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 REPLY BRIEF

HALL FAMILY LAW
Stefanie Hall (SBN 139192)
shall@hall-familylaw.com
5757 Wilshire Blvd. PH 20
Los Angeles, California 90036
(310) 273-8703 | Fax: (310) 273-8704

GREINES, MARTIN, STEIN & RICHLAND LLP
*Robert A. Olson (SBN 109374)
rolson@gmsr.com
Cynthia Tobisman (SBN 197983)
ctobisman@gmsr.com
Tina Kuang (SBN 340976)
tkuang@gmsr.com
5900 Wilshire Boulevard 12th Floor
Los Angeles, California 90036
(310) 859-7811 | Fax: (310) 276-5261

Attorneys for Appellant
Kerry Ann Johnston-Rossi

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INTRODUCTION

Apparently recognizing that he has no leg to stand on with respect to the merits of mother's substantive challenges to the 90-day, no-contact-with-mother Family Bridges order, father simply asks the Court to affirm, *yet remand* for the trial court to assess what therapy program would be appropriate for the family. But father can't have it both ways. Rather, what he's necessarily asking for is a *reversal* and remand of the December 2021 order since he, too, does not believe it can be enforced.

Father provides no merits response to mother's showing that the December 2021 order must be reversed. He doesn't even try to defend the 90-day, no-contact-with-mother, Stockholm-Syndrome-like program as comporting with the Family Code, Supreme Court directive, and the First Amendment. He doesn't even try to show that such programs are generally accepted in the scientific community. He doesn't ever address the fact that there's been no finding of alienation or abuse by the parent who is barred all contact from her children (here, mother). He doesn't justify the trial court's failure to hear from the teenage children—something that the court was required to do under Family Code section 3042 before the children could be torn away from their stable, loving home and forced into prolonged, isolated contact with a parent they fear.

Instead, Father's only argument is that the August 2021 order of a "week-long" Family Bridges program somehow was actually an order of a 90-day program—and that because mother did not appeal the clearly inchoate and incomplete August 2021

order, she cannot challenge it now. Father is wrong. The August order was interlocutory, as demonstrated by father's *own motion* seeking further judicial action to clarify it. On its face, the August order didn't include any order of 90 days of no contact with mother, which is how the order was eventually clarified in December. The August *interlocutory* order was encompassed by the *final* December order, which mother timely appealed.

As to the December 2021 order, mother agrees with father that reversal and remand is needed. But in reversing, the Court should reach the merits of mother's challenges to the 90-day, no-contact program that the trial court ordered. By conceding to a remand and providing no response on the merits of mother's challenge to the December order, father ducks the merits issue, seemingly in the hopes that this Court will, too. But the merits issue is not only squarely before this Court, it is far from moot, as the merits issue is likely to reemerge on remand.

Without this Court's guidance, it will be unclear on remand whether Family Bridges' 90-day, no-contact program or some other extreme, no-contact-with-one-parent program can still be ordered—even though there has *never* been a finding of abuse or alienation by mother, and even though these programs contravene the Family Code, Supreme Court directive, and the First Amendment, and are not generally accepted in the scientific community. If these extreme, isolation-based programs are judicially acceptable at all, the Court should decide (1) whether they can be ordered when there is no finding of alienation or abuse by the parent who is barred all contact from her children (here, mother), and (2) whether the teenage children are entitled

to be heard under Family Code section 3042 before they are forced to attend the radical, no-contact-with-mother program.

Remand is also necessary so that the trial court can address father's March 2022 *felony assault conviction*.[1] Even father concedes that the "ramifications" of his "felony conviction" must be addressed by the trial court. (RB-19.)

The order compelling the teenage children to involuntarily participate in the 90-day, no-contact-with-mother Family Bridges program must be reversed, with any radical, no-contact program taken off the table upon remand.

[1] Despite being charged in August 2020—months before anyone first brought up Family Bridges or any intensive reunification programs at the November 2020 hearings—father never disclosed his prosecution to either of the family law judges presiding over the case. (See Section III, *post*.) In fact, he actively tried to conceal it. (*Ibid*.)

ARGUMENT

I. The Parties *Agree* That This Court Should Reverse The December 2021 Order.

Although he asks the Court to "affirm" the Family Bridges order, father "requests that the Court remand this matter to the trial court with instructions to reevaluate and, if necessary, reconsider the selection of the appropriate therapy program." (RB-7.) Father "believes that it would be in the children's best interest for this Court to send the matter back down to the trial court for reevaluation and reassessment." (RB-18.)

