B287735

Court of Appeal
State of California

Second Appellate District, Division Eight

W.M.,
Appellant,

vs.

V.A.
Respondent.

REPLY RE PETITION FOR WRIT OF SUPERSEDEAS

(Supporting Exhibits Filed Separately)
(Super. Ct. No. 17STPT00486)
(Mark H. Epstein, Judge)

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Supersedeas is needed to maintain William's parentage action in status quo during the appeal. That can only be done by suspending the trial court's ruling quashing his action. Without supersedeas, no court will have jurisdiction over baby L. while the ruling is appealed. Therefore, William requests that the ruling be stayed.

The trial court can make temporary custody orders pending the appeal, but may not permit baby L. to be removed from the U.S. Victoria has stated her intention to take baby L. to the Republic of Belarus, a country with which the U.S. is not a treaty partner on the Hague Convention for the return of abducted children. If Victoria is allowed to remove baby L. from the U.S., there will be no way to compel baby L.'s return to California or to enforce the trial court's temporary custody orders.

It is crucial that baby L. maintain and develop his relationship with both parents. This can only be assured if the trial court can enforce its award of equal parenting time to the parties. Even travel to a country which is a treaty partner on the Hague Convention will pose a substantial risk of non-return because Victoria disputes the trial court's finding that the U.S. is baby L.'s country of habitual residence. Therefore, the stay should prohibit the trial court from granting leave for the removal of baby L. from the U.S.

A proposed stay order is attached.

I. THE TRIAL COURT WILL HAVE JURISDICTION TO MAKE TEMPORARY CUSTODY ORDERS, BUT SHOULD BE PROHIBITED FROM ALLOWING THE PARTIES TO REMOVE BABY L. FROM THE U.S.

The Court asked for briefing on the following question: "If this court were to grant supersedeas and stay the January 12, 2018 ruling pending the appeal, will the trial court be vested with jurisdiction to [A] continue to make temporary orders concerning custody of baby L. and [B] his removal from this jurisdiction?" (Stay Order, 2/1/18, p. 1.)

Answer: Yes, the trial court will have jurisdiction to modify its temporary custody and abduction prevention orders, including allowing Victoria to travel within the U.S. with baby L., but the trial court may not allow baby L. to be removed from the U.S. pending appeal, as that would deprive the California courts of any power to compel baby L.'s return or to enforce William's custody rights, rendering his appeal meaningless.

(A) A trial court ordinarily retains jurisdiction to modify custody pending appeal even when supersedeas is granted.

A trial court may modify custody or visitation orders pending appeal, even when supersedeas is granted. (*In re Marriage of Dover* (1971) 15 Cal.App.3d 675, 680–681 ("*Dover*").) "The perfecting of an appeal shall not stay proceedings as to those provisions of a judgment or order which award, change, or otherwise affect the custody, including the right of visitation, of a minor child…." (Code Civ. Proc., § 917.7.) The reason for dual jurisdiction between the trial court and an appellate court when a custody order is on appeal was explained in *Sanchez v. Sanchez* (1960) 178 Cal.App.2d 810 ("*Sanzchez*") as the need for "protection of the child from possible harm during the period between the order and the appeal, affording

the trial court the power to act, if necessary, in that interval. (*Sanchez, supra,* 178 Cal.App.2d at p. 812.)[1]

Victoria uses the wrong standard when she argues for restoration of the "true status quo" which she says is how the parties "operated from the time [baby L.] was born until William filed his (now superseded) *ex parte* application in July."[2] Supersedeas does not preserve a lifestyle Victoria envisioned prior to the breakdown of her relationship with William. No court can preserve that which no longer exists. Supersedeas maintains the status quo of the action so appellate jurisdiction is not lost; it does not preserve the purported status quo of the parties personally.

"The purpose of the writ of supersedeas is to maintain the subject of the action *in status quo* until the final determination of the appeal, in order that the appellant may not lose the fruits of a meritorious appeal." (*Dry Cleaners & Dyers Institute of San Francisco & Bay Counties v. Reiss* (1936) 5 Cal.2d 306, 310.) Supersedeas preserves appellate jurisdiction by "suspending the enforcement of a trial court judgment or order while an appeal is pending. [Citation.]." (*Quiles v. Paren*t (2017) 10 Cal.App.5th 130, 136; Code Civ. Proc., § 923.)

The ruling quashing William's parentage action must be suspended to preserve the status quo of the action pending the appeal. The trial court is vested with jurisdiction to continue to make temporary orders concerning custody of baby L. if supersedeas is granted, but in sharing jurisdiction with

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[1] Interpreting former Code Civ. Proc., § 949a [repealed by Stats. 1968, c. 385, p. 811, § 1], replaced by Code Civ. Proc., § 917.7 [added by Stats. 1968, c. 385, p. 818, § 2].

[2] Supp. Opp. to Pet. for Writ of Supersedeas filed 2/9/18, p. 24, ¶ 23.

this Court, the trial court cannot make orders that would undermine or moot William's appeal.

(B) This Court should prohibit the trial court from permitting international travel with baby L.

Dual jurisdiction under Code of Civil Procedure section 917.7 continues after a grant of supersedeas, with the obvious exception that the trial court do nothing to undermine the appellate court's jurisdiction. (*Dover, supra,* 15 Cal.App.3d at pp. 680–681.) There would be no point to William appealing the order quashing his parentage action if baby L. is removed from the reach of our courts, as it will be impossible to enforce William's rights of custody during the appeal or to compel baby L.'s return.

In *Dover*, the husband was granted supersedeas pending his appeal from a judgment dismissing an action for dissolution of marriage. His wife, who filed the petition for dissolution, requested its dismissal after she received an unfavorable child custody recommendation. She filed a second action for dissolution in a different county and wanted that court to determine her custody rights. The trial court dismissed the first action over the husband's objection. The Court of Appeal granted supersedeas, suspending the effect of the dismissal, to preserve the trial court's jurisdiction in the first action to make temporary custody orders pending the appeal. The *Dover* court observed*:*

> No citation of authority is necessary for the proposition that the welfare of a minor child of the parties is paramount to all other considerations in a dissolution matter pending before an appellate court as well as in one pending before a trial court; it would be an unthinkable result if the issuance of an order of this court resulted in there being no forum which could act to protect the interests of the child during the pendency of the appeal. [¶]
>
> [A]n inability on the part of the husband to be with the 4-year-old child, coupled with an unfavorable custody situation

> (if such there be) over an extended period during litigation, may unfavorably affect the father-child relationship and thereby the welfare of the child, and the fruits of a reversal may thus be irrevocably lost. This reviewing court cannot itself determine and issue appropriate orders concerning the custody of the minor child, but provision for the making of such orders pendente lite by an appropriate forum may be made to preserve the status quo at the time the judgment was entered from which the appeal was taken; a substantial part of that status quo was the authority of the Superior Court of Merced County to make proper custody orders pendente lite.

(*Dover, supra,* 15 Cal.App.3d at pp. 680–681.)

Just as in *Dover*, it is the jurisdiction our courts have over baby L. that must be preserved pending the appeal. The status quo to be maintained by the stay is the order prohibiting the parties from removing baby L. from the reach of our court, which automatically applies at the commencement of every parentage action. (See, § 7700 [automatic prohibition against removal of a minor child from California during a parentage action].) [3] A stay will maintain in effect the order prohibiting the removal of baby L. from the jurisdiction of our courts. It is vital to maintain the enforceability of the trial court's joint custody orders over baby L. so he maintains and develops his relationship with both parents.

Denial of a stay will disrupt the status quo of this action. If the temporary stay is dissolved, Victoria has told this Court she will remove baby L. from the reach of our courts. She expressly asks for the stay to be lifted so she can take baby L. "home" to Belarus.[4] The trial court cannot allow such travel because there is no treaty between the U.S. and Belarus for the return of a child. Our government refuses to be a treaty partner with

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[3] Undesignated statutory references are to the Family Code.

[4] Supp. Opp. to Pet. for Writ of Supersedeas filed 2/9/18, p. 25, ¶ 26.

Belarus because Belarus is an authoritarian state which lacks an independent judiciary.[5] The Belarus court twice entered orders against William without notice based on Victoria's influence.

Even travel to a country that is a treaty partner with the U.S. on the Hague Convention will pose too great of a risk on non-return because Victoria disputes the trial court's finding that the U.S. is baby L.'s country of habitual residence. If Victoria removes baby L. from this country, nothing can be done to compel baby L.'s return or restore William's custody rights.

