2d Civil No. B318522

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

KERRY ANN JOHNSTON-ROSSI,

Plaintiff and Appellant,

v.

PAUL ROSSI,

Defendant and Respondent.

Appeal from Los Angeles County Superior Court
Case No. BD542090
Honorable Dianna Gould-Saltman
Honorable Steven A. Ellis

APPELLANT'S OPENING BRIEF

[Exhibits Under Separate Cover]

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CERTIFICATE OF INTERESTED ENTITIES OR PERSONS

Court of Appeal Case Number: B318522

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INTRODUCTION

The Family Code is clear: Absent an express waiver, an evidentiary showing and a hearing are *required* for orders in family law matters. This is especially true for post-judgment child-custody determinations. Those determinations require a finding of a significant change in circumstances, in recognition of the fact that the best interest of children is generally best served by maintaining stability.

Here, without *any* evidentiary hearing, let alone *any* evidence of or *any* finding of changed circumstances—indeed, without *any* real notice—the trial court ordered that two children, ages 14 and 16, be torn from their mother with whom they are well-bonded and live in New York, transferred to Los Angeles, and be prohibited from any contact with their mother for more than 90 days. The children are to be (1) delivered to the sole custody of their father, and (2) forced to participate in Family Bridges, a coercive program disguised as "treatment." The court order is alarming. It authorizes the father to have third-party agents, unknown to the children, physically take the kids away from their mother and their home and transport them across country.

The legal or factual basis for this extreme order? None.

The likelihood of trauma to the children? Inevitable.

The existence of any published California precedent approving such a court-ordered program to effectively kidnap children, against their will, from a loving and safe home? None.

Family Bridges is a radical, extreme program/methodology that is not recognized in the scientific community. It is pseudo-science. Contrary to California's express statutory directive that relationships be maintained with both parents, Family Bridges is designed to suspend and destroy the relationship between the children and one parent. It is premised on kidnapping children and holding them against their will under the complete control of just one parent for 90-plus days. It bars *all* communication between the children and their mother. And, it would be foisted upon the mother and children with no notice and no opportunity to be heard, including an opportunity to present evidence on this extreme, radical, scientific community outlier program.

The genesis of this extraordinary situation is remarkable. A year before the present order, the trial court heard testimony about various "radical" and "extreme" programs for attempting to improve relations between children and parents. But the court's intervening custody order said nothing about such programs. The father later requested *one week* of time alone with the children in the summer. The judge who was then presiding over the matter *sua sponte* suggested an "educational vacation to something like . . . Family Bridges" for *one week*—and entered an order specifying a *one-week* program. Weeks later, the father asked the court to "implement" that order by imposing Family Bridges' *90-day* program which permits *no contact* between the children and their mother for months and which allows the father to have the children taken against their will. A *different* family law judge interpreted the first judge's *one-week* order as a ruling

that the full *90-day, no-contact-with-mother* Family Bridges program had been ordered.

The Family Bridges order is wholly unjustifiable; indeed, it is perverse. Among other things:

- The trial court has *never* vetted the 90-plus-day, no-contact-with-mother Family Bridges program.
- The court denied the mother's request for an evidentiary hearing. Yet, if afforded a hearing, mother would have much to say about why putting the children under father's unfettered dominion for 90-plus days is a bad idea—indeed, father was recently convicted of violent assault. (See Motion for Judicial Notice (MJN) [criminal conviction of violent assault under Pen. Code, § 245, subd. (a)(1)].)
- The court's order fails to consider the teenagers' wishes—a statutorily-required consideration. Instead, the order is based on one judge's unexpected comment from the bench, blindsiding *both* parties, which a *later* judge then construed as a fait accompli.
- There are no findings of (or evidence of) changed circumstances.
- There are no findings of (or evidence of) why being torn from the life they know and from the one parent who has been caring for them their entire lives will be in the children's best interests in stability.

The trial court's order compelling the teenage children to involuntarily participate in the 90-day, no-contact-with-mother Family Bridges program must be reversed.

STATEMENT OF THE CASE

A. The Parties.

Appellant Kerry Ann Johnston-Rossi is the petitioner in the action *Johnston Rossi v. Rossi*, Los Angeles Superior Court Case No. BD542090 (dissolution action). (1-Appellant's Appendix (AA)-16.)[1] We refer to her as "mother."

Paul Rossi is the respondent in the dissolution action and in this appeal. (1-AA-16.) We refer to him as "father."

They have two children, Brigitte, now 16 (date of birth: June 22, 2006), and Dominic, now 14 (date of birth: December 3, 2007). (1-AA-17.)

B. In 2015, The Court Enters A Final Custody Judgment Which Is Modified Over The Years.

A judgment of divorce was entered in 2012. (1-AA-16.) It afforded the parties joint custody and defined specific visitation rights and schedules. (1-AA-29.) On April 30, 2015, the court entered a final custody and visitation order, triggering application of the changed-circumstances rule. (1-AA-86.)

[1] We cite to the record as volume-AA-page. The documents in the Appellant's Appendix are true and correct copies of documents filed in Los Angeles Superior Court Case No. BD542090.

C. The Evolving Custody Orders.

1. Mother and the children move to New York. Father takes little opportunity to visit them.

In 2017, the children and mother relocated to New York. (1-AA-119.) Father's time with the children was modified, but he failed to see them on a regular basis.

As of December 2020, father's last visit with the children in Los Angeles had been in February 2019; his last regular visit with the children in New York had been in March 2019; and he had last seen them in December 2019 during a meeting with a therapist. (1-AA-119.)

2. At hearings in November 2020, the child custody evaluator describes various reunification programs, including the "radical" Family Bridges program. The trial court does not order such a program.

In February 2020, the parties had an informal meeting with child custody evaluator, Dr. Stanley Katz. (1-AA-119 [12/16/2020 Minute Order].) The substance of that meeting is not in the record. (See *ibid*.)

Nine months later in November 2020, the trial court (Judge Dianna Gould-Saltman) heard mother's and father's long-pending requests for orders, which had been delayed because of the pandemic. (1-AA-117-118.)

At the hearing, Dr. Katz testified about various types of reunification programs, including "Family Bridges, which actually is the most extreme program because it doesn't allow for the aligned parent to be involved at all. And this is a program where the court will order the child to be picked up and taken." (4-RT-620-627, 685-687.) Dr. Katz stated he was "less familiar with Family Bridges, which is usually kind of an extreme program where children are sort of forced to go with the parent" for what he thought was for "five to seven days." (4-RT-686.) He did not think such a program was presently necessary and he hoped that no program of any type would be necessary. (4-RT-687.)

The trial court issued an order on December 16, 2020, where it summarized Dr. Katz's testimony, including his recommendation "that [father] not touch or hug the children or ask them to do so, that he not talk about [mother] and that he not call the children names. If the children refused to go, then a more intensive program might be appropriate. [Dr. Katz] mentioned two, Family Bridges and one involving Dr. Rebecca Bailey. . . . He also testified that a parenting coach could be helpful for this family. Under current Covid-19 conditions Dr. Katz thinks [father's] time with the children should be in a safe way. Dad should still have someone with him." (1-AA-121.)

The court found that "counseling to improve [the family's ability to effectively communicate] is in the best interests of the children," and ordered the parents to meet and confer regarding selection of a counselor. (1-AA-136-137.) The court also found that "[t]he evidence presented that [father] attended a court-

ordered anger management program which he felt he helped teach because he already knew how to deescalate situations made it sound to the Court that he wasn't amenable to learning new information and, based on the statements made by the children to Dr. Katz and by [daughter] Brigitte to this Court, whatever lessons might have been learned did not stick." (1-AA-138.)

