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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

In re BRIANNA H., a Person Coming
Under the Juvenile Court Law.

SAN DIEGO COUNTY HEALTH AND
HUMAN SERVICES AGENCY,

Plaintiff and Respondent,

v.

D.P.,

Defendant and Appellant.

D062209

(Super. Ct. No. NJ14387A)

APPEAL from an order of the Superior Court of San Diego County, Blaine K.

Bowman, Judge. Affirmed.

D.P. appeals following the six-month-review hearing in the dependency case of her daughter, Brianna H. D.P. contends the juvenile court abused its discretion by denying her unsupervised visits. D.P. also contends the finding that reasonable reunification services were provided is unsupported by substantial evidence. We affirm.

FACTUAL AND PROCEEDURAL BACKGROUND

In February 2011, the San Diego County Health and Human Services Agency (the Agency) filed a dependency petition for 10-year-old Brianna based on her exposure to domestic violence. The petition alleged Brianna's father, K.H., and D.P. (together, the parents) had a long history of escalating conflicts, and D.P. refused to accept voluntary services.¹ The court made a true finding on the petition and, without declaring Brianna a dependent, ordered her placed with D.P. under the Agency's supervision. The court ordered voluntary services and terminated jurisdiction.

Brianna was afraid D.P. would hurt her. Brianna spent much of her time with the maternal grandmother (the grandmother), with whom she felt safe. In July 2011, Brianna reported that D.P. had banged on the wall and "had a belt and yelled [at her]." Brianna said "I was crying and I couldn't talk" and "I couldn't breathe." D.P. continued to have contact with K.H., and told Brianna to lie about it. As a result, Brianna was reluctant to speak with the social worker.

On July 15, 2011, the Agency filed a new dependency petition adding an allegation that D.P. had not cooperated with voluntary services. The court ordered Brianna detained with the grandmother,² with voluntary services and supervised visits for D.P. On September 14, the Agency filed an amended petition alleging D.P. was still not cooperating with services. That day, Brianna began psychotherapy with Susan Swartz.

¹ The Agency also filed a petition for D.P.'s seven-year-old son, B.H., who is not a subject of this appeal.

² Brianna remained in the grandmother's home for the rest of the case.

On October 22, Swartz terminated therapy because she "was unable to get Brianna . . . to open-up" On October 27, the court made true findings on the amended petition, declared Brianna a dependent and ordered her removed from D.P.'s custody. The court ordered reunification services and supervised visits, and gave the social worker discretion to allow unsupervised and expanded visits with the concurrence of Brianna's counsel.

In December 2011, Brianna began in-home counseling with a new therapist. The therapist was often late and failed to appear for one appointment. As a result, she was unable to establish a rapport with Brianna. In January 2012, a psychological evaluator concluded D.P. was subject to "explosive outbursts" and needed 12 to 18 months of treatment to learn how to change her behavior.

On February 11, 2012, Brianna had an initial interview with therapist Evangeline Clark. On February 24, Brianna told social worker Anne Azemi she wanted to see D.P. more often, but complained the weekly, two-hour visits were too long and she felt bored. Brianna did not want to live with D.P. because D.P. had said that Brianna would not be allowed to see relatives. This scared Brianna. Brianna said D.P. did "not tell[] the truth" and Brianna did not "know if [D.P.] can change." When Azemi mentioned unsupervised visits, Brianna responded, "I don't want to because it feels uncomfortable not like when the visits are supervised. And I am nervous because of what is going to happen and worried that [D.P.] might do something not good." Brianna said the supervised visits went well, and Azemi agreed. D.P. and Brianna were affectionate with each other, and Brianna appeared sad when visits ended.

On March 3, 2012, Brianna had her first therapy session with Clark. On March 8, Azemi again mentioned unsupervised visits to Brianna. Azemi said she would be nearby during the visit. Brianna eventually agreed to an unsupervised, 20-minute visit. On March 9, Brianna and D.P. spent 30 minutes together at a visitation center, with no one else in the room. Brianna enjoyed the visit, but afterward said she was not ready for unsupervised visitation. After a similar visit on March 15, Brianna repeated she was not ready for unsupervised visits. She was uncomfortable being alone with D.P. and worried "something" would happen.

By April 11, 2012, Brianna had attended four therapy sessions with Clark, and had missed four sessions due to Girl Scout activities and transportation problems. Clark reported that at first, Brianna did not want to engage in the therapeutic process, but in the latest session, she "started to open up" and "explore her relationship with [D.P.]" Brianna did not want to reunify with D.P. and saw no need for therapy. Azemi said it was sufficient for Brianna to attend therapy every other week, but Clark said the grandmother "at times cannot even come for every two weeks due to other commitments." Azemi encouraged the grandmother to take Brianna to therapy consistently.