Without a stay, baby L. will be in a jurisdictional netherworld; William's parentage action will be quashed and the joint custody orders issued by the trial court will evaporate. The Belarus residency decree will be of no use because the trial court refused to enforce it. That decree gave no visitation rights to William in any event. If Victoria obtained custody orders in her newly-filed custody action in Belarus, none of those orders would be enforceable in California because that action was filed after William's commenced his parentage action here.

Therefore, supersedeas should be granted to suspend the order quashing William's parentage action, and a stay should issue prohibiting the trial court from granting leave for the removal of baby L. from the U.S.

(C) Prohibiting international travel is an appropriate preventative measure based on the trial court's finding that Victoria poses a risk of abduction.

Whenever a court learns of facts indicating a risk of abduction, there is a *sua sponte* obligation to determine if measures are needed to prevent an

[5] Ex. 9 (PE, pp. 204 & 212-214 [2016 United States Department of State Human Rights Report for Belarus); Ex. 5 (PE, pp. 42:25 -43:8) [judicial notice taken of existence of report].

abduction of the child by one parent. (§ 3048, subd. (b)(1).) Section 3048, subdivision (b)(1) states:

> To make that determination, the court shall consider the risk of abduction of the child, obstacles to location, recovery, and return if the child is abducted, and potential harm to the child if he or she is abducted. To determine whether there is a risk of abduction, the court shall consider the following factors … [as relevant here]:
>
> (C) Whether a party lacks strong ties to this state.
>
> (D) Whether a party has strong familial, emotional, or cultural ties to another state or country, including foreign citizenship. This factor shall be considered only if evidence exists in support of another factor specified in this section.
>
> (E) Whether a party has no financial reason to stay in this state, including whether the party is … able to work anywhere, or is financially independent.
>
> (F) Whether a party has engaged in planning activities that would facilitate the removal of a child from the state, including … hiding or destroying documents….
>
> (G) Whether a party has a history of a lack of parental cooperation …, or there is substantiated evidence that a party has perpetrated domestic violence….

(§ 3048, subd. (b)(1).)

The trial court found Victoria posed a risk of abduction because she failed to cooperate with William in co-parenting baby L. and has a history of domestic violence (factor G); she also withheld baby. L's passport from William and actively concealed the Belarus custody action from William during these proceedings (factor F).[6] By her own admission, she has strong

[6] Ex. 10 (PE, p. 264, ¶¶ 1 & 1.c, & 1.d); Ex. 5 (PE, pp. 77:21 - 78:4). "PE" refers to Petitioner's Exhibits filed 1/29/18.

family ties to Belarus (factor D) and can work anywhere in the world (factor E).

Although the trial court relaxed its anti-abduction orders by removing the child custody monitor, it never said that Victoria is "not a flight risk" as Victoria claims.[7] In lifting the monitor order, the trial court stated "it does not believe [Victoria] remains the flight risk she was originally thought to be."[8] This was a finding of a reduced risk, not that she poses no risk. The trial court's comment must be read in light of the separate finding it made on January 12 when it renewed the temporary custody orders: "The Court is concerned about [Victoria] posing a risk of abducting the minor child. The Court therefore issues the following Child Abduction Preventing Orders in accordance with Family Code § 3048(b)."[9] The trial court issued two orders on January 12: In the morning, it renewed the temporary custody orders, with the abduction prevention measures. In the evening, it ruled on the motion to quash and lifted the monitoring requirement because it believed Victoria posed a reduced risk of abducting baby L.

When it quashed the action, the trial court was careful to state that the monitoring requirement "—and only that requirement—will be lifted (unless extended by the Court of Appeal)."[10] The other preventative measures, prohibiting baby L.'s removal from Los Angeles County, etc., remained effective during the three-week stay issued by the trial court, and were extended by this Court's temporary stay order.

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[7] Supp. Opp. to Pet. for Writ of Supersedeas filed 2/9/18, p. 22, ¶ 12.

[8] Ex. 5 (PE, p. 91:26-28).

[9] Ex. 7 (PE, p. 167:19-21).

[10] Ex. 5 (PE, p. 93:10-15).

All of those orders will dissipate if the ruling quashing William's parentage action is not stayed pending the appeal.

(D) Extending the orders prohibiting the removal of baby L. from the U.S. is vital to maintain jurisdiction over baby L. pending the appeal.

The law recognizes it may be difficult or impossible to compel a child's return to the U.S., so a parent may be prohibited from removing the child from the country when a risk of abduction has been found. (§ 3048, subd. (b)(2)(C).) Parties to a parentage action are subject to an automatic order against the removal of a minor child from California, absent written consent of the other party or leave of court. (§ 7700.)

Registration of a California custody order is another option to reduce the risk of abduction (§ 3048, subd. (b)(2)(H)), but that only works if the other country will enforce it. While states within the U.S. must enforce a California custody order that was validly made under the UCCJEA (§ 3441, et. seq.), recognition of a California custody order outside the U.S. "is uncertain at best" even in countries that are treaty partners with U.S. on the Hague Convention. (*In re Marriage of Condon* (1998) 62 Cal.App.4th 533, 561 ("*Condon"*).)

The Republic of Belarus is not a treaty partner with the U.S. on the Hague Convention, so no legal mechanism exists for our courts to compel baby L.'s return from Belarus.

For travel to countries that are treaty partners with the U.S. on the Hague Convention, the risk of non-return can be reduced by finding that the U.S. is the child's country of habitual residence under the Hague Convention. (§ 3048, subd. (b)(2)(J).) A related preventative measure is "obtaining the express agreement of the parents that the United States is the country of habitual residence of the child…." (*Ibid.*)

On July 26, 2017, the trial court found baby L.'s country of habitual residence is "The United States of America."[11] That finding was not changed in the ruling on the motion to quash, but Victoria does not agree with the habitual residence finding.[12] Because Victoria disputes baby L.'s country of habitual residence is the U.S., international travel poses a substantial risk that William cannot avail himself of the protections of the Hague Convention. (T.I.A.S. No. 11670 (10/25/80); 42 U.S.C. § 11601, subd. (b)(3)(B).) To have a child returned under the Hague Convention, it must be shown that the child was wrongfully removed or detained from his or her country of habitual residence. As the Court explained in *Maurizio R. v. L.C.* (2011) 201 Cal.App.4th 616:

> The Hague Convention provides a mechanism for the prompt return of a child taken by one parent across international borders in violation of a right of custody…. With a few narrow exceptions, the court must return the abducted child to its country of habitual residence so that the courts of that country can determine custody.' ...

(*Maurizio R. v. L.C., supra,* 201 Cal.App.4th at pp. 632–633, internal citations removed.)

(E) The trial court will have jurisdiction to grant leave for either party to travel with baby L. inside the U.S. on conditions ensuring he will be returned.

The limitation on international travel will not preclude the trial court from granting leave for domestic travel with baby L. This will allow Victoria to travel inside the U.S. with baby L. for tennis tournaments on conditions set by the trial court. Indeed, William offered Victoria the ability to take baby L. to her tournaments in Miami and Palm Springs after he read

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[11] Ex. 10 (PE, p. 263, ¶ 3.e.3).

[12] Opp. to Pet. For Writ of Supersedeas filed 1/31/18, pp. 18 & 40.

about her desire to participate in those tournaments in her opposition papers, but she did not respond.

When a court finds there is a need for preventative measures, Section 3048 requires the court to consider taking one or more of these measures to prevent abduction:

> (A) Ordering supervised visitation.
>
> (B) Requiring a parent to post a bond...
>
> (C) Restricting the right of the custodial or noncustodial parent to remove the child from the county, the state, or the country.
>
> (D) Restricting the right of the custodial parent to relocate with the child….
>
> (E) Requiring the surrender of passports and other travel documents.
>
> (F) Prohibiting a parent from applying for a new or replacement passport for the child.
>
> (G) Requiring a parent to notify a relevant foreign consulate or embassy of passport restrictions and to provide the court with proof of that notification.
>
> (H) Requiring a party to register a California order in another state as a prerequisite to allowing a child to travel to that state for visits, or to obtain an order from another country containing terms identical to the custody and visitation order issued in the United States (recognizing that these orders may be modified or enforced pursuant to the laws of the other country), as a prerequisite to allowing a child to travel to that county [sic] for visits.
>
> (I) Obtaining assurances that a party will return from foreign visits by requiring the traveling parent to provide the court or the other parent or guardian with any of the following: (i) The travel itinerary of the child. (ii) Copies of round trip airline tickets. (iii) A list of addresses and telephone numbers where the child can be reached at all

> times. (iv) An open airline ticket for the left-behind parent in case the child is not returned.
>
> (J) Including provisions in the custody order to facilitate use of the Uniform Child Custody Jurisdiction and Enforcement Act … and the Hague Convention on the Civil Aspects of International Child Abduction …, such as identifying California as the home state of the child or otherwise defining the basis for the California court's exercise of jurisdiction …, identifying the United States as the country of habitual residence of the child pursuant to the Hague Convention, defining custody rights pursuant to the Hague Convention, obtaining the express agreement of the parents that the United States is the country of habitual residence of the child, or that California or the United States is the most appropriate forum for addressing custody and visitation orders.
>
> (K) Authorizing the assistance of law enforcement.

