

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS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 This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.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 NATALIE W., a Person Coming
Under the Juvenile Court Law.

B284659
(Los Angeles County
Super. Ct. No. DK18404)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN
AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

D.T.,

Defendant and Appellant.

APPEAL from an order of the Superior Court of
Los Angeles County, Kim L. Nguyen, Judge. Affirmed.

Daniel G. Rooney, under appointment by the Court of
Appeal, for Defendant and Appellant.

Mary C. Wickham, County Counsel, R. Keith Davis,
Assistant County Counsel, and David Michael Miller, Deputy
County Counsel, for Plaintiff and Respondent.

In this dependency appeal, D.T. (Mother) challenges the juvenile court's order, made at the six-month review hearing, denying her unsupervised visitation with her daughter, Natalie W. (Welf. & Inst. Code, § 366.21, subd. (e).)¹ She contends the court abused its discretion by basing its decision on an inference not supported by the evidence. We disagree and affirm.

FACTUAL AND PROCEDURAL BACKGROUND

In July 2016, the Department of Children and Family Services (DCFS) removed Natalie, then 14 years old, from the custody of Mother and her father, Daniel T.² A few days later, DCFS filed a petition alleging, under section 300, subdivision (b)(1), that Mother has a substance abuse history and is a current abuser of alcohol and prescription medication; that the father has a substance abuse history and is a current abuser of alcohol and marijuana; that both parents have mental and emotional problems; and that the parents maintained an unsanitary, hazardous home environment, all of which render them incapable of caring for Natalie and placed the child at substantial risk of serious physical harm. The petition also contained a count under section 300, subdivision (a), alleging that Mother, on occasion, physically abused Natalie by striking her face, pulling her hair, and pinching her neck and back.

¹ Further statutory references are to the Welfare and Institutions Code unless otherwise indicated.

² Daniel T. is not a party to this appeal.

When interviewed by the social worker, Mother minimized her drug and alcohol abuse and, although she acknowledged that there was no running water in the home, she maintained that the home was free of hazards or unsanitary conditions.

At the July 20, 2016 detention hearing, the court found that Daniel T. was Natalie's presumed father. The court ordered monitored visitation for the parents—provided that no one was under the influence of drugs or alcohol during any visits—with DCFS to have discretion to liberalize visitation. The court scheduled a jurisdictional hearing for August 10.

When interviewed by the social worker, Natalie complained that Mother's substance abuse problem had been going on for a long time and had gotten worse in the past year. She further explained that although Mother had been diagnosed with anxiety and depression, she would not take her prescribed medications. Instead, she drank "sometimes every day, to the point where she will be falling."

Mother admitted that she had been struggling with alcohol, but said her addiction had only begun six months earlier and that she used alcohol twice a week to "cope more." She denied ever failing to take her prescribed psychotropic medications.

At the jurisdictional hearing on August 10, 2016, the parents entered no contest pleas. The court sustained the allegations of the petition except those pertaining to Mother's physical abuse of Natalie and the condition of the home. The court continued the matter to October 12 for disposition.

At the dispositional hearing on October 12, 2016, DCFS's report indicated that Mother had visited Natalie only two times between July and October. Neither visit was positive; during one of the visits, Mother required a lot of reassurance from Natalie

“as though[] there was a role reversal.” Natalie was happy in her foster home; she loved the family and wanted to remain there. The court declared Natalie a dependent child, removed her from her parents’ custody, and ordered family reunification services for both parents. The court ordered Mother to participate in parenting education classes, random and on-demand drug testing, and conjoint counseling with Natalie if recommended by Natalie’s therapist; if any drug test was missed or positive, Mother was to complete a full drug rehabilitation program with ongoing random drug testing. The court also ordered monitored visitation, three times a week for up to three hours, to be monitored by a DCFS-approved monitor. The court scheduled a six-month review hearing for April 12, 2017.

In its six-month review report, DCFS recommended that the parents receive six additional months of services. Mother had completed a parenting education course and had begun participating in individual counseling services. Conjoint counseling between Mother and Natalie had not begun, however, based on the recommendations of Natalie’s therapist. Four of Mother’s drug tests between July 2016 and February 2017 were positive for hydrocodone, and a test on March 16, 2017 was positive for alcohol. Mother provided DCFS documentation showing that in the past she had been prescribed pain medication. Mother’s medical records also disclosed that she had previously been diagnosed with “Severe Opioid Disorder and History of Alcohol Dependence.”³ DCFS was unable, however, to

³ Opioid Use Disorder is defined as “[a] problematic pattern of opioid use leading to clinically significant impairment or distress,” as manifested by the occurrence of at least two of the following situations, such as taking opioids in larger amounts or

confirm whether Mother's physician had concerns about Mother's opiate use or whether Mother was currently prescribed pain medication. As for the positive alcohol test, Mother denied the accuracy of the test results, claiming she had not consumed alcohol in the past several months and that her newly prescribed medications may cause a positive alcohol test result. The report also stated that Mother had been charged with driving under the influence in October 2016, but that Mother denied it was a recent incident and said it was related to a prior criminal case.

