

IN THE SUPREME COURT OF CALIFORNIA

In re the Marriage of		Supreme Court
SUSAN POSTON NAVARRO (LaMUSGA)		Case No. S107355
	Appellant,	Court of Appeal
And		Case No. A096012
GARY LaMUSGA		Contra Costa County
	Respondent.	Superior Court
		Case No. D95-01136

NOTICE OF ERRATA RE:

BRIEF OF
HERMA HILL KAY SBN 30734, GRACE GANZ BLUMBERG
SBN 139450, CAROL S. BRUCH SBN 56403, JANICE E KOSEL
SBN 50928, FRANCES OLSEN, JOAN HEIFETZ HOLLINGER,
MARY ANN MASON SBN 70327, D. KELLY WEISBERG SBN 88308, JAN C.
COSTELLO SBN 91372, SHEILA JAMES KUEHL SBN 85162, JOHN E.B. MYERS
SBN 91300, LISA C. IKEMOTO SBN 131396, SCOTT ALTMAN AND JANET
BOWERMASTER AS AMICI CURIAE
SUPPORTING AFFIRMANCE OF THE COURT OF APPEAL'S DECISION

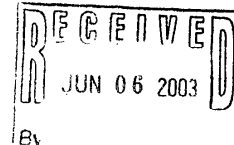
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PLEASE TAKE NOTICE that Amici Curiae Herma Hill Kay et al. hereby make the following corrections to the Amici Curiae Brief in *In re Marriage of LaMusga*, filed with this Court on May 22, 2003:

In the Table of Authorities at pp. iv-vi:

1) the unpublished Court of Appeal relocation cases are set forth with abbreviated LEXIS citation forms. Although these will suffice to locate the opinions, the full citation for each of these unpublished cases can be found in Appendix A to the Brief,

2) the correct citation for *In re Marriage of McLoren* is **202** (not 2002) Cal. App. 3d 108 (2d Dist. 1988)

3) citations for the following materials, which appear in the Brief without complete citations, should be added to the table of Authorities:

Cases:

In re Marriage of McGinnis, 7 Cal. App. 4th 473 (2d Dist. 1992), as amended by 8 Cal. App. 4th 144A (2d Dist. 1992)..... 68

In re Marriage of Postma & Hasson, No. A098969, 2003 Cal. App. Unpub. Lexis 43 (1st Dist. Jan. 6, 2003) (*Postma II*).....32

Signorelli v. Cassidy, SO68879 Petition for Review and Appellant’s Appendix in Lieu of Clerk’s Transcript, California Supreme Court (filed March 23, 1998)32, 46, 62, 70

Books: BELDEN RUSSONELLO & STEWART AND RESEARCH/STRATEGY/MANAGEMENT, AARP, IN THE MIDDLE: A REPORT ON THE MULTICULTURAL BOOMERS COPING WITH FAMILY AND AGING ISSUES (2001), <http://www.aarp.org/inthemiddle/pdf/inthemiddle.pdf>46

Page 32, the text following the call to note 93 is corrected as follows: A new footnote, 93a, is inserted at the end of the sentence that reads, “In the other, the woman’s 81-year-

old mother suffered nerve damage when she was thrown through a windshield in a care accident, and the woman herself went through bankruptcy and had been given notice that she must vacate her California office within six months.” The footnote reads: *See In re Marriage of Postma & Hasson*, No. A098969, 2003 Cal. App. Unpub. Lexis 43 (1st Dist. Jan. 6, 2003) (*Postma II*).

Page 32, note 93, is corrected to read: Account of Professor Bruch who served as counsel for Ms. Signorelli in a further relocation effort undertaken in 1998. *See Signorelli v. Cassidy*, SO68879 California Supreme Court (filed March 23, 1998): Petition for Review at 4-5, and Appellant’s Appendix in Lieu of Clerk’s Transcript at 1214 (physician’s statement), 1094, 115, 1117, 1407, 1441 (job offers), 1442 (subsidized housing), 1583, 1586 (projected income), 1406 (court’s criticism of this request) (hereafter *Signorelli* or *Signorelli II*). An earlier relocation request was denied at trial and affirmed by the Court of Appeal in *Cassidy*, *supra*.

