



## **In Re the Marriage of Roger R. and Natalie M. v. Natalie M**

2012 | Cited 0 times | California Court of Appeal | October 29, 2012

Marriage of R. and M. CA4/1

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Affirmed.

This appeal arises from a custody dispute between Natalie M. (Mother) and Roger R. (Father) concerning their 15-year-old son (N). After an evidentiary hearing, the court awarded Father primary physical custody of N and authorized Father to move with N to New Jersey. Mother appeals, challenging the court's ruling on several procedural and substantive grounds. We determine the court's custody order was a proper exercise of discretion and there was no prejudicial error. Accordingly, we affirm.

### **FACTUAL AND PROCEDURAL SUMMARY**

In August 2007, Father filed a petition for dissolution of his 17-year marriage to Mother. The couple had one son, N, who was 11 years old at the time. Father worked as a chemist for a corporate employer. Mother had a medical degree, but never completed her residency program.

About 10 months later, in June 2008, Mother gave birth to a boy (J), whose father was Juan R.

Several months later, in October 2008, Mother and Father entered into a stipulation providing they would share joint legal and physical custody of N. Under this agreement, the parties each had equal (50 percent) physical custody of their son. This custody arrangement was temporary pending a final court order.

During the next three years, the parties worked to resolve numerous support and property division issues. While these issues were pending, in May or June 2010, Father filed a motion to modify the 50-50 custody arrangement because of his concern with Mother's stability, her use of prescription pain medication, her "chaotic" home environment, and her inability to ensure that N was attending school. At the time, N was 14 years old and would enter ninth grade in the Fall. After a mediation



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session, the family court services mediator recommended that the parties continue to share joint physical custody, but that Father have a greater percentage of the time to ensure N regularly attended school.

In August 2010, the court accepted most of the recommendations, and issued a modified temporary order awarding Father custody of N during most of the school week with Mother having visitations on certain weekends. The next month, the court entered a final dissolution judgment, but left open the final custody and support determinations.

At a hearing held about six weeks later, the court ordered that Father have primary physical custody of N, and Mother have visits on three weekends per month and on Wednesday afternoons. Under this order, Father's custody share was 78 percent and Mother's share was 22 percent. The principal reason for the custody change was the court's concern that Mother had been unable to ensure N regularly attended school. This custody order was temporary and was not a final order.

Several months later, in January 2011, Father married a woman he had known for 30 years since high school.

About two months later, on March 15, Father filed a motion to modify the custody arrangements based on his intended move to New Jersey and sought permission to move N to New Jersey. In support, Father submitted his declaration in which he explained that his employer asked him to relocate to the East Coast, and he had remarried and his new wife lives in New Jersey. He said that his wife has a home large enough to accommodate himself and N, and submitted information showing that the nearby high school has strong graduation and college acceptance rates. Father said he was committed to ensuring N would return frequently to California during school breaks and summer vacations. Father also expressed concern about Mother's ability to care for N given her frequent use of pain medication, her inability to ensure that N attended school, and the lack of stability in her household.

The next month, on April 19, Mother and Father and N participated in a family court services mediation session. After the session, the mediator prepared a lengthy report recommending that the court award Mother primary physical custody of N and deny Father's move-away request. The mediator explained in part: "Although [Father] has secured a job transfer to New Jersey and the new stepmother resides in that area, [Father's] request to move the residence of the child to New Jersey does not appear to be focused on the child's needs or preferences. [¶] Despite that [Father] has had primary physical custody of the child for the past eight or nine months, the child's primary attachment figure appears to be his mother. Further, [N] is very close with his very young brother, whom he described as his best friend. [N] does not feel emotionally connected to his father."

Shortly after, in May 2011, the parents agreed that N would live with Mother during most of the summer, pending a final decision on the move-away and visitation/custody issues.



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In August 2011, the court held a three-day evidentiary hearing on Father's request for approval to change the custody arrangements to allow Father to move N to New Jersey. The parties agreed the court could consider the testimony at the hearing as well as all relevant and admissible information in the family court files.

At the evidentiary hearing, the family court services mediator testified that N told her he had a very good relationship with Mother and his half brother, and that he missed them "a lot" when he was with Father. But N also indicated that Mother was not always able to transport him to school and that he gets "sick more" at Mother's house. N said he did not have a good relationship with Father, and that Father was often angry with him. The mediator felt that N was being honest and saw no signs that he had been coached. But the mediator acknowledged she did not independently verify N's statements.