(§ 3048, subd. (b)(2).)

The current custody order prohibits the parties from removing baby L. from Los Angeles County, requires Victoria to surrender baby L.'s passports to her counsel, prohibits the parties from applying for any other passports for baby L, and authorizes law enforcement to enforce the orders.[13] Those preventative measures remain in effect based on the trial court's finding that Victoria poses a risk of abduction, and were extended by this Court's temporary stay.

Granting a stay will not take away the trial court's authority to modify its temporary custody orders, but the trial court must consider whether to keep or change its preventative measures under Section 3048 in any order allowing travel with baby L.

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[13] Ex. 7 (PE, pp. 167:5-7 & pp. 168:17 - 169:4).

To facilitate domestic travel, William proposes that this Court shorten the automatic stay on orders permitting the removal of a minor child from the state during a parentage action. Code of Civil Procedure section 917.7 states:

> [I]n the absence of a writ or order of a reviewing court providing otherwise, the provisions of the judgment or order allowing, or eliminating restrictions against, removal of the minor child from the state are stayed by operation of law … for a period of 30 calendar days from the entry of judgment or order by any other trial court.

(Code Civ. Proc., § 917.7.)

If the 30-day automatic stay applied, Victoria must seek leave for any travel inside the U.S. with baby L. in enough time for a hearing to be conducted (if William did not consent) and for the stay to lapse after permission to travel was granted. Shortening the automatic stay to 10 days will make it easier for Victoria to plan trips, while also allowing William to seek relief from this Court if the trial court did not take preventative measures under Section 3048 to ensure baby L.'s return to California.

(F) The trial court can make other temporary orders to serve baby L.'s best interests pending the appeal.

Baby L.'s parents claim that jurisdiction exists in opposite places on the planet. Only one of them can be correct, and we will not know who that is until the appeal is decided. In the meantime, it is vital baby L. maintains and develops his relationship with both parents. Because of the crucial issues involved in child custody proceedings, and the polarizing positions often taken by parents, appellate courts consider the child's best interests in fashioning a stay. (*Sanchez, supra,* 178 Cal.App.2d at p. 813.) As the Court stated in *Sanchez*:

> The welfare of the child … presents a more vital problem to this court than the disposition of money or property. Since

> normally no counsel represents the child as such and since he must therefore depend upon the presentation of either the father or the mother, we feel a direct obligation to protect his interests. As a consequence, in passing upon a writ of supersedeas involving child custody, pending determination upon appeal, we must scrutinize the record with the utmost care. The elements in such a case differentiate it from an application for the writ in a case which involves less crucial issues.

(*Sanchez, supra,* 178 Cal.App.2d at p. 813; see also, *Mancini v. Superior Court for Los Angeles County* (1964) 230 Cal.App.2d 547, 556 [modification of a custody order on appeal is proper when the "best interests of the child are being served.")

If this Court grants the stay, the trial court will have continuing jurisdiction to make travel orders and temporary custody orders that serve baby L.'s best interests, but cannot allow baby L. to be removed from the U.S.

(G) Conclusion

A grant of supersedeas and stay on appeal will not hamper Victoria's ability to take baby L. on trips inside the U.S. The trial court may allow interstate travel for baby L. on conditions it deems appropriate, and will have continuing jurisdiction to modify its temporary custody orders to serve baby L.'s best interests. Removal of baby L. from the U.S. cannot be allowed because it would deprive our courts of any power to compel baby L.'s return or enforce William's custody rights, rendering his appeal meaningless. A proposed stay order is submitted.

II. REPLY TO VICTORIA'S OPPOSITION BRIEFS

(A) Trust does not make an order.

Victoria claims, "This Case Turns on Trust … trusting Victoria to honor the California orders and return here if the ruling on her motion to quash is reversed."[14] That is precisely the problem. Victoria proposes a solution that depends on her voluntarily allowing William to see baby L. pending appeal, and bringing baby L. to California for custody proceedings if she loses the appeal. What happens if she does not return baby L.? Nothing can be done. "An unenforceable order is no order at all…. And an order a party voluntarily obeys for a while is not the same as one which is enforceable without choice for the duration." (*Condon, supra,* 62 Cal.App.4th at p. 561.) Enforceable orders are needed to ensure our courts can compel baby L's return to California and enforce William's rights of custody, even over Victoria's objection.

Trusting Victoria to comply with an unenforceable order is wishful thinking. Victoria actively concealed the existence of the Belarus custody action from William and secretly obtained sole custody of baby L. from the Belarus court in an effort to gain an advantage in William's California action. The trial court found:

> The only reasonable inference is that the proceedings were deliberately hidden from [William] (although perhaps not by California counsel) so that he would be unable to retain counsel in Belarus and be heard there.[15]

The trial court also found that Victoria's mother made "flatly false" statements to the Belarus court when she claimed William was informed

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[14] Supp. Opp. to Pet. for Writ of Supersedeas filed 2/9/18, p. 13.

[15] Ex. 5 (PE, pp. 77:21 - 78:4).

about the Belarus custody hearing but he decided not to attend. [16] Because Victoria was able to obtain orders from the Belarus court without due process, William does not trust that Victoria will play by the rules of the court pending the appeal without an enforceable order compelling her to do so.

Victoria's desire to travel with baby L. can be accommodated, but it must be balanced against the reality that there is no way to ensure baby L.'s return to California if she takes baby L. out of the U.S. and refuses to return him. Failure to maintain jurisdiction over baby L. while the appeal is decided could result in the de facto termination of William and baby L.'s parent-child relationship. (See, *Condon, supra,* 62 Cal.App.4th at p. 547.)

In *Condon*, the Court reversed a judgment allowing a mother to relocate the parties' children from California to Australia because the trial court did not ensure it would have jurisdiction to enforce the liberal visitation rights it awarded the father. (*Condon, supra,* 62 Cal.App.4th at p. 562.) The *Condon* court stated: "California court orders governing child custody lack any enforceability in many foreign jurisdictions and lack guaranteed enforceability even in those which subscribe to the Hague Convention on the Civil Aspects of International Child Abduction." (*Condon, supra,* 62 Cal.App.4th at p. 547.) "Similarly, except for those of considerable means, any relocation to another continent is likely to represent a de facto termination of the non-moving parent's rights to visitation and the child's rights to maintain a relationship with that parent. [Citation.]" (*Ibid.*) Reversal was required in *Condon* because "[t]he trial court failed to evidence an understanding its custody order might not be

[16] Ex. 5 (PE, p. 78:4-17).

enforced by the Australian courts." (*Condon, supra,* 62 Cal.App.4th at p. 561.)

The *Condon* principle should be applied in fashioning a stay. There is no chance Belarus will recognize or enforce an order from our courts to return baby L. to California for custody proceedings here when the Belarus court has already awarded Victoria sole custody. Even a country which is a treaty partner with the U.S. on the Hague Convention might not compel Victoria to return baby L. to the U.S., due to Victoria's claim that the U.S. is not the country of habitual residence of baby L. [17] As noted in *Condon*, an unenforceable custody order fails to "adequately protect the interests of this state's citizen …in maintaining a relationship with his children, nor does it adequately preserve the policies this state's Legislature has declared should govern child custody arrangements." (*Condon, supra,* 62 Cal.App.4th at p. 561.) ""[I]t is the public policy of California to assure minor children 'frequent and continuing contact' with both parents ….and to encourage parents to 'share the rights and responsibilities of child rearing.' [Citation.] The only exception to this policy is where the contact 'would not be in the best interest of the child…." (*Condon, supra,* 62 Cal.App.4th at pp. 551–552, quoting § 3020, subd. (b).)