Page 36, the sentence preceding the call to note 106 is corrected to read: The trial court heard and was unpersuaded by the evidence he cites, however, expressly finding that no alienation or denigration was occurring.

Page 36, the first citation in note 106 is corrected to read: RT 106:6-11, 107:21-25.

Pages 39, the first complete sentence is corrected as follows: Ms. Navarro previously declined to relocate without her children and testified at trial in 2001 that she would not move without the boys. A new footnote, 112a, is inserted following this sentence to read: RT 89:12-15.

Page 40, the text following the second sentences until the end of the page is corrected to read: The evaluator relied on parental alienation – a controversial theory at best. 116 Indeed, he offered a novel account of unconscious alienation. The trial court expressly rejected this aspect of his analysis and found that no alienation had taken place. Mr. LaMusga, however, continues to press alienation theory in this Court. Without an opportunity for consideration in the trial courts, it would be premature for this Court to give parental alienation theories its imprimatur. Indeed, given the deficiencies of the doctrines, it would be an extremely unfortunate mistake. 117

Page 40, note 116, the two sentences following the website citation are corrected as follows: The first appendix to which reference is made is Appendix C (not Appendix B) and the second is Appendix D (not Appendix C).

Page 46, note 127, the second sentence, is corrected to read: *See also* BELDEN

RUSSONELLO & STEWART AND RESEARCH/STRATEGY/MANAGEMENT, AARP, IN THE MIDDLE: A REPORT ON THE MULTICULTURAL BOOMERS COPING WITH FAMILY AND AGING ISSUES 58 (2001), <http://www.aarp.org/inthemiddle/pdf/inthemiddle.pdf> (21% of caregivers for the elderly report that where they live is determined by the caretaking situation).

Page 55, last full sentence, is corrected to read: Or, given his 1996 and February 2001 advice that the parties learn to “parallel parent” (i.e., attempt to parent to the best of their abilities as individuals and avoid personal interactions to the extent feasible), again one would have anticipated a favorable comment on Ms. Navarro’s use of letters and faxes. A new footnote, 156a, is inserted following this sentence to read: AA 394 (1996); 404-405 (February 2001).

Page 56, sentence following call to footnote 157 is corrected to read: He interviewed only the parents and made a “collateral” telephone call to Mr. Tuggle, yet opined on the children’s possible reactions to relocation or a custody transfer.

Page 56, footnote 158 is corrected to read: *Compare* PHILIP M. STAHL, COMPLEX ISSUES IN CHILD CUSTODY EVALUATIONS 79, 82 (1999) *with* AA 407-16 (nevertheless commenting that “[n]ow that the children are older, it’s likely that they will be able to ‘hold onto’ their relationship with their dad, even with a move . . .”).

Page 57, footnote 161 is corrected by adding a citation at the end of the note to read: *See Hawwa.*

Page 58 is corrected as follows: The second blocked paragraph, which begins with the words “[T]he developmental effects,” is further block indented to signify that Ms. Shear’s article presents it as an indented block direct quotation of Mavis Hetherington’s work.

Page 58, footnote 163 is corrected as follows: The final sentence in the block quotation that is set forth in the footnote is corrected to read, “*It is the quality of the relationship between the non-residential parent and child rather than sheer frequency of visitation that is most important.*”

Page 62, the sentence preceding the call to footnote 171 is corrected to read: The facts reveal the mother had approximately \$175,000 as her share in the equity of her current home and planned to be unemployed for some time in order to care for her infant.

Page 63, a new footnote, 172a, is inserted following the fifth sentence of the first full paragraph, to read: *See Biallas.*

Page 68, the third full paragraph is corrected to read: The trial officer in Wright also indicated her view that *Montenegro* and *In re Marriage of McGinnis*, 7 Cal. App. 4th 473 (2d Dist. 1992), as amended by 8 Cal. App. 4th 144A (2d Dist. 1992), bar a custodial parent with a temporary order from the § 7501 presumption favoring her relocation decision. This theory, which is being pressed in other cases as well, is incorrect in every regard. First, *Montenegro*, as discussed above, is irrelevant – both this case and *Burgess* (where § 7501 was applied to permit relocation) involved expressly temporary orders. In other words, the temporary sole custody order in this case provides no basis for distinguishing it from *Burgess*. Second, *McGinnis*, which was a pre-*Burgess* joint custody case, dealt with a father’s right to a hearing prior to relocation. As such, it was clearly irrelevant to *Burgess*, which involved a temporary sole custody order. It is equally irrelevant to the temporary sole custody order in this case and to other temporary sole custody relocation cases.

