Ri. Indeed, Ra. "openly admits that she is trying to alienate [the other children] from their father . . . ."

Ra. claimed that father touched her vagina over her clothes when she was four, six and eight years old, " 'one time' " each year. The last incident thus was in approximately 2008, or about two years before Dr. Katz's evaluation. Ra. stated that each time father rubbed her for less than 10 seconds, and that no one witnessed it. She further stated that father "covered it up by tickling close to her private parts which she often asked him to stop, but he would not."

Ri. told Dr. Katz that mother "hates" father because he touched Ri. inappropriately. She told Dr. Katz that "she did not know he [father] was bad until Ra. told her not to go to his house. She admitted that she had fun at her father's house, when she did not know he was bad. However, her mother and Ra. taught her he was bad. She also indicated that Ra. wanted her to tell her father that she does not love him." Ri. still has "some positive feelings" toward father but there is "no safe venue in which she can really share these feelings." Further, Ri. is "significantly influenced" by mother and Ra. to have negative feelings toward father.

Mother told Ri. that the purpose of Dr. Katz's interview was to discuss how father touched her private parts. Ri. told Dr. Katz that father molested her 13 different times when she was six years old, i.e. in approximately 2007.

Ri. stated that father touched her two times under her clothes, the first time on her breasts. On that occasion, father "put his hand on her chest for five seconds, and said, 'Don't tell anyone.' "

Ri. claimed that father touched her breasts four times for about three to eight seconds. She also reported "there were two occasions, where he touched her on the butt on top of her clothes and three times he touched her vagina over her clothes. All these incidents occurred for between 2 and 8 seconds."

With respect to Ri.'s allegations of sexual molestation, the evaluation stated: "She [Ri.] talks about the molestation in a very matter of fact way, giving details which seem contrived despite their veracity or lack of veracity. Even though her allegations focus on two years ago, last year in April 2009 when the second evaluation was conducted, she did not provide any of the details she provided now."

With respect to Ri.'s genital warts, the evaluation noted that father's wife, Leah, stated that neither she nor father had ever had them, and that father denied having genital warts or any type of sexually transmitted disease. Further, Dr. Katz's research indicated that the virus causing the warts could have been transmitted in a non-sexual away.

Dr. Katz concluded there is a "very small likelihood the children were actually sexually molested" by father. He further opined the girls' memories of father's alleged sexual abuse were "contaminated" by mother, who is "hypervigilant" about her daughters being sexually molested and "obsessed with hostility" toward father. Although mother sincerely believes the girls were molested, she probably influenced the girls' memories by repeatedly asking them about events they did not experience, and asking them leading questions.

In Dr. Katz's view, father's tickling of the girls might have been misinterpreted. It is possible father accidently touched the girls' " 'private parts' " without any intention to derive any sexual pleasure from it.

The evaluation also stated "the three younger children have the potential to develop a healthy relationship with their father and stepmother as long as Ra. does not have the presence or power to sabotage their relationships." It further stated: "The most viable option and the one with the most advantages and least disadvantages is for the children to remain in mother's primary care and to resume their custodial time with their father without Ra. joining them. However, it is the intention of this evaluator for Ra. and [mother] to have the treatment that they both need in order to help Ra. make a positive adjustment to her father's home."

10. *October 8, 2010, Hearing*

On October 8, 2010, the court held a hearing regarding Dr. Katz's evaluation. Three witnesses testified at the hearing. Dr. Hicks, Ri.'s pediatrician, testified regarding her examination of Ri. on June 4, 2010. Dr. Hicks stated it was "possible" for Ri. to have contracted the virus that caused the genital warts without sexual transmission and that she did not know whether Ri. had been sexually molested.

Dr. Jacob Fleischman, a specialist regarding infectious diseases, testified that a "significant percentage" of cases involving genital warts do not involve sexual transmission. He further stated there was about a 50 percent chance that a child who has the warts contracted the virus through sexual contact.

Dr. Katz testified mostly about his written evaluation. He elaborated that he did not think Ri.'s statements regarding 13 incidents of molestation were credible because she did not report these incidents to him during his 2006 and 2009 interviews. Additionally, Dr. Katz stated he was not worried that the girls would be molested by father in the future because "[t]hey're so hypersexualized and hypervigilant, no one is going to be able to touch these children, no one."

