

Filed 6/14/17 In re Andrea B. CA2/1

**NOT TO BE PUBLISHED IN THE OFFICIAL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 This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.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

SECOND APPELLATE DISTRICT

DIVISION ONE

In re ANDREA B. et al., Persons
Coming Under the Juvenile Court
Law.

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN
AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

ANDREW B.,

Defendant and Appellant.

B278263

(Los Angeles County
Super. Ct. No. DK10583)

APPEAL from an order of the Superior Court of Los Angeles County, Terry T. Truong, Commissioner. Affirmed.

Marissa Coffey, under appointment by the Court of Appeal, for Defendant and Appellant.

Mary C. Wickham, County Counsel, R. Keith Davis, Assistant County Counsel, and Sarah Vesecky, Senior Deputy County Counsel, for Plaintiff and Respondent.

Andrew B. (Father) is the father of twins Andrea and Andrew, who were born in February 2011. Stephanie L. (Mother) is the children's biological mother. On appeal, Father contends that the juvenile court abused its discretion when it granted the Los Angeles County Department of Children and Family Services' (DCFS) Welfare and Institutions Code¹ section 388 petition and suspended his visits with the children.

We affirm.

BACKGROUND

A. Initial Contact With DCFS

On February 24, 2015, Father was arrested for driving under the influence (DUI). He was released from custody two days later. On February 27, 2015, the family came to the attention of DCFS when a housekeeper at a hotel where the family was staying saw Father and the maternal

¹ All further statutory references are to the Welfare and Institutions Code unless otherwise specified.

grandmother verbally and physically argue in the children's presence. The family had recently relocated from Missouri and did not have permanent housing yet.

On February 28, 2015, a social worker (CSW) and two police officers visited the family's hotel room and spoke with the maternal grandmother. Maternal grandmother stated Mother was her biological child and that Mother had been 16 years old when she gave birth to twins Andrea and Andrew. Although Father was the children's biological father, he was not in a relationship with Mother. Rather, he was in a relationship with maternal grandmother. The two began to date while Mother was pregnant with the twins. According to maternal grandmother, Mother was mentally ill, suffering from bipolar disorder and possibly schizo-affective disorder as well. Although Mother had come to California with the family when they first moved to the state, Mother had since returned to Missouri.² Maternal grandmother showed the CSW a notarized letter from Mother, authorizing maternal grandmother to care for the twins.

Maternal grandmother told the CSW that Father was very ill, suffering from lung cancer, severe diabetes, renal failure, seizures, and a blood clot. When asked about Father's recent DUI arrest, maternal grandmother said Father had suffered a seizure and had been arrested because police mistakenly thought he was under the influence. With

² Mother was pregnant and went back to Missouri to be with the father of her unborn child.

respect to the couple's alleged physical argument, maternal grandmother said the two had fought because she would not give him money but denied that the argument had become physical. She also denied that the two had any history of domestic violence. Maternal grandmother said she thought Father might be using drugs, but she could not be sure. She denied that Father drank alcohol or that he had been under the influence while the children were present.

Maternal grandmother said the male twin (Andrew) had autism, mild cerebral palsy and brachial plexus. As the children were preverbal, they were not interviewed. Although the children appeared hyperactive, they did not have any marks or bruises on their bodies.

The CSW interviewed Father in private when he returned to the hotel room. Father admitted he and maternal grandmother had argued that day about money and their living situation. He also admitted the two had "bad arguments" but denied the arguments had become physical. Father said he had been arrested in January 2015 because his car had stolen license plates. With respect to the DUI, Father said he had suffered a seizure while he was driving and the police had assumed he was intoxicated. Father admitted using marijuana and cocaine but said he had not used drugs for 15 years. He acknowledged he occasionally drank beer but not in front of the children.

On March 10, 2015, the CSW returned to the hotel and spoke with the housekeeping manager. The manager said maternal grandmother had confided in her that Father used

drugs. Maternal grandmother also said she could not leave Father because he had custody of the children. The manager said she had witnessed Father and maternal grandmother argue and said that Father appeared to be “coming down from a high.”