Mother testified that she is in substantial and constant pain and that she takes numerous pain medications (although she is attempting to take less of these medications). She said she has "severe migraines" about five days a week, and said: "I can't walk well. I can't -- my hands, I can't write. My shoulder pops all the time. I have chronic low-back pain. My knees have ligament tears that are severe. And there are some bone marrow problems that I've had . . . cortisone injections, and I'm scheduled to have more injections." But she expressed confidence that she could provide appropriate care for N with help from others, including her parents. She said that if the court grants her custody, she planned to enroll N at Scripps Ranch High School (N's preferred school and the school he attended the previous school year), but acknowledged she does not live within the school's boundaries and has not found a place to live within the district. She said she lives part time in Valley Center and part time in Bonita with her parents, and that the father of J (her three-year-old son) "come[s]" and "go[es]" at various times. Mother testified that N has a very good relationship with J and with her parents (Maternal Grandmother and Maternal Grandfather). However, she said that Maternal Grandmother is very sick, and that Maternal Grandfather has a lung disease.

Maternal Grandfather (who is a practicing physician) testified that Mother and her two sons (N and J) live with him on the weekends, and that N has a "very good" relationship with his Mother and half brother. Maternal Grandfather also said he and N have a close relationship and have taken several trips together, including a recent vacation to Hawaii. He also testified about Mother's prescription pain medications, including Dilaudid, which he said is an opiate.

In his testimony, Father said he believed that N should remain with him when he moved to New Jersey because he could provide N with a good and stable home, he loved N and had a good relationship with him, and he believed he could better bring N into adulthood as a strong and independent young man. Father presented school attendance records showing N frequently missed school when he was in Mother's care, and testified that Mother frequently seems "groggy" and medicated. Father acknowledged that he and N had arguments about N's grades and his poor performance in school, but said he had been told by N's teachers that N is smart but unmotivated,



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and Father has been attempting to motivate him and stress the importance of doing well. Father recognized that he had some problems interacting with N in the past and that he was not a perfect parent, but said he has completed a parenting/anger management class and has since learned better ways of relating to and interacting with his teenage son. Father expressed substantial concern about Mother's ability to properly care for N on a daily basis. He said N appears to have assumed a parental role with Mother and his half brother and feels the need to help and protect them. Father said if he was awarded custody, he would encourage N's continued relationship with Mother, Maternal Grandparents, and N's half brother.

During his closing argument, Father's counsel challenged the family court services mediator's reasoning because the mediator did not independently verify statements made by Mother and N, and the mediator did not fairly consider Father's version of the relevant events. Father's counsel also emphasized the evidence showing that N's role in Mother's household includes taking care of Mother and his little brother and that he is "over parentified," and that Mother's plans to enroll N in school were unclear.

In opposing Father's request, Mother's counsel asked the court to adopt the mediator's recommendation. Mother's counsel emphasized N's statements showing the relationship between N and Father was "tense," that N felt misunderstood by Father and that Father is often angry with him, and N frequently spends time "isolated" in his bedroom at Father's house. Mother's counsel noted that the mediator testified that N appeared to be speaking "from the heart" and did not appear to be coached in any manner. Mother's counsel maintained that Father's household was permeated with "anger" and was not a healthy environment for N. Counsel argued that it was not in N's best interest to "be taken 3,000 miles away so that [Father] can live with his high school sweetheart and be taken away, in effect, from his mother, his brother, grandparents, friends at school."

At the end of the hearing, the court granted Father's motion to move N to New Jersey. The court explained this decision as follows:

"I've had the opportunity to observe the demeanor of all the witnesses and the credibility of the witnesses who testified in this proceeding over the course of several days. This is Father's motion relative to a request to move away with the minor child to the state of New Jersey.

This request is granted for the following reasons: [Father] for the last 12 months has been the principal custodial parent of the minor child. The court has observed that in [Father's] care the child has, according to the testimony, been more prompt and attendant at school and his studies. [¶] It appears that the Father is capable of offering to the minor child a stable living arrangement and the appropriate training for the child to mature into a responsible adult. This is a 15, almost 16 year old male child.