By asking for a remand to reconsider what therapy program is appropriate for the family, father is necessarily asking for a *reversal*, not an affirmance. Thus, as the situation now stands, *neither* party believes that the December 2021 order should be enforced. *Both* parties believe that the Court should reverse it. And without the December 2021 order to interpret and complete it, the August 2021 order makes no sense and remains inchoate and baseless. So, it too should be reversed.

The only remaining question is whether the Court should reach the merits of mother's arguments challenging the December 2021 order. As we now show, the Court should.

II. Mother Has Not Waived Any Appellate Rights By Failing to Appeal The Inchoate, Interlocutory August 2021 Order.

Father's position is that while the Court should reverse the December 2021 order, it should nonetheless affirm the intermediate and predicate August 2021 order—and, further,

that the Court should hold that mother cannot argue otherwise, since she did not appeal the August 2021 order. (RB-5-8, 11-17.) But as showed (AOB-32), the August order was *not final* and did *not* include an order of 90 days of no contact with mother. The August order was not appealable, and mother waived no rights by not appealing it.

Father argues (1) that Judge Gould-Saltman's August 2021 order of a *week-long* program sub silentio actually imposed the 90-day, no-contact-with-mother restriction, and (2) that Judge Ellis's December 2021 order was an "enforcement order" that "dutifully followed Judge Gould-Saltman's original order." (RB-5, 11-17.) The timeline and record both belie father's position.

A. The August 2021 order was interlocutory.

The August order was *not* a final order, but instead was an inchoate directive with ambiguities and uncertainties that remained for the trial court to resolve another day. Mother waived no rights by failing to appeal that interlocutory, inchoate order. (See AOB-32, citing Code Civ. Proc., § 906.)

The most fundamental way to determine if an order is sufficiently definite to be final is to ask whether a deputy sheriff or deputy clerk could enforce it without the intervention and assistance of a judicial officer. (See *Wilson v. County of San Joaquin* (2019) 38 Cal.App.5th 1, 7; *Lyon v. Goss* (1942) 19 Cal.2d 659, 670.) The answer to that question as regards the August 2021 one-week Family Bridges order is a clear "no."

Indeed, father himself recognized such. That's why he brought his September 2021 request for order under the guise of "implementing" the August order. (AOB-22; 1-AA-344, 349.)

As written, the August 2021 order inchoately ordering a "one-week" Family Bridges program was indefinite; it needed judicial intercession to determine just what was and was not being ordered. That is the epitome of an interlocutory, inchoate order.

In fact, not only did the absence of an earlier appeal from the August 2021 order not waive appeal of the later December 2021 order (see RB-5-7, 11, 15-16), but the appeal of the December 2021 order timely *encompasses* an appeal of the August 2021 order—an order entered without any notice that 90 days of no contact was at issue. Because the August 2021 order is encompassed by the December order, it was not separately appealable and must now be reversed with the December order. (See *Wilson, supra,* 38 Cal.App.5th at p. 7 ["'an intermediate order . . . is "reviewable on appeal from the *final judgment* in the action,"'" original italics].)

In reversing, the Court should make clear that those orders are reversed *to the extent that they order the Family Bridges program*. Indeed, to the extent that the orders include other unrelated matters—i.e., matters *unrelated* to the Family Bridges program—they should remain in effect.

B. The vastly expanded December 2021 order did not merely "enforce" the August order.

Father takes the position that the December 2021 order did nothing more than "enforce[]" the August 2021 order, which mother failed to appeal. (RB-5, 11-17, italics added.) This is utter fiction.

A comparison of the orders reveals their sharp differences. (See AOB-43-44.) The August order refers only to "*a week-long program* such as Family Bridges." (1-AA-341-342, italics added.) It says nothing about a 90-day program. It says nothing about depriving mother of all contact with her children for at least three months. It says nothing about allowing father to take the children away, moving them across the country. It's the *December order* that does all of that. (2-AA-740, 743-744; AOB-43-44.) In other words, the December order was required to fill out the vague, self-contradictory, and facially ambiguous August order. As such, the December order is what was appealable, and mother timely appealed it.

In an argument that is utterly devoid of record citations, father states that "[b]ecause the materials provided to [mother] included the mandatory aftercare aspect of the Family Bridges program," this Court should find that the August order "necessarily included the 90-day aftercare aspect of the Family Bridges program." (See RB-7.)

But where was mother provided with materials that put her on notice that in ordering a one-week program, the trial court

would actually be ordering a 90-day, no-contact-with-mother program? Father doesn't say. He cites nothing.