The court also summarized Brigitte's testimony and Dr. Katz's description of her statements to him about father's anger and his tendency to yell at the children for no reason. (1-AA-119 [summarizing Dr. Katz's testimony], 129 [summarizing Brigitte's testimony].)

The December 2020 order awarded father visitation on certain weekend days in New York and directed that custody had to be in public places unless he was accompanied by another adult. (1-AA-137.) The trial court made no order regarding intensive programs, in general, or Family Bridges, in particular. (1-AA-136-138.)

3. In February 2021, the trial court denies father's request for additional custody, ordering limited custody time for him.

In February 2021, the trial court (Judge Gould-Saltman) revisited custody. The court denied father's request for sole custody, instead awarding all custody to mother except for two weekends a month in New York for four hours on Saturdays and four hours on Sundays. (1-AA-142.) Father's custody time still had to be in a public place unless he was accompanied by another adult. (*Ibid.*)

The court also ordered the parties to select "a counselor who can assist the parents and the minor children to develop more effective communication tools, to recognize the effects of their behavior on the children in the moment, and to set age-appropriate boundaries for the children." (1-AA-141.) The order gave mother "tie-breaking" authority as to choice of therapists for the children. (1-AA-142.)

Again, the court made no order regarding intensive programs, in general, or Family Bridges, in particular. (See 1-AA-140-146.)

4. In response to father's July 13, 2021 request to modify custody, the court authorizes him to enroll the children in a *"week-long* program such as Family Bridges"—but with no evidence about the particulars of such a program.

On July 13, 2021, father asked to modify the prior custody order to allow for the children to stay with him "for one week, in Los Angeles, without any communication with [mother] with the eventual return to the pre-March 2019 Custody arrangement." (1-AA-153.) Nowhere did father's July request raise the Family Bridges' program. (See 1-AA-152-163, 352-353.)

The trial court (Judge Gould-Saltman) held a hearing on father's request on July 22, 2021. (6-RT-1801.) At that hearing, the court stated that "based on the declarations that I have read, it appears that things are not going well," and the court mused that "one possibility would be that [father] and the kids take a –

an educational vacation to something like Turning Points for Families or Family Bridges or Transitioning Families." (6-RT-1813.) The court asked the attorneys "to talk with each other now for a few minutes privately about the three entities that I talked about and see if that's a possibility." (6-RT-1818.)

The parties met and conferred during a break, but there was insufficient time to do anything but pull up one of the three programs on a computer; mother's counsel could not see the other two. (6-RT-1819.) Father's counsel stated that he preferred Family Bridges. (6-RT-1820.)

The court "believe[d] [father]'s written declaration was pretty inflammatory. It provided more heat than light, which was less useful than it might have been." (6-RT-1939-1940.) Nonetheless, the court directed counsel to prepare an order for a one-week visitation with father in Los Angeles and a *one-week* program such as Family Bridges or Turning Point. (6-RT-1940.)

The trial court (Judge Gould-Saltman) followed up the hearing with an August 17, 2021 formal order directing that father "shall be permitted to arrange for himself and the children to participate *in a week-long* program such as Family Bridges or Turning Point, but not High Roads. If [father] arranges for himself and the children to participate in *a week-long program* such as Family Bridges or Turning Point, then [father] shall have time with the children during *the week-long* program in addition to his one week of time with the children in California." (1-AA-341-342, italics added.)

The trial court made no mention of changed circumstances or the best interests of the children in either the July 2021 minute order or the August 2021 order after hearing. (1-AA-189-190, 340-343.)

The court's order regarding such a program came out of the blue *for both parties*. According to *father*, "At the Review Hearing [on July 22, 2021], neither I nor my counsel expected a program like Family Bridges to be ordered. The Court gave no indications it was considering this option . . . ." (1-AA-352-353.) Indeed, while Family Bridges had been discussed in passing in the November 2020 hearings, the child custody evaluator (Dr. Katz) had not recommended it, and the trial court had not issued any orders relating to it—neither in its December 2020 order nor in its February 2021 order. (See Statement of the Case, C.2-3, *ante*.)

The August 2021 order also afforded father, upon two weeks' notice, one week of time with the children in California over the summer. (1-AA-341.)[2]

[2] Because of the pandemic, the one-week visitation did not take place in 2021. It did, however, take place in 2022.

D. The Vastly Expanded 90-Day No-Contact Family Bridges Order.

1. On September 14, 2021, father requested a new order to purportedly "implement" the August 2021 *one-week* order, but that sought for the first time to impose the Family Bridges' mandatory *90-day, no-contact-with-mother* program.

Under the guise of "implementing" the August 2021 order, father brought a new request to change the custody arrangement. (1-AA-344, 349.) Indeed, he sought *not* a one-week program, as the court had authorized in its August order, but an additional *90 days* for Family Bridges' no-contact-with-mother program—a program that would isolate the children from their current living arrangement *for months*. (1-AA-349.)

In support of this new, extreme request, father proffered that his selected "Family Bridges" program requires court-ordered isolation of the children from the other parent (here, mother) in order to break the children's bonds with that other parent. (1-AA-349, 363-385.) The Family Bridges literature shows that the program requires a *minimum* of 90 days of no contact with the other parent (here, mother). (E.g., 1-AA-363, 373, 377, 383; see *Cisneros v. Guinand* (Fla.Ct.App. 2021) 332 So.3d 1041, 1042 & 1043, fn. 3 [Family Bridges started out as 90 days; "All three children attended the program, and, despite the fact that ninety days has long since elapsed, the mother has been

denied any form of contact with the children"; mother has had no contact with children for thirty months].)

The Family Bridges literature that father provided to the court makes clear that Family Bridges is a one-sided and highly adversarial program designed to break the children's bonds with one parent. For example, the Family Bridges literature refers to its client (father) as the "rejected parent" and the other parent, with whom all contact is to be eliminated for 90 days (a period that restarts if the child ever has any contact with her during that time), as the "favored parent." (E.g., 1-AA-382-384.) Family Bridges *assigns blame* to the "favored parent" for "parental alienation," which it considers "child abuse." (1-AA-374-375.)

But "alienation" *has never been found in this case*—indeed, the trial court has never used the term "alienation," or its derivatives, to describe mother's actions towards her children. (See, e.g., 1-AA-117-139 [12/16/2020 Minute Order].) At most, Dr. Katz described the children as "estranged from" father. (1-AA-119.) Estrangement as a result of father's own actions is *not* the same as parental alienation. (1-AA-127 [estrangement as a result of father "expos[ing] the children to the threat of violence," "insulting them[,] and treating them roughly"], 375 [Family Bridges literature noting difference between "realistic estrangement versus parental alienation"].)

Although complaining about events that predated the February 2021 and July 2021 orders, the *only* new circumstance that father presented was that the children were unable to travel to see him in Los Angeles in August because of the status of their

COVID-19 vaccinations. (1-AA-351.) The attached exhibit from the children's doctor showed that the doctor advised against their traveling to Los Angeles, which at the time was experiencing a Delta-variant COVID surge, without being fully vaccinated for at least two weeks, a process that would take five weeks from when their vaccinations started in early August 2021 (about as soon as the then 15- and 14-year-olds could receive vaccines). (1-AA-361.)

2. Mother vigorously opposes the newly requested 90-day order as far beyond the July 2021 order and not in the children's best interests. She requests a hearing with live testimony, as Family Code section 217 requires.

Mother vehemently opposed father's new, 90-day Family Bridges ploy. (2-AA-457.) She asserted that it wasn't in the children's best interests. (2-AA-460.) She noted that at no previous time had a 90-day program been mentioned and that the court *had* to consider the input of the children themselves as to such a program. (2-AA-468.) She requested that the court hear from both the children's therapists *and* the children. (*Ibid.*) She objected to "embarking on a radical program that turns the children's world upside down." (2-AA-467.)

