

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS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 This opinion has not been certified for publication or ordered published for purposes of rule 8.1115(a).

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

In re SOPHIA & EVAN B., Persons
Coming Under the Juvenile Court Law.

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN AND
FAMILY SERVICES,

Plaintiff and Respondent,

v.

DAPHNE B.,

Defendant and Appellant.

B235851

(Los Angeles County
Super. Ct. No. CK84920)

APPEAL from an order of the Superior Court of Los Angeles County,
Marilyn K. Martinez, Juvenile Court Referee. Affirmed.

Christopher R. Booth, under appointment by the Court of Appeal, for Defendant
and Appellant.

Andrea Sheridan Ordin, County Counsel, James M. Owens, Assistant County
Counsel, and Kim Nemoy, Principal Deputy County Counsel, for Plaintiff and
Respondent.

Appellant appeals the trial court's denying her request for joint legal and physical custody of her two children and limiting her to only monitored visitation with the children. She contends that the trial court erred because the order was not in the best interests of the children. We disagree and hold that the record supports the trial court's order and thus, it was not an abuse of its discretion.

FACTUAL AND PROCEDURAL BACKGROUND¹

Appellant, Daphne B., (mother) is married to Jack B. (father). They are the parents of Sophia B. (Sophia), born in September of 1999, and Evan B. (Evan), born in November of 2003. The children came to the attention of the Department of Children and Family Services (DCFS) in late October of 2010 when father called to report that mother's alcohol abuse interfered with her ability to care for the children. DCFS filed a petition alleging, inter alia, that mother had an unresolved history of alcohol abuse which rendered her incapable of providing regular care and supervision of the children.² It alleged further that mother was intoxicated on numerous prior occasions when the children were in her care placing them at risk for physical and emotional harm.³

¹ The factual and procedural background was taken from the record which consists of a two-volume Clerk's Transcript and a one-volume Reporter's Transcript.

² A similar referral was made to DCFS on May 26, 2009 with respect to mother's mixing prescription medication and alcohol. At that time, both parents agreed to receive voluntary family maintenance services. The case was terminated on December 28, 2009 after both parents successfully completed the case plan and mother tested clean for alcohol and drugs.

³ The other allegations in the petition were dismissed.

In her interview with DCFS, mother admitted to drinking alcohol concurrently with consuming her prescription medication (Trazodone, Effexor and Norpramin). She denied having a current alcohol problem and claimed that she previously had one but had been sober for 11 years. She explained that she and father were having marital difficulties and that father yelled at her and called her derogatory names in front of the children. DCFS noted that the home was cluttered with dirty laundry littered about. Additionally, she blamed father for sabotaging her efforts to remain sober. Mother then agreed to stop drinking and move out of the house.

DCFS also interviewed the children. Although Evan stated he felt safe in the home, Sophia stated she felt safe only when father was home and “mom is not acting weird.” Sophia also reported feeling afraid when left alone with mother, having difficulty completing her homework due to her parents’ fighting, feeling “that something bad will happen to [] mother,” and wanting her mother to move out. She also stated, “[P]lease stop my mom from drinking.”

At the detention hearing on November 1, 2010, the trial court appointed counsel for the parents and the children, found that DCFS had made a prima facie case for detaining the children and found that father was the presumed father of the children. It ordered family preservation and maintenance services for father and reunification services and monitored visitation for mother. Although initially father was allowed to monitor mother’s visits, the trial court amended its order so that father could not monitor her visits.

During the pretrial resolution conference on December 15, 2010, a temporary restraining order was issued against mother to keep her away from father. The trial court later issued a permanent restraining order which remained in effect until January 6, 2012. With certain exceptions related to school and other functions and exchanging the children for visitation, mother was not to text, call or speak to father, nor was she to be within 100 yards of father.

At the dispositional hearing on January 6, 2011, the trial court declared the children to be dependents of the court under Welfare and Institutions Code⁴ section 300, subdivision (b). It found by clear and convincing evidence that substantial danger existed to the physical and emotional health of the children and that removal from mother's custody was necessary. It then placed the children in father's custody with DCFS supervision. Mother was allowed monitored visits. The trial court also ordered mother to attend counseling (individual and conjoint if allowed by mother's and the children's therapists), to attend Alcoholics Anonymous and Alanon meetings, to submit to weekly random drug and alcohol screening and to receive a psychiatric evaluation.

Despite the restraining order's existence, mother continued to harass father. In mid-April of 2011, after father failed to respond for several days to mother's many text messages and telephone calls requesting visits, mother called the police. Later, when the children refused a visit with mother, she sent father a series of text messages threatening to kill herself.

⁴ All section references are to the Welfare and Institutions Code unless otherwise noted.

At the combined section 364 and section 366.21, subdivision (e) hearing set for August 26, 2011, DCFS reported that mother continued to harass father via text and voicemail and that the children were ambivalent about visiting her and did not appear to be emotionally connected with her. Sophia reported that she believed mother was still drinking. And the social worker described the quality of their monitored visits with mother as “mediocre.”