Even more to the point, even *father* did not contemporaneously think so. That's why he filed his September 2021 motion to transform the August 2021 order into something definite enough to be enforceable.

Father states—again without any record citation—that Family Bridges was mentioned by custody evaluator Dr. Katz in February 2021. (RB-13.) Really? Where did that happen?

Father not only doesn't cite anything for his bald assertion that the parties talked about Family Bridges in February 2021, but he also neglects to address Dr. Katz's *actual* testimony, which mother described in detail in her opening brief (see AOB-16-18, 45, 54, 57-59). To summarize: Dr. Katz met with the parties in February 2020, not February 2021. (See AOB-16, 45.) There is no record of what he said in those discussions. Nine months later, in November 2020, Dr. Katz mentioned Family Bridges in passing at a hearing where he told the trial court that he wasn't all that familiar with the program, but that it was one "where children are sort of forced to go with the parent" for "five to seven days." (4-RT-686.) He testified that he did not think such a program was presently necessary, and that he hoped that no program of any type would be necessary. (4-RT-687.)

In the *multiple* orders following the November 2020 hearing, the trial court never made any findings or orders regarding intensive programs in general or Family Bridges, in particular. (See AOB-17-19, 45.)

Father ignores all of this. Instead, he castigates mother for not asking questions about the Family Bridges program after Dr. Katz mentioned it "back on February 24, 2021 [sic, 2020]." (RB-13.) Father argues: "Being placed on notice, a reasonable mother in appellant's shoes, concerned about her children, would have inquired further, and asked probing questions about the program she was ordered to participate in." (*Ibid*.)

But nothing in Dr. Katz's testimony would have put a "reasonable mother in appellant's shoes" on notice that Dr. Katz was recommending—or that the trial court was considering—a 90-day, no-contact-with-mother program.

Even more to the point, a mandatory no-contact period of 90 days was *not* part of the August 2021 order. Here's the entirety of what that order said on the subject of what sort of program the court was ordering: "Respondent 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 Respondent arranges for himself and the children to participate in a *week-long* program such as Family Bridges or Turning Point, then Respondent 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.) Accordingly, mother had no reason to believe the children would be attending anything but "*a week-long program* such as Family Bridges." (*Ibid.*, italics added.)

Nor is father correct in insinuating that in ordering a *week-long* Family Bridges program in August, the trial court

actually had the 90-day aftercare program in mind. Not only did Dr. Katz never mention any 90-day extreme isolation aftercare program, but the record shows that father didn't even give the court the Family Bridges literature describing the 90-day, no-contact aspect of the program until his September 2021 request for an order—one month *after* the August 2021 order. (See 1-AA-348, 362-385.) Thus, there is no indication that the court even knew that Family Bridges included a mandatory 90-day period of no contact when it ordered a week-long program in August 2021.

The trial court did not order anything more than a *week-long* program in August 2021. Nothing in the record shows that mother was put on notice that in ordering a *week-long* program (1-AA-341-342), the court was actually sub silentio ordering a 90-day program that involved abducting the children and depriving her of any contact with her children for three months.

Thus, it isn't true that the December 2021 order was just an "enforcement order" that "dutifully followed" Judge Gould-Saltman's original order in August 2021. (See RB-5, 11-17.) Instead, the December order was a massive expansion of whatever it was that the trial court ordered in August—an expansion that had the effect of creating a definitive, enforceable order, which mother appealed. The December order is what was appealable and must be reversed. (See AOB-42-44, citing *Logreira v. Logreira* (Fla.Ct.App. 2021) 322 So.3d 155 [vacating similar Family Bridges order entered without hearing that greatly expands on limitations placed on one parent in earlier order].)

Mother timely appealed the relevant order.

III. Reversal And Remand Are Necessary For The Trial Court To Consider Father's Felony Assault Conviction.

As father concedes, his recent felony conviction must be addressed on remand. (RB-19 ["that respondent got into an altercation with a stranger, and the ramifications the subsequent felony conviction may have regarding any prior family court order will need to be addressed in the trial court below"].)

Father is correct that on remand, the trial court must address father's March 28, 2022, conviction for felony assault under Penal Code section 245, subdivision (a)(1). (See MJN.) Beyond that, even the fact of father's *prosecution* was itself relevant information that should have been disclosed to the trial court as it was considering what to order in December 2021. That the trial court was kept in the dark about those criminal proceedings is, itself, relevant information for the trial court to consider on remand.