With respect to Ra., Dr. Katz stated: " . . . I haven't in 30 years of practice actually seen a child, who at the time was nine years old, who talked to me the way that she talked to me about her sister . . . about her anger and vitriol, that her sister couldn't get it, that she was not supposed to have fun with 'abba,' who is father, go to abba's house, and that she was going to have to teach her and train her."

11. *The Children Are Ordered to Participate in Monitored Visits With Father*

On December 7, 2010, the trial court ordered the three younger children to have visits with father monitored by psychologist Lynn Dannacher, Ph.D. The court also ordered Ra. to undergo reunification therapy with Dr. Dannacher. Ra., however, refused to comply with the order and mother did little, if anything, to compel Ra. to do so.

The younger children's first monitored visit with father occurred on December 21, 2010. Ri. and H. appeared for the visit. According to Dr. Dannacher, the visit went well and Ri. did not seem to be fearful of father.

The second visit occurred on December 28, 2010. When mother and the four children arrived at Dr. Dannacher's office, H. and C. went to visit father[5] but Ri. declined to get out of mother's car. Dr. Dannacher went to the car to try to convince Ri. to come to the office for her court-ordered visit with father. Ra., however, locked the car when Dr. Dannacher approached. As Dr. Dannacher tried to convince Ri. to come with her, Ra. was "glaring" at Ri. Although Ri. admitted to Dr. Dannacher she had fun the last visit, she nonetheless refused to get out of the car. In Dr. Dannacher's view, Ri. was intimidated by Ra. Mother, who was outside of the car, did not instruct the girls to cooperate.

Dr. Dannacher scheduled additional monitored visits in January and February 2011. The two boys attended these visits but Ri. refused to participate.

12. *Additional Hearings Regarding the TRO, Custody and Visitation*

From January to May 2011, the trial court held numerous hearings regarding the TRO it issued in June 2010, custody and visitation issues, and father's alleged sexual molestation of Ra. and Ri. Judge Cunningham presided over each hearing.

Mother testified on at least five different occasions. She conceded that Ra. referred to father as, "He Who Should Not Be Named." At her December 16, 2010, deposition, which was read in court, mother stated, " 'I have her [Ra.] say "He Who Should Not Be Named.' "[6]

Mother denied telling Ra. to call 911 on May 28, 2010. A DCFS report, however, indicated Ra. told a police officer that mother told her to do so.

Mother denied being "hypervigilant" about sexual matters. At a January 30, 2009, hearing in front of Judge Meisinger, however, mother testified that she was "vigilant"

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5 According to Dr. Dannacher, father's visit with the two boys went very well.

6 Pursuant to a stipulation of the parties at the deposition, mother had until January 7, 2011, to make any corrections to the deposition transcript. Mother did not make any corrections prior to that date. Mother subsequently corrected the transcript to state, "I [mother] have heard her [Ra.] say 'He [Who] Should Not Be Named.' "

regarding sexual molestation and "very vigilant" regarding sexual exploitation, especially with her children.

Dr. Katz testified that in light of girls' lack of cooperation and Ra.'s and mother's influence on the three younger children, he did not believe Ri., H. and C. could build a relationship with father unless extraordinary measures were taken. He recommended that the three younger children spend 30 days in father's custody without any contact with mother. Subsequently, the three younger children could reintegrate with mother. Dr. Katz further stated that Ra. should undergo therapy but should not be compelled to visit father yet.

Dr. Katz recommended developing some sort of safety plan for the three younger children while they were in father's custody. For example, father could be ordered to not bathe the children and to not be alone with the children at anytime.

Dr. Astorid Heger, an expert regarding sexual abuse of children, testified that the virus causing genital warts can be transmitted in many nonsexual ways. According to Dr. Heger, in her experience about 75 to 80 percent of the children who have the virus acquired it at birth. Dr. Heger further testified that it was "bad science" to "say that warts are always sexually transmitted."

Father testified that he never touched Ra. and Ri. in an inappropriate manner.

13. *Father Undergoes Testing for Genital Warts*

At some point, the court requested an independent physician, Dr. Gary Richwald, to examine father for genital warts. Father agreed to be examined and to give Dr. Richwald access to his medical records. Although Dr. Richwald's report is not in the record, a minute order dated June 10, 2011, indicates the report was admitted in evidence under seal. Additionally, at the July 28, 2011, hearing, the court stated that Dr. Richwald's examination indicated there was "no evidence of genital warts or history of the same as to [father]." Mother did not dispute this statement at the hearing.

