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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

In re DANA L., a Person Coming Under  
the Juvenile Court Law.

SAN DIEGO COUNTY HEALTH AND  
HUMAN SERVICES AGENCY,

Plaintiff and Respondent,

v.

DONALD L.,

Defendant and Appellant.

D062822

(Super. Ct. No. J517257B)

APPEAL from a judgment of the Superior Court of San Diego County, Laura J. Birkmeyer, Judge. Affirmed.

Donald L. appeals following the September 2012 12-month review hearing in the dependency case of his daughter, Dana L. Donald challenges the juvenile court's order denying him unsupervised and overnight visits. We affirm.

## BACKGROUND

In October 2008, the San Diego County Health and Human Services Agency (the Agency) filed a dependency petition for one-month-old Dana. The petition alleged Dana was exposed to domestic violence between Donald and mother Brenda L. (together, the parents),<sup>1</sup> and the parents drank alcohol to excess. The court made a true finding on the petition. Dana remained in foster care until July 2009, when she began a 60-day trial visit with the parents. In November, on the day the court terminated dependency jurisdiction, the Agency received a referral alleging further alcohol abuse and domestic violence. The Agency offered the parents voluntary services, but they refused to cooperate. The domestic violence continued and Donald, who was in the military, was placed in the brig.

Donald was released in April 2011 and the Agency filed a new petition for two-and-one-half-year-old Dana. The petition alleged Brenda had relapsed on alcohol and Donald had not protected Dana. Dana was detained and the court ordered supervised visits for Donald. A restraining order protected Brenda and Dana from Donald, with an exception for court-ordered visitation.

On June 2, 2011, the court made a true finding on the petition and ordered Dana placed out of home. The court gave the Agency discretion to allow unsupervised and expanded visits and a 60-day trial visit on certain conditions. On June 7, the court

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<sup>1</sup> Brenda does not appeal and we mention her only as necessary.

ordered supervised visits. In September, the court ordered unsupervised visits. In October, Donald left San Diego without notifying the Agency and was out of contact for almost three weeks. In November, after Donald returned, the court denied his request for unsupervised overnight visits and gave the Agency discretion to allow such visits with notice to Dana's counsel. After the November hearing, Donald violated the restraining order by approaching Brenda outside the courtroom. In December, Donald again left town. In January 2012, the court ordered Dana placed with Brenda. For about three weeks in February and March, Donald was away from San Diego and out of contact with the Agency. When he returned, he had unsupervised afternoon visits with Dana. On May 29, the court ordered overnight visits.

On May 31, 2012, Donald was more than one-half hour late in returning Dana to her day care facility after a visit. Brenda, who was there when Donald and Dana arrived around 6:05 or 6:10 p.m., believed Donald was under the influence of alcohol.

On June 1, 2012, social worker Dianna Lucas left Donald a voice mail message asking him to drug test that day. When Lucas retrieved her voice mail messages, she found a message Donald left at 4:13 a.m., saying he wished to cancel his visit by reason of "severe damage to my car I need to get it taken care of today." Donald's speech was slow and slurred. Lucas informed the day care facility that Donald's June 1 visit was cancelled. Later that morning, Donald called the day care facility and said he was on his way to pick up Dana. Lucas called Donald and mentioned his early morning voice mail message. Donald did not respond for some time, then said, "oh yeah." Lucas asked what had happened to Donald's car. Donald said, "I think I need a new engine. It's smoking

and blowing up." Donald said he had not taken the car in for repair. Lucas reminded Donald to drug test. Donald responded, "If I can get there." Lucas asked Donald how he would pick up Dana if he could not go drug test. Donald asked if Lucas knew the location of Donald's confidential address. Lucas said the address he had provided did not exist. Donald swore at Lucas.