Indeed, while a jury did not convict father of criminal assault until after the December 2021 order, the conviction was based on a July 2020 assault and an arrest less than two months later. (MJN-13, 25.) The events that led up to father's conviction happened *months before* anyone brought up Family Bridges, or any intensive reunification program, at the November 2020 hearings. (See 1-AA-118, 121.) Yet at no point during the custody proceedings did father ever alert the trial court about his concurrent criminal prosecution. (AOB-31, 59; 2-RT-1-7-RT-

2148; see also 3-RT-426 [Dr. Katz testifying in November 2020 that father told him of "one arrest maybe 40 years ago"]; 4-RT-634 [Dr. Katz testifying in November 2020 that father's February 2017 arrest was his "latest arrest in New York City"]; 2-AA-727-728 [father admitting to other arrests in his December 2021 declaration, but not to the August 2020 felony assault arrest].)

To the contrary, father actively *concealed* his criminal prosecution. (See Second MJN.) At his deposition in November 2020—months *after* the assault and arrest—mother's attorney asked him whether his criminal defense attorney, Howard Price, had "performed any services for [him] in the last ten years that have been with regard to criminal matters." (*Id.* at 41.) Father replied: "In the last ten years, I don't believe so." (*Ibid.*) Yet the criminal assault docket reveals that by that point, Mr. Price had already represented father at both a September 2020 arraignment hearing and an October 2020 status conference. (MJN-13; see Second MJN-32-33, 43.)

Father admitted only *after* his conviction that Mr. Price had represented him in the assault case. (Second MJN-26, 41-43.) When asked about his falsehood, he claimed that he didn't disclose that representation when asked directly about it in his November 2020 deposition because he thought "they were going to drop the matter." (*Id.* at 42.)

In other words, in the time period before the trial court ordered a week-long Family Bridges program in August 2021, father lied under oath and hid the fact of his criminal prosecution. Had the court known about father's prosecution for

a violent crime, it is doubtful whether the court would have considered even "a *week-long* program such as Family Bridges" (1-AA-341-342, italics added), much less an additional 90 days of no contact with mother. All of these issues must be vetted on remand.

IV. In Reversing And Remanding, The Court Should Address The Merits So As To Decide Whether Family Bridges Or A Similar, No-Contact Program Is Still On The Table.

The Court should decline father's invitation to sidestep the merits of mother's challenge to the December 2021 order. Certainly, the Court should hold that the order is infirm because, as even father himself concedes, the trial court must address his March 2022 felony assault conviction. But the December 2021 order is also infirm for all of the many reasons articulated in the opening brief (AOB-48-59)—reasons that father does not address. Response or no response, those issues are squarely before the Court and are likely to reemerge on remand. The Court should reach them and address whether Family Bridges or some other radical, no-contact program or other similar reunification therapy camp can be ordered on remand.

A. Father's respondent's brief fails to respond to the merits arguments and misstates the record.

1. Father's brief does not respond to *any* of mother's substantive challenges to the December 2021 order.

The arguments that father makes in his respondent's brief are quite limited. As shown (§§ I-III, *ante*), he argues (1) that Judge Gould-Saltman's August 2021 order of a one-week program like Family Bridges is final and not appealable (RB-5, 10-11); (2) that Judge Ellis's December 2021 order simply "dutifully followed" Judge Gould-Saltman's August 2021 order (RB-5, 10-17); and (3) that, nevertheless, the Court should remand for the trial court to reevaluate the appropriate therapy program for the family (RB-6, 10, 18-19). That's it. Father offers no response to any other argument raised in the opening brief regarding the propriety of the Family Bridges program or the December order.

Thus, father has not addressed mother's arguments that:

- The trial court abused its discretion by failing to hold the requisite Family Code section 217 hearing before ordering the 90-day, no-contact Family Bridges program. (AOB-34-35, 55-56.)

- The trial court abused its discretion in denying the teenage children the right to be heard under Family Code section 3042 before being ripped from their mother, their normal routine, and their home environment. (AOB-39-40, 56-57.)

- A family court cannot make a substantial change to custody post-judgment without first finding significant changed circumstances—something that didn't happen here. (AOB-35-

39.) Instead, the trial court abused its discretion in failing to use the governing standard or to make *any* finding of significant changed circumstances. (AOB-48-50.) Indeed, the trial court could not make some new order without such findings.[2]

- The trial court's order contravenes even the lesser, children's-best-interests standard, which requires promoting consistent, regular contact with both parents and stability of the children's environment. (AOB-41-42, 50-51.) Nothing in the law or facts supports that Family Bridges' radical, isolation-from-a-loving-parent program is in the children's best interests. (*Ibid.*)

- The trial court abused its discretion because there was no showing and no finding that Family Bridges' radical program is generally accepted in the scientific community. (AOB-28-30, 51-55.)

