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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FOUR

In re T.T. et al., Persons Coming Under the  
Juvenile Court Law.

HUMBOLDT COUNTY DEPARTMENT  
OF HEALTH & HUMAN SERVICES,

Plaintiff and Respondent,

v.

C.T.,

Defendant and Appellant.

A134923

(Humboldt County Super. Ct. Nos.  
JV0900711 and JV0900712)

In this appeal, C.T. (referred to as Father) contends that the juvenile court abused its discretion in ordering that his visitation with his daughter, T.T. and son, C.T., be supervised, and that the evidence did not support the juvenile court's finding that it would be detrimental to place T.T. with him. We shall affirm the orders.

**I. BACKGROUND**

We recently decided a related case, *In re Tamara T.* (July 19, 2012, A132508) [nonpub. opn.] (*Tamara T.*), and contemporaneously with this decision decide a second related case, *In re C.T.* (A134153) (*C.T.*). In those appeals, we considered challenges to earlier rulings in these dependency proceedings. We will not repeat the "Background" portions of those opinions, but rather incorporate them by reference. We have taken judicial notice of the records in those appeals.

As we explained in our earlier opinions, T.T. and C.T. are the two oldest of the six children of A.B. (Mother). Father is the father of T.T. and C.T., but not of Mother's four younger children. Father did not live with Mother or the children.

The juvenile court took jurisdiction of T.T. on June 14, 2010, and of C.T. on August 25, 2010. The basis for jurisdiction is laid out in our opinion in *Tamara T.* At the times relevant to this appeal, T.T. was in foster care, and C.T. was living with his maternal grandmother (Grandmother). As we explain in *C.T.*, on November 29, 2011, at Mother's request, and over Father's objection, the juvenile court ordered a guardianship for C.T., with Grandmother as guardian. At the same time, the court ordered visitation between C.T. and Father a minimum of two times a week, to be unsupervised at the discretion of the social worker. Father was ordered to be clean and sober and refrain from drinking alcohol both during and for 24 hours before visits.

On December 8, 2011, the Humboldt County Department of Health and Human Services (the Department) filed a "Request to Change Court Order" in C.T.'s case pursuant to Welfare and Institutions Code<sup>1</sup> section 388. Rather than unsupervised visits, the Department asked that Father have two supervised visits a week, as long as he was sober, and that the visits could become unsupervised at the discretion of the social worker in consultation with the children's counsel. The request was based on an incident that took place on November 29, 2011, the afternoon Grandmother was appointed C.T.'s guardian. According to a supporting report, when the social worker arrived for court that day, she saw Father sitting with C.T. Father's eyes were red, and he smelled strongly of marijuana. After the afternoon session, the social worker saw C.T. speaking loudly and crying. He told her he did not want to live with Grandmother because she was "mean" and would not let him go with Father. Father said C.T. did not have to go with Grandmother and that Father had visitation rights. Grandmother told the social worker she had let C.T. go with Father after the morning session, and that when they returned, Father "reeked" of marijuana. She said she was not allowing C.T. to visit with Father

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<sup>1</sup> All further statutory references are to the Welfare and Institutions Code.

after the afternoon session because the family was returning home. Outside, C.T. refused to go with Grandmother. He was crying loudly. Two social workers summoned sheriff's deputies to intervene, but Father refused a deputy's request to leave. A social worker asked Father to leave, but he refused, saying C.T. did not have to go with Grandmother. He said he would be working 150 miles away and did not have a car, so he would not see the children until Christmas, which upset C.T. more. C.T.'s counsel persuaded him to get into the car with Grandmother, as Father stood nearby and encouraged his children to fight for their rights. Father's behavior during the incident was "argumentative, loud, disagreeable, and uncooperative."

Meanwhile, T.T.'s case was proceeding. T.T. was still in foster care. The report for T.T.'s 18-month review hearing discussed the November 29, 2011 incident, and stated that Father had told both C.T. and T.T. they did not have to listen to Grandmother, Mother, or the social workers, that he had yelled and escalated the situation, and that he had smelled of marijuana. The Department recommended that Father's visits with T.T. be supervised, to become unsupervised at the discretion of the social worker in consultation with T.T.'s attorney. At a January 24, 2012, review hearing, the juvenile court found it would be detrimental to place T.T. with the non-custodial parent.

A hearing on the requests for supervised visitation with T.T. and C.T. took place on January 25, 2012. Counsel for T.T. and C.T. expressed the children's wish to continue to have unsupervised visits with Father. According to their counsel, neither child had any concerns about their visits with Father, and T.T. preferred to have the greater flexibility of unsupervised visits. Despite the children's wishes, however, their counsel supported the Department's request for supervised visitation.