The trial court entered a custody order and final judgment on August 26, 2011.⁵ The trial court ordered supervised visits for mother and granted sole legal and physical custody of the children to father. In ruling, the trial court “distinguish[ed] . . . between what it means to complete [alcohol] programs and what it means to make a *recovery*.” (Italics added.) Although the court recognized that mother was making progress in her treatment, it stated that her progress at this time was insufficient to grant her request and that returning the children to her custody would be detrimental to them. It found further that mother was not yet able to fully take care of herself and thus could not take care of the children. It then terminated jurisdiction over the children and transferred the case to family court. Mother timely appealed.

CONTENTIONS

Mother contends that the trial court erred in denying her request for joint legal and physical custody of her children and in limiting her to only monitored visitation.

⁵ The Reporter’s Transcript shows the date of the hearing as “October 26, 2011.” However, the minute order shows the correct date of August 26, 2011. As the Reporter’s Transcript was prepared on October 17, 2011, it is clear that the October 26th date is a typographical error.

Mother seeks to reverse and remand the matter with an order granting her joint legal and physical custody, or at a minimum, removing the requirement that her visitation be monitored.

DISCUSSION

1. The Standard of Review

Pursuant to section 362.4, when terminating dependency jurisdiction, a trial court is authorized to make custody and visitation orders regarding the dependent children to be filed in a family law proceeding (exit orders). (*In re Chantal S.* (1996) 13 Cal.4th 196, 202-203.) In making such exit orders, the trial court in a dependency proceeding is still exercising jurisdiction under applicable juvenile dependency statutes and therefore any orders are based exclusively on the child's best interests, rather than on the child's interests as between his or her parents. (*In re John W.* (1996) 41 Cal.App.4th 961, 971-974.) The trial court has broad discretion to determine what best serves the child's interests and we will not reverse its decision absent a clear abuse of such discretion. (*In re Robert L.* (1993) 21 Cal.App.4th 1057, 1067.) A "trial court is accorded wide discretion and its determination will not be disturbed on appeal absent 'a manifest showing of abuse.' [Citation.]" (*Ibid.*)

2. Denying Joint Legal and Physical Custody for Mother Was Not an Abuse of Discretion

Mother contends that the trial court abused its discretion in denying her joint legal and physical custody of Sophia and Evan. Specifically, she argues that the issue that brought the children under the jurisdiction of the court (her alcoholism) has been

resolved and therefore, it was in the children's best interest that she be given joint legal and physical custody. We disagree.

Although mother has made progress in her treatment and acceptance of her alcoholism, the record shows that the issue is far from resolved. When DCFS filed the petition in November of 2010, mother drank every day, drove the children around while intoxicated, argued with and physically attacked father and generally made her children feel unsafe in her presence. Despite being enrolled in an alcohol treatment program from November of 2010 through May of 2011, mother was unable to remain sober. She admitted in her testimony that she was intoxicated on December 8, 2010. Maternal aunt, who was monitoring mother's visits at the time, testified that mother arrived sober for a visit with the children on December 10, 2010, but went to the store and returned intoxicated. Further, her random alcohol tests were positive in January, February, April and May of 2011.⁶ In early June, visitation monitor Danny R. discovered an empty vodka bottle hidden under dirty clothes in the bedroom and reported that mother was not intoxicated during the visit but appeared to have a hangover due to her sluggish demeanor and her failure to swim with the children until around noon. Additionally, although mother has shown some insight into her illness, she continues to blame father

⁶ The positive tests were on January 27, 2011 (0.11%), February 2, 2011 (0.08%), April 27, 2011 (0.08%), and May 17, 2011 (0.06%). Mother argued that the positive tests in January and February were due to her taking Robitussin for a cold. However, she also made the same statement to DCFS in an interview on June 6, 2011. When the DCFS social worker doubted that taking a normal dose of Robitussin would cause such high blood alcohol levels, mother admitted that she had relapsed. She also admitted to relapsing in April and May.

for her most recent relapse and had to be reminded repeatedly during the trial to answer the questions she was asked directly rather than make accusations against father.

The trial court's conclusion that the return of the children to mother would be detrimental to them is supported by the record. Therefore, it was reasonable for the trial court to determine that such detriment was not in the children's best interest. As a result, the trial court's order denying mother joint legal and physical custody of the children, based on such determination, was not an abuse of discretion.

3. *Requiring Mother's Visitation to be Monitored Was Not an Abuse of Discretion*

Mother also contends that the trial court abused its discretion in ordering that her visits with the children be monitored. She relies on the same argument asserted above to support this contention. Additionally, mother asserts that she and the children are "fiercely bonded," and that she was appropriate during all visits. We disagree.

As noted above, mother has not resolved her alcoholism and thus, the issues that led to the trial court's dependency jurisdiction over the children remain. Further, the record does not support mother's assertion that she was appropriate during her visits with the children. Even when a court determines that continuing juvenile jurisdiction is unnecessary, it may still place conditions on future parental visits if it determines such conditions are necessary. (*In re Chantal S.*, *supra*, 13 Cal.4th at p. 204.) The trial court's determination that such conditions are necessary given that mother has made insufficient progress in the treatment of her alcoholism and the children remain at risk of detriment as a result, was not an abuse of discretion.

DISPOSITION

The order is affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

CROSKEY, Acting P. J.

WE CONCUR:

KITCHING, J.

ALDRICH, J.