- The trial court abused its discretion because even if a radical isolation program like Family Bridges—and the "parental alienation syndrome" that it purports to treat—*ever* could pass scientific muster, there was no evidence and no finding here of parental alienation or abuse by mother. (See AOB-23.)

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[2] Father seems to suggest that on remand, the trial court could determine that there have been "changed circumstances." (See, e.g., RB-6 ["Because of the passage of time, and the change in circumstances, for the best interests of the children, respondent believes the appropriate program for the situation should be reevaluated and, in the trial court's sound discretion, reconsidered, if necessary"].) But father does not point to any "changed circumstances" that would permit any modification of the current custody arrangement—i.e., that would justify giving father any further custody. And, indeed, there are none.

Having failed to address any of these arguments, father has given the Court no legal or factual basis for holding otherwise. Mother's showings should be well taken by this Court.

2. Father's factual assertions are unsupported and contradicted by the record.

Despite failing to respond to mother's merits arguments, father makes numerous factual assertions with no accompanying record citations. The Court can and should ignore assertions that are unsupported by the record. (*Grant-Burton v. Covenant Care, Inc.* (2002) 99 Cal.App.4th 1361, 1379; see RB-17, citing *Oldenkott v. American Electric, Inc.* (1971) 14 Cal.App.3d 198, 207 [the "appellate court is governed by the record; will not consider facts having no support in the record; and will disregard statements of such facts set forth in a brief"].)

For example, father claims that mother was informed of the Family Bridges program on February 24, 2021. (RB-13.) But he cites nothing, and, in fact, the substance of the February 24, 2020 meeting he is referring to is not in the record. (AOB-16, 45.)

Likewise, father points to nothing in the record to support his bald assertions that mother was placed on notice prior to the August 2021 order that a 90-day extreme isolation program was on the table, let alone anything to support his arguments that the trial court ordered that kind of radical departure from the existing custody arrangement back in August 2021.

Worst yet—despite accusing mother of "repeated misrepresentations of the record and alarmist hyperbole" (RB-

12), again, with no citations—father makes assertions that are flatly *contradicted* by the record. Specifically:

Judge Gould-Saltman *did not* observe "severe alienation" or abuse by mother. Father repeatedly states that the trial court has sought to address mother's "alienation" of the children from father. (See RB-5-7, 10, 18, 20.) But there's never been *any* finding of alienation in this case. (See AOB-23, 54-55, fn. 9.) The trial court has *never* even 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].) There is no "parental alienation" finding anywhere in this case.

Quite the contrary, the only finding by the trial court suggests the opposite. In its December 16, 2020 order, the court found: "The Court finds four possibilities here: (1) [T]hings happened precisely as the children described and [father] is lying; (2) Something happened, but it's not as the children described; (3) Something happened as the children described but [father] doesn't remember it happening; (4) Nothing at all happened and the children are lying. The Court sees no motivation for the children to lie unless Petitioner has influenced the children to do so. *The Court does not find this to be the case*." (1-AA-136, italics added.) In other words, the trial court specifically found that mother was *not* "influenc[ing]" the children.

Family Bridge's 90-day aftercare aspect *does not* permit mother to attend therapy sessions with the children during the no-contact period. Father repeatedly

states that mother is allowed to attend therapy sessions during the 90-day extreme program. (See RB-5, 12-15.) But this isn't true either. Both the December 2021 order *and* the Family Bridges literature that father provided to the court in September 2021 make clear that mother will not have contact with the children for *at least* 90 days. (2-AA-743-744; 1-AA-363, 373, 377, 383; AOB-26-27.) Perhaps father misread the part of the Family Bridges Aftercare Guidelines that states mother may have "monitored contact *after* a 90-day minimum no contact period post the Family Bridges Workshop completion." (1-AA-363, italics added.) But that certainly doesn't support father's no-record-citation assertions regarding the nature of the Family Bridges extreme isolation program,—which takes the children away for months—and mother's *total* lack of access to her children during it.

Dr. Katz *did not* testify for a full day about the Family Bridges program. Father repeatedly states that custody evaluator Dr. Stan Katz gave a "fully day of testimony" about the Family Bridges program. (RB-5, 16.) Again, this isn't true. Dr. Katz's testimony about Family Bridges, which he gave in November 2020, is only two pages long. (4-RT-621-622, 686.) There, he only briefly mentions the program, conceding that he isn't very familiar with it, musing that he believes it's a five-to-seven-day program, and referring to one article published by Family Bridges about its purported "success rate." (See AOB-52, 58, citing testimony; 4-RT-621-622, 686.) That's nowhere near a "full day" of testimony about Family Bridges, let alone anything

close to vetting the program or putting anyone on notice that the program involved a 90-day extreme isolation-from-mother aspect.

