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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION THREE

In re N.C. et al., a Person Coming Under  
the Juvenile Court Law.

DEL NORTE COUNTY DEPARTMENT  
OF HEALTH AND HUMAN SERVICES,

Plaintiff and Respondent,

v.

J.B.,

Defendant and Appellant;

B.B.,

Appellant;

Y.B.,

Appellant.

A141406

(Del Norte County  
Super. Ct. Nos. JVSQ13-6017,  
JVSQ13-6017)

This is the fourth of five appeals in these dependencies. J.B. (Mother), mother of N.C. and M.C., born in January 2007 (the Twins), B.B. (Maternal Grandfather) and Y.B. (Maternal Grandmother), appeal from orders made at a February 28, 2014 interim review hearing. We have previously ruled on Mother's appeals from orders at: the April 2013 disposition (*In re N.C.* (May 5, 2014, A138503) [nonpub. opn.] (*N.C. I*)); the October 2013 six-month review (*In re N.C.* (June 24, 2014, A140027) [nonpub. opn.] (*N.C. II*));

and a November 2013 interim review (*In re N.C.* (July 28, 2014, A140372) [nonpub. opn.] (*N.C. III*)).<sup>1</sup>

At the February 2014 interim review, the court approved revised case plans for Mother that required her to participate in psychological counseling and restricted her visitation based on the report from psychologist Dr. Jacqueline Singer we discussed in *N.C. III*. The Maternal Grandparents' requests for de facto parent status in the Twins' cases were denied. Mother and Maternal Grandparents contend that the court made multiple errors at the interim review that adversely affected their interests in the cases. We conclude that their arguments lack merit and affirm.

## **I. MOTHER'S APPEAL**

### **A. General Background**

Our opinion in *N.C. I* concisely described the origins of this case. "The Twins are subjects of a custody dispute in marital dissolution proceedings between Mother and Father. Mother accuses Father of sexually molesting the Twins, and at one point she absconded with them. The court determined in these dependencies that the Twins would be safe with Father pending further investigation into the family's circumstances and the allegations against him."

The Twins remain in Father's custody. Mother's visitation with the Twins and possible custody of them has been the focus of these proceedings since the dispositional orders were entered.

### **B. Background**

The court appointed special advocate (CASA) report for the interim review recommended that the Twins continue to reside with D.C. (Father), and that Mother continue to receive reunification services and supervised visitation. Father was providing "a stable and structured home that is meeting the girls' daily needs." Mother was putting "extensive efforts" into her visits with the Twins, and the visits were "very important to the girls." However, "[o]n two occasions CASA had shown up to observe visits [but] due

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<sup>1</sup>We take judicial notice of the records, briefs, and opinions in these other cases.

to [Mother's] tardiness the visits were cancelled. According to the social worker, [Mother] has missed a total of 6 days of visitation 11/22, 11/25, 12/4, 12/13, 12/16, and 1/7 due to being late to scheduled visits and the visits being cancelled." The report concluded:

"It is CASA's concern, since being appointed in this case that [Mother] has not overcome the behavior issues that brought this case to the Court's attention in the first place. Although there have been some improvements and it's very clear to CASA that [Mother] loves her children very deeply, she continues to blame or accuse others. CASA has observed a pattern with [Mother]; blames her Attorneys, Social Services, Crescent City Politicians, Law Enforcement, counseling staff, as well as CASA for such things as 'Not doing their Job,' 'lying,' 'glaring at me,' and that there is some type of 'conspiracy' against her for not regaining custody of her children. . . . CASA continues to be concerned for the emotional well-being of the girls due to [Mother's] continued pattern of blame and not taking responsibility for her own actions."

The Department recommended adoption of a modified case plan based on Dr. Singer's report, which, among other things, recommended against granting Mother custody of the Twins because of "concerns about possible abduction." The plan required Mother to "identify a therapist whom she can see on a weekly basis who can help her understand the safety concerns as delineated in Dr. Singer's report. [Mother] will be responsible for the cost should she choose to go outside of County Mental Health." The plan required Mother to have "consistent" visitation with the Twins, and the report "acknowledge[d] that [Mother] has followed the visitation agreement by arriving fifteen minutes early and not cancelling any visit in the last month." The provisions for visitation stated: "Supervised visits at the Department [ ]5 hrs/wk," and "[Mother] will be at the visitation location fifteen (15) minutes prior to start of a visit or it will be cancelled."