Victoria stated that her intention is to take baby L. "home" to Belarus if the stay is denied, [18] but fails to address what would happen to William and baby L.'s relationship while baby L. is in Belarus. Victoria offers William the visitation the Belarus court awarded him, which she characterizes as "substantial access to [baby L.]…."[19] However, under the

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[17] Opp. to Pet. For Writ of Supersedeas filed 1/31/18, pp. 18 & 40.

[18] Opp. to Pet. for Writ of Supersedeas filed 1/31/18, p. 15, ¶ 35.

[19] Supp. Opp. to Pet. for Writ of Supersedeas filed 2/9/18, p. 22, ¶12.

Belarus custody order (which the trial court refused to enforce),[20] the Belarus court states that William's time with baby L. is limited to one visit a month—to take place in Victoria's presence in Belarus.[21] Victoria expresses no concern for how William and baby L's relationship will be affected by depriving them of the equal custodial time they enjoy under the California custody order. Limiting baby L. and William to seeing each other once a month, when Victoria happens to be in Belarus, would be detrimental to baby L.'s best interests. The only way to maintain frequent and continuing contact with baby L. and both of his parents is to grant the stay and direct the trial court not to allow baby L. to be removed from the U.S. pending the appeal.

(B) Victoria incorrectly states the trial court did not have jurisdiction under the UCCJEA.

Victoria claims: "After a lengthy, evidentiary hearing, the trial court … determined that California does not have jurisdiction as Leo's home state (§3421(a)(1)), and that, though it could, it does not have jurisdiction as the state with significant connections to the child (§3421 (a)(2))."[22]

That is incorrect. The trial court found "it has jurisdiction pursuant to Family Code section 3421(a)(2)…."[23] The trial court declined to exercise that jurisdiction because it believed the Belarus residency action was a child custody proceeding that was filed before William filed his action here.[24]

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[20] Ex. 5 (PE, p. 80:15-23).

[21] Ex. 5 (PE, p. 38:8-11).

[22] Supp. Opp. to Pet. for Writ of Supersedeas filed 2/9/18, p. 8.

[23] Ex. 5 (PE, p. 90:14-15).

[24] Ex. 5 (PE, p. 90:14-21).

Victoria eventually acknowledges that the trial court has jurisdiction over baby L. if the stay is granted.[25] She states: "Thus, even absent current UCCJEA grounds, the trial court may exercise jurisdiction pending appeal, relying on the jurisdiction originally assumed by the court." The discussion in Victoria's Supplemental Opposition about emergency jurisdiction pending the appeal[26] is unnecessary because the trial court determined that California has jurisdiction under the UCCJEA's significant connection and substantial evidence test. (See, § 3421, subd. (a)(2).)

(C) *Marriage of Pallie*r does not support Victoria's claim that the Belarus residency action was a child custody proceeding.

It was the secret filing of the Belarus residency action upon which William's California parentage action was quashed.[27] The residency action, having been filed first, is the reason the trial court declined to exercise its jurisdiction over baby L. That was error because the Belarus residency action was not a child custody proceeding.

The trial court acknowledged its conclusion that the Belarus residency action was a child custody proceeding within the meaning of the UCCJEA is purely "a question of California law."[28] As such, the standard of review is de novo. (*Topanga and Victory Partners v. Toghia* (2002) 103 Cal.App.4th 775, 779–780.)

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[25] Supp. Opp. to Pet. for Writ of Supersedeas filed 2/9/18, pp. 11.

[26] Supp. Opp. to Pet. for Writ of Supersedeas filed 2/9/18, p. 10.

[27] Ex. 5 (PE, p. 70:14-19).

[28] Ex. 5 (PE, p. 70:3-17).

In arguing that residency means custody, Victoria misinterprets *In re Marriage of Pallier* (2006) 144 Cal.App.4th 461 ("*Pallier*"). Victoria argued in her Supplemental Opposition:

> Our court is not the first California court to recognize that a foreign 'residency' proceeding is a custody proceeding. In [*Pallier*], the Court of Appeal addressed the effects of a French custody order. The French order decreed, among other things, that the 'child's normal place of residence' was to be his mother's residence. (At 466.) The Court of Appeal explained, 'The residence provision gave [mother] what we would call physical custody of Brian.' (*Id.,* at 471, emphasis added.) The court's understanding of the French order in *Pallier, supra,* that 'residency' means "custody," comports exactly with the trial court's understanding of the residency action in Belarus. [See P.E. 5:69-70.] (The nomenclature for custody proceedings appears to be alike in Europe, even as it might differ both in France and Belarus from the United States.)[29]

The French custody decree in *Pallier* was nothing like the Belarus residency decree. In *Pallier,* the father filed a petition in California under the UCCJEA to enforce a French divorce decree awarding him visitation in France. The mother had removed their child to Riverside County in violation of the father's visitation rights under their French decree and he sought the child's return to France. (*Pallier, supra,* 144 Cal.App.4th at p. 466.) The French divorce decree stated:

> 1. [The parties] were to have the 'joint exercise of parental authority over [Brian]'….
>
> 2. Brian's "normal place of residence" ('résidence habituelle') was to be with Christine (residence provision).

[29] Supp. Opp. to Pet. for Writ of Supersedeas filed 2/9/18, p. 9, emphasis removed.

> 3. Eric was to have visitation … with Brian, on a specified schedule (visitation provision).
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> 4. Christine was forbidden 'to take [Brian] outside French territory for a period that might prejudice [Eric]'s exercise of his visitation right' (injunctive provision).

(*Pallier, supra,* 144 Cal.App.4th at p. 466.)

The custody determination by the French court occurred a year after the parties filed for divorce. In deciding whether the French decree was entitled to recognition under the UCCJEA, the *Pallier* court held that "[t]he residence provision gave Christine what we would call physical custody of Brian. Accordingly, it was a 'child custody determination' within the meaning of the UCCJEA. (Fam.Code, § 3402, subd. (c).)… The visitation provision gave Eric visitation with Brian. Accordingly, it, too, was a child custody determination…." " (*Paillier, supra,* 144 Cal.App.4th at p. 471.) The UCCJEA defines child custody determinations and proceedings as:

> 'Child custody determination' means a judgment, decree, or other order of a court providing for the legal custody, physical custody, or visitation with respect to a child. The term includes a permanent, temporary, initial, and modification order. The term does not include an order relating to child support or other monetary obligation of an individual.
>
> 'Child custody proceeding' means a proceeding in which legal custody, physical custody, or visitation with respect to a child is an issue. The term includes a proceeding for dissolution of marriage, legal separation of the parties, neglect, abuse, dependency, guardianship, paternity, termination of parental rights, and protection from domestic violence, in which the issue may appear. The term does not include a proceeding involving juvenile delinquency, contractual emancipation, or enforcement under Chapter 3 (commencing with Section 3441).

(§ 3402, subd. (c) & (d).)

The residency provision in *Pallier* used the future tense in awarding custody to the mother: "Brian's 'normal place of residence' ('résidence habituelle') was to be with Christine." (*Pallier, supra,* 144 Cal.App.4th at p. 466, ¶ 2.) That provision, taken together with the legal custody order, the award of visitation to the father, the prohibition against removal of the child from France, and the fact the orders arose from a divorce proceeding, leaves no doubt the decree in *Pallier* was a child custody determination.

By contrast, there is no basis to conclude the Belarus residency decree was a "child custody proceeding" or that the decree resulting from the residency action was a "child custody determination." The decree states:

> To determine the place of residence of minor [baby L.], born on December 19, 2016, by the place of residence of her mother Victoria [], born on July 31, 1989, at the address: Minsk: 12 Polevaya Street, apartment 7.[30]

It is impossible that the Belarus court intended to award Victoria custody of baby L. because the address the Belarus court found was baby L.'s "place of residence" was William's apartment in Minsk (*i.e.,* 2 Polevaya Street, apartment 7). William leased that apartment from Victoria for his application for temporary residency in Belarus and neither party were staying there when the decree was issued. [31] Yet, the trial court concluded the Belarus court awarded custody of baby L. to Victoria because the decree specified "the actual street address" where baby L. resided.[32] The trial court overlooked this was William's registered address in Belarus, not where Victoria lived.

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[30] Ex. 13 (PE, 303, under "Has Decided" heading); Ex. 5 (PE, p. 69:19-23).

[31] Ex. 12 (PE, p. 281, box 17 & p. 282, box 19).

[32] Ex. 5 (PE, pp. 69:19 - 70:1).