The trial court's December 16, 2020, minute order summarizing Dr. Katz's testimony states simply that Dr. Katz "mentioned" Family Bridges, along with some other program involving equestrian contact. (1-AA-121.) And the multiple orders that the court issued in the months that followed the November 2020 testimony never even hint that the court was considering the program that Dr. Katz had only briefly mentioned, let alone that it was considering a program with a mandatory 90-plus-day, no-contact requirement. (See AOB-45-47, 57-59.)

Mother *did* vigorously oppose Family Bridges beyond checking the box of a form entitled "Responsive Declaration to Request for Order" (FL-320). Father suggests that prior to the December 2021 order, mother did not vigorously oppose the imposition of Family Bridges' radical 90-day isolation program. (See RB-15, citing 2-AA-457.) Again, the record contradicts father's bald assertion. Mother submitted a 10-page "Attachment to FL-320," which included a memorandum of points and authorities and a declaration. (2-AA-460-470.) She also requested that the court take live testimony under Family Code section 217 regarding Family Bridges. (2-AA-471-472.)

In sum, father fails to respond to the merits arguments, and he makes assertions that are either unsupported or contradicted. The Court should disregard his arguments or, at the very least, regard them with a very jaundiced eye.

B. In reversing the December 2021 order, the Court should reach each of the merits issues and hold that the order is infirm for multiple independent reasons.

In reversing and remanding, the Court should reach the merits of mother's substantive challenges to the December 2021 order. Despite father's concession that the order should not be enforced and his failure to defend the permissibility of radical, lengthy, isolation programs under California law or under the facts of this case, the merits are still before the Court and must be addressed to provide guidance on remand. Indeed, while father concedes that the trial court should have a chance to reevaluate the specific therapy program that should be ordered, he *also* takes the position that a program with Family Bridges' extreme isolation and duration features was properly—if completely silently—made by the trial court in August 2021.

As shown, the trial court didn't make any such order in August 2021. And, as the Court should also now hold, the trial court could not properly make such an order in December 2021. At the very least, on remand, the parties and the trial court require guidance as to whether and under what circumstances the court can order a 90-day, no-contact-with-mother program or any other similar reunification program. Thus, the Court should reach the merits issues.

1. The Court should hold that the trial court abused its discretion in ordering the Family Bridges program, which contravenes California law and policy.

In reversing, the Court should broadly hold that Family Bridges and other similar programs contravene (1) Family Code section 3020's directive that 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" (see AOB-41, 51); (2) Supreme Court's directive 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 arrangement[s]'" (AOB-36, citing *In re Marriage of Burgess* (1996) 13 Cal.4th 25, 32-33); and (3) a parent's First Amendment right to associate and communicate with her children (see *In re Marilyn H. (*1993) 5 Cal.4th 295, 306 ["A parent's interest in the companionship, care, custody and management of his children is a compelling one, ranked among the most basic of civil rights. Likewise, natural children have a fundamental independent interest in belonging to a family unit," internal citations omitted]; *Cisneros v. Guinand* (Fla.Ct.App. 2021) 332 So.3d 1041, 1043 ["Child custody determinations, however, implicate rights of a constitutional dimension, and the law permits a complete denial of parental rights only under the most extreme of circumstances"]).

Moreover, the Court should hold that there is *no* evidence that no-contact programs like Family Bridges which purport to treat "parental alienation syndrome"—or even the parental alienation syndrome itself—are generally accepted in the scientific, medical, or therapeutic community. (AOB-51-53, citing *People v. Kelly* (1976) 17 Cal.3d 24, 30-31, superseded by statute on another ground.) All indications are to the contrary. (*Ibid.*)[3]