Mother filed a report alleging that the Department was "focus[ed] on punishment as opposed to rehabilitation." The report recounted an incident during her visit with the Twins on their birthday. While Mother was out of the room, M.C. answered a call from

Maternal Grandfather to Mother's cell phone. "The Department and Social Worker decided to punish [Mother] for [M.C.] answering her cell phone and saying 'hello' to her grandfather. The birthday incident led the Department and Social Worker Ward to unilaterally decide to change the location of the visitations back to the tiny austere room at the [Department] and also to change the number of hours of visitation per week back to 5 hours instead of the court ordered 7-8." Mother's report requested that her visitation with the Twins "be increased to at least one overnight per week starting immediately," and "increased incrementally until [Mother] is receiving 3-4 overnights per week."

Counsel for the Twins filed a memorandum recommending, "with some trepidation," a "litmus test of an overnight visit with [Mother] perhaps once every two weeks or once a week." But counsel also stated that Mother and Maternal Grandmother were making false statements that the Twins were not consistently receiving counseling, and were subject to inappropriate influence by Father's family when they went to counseling sessions.

At the brief review hearing, the court adopted the revised case plan and expressed dissatisfaction with a lack of progress in the case. The court noted Mother's problems with keeping appointments, which included a missed appointment with her counsel as reflected in counsel's fee application, as well as the missed visits with the Twins. A CASA representative said "we don't feel comfortable with overnight visits," and the court said it would not alter Mother's visitation with the Twins unless the Department agreed to the change.

## B. Discussion

Mother first contends that if we accepted her argument in *N.C. III* that the court improperly delegated judicial power to determine visitation to the Department, then we must reverse decisions made by the court at the February hearing. Since we rejected her delegation argument in *N.C. III*, this argument fails.

Mother next contends, as she did in *N.C. III*, that the visitation order must be reversed because it was "illusory," and an improper delegation of authority to the Department, because it gave the Department "the power to cancel each and every visit"

and “provide Jennifer with zero visit time” if she did not arrive 15 minutes before the visits started.

We reject this argument for the same reasons stated in *N.C. III*. Since the plan approved by the court provided for five hours of “consistent” visitation per week, the court fulfilled its obligation to ensure that “regular” visitation (*In re S.H.* (2003) 111 Cal.App.4th 310, 317) was afforded at a “minimum level determined by the court itself” (*id.* at p. 313). The court did not give the Department “unlimited discretion to determine whether visitation is to occur.” (*In re Hunter S.* (2006) 142 Cal.App.4th 1497, 1505.) As we said in *N.C. III*, the condition that Mother arrive 15 minutes early to visits did not grant the Department discretion, it simply required Mother to be punctual and the Department to monitor Mother’s punctuality.

Mother next contends that the court erred by considering the missed appointment shown in her counsel’s billing records as evidence of what it called Mother’s “pattern of not showing up for things, not being on time.” The bill charged for one hour of time on January 2, 2014, for a “[m]eeting scheduled w/client (no show).” Mother’s objection is that the billing statement did not qualify as a sworn statement under Code of Civil Procedure section 2015.5 because it did not recite that it was submitted under penalty of perjury or identify its “place of execution.” (See *In re Zeth S.* (2003) 31 Cal.4th 396, 414, fn. 11 [“unsworn statements of counsel are not evidence”].) Mother goes so far as to claim that the court’s consideration of counsel’s bill violated her right to due process and “constituted judicial misconduct.”

However, the bill was far from the only evidence of Mother’s “pattern of not showing up for things, not being on time.” As the court observed at the hearing, she also missed visits with the Twins. As we observed in *N.C. III*, both Dr. Singer and Dr. Edwin Jenesky, another expert who psychologically assessed Mother, noted that she arrived late for appointments with them. She had what Dr. Jenesky called a “ ‘punctuality’ ” problem. Moreover, the court regarded the problem as merely a “another brick” in the “wall” of these cases. There is no reason to think that the outcome of the hearing would

have been different if the court had not considered counsel's bill. The evidentiary error, if any, was harmless under any standard.

Mother next contends that the modified case plan did not provide her with reasonable services. She argues that the plan improperly "denied a referral to and funding for" the psychotherapy required by her case plan. However, the plan stated that Mother would be responsible for finding and paying a therapist only if she chose to "go outside of County Mental Health." The plan could reasonably provide Mother free counseling from the county rather than a referral for counseling from a different source at county expense. Mother argues that the plan's stipulation that she arrive 15 minutes early for visits with the Twins was "unnecessarily punitive" and "impermissibly coercive," but the requirement was reasonable in light of Mother's punctuality problem previously discussed.