The Belarus residency decree lacks any hallmarks of a custody order. It does not provide visitation to William, makes no allocation of decision-making authority over baby L., does not restrict Victoria from removing baby L. from Belarus, and did not arise from a divorce or parentage action. This makes sense because the Belarus residency action was filed when there was no dispute between the parties as to baby L; they were still together as a family when that action was filed.[33]

As the trial court noted, the only issue in the Belarus residency action was baby L.'s place of residence, which the trial court found was a separate issue from the Belarus custody action (which Victoria filed after William commenced his California action):

> [T]he residency application yielded a final decision (that is, a decision that resolved all of the issues before the Court in the application without the need for further hearings at the trial court level), and did so before the [Belarus custody] application was even filed; it began and ended before the [Belarus custody] application began.[34]

Since the Belarus residency action solely determined baby L.'s place of residence for citizenship purposes, it was not a child custody proceeding and did not result in a child custody determination.

(D) The Belarus residency action was filed so Victoria could apply for Belarus citizenship for baby L., but she now claims it was a child custody proceeding.

Victoria admitted that she obtained the residency decree, while the parties were still in a relationship, to obtain Belarus citizenship for baby L.:

> William was aware of the fact that we would have to apply for [baby L.] to become a resident of Belarus, given [baby L.] was not born in Belarus. On May 25, 2017, while William

[33] Ex. 5 (PE, p. 37:2-5).

[34] Ex. 5 (PE, pp. 66:14 - 67:13).

> and I were in Paris for the French Open, I commenced the necessary residency proceedings in Belarus.[35] On May 26, 2017, papers were filed in Belarus regarding [baby L.'s] residential status. A hearing was held on June 7, 2017 wherein the court in Belarus declared [baby L.] a resident of Belarus.[36]

Victoria also admitted, as quoted below, that she did not commence custody proceedings in Belarus until after William filed his California action. Her admission establishes that the Belarus residency action was not a custody proceeding—there would be no need for Victoria to bring a custody proceeding in Belarus if the Belarus residency action had already determined her custody rights. Victoria declared:

> [A]fter the Court determined [baby L.] was a resident of Belarus [in the Belarus residency action], I began the process of initiating custody proceedings in Belarus.[37]

> After [baby L.]'s residency orders were in place, I began discussing with my attorney in Belarus, Anton Greinwich, my options in regards to initiating custody proceedings in Belarus…. We were in the process of drafting the paperwork when I was served with William's Petition to Establish Parentage in California on July 24, 2017. [¶] On July 28, 2017, my attorney filed a motion for child custody in Belarus on my behalf…[38]

Those admissions were made in the first two weeks of this case. Later, Victoria claimed the residency decree gave Belarus exclusive custody jurisdiction over baby L. Because the Belarus residency action was not a child custody proceeding, the trial court erred in declining to exercise

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[35] Ex. 17 (PRE, p. 199:2-5, ¶ 10). "PRE" refers to Petitioner's Exhibits in Support of Reply re Petition for Writ of Supersedeas filed 2/15/18.

[36] Ex. 18 (PRE, p. 245:17-18, ¶ 3).

[37] Ex. 18 (PRE, p. 245:27-28, ¶ 3).

[38] Ex. 17 (PRE, pp. 199:26 - 200:8, ¶¶ 14-15).

custody jurisdiction over baby L. William was the first party to file a custody proceeding over baby L.

(E) The error was prejudicial.

The trial court made a finding that establishes the prejudice of its error. The trial court stated that California is the best forum to determine custody, but it felt compelled by Section 3426 to surrender its jurisdiction over Leo to Belarus:

> Weighing all of these factors together, the Court believes that if the issue were only one of inconvenient forum, on balance it would exercise its jurisdiction. The factor that tips the scale is the additional procedural safeguards that California provides to ensure that both sides are heard, and therefore that the best decision is ultimately made. [fn. omitted.][39]

But for its erroneous conclusion that the Belarus residency action was a child custody proceeding, the trial court would have exercised its jurisdiction over baby L. as the best forum for determining custody. Allowing Victoria to remove baby L. from the reach of our courts based on the trial court's clear and prejudicial error of law would be detrimental to William and baby L.'s parent-child relationship because there will be no way to compel baby L.'s return to California if the trial court ruling is reversed on appeal.

(F) Victoria maintains she gave William notice of the Belarus residency and custody actions, but the trial court did not believe her.

Victoria claims the Belarus court conducted a full hearing before issuing the residency decree: "In determining the child's 'residency,' the Belarus court considered that the child was always with Victoria and that she takes care of him herself, and concluded that residency would be with

[39] Ex. 5 (PE, pp. 86:21 - 87:3).

the mother and not the father."[40] However, the trial court found that the residency hearing was conducted with both parties *in absentia*, without notice to William, which is why the trial court refused to enforce it.[41]

Victoria does not try to explain how she obtained two decrees from the Belarus court without notice to William. She does not say why she filed her custody action in Belarus the day after the trial court made temporary custody orders in William's California parentage action. Nor does she reveal how she convinced the Belarus court to issue a final judgment, awarding her sole custody of baby L., only six days after she filed her Belarus custody action. The trial court was troubled that the Belarus custody action "went from filing to decision in under a week. That is suspiciously fast."[42] Instead of addressing those questions, Victoria claims she gave notice of both actions to William, and that William "elected not to participate in them because, as of May of 2017, he saw no need to do so."[43] The problem is the trial court did not believe Victoria or her mother about those claims.[44] In fact, the trial court found that the custody proceedings in Belarus were "deliberately hidden" from William.[45]

(G) William will not receive a fair hearing in Belarus.

Victoria states: "As to the integrity of the Belarus courts, the court found that there is no reason to believe that the Belarus court will not honor its own decrees regarding custody and visitation. [P.E. 5:83, lines 18-

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[40] Opp. to Pet. for Writ of Supersedeas filed 1/31/18, p. 39.

[41] Ex. 5 (PE, p. 90:21-24).

[42] Ex. 5 (PE, p. 77:10-11).

[43] Supp. Opp. to Pet. for Writ of Supersedeas filed 2/9/18, p. 19, ¶ 3.

[44] Ex. 5 (PE, pp. 77:21 - 78:17).

[45] Ex. 5 (PE, pp. 77:21 - 78:4).

22.]."[46] "There is no reason to distrust Belarus. As the trial court noted, no evidence was presented that Belarus will not honor any orders it has–or will–put in place for William regarding Leo's custody or visitation. [P.E. 5:83:16-21.]"[47]

This ignores that the Belarus court awarded Victoria sole custody of baby L. six days after she secretly filed her custody action there, without notice to William, which the trial court found "suspiciously fast." [48] Victoria also ignores the finding that California is the best forum to determine the parties' custody rights because the trial court did not trust the Belarus court would provide due process to William:

> The factor that tips the scale is the additional procedural safeguards that California provides to ensure that both sides are heard, and therefore that the best decision is ultimately made. [fn. omitted.][49]

The lack of legitimacy of the Belarus court proceedings is why the trial court refused to enforce the residency and custody decrees. [50] Victoria filed her action for custody in Belarus one day after the trial court made its temporary custody orders. [51] She wanted to show the trial court that Belarus was exercising custody powers over baby L., so she got what she needed from the Belarus court, in six days from start to finish with no need for notice to William. When William appealed the custody decree to the Belarus court and complained about the lack of notice, the Belarus court

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[46] Supp. Opp. to Pet. for Writ of Supersedeas filed 2/9/18, p. 10.

[47] Supp. Opp. to Pet. for Writ of Supersedeas filed 2/9/18, p. 14.

[48] Ex. 5 (PE, p. 77:10-11).

[49] Ex. 5 (PE, pp. 86:21 - 87:3).

[50] Ex. 5 (PE, p. 80:15-23).

[51] Ex. 5 (PE, p. 38:4-6).

disregarded his plea. The trial court found: "[William] raised the notice issue in his appeal of the August 3, 2017 decree. In its decision affirming the decree, the Belarus court simply ignored the entire subject. Instead, it re-considered the merits and concluded that the right outcome had been reached."[52]

There is no reason to believe William will be treated differently in any further proceedings in Belarus. As stated in the Declaration of Patricia Apy, William's UCCJEA expert:

> The 2016 United States Department of State Human Rights Report for Belarus confirms 'Authorities arbitrarily arrested, detained, and imprisoned citizens for criticizing officials, participating in demonstrations, and other political reasons. The judiciary experienced political interference and a lack of independence; trial outcomes often appeared predetermined, and trials occurred behind closed doors or in the absence of the accused.'[53]

(H) The 2018 Belarus custody action is not recognized under the UCCJEA because it was filed after William's California action.

