

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIFTH APPELLATE DISTRICT

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

STANISLAUS COUNTY COMMUNITY
SERVICES AGENCY,

Plaintiff and Respondent,

v.

S.T.,

Defendant and Appellant.

F070420

(Super. Ct. Nos. 517089, 517090,
517091)

OPINION

APPEAL from order of the Superior Court of Stanislaus County. Ann Q. Ameral,
Judge.

Konrad S. Lee, under appointment by the Court of Appeal, for Defendant and
Appellant.

John P. Doering, County Counsel, and Carrie M. Stephens, Deputy County
Counsel, for Plaintiff and Respondent.

S.T. (mother) appeals from the dependency court's juvenile custody and visitation order¹ terminating jurisdiction over her children, G., T. and D., granting mother sole legal and physical custody and allowing G.'s father, Emmanuel M., and T.'s father, Tomas M., (together fathers) visitation. Mother contends the juvenile court abused its discretion when it granted fathers visitation because no showing was made that either had remedied their offending behaviors. We conclude that the court's order does not constitute an abuse of discretion and therefore we affirm.

FACTUAL AND PROCEDURAL BACKGROUND

In March of 2013, mother came to the attention of the Sacramento Police Department when she and her three children, G., T., and D., then ages nine, five, and one-month respectively, were discovered at 1:00 a.m., after having been outside in 44-degree weather for approximately six hours. Mother told the officers her boyfriend, Emmanuel M., had threatened to kill her and the children. He had also taken mother's car keys, purse and money. Mother and Emmanuel M. had a long history of domestic violence, including violence in front of the children, dating back to 2003. Mother had resumed her relationship with Emmanuel M. after a seven-year break, thinking he was no longer a threat. The children were placed into protective custody.

Mother had a history of failing to protect her children from inappropriate men, including her relationship with Tomas M., who is Emmanuel M.'s brother. Tomas M. was a registered sex offender for sexual molestation of minors. Mother's ex-husband, Maurice K., had repeatedly punched mother in the face. G. reported being afraid of Emmanuel M., and did not want contact with him.²

¹ Judicial Council forms JV-200 (Custody Order – Juvenile – Final Judgment) and JV-205 (Visitation Order – Juvenile), sometimes referred to as an “exit order.”

² Neither Tomas M. nor Emmanuel M. is a party to this appeal. D.'s father is unknown.

Mother had several previous child welfare cases, including one in 2005-2006, during which mother was diagnosed with posttraumatic stress disorder, generalized anxiety disorder and avoidant, paranoid, and dependent personality traits and features. She was recommended to receive psychotropic medication.

Another dependency case occurred in San Joaquin County between 2008 and 2011, when mother insisted on marrying Tomas M., even after learning he had been convicted of molesting three children under the age of 10 and was restricted from contact with minors, including his own children, as a condition of probation. It is not clear how the issue was resolved, but the January 2011 custody orders from the San Joaquin County case terminating jurisdiction granted no visitation rights to Emmanuel M. for G. or to Tomas M. for T.

The report prepared in anticipation of jurisdiction/disposition from Sacramento County in the current case noted that an order against Tomas M., restraining him from contact with mother and the children, was set to expire August 10, 2014. The report also noted that Emmanuel M. had a 2004 conviction for inflicting corporal injury on a spouse, for which he received a three-year prison term.

On April 19, 2013, pursuant to a prejurisdiction motion by mother, the juvenile court returned all three children to mother's custody pending further hearings, as mother was in safe and stable housing for domestic violence victims and was participating in services. But on May 4, 2013, mother (while holding three-month-old D.) got into an altercation with a neighbor, who she assaulted with a bottle. An amended dependency petition was filed and the children were again detained in foster care.

At jurisdiction/disposition July 9, 2013, mother submitted on the petition and reports. Tomas M., who was not present, submitted through counsel, who stated that any visitation with T. would be a violation of the terms of Tomas M.'s probation/parole. Visitation with Tomas M. was denied due to his probation and Penal Code section 291 registrant status. Reunification services for Tomas M. were denied. Emmanuel M. did

not appear, and visitation between G. and Emmanuel M. was denied as “father has not come forward. If the father comes forward and is requesting visitation the social worker shall contact the Court clerk to have the matter placed on the court’s calendar.”

