

CALIFORNIA COURT OF APPEAL, SECOND APPELLATE DISTRICT,
DIVISION SIX

In re Marriage of R.K. and G.K.

2d Civ. No. B334571 · No. B334571 · Decided August 18, 2025

SUMMARY

The California Court of Appeal affirmed an order awarding the mother sole physical custody of the parties’ child while maintaining joint legal custody. The court held that the father forfeited his due process and sibling-separation arguments by failing to raise them in the trial court and, alternatively, concluded that the record did not establish a due process violation. The court also denied rehearing and modified its published opinion without changing the judgment.

CASE DETAILS

COURT	California Court of Appeal, Second Appellate District, Division Six
WRITING FOR THE COURT	YEGAN, J.; GILBERT, P. J.; BALODANO, J.
JURISDICTION	California Court of Appeal, Second Appellate District, Division Six
DECIDED	August 18, 2025
DOCKET	B334571
DISPOSITION	affirmed
PROCEDURAL POSTURE	Father appealed a postjudgment child-custody order awarding Mother sole physical custody of their daughter. The Court of Appeal affirmed.
STANDARD OF REVIEW	Due process is reviewed de novo. Custody modification is reviewed under the changed-circumstance rule and the trial court's best-interest determination is reviewed for abuse of discretion, subject to the presumption that factual findings are supported by the evidence when the appellate record is inadequate.
PRECEDENTIAL VALUE	Published and certified for publication
PARTIES	R.K. v. G.K.

TOPICS

- child custody
- family law procedure
- preservation of error
- procedural due process
- appellate procedure

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether Father forfeited his due-process challenge by failing to object to the trial court's tentative custody ruling.
2. Whether the custody modification violated due process because Father lacked notice that Mother might receive sole physical custody or that the child might return to San Luis Obispo County.
3. Whether the trial court was required to conduct a separate move-away evidentiary hearing before awarding Mother sole physical custody.
4. Whether Father forfeited, and alternatively established, an error based on the alleged separation of the child from her siblings.

HOLDINGS

1. A party who fails to object to deficiencies or omissions in a tentative custody decision forfeits the right to raise those issues on appeal.
2. Father was not denied due process because Mother's request placed physical custody at issue, Father appeared and opposed the request at a three-day evidentiary hearing, and he had an opportunity to contest Mother's entitlement to physical custody.
3. The custody modification was not a move-away case requiring a separate evidentiary hearing because Mother did not move; Father had relocated with the child, and the custody proceeding itself placed the child's residence and physical custody at issue.
4. Father forfeited his claim that the custody order improperly separated the child from her siblings by failing to raise the issue in response to the tentative decision; in addition, the record did not establish that compelling circumstances were required for separation from the stepsiblings or half-sibling.

KEY QUOTATIONS

“The appellant must affirmatively show error by an adequate record. [Citation.]” (at 6)

“It is unfair to the trial judge and the adverse party to attempt to take advantage of an alleged error or omission on appeal when the error or omission could have been, but was not, brought to the attention of the trial court in the first instance.” (at 7)

“It is a fundamental concept of due process that a judgment against a defendant cannot be entered unless he was given proper notice and an opportunity to defend.” (at 8)

“But this is not a move-away case. Mother has not decided to move to a different location.” (at 10)

FACTUAL BACKGROUND

The parties' 2021 dissolution judgment awarded Father sole legal and sole physical custody of their daughter, with Mother receiving visitation. Mother later requested a normalized joint legal and joint physical custody arrangement, while Father had relocated with the child from San Luis Obispo County to El Dorado County. After

a three-day evidentiary hearing, the trial court found that Father had repeatedly violated court orders, interfered with Mother's visitation and communications, acted as a gatekeeper, lacked credibility, and was unable or unwilling to facilitate Mother's continuing contact. The court awarded Mother sole physical custody while continuing joint legal custody.

PROCEDURAL HISTORY

The parties' 2021 dissolution judgment awarded Father sole legal and sole physical custody and Mother visitation. Mother later sought modification to joint legal and joint physical custody. After a three-day evidentiary hearing, the trial court issued a tentative ruling and then entered a January 3, 2024 order awarding Mother sole physical custody and continuing joint legal custody. Father did not object to the tentative ruling or raise his due-process and sibling-separation arguments in the trial court. The Court of Appeal affirmed and denied rehearing; the opinion was modified without changing the judgment.

DISPOSITION

affirmed

CASES CITED

- In re Marriage of Greenberg (2011) 194 Cal.App.4th 1095, 1099
- In re Marriage of Brown & Yana (2006) 37 Cal.4th 947, 956
- Denham v. Superior Court (1970) 2 Cal.3d 557, 564
- FLIR Systems, Inc. v. Parrish (2009) 174 Cal.App.4th 1270, 1284
- Porterville Citizens for Responsible Hillside Development v. City of Porterville (2007) 157 Cal.App.4th 885, 912
- Bettencourt v. City and County of San Francisco (2007) 146 Cal.App.4th 1090, 1101
- Phillips v. Campbell (2016) 2 Cal.App.5th 844, 848
- In re Marriage of O'Connell (1992) 8 Cal.App.4th 565, 574
- In re Marriage of Siegel (2015) 239 Cal.App.4th 944, 953
- Niko v. Foreman (2006) 144 Cal.App.4th 344, 363
- In re Marriage of Williams (2001) 88 Cal.App.4th 808, 809
- J.M. v. G.H. (2014) 228 Cal.App.4th 925, 939