3. The trial court accepts the claim that the August 2021 order made a *90-day no-contact* Family Bridges program as a fait accompli, refusing to hear evidence.

The trial court, now with a new judge presiding (Judge Steven A. Ellis), heard father's 90-day no-contact Family Bridges request on November 8, 2021. (7-RT-2101.)

Despite not hearing any of the prior proceedings in this case, Judge Ellis refused to hear evidence: "As a threshold issue, I do know there was a [Family Code section] 217, a request for a 217 hearing . . . . There's no need to have an evidentiary hearing on this RFO . . . . The court finds that there's good cause not to hear the proffered testimony." (7-RT-2125.)

The "good cause" was that, in Judge Ellis's view, Judge Gould-Saltman had already decided the issue: "Although there's a substantive matter that is at issue, the substantive matter *has already been resolved* by Judge Gould-Saltman [who issued the August 2021 order], in that she has already ruled, made her ruling with regard to the Family Bridges program . . . ." (7-RT-2126, italics added.) Thus, in Judge Ellis's view, the August 2021 order of a *one-week* program apparently somehow had the effect of already determining that the teenage children were to be ordered, without their input or any substantial evidence, into a *90-day, no-contact-with-mother deprogramming program*.

In declining to hear any testimony whatsoever, the court declined to hear directly from the teenage children as to their wishes, as mother had requested.

After various objections to submitted drafts, on December 22, 2021, the court entered its order compelling the teenage children to involuntarily participate in the 90-day, no-contact-with-mother program. (2-AA-739.) The order allows father to move the children away from their normal place of abode and friends for an extended period of time. (2-AA-741-742, ¶ 5(b).) It grants him authority to "hire or designate other persons" to conduct an intervention to force the children into the program and gives him "sole authority to consent to the children's domestic travel as it relates to participation in the Family Bridges program." (2-AA-743, ¶¶ 6(h), 6(i).)

Although the order states, "Mother *may* elect to participate, or not participate, in this [90-plus day protocol] aspect of the Family Bridges program," this language doesn't mean that mother isn't barred from communicating with the children. (2-AA-744, ¶ 6(q), italics added.) According to Family Bridges' *own literature*, there is a "minimum 90-day No Contact period," and "participation" during the no-contact period means, e.g., (1) complying with court orders; (2) reading/watching materials on parental alienation; (3) agreeing that parental alienation is child abuse; and (4) writing a Family Bridges-approved apology letter to the children. (1-AA-366, 373, 375.)

In fact, the order *directs* that mother will have no contact with her children during the Family Bridges program, which "includes all forms of contact and communication, including but not limited to phone contact, text messages, letters, contact via computer, snap-chat, Instagram, face-time, skype, tiktok, Zoom, or any other form of electric communication, in person contact,

and/or communication via third parties or applications (apps)." (2-AA-743-744, ¶¶ 6(l) & (m)].) The order affords father plenipotentiary right to confiscate all of the teenage children's electronic communications devices and thereby to isolate them from everyone they know during the 90-day Family Bridges time and otherwise while father has custody. (2-AA-744 ¶ 6(n).)

The order states that only "once the children and Father have completed the Family Bridges program" will "the children . . . be able to move back with Mother and the prior custody order . . . be re-implemented . . . ." (2-AA-746-747, ¶ 11.)

The order contemplates that if the 90-day program runs into the school year, then the children will return to New York for school, but where they will live is unknown as they will not be permitted to see or communicate with mother. (2-AA-741, ¶ 5(a).) If the Family Bridges program occurred in summer, "then the children can come and live with [father] in Los Angeles during the Family Bridges in-person segment and the Family Bridges 90-day Aftercare Program." (2-AA-741, ¶ 5(b).) Thus, father will have full control of the children for more than 90 days—an in-person Family Bridges program of between 4-7 days, followed by a minimum 90-day aftercare program (primarily a continent away from their home and friends in New York), which can be extended by Family Bridges.

The order further permits father "to hire or designate other persons to facilitate and assist with the transfer of the children to the airport and/or the location where any intervention will be conducted." (2-AA-743, ¶ 6(h).) It essentially authorizes father to

hire an outside entity to *forcibly* seize the teenage children from their home and transport them against their will to Family Bridges' deprogramming location.

The order does *not* find *any* changed circumstances from the February or August 2021 custody orders. Although the order states that it is in the "children's best interest" to participate in the Family Bridges program (2-AA-741, ¶ 4), the order does not explain the basis for that "best interest" finding beyond simply reciting that on July 22, 2021, the trial court (Judge Gould-Saltman) had already found that it was in the best interest of the children and father "to spend *a week* in Los Angeles and attend Family Bridges." (2-AA-740, italics added.)

As Judge Ellis *declined to hear any evidence*, the order's conclusory and unsupported lip-service to "children's best interest" did not, and necessarily could not, represent an independent best-interest-of-the-children determination as to the newly ordered *90-day* no-contact scheme.

E. Family Bridges: A Controversial Deprogramming "Reunification" Program.

Per its own literature, "Family Bridges" is a radical deprogramming program. It is judgmental, referring to the parent from whom the children are barred all contact as the "alienating parent" or the "favored parent." (1-AA-373-374.) The parent to whom custody is being transferred is referred to as the "rejected parent." (1-AA-382.) Family Bridges *presumes* that the "favored parent" (here, mother) has engaged in child abuse by alienating the children from the other parent. (1-AA-373.)

There are *no* court findings supporting such a presumption here. (See, e.g., 1-AA-117-139.) Family Bridges' goal is to require the "favored parent" to write a letter of *apology* to the children, approved by Family Bridges. (1-AA-375.) In other words, it places the parent with whom the children live in the role of wrongdoer even though there have been *no* findings to that effect.

Family Bridges' premise is that the children will be removed—deceptively and forcefully, if necessary—from the custody of the parent that they are living with, regardless of the trauma to the children. (1-AA-379-381.) In other words, the children are to be judicially kidnapped.

Family Bridges is a fee-based program, charging the individual parents a substantial fee, not the court. (2-AA-746.) No evidence was presented as to the program's effectiveness, potential to harm the children, or even general acceptance in the scientific or therapeutic community.

Father chose Family Bridges based on his contact with its founder, Dr. Randy Rand. (1-AA-349.) Dr. Rand has had a troubled past with the California Board of Psychology, having been disciplined repeatedly, including for dishonesty with a court, partiality as a court-appointed special master, and failing to abide by the terms of his probation. (*Rand v. Board of Psychology* (2012) 206 Cal.App.4th 565; California Board of Psychology, Citation Order No. 600 2019 000149 (Mar. 5, 2019).) Dr. Rand's current status with the California Board of Psychology is "inactive," "Probation Tolled, No Practice Permitted." (https://search.dca.ca.gov/details/

6001/PSY/12137/b7399ba7a92fa0255639bb6c945e07cc [last accessed Sept. 21, 2022].) Dr. Rand holds no other current California license. (*Ibid.*)[3]

F. Mother Appeals The December 2021 Order And Petitions for Writ of Mandate.

Mother both appealed from the December 22, 2021 final order altering custody and filed a petition for writ of mandate with this Court to set aside the December 2021 order. (See *Johnston Rossi v. Superior Court*, No. B318493.)

This Court denied the petition on March 4, 2022, on the ground that mother "ha[d] an adequate remedy by way of appeal." (Order, Mar. 4, 2022, No. B318493.)