Victoria filed a third action in Belarus (the "2018 Belarus action"). Victoria states her new custody action was filed January 19, 2018, "to ensure that William has another opportunity to present evidence and to obtain orders from the Belarussian court that will provide him with adequate access to Leo…."[54]

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[52] Ex. 5 (PE, p. 79:3-6).

[53] Ex. 14 (PE, p. 386:4-21). The trial court took judicial notice of the existence of The 2016 United States Department of State Human Rights Report for Belarus, but not for the truth of the statements in the report. The report is at Ex. 5 (PE, pp. 42:25 - 43:8).

[54] Supp. Opp. to Pet. for Writ of Supersedeas filed 2/9/18, p. 20, ¶ 5.

It is unknown why Victoria states she is giving William "another opportunity to present evidence" in the Belarus court when the trial court found William was given no notice of her two prior actions, and that she actively concealed the Belarus custody action from him. [55]

The 2018 Belarus action will not cure the lack of notice that occurred in the Belarus residency action. Section 3426 applies "if, at the time of the commencement of the [California] proceeding, a proceeding concerning the custody of the child has been commenced in a court of another state having jurisdiction substantially in conformity with this part…." (§ 3426, subd. (a).) The 2018 Belarus action (and the custody action she filed there in 2017) do not qualify because those actions did not exist when William commenced his California action.

It was only the Belarus residency action, which was filed before William's action, that the trial court felt took precedence, even though the trial court refused to enforce the residency decree due to the lack of notice to William. The later-filed custody actions in Belarus do not qualify under Section 3426, so no orders issued by the Belarus court could be enforced in California consistent with the UCCJEA.

(I) A stay is needed to avoid a jurisdictional vacuum.

Unless a stay is issued, a jurisdiction vacuum will exist whereby William's action will be quashed and no order by the Belarus court will be capable of recognition under the UCCJEA because the 2018 Belarus action was filed after William commenced custody proceedings here.

[55] Ex. 5 (PE, pp. 77:21 - 78:4).

That problem was mentioned in *Pallier*. In reversing the judgment, the *Pallier* court observed that the child could be left in a jurisdictional vacuum pending a trial court hearing on remand.

> We are concerned that this could have left Brian in a kind of custodial netherworld, not residing with either his mother or his father, but rather with unidentified third parties, unless and until the French trial court ordered otherwise. We would be even more concerned if the child involved were an infant or a toddler, rather than a 14 year old who was accustomed to boarding school.

(*Pallier, supra,* 144 Cal.App.4th at p. 473)

Baby L. faces a similar risk unless a stay is granted. He will be caught in a jurisdictional netherworld with no enforceable California custody orders to protect his relationship with William, and Victoria will have no order from the Belarus court that is capable of enforcement or recognition under the UCCJEA. A stay is needed because California is the only place that has jurisdiction over baby L.

(J) Victoria's lack of cooperation in co-parenting and history of domestic violence were findings in a court order—not mere allegations as Victoria claims.

Victoria claims William misrepresented the record in his Petition for Writ of Supersedeas:

> In paragraph 61 of the Petition, William states that 'the Superior Court found Victoria has not cooperated with William in parenting Leo, and that she has a history of domestic violence.' Neither of those statements is true or supported by anything in the record. As is true of many of the statements in William's petition, his only evidence for the statement is the ex parte application he submitted to the Court on July 26, 2017. William's July 26, 2017 ex parte

> submission is not factual findings. It is simply his unproven allegations.[56]

The truth is the trial court made those findings in its "Temporary Emergency (Ex Parte) Orders filed July 26, 2017.[57] The bottom of the form states, "This is a Court Order."[58] In its order, the trial court found Victoria "has a history of … domestic violence[,] not cooperating with the other parent or party in parenting"[59] and that she posed a risk of abducting baby L. These findings were not changed by the trial court in its January 12 order quashing William's parentage action.

The lack of cooperation in parenting baby L. continues. Victoria failed to inform William of her plans to take baby L. to tennis tournaments across the world, except for apprising him of those plans through her Opposition brief filed with this Court. She informed this Court, without telling William or his counsel directly:

> [I]n contemplation of the orders allowing me to leave, I have made plans to resume my career. To that end, I am scheduled to participate in a Federal Cup Tournament in Minsk, Belarus, my home city, on February 10 and 11….
>
> [¶] Thereafter, I am scheduled to travel to Doha, Qatar, to participate in the Qatar Total Open beginning February 12. The tournament is scheduled to be 7 days long.
>
> [¶] In mid-March, I plan to return to California to participate in a tournament in Indian Wells (Palm Springs, California), and then I will go to Miami, Florida for a tournament.[60]

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[56] Supp. Opp. to Pet. for Writ of Supersedeas filed 2/9/18, p. 21, ¶ 9, emphasis removed.

[57] Ex. 10 (PE, p. 262).

[58] Ex. 10 (PE, p. 262), emphasis removed.

[59] Ex. 10 (PE, p. 264, ¶ 1.d).

[60] Opp. to Pet. for Writ of Supersedeas filed 1/31/18, pp. 11-12, ¶¶ 20-22.

She added: "To be clear, I have always kept William apprised of my plans with Leo and encouraged him to remain fully active and involved in all aspects of Leo's life. Even when my relationship with William deteriorated in July of 2017, I continued to respond to William's inquiries."[61]

William was never told of these plans by Victoria, other than by reading her opposition. He learned of the Qatar tournament by reading about it on the internet. William informed this Court of his belief that Victoria planned to take baby L. out of the U.S. to play in that tournament as a reason for the temporary stay.[62] Victoria's plan to take baby L. to Minsk, Belarus, then Doha, Qatar, then Indian Wells, California, then Miami, Florida, without informing William directly, is not an example of keeping "William apprised of [her] plans with [baby L.]…." [63] Appellate filings are not a good way for parents to communicate about a baby.

Victoria assured this Court that "[William] can see the child in Belarus…."[64] However, if she planned for William to see baby L. for his monthly visit in Belarus, she did not offer him any visitation for her planned tournament in Minsk. Had the temporary stay been denied, there is no way William and baby L. would have seen each other during those whirlwind trips. This belies her statement: "… I have no objection to William having an active role in Leo's life. Nor is there any evidence that I

[61] Opp. to Pet. for Writ of Supersedeas filed 1/31/18, p. 14, ¶ 32.

[62] Pet. for Writ of Supersedeas filed 1/29/18, p. 38, ¶ 97.

[63] Opp. to Pet. for Writ of Supersedeas filed 1/31/18, p. 14, ¶ 32.

[64] Opp. to Pet. for Writ of Supersedeas filed 1/31/18, p. 29.

have ever separated Leo from his father or failed to communicate with William regarding Leo's whereabouts or wellbeing."[65]

After reading about her plans in the Opposition, William's trial attorney offered Victoria on February 6, 2018, "a temporary parenting plan to allow Victoria to travel to the Palm Springs tournament with Leo. Depending on the safeguards in place, [William] may be willing to discuss Leo traveling with Victoria within the United States. For example, he may consider Leo traveling to the upcoming tournament in Miami."[66] There was no response by Victoria or her counsel. Victoria's failure to respond to William's offer to allow her to take baby L. to the Palm Springs and Miami tournaments is inconsistent with her claim that she is being denied the right to travel with baby L.

In her opposition papers, Victoria offered William consolation that she will make sure baby L. learns English when she moves him to Belarus, provided William pays for those lessons.[67] Baby L. is a U.S. citizen who has a right to remain in the U.S. while the appeal is decided. A denial of supersedeas will give Victoria complete control over baby L., allowing her to take baby L. across the world without informing William. It will result in a de facto termination of the relationship between William and baby L.

(K) A stay is not a prison sentence; Victoria chose California.

Victoria argues: "Granting Supersedeas Will Condemn Victoria to Remaining Here for Many More Months, Perhaps Beyond Another Year."[68]

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[65] Supp. Opp. to Pet. for Writ of Supersedeas filed 2/9/18, p. 20, ¶ 5.

[66] Ex. 24 (PRE, pp. 457-458, email dtd. 2-6-18 at 2:56 pm).

[67] Opp. to Pet. for Writ of Supersedeas filed 1/31/18, p. 13, ¶ 28.

[68] Supp. Opp. to Pet. for Writ of Supersedeas filed 2/9/18, p. 14.