On April 26, 2012, the initial day of the six-month-review hearing, D.P.'s counsel requested a contested hearing on the issue of unsupervised visits. On May 18, during a supervised visit, Azemi raised the subject of unsupervised visits with Brianna and D.P. D.P. volunteered to pick up Brianna after school and asked her where she wanted to go. Brianna named a store. Azemi asked Brianna if she agreed with the plan. Brianna said yes. When Azemi spoke with Brianna privately, Brianna said she had changed her mind

and asked Azemi to pick her up for the visit.³ When Azemi asked Brianna the reason for the change, Brianna said, "I was not thinking."

On May 24, 2012, there was a 40-minute, unsupervised visit in the store. Afterward, Brianna said the visit was "kinda ok," then told Azemi, "I already told you the first time that I don't want to have unsupervised and now I'm doing it again and I'm telling you that I don't want any unsupervised visits." Brianna explained, "I am scared that when I am alone with my mom she will be the same person as she was before. She is good in front of other people but when we are alone she is different. I don't trust her." When Azemi asked what D.P. was like before, Brianna replied "she is mean and hurtful." Azemi said she would reconsider unsupervised visits after a few conjoint therapy sessions between Brianna and D.P. Brianna said "ok."

On May 24, 2012, Azemi held a team decision meeting with D.P., the grandmother and a maternal aunt (the aunt). D.P. had moved away from San Diego County, and the aunt said Brianna did not want to move away.⁴ The aunt was concerned that if D.P. reunified with Brianna, D.P. would prohibit contact between Brianna and maternal relatives. D.P. was concerned the relatives were hindering reunification. It was

³ D.P. incorrectly claims Brianna cancelled this visit.

⁴ D.P. claims the aunt said Brianna did not want to leave her friends and school. D.P. cites Azemi's report of the team decision meeting, which states Brianna has "already maintained stability with friends as well as school." The report does not attribute that statement to the aunt.

agreed that the aunt would transport Brianna to therapy, and D.P., the grandmother and the aunt would participate in family therapy.⁵

Clark scheduled a May 26, 2012, conjoint therapy session for Brianna and D.P. D.P. cancelled at the last minute, saying she did not feel well. Clark said D.P. was rude when she called to cancel. D.P. did not reschedule the appointment, and refused to participate in therapy with Clark. D.P. testified Clark was "combative" and "hostile," and had a conflict of interest because she was Brianna's therapist. D.P. was willing to attend a conjoint session with a different therapist, and planned to report Clark to the licensing board.

On May 29, 2012, D.P.'s therapist recommended deferring conjoint therapy until after reunification. The therapist said D.P. "appears to be gradually shifting from a virtual absence of awareness related to protective issues" and her empathy for Brianna was increasing. D.P. "continue[d] to view adult relatives as the main impediment to" reunification, continued to minimize the domestic violence and was "unwavering in characterizing herself as a protective parent."

On May 30, 2012, Clark reported: "Brianna . . . states that she is scared of [D.P.] because she is mean and yells at her all the time. [Brianna] says she is not able to talk to [D.P.] and that [D.P.] does not listen to her or anybody else [Brianna] stated . . . 'I am going to court to tell the judge that I do not want to ever live with [D.P.]' The grandmother and the aunt told Clark "[D.P.] is different in the presence of others."

⁵ D.P. and the aunt were "to explore family therapy." There is no evidence they did.

Beginning on June 1, 2012, Brianna cancelled three consecutive supervised visits. The first cancellation was due to mandatory dance practice. The second visit, on June 8, was cancelled because Brianna hit her head and did not feel well. On June 15, the last day of school, Brianna cancelled a third visit, saying she was tired. That day, Azemi conducted a Safety House exercise with Brianna. Brianna said she lived in her Safety House with the grandmother and B.H.; her safety network included her friends and aunts; and the people she did not feel safe with were D.P., K.H. "and bad people." Brianna repeated that she did not want to live with or have unsupervised visits with D.P.

At the June 19, 2012, six-month-review hearing, D.P. testified she wanted unsupervised visits lasting at least 30 minutes, even though Brianna did not want unsupervised visits. Over D.P.'s objection, the court admitted into evidence Brianna's letter to the court. The letter stated, "I don't feel like people are listening to me. I told my social worker I don't want to be alone with my mom and I don't want to live with my mom also I don't feel I should go to therapy. Even though I told my social worker I don't want to be alone with my mom I still have visits with my mom alone. I feel [uncomfortable] when I'm with my mom because I'm afraid she will hurt me. I love my mom but don't want to live with her because she pretends to act nice. She spanks me . . . when she gets mad and she gets mad a lot. I'm scared to be alone with her. I feel safe when I'm at my grandma's because my mom is not there and my grandma doesn't hurt me"

Azemi testified that 11-and-one-half-year-old Brianna was intelligent, articulate and mature. Brianna consistently expressed her fear of unsupervised contact and her distrust of D.P. Due to the distrust, it would be detrimental to Brianna's emotional well being to force further unsupervised contact. Azemi recommended visits remain supervised, and that the Agency retain its discretion to begin unsupervised visits. Azemi hoped conjoint therapy would help Brianna develop a trusting relationship with D.P.