Page 70, the final parenthetical in footnote 183 (which is carried over from page 69), is corrected to read: (chiropractor whose California practice has failed, but holds job offers in Pennsylvania, where her elderly mother lives)

Page 70, the second full paragraph, fourth sentence is corrected to read: Further, it may well be that he really does not want custody – he has never actually sought custody.

Page 70, a new note, 183a, is inserted following the corrected fourth sentence to read: Although his attorney filed a memorandum of points and authorities on March 12, 2001 stating that custody “should” be transferred to Mr. LaMusga if Ms. Navarro relocates, neither it nor the responsive declaration to which it is attached requests primary custody. Instead, declaration merely requests visitation according to Dr. Stahl’s March 2001 evaluation or a “focused” evaluation on the relocation request itself. AA 137-139,140, 143.

Page 72, note 188 is corrected to read: Wallerstein email, *supra* note 184.

Pages 73-74, the text following the call to note 190 until the end of this section of the brief are corrected to read: Although custody itself was not at issue, the opinion reports several troubling matters. The custodial father had been arrested for beating his mother, who provided care for the child, and conceded violence against the child’s mother. She had twice snatched the child (once to Mexico and once to Hawaii), yet there was no indication that she had been criminally prosecuted for the first abduction; she plead guilty to a misdemeanor as to the second. The woman lived more than 100 miles from the father, yet the custody evaluator was concerned that the father would disrupt her ability to visit if he moved from San Diego to Las Vegas. The woman was a professional – a veterinarian –

PROOF OF SERVICE

THE UNDERSIGNED STATES:

I, Carol S. Bruch, am a citizen of the United States of America. I am over the age of 18 years and am not a party to the above-entitled action. On June 5, 2003, I served copies of the following document:

NOTICE OF ERRATA RE: BRIEF OF HERMA KAY HILL ET. AL., *AMICI CURIAE* IN THE CASE OF *IN RE MARRIAGE OF LAMUSGA S107355*

on the parties in this action as follows:

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2915 McClure St.
Oakland, CA 94609
Attorney for Respondent, Gary LaMusga

Susan Poston Navarro (LaMusga)
2160 Armstrong Dr.
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Judge Terence L. Bruiniers
Contra Costa County Superior Court
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Court of Appeal
First Appellate District
350 McAllister St.
San Francisco, CA 94102

Herma Hill Kay, et. al., as Amici Curiae

XX (BY MAIL) I placed a true copy of the aforementioned document(s) in a sealed envelope with postage fully prepaid and addressed as indicated above in a United States Post Office Box at Davis, California.

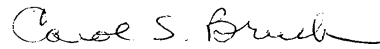
I declare under penalty of perjury that the foregoing is true and correct. Executed on June 5, 2003, at Davis, California.


Carol S. Bruch

so one would assume she could afford to travel to the short distance from the Los Angeles area to Las Vegas to visit her child.¹⁹¹ It is, of course, difficult to read between the lines of an appellate report that was not directly considering the custody issue. One is nonetheless left wondering if the relative tolerance of her abductions, the distance of her home from her child and the evaluator's concern that the father would prevent her from exercising custody in Las Vegas may all stem from the father's conceded violent behavior. We find it troubling that two of the three custodial-father relocation cases (*LaGuardia* and *Leitke*) involve out-of-control fathers who have been awarded custody of young children by the trial courts.

Dated: June 5, 2003

Respectfully submitted,



CAROL S. BRUCH (SBN 56403)

Attorney for *Amici Curiae*,
Herma Hill Kay *et al.*

¹⁹¹ Indeed, she had greater funds than she would have if she were paying her child support obligations.