14. *July 28, 2011, Hearing and Order*

On July 28, 2011, the trial court held a hearing. Judge Cunningham presided. Before the hearing, Ri.'s court-appointed attorney filed a brief stating that she supported

Dr. Katz's recommendation that the three younger children be placed in father's custody for 30 days without contact with mother.

In announcing its decision to adopt Dr. Katz's recommendations, the court noted that it did not find " 'independent substantial corroboration' " of sexual abuse. The court also stated "I don't think that you can tie [Ri.'s] genital warts to [father]."

The court then candidly admitted it "struggled" reaching a decision, and that the case "haunted" the judge because it dealt with the future of two little girls. The court also recognized that it was issuing an "extreme remedy," but thought its ruling was in the best interest of the children.

The minute order dated July 28, 2011, stated the following. Commencing on August 1, 2011, and continuing for a period of 30 days, the three younger children shall be placed in the care and custody of father. During the 30 day period, there shall be no contact between the three younger children and mother. Father, however, is required to respond to mother's emails within four hours except if he cannot do so for religious reasons. Ra. shall remain in the physical custody of mother. Ri. shall commence individual therapy with Dr. Dannacher and her medical condition shall be properly treated by a nurse while in father's custody. Finally, the restraining order against father shall be dissolved and the children's passports shall be held by minors' counsel.[7]

15. *Procedural History in the Court of Appeal*

On August 2, 2011, mother filed a petition for writ of mandate challenging the July 28, 2011, order. This court stayed the July 28, 2011, order on August 4, 2011. Then, on August 31, 2011, we issued an order reinstating the restraining order against father dissolved by the July 28, 2011, order. On April 5, 2012, we issued an order to

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[7] On August 1, 2011, the court entered "Findings and Order After Hearing" prepared by father's counsel. This order reiterated the principal provisions of the July 28, 2011, order.

show cause (OSC) as to why the relief requested in mother's petition should or should not be granted.[8]

ISSUE

The issue raised by mother's petition is whether the trial court abused its discretion by issuing the July 28, 2011, order.

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[8] The issuance of the OSC was delayed for a number of reasons. After father filed his opposition to the petition, mother filed a request for an extension to file reply papers. On August 24, 2011, we granted that request and permitted mother to file her reply on or before November 10, 2011. In the meantime, on September 26, 2011, mother requested this court receive sealed records from the Rape Treatment Center at UCLA Medical Center (UCLA). On September 29, 2011, we denied mother's request without prejudice because the sealed documents were not authenticated. On the same date, we directed the parties to provide this court with a complete record, including medical and psychological reports, no later than November 10, 2011. Subsequently, in November 2011, we granted mother several extensions of time to file additional documents and a reply. On November 29, 2011, we granted amicus curiae permission to file a brief. Father responded to that brief on December 28, 2011. On January 4, 2012, we extended the time for mother to file authenticated documents from UCLA to February 2, 2012. On February 7, 2012, we granted mother another 30-day extension to file the authenticated UCLA documents. The documents were finally filed in this court in or about March, 2012.

DISCUSSION

1. *Standard of Review*

" 'The standard of appellate review of custody and visitation orders is the deferential abuse of discretion test.' "[9] (*Montenegro v. Diaz* (2001) 26 Cal.4th 249, 255.) "A trial court abuses its discretion when its decision exceeds the bounds of reason by being arbitrary, capricious or patently absurd." (*Dodge, Warren & Peters Ins. Services, Inc. v. Riley* (2003) 105 Cal.App.4th 1414, 1420.) In child custody cases, we must determine whether the court " 'could have reasonably concluded that the order in question advanced the "best interest" of the child.' "[10] (*In re Marriage of Williams* (2001) 88 Cal.App.4th 808, 812.)

" 'Although mandamus does not generally lie to control the exercise of judicial discretion, the writ will issue "where, under the facts, that discretion can be exercised in only one way." [Citations.]' [Citation.] 'Mandate lies to control judicial discretion when that discretion has been abused. [Citations.]' " (*Richardson v. Superior Court* (2008) 43 Cal.4th 1040, 1047-1048.)

We presume the trial court's order is correct. (*Denham v. Superior Court* (1970) 2 Cal.3d 557, 664.) Where the record is silent, we make all intendments and presumptions in favor of the order, including "inferring the trial court made implied findings of fact that are consistent with its order, provided such implied findings are supported by substantial evidence." (*Madera Oversight Coalition, Inc. v. County of Madera* (2011) 199 Cal.App.4th 48, 66.)