The court made the following findings. Brianna's preference was not the sole factor to consider in deciding whether visits should be unsupervised. The Agency balanced Brianna's fears with D.P.'s wishes and offered reasonable visitation. Brianna was mature, smart and articulate. She was not trying to veto visits and her reasons were not spurious. Her fears were rational, and likely based on the abuse she had suffered. She "had quite a history with [D.P.], and those types of wounds do not heal overnight."⁶ Brianna "need[ed] more time to process the hurt and the pain and the scars that have resulted from the reasons this case was brought before the court." Everyone was trying to help Brianna become comfortable with unsupervised visits, but that goal had not been achieved. Azemi was credible, and her opinion that unsupervised visits were not in Brianna's best interests deserved great weight. Unsupervised visits had been unsuccessful. Pushing Brianna to proceed too quickly for her own comfort would jeopardize reunification. Forcing her to do something she did not want to do would not

⁶ The court noted the wounds had healed "more so for [B.H.]," but he was younger and "all kids are different." B.H. began unsupervised visits in March 2012 and the visits went well.

be in her best interests. D.P. had "done everything [she was] asked to do" and her "issues with [Clark could] be worked out." D.P. had been provided reasonable services.

The court continued Brianna's relative placement, found the current visitation schedule was reasonable and denied D.P.'s request for unsupervised visits. The court continued the social worker's discretion to lift the supervision requirement with the concurrence of Brianna's counsel. Addressing Brianna, the court said, "I just want you to know that we do want to move forward with unsupervised visits at some point I want you to continue to have an open mind and talk to your therapist about the possibility of going to unsupervised visits."

DISCUSSION

I.

The Court Did Not Abuse Its Discretion By Denying D.P. Unsupervised Visits

A.

Legal Framework

In making a visitation order, the juvenile court must consider the child's well-being and best interests (*In re Julie M.* (1999) 69 Cal.App.4th 41, 49-50), including "the possibility of adverse psychological consequences" to the child (*In re Danielle W.* (1989) 207 Cal.App.3d 1227, 1238-1239). The court may consider the child's wishes, although not as the sole factor. (See *In re Julie M.*, *supra*, at p. 51.) We review the juvenile court's visitation order for an abuse of discretion. (*In re Stephanie M.* (1994) 7 Cal.4th

295, 318-319; *In re Alexandria M.* (2007) 156 Cal.App.4th 1088, 1095.) We will not disturb the trial court's decision unless it is "arbitrary, capricious, or patently absurd" and "exceed[s] the bounds of reason. When two or more inferences can reasonably be deduced from the facts, the reviewing court has no authority to substitute its decision for that of the trial court."⁷ (*In re Stephanie M., supra*, at pp. 318-319.) "We do not reweigh the evidence, evaluate the credibility of witnesses, or resolve evidentiary conflicts." (*In re Dakota H.* (2005) 132 Cal.App.4th 212, 228.)

B.

Arguments and Analysis

D.P. contends the court abused its discretion by denying unsupervised visits. She makes the following arguments. Brianna's expressions of fear and cancellation of visits were manipulative. There was no evidence D.P. had emotionally harmed Brianna recently. The Agency had no concerns about Brianna's safety with D.P. B.H.'s unsupervised visits were successful. The court incorrectly characterized Brianna's unsupervised visits as unsuccessful. The court applied an incorrect legal standard: forcing Brianna to act in opposition to her wishes was against her best interests. The Agency's counsel's cross-examination of D.P. created an unsupported inference that D.P. would use corporal punishment to force Brianna to do something she did not wish to do. The court improperly delegated authority regarding the supervision requirement to Brianna, her attorney and the Agency.

⁷ Contrary to D.P.'s assertion, no showing of detriment was required, as the court did not deny visitation. (Cf. *In re Mark L.* (2001) 94 Cal.App.4th 573, 580-581.)

Many of D.P.'s arguments are contradicted by the court's credibility findings, which we will not second guess, and by the court's other reasonable findings. The court believed Brianna's fears were real, not a ploy to avoid visits. She was suffering emotionally from the abuse she suffered while in D.P.'s care, and needed more time to recover before unsupervised visits resumed. While unsupervised visits had worked well for B.H., they had not worked well for Brianna because she was afraid D.P. would hurt her. The court aptly noted that B.H.'s feelings and experiences were not consonant with Brianna's. Moreover, D.P. herself had caused a setback in the advancement to unsupervised visits by refusing to engage in conjoint therapy with Brianna's therapist.