Donald did not drug test on June 1, 2012,<sup>2</sup> and failed to appear for an individual therapy session that day. On June 4, the court temporarily suspended unsupervised visits and ordered Donald's visits supervised by the Agency or a professional supervisor. Donald failed to appear for a group therapy session on June 5, for supervised visits on June 7 and 8 and for another individual therapy session. On June 10, Donald left a voice mail message for Lucas, apologizing for swearing at her. On June 11, Donald left Lucas a voice mail message saying "I had a reaction to this medication that they gave me. . . . I haven't slept for a couple days. . . ."

Donald appeared for a visit on June 12, 2012, and the visit went well. On June 14, the court gave the Agency discretion to allow unsupervised visits in a public setting, with the advance concurrence of Dana's counsel. After the June 14 hearing, Donald told Lucas that on May 31, he mistakenly took two tablets of zolipdem tartrate, a sleep medication prescribed by his psychiatrist, Dr. John Keltner, rather than two tablets of oxycodone, prescribed by a nurse practitioner for back pain. Donald first said he took the zolipdem "right before I dropped Dana off," then said he took it when he picked her up. Donald

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<sup>2</sup> Donald eventually tested on July 9, 2012, with negative results.

denied drinking alcohol. He said he had blacked out and had no recollection of his telephone calls to Lucas and the day care facility. Lucas told Donald that she needed to speak to his doctors. Donald refused to sign a release, but said he would allow Lucas to talk with Dr. Keltner to a limited extent.

On July 30, 2012, Dr. Keltner told Lucas that Donald had stopped taking zolipdem. When Lucas asked if it were possible for someone to take zolipdem in the middle of the day and still be "blacked out" the next morning, Dr. Keltner replied, "that doesn't make a lot of sense to me."

In August 2012, Donald failed to appear for a visit and a drug test. He yelled and swore at Lucas during a telephone call and sent her an abusive e-mail. Donald told Lucas he had not slept for two days.

At the 12-month review hearing in September 2012, the court continued Dana's placement with Brenda. The court ordered that Donald's visits would remain supervised, and continued at the Agency's discretion. The court gave Donald "the benefit of the doubt" that he accidentally overdosed, but said it needed more information about his issues with prescription medications before allowing unsupervised visits. The court also cited Donald's unstable behavior; the services, visits and drug tests he missed; and his "anger issues," including the profanity he used toward Lucas.

#### THE AGENCY'S REQUEST FOR JUDICIAL NOTICE

The Agency requests judicial notice of the juvenile court's November 28, 2012, order awarding joint custody of Dana to the parents and sole legal custody to Brenda; allowing Donald unsupervised visits; and terminating jurisdiction. The order allows

Donald visits on Wednesdays and Fridays after school until 6:00 p.m., and on Saturdays from 9:00 a.m. to 1:00 p.m., provided he is not under the influence of a controlled substance or alcohol. The Agency argues the custody order renders moot Donald's contention of error in the denial of unsupervised visits.

The 12-month review order did not specify the number or length of Donald's visits, and it is unclear exactly how much visitation was occurring at the time of the hearing. Thus, Donald's contention regarding unsupervised daytime visits is not moot. We deny the request for judicial notice.

#### UNSUPERVISED AND OVERNIGHT VISITS

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). "No visitation order shall jeopardize the safety of the child." (§ 362.1, subd. (a)(1)(B).) We review a 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 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.' "<sup>3</sup> (*In re Stephanie M.*, at pp. 318-319.) "We do not reweigh the evidence, evaluate the credibility

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<sup>3</sup> Contrary to Donald'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.)

of witnesses, or resolve evidentiary conflicts." (*In re Dakota H.* (2005) 132 Cal.App.4th 212, 228.)

Donald has a long history of violence and substance abuse. His behavior scared Dana. Shortly before the hearing, Donald demonstrated an inability to control his anger on more than one occasion. He lost consciousness, apparently as a result of taking prescription medication, and missed visits and therapy sessions. Dana was only four years old. The court did not abuse its discretion in determining that denial of unsupervised and overnight visits was necessary to ensure her safety and well-being.

#### DISPOSITION

The judgment is affirmed.

NARES, Acting P.J.

WE CONCUR:

McDONALD, J.

IRION, J.