Mother contends finally that the court erred in denying her parents' requests for de facto parent status in the case, but she has no standing to make that argument. (*In re Daniel D.* (1994) 24 Cal.App.4th 1823, 1835-1836; see also *In re Crystal J.* (2001) 92 Cal.App.4th 186, 189-192.)

## **II. MATERNAL GRANDPARENTS' APPEAL**

### **A. Background**

As stated in *N.C. I*, the Department's report for the jurisdictional hearing "indicated that Mother had been charged with child abduction (Pen. Code, § 278) on March 10, 2012, and attached a February 3, 2012 protective custody warrant for the Twins, stating that they were last known to be in the company of Mother, and a February 8, 2012 Del Norte County "Wanted" flyer for the arrest of Mother and [Maternal Grandfather] for absconding with the Twins." *N.C. I* noted Maternal Grandfather's testimony at the jurisdictional hearing "that he and Mother took the Twins to Humboldt County in January 2012 because they could not arrange local SART [Sexual Assault Response Team] examinations for them," and that "Mother kept the Twins for several weeks thereafter before turning them over to law enforcement." The court also entertained comments and arguments from Maternal Grandfather at the hearing.

The Department's report for the dispositional hearing advised that on March 22, 2013, the court terminated Maternal Grandparents' visits with the Twins. The visitation monitor reported that when Maternal Grandmother participated she "dictates the visits often dominating [Mother's] opportunity to parent her children . . . ." The social worker further reported:

"[Maternal Grandfather] was respectful of the visitation rules and would leave after telling the girls good bye without incident; however, [Maternal Grandmother] would go back and forth between the girls, hugging and kissing, and saying good bye and how much she loved them until she had them worked up emotionally and they would cry. . . . [T]his was often a five to ten minute process that had to end and so [the social worker] took [Maternal Grandmother] aside and explained again the rules of visitation and how her behavior causes the children to be distressed. . . . [Maternal Grandmother] refuses to accept 'no' for an answer in regards to visits; as an example [Maternal Grandmother] was insistent on one occasion to see the girls for an additional fifteen minutes then she changed her request to five more minutes and then to just a hug and a kiss, to which [the social worker] consistently replied 'no.' [The social worker] told [Maternal Grandmother] 'you will not turn my visitation area into a three ring circus.' "

Another incident involving Maternal Grandmother occurred during Mother's March 28, 2013 visit with the Twins. Mother was given permission to take "a supervised walk outside the building with her daughters; however, she was first to go outside and tell her mother who was sitting in her car in the parking lot to leave. Once done, [a social worker] accompanied [Mother] and the girls outside. When they were almost back to the building, [the social worker] noticed [Maternal Grandmother] step outside of her car and start to walk towards them. [The social worker] told [Mother] no and she told her mother to go back. This encounter upset the girls as they saw their grandmother and wanted to go to her. Up until this week, they had been visiting with [Maternal Grandparents] for one hour each week."

The dispositional hearing ended with Maternal Grandmother berating the court for denying her and Maternal Grandfather visitation:

“[Maternal Grandmother]: I am very upset with everything that has gone on. It’s been extremely one-sided. I’d like to know why my husband and I, when we have not done anything wrong, and my daughter has been an extremely good mother that there was an investigation and it was extremely one-sided. . . . [¶] . . . Also besides the investigation, that my husband and I have been, . . . along with my daughter, have been the two people that have mainly raised those children. [¶] . . . I would like to know why it is that we were deprived of our visitation rights. And the children miss us terribly. They’re always asking why we can’t come.

“The Court: I know you’re not visiting with them. I know it makes the children sad. I’m deeply saddened by that. But it’s another layer of complication I can’t deal with, making it an extremely difficult, complex case. And the less—I have at the moment, the more likely we’re going to get a successful result. That’s all I can tell you.

“[Maternal Grandmother]: Why make the children suffer wanting to see their grandmother at every single visit, begging to have mother take them home with her because they do not want to be at daddy’s. This is from the children. You’re not hearing it.

“The Court: These are questions I can’t answer.

“[Maternal Grandmother]: But didn’t you make the judgment that we could not see them?

“The Court: Yes. So far, yes. I want to de complicate and de escalate the situation as much as I can.

“[Maternal Grandmother]: But I don’t do anything with the children.

“The Court: I know.

“[Maternal Grandmother]: My grandchildren need me. They ask for me. And you’re doing a lot of damage mentally to them by not allowing—you can ask any competent doctor that is a psychiatrist or doctor anywhere in the world and they will tell you denying a grandparent who has helped raise them from the time they were in the mother’s womb—

“The Court: You’re right. Just another reason why this is a difficult case and I’m deeply saddened by it.