[N] and his father, like most teenagers and their parents, have issues in their relationship. None of



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these issues are significant enough, in this court's opinion, to deny the custodial parent the ability to move. Case law requires the court to assume the custodial parent will move. The court does assume that, and in fact [Father] has moved.

Even under a LaMusga [best interests] analysis, the court would grant this motion. Father is more responsible in getting the child to school. There is greater stability in the Father's household in role modeling that is appropriate for a young teenage boy. [¶] There is no indication that [Father] has frustrated visitation between the minor child and his mother. There is no bad faith in Father's request to move. He is employed in New Jersey. He is remarried and living with his new spouse in New Jersey.

The court is absolutely convinced that Mother is a loving and caring parent to the minor child. Regrettably Mother's health issues, including migraines five days per week, her need to take various medications of varying strength, including up to the heavy narcotic level precludes her, in this court's opinion, from being able to carefully monitor the activities and behavior of a 15-year-old child. [¶] [N] is clearly her child, her baby. She loves him. But in this court's opinion, based on this evidence that I have observed, Father is now today in a better position to raise this young man to adulthood.

. . . And I might add, it appears that [N] is parentified in his Mother's home. He is helping to care for his mother, who has health issues; his youngest brother, who is [three] years of age; and he also is in a household, at least a portion of the time . . . with grandparents who love him, but one of whom is also extremely seriously ill, and it sounds like bedridden, that being the maternal grandmother. For all these reasons the court authorizes the move to New Jersey."

The court stated the order was stayed for 30 days (until September 22) under Code of Civil Procedure section 917.7. But the court said it was aware N had been in Mother's custody for the entire summer and thus granted Father "visitation" in New Jersey from August 27 until September 22. The court stated that during the visit, Father could enroll N in high school because "the child needs to be enrolled in school and attending to his studies." The court further provided a liberal visitation schedule with Mother, including six weeks during the summer and various holidays.

At the conclusion of the hearing, the court entered a written minute order summarizing its ruling and the basis for the ruling, including that: "[Father] has the more stable living arrangements . . . [and] is more able to set limits for the child and enforce them. [Father] appears to be a more appropriate role model. [¶] [Mother] is loving and caring towards the child. However her medical conditions and medications taken make the [Mother] unable to properly supervise the child all the time. The child has been parentified in her care." The court directed Father's counsel to prepare a final order and send it to Mother's counsel. The court took various other issues under submission, including spousal and child support.

Five days later, on August 29, the court issued a written statement of decision that discussed the



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custody and support issues. With respect to the custody issues, the court's statement of decision provides:

"Counsel stipulated on the first day of these hearings . . . that the Court could consider all documents filed. Supplementary testimony was then provided by each party, the FCS mediator and [Maternal Grandfather]. The Court has reviewed the file. The court has assessed the credibility of each witness.

[After the hearing], the Court granted Father's move away request. As primary custodial parent, [Father] is entitled to move with the minor. In addition, under a 'best interest' analysis the Court grants the move away request. There is no bad faith motivating the request. Father's job and his new marriage take him to New Jersey. Father has demonstrated his willingness to share the child throughout the past year and this summer, allowing the child to spend most of the summer months in Mother's care. Father is more capable of getting the child to school on time and monitoring his homework and free time. Father is able to set limits and enforce them. Father has taken a class to improve his relationship with his son and to address any anger issues. Father is the more capable parent of rearing this 15 year old male teen into adulthood.

Mother testified to having a number of health ailments, including migraines which afflict her five days per week. She takes a variety of medications, including a Schedule II narcotic. She has trouble getting the child to school. She sleeps a lot. The child is parentified in her care. The child provides assistance to her, his 4 year old half brother, whose father is in and out of [Mother's] home, and sometimes his grandparents. Mother loves the child, but is not adept at setting limits and enforcing them.

The Court has granted Father a lengthy visit in New Jersey with the minor, commencing August 27, 2011, pending the stay pursuant to Code of Civil Procedure 917.7."

The statement of decision also included the court's observations that, "When [Mother] testified, [she] spoke in a quiet tone and was somewhat emotional. [Mother] has appeared to be medicated throughout these proceedings." The court further noted that its prior order awarding Father primary custody was "temporary" and this August 2011 order was a final order under *Montenegro v. Diaz* (2001) 26 Cal.4th 249.

