

**NOT TO BE PUBLISHED IN OFFICIAL REPORTS**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 This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.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

FOURTH APPELLATE DISTRICT

DIVISION THREE

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

ORANGE COUNTY SOCIAL SERVICES  
AGENCY,

Plaintiff and Respondent,

v.

B.N.,

Defendant and Appellant.

G047400

(Super. Ct. Nos. DP021849 &  
DP021850)

O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, Cheryl L.  
Leininger, Judge. Affirmed.

Marcia F. Levine, under appointment by the Court of Appeal, for  
Defendant and Appellant.

Nicholas S. Chrisos, County Counsel, and Karen L. Christensen, Deputy County Counsel, for Plaintiff and Respondent.

No appearance for the Minors.

## **INTRODUCTION**

Orange County Social Services Agency (SSA) detained the minors Diane and Tiffany N. in October 2011, after their mother, B.N., called the police to prevent her from murdering Diane. The two girls found refuge with a family friend who, in a true Hollywood ending, turned out to be their father. Efforts to arrange consistent visitation between the girls and their mother proved fruitless, as B.N. simply could not keep from reverting to old habits of criticism and verbal abuse while she was with the children.

In August 2012, the juvenile court issued exit orders for the girls, giving legal custody to B.N. and the girls' father and physical custody to him. The court also ordered no visitation by B.N. for the present, although it observed that visitation might be possible in the future depending on the progress made in counseling, which was to be continued.

B.N. appeals from the portion of the exit order denying her visitation with the girls, an order we review for abuse of discretion. We find no abuse here. SSA presented a powerful case for keeping B.N. away from her daughters for the time being. Perhaps the juvenile court's optimism about a future relationship between mother and daughters will prove justified. For now, however, it appears to us that it correctly concluded the girls need all the reassurance they can get that the adults in their lives will protect them from abuse, not subject them to it.

## **FACTS**

On October 29, 2011, officers from the Costa Mesa Police Department responded to a 911 call from B.N. At that time, Diane was 13 years old, and Tiffany was 11. B.N. told the responding officers she had called them because she was afraid

that she would murder Diane. Earlier in the day, B.N. had checked Diane's grades on her school's Web site and discovered that Diane had received a bad grade on a test. As punishment, she put Diane in a closet for six hours. She also had Tiffany write a sign to be taped on the closet door: "I am an idiot. I failed a test." At the end of the six hours, B.N. let Diane out of the closet and, when she did not do as she was told, hit her several times with a four-foot stick. Tiffany witnessed the beating. B.N. then called the police, because, she said, she was afraid the neighbors would hear Diane screaming. She also said she was tired of being a mother and that she wanted to get on with her life without this responsibility.

The police arrested B.N. for child abuse and took the two girls into protective custody. They were placed with D.N., who at the time was regarded as a nonrelated family friend but whom subsequent paternity tests revealed was actually the father of both girls. They continue to reside with D.N.

The encounter with the police in October 2011 was not the first time B.N. had been investigated for child abuse. Although one report in 2002 was ruled inconclusive, abuse of Tiffany in 2009 was substantiated. Both girls told the investigating social worker that B.N. had hit them with a kitchen utensil. Tiffany told the officers in 2011 that her mother had stopped hitting her after this investigation, but that she continued to hit Diane.

The court granted B.N. one visit per week, monitored, while she was in jail and twice a week for two hours once she was out. SSA tried to arrange a visit soon after B.N. was released from custody, but the girls did not want to go. On November 21, 2011, Tiffany visited B.N., but Diane stayed away. The first thing B.N. said to Tiffany was to ask her why she was wearing a dirty T-shirt. The visit ended early, and B.N. told the social worker that she was unsure whether "it was worth it to go through" the process necessary to get the children back if they did not want to live with her any more.

About a week later, both girls visited B.N. Again B.N. criticized Tiffany, this time for her hair color and for getting two B's in school instead of A's. She accused Diane of lying about losing her glasses and generally seemed unable to engage in pleasant conversation appropriate to young teens. At the end of the visit, Diane told B.N. that she would not be at the next one. And, in fact, the children refused to attend the next few visits in early December. A visit in mid-December elicited an observation from the monitor that B.N. "tends to be negative or critical" with the children. A subsequent visit, which included a relative and her toddler son, resulted in B.N. spending most of the time playing with the toddler and largely ignoring the girls. A planned overnight visit at the relative's house on the day after Christmas ended in disaster, with B.N. criticizing D.N. (who was not present), yelling at the children, and making them cry. Diane wound up leaving the house without staying overnight, although Tiffany stayed. Not surprisingly, neither child wanted to visit B.N. again.