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9 In her petition and supporting memorandum mother does not discuss the standard of review. She also fails to set forth a statement of facts or present any coherent legal argument as to why her petition should be granted. Under normal circumstances, these deficiencies would result in the forfeiture of mother's claims in this court. In this case, however, we exercise our discretion to review the July 28, 2011, order for legal error because very serious allegations of child abuse have been raised and the alleged victims of that abuse are not represented by counsel in this court.

10 The trial court is required to decide custody issues based on the "best interest of the child." (Fam. Code, §§ 3011, 3020,3040.)

In determining whether substantial evidence supports a trier of fact's express or implied finding, we are bound by the trial court's credibility determinations. (*Estate of Young* (2008) 160 Cal.App.4th 62, 76.) We must make all reasonable inferences in favor of the finding; we do not reweigh the evidence. (*Little v. Amber Hotel Co.* (2011) 202 Cal.App.4th 280, 292.) If we conclude substantial evidence supports the factual findings below, it is of no consequence that the fact finder, believing other evidence, or drawing other reasonable inferences, might have reached a contrary conclusion. (*Ibid.*; *Jameson v. Five Feet Restaurant, Inc.* (2003) 107 Cal.App.4th 138, 143.)

2. *The Trial Court Did Not Abuse Its Discretion*

"[I]t is the public policy of this state to assure that children have frequent and continuing contact with both parents after the parents have separated or dissolved their marriage, or ended their relationship, and to encourage parents to share the rights and responsibilities of child rearing in order to effect this policy, except where the contact would not be in the best interest of the child . . . ." (Fam. Code, § 3020, subd. (b).)

In determining whether a custody order is in the best interests of a child, the trial court must look at all the circumstances (*In re Marriage of Burgess* (1996) 13 Cal.4th 25, 31), including, inter alia, the "health, safety and welfare of the child" and whether there is a history of abuse by a parent seeking custody against any child to whom he is related by blood or the other parent. (Fam. Code, § 3011, subd. (a).) Further, "[a]s a prerequisite to the consideration of allegations of abuse, the court may require substantial independent corroboration, including, but not limited to, written reports by law enforcement agencies, child protective services or other social welfare agencies, courts, medical facilities, or other public agencies or private nonprofit organizations providing services to victims of sexual assault or domestic violence." (*Id.*, subd. (b)(3).)

Here, the trial court found that there was no substantial independent corroboration of the allegations of sexual molestation against father. There was substantial evidence to support this finding. Ra. and Ri. did not report the alleged sexual molestation to anyone at or near the time it allegedly occurred. Further, there was no medical evidence of sexual abuse.

Mother argues Ri.'s genital warts corroborate the allegations against father. Expert medical testimony, however, established that Ri. could have obtained the virus causing the warts in a non-sexual way, and that most children who have the virus obtain it without being sexually abused. There was also evidence that father did not have genital warts, namely a report by a physician who examined father, father's testimony, and statements by father's wife, Leah, to Dr. Katz. Moreover, Ri. only alleged that father touched her one time under her clothes below her waist. A reasonable trier of fact could have concluded, as the trial court did, that Ri.'s genital warts did not constitute substantial independent corroborating evidence of sexual molestation.

Mother's allegations of sexual molestation thus rest entirely on the statements Ra. and Ri. made to mother, Dr. Hicks, Dr. Katz and others. Although the trial court did not expressly state whether it believed Ra. and Ri. were telling the truth, it impliedly rejected the veracity of their allegations. As an appellate court, we cannot second guess the trial court's implied or express findings on credibility.

Moreover, there were ample grounds upon which the trial court could have reasonably concluded that father did not sexually molest Ra. and Ri. Ra. did not report the alleged molestation to Dr. Katz in 2006 even though the first and possibly the second alleged incident occurred before Dr. Katz interviewed her. In 2009, she again failed to make any specific allegations regarding sexual molestation. Only in 2010, after Ra. developed a deep hostility toward father, with mother's encouragement, did Ra. specifically describe the abuse to Dr. Katz. Dr. Katz, a very experienced evaluator, determined that Ra. was in all likelihood not molested.