Fourteen days later, on September 12, Mother filed objections to this written statement of decision, requesting the court to supplement the statement by addressing various issues, including the reasons for the custody ruling, whether the court considered each of the statutory "best interest" factors, and N's relationship with his half brother. With respect to these issues, the court declined to rule on Mother's objections, finding the objections were untimely because the court's statement of decision on the custody issues was made orally in court on August 24, and Mother did not file the objections until 19 days after that date. The court said the written statement of decision served merely to provide "background information" on the court's custody determination and to explain its rulings on





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the support issues. The court also rejected Mother's objection to allowing Father to immediately take N to New Jersey without waiting the statutory 30-day period under Code of Civil Procedure section 917.7, apparently reasoning that the 30-day statutory stay did not apply to out-of-state visitations.

Several days later, Mother filed a writ petition in this court requesting that we order Father to bring N back to California until the trial court issued the final judgment and the statutory 30-stay period expired. This court summarily denied this writ petition.

The next month, the court entered the final judgment on the reserved issues (custody and support). Mother appeals from this judgment with respect to the custody issues.

### DISCUSSION

#### I. Applicable Legal Principles

It was undisputed in the proceedings below and it is conceded on appeal that there was no final judicial custody determination at the time of the August 2011 hearing on Father's move-away request. Accordingly, the legal standards applicable to the court's determination were those governing the determination of an initial permanent custody order.

"In an initial custody determination, the trial court has 'the widest discretion to choose a parenting plan that is in the best interest[s] of the child.' [Citation.] It must look to all the circumstances bearing on the best interest[s] of the minor child. [Citation.] Family Code section 3011 lists specific factors, 'among others,' that the trial court must consider in determining the 'best interest[s]' of the child in a proceeding to determine custody and visitation: '(a) The health, safety, and welfare of the child. [¶] (b) Any history of abuse by one parent against the child or against the other parent. . . . [¶] (c) The nature and amount of contact with both parents.' " (In re Marriage of Burgess (1996) 13 Cal.4th 25, 31-32 (Burgess), italics omitted; Mark T. v. Jamie Z. (2011) 194 Cal.App.4th 1115, 1125 (Mark T.).<sup>1</sup> Unlike a parent moving to modify a final custody order, a parent moving to change a temporary custody order need not prove changed circumstances and there is no presumption that the existing custody arrangement is the appropriate one. (F.T. v. L.J. (2011) 194 Cal.App.4th 1, 14-15; see In re Marriage of LaMusga (2004) 32 Cal.4th 1072, 1078 (LaMusga); Burgess, supra, 13 Cal.4th at p. 38.)

In applying the best interests analysis in a proposed move-away situation, the California Supreme Court has held the trial court must consider the section 3011 factors and all other relevant factors, including: "the children's interest in stability and continuity in the custodial arrangement; the distance of the move; the age of the children; the children's relationship with both parents; the relationship between the parents including, but not limited to, their ability to communicate and cooperate effectively and their willingness to put the interests of the children above their individual interests; the wishes of the children if they are mature enough for such an inquiry to be appropriate; the reasons for the proposed move; and the extent to which the parents currently are sharing



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custody." (LaMusga, supra, 32 Cal.4th at p. 1101.)

The parent seeking to move with the child "bears no burden of establishing that the move is 'necessary,' " but must show the relocation is in the " 'best interest' " of the minor child. (Burgess, supra, 13 Cal.4th at p. 34.) Moreover, the court must decide the custody issue premised on the assumption that the parent will move away; the issue is not whether the parent should or may be permitted to move away, but " 'what arrangement for custody should be made' " when the parent moves. (Mark T., supra, 194 Cal.App.4th at p. 1126; F.T. v. L.J., supra, 194 Cal.App.4th at p. 22.)