B.N. attended her first parenting class on January 9, 2012. The instructor reported to SSA that she seemed to have "no prior knowledge about effective parenting skills." She attended her first counseling session on the following day.

The children began receiving weekly in-home counseling in January 2012. By March, they were both making some progress, and Diane told her case worker that the therapist "helps me deal with my problems and my feelings toward my mother." By May, however, neither child had resolved the feelings generated by their mother's abuse. Tiffany told the therapist, "I don't feel safe and comfortable with my mom." Diane still had weeks to go before the therapist expected to see her symptoms (anxiety, withdrawal) improve. The girls still refused to visit.<sup>1</sup>

---

<sup>1</sup> In May, B.N. asked to have visitation with the girls. When the social worker explained to her that the children were not ready to see her, B.N. wanted to know the "real reasons" for their refusal to see her and how they could avoid visits just because they were not "comfortable" with her.

The six-month review hearing took place on August 1, 2012. At that time, the court issued its exit orders. It ordered B.N. and the children to continue counseling, but refused to order visitation, stating that visitation might be appropriate in the future but would be detrimental at present owing to the residual effects of the children's trauma and B.N.'s inability to understand their point of view. The court ordered legal custody to remain with B.N. and D.N., physical custody and primary residence with D.N., and a continuation of counseling for mother and daughters.

B.N. has appealed from the portion of the court's final order denying her visitation at this time.

### **DISCUSSION**

Welfare and Institutions Code section 362.4 permits a juvenile court to terminate dependency jurisdiction over a minor, while issuing an order determining custody and visitation. The order continues in force "until modified or terminated by a subsequent order of the superior court."

A visitation order "necessarily involves a balancing of the interests of the parent in visitation with the best interests of the child. In balancing these interests, the court in the exercise of its judicial discretion should determine whether there should be any right to visitation and, if so, the frequency and length of visitation." (*In re Jennifer G.* (1990) 221 Cal.App.3d 752, 757.) We review visitation orders for abuse of discretion. (*In re Robert L.* (1993) 21 Cal.App.4th 1057, 106.) "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 from the facts, the reviewing court has no authority to substitute its decision for that of the trial court." [Citation.] (*In re Stephanie M.* (1994) 7 Cal.4th 295, 318-319.)

B.N. complains that the dependency proceedings, rather than repairing a bad situation, have "virtually torn the family apart forever," owing to the "no visitation" order. The record shows the ties binding B.N. and her children were tenuous at best; if

they have frayed irreparably, the fault can hardly be laid at the court's door. And there is nothing in this record to convince us the court's plan of total separation at this point might not serve as an effective ameliorating step.

Both Diane and Tiffany reported to SSA that they had very little contact of a positive nature with their mother. She stayed in her room, and they tried to keep out of her way. Her interactions with her daughters consisted in large part in yelling at them in English and Vietnamese, criticizing them, blaming them for short-circuiting her dreams of personal advancement, and kicking or hitting them with various instruments. The abuse apparently went on unchecked for years, until SSA intervened on Tiffany's behalf in 2009. Even B.N.'s laudable desire to see her children excel in school took the form of excessive punishments for academic missteps instead of praise for success or assistance to forestall failure.

Once the children had escaped from this long oppression, it is no wonder they would harbor feelings of fear and anxiety when confronted with the prospect of being in their mother's presence again. As the court observed, B.N. appeared not to understand at all the depth and extent of the damage she has done. It is not the physical abuse alone that caused this damage, but also – and what may be even more corrosive – the constant sense of attack lurking just ahead, even when things were outwardly calm. This fear of attack led the girls to endeavor to “stay out of her way,” hardly the basis for close family ties.

Although the court held out some hope that B.N. could see the girls in the future, she does not get to set the pace. The girls' best interest is the determining factor. (See *In re Elizabeth M.* (1991) 232 Cal.App.3d 553, 569 disapproved on other grounds *In re Tabitha W.* (2006) 143 Cal.App.4th 811, 817.) Their therapist believed that they were not sufficiently healed from the trauma inflicted on them to see their mother without some danger of reopening the wounds and setting back any progress they had made. The

juvenile court agreed with the therapist. We do not believe the court abused its discretion in so doing.

**DISPOSITION**

The portion of the court's order denying visitation to B.N. at the present time is affirmed.

BEDSWORTH, J.

WE CONCUR:

O'LEARY, P. J.

MOORE, J.