G. This Court Grants Supersedeas.

Mother petitioned ex parte for a stay of the Family Bridges order on March 9, 2022. (2-AA-753.) On the same day, the trial court denied the request for a stay. (*Ibid.*)

On March 11, 2022, mother filed a petition for writ of supersedeas in this appeal seeking a stay of the Family Bridges order, pending this appeal. Substantively, the petition for writ of

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[3] In an apparent attempt to avoid unlawful practice of psychology or family counseling, Family Bridges disclaims providing any "therapy." (1-AA-374, 376, 380; but see Bus. & Prof. Code, §§ 4980.02 ["the practice of marriage and family therapy shall mean the application of psychotherapeutic and family systems theories, principles, and methods in the delivery of services to individuals, couples, or groups in order to assess, evaluate, and treat relational issues"], 4980 [requiring license for family counseling], 2903 [requiring current license for psychological services].)

supersedeas presented the same arguments for reversal as in this opening brief.

This Court issued supersedeas on May 26, 2022: "The superior court's order of December 22, 2021 requiring participation in the Family Bridges program, including the 90 days of no contact with appellant, is stayed pending resolution of this appeal." The Court deferred mother's request for judicial notice of father's conviction and granted mother's request to expedite the appeal. (*Ibid.*; see MJN.) The case was set for calendar preference.

H. Father Is Convicted Of Felony Assault With A Deadly Weapon.

On March 28, 2022, a Los Angeles jury convicted father of criminal assault under Penal Code section 245, subdivision (a)(1)—a statute penalizing "assault upon the person of another with a deadly weapon or instrument other than a firearm." (MJN.) This conviction is based on a July 2020 assault and August 2020 arrest which father never revealed to the trial court in the instant matter.

STATEMENT OF APPEALABILITY

The trial court's December 22, 2021 order removing all custody—indeed all contact—from mother for a period of 90 days or more is a substantial change in custody. It is appealable as a final post judgment order or a final order regarding custody. (Code Civ. Proc., § 904.1, subd. (a)(2), (14).) The August 2021 order was not final—there was no order of 90 days of no contact with the mother until the December 22, 2021 order. Until the December 22, 2021 order was entered, there was no *final* new custody order. Indeed, father recognized that the trial court's August 2021 order was inchoate, incomplete, and self-contradictory, which is why the very next month he sought a further order to "implement" the August 2021 order. There was no final, appealable order until all steps in the Family Bridges 90-day, no-contact-with-mother process were complete in December 2021. (*In re Marriage of Olson* (2015) 238 Cal.App.4th 1458, 1462 [order after judgment not appealable if preparatory to further judicial action].)

On appeal from the December 22, 2021 order, this Court reviews all prior nonfinal or interlocutory orders. Thus, on the appeal from the December 22, 2021 order, this Court may review the inchoate July and August 2021 orders as well. (Code Civ. Proc., § 906 ["the reviewing court may review the verdict or decision and any intermediate ruling, proceeding, order or decision which involves the merits or necessarily affects the judgment or order appealed from"].)

Mother timely appealed the trial court's December 22, 2021 order on January 31, 2022. (2-AA-752.)

STANDARD OF REVIEW

Custody orders fall within a trial court's discretion. But a trial court's exercise of legal discretion must be grounded in reasoned judgment and conform with the law. (*F.T. v. L.J.* (2011) 194 Cal.App.4th 1, 15.) If a court applies an erroneous understanding of applicable law or its ruling reflects unawareness of its scope of discretion, it is a per se abuse of discretion. (*Ibid.*) Application of the wrong legal standards or erroneous assumptions is a per se abuse of discretion. (*In re Marriage of Fajota* (2014) 230 Cal.App.4th 1487, 1497.) That is because one cannot tell what result the trial court might have reached had it applied the correct legal standard.

An appellate court conducts de novo review of the legal standards that govern a court's discretion. (*Enrique M. v. Angelina V.* (2004) 121 Cal.App.4th 1371, 1378.)

ARGUMENT

I. Legal Standard: Before Making A Substantial Change In A Post-Judgment Custody Order, A Trial Court Must Hear Evidence (Including The Teenage Children's Wishes) And Make A Determination Of A Significant Change In Circumstances.

A. Hearings with live testimony are *required* for substantial Family Law determinations.

Family Code section 217 is clear regarding a court's obligation to hear evidence: "At a hearing on any order to show cause or notice of motion brought pursuant to this code, absent a stipulation of the parties or a finding of good cause pursuant to subdivision (b), the court *shall* receive any *live, competent testimony* that is relevant and within the scope of the hearing and the court may ask questions of the parties." (Italics added; Cal. Rules of Court, rule 5.113.)

While there are certain good-cause exceptions to the live-testimony rule, none apply here. The trial court recognized at the November 8, 2021 hearing that section 217 would apply to a change that was as substantial as a 90-day custody removal and no-contact order, but erroneously found good cause to exclude live testimony. (7-RT-2126 ["Under Rule 5.113, the Court is making a finding of good cause to exclude live testimony, and in doing so, I will state my reasons on the record. My reasons are, number one, although there's a substantive matter that is at issue, the substantive matter has already been resolved by Judge

Gould-Saltman, in that she has already ruled, made her ruling with regard to the Family Bridges program."].)

But Judge Gould-Saltman had not, and could not have, ordered a 90-day no-contact program. On its face, her August 2021 order contemplated a *one-week* program. (1-AA-341-342.) A one-week program does not translate to 90 days of isolation from one parent.

B. Post-judgment, findings of significantly changed circumstances are required to make substantial custody changes.

If a final, judicial custody determination is in place (as is the case here), that custody determination is presumed to be in the best interest of the child and should be preserved, absent "some significant change in circumstances [that] indicates . . . a different arrangement would be in the child's best interest." (*Montenegro v. Diaz* (2001) 26 Cal.4th 249, 256; see also Sharp, *Modification of Agreement-Based Custody Decrees: Unitary or Dual Standard?* (1982) 68 Va. L.Rev. 1263, 1264, fn. 9 ["The change of circumstances standard is based on principles of res judicata."].)

Mere children's "best interests" will not do. (*F.T., supra*, 194 Cal.App.4th at p. 15; *In re Marriage of McKean* (2019) 41 Cal.App.5th 1083, 1089-1090.)

The reason for the more stringent "significant change in circumstances" standard is to promote stability of environment and home life for children. As our Supreme Court has explained: "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." (*In re Marriage of Brown & Yana* (2006) 37 Cal.4th 947, 956, quoting *In re Marriage of Burgess* (1996) 13 Cal.4th 25, 32-33 (*Burgess*).)

Thus, "a party seeking to modify a permanent custody order can do so only if he or she demonstrates a significant change of circumstances justifying a modification." (*Montenegro, supra*, 26 Cal.4th at p. 256.) "'It is settled that to justify ordering a change in custody there must generally be a persuasive showing of changed circumstances affecting the child. And that change must be substantial: a child will not be removed from the prior custody of one parent and given to the other "unless the material facts and circumstances occurring subsequently are of a kind to render it essential or expedient for the welfare of the child that there be a change." The reasons for the rule are clear: "It is well established that the courts are reluctant to order a change of custody and will not do so except for imperative reasons; that it is desirable that there be an end of litigation and undesirable to change the child's established mode of living."'" (*Speelman v. Superior Court* (1983) 152 Cal.App.3d 124, 129, citations omitted, quoting *In re Marriage of Carney* (1979) 24 Cal.3d 725, 729-731.)