The DCFS apparently came to the same conclusion after Ra. indicated to a police officer she was not sure if father actually molested her or she simply imagined it. In 2009, after listening to Dr. Katz's testimony, Judge Meisinger rejected Ra.'s allegations. When Judge Cunningham also did so on July 28, 2011, he acted within the bounds of reason.

Likewise, the veracity of Ri.'s statements to Dr. Katz in 2010 is undermined by her failure to specifically report sexual molestation to Dr. Katz in 2009. There was also a

great deal of evidence that Ri. was pressured and influenced by Ra. and mother to project hostility toward father. This evidence primarily consisted of Ri.'s and Ra.'s statements to Dr. Katz and Dr. Dannacher's observations. Dr. Katz concluded that Ri. was not telling the truth about father's alleged molestation. The trial court acted within the bounds of reason when it adopted Dr. Katz's conclusion.

The trial court also adopted Dr. Katz's conclusion that the only way to repair Ri.'s relationship with father was for her to spend 30 days with him and his family without contact with mother and Ra.[11] As the trial court acknowledged, this was an "extreme" remedy.

The remedy raises two issues we must consider. First, Dr. Katz testified that it was a "possibility"—though highly unlikely—father molested the girls. Anytime such a possibility exists, however remote, we must consider the risk that the parent will molest the child in the future. Specifically, in this case, we must consider whether there is a risk that father will molest Ri. in the 30-day period he will have sole custody over her.

In analyzing this issue we note father lives in a relatively small home with his wife and four children. If Ri., H. and C. join this family, they will be living in a crowded household, making Ri. less vulnerable. Dr. Katz opined that because Ri. has become hypervigilant regarding sexual abuse, it is very unlikely father will molest her during the 30-day period she is required to live with him.

Moreover, Ri. has been ordered to commence individual therapy with Dr. Dannacher and will have her medical condition treated by a nurse during the 30-day period she is in father's custody. We are assuming this means Ri. will have access to at least two neutral adults outside of father's household while she is in father's custody. This too ameliorates the risk to Ri.

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11 Mother does not make any coherent legal argument regarding whether the trial court abused its discretion by ordering the boys, H. and C., to spend 30 days with father without contact with mother. Because there is no allegation or evidence that father sexually abused the boys or that it would be unsafe for the boys to live with father for 30 days, there is no basis to grant mother's petition with respect to H. and C.

The second issue raised by the trial court's remedy is the strain the remedy might cause Ri. She appears to sincerely believe father sexually molested her and that he poses a danger to her. Even if her belief is unfounded, it is not an easy decision to compel her to live with father for a month without contacting mother.

Having considered both issues, we cannot say that the trial court's remedy was arbitrary, capricious or patently absurd, or that no reasonable judge would have concluded that the remedy was in Ri.'s best interest. There was substantial evidence supporting the trial court's implied findings that Ri. could not save her relationship with father unless she spent time with him away from mother and Ra., and that ordering Ri. to have monitored visits with father was simply not enough. Most compelling was Dr. Dannacher's testimony regarding Ri.'s failure to participate in court-ordered visits. Having reasonably concluded that Ri. was not actually molested and that there was no other way to salvage her relationship with father, the trial court did not abuse its discretion in ordering Ri. to be in father's sole custody for 30 days.

We are mindful, however, that circumstances affecting the best interest of the four children may have changed since the trial court issued its order dated July 28, 2011. Nothing in this opinion precludes the trial court from holding a status conference to determine whether the July 28, 2011, order should be modified in light of changed circumstances, if any, since the order.

3. *Dr. Katz's Testimony Regarding Parental Alienation Was Not Subject to the Kelly/Frye Test*

Amici Curiae and mother argue that the trial court improperly admitted evidence regarding "parental alienation syndrome" (PAS) and "parental alienation" and that such evidence is inadmissible under the evidentiary standards set forth in *Frye v. United States* (D.C. Cir. 1923) 293 F. 1013, 1014 and *People v. Kelly* (1976) 17 Cal.3d 24, also known as the "*Kelly/Frye* test." Specifically, amici curiae and mother contend that the trial

court's decision was "decidedly influenced" by Dr. Katz's testimony regarding PAS and "parental alienation" and that such evidence was inadmissible.[12]

The *Kelly/Frye* test applies to the admissibility of expert testimony based on "a new scientific technique."[13] (*People v. Kelly*, *supra*, 17 Cal.3d at p. 30.) In determining whether expert testimony is based on such a technique, the court must consider the test's "narrow 'common sense' purpose, i.e., to protect the jury from techniques which, though 'new,' novel, or ' "experimental," ' convey a ' "misleading aura of certainty." ' " (*People v. Stoll* (1989) 49 Cal.3d 1136, 1155-1156 (*Stoll*).)