The juvenile court found Father's actions on the date of the incident were detrimental to both children, and that his "inability to follow the directions of the guardian, the social worker, law enforcement or security folks does require that the Court impose supervision at this time." The court accordingly granted the Department's requests for supervised visitation in both children's cases.

Father appealed the juvenile court's January 24 and January 25, 2012, orders.

## II. DISCUSSION

### A. Supervised Visitation

Father contends the juvenile court abused its discretion in ordering his visitation with both children to be supervised. We review an order setting visitation terms for abuse of discretion. (*Los Angeles County Dept. of Children & Family Services v. Superior Court* (2006) 145 Cal.App.4th 692, 699, fn. 6.) Likewise, we review a decision to modify a previously made order for abuse of discretion. (*In re Shirley K.* (2006) 140 Cal.App.4th 65, 71; *In re Michael B.* (1992) 8 Cal.App.4th 1698, 1704.)

There was no abuse of discretion here. There was evidence that on November 29, 2011, Father used marijuana during a visit with C.T., encouraged both children to disobey and disrespect both his guardian and the Department, and behaved in a manner that caused emotional distress, particularly to C.T. The juvenile court could reasonably conclude that Father could not be relied on during visits with his children to stay sober or to behave in a manner that was appropriate or responsive to their needs.

Father points to the juvenile court's statement that Father could regain unsupervised visitation if he followed the rules, and argues that the juvenile court improperly used the visitation order to secure his cooperation. (See *In re Henry V.* (2004) 119 Cal.App.4th 522, 525 [out-of-home placement not proper means of securing parental compliance with reunification efforts].) We reject this contention. The juvenile court was making the unremarkable point that if Father showed he could behave appropriately with the children, the Department might no longer need to supervise his visits with them.

Father also makes a convoluted argument based on the juvenile court's acknowledgement that he might refuse to participate in visits if those visits were supervised. According to Father, if he refused to participate in supervised visits with the children, his relationship with them would be eroded; therefore by ordering supervision to which he objected, the juvenile court was impermissibly endangering the parent-child relationship. (See *In re Hunter S.* (2006) 142 Cal.App.4th 1497, 1504 [lack of visitation would assure erosion and termination of parent-child relationship].) Father cites no

authority for the proposition that he may, in effect, override the juvenile court's judgment about the children's best interest by refusing to participate in supervised visitation or that he may then blame the court for endangering the parent-child relationship. Indeed, the proposition is manifestly self-defeating.

Grasping at straws, Father also argues the smell of marijuana did not show he had actually been *smoking* marijuana, but rather that he might have been near someone else who was using it, or might have been wearing clothes in which he had previously been smoking marijuana. The strong smell and Father's red eyes would support a conclusion he was not sober during his visit with C.T.—which took place in the break between the morning and court sessions. In any case, his behavior after the afternoon session would itself be sufficient to support the supervision order.

The juvenile court did not abuse its discretion in ordering supervised visitation.

### **B. Detriment Finding**

Father contends the evidence does not support the juvenile court's finding that it would be detrimental to place T.T. in his custody. We disagree. In *Tamara T.*, we discussed the evidence that in 2010, Father had police contacts for public intoxication, violating a domestic violence restraining order, and being disorderly at Mother's house, that he would come to Mother's house “ ‘reeking of alcohol and belligerent,’ ” and that T.T. had reported that Father smoked marijuana around her and C.T.<sup>2</sup> (*Tamara T.*, *supra*, A132508.) He did not engage in services for anger management and substance abuse. At the time the court made the detriment finding at issue here, it had before it evidence of Father's behavior during the November 29, 2011, incident—evidence that we have already ruled supports a conclusion that he could not be relied on to stay sober or behave appropriately when with his children. In the circumstances, the juvenile court could properly conclude it would be detrimental to place T.T. with Father.<sup>3</sup>

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<sup>2</sup> At a December, 2010, disposition hearing, the juvenile court found by clear and convincing evidence that it would be detrimental to place T.T. with the noncustodial parent.

<sup>3</sup> We deny Father's request that we direct further proceedings to be heard by a different judge. (Code Civ. Proc., § 170.1.)

**III. DISPOSITION**

The orders appealed from are affirmed.

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RIVERA, J.

We concur:

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REARDON, ACTING P. J.

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SEPULVEDA, J. \*

\* Retired Associate Justice of the Court of Appeal, First Appellate District, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.