DCFS also reported that Mother had exercised monitored visitation twice a week during the previous several months. In December 2016, DCFS allowed Mother an unmonitored holiday visit. During the visit, Mother initiated a call to Natalie's father, during which Natalie spoke to him. Natalie later told the social worker that speaking with her father had upset her, that she no longer wished to have unmonitored visits with Mother, and that she wanted all telephone calls with her parents monitored. Natalie, however, thereafter refused to have any visits with Mother. The social worker opined that both parents have a negative effect upon Natalie's emotional health, noting that Natalie herself said that she "feels best" when she is not visiting or talking to her parents.

On April 12, 2017, the court retained its earlier orders and set a contested hearing for May 15 on the issue of visitation. At the request of minor's counsel, the court waived Natalie's presence on that date.

over a longer period than intended, or continuing opioid use despite having persistent or recurrent problems caused by the effects of opioids, within a 12-month period. (<https://www.buppractice.com/node/1514>)

DCFS's last minute information for the court dated May 15, 2017, indicated that at a recent monitored visit at the maternal aunt's home, Natalie smelled alcohol on Mother's breath and reported that Mother "always seems drunk." She said that when she is with Mother, she is depressed and afraid. She does not trust mother and feels uncomfortable when she is with her. Natalie expressed concerns about driving with Mother because Mother talks on the phone and texts while driving; Mother has been in a lot of accidents and she might be in the car with Mother and be in an accident. She "feels pressured by her parents to go back home, but she is skeptical that things have not changed." She believes that Mother is "mentally unstable and lies a lot to [her] because she's drinking."

At the May 15, 2017 hearing, the court denied Mother's request to return Natalie to her custody as well as her alternative request for unmonitored visitation. In reaching its decision, the court noted Natalie's fear of being in Mother's care and found Natalie's statements to be credible, specifically her belief that Mother is not only drinking alcohol, but appears to be drunk all the time. The court stated that its decision to deny unmonitored visitation was "not an instance in which the court is deferring to the minor simply because she doesn't want to have unmonitored visits with Mother. Rather, it's based on the evidence that the court believes that it may be the case that Mother is substituting alcohol for prior opioid addiction." The court, however, gave DCFS discretion to allow unmonitored visits should overnight monitored visits at the maternal aunt's home go well in the future. The court also continued family reunification services for both parents and scheduled a 12-month review hearing for September 20.

Mother filed her notice of appeal the following day.⁴

DISCUSSION

Mother's sole contention on appeal is that the juvenile court abused its discretion in denying her unsupervised visitation. Although she concedes that she was not ready to have Natalie returned to her custody, she contends "the evidence was minimal that she was not ready for unmonitored visits." We disagree.

"We review an order setting visitation terms for abuse of discretion." (*In re Brittany C.* (2011) 191 Cal.App.4th 1343, 1356; but see *In re Mark L.* (2001) 94 Cal.App.4th 573, 581, fn. 5 [the reviewing court determines whether the order is supported by substantial evidence].) Under the circumstances of this case, either standard compels the same result. In either case "[w]e do not reweigh the evidence, evaluate the credibility of witnesses, or resolve evidentiary conflicts." (*In re Dakota H.* (2005) 132 Cal.App.4th 212, 228.) " " "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.) Here, although the facts might support mother's view, they did

⁴ While this appeal was pending, the 12-month review hearing was held on November 2, 2017, at which the court terminated reunification services for both parents and scheduled a section 366.26 hearing. On December 12, 2017, in case No. B286243, Mother filed a writ petition pursuant to rule 8.452 of the California Rules of Court. On December 20, 2017, this court ordered that the writ petition be considered concurrently with this appeal. By separate order, we deny the petition and at the same time deny as moot DCFS's motion filed December 15, 2017 to dismiss the petition.

not compel it because substantial evidence supported the court's decision. Accordingly, the court did not abuse its discretion.

Mother contends that the court mistakenly “grounded its decision not to liberalize visitation on ‘Natalie’s belief that [M]other is not only drinking alcohol, but is showing up—appears to her drunk all the time.’” We disagree. Substantial evidence in the record, other than Natalie’s observations, supports the court’s decision: DCFS’s reports of Mother’s history of substance abuse and current alcohol abuse, her prior diagnosis of “Severe Opioid Disorder and History of Alcohol Dependence,” her recent positive test for alcohol, and her recent driving under the influence charge. In any case, the court would have been justified in basing its decision on Natalie’s testimony alone. The court found her credible and nothing in the record suggests otherwise. Although Mother tried to explain her lapses, the court was not required to believe her.

In conclusion, the court did not abuse its discretion in making this order.

DISPOSITION

The juvenile court's order is affirmed.

NOT TO BE PUBLISHED.

ROTHSCHILD, P.J.

We concur:

CHANEY, J.

BENDIX, J.*

* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.