“[Maternal Grandmother]: So you’re going to continue to damage the children mentally?

“The Court: If you want to put it that way.

“[Maternal Grandmother]: You should know this.

“The Court: Court is in recess.”

Maternal Grandfather participated in the June 28, 2013 review hearing we discussed in *N.C. II*. He told the court: “It appears that the county has sat on [its report for] this review for a period of time. [Mother] was just provided this. [¶] To suggest that we be in a position to comment on that, we haven’t even had a chance to read it.” The court responded: “I’m sorry. You’re not a party to the case. You’re here as an accommodation. You’re not entitled to the reports. If your daughter wants to let you read the report, that’s fine.” When the court expressed concerns that information about the case was not being kept confidential, Maternal Grandfather said, “I’d like to make you aware and put on the record that information, documents contained in the collection of sealed documents were released by the county to the *Sacramento Bee* newspaper, and this can be proven beyond any doubt.” When the court replied that it did not “want to spend any time with the dirty laundry,” and did not “believe for a minute that a county person disseminated this to a newspaper,” Maternal Grandfather said he “would be happy to present the evidence,” and the court said, “file anything you want to file, and I’ll look at it.”

In *N.C. II*, we discussed the Welfare and Institutions Code section 388 petition Mother filed before the six-month review, and the Department’s opposition to that petition. The opposition detailed Maternal Grandmother’s contacts with the Twins during their visits with Mother in contravention of the no-visitation order. “[Maternal Grandmother] comes to the Department frequently with her daughter. She and [Mother] have walked around the paternal grandmother’s truck . . . while the girls were still inside and have approached the truck and leaned inside to talk to the girls and [Mother] has

verbally dismissed [the paternal grandmother].” In another incident, “[Maternal Grandmother] was crouched down in the back seat of [Mother’s] car and the girls ran over to the car at which time, [Maternal Grandmother] popped up and began talking with the girls. The girls are aware this is not what is supposed to be happening and although they are happy to see their grandmother, they also know both she and their mother are not following rules and this appears to cause them distress.” Also, “[o]n a couple of occasions, [Maternal Grandmother] has been in the lobby so she can talk to the girls as they walk through going to their visit.”

At the six-month review, Maternal Grandmother again addressed the court at some length. She began her remarks by saying, “Your Honor, I’d like to be very respectful to you, but I don’t know how I can say this,” and the court responded, “Go ahead and say it. I’ve got a tough skin.” She said that statements about her in the reports were untrue, and told the court: “You have got a bad picture of what the true story is, and you don’t know what the history is of [Father].” She requested and received permission to file a report with “some honest, true investigation done.”

At the November 22, 2013 hearing reviewed in *N.C. III*, visitation between Mother and the Twins was, as our opinion noted, a central issue. When the CASA representative expressed concerns about visitation with Maternal Grandmother, the court said that it would not be changing the no-visitation order, but would be willing to consider the issue at a later date.

#### B. De Facto Parent Proceedings

On January 16, 2014, Maternal Grandparents filed requests for de facto parent status in the Twins’ cases.

In support of his request, Maternal Grandfather filed a declaration stating that he had been an integral part of the Twins’ lives from the time of their birth in January 2007 until March 2012, when they were removed from Mother’s custody. Mother and the Twins had lived with Maternal Grandparents for well over a year, and had previously lived within walking distance of Maternal Grandparents’ home. He was “a predominant male figure” in the Twins’ lives during those years and developed “a special bond with

them.” He detailed his activities with the Twins, including pre-school events, parades, picnics, visits to the zoo, walks in nature, and their first trip to the snow. He had been named guardian ad litem for the Twins in the federal lawsuit he and Maternal Grandmother filed against the county and a Department social worker who was assigned to the Twins’ cases, among others.

Maternal Grandmother filed a declaration stating: “I have loved and cared for [the Twins] almost as a second parent for most of their lives. I know their personalities, habits, moods and temperaments. I’m aware of their favorite foods, clothing preferences and have helped to develop their academic and religious guidelines as requested by [Mother].” She and Maternal Grandfather requested visitation with the Twins. She said that the criticisms of her behavior at past visits were unjustified.

Maternal Grandparents further supported their requests with declarations from individuals who had supervised their visits with the Twins before the dependency cases were filed. The declarations stated that the Twins had “a clear and unequivocal psychological bond to [Maternal Grandparents].”