This "changed circumstance rule applies 'whenever [final] custody has been established by judicial decree.'" (*Montenegro, supra*, 26 Cal.4th at p. 256, quoting *Burchard v. Garay* (1986) 42

Cal.3d 531, 535, fn. omitted.) The "final" or "permanent" requirement is met when the order sought to be modified was intended to be a "final" judicial custody determination—regardless of whether it was entered after a contested hearing, by default judgment, or by stipulation. (*Montenegro, supra*, 26 Cal.4th at pp. 256-258 [stipulated custody order can trigger changed circumstance rule, depending on intent of parties]; *Burchard, supra*, 42 Cal.3d at p. 535 [California follows majority of jurisdictions that apply changed circumstance rule whenever custody is established by judicial decree, rejecting minority view that only applies rule when custody was determined through an adversarial hearing]; *Osgood v. Landon* (2005) 127 Cal.App.4th 425, 434 [changed circumstance rule applies to motion to modify final custody order embodied in default judgment].)

"The changed circumstances test requires a threshold showing of detriment before a court may modify an existing final custody order that was previously based upon the child's best interest." (*Ragghanti v. Reyes* (2004) 123 Cal.App.4th 989, 996.)

The showing required for changed circumstances is "substantial." (*Burgess*, *supra*, 13 Cal.4th at p. 38.) Children should not be removed from the custody of one parent and given to the other "'unless the material facts and circumstances occurring subsequently'" would "'render it essential or expedient'" for the children for there to be a change. (*Ibid.*; see also *In re Marriage of Carney, supra,* 24 Cal.3d at p. 730.) While "each case must be evaluated on its own unique facts[,] . . . the interests of a minor child in the continuity and permanency of custodial

placement with the primary caretaker will most often prevail." (*Burgess*, *supra*, 13 Cal.4th at p. 39.)

Since a party seeking to modify a permanent custody order must demonstrate a significant change of circumstances justifying a modification (*Montenegro, supra*, 26 Cal.4th at p. 256), a formal hearing on the issue is necessarily required before the court can modify custody. (See *In re Marriage of Dunn-Kato & Dunn* (2002) 103 Cal.App.4th 345, 348.)

Absent a showing of changed circumstances, any modification to a final custody determination is an abuse of discretion. (*Anne H. v. Michael B.* (2016) 1 Cal.App.5th 488, 501.) "'[A]lthough a request for a change of custody is also addressed in the first instance to the sound discretion of the trial judge, he [or she] must exercise that discretion in light of the important policy considerations just mentioned. For this reason appellate courts have been less reluctant to find an abuse of discretion when custody is changed than when it is originally awarded, and reversals of such orders have not been uncommon.'" (*Speelman*, *supra*, 152 Cal.App.3d at p. 129, quoting *In re Marriage of Carney*, *supra*, 24 Cal.3d at pp. 729-731 and collecting cases; accord, *Christina L. v. Chauncey B.* (2014) 229 Cal.App.4th 731, 738-739; see *In re Marriage of McLoren* (1988) 202 Cal.App.3d 108, 116 [family court abused its discretion in changing custody from sole to joint legal custody in the absence of a showing of substantially changed circumstances].)

Here, there has not even been a purported finding of changed circumstances to justify the 90-day, no-contact-with-

mother Family Bridges order. There is no such finding in Judge Gould-Saltman's August 2021 order, and there is no such finding in Judge Ellis's December 22, 2021 order. And, there is no *evidence* of any changed circumstance from February 2021 to August 2021 or to December 2021. Indeed, there is no evidence of *any* changed circumstance. There is no "threshold showing of detriment" to the children if they are not torn away from their mother and the life, community, and friends they know and placed incommunicado with their father a continent away. There is no showing that they are anything other than well-adjusted teenagers (with all the usual teenage foibles) in a loving home.

C. Teenage children have the right to be heard and to have their wishes considered before being involuntarily ripped from their normal routine and environment.

Family Bridges' own literature cites to Article 12 of the UN Convention on the Rights of the Child: "Article 12: The right of the child, who is capable of forming their own views, [to] express their views or have them represented, and for the views of the child to be given due weight according to the age and maturity of the child." (1-AA-373.) That right is embodied in Family Code section 3042's direct mandate that "the court *shall* consider, and give due weight to, the wishes of the child in making an order granting or modifying custody or visitation" (subd. (a), italics added) and that children of their ages who wish to address the court shall be permitted to do so (subd. (c) ["If the child is 14 years of age or older and wishes to address the court regarding

custody or visitation, the child *shall* be permitted to do so," italics added]).[4]

The statute specifically allows a parent to inform the court that the children should be heard from. (§ 3042, subd. (g) ["A party or a party's attorney may also indicate to the judge that the child wishes to address the court or judge."].)

Yet, the trial court here specifically refused to hear from the children on a subject of great import to them—whether they are to be dragged away (perhaps physically by strangers), placed under the complete control of their father with no means of communicating to their friends or family (father is granted the right to seize all communication devices) across the country from their normal abode, forbidden under penalty of further isolation from any contact with their mother, and forced to like a father who in the past has terrified them. This is precisely the type of circumstance where section 3042 *requires* the court to hear from the children.

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[4] There is an exception if the court *finds* that testifying is not in the child's best interest. (Fam. Code, § 3042, subd. (c).) The trial court here made no pretense of even so finding. And, in that event, the statute directs that "the court *shall* provide alternative means of obtaining input from the child and other information regarding the child's preferences." (*Id.*, subd. (e), italics added.)

D. Even the lesser children's-best-interests standard requires promoting consistent, regular contact with both parents and stability of the children's environment.

It is public policy in California "to ensure that children have *frequent and continuing contact with both parents* after the parents have separated or dissolved their marriage." (Fam. Code, § 3020, italics added.) Add to this that "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 ongoing custody arrangements." (*Burgess, supra*, 13 Cal.4th at pp. 32-33.) Given the *statutory* requirement of continuing and frequent contact between the children and their mother—the parent whom they live with in New York and who has been providing for their day-to-day physical, emotional, and moral needs—there would have to be findings, supported by evidence, of some extraordinary need (e.g., physical or emotional abuse by a parent) for it to be in the children's best interests for a court order to violate the statutory norm.

Yet, there is *no* finding of the children's best interests in Judge Gould-Saltman's August order, an order that Judge Ellis viewed as predetermining the matter and tying his hands. And, there was *no evidence* before Judge Ellis of the children's best interests in light of the statutory directive of continuing contact with their mother that could possibly support or justify the pro formal "best interests" line in the December 2021 order. Nor,

having refused to hold a hearing, could he have made an independent best interests determination.

As we now show, under *any* standard, the Family Bridges order fails.

II. The Trial Court's December 2021 Order Did Not Merely Implement The August Order—It Greatly Expanded It, Substantially Modifying Custody.

The trial court's rationale for evading its Family Code section 217 hearing obligations and, implicitly, not considering whether changed circumstances existed was its belief that it was just "implementing," and bound by, a prior judge's August 2021 order—that is, that there had *already been a determination* that mother was to be denied custody of the children for 90 days (or more) and that mother and the children would be barred from even communicating with each other for that period. (See 7-RT-2125-2126.)

But the August 2021 order did not impose any 90-day, no-contact-with-mother restriction. The December 2021 order did that. The August 2021 order is explicit. It directs that there was to be a *week-long* program. That order is not surprising as that's all that father had asked for and that's all that the witnesses who gave testimony in November had discussed. There was nothing in either father's request or the witnesses' testimony about no contact between the teenage children and their mother for 90 days. None. There was no mention in any of the pre-order testimony about seizing all of the teenage children's means of communication. There is no mention of hiring third parties to

abduct the teenage children. There was no mention of moving the teenage children for 90 days to Los Angeles, away from their friends and familiar surroundings.