Reunification services were ordered for mother and Emmanuel M.

The report prepared for the six-month review stated that mother was homeless and living in various shelters. She had an active restraining order against Emmanuel M. The whereabouts of both fathers was unknown.

At the six-month review hearing in December of 2013, the juvenile court granted an additional six months of reunification services to mother, but terminated services to Emmanuel M. The juvenile court made no additional orders regarding visitation with the fathers.

The report prepared in anticipation of the 12-month review hearing stated that mother had completed her services despite moving around and being somewhat homeless. She attended domestic violence classes in Yolo County before moving to a facility in Stanislaus County.

Mother gave birth to a baby girl in May of 2014. A referral was made to Child Protective Services (CPS) in Stanislaus County, but the baby was not detained. Mother and baby were living in a shelter designed to assist families and children with CPS cases or domestic violence situations. The children began overnight visits with mother in April 2014 at the facility where mother was staying. She was reported to be doing well and participating in programs offered at the facility. The manager of the facility confirmed that mother and children could stay at the facility for up to two years. The social worker recommended that the children be returned to mother’s care under court-ordered supervision and that the case be transferred to Stanislaus County.

On June 20, 2014, the Sacramento County Juvenile Court returned the children to mother on the condition that she continue to participate in her case plan and not move from her current residence without permission from the social worker. A formal motion

for transfer to Stanislaus County was filed and granted in July of 2014, with a transfer-in hearing set for August of 2014.

At the transfer-in hearing, mother and children were present, but neither father appeared. The juvenile court accepted the transfer-in and ordered all prior orders remain in effect. The matter was set for a further transfer-in hearing in September of 2014.

Prior to the further transfer-in hearing, the Stanislaus County Community Services Agency (agency) filed a report recommending that sole legal and physical custody of all three children be given to mother with “reasonable visitation” to the fathers and that the case be dismissed. The report stated that, as of the end of June 2014, mother was no longer living in the domestic violence facility, but was in a “weekly” motel with the children. The social worker reported no immediate threats to the children and that mother did not appear to be interested in receiving nonmonetary forms of assistance or forming a therapeutic relationship with the agency. The social worker opined that additional family maintenance services would not be helpful. The report did not discuss either father at any length, but noted that there was a restraining order against Tomas M. that expired on August 14, 2014.

The Family Court Services evaluation worksheet submitted to the juvenile court with recommendations for custody orders stated that they were by “agreement of the parties,” but that the fathers were not present and the recommendations were made as to them “without prejudice.” The recommendation for visitation between Tomas M. and T. and between Emmanuel M. and G. was that it be “at the discretion” of mother under supervision and in physical presence of an adult to be designated by mother. The visits were to be once a month for two hours.

At the transfer-in hearing September 11, 2014, neither father was present. Mother was present and opposed the recommendation for fathers visitation. Counsel for mother stated that, although he had not been able to find it as yet, there was a prior court order from Sacramento County stating that there should be no contact between the children and

the fathers. Counsel asked that the orders “be enforced as far as the final custody orders, and the fathers not be granted visitation at all.” The juvenile court asked, “How do I do that when there isn’t any order?” Counsel stated that there should be such an order, but that it was a matter of “going through the file and finding it.”

County counsel explained that the recommended visitation order was intended to be a “forever exit order,” in contrast to the Sacramento County order which she thought was for a “term of probation or parole. In other words, it is not a forever thing.” County counsel agreed that, if there was to be any contact, it would have to be “highly supervised.”

The juvenile court then suggested that any visitation with Tomas M. be in a supervised setting “such as Sierra Vista,”³ rather than with an adult chosen by mother; that the visits be for only 50 minutes once a month; and any costs incurred be paid by father. Mother’s counsel noted a continued objection. The juvenile court acknowledged that Tomas M. would nevertheless have to comply with the terms of parole regardless of what the custody order said.

The juvenile court then ordered that, if Tomas M. came forward to ask for visitation, it would be “under the supervision and in the physical presence of Sierra Vista,” that he would have to attend Family Court Services orientation prior to any visitation, and that all costs connected to the visitation be borne by him. It removed from the suggested order the clause that visitation was at the discretion of mother. Visits were to be the first Friday of the month from 3:00 to 4:00 p.m.

