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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

NANETTE DEAN et al.,

Petitioners and Respondents,

v.

SHANNEN PATTON,

Respondent and Appellant.

2d Civil No. B278414
(Super. Ct. No. D369757)
(Ventura County)

Shannen Patton appeals an August 18, 2016 order granting respondents Nanette Dean (the paternal grandmother) and Renato Dean (the paternal uncle) visitation with Shannen's seven-year-old son, Michael. The trial court found a preexisting relationship and that it was in Michael's best interest to have contact with respondents. (Fam. Code, § 3102, subds. (a) - (b).)[1] We affirm.

Facts and Procedural History

Shannen and Mario Dean lived together for four years and had a son, Michael, born December 10, 2008. After the couple broke up, Shannen was Michael's primary caregiver. On

[1] All statutory references are to the Family Code.

October 23, 2013, Mario was awarded custodial time on weekends and mid-week visits. (*Mario Dean v. Shannen Patton*, Ventura County Sup. Ct., Case No. D358489.) Michael typically saw Mario's family, i.e., respondents, during Mario's custodial time.

Mario was killed in a work-related accident on October 4, 2014. Following Mario's death, respondents requested visitation with Michael. Shannen initially agreed but stopped the visits due to a conflict over Mario's estate and personal property. Michael last saw respondents at a December 2014 birthday party.

On May 11, 2015, respondents filed a petition for grandparent/uncle visitation (§ 3102) which was opposed by Shannen. After four days of testimony, the trial court found that respondents had a preexisting relationship with Michael and it was in Michael's best interest to have contact with respondents. In a written statement of decision, the trial court found that Shannen's decision as a parent to deny respondents' contact "shall be given substantial weight. Nevertheless, it is in Michael's best interest to continue to have contact with his father's family under certain, specified circumstances. Shannen's original statement that she would not take Michael away from Mario's family but did so, in part, due to the conflict immediately following Mario's funeral establishes that Shannen believed contact was in Michael's best interest." The trial court ordered visits on holidays and for special events, the days and times to be determined by Shannen, and that visits be a "family event" and include the paternal uncle's children or other family member's children.

Section 3102

Section 3102, subdivision (a) provides: "If either parent of an unemancipated minor child is deceased, the children, siblings, parents, and grandparents of the deceased parent may be granted reasonable visitation with the child during the child's minority upon a finding that the visitation would be in the best interest of the minor child." The cases that have considered application of section 3102 have substantially circumscribed the rights otherwise provided by the statute based on the principle that the trial court must accord "special weight" to the parent's decision that visitation would not be beneficial to the child. (See *Troxel v. Granville* (2000) 530 U.S. 57, 70; *Zasueta v. Zasueta* (2002) 102 Cal.App.4th 1242, 1251; *Punsly v. Ho* (2001) 87 Cal.App.4th 1099, 1106–1107; *Ian J. v. Peter M.* (2013) 213 Cal.App.4th 189, 204.) "'Even when grandparents are statutorily given standing to petition for visitation rights, there is always a rebuttable presumption in favor of the parents when the parents conclude visitation is not in the best interests of the child. [Citation.] The result is a balance between the child's interest in the grandparental relationship and the right of the parents to rear their own child as they see fit.'" (*In re Marriage of Harris* (2004) 34 Cal.4th 210, 226, citing *Lopez v. Martinez* (2000) 85 Cal.App.4th 279, 287-288.)

Appellant argues that her fundamental right to exercise parental authority outweighs any interest Michael has in visiting respondents. In order to grant visitation, section 3104, subdivisions (a)(1) and (a)(2) required that the trial court find, by clear and convincing evidence, a preexisting relationship between respondents and Michael that has engendered a bond such that visitation is in the child's best interest, and (2) that Michael's

interest in visiting respondents outweighs Shannen's right to exercise parental authority. (See, e.g., *Rich v. Thatcher* (2011) 200 Cal.App.4th 1176, 1179-1181 [applying deferential abuse of discretion standard of review].)

The trial court found that Shannen initially agreed to visitation "but eventually withdrew the contact due, in part, to conflict with the family and what she described as the excessive demands on Michael's time." The court concluded that Shannen's statement that she would not take Michael away from Mario's family established that Shannen believed contact was in Michael's best interest. A parent's "willingness to allow visitation puts the parent in a 'damned if you do, damned if you don't' position. If the parent voluntarily allows some visitation, that could be viewed as a concession that visitation is in the best interest of the child. Certainly it is a decision regarding the child's best interest, to which the court much accord 'special weight.'" (*Hoag v. Diedjomahor* (2011) 200 Cal.App.4th 1008, 1017.)

Shannen argues that the visitation order is not supported by the evidence but has elected to proceed without a reporter's transcript. Where the appeal is based on the clerk's transcript or "judgment roll" and no error is apparent on the face of the appellate record, the judgment is conclusively presumed correct as to all evidentiary matters. (*Ehrler v. Ehrler* (1981) 126 Cal.App.3d 147, 154; *In re Estate of Fain* (1999) 75 Cal.App.4th 973, 992.) "To put it another way, it is presumed that the unreported trial testimony would demonstrate the absence of error. [Citation.]" (*Ibid.*) Shannen claims the visits were traumatic for Michael and that Michael's therapist, Dr. Howard Levitt, agrees with her decision that Michael should have no

contact with respondents. Shannen in essence requests that we reweigh the evidence, determine witness credibility, and resolve conflicts in the evidence, but that is prohibited on appeal. (*In re Cassey D.* (1999) 70 Cal.App.4th 38, 52-53.) Shannen has not provided a reporter's transcript to support her contentions on appeal. Nor is there a settled statement to assist the court. (See Cal. Rules of Court, rule 8.137.) The clerk's transcript is incomplete and contains only documents filed by Shannen with the trial court.

This is fatal to the appeal. If the record on appeal does not contain all the documents or other evidence submitted to the trial court, a reviewing court will "decline to find error on a silent record, and thus infer that substantial evidence" supports the trial court's findings. (*Haywood v. Superior Court* (2000) 77 Cal.App.4th 949, 955; see Cal. Rules of Court, rule 8.163.) "[I]n the absence of a required reporter's transcript and other [necessary] documents, we presume the judgment is correct. [Citations.]" (*Stasz v. Eisenberg* (2010) 190 Cal.App.4th 1032, 1039.) The trial court's decision was based on the factual findings made on the evidence presented to it. We are not privy to that evidence; thus, we are unable to review the rulings made at trial. We can only presume they are supported by the record and that no abuse of discretion occurred. (*Ibid.*)

Disposition

The judgment (order for grandparent/uncle visitation) is affirmed. The parties shall bear their own costs on appeal.

NOT TO BE PUBLISHED.

YEGAN, J.

We concur:

GILBERT, P. J.

PERREN, J.

Joann Johnson, Commissioner

Superior Court County of Ventura

Shannen Patton, in propria persona, for Appellant.
No appearance for Respondents.