A simple comparison of the August and December orders conclusively demonstrates that they are very different, with the December order being a vast enlargement and expansion:

- The August 2021 order refers—repeatedly—to only a *one-week* program. It provides that "[i]f [father] arranges for himself and the children to participate in *a week-long program* such as Family Bridges or Turning Point, then [father] shall have time with the children during the *week-long* program in addition to his one week of time with the children in California." (1-AA-341-342, italics added.) [5]
- The December 22, 2021 order is a *massive* change from a *one-week* program. In addition to participating in the one-week in-person component of Family Bridges, it dictates a follow-on regime of 90 days of no contact with mother. (2-AA-740, 743-744.) It allows father to move the teenage children across the country, away from their normal abode and friends, for more than three months and to deprive them of any means to communicate with mother or anyone else in New York or elsewhere during

[5] To assist the Court, we attach both the December 22, 2021 order and the August 17, 2021 order to this brief.

that time, as father can confiscate all communication devices. (2-AA-741, 744.)

Thus, the December order is many magnitudes more extreme than the earlier August order. It effectively permits forced removal of the children from their home for three months and forced deprivation of any contact with their mother or anyone else for that same period. As such, the December order is tantamount to a sentence that in the criminal sphere would require proof of wrongdoing beyond a reasonable doubt.

This extreme circumstance parallels that in *Logreira v. Logreira* (Fla.Ct.App. 2021) 322 So.3d 155. There, as here, the trial court initially ordered the children into Family Bridges. (*Id.* at p. 157.) The father then submitted a much more expansive order that included such things, as here, as giving the father unilateral rights over the children's travel, "prohibit[ing] the former wife from any contact with the children for an indeterminate duration, specifying that such prohibition would last for a minimum of ninety days following completion of therapy," and conditionally ordering law enforcement to assist in transferring the children to the father. (*Id.* at p. 158.) The Florida Court of Appeal held that the follow-on order had to be vacated: "[T]he supplemental order was unsolicited by the trial court and dramatically shifted the existing framework of the parties' parenting plan. Thus, the former wife was entitled to minimal due process protections prior to entry." (*Ibid.*)

This should be the result here, as mother was also deprived of even minimal due-process protections. The trial court declined

to hold a requisite Family Code section 217 hearing. It substantially modified custody under the guise of simply implementing a previous order. But the record reveals that the trial court *did not order* the 90-plus day Family Bridges program until *December 2021*. Here's the undisputed chronology:

- In February 2020, there was an informal meeting with Dr. Katz. The substance of that meeting is not in the record. (1-AA-119 [12/16/2020 Minute Order].)
- Nine months later, Dr. Katz testified in November 2020 (a) that he did not know much about Family Bridges, (b) that it was a *five-to-seven-day* program, (c) that the program was "extreme," and (d) that he did not recommend it. (4-RT-621-622, 686-687.)
- When the trial court issued its next orders in December 2020 and February 2021, it did not comment on, let alone order, Family Bridges. (1-AA-117-146.) The orders gave father limited visitation rights and required his custody time to be supervised or "in public places only." (1 AA-137, 142.) No party appealed those orders.
- Five months later, when father applied in July 2021 to modify custody, he said *nothing* about Family Bridges or any similar program. (1-AA-152-153; see 1-AA-352-353.) He sought only a *one-week* visit with the children without communication with mother. (1-AA-153.) There was no mention in father's application of the children being held incommunicado for an additional 90-plus days. When counsel for mother asked at the

July 2021 hearing what was at issue, the trial court responded just what was asked for in father's papers. (6-RT-1802 [July 2021 hearing RT].)

- The order following the July 2021 hearing—i.e., the August 2021 order—is expressly limited to "a *week-long* program *such as* Family Bridges or Turning Point." (1-AA-341-342, italics added.) Again and again, the August 2021 order states that the duration of the program that the court is ordering is one week. (*Ibid.*) The court made no finding of significantly changed circumstances or even best interests of the children.

- Both parties were completely surprised by the August 2021 order's mention of Family Bridges. Indeed, in father's follow-on September 2021 application to exploit the August 2021 order, father candidly acknowledged his surprise at the court's mention of Family Bridges in its August 2021 order: "At the Review Hearing [on July 22, 2021], *neither I nor my counsel expected a program like Family Bridges to be ordered. The Court gave no indications it was considering this option.*" (1-AA-352-353, italics added.) Simply put: Family Bridges came out of the blue.

- In September 2021, under the guise of "implement[ing]" the August order, father sought to massively expand the one-week program that the court had actually ordered into a 90-plus day, no-contact-with-mother program that the court *had not ordered*. (1-AA-344, 349.)

- In its November 2021 hearing on father's September 2021 application, before a new judge, the court recognized that Family Code section 217 ordinarily would require a hearing and evidentiary presentation but expressly did not allow an evidentiary hearing on the 90-plus day, no-contact-with-mother program. (7-RT-2125.) In the court's view, the 90-plus day, no-contact-with-mother Family Bridges program was a fait accompli per the prior judge's August 2021 order. (7-RT-2126.) Given its view, the court did not even consider whether there were the required significantly changed circumstances between August 2021 and November 2021 to justify a substantial change in custody.
- The December 2021 order compelling the teenage children to involuntarily participate in the 90-plus day, no-contact-with-mother program is worlds apart from the August 2021 order. Again, a simple comparison of the two orders demonstrates that this is so. (Compare 1-AA-341-342 with 2-AA-739-747.)

Thus, the August order provides no justification for the trial court's failure to hear evidence or perform any factfinding as to whether changed circumstances existed for a radical 90-day, no-contact-with-mother change of custody. The August order was not appealable, as discussed in the Statement of Appealability above, and did not order a 90-day, no-contact program. So, mother could not have waived the present challenge by failing to appeal the inchoate August order.

III. The Trial Court Abused Its Discretion In Multiple Respects.

A. The trial court abused its discretion by applying the wrong legal standard.

As a threshold matter, the trial court abused its discretion by failing to apply the governing legal standard for imposing a substantial change in the post-judgment custody arrangement: a finding of significantly changed circumstances. (See *Montenegro, supra*, 26 Cal.4th at p. 256.)

While the law *requires* findings of significant changed circumstances, the December order makes no mention of that standard, any facts that could meet it, or any finding relating to it. Nor does the August order. In fact, there were no significantly changed circumstances between February 2021 and August 2021 or between August 2021 and December 22, 2021. Between August and December 2021, there was a single missed transcontinental visit that was due to COVID issues. That's it.

The December order thus evidences an utter disregard for "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[ing] heavily in favor of maintaining ongoing custody arrangements." (*Burgess, supra*, 13 Cal.4th at pp. 32-33.)

Instead, the December order merely parrots the "best interests of the child" standard (the August order is even silent as to that). (2-AA-741.) But that's not the standard for a post-

judgment custody order: "'The changed-circumstance rule . . . provides, in essence, that once it has been established that a particular custodial arrangement is in the best interests of the child, the court need not reexamine that question. Instead, it should preserve the established mode of custody unless some significant change in circumstances indicates that a different arrangement would be in the child's best interest[s].'" (*F.T.*, *supra*, 194 Cal.App.4th at p. 15.) That application of the wrong legal standard, in and of itself, is reversible error. (E.g., *In re Marriage of McKean*, *supra*, 41 Cal.App.5th at p. 1089-1090, 1093.)

The changed circumstances standard is a significant hurdle not easily met. "'[A] child will not be removed from the prior custody of one parent and given to the other 'unless the material facts and circumstances occurring subsequently are of a kind to render it *essential or expedient for the welfare of the child that there be a change*.' . . . [It is] "undesirable to change the child's established mode of living."'" (*Speelman*, *supra*, 152 Cal.App.3d at p. 129, citations omitted, italics added, quoting *In re Marriage of Carney*, *supra*, 24 Cal.3d at pp. 729-731.) There is no finding or evidence anywhere in this record as to how depriving the teenagers here of any contact with their mother (who indisputably has been providing a loving and comfortable home for them) and all means of communicating with their friends and family for 90-plus days is "essential or expedient for the welfare of the child[ren]."