Absent some "some special feature which effectively blindsides the jury," a psychologist's expert opinion testimony is not subject to the *Kelly/Frye* test. (*Stoll*, *supra*, 49 Cal.3d at p. 1157.) This is because " '[w]hen a witness gives his personal opinion on the stand—even if he qualifies as an expert—the jurors may temper their acceptance of his testimony with a healthy skepticism born of their knowledge that all human beings are fallible. . . .' " (*Ibid.*)

In *Stoll*, for example, a defendant accused of child molestation proffered expert opinion testimony by a psychologist who conducted tests on the defendant and concluded that she did not possess any pathology in the nature of sexual deviation. (*Stoll*, *supra*, 49 Cal.3d at p. 1146.) The trial court excluded the expert opinion on the grounds that it did not pass the *Kelly/Frye* test. (*Id.* at p. 1147.) The California Supreme Court, however, held that "[t]he psychological testimony proffered here raises none of the concerns addressed by *Kelly/Frye*. The methods employed are *not* new to psychology or the law, and they carry no misleading aura of scientific infallibility." (*Id.* at p. 1157.)

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12 Because mother did not make this objection to the evidence in the trial court, she forfeited it on appeal. (Evid. Code, § 353, subd. (a).) We nonetheless address the merits of the argument.

13 The test involves a two-step process: "(1) the reliability of the method must be established, usually by expert testimony, and (2) the witness furnishing such testimony must be properly qualified as an expert to give an opinion on the subject." (*People v. Kelly*, *supra*, 17 Cal.3d at p. 30, italics omitted.)

By contrast, courts have found that expert testimony regarding certain psychological "syndromes" must past the *Kelly/Frye* test. For example, in *People v. Bledsoe* (1984) 36 Cal.3d 236, 251, the court held that under the *Kelly/Frye* test expert testimony regarding the "rape trauma syndrome" was not admissible to prove that the complaining witness was raped. Similarly, in *In re Sara M.* (1987) 194 Cal.App.3d 585, 592, the court held that under the *Kelly/Frye* test expert testimony regarding the "child molest syndrome" was not admissible to prove that a child was molested.

Here, when asked about the "parental alienation syndrome," Dr. Katz stated that no such syndrome was in the American Psychological Society's Diagnostic and Statistical Manual of Mental Disorders and that alienation is not a "psychiatric diagnosis." He added, however, that in high-conflict divorce cases, children are sometimes alienated from one parent. Dr. Katz stated: "You can't be diagnosed as having alienation, but it is clear, everyone involved in these kind of cases know[s] the children are estranged and sometimes alienated from their parents." Accordingly, Dr. Katz did *not* offer an opinion based on PAS or any other syndrome or diagnosis. He instead simply discussed a dynamic that he frequently observed during his three decades of practice and offered his expert opinion regarding the matter.

Dr. Katz did not present expert testimony regarding a "new scientific technique" or employ a method or analysis that is new to psychology or law. Nothing in his testimony carried a misleading aura of scientific infallibility. Indeed, he readily admitted that parental alienation was not a syndrome or diagnosis. We thus hold that Dr. Katz's expert opinion regarding parental alienation was not subject to the *Kelly/Frye* test, and that the trial court did not error in admitting such evidence.

DISPOSITION

The petition is denied and the stay of the July 28, 2011, order is lifted. This court's August 31, 2011, order is vacated. This opinion shall become final as to this court immediately. Costs are awarded to real party in interest Steven Lesserson.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

KITCHING, J.

I concur:

CROSKEY, J.

KLEIN, P. J., Concurring

While I have serious reservations about placing Ri. in father's household for 30 days without contact with mother and Ra., I concur in the result reached by the majority opinion based on Dr. Katz's testimony. I write separately to state I am also concerned the circumstances affecting the best interest of the children may have changed materially during the more than 10-month period mother's petition was pending in this court. I believe this delay compels the trial court to reexamine the order of July 28, 2011 and to consider whether any circumstances have occurred which might justify an appropriate modification of the order.

KLEIN, P. J.s