D.P.'s argument regarding cross-examination is without merit. On direct examination, D.P. testified Brianna was "way too old for" corporal punishment. On cross-examination, the Agency's counsel asked D.P. about that testimony, and D.P. said "I don't believe in spanking." Counsel asked whether D.P. had used corporal punishment in the past. D.P. said no, aside from "tapping on the hand." Counsel then changed the line of questioning, asking whether Brianna had ever told D.P. of her discomfort with unsupervised visits. D.P.'s counsel made no objection, and nothing in this exchange was objectionable.

The court did not improperly delegate the authority to decide whether visits would continue to be supervised,⁸ allow Brianna's preference to be the sole deciding factor, or define her wishes as synonymous with her best interests. Rather, the court clarified that reunification was the goal; D.P.'s visitation rights were to be balanced with Brianna's emotional needs; and the supervision requirement would be lifted when Brianna's comfort level with D.P. increased. Azemi encouraged Brianna to consider unsupervised visits, and facilitated unsupervised contact twice at the visitation center and once in a store. D.P., of course, can advance the progress toward unsupervised visits by continuing in individual therapy, and participating in conjoint therapy.

II.

Substantial Evidence Supports The Finding That D.P. Was Provided Reasonable Reunification Services

A.

Legal Framework

In determining whether substantial evidence supports the finding that reasonable reunification services were provided, we "review[] the evidence in a light most favorable to the prevailing party and indulg[e] in all legitimate and reasonable inferences to uphold the court's ruling." (*Katie V. v. Superior Court* (2005) 130 Cal.App.4th 586, 598.) "The

⁸ D.P. cites inapposite authorities standing for the proposition that the court cannot delegate the power to decide whether visits will occur at all. (E.g., *In re Hunter S.* (2006) 142 Cal.App.4th 1497, 1505; *In re Jennifer G.* (1990) 221 Cal.App.3d 752, 756-757; *In re Donovan J.* (1997) 58 Cal.App.4th 1474, 1476; *In re Nicholas B.* (2001) 88 Cal.App.4th 1126, 1138-1139; *In re Kyle E.* (2010) 185 Cal.App.4th 1130, 1135-1136; *In re Julie M.*, *supra*, 69 Cal.App.4th at p. 44, 48-49, 51; *In re T.H.* (2010) 190 Cal.App.4th 1119, 1123; *In re S.H.* (2003) 111 Cal.App.4th 310, 317-319.)

standard is not whether the services provided were the best that might be provided in an ideal world, but rather whether the services were reasonable under the circumstances.' " (*Id.* at pp. 598-599, quoting *In re Misako R.* (1991) 2 Cal.App.4th 538, 547.)

B.

Arguments and Analysis

D.P. contends the reasonable services finding is unsupported by substantial evidence because the grandmother did not take Brianna to therapy consistently and the Agency did nothing. D.P. argues the court should have required the grandmother to take Brianna to therapy, or ordered the Agency to find alternative transportation. D.P. also argues Clark was unable to provide a full assessment because Brianna's therapy attendance was poor, and "[t]he only thing standing in the way of reunification . . . was . . . getting Brianna into . . . individual therapy."⁹

D.P.'s factual premises are incorrect. First, at the team decision meeting, the transportation problem was resolved with an agreement that the aunt would take Brianna to therapy. After the meeting, one appointment was rescheduled, and there is no evidence of any missed appointments. Second, although Brianna acceded to conjoint therapy, D.P. declined and her therapist recommended a deferral. In support of her argument that Clark was unable to provide an assessment, D.P. cites Clark's early April

⁹ D.P. also contends the court did not order a minimum number of visits and did not order that Brianna attend a minimum number of therapy appointments. At the hearing, D.P.'s counsel mentioned the cancelled visits but did not request a minimum number of visits or appointments. D.P. has thus forfeited her right to raise the issue on appeal.

2012 report, not her latest treatment update, written on May 30. Moreover, D.P.'s primary legal authority, *In re Alvin R.* (2003) 108 Cal.App.4th 962, is factually distinguishable. There, the father was unable to participate in conjoint counseling with his child, Alvin, because the social services department did not "effectuate timely individual counseling for Alvin" or "take timely steps necessary to have father and Alvin begin conjoint counseling."¹⁰ (*Id.* at p. 965.)

DISPOSITION

The order is affirmed.

IRION, J.

WE CONCUR:

McCONNELL, P. J.

McDONALD, J.

¹⁰ The juvenile court in *In re Alvin R.*, *supra*, 108 Cal.App.4th 962, stated it would consider conjoint counseling after Alvin attended eight individual therapy sessions. (*Id.* at. 966-967.) Alvin attended only five sessions in nine months. (*Id.* at. 966-968).