The *required* changed-circumstances findings and evidence are wholly missing. As we now explain, even if the governing

standard was the lower "best interests of the children" standard, it was not met here either.

B. Even if the governing standard is "best interests of the children," the custody order compelling the children to participate in an extreme, controversial reunification program, unsupported by any evidence that it is in the children's best interests, is an abuse of discretion.

1. There is no evidence that depriving the children of all contact with their mother for 90 days or more—in direct violation of Family Code section 3011—is in the children's best interests.

Even if "best interests," without more, were the governing standard, it wasn't met here. The December 2021 order declares that its extreme reworking of the custody status quo is in the children's best interests (the predicate August order is silent even as to "best interests"). But saying it doesn't make it so. There is no factual recitation as to why the extreme measures—abducting the teenage children, depriving them of any contact with their mother or normal environment—is even close to being in the children's (as opposed to father's) best interests. It's not surprising that there is no such finding because the judge who issued the December order heard *no* evidence, and certainly none from the individuals most affected—the teenagers.

A conclusion without an evidentiary foundation is an abuse of discretion. (*Metis Development LLC v. Bohacek* (2011) 200 Cal.App.4th 679, 693.) That's the case here.

California law defines the best interests of children as (1) primary concern for children's "health, safety, and welfare" (Fam. Code, §§ 3011, 3020), (2) "*frequent and continuing* contact with *both* parents" (*Id.*, § 3020, italics added), and (3) stability and continuity of environment (*Burgess*, *supra*, 13 Cal.4th at pp. 32-33). The December 22, 2021 order, indeed the entire Family Bridges program, violates and is the antithesis of the second and third prongs of this statutory mandate. There is no explanation as to how ripping the children from the city they know and their friends and neighbors and bundling them off, against their will, to Los Angeles, where they know no one—and at the same time barring them for at least three months from *any* contact with their mother—meets these statutory requirements.

2. There is no record that the scientifically unvetted Family Bridges' radical, isolation-of-the-child-from-a-loving-parent program is ever in a child's best interest.

Indeed, the Family Bridges program is highly controversial and fails to meet the minimum standard of scientific approval. To begin with, there is an inherent conflict of interest in Family Bridges' desire to entice a "rejected parent" to obtain its court-ordered services for which one, or the other, or both parents will be forced to pay.

Even more fundamentally, the success of Family Bridges' methods has been widely questioned. (See, e.g., Tabachnick, *They Were Taken from Their Mom to Rebond with Their Dad. It Didn't Go Well* (May 11, 2017) Washington Post[6]; Hagerty, *Can Children Be Persuaded to Love a Parent They Hate?* (Dec. 2020) The Atlantic[7]; Nguyen et al., *No Oversight for Programs Advertising They Reconnect Children with 'Alienated' Parents* (Nov. 5, 2018) NBC Bay Area.[8])

Family Bridges' methodology is based on a "parental alienation syndrome" theory that is not scientifically recognized. (See *Logreira*, *supra*, 322 So.3d at p. 157, fn. 2 [noting controversy]; *M.A. v. A.I.* (N.J.App.Div. Dec. 15, 2014, A-4021-11T1) 2014 WL 7010813, at *5 ["PAS was not a recognized syndrome in the Diagnostic and Statistical Manual of Mental Disorders (DSM-IV), and it is not a recognized syndrome in the new fifth edition. The Supreme Court and this court have not yet determined that PAS is a scientifically reliable or generally accepted theory."]; *Dean v. Valinho* (Conn.Super.Ct. July 6, 2011, No. FA044012513) 2011 WL 8204118, at *12 ["The debate regarding the Family Bridges program that is embodied in the

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[6]https://www.washingtonpost.com/lifestyle/magazine/2017/05/09/b50ac6f6-204c-11e7-ad74-3a742a6e93a7_story.html [last accessed Sept. 21, 2022].

[7] https://www.theatlantic.com/magazine/archive/2020/12/when-a-child-is-a-weapon/616931 [last accessed Sept. 21, 2022].

[8] https://www.nbcbayarea.com/news/local/no-oversight-for-programs-advertising-they-reconnect-children-with-alienated-parents/64105 [last accessed Sept. 21, 2022].

January 2010 *Family Court Review* journal is squarely before the court. This court has read the relevant articles in the journal . . . . The court acknowledges that the program has not been adequately subjected to peer review. Without that, the court has no comfort in knowing that it is a generally accepted program of therapy likely to be positively responsive to the problems of this family."].)

It is an abuse of discretion for a trial court to order a treatment program that it has not vetted—and could not vet—because there has there been no testimony or any other evidence that Family Bridges is generally accepted within the scientific, medical, or therapeutic community. (See *People v. Kelly* (1976) 17 Cal.3d 24, 30-31 [expert testimony not allowed unless subject is generally accepted in the scientific community], disapproved on another ground in *People v. Wilkinson* (2004) 33 Cal.4th 821.) There is no evidence that Family Bridges' methods or results have ever been peer reviewed. To the contrary, the only descriptions are that it is "extreme" and that it even disavows being therapy—presumably because Family Bridges is not licensed to provide therapy, which in California includes the precise family interventions and client education that Family Bridges purports to provide (see Bus. & Prof. Code, § 4980.02). (Fn. 3, *ante*; 4-RT-686; 1-AA-374, 376, 380.) If it is simply lay voodoo and conjuring, there is no basis for a court to order it. That such quack science programs are bandied about glibly in family law courts without any examination or vetting violates fundamental legal principles that apply in all other contexts. (See *Sargon Enterprises, Inc. v. University of Southern*

California (2012) 55 Cal.4th 747, 771-772 [trial court is to act as gatekeeper as to pseudo-science and purported expert methodologies].)

Nor was there *ever* any testimony about the Family Bridges program, its details, or whether it was appropriate. Rather, Dr. Katz only mentioned the program in passing. He admitted he did not know much about Family Bridges, and he stated that he did not recommend it. (4-RT-686 ["I'm less familiar with Family Bridges, which is usually kind of an extreme program where children are sort of forced to go with the parent . . ."], 686-687 ["I don't like the truly restrictive programs to begin with. . . . I don't think such a program is necessary. And I'm hoping that no program is necessary."].) The trial court's December 16, 2020 minute order summarizing Dr. Katz's testimony states only once that he "mentioned" Family Bridges and another program. (1-AA-121.) That's nowhere close to a full vetting of the program. It cannot be in the best interests of the children to order a radical 90-day isolation program without any record as to the program's therapeutic validity, general acceptance in the scientific or therapeutic community, or even the recommendation of a qualified professional. Ordering children into an unknown, what-the-heck program is not in their best interests.[9]

[9] Family Bridges' "Aftercare Curriculum" assigns blame to the "favored" parent for "parental alienation," which it considers "child abuse." (1-AA-374-375.) But "alienation" has *never been found* in this case—indeed, the trial court has never used the term "alienation," or its derivatives, to describe mother's actions

No published California precedent supports the extreme, traumatizing, scientifically unproven, and radical measures ordered here, and the trial court cited none. The court abused its discretion.

C. The trial court's erroneous denial of mother's request for live testimony—which section 217 *requires*—and refusal to hear from the teens themselves was based on a mistaken premise and itself constitutes an abuse of discretion.

1. The required section 217 hearing.

The December order is also fatally infirm procedurally. Family Code section 217 *requires* a hearing with live testimony whenever substantial family law rights are at issue. (See section I.A, *ante*.) That never happened here.

The trial court recognized that a section 217 hearing normally should have been required for the custody modification that was at issue here. (See 7-RT-2126.) And there's no doubt that mother requested such a hearing. (2-AA-468.) The trial court found "good cause" not to provide a hearing because it

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towards her children. (See, e.g., 1-AA-117-139 [12/16/2020 Minute Order].)