Because of the trial court's broad discretion in this area, reviewing courts must act with cautious judicial restraint in reviewing a custody order. When choosing between two parents in a move-away situation, there is often no one right answer. But a decision must be made. And California law places the decision in the hands of the trial judge. Trial judges are the best equipped to make this decision because they have the opportunity to observe first-hand the demeanor of the witnesses and the tone of their testimony and to evaluate all the tangible and intangible factors involved in the child custody decision. (See LaMusga, supra, 32 Cal.4th at p. 1101.) Thus, our appellate review does not involve our own comparison of the relative qualifications of the parents; instead the issue is "whether the trial court could have reasonably concluded that the order . . . advanced the 'best interest' of the child." (Burgess, supra, 13 Cal.4th at p. 32, italics added.) As the California Supreme Court has observed, move-away cases frequently involve "heart-wrenching circumstances" that are "not amenable to inflexible rules." (LaMusga, supra, 32 Cal.4th at p. 1101.) Because of this, "we must permit our superior court judges . . . guided by statute and [judicial] principles . . . to exercise their discretion to fashion orders that best serve the interests of the children in the cases before them." (Ibid.)

## II. No Abuse of Discretion in Awarding Father Primary Custody in New Jersey

Under these standards, the trial court acted within its discretion by awarding Father primary custody and permitting Father to move N to New Jersey.

The evidence supported that Father is a responsible, loving, and caring parent who is capable of ensuring that N attends and successfully completes high school. Further, the evidence showed Father would provide a more stable living environment and the appropriate guidance for N to mature into a responsible adult.

Although the evidence showed that Mother loved N very much and wanted the best for him, the evidence also supported the court's conclusion that Mother was not equally capable of setting limits for her teenage son and ensuring N regularly attended high school. Based on Mother's own testimony, her living situation appeared to be uncertain and unstable. The evidence also showed that N had assumed a parental role with his Mother and young brother and was focused on their needs rather than his own. Additionally, the evidence (including the court's observation that Mother "appeared to be medicated throughout these proceedings") supported that Mother's use of "heavy





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narcotic[s]," including opiates, precluded her from "being able to carefully monitor" N's behavior and ensure that N will attend and successfully graduate from high school. Mother said she intended to enroll N at Scripps Ranch High School, but acknowledged she did not live in that area and had not made any specific plans about moving into that area even though school would start in a few weeks. Although Mother said she was waiting for the court to make a decision on custody, the court had a reasonable basis to find that Mother's lack of preparation for N's schooling was further evidence of Mother's inability to appropriately plan and provide adequate care and guidance for her son.

After presiding over this dissolution case for several years and considering the evidence presented by the parties at the move-away hearing, the experienced trial judge had a reasonable basis to conclude it was in N's best interests that Father have primary physical custody, even if this custody arrangement required N to move to New Jersey with Father. To ensure N maintained his close bond with Mother and his half brother, the court ordered a very liberal visitation schedule and permitted daily telephone/Skype contact. The court's rulings were a proper exercise of its discretion.

### III. Mother's Contentions

On appeal, Mother does not directly challenge the sufficiency of the evidence to support the court's findings that Father was in a better position to care for and guide N into adulthood and therefore that N's best interests would be served by his placement with Father. Instead, she argues mainly that the court did not consider all the relevant factors and made certain procedural errors with respect to its statement of decision and its refusal to stay its decision for 30 days. We address these contentions below. We conclude that none of the asserted errors constitutes prejudicial error.

#### A. Court Applied Correct Legal Standard

Mother first contends the court erroneously believed Father had a " 'presumptive right' " or an "absolute or inherent right" to move away "as long as such move-away was not prejudicial" to N's welfare. (Underscoring omitted.) This argument is unsupported by the record.

In ruling on the motion, the court was required to determine whether the move was in N's best interests. (See *Mark T.*, supra, 194 Cal.App.4th at p. 1125.) Additionally, there was no need for either parent to prove "changed circumstances" and there was no presumption that the existing custody arrangement was the correct one. (*F.T. v. L.J.*, supra, 194 Cal.App.4th at pp. 14-15.) The record before us shows the court understood and applied these standards. The trial court repeatedly made clear that its focus was on N's welfare and his best interests and that it was required to consider all of the circumstances. The court never stated or suggested that Father had a presumptive right to move with N based on the previous temporary custody order.

Contrary to Mother's contention, the court's use of the word "entitled" does not suggest the court applied the wrong standard. In its written statement of decision, the court said that "As primary



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custodial parent, [Father] is entitled to move with the minor" (italics added), but the court also stated that it was additionally granting the move-away request under a " 'best interest' analysis" and specifically acknowledged the prior custody order was only "temporary." Viewing the word "entitled" in the context of the entire record, there is no basis to conclude the court improperly believed Father had the presumptive right to move N out of state and/or improperly imposed a burden on Mother to show changed circumstances.