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[3] See, e.g., *Parental alienation syndrome (PAS)*, American Psychological Association Dictionary of Psychology <https://dictio`nary.apa.org/parental-alienation-syndrome> (as of Nov. 9, 2022) ("parental alienation syndrome" is *not* recognized by the American Psychiatric Association, American Psychological Association, *American Medical Association Diagnostic and Statistical Manual of Mental Disorders*, or the *International Classification of Diseases*); Mercer, *Reunification Therapies for Parental Alienation: Tenets, Empirical Evidence, Commonalities, and Differences* (June 9, 2022) Journal of Family Trauma, Child Custody & Child Development <https://doi.org/10.1080/26904586.2022.2080147> p. 17 ("claims made about [reunification therapies for parental alienation] as of the date of this writing should also be challenged on grounds of scientific admissibility"); Andreopoulos, *The "Solution" to Parental Alienation: A Critique of the Turning Points and Overcoming Barriers Reunification Programs* (March 15, 2022) Journal of Family Trauma, Child Custody & Child Development <https://doi.org/10.1080/26904586.2022.2049462> p. 2 ("Ultimately, there is a lack of reliable research behind each of these programs and a potential concern for traumatizing individuals who engage in such programs"); Meier, *U.S. child custody outcomes in cases involving parental alienation and abuse allegations: what do the data show?* (Jan. 7, 2020) George Washington University Law School, Journal of Social Welfare And Family Law <https://www.dropbox.com/s/4jnlwgph7x4af6h/14%20Joan%20Meier%20Research%20Paper.pdf?dl=0> (as of Nov. 9, 2022); Summers & Campbell, *Parental alienation and the unregulated experts shattering children's lives* (June 12, 2022) The Guardian

In reversing, the Court should hold that the trial court abused its discretion in ordering this type of extreme, no-contact-with-one-parent program. Indeed, the Court can and should hold

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<https://www.theguardian.com/global-development/2022/jun/12/parental-alienation-and-the-unregulated-experts-shattering-childrens-lives> (as of Nov. 9, 2022); Schabacker, *Although widely discredited, 'parental alienation' still a weapon in Montana custody battles* (Jul. 3, 2022) Billings Gazette <https://billingsgazette.com/lifestyles/health-med-fit/although-widely-discredited-parental-alienation-still-a-weapon-in-montana-custody-battles/article_dd131d5e-f820-11ec-a242-872986ff44df.html> (as of Nov. 9, 2022); Fersch, *Parental Alienation As A Defense To Allegations Of Domestic Violence And Allegations Of Child Sexual Abuse* (Mar. 29, 2021) Forbes <https://www.forbes.com/sites/patriciafersch/2021/03/29/parental-alienation-as-a-defense-to-allegations-of-domestic-violence-and-allegations-of-child-sexual-abuse/?sh=fd699d725c39> (as of Nov. 9, 2022); Carroccia, *Kyra's Law advances in Senate; aimed at protecting children in custody and visitation cases* (April 26, 2022) The Legislative Gazette <https://legislativegazette.com/17050-2/> (as of Nov. 9, 2022); Proudman, *The discredited legal tactic that's putting abused UK children in danger* (July 21, 2021) The Guardian <https://www.theguardian.com/commentisfree/2021/jul/21/abused-uk-children-family-courts-parental-alienation> (as of Nov. 9, 2022); Jaffe-Geffner, *Gender Bias in Cross-Allegation Domestic Violence-Parental Alienation Custody Cases: Can States Legislate the Fix?* (2021) 42 Colum. J. Gender & L. 58; Meier, *Denial of Family Violence in Court: An Empirical Analysis and Path Forward for Family Law* (2022) 110 Geo. L.J. 835; Smith, *Parental Alienation Syndrome: Fact or Fiction? The Problem with Its Use in Child Custody Cases* (Jan. 2016) Univ. of Mass. L. Rev. <https://scholarship.law.umassd.edu/umlr/vol11/iss1/5> (as of Nov. 9, 2022); Rao, *Rejecting 'Unjustified' Rejection: Why Family Courts Should Exclude Parental Alienation Experts* (2021) 62 B.C. L. Rev. 1759.

that such programs are *categorically* barred in California. But if the Court does not go so far as to make such a categorical holding, it should nonetheless hold that the trial court's order here was an abuse of discretion on each of those grounds.

2. The Court should hold that the trial court abused its discretion in ordering the Family Bridges program, as there was no finding of abuse and alienation by the to-be-excluded parent.

Although Family Bridges purports to treat "parental alienation" (claiming that the discredited syndrome is "child abuse"), the trial court here has *never* found alienation or any abuse by mother. (AOB-23, 54-55, fn. 9; § IV.A.2., *ante*.) At most, Dr. Katz described the children as "estranged from" father, but estrangement due to father's *own actions* is not the same as parental alienation. (AOB-23, 54-55, fn. 9.)