On March 11, 2015, a new CSW made an unannounced visit to the hotel. The CSW met only with maternal grandmother, who said Father was in court on the stolen license plate case. Maternal grandmother said she believed Father currently used drugs based on his erratic behavior. She agreed to undergo drug tests herself and gave the CSW a list of her medications, which included codeine. Maternal grandmother also called Mother during the CSW’s visit. Mother said she had given maternal grandmother permission to care for the children. Mother said she was in Missouri and could not afford to pick up the children. Mother said she did not want Father to care for the children and that he used methamphetamine.

On March 12, 2015, maternal grandmother tested positive for opiates and codeine. Father did not appear for the drug testing because he did “ ‘not feel he need[ed] to explain himself.’ ”

On March 17, 2015, the CSW spoke with Father on the phone. Father denied that he had a drug problem and said he did not find out about the drug test until the “ ‘last minute.’ ” He also said he was unsure whether he could take a make-up test the next day because he was very busy. When the CSW told Father she would be submitting a

referral for him to drug test the next day, he became upset and told the CSW that it would be the CSW's fault if he did not show up for the test. He hung up on the CSW and failed to appear for the drug test the next day.

On March 19, 2015, maternal grandmother called the CSW and revealed that Father had a "CPS history" in Michigan and was a registered sex offender in Missouri. The CSW also obtained two police reports regarding Father. The first report documented a traffic stop on January 11, 2015, for missing license plates. According to the report, Father told police the plates had been stolen. When Father opened his door, the officers saw glass pipes commonly used to ingest methamphetamine. Father admitted he had methamphetamine in his possession and officers found a small baggie of a substance that resembled methamphetamine. The officers arrested Father for possession of methamphetamine and drug paraphernalia. The second report documented a stop on February 2, 2015. When officers asked Father to get out of his car, Father became angry and said he had medical conditions that prevented him from doing so. Officers recovered a substance resembling methamphetamine and Father said, "I don't want to go to jail because I have a lot of meth this time."

On March 23, 2015, the juvenile court signed an order authorizing DCFS to detain the children. Two days later, DCFS detained the children with the help of sheriff's deputies.

B. DCFS Files Section 300 Petition

On March 30, 2015, DCFS filed a section 300 petition alleging the children were at risk of harm due to Father's methamphetamine use, Father's sexual abuse of Mother, and Father's registered sex offender status. The petition further alleged that Mother had failed to protect the children from Father's illegal drug use and was unable or unwilling to provide the children with ongoing care and supervision and the basic necessities of life. The juvenile court conducted the detention hearing that same day and ordered that the parents' visits with the children be monitored.

A dependency investigator interviewed Father, Mother and maternal grandmother on May 13, 2015. During his interview, Father admitted he had a history of marijuana and cocaine use. Father said he began using marijuana when he was 11 or 12 years old and last used marijuana around 2001. Father said he used cocaine for three months when he was about 15 years old and last used cocaine around 2001. Father denied having any current drug problems and said the charges related to his recent arrests were dropped. Father said there was no evidence and he had been "set-up." Father said a friend gave him the methamphetamine found in his car, but said he had not intended to use or sell it.³ He denied having a history of methamphetamine use.

³ Father also reported that a friend gave him one of the drug pipes that was found in his car, but said he did not use

With respect to the criminal conviction that led to his sex offender status, Father acknowledged having pleaded guilty to statutory rape and sodomy, but maintained the victim was 15 years old, not 14 years old.⁴ Father said he served seven years in prison for the offense. Father told the investigator that the crime took place during a 10-day drinking binge. Father said he was “ ‘black out’ ” drunk, but did not believe he forced himself on the victim.

The investigator also asked Father about his relationship with Mother. Father told the investigator that there was no relationship and that “ ‘[i]t was a onetime thing.’ ” Father said the children were conceived shortly after he was released from prison when he was 31 years old and Mother was 16 years old. Father said he was staying with maternal grandmother at the time. Father said Mother became pregnant on her birthday and said that everyone in the home drank alcohol that day. Father told the investigator that he had “ ‘passed out’ ” and did not find out what had happened until after Mother told him she was pregnant.

During Mother’s interview, she described Father’s drug use as follows: “ ‘From what he’s talked about, he’s sold drugs and tried every type of drug but I didn’t ask him for

it. Father said he believed the second pipe belonged to a passenger in the car.