Moreover, contrary to Mother's assertions, the court did not err in taking into account that Father was the existing primary custodial parent. In evaluating a child's best interests in a proposed move-away, the court is entitled to consider "the extent to which the parents currently are sharing custody." (LaMusga, *supra*, 32 Cal.4th at pp. 1094, 1101; see Burgess, *supra*, 13 Cal.4th at p. 32.)

### B. Court Properly Applied Section 3011 Factors

Mother next contends the court erred in failing to consider three "best interest" factors identified in section 3011: (1) the health, safety, and welfare of the child; (2) any history of abuse; and (3) the nature and amount of contact with both parents. (§ 3011, subds. (a), (b), (c).) We reject this contention because the record shows the court considered each of these factors in its best interests analysis.

First, as discussed above, the record clearly shows N's "health, safety, and welfare" were among the court's primary considerations in deciding that N's best interests would be served by living with Father.

Second, with respect to the abuse factor, Mother argues that the court failed to give appropriate consideration to the family court mediator's testimony that she believed some of Father's previous interactions with N could be described as " 'emotionally abusive.' " However, the court's oral and written statements show the court considered this testimony, but rejected the mediator's characterization. The court stated that N "and his father, like most teenagers and their parents, have issues in their relationship," but that "[n]one of these issues are significant enough, in this court's opinion, to deny the custodial parent the ability to move." The court further stated that "Father has taken a class to improve his relationship with his son and to address any anger issues. Father is the more capable parent of rearing this 15 year old male teen into adulthood." Based on these statements and our review of the entire record, we are satisfied the court fully considered the past interactions between Father and N, understood that these interactions were not always perfect, but that considering the totality of the circumstances, Father's prior interactions with his 15-year-old son reflected normal parent-teenage conflict and did not constitute abuse.

Third, with respect to the nature and amount of contact by each parent, the record shows the court was aware that N spent most of the past school year living with Father, particularly during the weekdays, and that during the summer he lived with Mother. The court was also aware that N had a strong and loving relationship with Mother and had a closer emotional bond with Mother, but that



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the relationship between Father and N was improving. The court considered all of this evidence, and decided on balance, N's best interest would be served by living with Father. This factual conclusion was within the court's discretion.

Mother contends we should reverse the custody order because the court's August 29 written statement of decision did not sufficiently address each of these factors. We reject this argument. In a statement of decision, a trial court need not expressly discuss each and every statutory factor in explaining the grounds for its decision. "In rendering a statement of decision under Code of Civil Procedure section 632, a trial court is required only to state ultimate rather than evidentiary facts . . . ." (Hellman v. La Cumbre Golf & Country Club (1992) 6 Cal.App.4th 1224, 1230.) Moreover, reviewing courts are required to presume the trial court made all of the necessary factual findings concerning the best interests of the child.

Mother contends that these general rules do not apply here because she objected to the statement of decision on the basis that the court did not "address all of the factors contained in . . . section 3011." The court did not rule on this objection because it found it untimely. Mother argues the court erred in this ruling. Although we agree Mother's objection was timely, we find the court's ruling did not constitute prejudicial error.

On August 24, 2011, the court orally granted Father's move-away request and orally detailed its reasons for this ruling. On that same date, the court issued a written minute order summarizing those reasons and directing Father's counsel to prepare the final order. Five days later, on August 29, the court issued its written statement of decision. In this written statement, the court reiterated its reasons for granting Father's move-away request and also notified the parties of its ruling on the spousal and child support issues and explained its reasons for these rulings. Fourteen days later, Mother filed her objections to the written statement of decision.

Generally, a party has 15 days from the time a proposed written statement of decision is filed to file objections. (Cal. Rules of Court, rule 3.1590(g).)<sup>2</sup> However, if the court announces the reasons for its ruling by an oral statement (referred to in the Rules of Court as a "tentative decision"), the court may "[d]irect that the tentative decision will become the statement of decision unless, within 10 days after announcement or service of the tentative decision, a party specifies those principal controverted issues as to which the party is requesting a statement of decision or makes proposals not included in the tentative decision." (Rule 3.1590(c)(4).)