The trial court's knee-jerk barring of a parent's communication or association with her own children is especially inappropriate given the First Amendment protections of just such communication and association—and its requirement of use of the least intrusive means possible to achieve the State's interests. "A parent's interest in the companionship, care, custody and management of h[er] children is a compelling one, ranked among the most basic of civil rights." (*In re Marilyn H., supra,* 5 Cal.4th at p. 306, internal citations omitted.) The First Amendment applies to Family Law. (*In re Marriage of Burkle* (2006) 135 Cal.App.4th 1045, 1060-1061 [dissolution proceedings].) An order

of no contact with one's children for 90 days is a complete prior-restraint infringement on mother's rights of speech and association. Yet, "the State may not employ 'means that broadly stifle fundamental personal liberties when the end can be more narrowly achieved.' In other words, the order must be tailored as precisely as possible to the exact needs of the case." (*Balboa Island Village Inn, Inc. v. Lemen* (2007) 40 Cal.4th 1141, 1159, internal citations and quotation marks omitted.) The order here is the opposite of narrow tailoring.

If extreme, no-contact-with-one-parent programs purporting to treat parental alienation syndrome are not categorically banned in California (see § IV.B.1, *ante*), the Court should hold that such programs c*annot be ordered* where, as here, there is no finding of alienation or abuse by the parent barred from contact. (See 1-AA-379 [Family Bridges literature: program is for "case[s] involving severe parental alienation"].)

3. The Court should hold that the trial court abused its discretion in ordering the Family Bridges program without first permitting the children to be heard, as was required by Family Code section 3042.

Despite Family Code section 3042's mandate that "the court s*hall* 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), the trial court here refused to hear from the teenage children before it substantially modified custody to force them to attend the 90-day, no-contact-with-

mother Family Bridges program. (AOB-39-40.) As a result, the teenagers had no say on whether they are to be forcibly removed from their mother's care for a minimum of 90 days and placed under the complete control of their father with no means of communicating with the people closest to them. (*Ibid.*)

If extreme, no-contact-with-one-parent programs purporting to treat parental alienation are not categorically banned in California, the Court should hold that the trial court must hear from children over the age of 14 regarding the 90-day, no-contact program and substantial change of custody before forcing them to attend. (See Fam. Code, § 3042, 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].)

CONCLUSION

Both parties agree: The Family Bridges order must be reversed and remanded, including for the trial court to consider father's felony assault conviction. That reversal should extend to the intermediate and indefinite August 2021 order, as well.

Further, despite father's lack of merits response to mother's substantive challenges to the December 2021 order, the Court should decide those issues to clarify whether Family Bridges, or some other extreme, no-contact-with-one-parent program, can still be ordered on remand—and, if so, under what circumstances. While isolation-based programs purporting to treat the discredited parental alienation syndrome should be categorically

barred for contravening California law and public policy, at minimum, they cannot be ordered here.

The Family Bridges order cannot stand—now or in the future. This Court should reverse the December 2021 order compelling the teenage children to involuntarily participate in the Family Bridges program, as well as the incomplete and uncertain August 2021 order that was the December 2021 order's predicate, with any radical, no-contact program taken off the table on remand.

Date: November 15, 2022

HALL FAMILY LAW
Stefanie Hall

GREINES, MARTIN, STEIN & RICHLAND LLP
Robert A. Olson
Cynthia E. Tobisman
Tina Kuang

By: /s/ *Tina Kuang*
Tina Kuang

Attorneys for Appellant
KERRY ANN JOHNSTON-ROSSI

CERTIFICATION

Pursuant to California Rules of Court, rule 8.204(c)(1), I certify that this **APPELLANT'S REPLY BRIEF** contains **6,256** words, not including the tables of contents and authorities, the caption page, signature blocks, or this Certification page.

Date: November 15, 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 November 15, 2022, I hereby certify that I electronically served the foregoing **APPELLANT'S REPLY 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 November 15, 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

Chris Hsu

Kerri Ann Johnston Rossi v. Paul Rossi
Second Appellate District
Case No. B318522

SERVICE LIST

Chumahan B. Bowen (268136)
OVANDO BOWEN LLP
1800 E. GARRY AVE., SUITE 116
SANTA ANA, CA 92705-5803
PHONE: (949) 490-4884
FAX: (213) 279-0220
chumahan@ovandobowen.com

David M. Arbogast (167571)
ARBOGAST LAW
1800 E. GARRY AVE., SUITE 116
SANTA ANA, CA 92705-5803
PHONE/FAX: (714) 988-1491
david@arbogastlaw.com

Attorneys for Respondent Paul Rossi

Honorable Steven Ellis
c/o Court Counsel, Frederick Raymond Bennett III
Los Angeles Superior Court
111 North Hill Street, Rm. 546
Los Angeles, California 90012
T: (213) 633-8597
fbennett@lacourt.org
pnguyen1@lacourt.org
[Case No. BD542090]