At most, Dr. Katz described the children as "estranged from" father. (1-AA-119.) Even according to Family Bridges, estrangement as a result of father's own actions is *not* the same as parental alienation. (1-AA-120 [estrangement as a result of father "expos[ing] the children to the threat of violence," "insulting them[,] and treating them roughly"], 375 [Family Bridges literature noting difference between "realistic estrangement versus parental alienation"].)

concluded that the prior judge's August order had made the expansive details of the December order a fait accompli. (7-RT-2126.) But because the December 2021 order goes far beyond "implementation" of the August 2021 order, the trial court's sole rationale for depriving mother of her section 217 hearing right collapses. The failure to provide a hearing renders the December 2021 order an abuse of discretion.

2. The denial of the children's right under Family Code 3042 to be heard directly.

And there' s another problem to the trial court's rush to upend the teenage children's lives: The law requires consideration of their preferences. (Fam. Code, § 3042, subd. (a).) The teenage children here are old enough that they have a *statutory right* to address the court with their preferences. (*Id.*, subd. (c).) If *anyone* (here, their mother) brings to the court's attention their desire to do so, the court is mandated to listen. (*Id.*, subd. (g).) This statute is a recognition that teenagers, as emerging adults, have a right to have a say in their fate and to have some sense of control over their own lives. And, if it is to have any meaning, the statute must mean the teenagers are able to not only talk about their preferences in general, but also as to specific measures to be directed at them—like being kidnapped, transported across country against their will, and held effectively in isolation from everything and everyone they know for 90 days or more.

Yet it is undisputed that neither child was ever asked or told at any point about a 90-plus day program that involved their

being forcibly removed from their mother's custody with no contact. And certainly, neither Brigitte nor Dominic have been asked how they feel about being isolated from their mother and under the sole control of their father in the wake of his criminal assault conviction on March 28, 2022. (See MJN.)

3. The trial court's failure to hold the required hearing is highly prejudicial because the court failed to vet the Family Bridges 90-day, no-contact-with-mother program.

The absence of any Family Code section 217 hearing is especially prejudicial here because at no time have the bona fides or fairness of Family Bridges' controversial 90-day program been subject to testimony and scrutiny. To the contrary, while Family Bridges came up in the November 2020 hearings, no one told the court that this program would entail *no contact whatsoever with mother for over 90 days*. Custody evaluator Dr. Katz's testimony about Family Bridges was brief, general, and did not disclose or vet the specifics of the program. This makes sense, since Family Bridges was neither something that Dr. Katz recommended nor that the parties thought was on the table. (4-RT-686-687 [Dr. Katz: ["I don't like the truly restrictive programs to begin with. . . . I don't think such a program is necessary. And I'm hoping that no program is necessary."], 352-353 [father: "[N]either I nor my counsel expected a program like Family Bridges to be ordered. The Court gave no indications it was considering this option . . ."].)

Dr. Katz admitted he didn't know much about Family Bridges (4-RT-686 ["I'm less familiar with Family Bridges, which is usually kind of an extreme program where children are sort of forced to go with the parent . . ."]), and he never said that it included a mandatory, 90-plus-day, no-contact portion. All he said regarding the program's time frame was that it "temporarily remove[d] the aligned parent for anywhere from two weeks to 90 days," but he went on to say that he thought it was "five to seven days[, a]nd then there's usually a restriction on the preferred parent seeing those children for a period of time." (4-RT-622, 686.) Thus, Dr. Katz's testimony suggested that Family Bridges had a flexible duration that could be adjusted based on the family's needs. And, in the wake of that testimony, Judge Gould-Saltman ordered *one week* of Family Bridges or another similar program, with no mention whatsoever of 90-plus days. (Section II, *ante*.)

The trial court never heard about the fact that Family Bridges is not generally accepted within the scientific, medical, or therapeutic community either. (See *People v. Kelly*, *supra*, 17 Cal.3d at pp. 30-31 [expert testimony not allowed unless subject is generally accepted in the scientific community].) The court never asked that question. Nor did the court hear any evidence that Family Bridges' methods or results have ever been peer reviewed. To the contrary, the only descriptions in the record are that it is "extreme" and that it even disavows being therapy—presumably because it is not licensed to provide therapy, which in California includes the precise family interventions and client

education that Family Bridges purports to provide (see Bus. & Prof. Code, § 4980.02). (4-RT-686; 1-AA-374, 376, 380.)

In sum: While Dr. Katz's November 2020 testimony briefly *mentions* Family Bridges, his testimony didn't come close to vetting the program, disclosing the mandatory no-contact-for-90-plus-days requirement, or even recommending the program. Dr. Katz's testimony is not a proper substitute for mother's requested Family Code section 217 hearing. Family Bridges claims to be based on consensual participation, but it is all about compulsion and enforced physical, emotional, and even communicative isolation. Before such a radical program is ordered, it must be vetted—and the court must hear from the children—as is the children's right.

The trial court's failure to hold the required section 217 hearing is also prejudicial because there are very real concerns about whether father should be given unfettered, isolated access to the teenage children for 90-plus days after his criminal assault with a deadly weapon conviction. (MJN; Penal Code, § 245, subd. (a)(1).) The trial court did not hear that father had a pending felony criminal charge for aggravated physical assault. It was a fact that father kept from the court. And it was a charge that ultimately resulted in conviction.

Mother should be allowed to present this relevant evidence to the trial court, and the children should be heard on how they feel about being isolated from their mother and under the sole control of their father who has had anger-management issues in the past and who has now been convicted of assault.

CONCLUSION

The trial court's December 2021 order is an egregious abuse of discretion. The court failed even to consider the significant-changed-circumstances legal standard, let alone make any findings that it had been met. Even if the governing legal standard were best-interests-of-the-children, there was no evidentiary basis for the trial court's ipse dixit statement that the 90-day, no-contact-with-mother order is in the children's "best interests."

All of this occurred in a context of undoubted procedural error. Mother was denied her statutory right to give testimony to the court. The teenage children were denied their statutory right to address the court about whether they wished to participate in Family Bridges' radical deprogramming "reunification" program.

The result of the trial court's errors is imposition of an extreme custody change that appears to have no precedent in any published California appellate decision—a custody change that is likely to traumatize the children and amount to legally-sanctioned abduction, potentially by third-parties unknown to them. The children will be held incommunicado from their mother and their normal daily environment, in hopes that they will develop Stockholm-Syndrome and coerced affection for their captors. All of this is directly at odds with controlling statutory and Supreme Court directives, as well as basic common sense.

This Court should reverse the December 22, 2021 order compelling the teenage children to involuntarily participate in the 90-day, no-contact-with-mother Family Bridges program.

Date: September 26, 2022

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CERTIFICATION

Pursuant to California Rules of Court, rule 8.204(c)(1), (c)(4), I certify that this **APPELLANT'S OPENING BRIEF** contains **11,532** words, not including the tables of contents and authorities, the caption page, signature blocks, or this Certification page.

Date: September 26, 2022 /s/ *Tina Kuang*

Tina Kuang

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 5900 Wilshire Boulevard, 12th Floor, Los Angeles, California 90036, my email address is chsu@gmsr.com.

On September 26, 2022, I hereby certify that I electronically served the foregoing **APPELLANT'S OPENING BRIEF** through the Court's TrueFiling electronic filing system. I certify that all participants in the case who are registered TrueFiling users and appear on its electronic service list will be served. Electronic service is complete at the time of transmission:

***** SEE ATTACHED SERVICE LIST *****

Executed on September 26, 2022, at Los Angeles, California.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Chris Hsu

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Second Appellate District
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