It appears that the trial court believed that its oral explanation of its ruling at the conclusion of the three-day hearing (on August 24) constituted its statement of decision under Rule 3.1590(c)(4) and thus that the parties had 15 days from this date to file objections. (Rule 3.1590(c)(4).) However, the court did subsequently issue a written statement of decision in which it discussed its reasons for granting Father's move-away request and the court never indicated in its August 24 oral decision or in the minutes filed that day that it was considering its oral statement as the statement of decision



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triggering the 15-day objections period. Under Rule 3.1590(c)(4), a court is required to "[d]irect that the tentative decision will become the statement of decision" to trigger the 15-day objections period. (*Italics added.*) By remaining silent on this issue, the court did not trigger this period.

On this record, Mother's objections to the statement of decision (filed 14 days after the filing of the written statement of decision) were timely and the court should have ruled on them. However, Mother suffered no prejudice from the court's failure to rule on the objections. Mother suggests that because the trial court failed to specifically rule on her objections, we are required to engage in the fiction that the court never considered the relevant statutory factors. There is no legal or factual support for this assertion. (See *McAdams v. McElroy* (1976) 62 Cal.App.3d 985, 996.)

Mother objected to the statement of decision on the basis that it did "not address all of the factors contained in [section] 3011." Although the court did not expressly state it considered each of these statutory factors, the record shows the trial court considered each of the relevant factors and the court's statement of decision sufficiently sets forth the factual and legal grounds for the court's conclusions. A statement of decision is primarily "for the benefit of the Court of Appeal . . . . It 'is our touchstone to determine whether or not the trial court's decision is supported by the facts and the law.' . . ." (*In re Marriage of Sellers* (2003) 110 Cal.App.4th 1007, 1010.) Unlike *Sellers*, in which the Court of Appeal reversed a decision and remanded to the trial court to prepare a statement of decision because the record failed to reveal the trial court's reasoning (see *id.* at p. 1011), the extensive record in this case amply illuminates the reasoning of the court on the fundamental issue of N's best interests pertaining to the custody decision. The record reveals that the court gave adequate consideration to each of the statutory factors. There was no prejudicial error in the court's failure to rule on Mother's objections to the statement of decision. (See *McAdams*, *supra*, 62 Cal.App.3d at p. 996.)

### C. Court Properly Considered N's Relationship with His Half Brother

Mother next contends the court erred in failing to properly evaluate the relationship between N and his three-year-old half brother (J) when it granted Father's move-away request. Relying on *In re Marriage of Williams* (2001) 88 Cal.App.4th 808 (*Williams*), Mother contends the court abused its discretion by failing to place sufficient weight on the relationship between J and N.

*Williams* involved custody proceedings between divorced parents who had four children ranging in age from 10 to three years. (*Williams*, *supra*, 88 Cal.App.4th at p. 809.) These young siblings had always lived together and each parent had custody of all the children during alternate weeks. (*Id.* at p. 810.) When the mother remarried and sought to move to Utah, she sought custody of all of the children. (*Id.* at pp. 809-810.) The court found that both parents were equally qualified caretakers, and thus decided to give two children to one parent and two to the other, without any consideration of the relationships among the children. (*Id.* at pp. 811, 812-814.) In the Court of Appeal's words, the trial court treated the children as "property" (*id.* at p. 814) and, "quite literally, 'split the babies' " (*id.*



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at p. 813).

The Williams court reversed, stating: "Children are not community property to be divided equally for the benefit of their parents. . . . At a minimum, the children have a right to the society and companionship of their siblings. . . . [T]here is no evidence of the impact that separation will have on these children. In the absence of such evidence, we cannot affirm the family law court's order even on the deferential abuse of discretion standard." (Williams, *supra*, 88 Cal.App.4th at p. 814.) After surveying the law in other jurisdictions, the Williams court held that on "remand, the family law court may only order a separation of siblings upon a showing of compelling circumstances." (Id. at pp. 814-815, *italics added*.)

Recognizing the differences between the sibling and half-sibling relationship in the context of a custody proceeding, Mother does not suggest the trial court should have applied Williams's "compelling circumstances" test. But Mother asks this court to "formulate its own unique standard" governing "the separation of half-siblings in child sharing disputes." Citing various statutes and judicial decisions from other states, Mother maintains that this new standard should not be specific or rigid and instead posits that "trial courts should be required to consider half-sibling relationships and give them whatever weight they should be given according to the unique facts of each case."