⁴ Mother and this particular statutory rape victim are two different people.

details of what drugs he's used. He mentioned weed, meth, and acid.' ” Mother said she had witnessed Father use crystal methamphetamine, but not in front of the children. Mother said that when Father was “ ‘coming down,’ ” he would become angry, aggressive, and yell a lot. Mother denied he had been physically aggressive toward her, the children, or maternal grandmother. Mother confirmed that the children were conceived the evening of her 16th birthday party. She said she was drunk and thought Father was someone else when she had sex with him. Neither Mother nor maternal grandmother reported the incident to police.

During maternal grandmother's interview, she further confirmed Father's drug use. Maternal grandmother said his drug use caused Father to stay awake for several days at a time and that he would become very upset and disrespectful. Maternal grandmother said she was no longer involved in a relationship with Father and did not know if he was currently using drugs. Maternal grandmother said Father just picked her up for visits with the children. She did not want to provide further details about Father because she did not trust him or know what he was capable of.

Maternal grandmother said she was not sure exactly what occurred the night of Mother's 16th birthday party, but confirmed that she (maternal grandmother) was drunk and confirmed everyone at the party was drinking alcohol. Although she acknowledged that when Mother conceived she was only 16, while Father was 31 years old, maternal grandmother said that Mother “ ‘wasn't the best behaved,’ ”

and again noted that everyone at the party had been drinking. Maternal grandmother said Father's sex offender status did not concern her and said she learned of it in 2010, after they started dating.

On April 13, 2015, the children were assessed by the Olive View Medical Center. Andrea's report stated: " 'Well appearing [four] year old with symptoms of toxic stress/traumatic grief and needs urgent MH evaluation; has some pica behaviors. Child has nightmares, fear o[f] dark, unprovoked tantrums and cries excessively.' " Andrew's report stated: "[Four] years old with severe language delay, stereotype, limited purposeful play and concerns regarding hearing; consistent with autism but urgently needs full evaluation as needed services."

The children appeared comfortable in the presence of Father and maternal grandmother during a monitored visit. Father visited the children twice a week and each visit lasted two hours. However, Father often appeared disengaged with the children during the visits. He also had a strong odor of cigarettes and often seemed sleepy during the visits. He also focused on his phone, rather than the children. Maternal grandmother attended the visits and appeared more interested in the children. She prepared snacks for the children and interacted with them.

On May 13, 2015, the CSW terminated a visit between the children, Father, and maternal grandmother because Father appeared to be under the influence. He had a "sleepy demeanor and his eyes were very low." Father was slouched

on the sofa in the visiting room, and he only minimally interacted with the children. Father did not appear bothered when the visit was cancelled. DCFS recommended that Father's visits be reduced to once per week, citing the travel time required for the visits and Father's lack of effort to interact with the children during visits. DCFS also said the children were being assessed for services and that the visits would interfere with these services. On May 21, 2015, the juvenile court ordered that Father receive visitation consistent with the court's previous order.

On June 1, 2015, the juvenile court conducted the jurisdiction and disposition hearing. DCFS informed the court that Father consistently visited the children twice a week and that each visit continued to be two hours in duration. Father also called the children daily. The children had been placed in a new foster home on May 22, 2015, to facilitate Father's visits. However, the CSW received a notice requesting that the children be removed because the foster parents had difficulty communicating with Father. The juvenile court sustained the section 300 petition with amendments, declared the children dependents of the juvenile court, removed them from Father, and ordered DCFS to provide Mother with reunification services. The juvenile court denied Father reunification services pursuant to section 361.5, subdivision (b)(16), based on his status as a registered sex offender. The juvenile court ordered that the parents' visits with the children be monitored.

On November 24, 2015, the case was on calendar for a status review hearing. DCFS filed a status review report with the juvenile court. The children were living in a foster home with Ms. R. Mother had not contacted the children and did not respond to efforts to engage her in services. Andrew was being assessed for Regional Center services and the children were attending preschool and therapy. Father visited the children consistently, but had neither enrolled in any programs nor submitted to random drug testing. DCFS had to end two of Father's visits with the children early because he appeared to be under the influence.