"Our State Must Not Become *Fortress California* to Our Visitors."[69] "[O]ur courts should let the visitor and her or his child leave immediately. Otherwise, those who enter into relationships with California residents and visit here with their children, even for brief periods, do so at great personal risk."[70]

Victoria mischaracterizes the facts. Victoria stated that she "came to California to train for The U.S. Open on a visitor's visa"[71] but omits that she chose to give birth to baby L. in California. The trial court found William and Victoria lived in California leading up to Leo's birth and this "was not accidental; the parties agreed that Leo would be born here."[72] After ensuring baby L.'s U.S. citizenship by planning the birth in California, she now claims her contacts with the state are incidental, like a tourist who planned to stay in California for a week to see the beach and was detained here unexpectedly. The trial court found that Victoria has a significant connection to California:

> [Victoria] is, in many ways, more connected to California than [William]. She owns significant real estate here (and has for a number of years); she spends considerable time here each year; she has had things mailed to her in California for a long time, including personal correspondence and items she has purchased. [William] is right that she does have a significant connection to California, and, in the Court's view, the question is not a close one.[73]

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[69] Supp. Opp. to Pet. for Writ of Supersedeas filed 2/9/18, p. 16.

[70] Supp. Opp. to Pet. for Writ of Supersedeas filed 2/9/18, pp. 16-17.

[71] Supp. Opp. to Pet. for Writ of Supersedeas filed 2/9/18, p. 17.

[72] Ex. 5 (PE, pp. 34:26 - 35:1).

[73] Ex. 5 (PE, p. 56:6-12).

In her court papers, Victoria refers to her Manhattan Beach home as a "training facility"[74] but it is a five-bedroom beach home that has no tennis court or training equipment. It is her home where she lives. The trial court found "[t]he evidence is undisputed that [Victoria] spends a significant amount of time at [her Manhattan Beach home]."[75]

Finally, Victoria makes the claim: "As we would not want our nationals held for months, perhaps extending beyond a year, in the legal labyrinth of a foreign state, so we should not hold another country's nationals."[76] But this is exactly the fate she proposes for William in Belarus. If the stay is denied and William wants any chance to see baby L. again, he must go to Belarus and hope that the decree for his once-a-month supervised visitation is still in effect, hope he is granted a visa to enter Belarus, and hope Victoria informs him when she plans to be there.

(L) Victoria says she wants to take baby L. "home" to Belarus, then states she needs to travel extensively across the world for tennis.

"I simply wish to return to my home with my son and to resume my career."[77] But she has not called Belarus home for a long time:

> From a young age, I left my home in Belarus to train for tennis and compete in international tournaments. I often returned home to Belarus to visit my family, but my demanding schedule did not allow me to stay for extended periods of time. [78]

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[74] Opp. to Pet. for Writ of Supersedeas filed 1/31/18, p. 10, ¶ 16.

[75] Ex. 5 (PE, p. 33:19-24).

[76] Supp. Opp. to Pet. for Writ of Supersedeas filed 2/9/18, p. 17.

[77] Opp. to Pet. for Writ of Supersedeas filed 1/31/18, p. 15, ¶ 35.

[78] Ex. 17 (PRE, p. 201:24-26, ¶ 21(B).

Also, if the stay is denied, she plans to bring baby L. to her tennis matches. "I intend to bring Leo with me to the various mentioned tournaments, as was my practice before William filed this action. I have already arranged for Leo to have proper care while I am training and playing."[79] She has ambitious plans to play tennis all over the world. There would be little time for Victoria to spend with baby L. based on the travel schedule she proposes.[80]

Victoria does not explain why she cannot go the tournaments and come back to see baby L. She expresses no consideration for William and baby L.'s relationship. Taking baby L. to Belarus will not help her career, but will ensure he is out of reach of our courts if William wins the appeal.

Victoria's reasons for wanting baby L. to accompany her for tennis matches are self-centered:

> Whereas, prior to the court's issuance of its August 9, 2017 orders, I would only practice and compete knowing that our son Leo is nearby watching, as inspiration to me as a sports athlete.[81] This way, I would be able to concentrate, not worry, be inspired by Leo nearby, and not have to worry, and be able to adequately play and compete in the US open.[82] [W]ithout knowing Leo is near by my side I will not be able to play, effectively concentrate on the game, nor any of my associated obligations in connection therewith, nor am I able to leave him 3,000 miles away from me.[83]

No consideration is given to William and baby L.'s relationship in her desire to have baby L. nearby as an inspiration while she plays tennis.

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[79] Opp. to Pet. for Writ of Supersedeas filed 1/31/18, p. 12, ¶¶ 23.

[80] Supp. Opp. to Pet. for Writ of Supersedeas filed 2/9/18, pp. 22-23, ¶ 15.

[81] Ex. 19 (PRE, p. 344:5-7, ¶ 16).

[82] Ex. 20 (PRE, p. 345:1-2, ¶ 18).

[83] Ex. 20 (PRE, p. 345:15-18, ¶ 18).

Maintaining baby L.'s relationship with William is more important than having baby L. wait on the sidelines as Victoria plays tennis

(M) The order prohibiting Victoria from removing baby L. from California did not interfere with her ability to compete—she decided not to participate.

Victoria claims: "On July 26, 2017, William secured a temporary restraining order precluding me from leaving California with our son, Leo. The orders brought my career to a halt. The orders made it virtually impossible for me to leave Los Angeles without compromising my ability to be with my son, Leo."[84]

The order prohibiting Victoria from removing baby L. from California applies to every parent involved in a parentage action. (See, § 7700.) That order does not restrict Victoria's ability to travel by herself. Victoria admitted that it was her intention to scale back on tennis so she could raise baby L. Any damage to her career has been self-inflicted. Victoria decided to scale back on tennis and focus on being a new mother in her home in Manhattan Beach, but now claims she is trapped here. In the first weeks of this case, Victoria explained why she stopped playing tennis:

> I found out I was pregnant when my career was a climax. Regardless of the fact that I was at the pinnacle of my career, I was overjoyed with the news that I was pregnant and I was determined to have our beautiful child by all costs and means necessary, even if it meant losing what I had worked for my whole life. I knew it was not advisable to have a child at this point in my career than that most professional female athletes do not do so because of the unexpected difficulties that might arise from the pregnancy proceedings and giving birth (including, inter alia, heath complications, operations, the time recovering from pregnancy and birth, etc.) Regardless, despite the potential detriment to my career and the fact that

[84] Opp. to Pet. for Writ of Supersedeas filed 1/31/18, p. 9, ¶ 8.

> William was initially not supportive of me having a child, I wholeheartedly and excitedly continued with my pregnancy.[85]
>
> I told William I was having the baby regardless of whether he would support my decision or not. I was very excited to be a mother. It is something I have wanted all my life. It is the most important thing to me in life. I was fully prepared to stop my career if necessary and never play tennis again.[86]
>
> My priorities completely changed when I became pregnant with [baby L.]….[87]
>
> This past year was the first time I was able to take a break from my hectic tennis schedule. Having a child changes your perspective and priorities….[88]

The trial court encouraged Victoria to travel for her tennis tournaments, and assured Victoria it would not be held against her in determining her custody rights.[89] Victoria misstates the reason she did not participate in several tournaments during this case. She claims: "Due to the initial orders, I have not been able to compete in any tournaments since July 2017. Specifically, I was unable to participate in tournaments in which I was scheduled to play in Stanford (California), Cincinnati, Luxembourg, Tokyo, Linz (Austria), and Auckland (Australia)."[90]

That is not true. Victoria signed up for, then canceled her entries to each of these tournaments by her own choice. Victoria also claims: "I was unable to compete in two major tournaments: I pulled out of the 2017

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[85] Ex. 15 (PRE, pp. 17:20 - 18:1, ¶ 5).

[86] Ex. 15 (PRE, pp. 18:26 - 19:1, ¶ 9).

[87] Ex. 17 (PRE, p. 200:24-25, ¶ 18).

[88] Ex. 17 (PRE, p. 201:27-28, ¶ 21(B)).

[89] Ex. 20 (PRE, p. 432:7-25).

[90] Opp. to Pet. for Writ of Supersedeas filed 1/31/18, p. 9, ¶ 9.

United States Open and the 2018 Australian Open."[91] However, Victoria was granted leave to take baby L. to New York so she could exercise two of her custodial days during a week of sponsorship obligations during the US open.[92] She canceled that trip and blamed William.[93]

(N) Victoria has a visa to live in the U.S., but William's right to live in Belarus is uncertain.

Victoria told this Court that she has a temporary visa to remain in the U.S. that limits the time she can spend here.[94] She made a similar claim in the trial court, stating that she cannot stay in the U.S. more than six months per year. The trial court found no such six-month limitation to her visa.[95]

Victoria claims that "[William] can see the child in Belarus, where he is a legal resident and to where he is able to travel…."[96] This is not the case. William applied for temporary residency in Belarus last year for their trip there because his prior visa was about to expire.[97] There is no assurance William can travel freely to Belarus again.