Although we reject Mother's assertion that we should create a new rule governing half-sibling relationships, we agree this relationship can be relevant in a court's custody analysis. The Williams standard is based on the principle that protecting the sibling relationship is an element of the broader "best interest[s]" test with respect to custody orders. (Williams, *supra*, 88 Cal.App.4th at pp. 812-815.) In determining a child's appropriate living arrangement as between two parents, the child's prior and current relationship with half siblings (as well as with siblings or stepsiblings) may be a pertinent factor in evaluating the child's best interests under the totality of the circumstances.<sup>3</sup>

Under this standard, the court did not abuse its discretion in this case. Unlike the siblings in Williams, the two half brothers were far apart in age and had lived separately for a substantial portion of their lives. Until the summer before the move-away hearing, N was living with Father for about 80 percent of the time. Moreover, unlike Williams, the court did not merely treat the boys as property, but had before it substantial evidence about the relationship between the two boys.

The evidence showed that 15-year-old N and three-year-old J had a close relationship. According to the mediator, N described J as "his best friend" and said he "just loves spending time with him all the time." Mother said that N and J "get along well" and "they play." Father likewise testified that J and N are "close" and that N talks about his brother "a lot." However, the evidence also showed that N had assumed a parental role towards his three-year-old brother, and would put J's interests before his own. Father testified that N feels like he is J's guardian or parent, and that concerns Father because N is a child who first "needs to figure out who he is." Additionally the evidence showed J had interfered with N's schoolwork.



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At the hearing, Father said he recognized the bond between the brothers and intended to encourage the continuation of the relationship through N's frequent visits to San Diego, allowing N to make frequent telephone calls to J as long as the calls did not interfere with N's school work, and permitting J (with Mother's permission) to come visit with N in their New Jersey home.

On this record, the court had a reasonable basis to conclude the relationship between the siblings did not establish that N's best interest would be served by placing N in Mother's custody.

Mother contends we cannot infer the court considered the sibling relationship because the court did not expressly mention the relationship when referring to N's best interests. We disagree. The brothers' relationship was an important part of the three-day hearing. Each witness testified at length about N's relationship with J, and both counsel discussed the relationship in their closing arguments. The court made a specific finding that N has assumed a parental role regarding his younger brother in Mother's home and the court discussed Mother's inability to set and enforce limits for N. This record shows that the court did appropriately consider the sibling relationship, but found that on balance it did not outweigh the other factors supporting a finding that N's best interests would be served in Father's home.

In reaching this conclusion, we recognize that Mother specifically objected to the written statement of decision on the basis that the court did not adequately explain its consideration of the brothers' relationship on the best interests determination. As we have discussed, the court did not rule on this objection because it erroneously believed it was untimely. However, because the record makes clear that the court did include the relationship in its best interests analysis, there is no basis for a reversal.

### D. 30-Day Stay

Mother contends the court erred in authorizing Father to remove N from the state three days after it made its oral ruling granting Father's move-away request. Mother asserts that this order violated Code of Civil Procedure section 917.7's automatic 30-day stay and was improper because the court's order was not a final order and the court erroneously believed the stay did not apply to out-of-state visitations.

These contentions are moot because the 30-day stay period has long since passed. Additionally, there is no prejudice because we have had the benefit of reviewing the entire record and have found the court acted within its discretion in granting Father's move-away motion. An error is reversible only if the appellant shows there was a miscarriage of justice and the party lost a substantial right as a result of the error. (See *In re Marriage of Steiner & Hosseini* (2004) 117 Cal.App.4th 519, 524-525.) Mother failed to satisfy this standard with respect to the 30-day stay period.

### DISPOSITION





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Judgment affirmed. Appellant to pay respondent's costs on appeal.

WE CONCUR: HUFFMAN, Acting P. J. O'ROURKE, J.

1. All statutory references are to the Family Code unless otherwise indicated.
2. All further rule references are to the California Rules of Court.
3. In other contexts, the Legislature has recognized the importance of relationships with half siblings (§ 8714.5, subd. (a)(2)), including that in dependency proceedings half siblings should be placed together whenever practical and appropriate. (Welf. & Inst. Code, § 306.5.)