During a visit on June 24, 2015, Father warned that if anyone said he was under the influence, he would "put a hole in the wall." Father was warned that the visit would be terminated if he made threats or used foul language. Father's visits had been reduced from twice a week to once a week to accommodate the children's preschool schedule. The children were thriving in their foster home and Ms. R. was willing to pursue legal guardianship of the children. The juvenile court ordered DCFS to continue to provide Father with a minimum of two visits per week.

On February 1, 2016, maternal grandmother filed a section 388 petition seeking visitation and reunification services with the children. DCFS filed a response, reporting that maternal grandmother and Father consistently visited the children twice per week and that maternal grandmother generally engaged with the children while Father engaged with his phone. However, maternal grandmother and

Father tended to bicker during the visits, arguments that Father usually initiated. Furthermore, maternal grandmother remained in a relationship with Father and DCFS was worried about her past failure to protect the children. DCFS said the children had made great progress since being placed with Ms. R. and recommended that the juvenile court deny the section 388 petition. On March 21, 2016, the juvenile court denied maternal grandmother's section 388 petition and ordered DCFS to work with Father regarding his visitation.

On May 13, 2016, DCFS filed a status review report with the juvenile court. The children continued to live with Ms. R. Mother had not contacted the children and was not participating in services. Andrea was no longer exhibiting the behaviors noted in the Olive View Medical Center assessment, which had included nightmares, fear of the dark, unprovoked tantrums, and crying incessantly. Andrew was now verbal and thriving in his placement. Andrew was deemed ineligible for Regional Center services due to the progress he had made. The children were also progressing with respect to their therapeutic goals. Father was visiting the children twice per week with no reported issues. However, he continued to engage very little with the children. Ms. R. remained committed to assuming legal guardianship of the children.

On July 6, 2016, DCFS filed logs documenting Father's visits with the children from December 1, 2015, to June 9, 2016. The children greeted Father by running to him and

hugging him. They also kissed and hugged him at the end of visits. Father kissed, hugged, and tickled the children. Father, maternal grandmother, and the children ate together during many of the visits. The children enjoyed playing with Father while Father pretended to be a monster. During some visits, however, Father's interaction with the children was minimal and he spent time sitting on the couch or playing with his phone and iPad. During one visit, the children pretended to be cats and dogs and Father tickled them. The children often watched movies during the visits. A June 2, 2016, visit was terminated because Father appeared to be under the influence. Father denied being under the influence and attributed his appearance to a lack of sleep. Father told the CSW during the visit that he had been diagnosed with stage II lung cancer.

C. DCFS Files Section 388 Petition

On August 24, 2016, DCFS filed a section 388 petition requesting that the juvenile court suspend Father's visits with the children. DCFS did not believe visits were in the children's best interest, writing, "[F]ather has been reported to make minimal interaction with the children during the visits. Father has been reported to be on the phone for most of the time or he will bring a movie for the children to watch while he sleeps. Father has also been reported to become aggressive when he does not get his way. Father has been reported to be demeaning of grandmother in front of the children." DCFS further noted that, "Since [F]ather's recent outbursts and behavior during visits, caregiver has reported

that child Andrea has bec[o]me more aggressive and has been repeating a lot of the profanity she hears from her father. Therapy sessions for Andrea have increased from [once a] week to [twice a] week due to aggressive behaviors.”

Father’s visits were terminated early on May 13, 2016, and July 21, 2016, because he appeared to be under the influence. Father’s visit on July 21, 2016, was also terminated because Father kept falling asleep and disregarded the monitor’s attempts to wake him. When the monitor asked the CSW to terminate the visit, Father became belligerent and used profane language toward the CSW and the monitor in front of the children. The CSW asked Father to calm down and reminded him the children were present. Father refused to calm down and continued to yell at the CSW. Father did not calm down even after security guards were called to the room to diffuse the situation. The assistant regional administrator came to the room and spoke with father. Father remained very agitated and said he was tired of everyone accusing him of being under the influence. He offered to drug test “ ‘right here and now’ ” but then refused to submit to an on-demand drug test. When the administrator told father he could find someone other than DCFS to monitor his visits, Father became upset, screamed, and said he did not have a monitor and could not afford to pay for one.