The Department filed an opposition to the de facto parent requests, and the court gave the requests summary consideration at the February 28 interim review. At the outset of the hearing, the court said that it had read the documents submitted in connection with the requests, and that it was denying the requests because Maternal Grandparents did not satisfy the “statutory criteria.” When Maternal Grandfather said he wanted to present evidence and had subpoenaed witnesses for the hearing, the court told him it was denying the requests “based on what you filed . . . . [¶] You’re not entitled to call witnesses. You’re not entitled to a hearing. I’m not sure you’re entitled to be in the room, but I’ll ignore that for the moment. So the answer is no.”

### C. Discussion

Maternal Grandparents contend that the court’s refusal to hold an evidentiary hearing on their de facto parent requests was an abuse of discretion. However, the court was well familiar with Maternal Grandparents from the prior reports and hearings in the case. Maternal Grandparents lodged evidence in support of their requests, and the court

could reasonably decide to resolve the requests based on their written submissions. Even when de facto parent status is granted, the de facto parent's right to present evidence "depends on the relevant circumstances" (*In re A.F.* (2014) 227 Cal.App.4th 692, 700), and the court was not compelled to hold an evidentiary hearing under the circumstances here. In this case, as in *In re R.J.* (2008) 164 Cal.App.4th 219, 224, the court "did not abuse its discretion by summarily denying [the] request[s] for de facto parent status without an evidentiary hearing."

To the extent Maternal Grandparents can be taken to argue that denial of their requests was an abuse of discretion, that argument fails as well. (*In re D.R.* (2010) 185 Cal.App.4th 852, 864 [applying abuse of discretion review].) Even though the court mistakenly referred to "statutory" criteria in ruling on the request, the relevant criteria are well established in the case law. "Those considerations include whether (1) the child is 'psychologically bonded' to the adult; (2) the adult has assumed the role of a parent on a day-to-day basis for a substantial period of time; (3) the adult possesses information about the child unique from other participants in the process; (4) the adult has regularly attended juvenile court hearings; and (5) a future proceeding may result in an order permanently foreclosing any future contact with the adult." (*In re Patricia L.* (1992) 9 Cal.App.4th 61, 66–67; see also Cal. Rules of Court, rule 5.502 (10) [defining a "[d]e facto parent" as "a person who has been found by the court to have assumed, on a day-to-day basis, the role of parent, fulfilling both the child's physical and psychological needs for care and affection, and who has assumed that role for a substantial period"].) "The party seeking de facto parent status has the burden of proof by a preponderance of the evidence." (*In re Giovanni F.* (2010) 184 Cal.App.4th 594, 602.)

The record shows that Maternal Grandparents attended hearings in the Twins' cases, and we will assume for present purposes that Maternal Grandparents proved that the Twins were psychologically bonded to them, and that they had for a substantial time assumed a daily parental role in the Twins' lives. On the other hand, Maternal Grandparents were not facing any future proceeding that might permanently prevent them from seeing the Twins, and they did not show that they possessed any relevant

information about the Twins that was not also known to Mother. This last consideration is particularly important because the purpose of de facto parenthood is “to ensure that all legitimate views, evidence, and interests are considered in dispositional proceedings involving a dependent minor.” (*In re Kieshia E.* (1993) 6 Cal.4th 68, 76; see also *In re Bryan D.* (2011) 199 Cal.App.4th 127, 146 [noting that de facto parenthood “merely provides a way for the de facto parent to stay involved in the dependency process and provide information to the court”].) Thus, the court had reasonable grounds to deny the requests.

Maternal Grandparents argue that the court erroneously precluded them from participating in the review hearing. But they made no attempt to participate in the hearing after their de facto parent requests were denied. The court had permitted them to actively participate in prior hearings, and it is speculative to suggest that it would have prevented them from participating in this one if they had tried to do so.

Maternal Grandparents maintain that the court erred in denying their requests for visitation with the Twins. We disagree. For our purposes, we will accept Maternal Grandparents’ assertion that “[g]randparents are generally entitled to visit with dependent children unless the juvenile court has determined that the children’s best interest would not be served” by the visits. However, the court could credit the Department’s reports that disruptive behavior by the Maternal Grandmother during visits was upsetting to the Twins. The court thus had sufficient, reasonable grounds on which to find that visitation with Maternal Grandparents would not be in the Twins’ best interests.

### **III. DISPOSITION**

The orders at the February 28, 2014 interim review hearing are affirmed.

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Siggins, J.

We concur:

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McGuinness, P.J.

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Jenkins, J.