(O) On balance, the harm to baby L.'s relationship with William if a stay is denied outweighs the inconvenience to Victoria if a stay is granted.

Victoria claims she will suffer financial harm if the stay is granted.[98] But William's appeal is taken from a parentage action, not a money

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[91] Opp. to Pet. for Writ of Supersedeas filed 1/31/18, p. 9, ¶ 10.

[92] Ex. 21 (PRE, pp. 444-446).

[93] Ex. 22 (PRE, p. 443).

[94] Opp. to Pet. for Writ of Supersedeas filed 1/31/18, p. 8, ¶ 5.

[95] Ex. 5 (PE, pp. 34:1-15 & 85:20).

[96] Opp. to Pet. for Writ of Supersedeas filed 1/31/18, p. 29.

[97] Ex. 8 (PE, p. 281); Ex. 6 (PE, p. 111:17-22).

[98] Supp. Opp. to Pet. for Writ of Supersedeas filed 2/9/18, p. 22, ¶ 14.

judgment. Even if it were a money judgment, financial loss is rarely considered irreparable harm. (See, *Quiles v. Parent, supra,* 10 Cal.App.5th 130, 136, fn. 2 [appellate courts should only issue a discretionary stay of a money judgment in exceptional circumstances].)

Victoria can travel for work and maintain her relationship with baby L. like all working parents find a way to do. There is no comparison between the inconvenience and potential loss of income to Victoria during the stay against the need for baby L. to maintain and develop his relationship with his father, William. It would not be in baby L's best interests to be away from William just so Victoria can take baby L. on rigorous overseas travel while she trains and competes for 12 hours a day.[99] Victoria can take her overseas trips and return to her home in California for custodial time with baby L.

Victoria has not articulated how a stay will harm baby L. nor did she attempt a balancing analysis of the harm that will be suffered if the stay is not granted. Her claim that she has lost millions of dollars due to this case[100] is not supported by any evidence. There is no way to determine how she might have performed if she elected to participate.

(P) There was no delay in filing the petition for writ of supersedeas and William is not delaying the appeal.

Victoria claims William waited to the last minute to file his writ petition, as if the trial court allowed ample time and he wasted it. He was given a three week stay, starting at 6 pm on a Friday. He filed the writ in enough time for Victoria to file her Opposition and for this Court to issue a temporary stay.

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[99] Ex. 8 (PE, p. 190:16-17).

[100] Opp. to Pet. for Writ of Supersedeas filed 1/31/18, p. 10, ¶ 13.

Victoria claims William is stalling the appeal by designating a clerk's transcript instead of an appellant's appendix.[101] That claim is unfounded. As the appellant, William has the burden of designating an adequate record to show the trial court erred. (See, *In re Marriage of Wilcox* (2004) 124 Cal.App.4th 492, 498-499; Cal. Rules Ct., rule 8.140(a)(1).) William cannot know for sure now what records will be needed for the appeal. Also, the records in this action are confidential because it is a parentage action. There was no effort to delay, as William indicated in the Notice Designating Record that this case is entitled to calendar preference.

(Q) Victoria is responsible for the media leak when she or her legal team violated the gag agreement.

Victoria states:

> I am also concerned that if I left the United States without Leo, I might not be able to return if the immigration authorities believe that I have been in violation of my visa by not playing here. (My fear is not unfounded as during the litigation, people with intimate knowledge of the litigation repeatedly shared private information regarding these court proceedings on the internet and in print media, likely intended to harass or embarrass me or to otherwise harm me and my career.)[102]

The problem is that Victoria is responsible for leaking information to the media. Her "camp" is cited as a source in a TMZ article about her winning the motion to quash.

> We're told Azarenka's camp is confident they will win that battle as well, based on the judge's strongly-worded 65-page opinion. [¶] We're told Azarenka's plan is to move back to Belarus with their son as soon as she can -- but she wants

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[101] Supp. Opp. to Pet. for Writ of Supersedeas filed 2/9/18, p. 15.

[102] Supp. Opp. to Pet. for Writ of Supersedeas filed 2/9/18, p. 23, ¶ 17.

> McKeague to be in the kid's life and hopes to have an amicable co-parenting relationship with him moving forward.[103]

The TMZ article appeared right after the trial court issued its ruling on the motion to quash. As the records in this case are confidential, there was no media access to the ruling. The statements by Victoria or her camp to the press were in violation of an agreement the parties made:

> Neither party, including his or her agents, attorneys, or family members, may discuss the California or Belarus legal proceedings regarding the parties' minor child with any media outlets, the press, or in any form of social media, including but not limited to, FaceBook, Twitter, TwitLonger, and Instagram.[104]

III. CONCLUSION

William respectfully requests that this Court grant supersedeas and the stay order proposed below.

Dated: February 16, 2018

WALZER MELCHER LLP

By: /s/
Christopher C. Melcher
Leena H. Hingnikar
Edward M. Lyman
Attorneys for Petitioner,
William McKeague

[103] Ex. 22 (PRE, pp. 448-449).

[104] Ex. 23 (PRE, p. 453:3-6,¶ 5).

PROPOSED STAY ORDER

The Court has read and considered (1) the petition for writ of supersedeas filed on January 29, 2018, (2) Respondent's opposition to petition for writ of supersedeas filed on January 31, 2018, (3) Respondent's supplemental brief in opposition to petition for writ of supersedeas filed on February 9, 2018, and (4) Petitioner's reply filed on February 16, 2018.

The petition for writ of supersedeas is granted. Pursuant to California Rules of Court, rule 8.112(d)(1), the trial court's order of January 12, 2018, granting Respondent's motion to quash is stayed pending resolution of the appeal in this matter.

The trial court's temporary orders awarding joint physical and legal custody and prohibiting the removal of baby L. from this jurisdiction shall remain in effect pending resolution of the appeal in this matter, but the trial court is vested with jurisdiction to grant any subsequent temporary custody, visitation, or support orders as provided by law, including travel orders for the removal of baby L. from California to other states within the U.S., but shall not permit either party to remove baby L. from the U.S.

In any order permitting either party to remove baby L. from the state of California from domestic travel, the trial court shall consider the preventative measures under Family Code section 3048. For any such order, the automatic stay per Code of Civil Procedure section 917.7 is shortened from 30 days to 10 days.

These orders remain in effect until final resolution of the appeal.

VERIFICATION

I am the petitioner, am over the age of 18, and have read this Reply re Petition for Writ of Supersedeas and know its contents. The facts alleged are within my own personal knowledge and I know these facts to be true (except for those stated on information and belief, of which I am informed and believe are true).

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

Dated: February 16 , 2018 /s/

Petitioner, W.M.

CERTIFICATE OF WORD COUNT

I certify, pursuant to Rule 8.204(c)(1) of the California Rules of Court, the attached Petition contains less than 14,000 words according to the program used to create this document, excluding tables, certificates and the cover page.

Dated: February 16, 2018 WALZER MELCHER LLP

By: /s/
Christopher C. Melcher
Attorney for Petitioner

PROOF OF SERVICE

State of California	)	Proof of Service by:
	)	☐ US Postal Service
County of Los Angeles	)	☒ Federal Express

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: 5941 Variel Avenue, Woodland Hills, California 91367.

On February 16, 2018, I served the foregoing document described as **REPLY RE PETITION FOR WRIT OF SUPERSEDEAS** upon the following by placing a true copy thereof in sealed envelopes addressed as follows:

1 Copy ☒ Federal Express

Clerk in Dept. 81
Los Angeles Superior Court
Stanley Mosk Courthouse
111 N. Hill Street
Los Angeles, CA 90012
T: (213) 830-0781
Superior Court

1 Copy ☒ Electronic

Laura A. Wasser, Esq.
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Attorneys for Respondent, V.A.

1 Copy ☒ Federal Express

Frederick Bennett
Los Angeles Superior Court
111 N. Hill Street, Room 546
Los Angeles, CA 90012
Superior Court

1 Copy ☒ Electronic

Honey Kessler Amado
Attorney at Law
261 South Wetherly Drive
Beverly Hills, CA 90211-2515
Attorneys for Respondent, V.A.

I caused such envelope(s) to be delivered by overnight mail to the offices of the addressee(s).

Executed on February 16, 2018 at Woodland Hills, California.

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

/s/
Annais Alba