Father complained that he was only receiving three and a half hours of visits per week, rather than the court-ordered four hours. The administrator said this was because

of all the services the children were receiving. Father responded, “ ‘Then someone better fucking make some fucking changes to their schedule to give me my full two hours.’ ” As Father angrily exited the room, he said to maternal grandmother, “ ‘I told you talking to these people would get us nowhere. I bet you if I bash one of their heads into a wall they will listen.’ ”

The following week, Father was an hour late for his visit and belligerent. Father demanded tokens and the opportunity to visit his children more often. When he did not get what he wanted, he raised his voice and used profanity. Father was told to lower his voice or the security guards would be called and he would be asked to leave. Father said, “ ‘Let them try.’ ” Father eventually calmed down and was given bus tokens. After the social workers left the room, Father told the monitor, “ ‘If I don’t get loud it’s no fun and I don’t get what I want.’ ”

On July 28, 2016, Ms. R. told the CSW that father was “ ‘very abusive’ ” when speaking with her on the phone and said Father had become very upset during a supervised phone call because the children referred to maternal grandmother as “ ‘grandma’ ” instead of “ ‘mom.’ ” Father became very aggressive and used profanity. Ms. R. said she was worried about Father’s stability and feared he had “nothing to lose” and might hurt someone at the DCFS office.

DCFS attached to the petition a September 7, 2016, progress report from Andrea’s therapist. The therapist wrote that Ms. R. reported the child’s negative behavior

increased after visits with Father. This behavior included hitting her brother, cursing, and tantrums. Ms. R. reported that Andrea witnessed Father's outbursts during visits and telephone calls. The therapist also noted that—according to a prior report—the child had witnessed domestic violence between the maternal grandmother and Father. According to the therapist, children who witness domestic violence could experience an increase in acting out behavior if they were exposed to similar people, places, or circumstances that were associated with their trauma. The therapist concluded that Andrea's "increase of negative behavior is of great concern and will continue to be addressed in therapy." The therapist also stated that Andrea could benefit from a behavior specialist and one would be requested.

DCFS also attached to the petition a September 7, 2016, letter from Andrew's therapist. The goal with Andrew was to reduce anger outbursts. The therapist reported that Andrew's progress appeared to have plateaued and he was no longer benefitting from therapy. Andrew "exhibited difficulty with his ability to process, focus, and actively participate in his treatment." The therapist also noted that, according to the foster parents, Andrew's behavior appeared to regress after visits with Father. Although the therapist had not witnessed Andrew immediately after a visit, Andrew's foster parent told the therapist that Andrew's behaviors "are infantile in nature" and included "increased mutism, lack of eye contact, and increased enuresis."

DCFS also attached to the petition a September 7, 2016, letter from Ms. R. She said that the children told her they saw Father become upset. Once, when Ms. R. asked Andrea how her visit with father went, the child stated, “ ‘Daddy was upset and yelled at the office ladies.’ ” Andrea told Ms. R. that Father said bad words to the office ladies. When Ms. R. told Andrea to get her shoes the following day, the child responded, “ ‘I can't find my (expl[e]tive) shoe.’ ” When Ms. R. asked Andrea why she had used that term, the child said, “[T]hat's what Daddy says.” Ms. R. said the children had begun receiving phone calls from Mother and that she (Mother) told them she was their biological mother. Father became very upset and told Ms. R. he had a “very big (expl[e]tive) problem” with this. Ms. R. told Father not to use this type of language when he called her home and ended the call. Ms. R. said there had been other incidents and that after almost every visit, Andrew and Andrea would “transform from your typical five year olds to babies that can not talk and want to crawl.” She also noted that Andrea's therapy sessions had been increased from once a week to twice a week.

D. Hearing on Section 388 Petition

On September 29, 2016, the juvenile court held the hearing on DCFS's section 388 petition. Father's counsel argued that DCFS had not met its burden of demonstrating that the visits with Father were detrimental to the children. According to Father's counsel, even if the information presented was true, it might “go to the quality of the

visit[s].” However, he said, Father becoming distracted or sleepy due to his medical conditions did not create detriment and was not a basis to curtail the visits. County counsel pointed to the therapists’ letters and the foster mother’s reports that the children’s behavior regressed after visits. Counsel said she believed there was detriment and that it would be in the children’s best interest to suspend the visits.

The juvenile court said it was granting the section 388 petition and explained, “My concern is not only the physical risk that [Father] is putting his children under with his behavior and conduct, but also the emotional harm to the children as a result of his actions.”