³ It appears that the juvenile court is referring to Sierra Vista Child and Family Services, a nonprofit agency that provides help for abused, neglected and emotionally disturbed children and families in crisis in Stanislaus County. (<<http://www.sierravistacares.org/>>)

Mother's counsel then asked for the same terms for Emmanuel M., as he had a conviction for a violent felony and there was an active restraining order. The juvenile court agreed and made the order.⁴ Dependency jurisdiction was terminated.

DISCUSSION

Mother contends that the juvenile court abused its discretion in ordering visitation for fathers because both were dangerous and there was no showing that either had remedied their offending behaviors. Assuming mother has standing to make her claim, we address the issue and find no abuse of discretion.

In terminating jurisdiction over a dependent child, the juvenile court is empowered to make "exit orders" regarding custody and visitation. (Welf. & Inst. Code, §§ 364, subd. (c), 362.4; *In re Kenneth S., Jr.* (2008) 169 Cal.App.4th 1353, 1358.) "[I]n making exit orders, the juvenile court must look at the best interests of the child." (*In re John W.* (1996) 41 Cal.App.4th 961, 973.) The juvenile court is not limited by "any preferences or presumptions" in fashioning exit orders pursuant to Welfare and Institutions Code section 362.4. (*In re Nicholas H.* (2003) 112 Cal.App.4th 251, 268; *In re Jennifer R.* (1993) 14 Cal.App.4th 704, 712.) The court must be guided by the totality of the circumstances and issue orders that are in the child's best interests. (*In re Chantal S.* (1996) 13 Cal.4th 196, 201; *In re Roger S.* (1992) 4 Cal.App.4th 25, 30-31; *In re John W., supra*, at p. 965 [exit orders determining custody and visitation must be made "in the context of the peculiar facts of the case before the court"].)

"We review an order setting visitation for abuse of discretion. [Citation.]" (*In re R.R.* (2010) 187 Cal.App.4th 1264, 1284; accord, *In re T.H.* (2010) 190 Cal.App.4th 1119, 1124.) "The appropriate test for abuse of discretion is whether the trial court exceeded the bounds of reason. When two or more inferences can reasonably be deduced

⁴ The order for Emmanuel M. does not remove the clause that visitation is at the discretion of mother.

from the facts, the reviewing court has no authority to substitute its decision for that of the trial court.”” (*In re Stephanie M.* (1994) 7 Cal.4th 295, 318-319.) We will not disturb a dependency court’s decision as an abuse of discretion unless the court exceeded the limits of legal discretion by making an arbitrary, capricious, or patently absurd determination. (*Id.* at p. 318.) Under the abuse of discretion standard, when two or more inferences reasonably can be deduced from the facts, the reviewing court has no authority to substitute its decision for that of the trial court. (*Ibid.*)

We agree with both parties that, on the facts of this case, the juvenile court would have been justified in denying visitation to both fathers altogether. The evidence in the record is that Emmanuel M. had a conviction and served time for spousal abuse, and there were reports of ongoing violence toward mother and the children. There was a restraining order placed against Emmanuel M. from having contact with mother and the children issued August 5, 2013, and set to expire August 5, 2016. Emmanuel M. did not appear at any of the dependency hearings and participated in no reunification services before they were terminated. As for Tomas M., he was a registered sex offender barred from having contact with any children as a condition of his parole. There was also a restraining order placed against him from having contact with mother and the children, set to expire in August of 2014. He also did not appear at any court hearings and was offered no reunification services.

During the hearing on the exit order, county counsel stressed the importance of making a visitation order that would, if needed, outlast any conditions of parole or probation for Tomas M. and address Emmanuel M.’s violent past. To that end, the juvenile court, aware that any “no contact” condition of probation, parole or a restraining order would supersede the visitation order, crafted a very restrictive visitation order that would require both fathers to demonstrate commitment to visitation by first coming forward, attending Family Court Services orientation prior to visits, and then paying for

and attending the visits at Sierra Vista. The visits would be brief in duration, 50 minutes once a month, and would be closely supervised by professionals.

We cannot say, on the facts of this case, that the juvenile court abused its discretion in making the visitation order.

DISPOSITION

The juvenile court's order determining custody and visitation is affirmed.

FRANSON, J.

WE CONCUR:

DETJEN, Acting P. J.

PEÑA, J.