DISCUSSION

On appeal, Father contends that the juvenile abused its discretion when it granted DCFS’s section 388 petition and suspended Father’s visits with the children. Under section 388, subdivision (a)(1), “[a]ny parent or other person having an interest in a child who is a dependent child of the juvenile court . . . may, upon grounds of change of circumstance or new evidence, petition the court . . . for a hearing to change, modify, or set aside any order of court previously made.”

“The petitioning party has the burden of showing, by a preponderance of the evidence, that there is a change of circumstances or new evidence, *and* that the proposed modification is in the child’s best interest.” (*In re Daniel C.* (2006) 141 Cal.App.4th 1438, 1445.) “The petition is addressed to the sound discretion of the juvenile court and

its decision will not be disturbed on appeal in the absence of a clear abuse of discretion.” (*In re Jasmon O.* (1994) 8 Cal.4th 398, 415.) We overturn the juvenile court’s exercise of that discretion only in the rare case when the court has made “ ‘ “an arbitrary, capricious or patently absurd” ’ ” determination. (*In re Stephanie M.* (1994) 7 Cal.4th 295, 318.)

In this case, the juvenile court previously denied Father reunification services pursuant to section 361.5, subdivision (b)(16), based on his status as a registered sex offender. Thus, the court was permitted, but not required, to permit father to continue to visit the children unless it found that visitation would be detrimental to the children. (§ 361.5, subd. (f).)

In its section 388 petition, DCFS reported that Father had demonstrated aggressive behavior when he did not get his way and was demeaning towards maternal grandmother in front of the children. Specific examples of this behavior included a July 21, 2016 visit where Father became belligerent, used profane language towards DCFS staff in the children’s presence, and would not calm down even after security guards were called to the room. As Father left, he told maternal grandmother, “ ‘I told you talking to these people would get us nowhere. I bet you if I bash one of their heads into a wall they will listen.’ ” Father was belligerent and used profane language during another visit and became similarly aggressive during a phone call with Ms. R. In addition, two of Father’s visits with the children had to be

terminated because Father appeared to be under the influence.⁵

The juvenile court was also presented with a sufficient evidence that Father's visits were detrimental to the children and that terminating the visits was therefore in the children's best interest. The children often witnessed—and sometimes mimicked—Father's outbursts. According to Ms. R., after almost every visit with Father, Andrew and Andrea “would transform from your typical five year olds to babies that cannot talk and want to crawl.” She also noted that Andrea's therapy sessions had been increased from once a week to twice a week. Andrea's therapist noted that, according to Ms. R., Andrea's negative behavior—such as hitting her brother, cursing, and tantrums—increased after visits with Father. The therapist advised that Andrea could benefit from a behavior specialist. With respect to Andrew, the therapist also noted that, according to Ms. R., Andrew's behavior appeared to regress after visits with Father. These behaviors included “increased mutism, lack of eye contact, and increased enuresis.”⁶ This was a marked setback from the children's previous progress.

Although Ms. R. relayed this information, there is no evidence that her observations were biased or otherwise untrustworthy. Indeed, given that Ms. R. spent the most

⁵ Father did not contest any of this evidence at the hearing.

⁶ This evidence was also not in dispute.

amount of time with the children—and cared for them after their visits with Father—it makes sense that she witnessed their aftermath. Father’s counsel did not cross-examine Ms. R. or the therapist. Thus, their observations and conclusions are uncontested.

Although Father had positive interactions with the children as well, these documented observations continued only until June 9, 2016. The juvenile court was tasked with determining whether Father’s current interactions were detrimental to the children. Lastly, although there was no discussion as to whether Father’s physical illnesses or prescribed medication may have caused his outbursts or to appear under the influence, Father did not offer any evidence to this effect and chose not to testify. Given the quantum of evidence at the juvenile court’s disposal and the standard of review applicable here, we cannot say that the court made an “ “arbitrary, capricious or patently absurd” ’ ” determination. (See *Stephanie M.*, *supra*, 7 Cal.4th at p. 318.)

DISPOSITION

The judgment is affirmed.

NOT TO BE PUBLISHED.

JOHNSON, J.

We concur:

CHANEY, Acting P. J.

LUI, J.