

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS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 This opinion has not been certified for publication or ordered published for purposes of rule 8.1115(a).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

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN
AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

ANNETTE D.,

Defendant and Appellant.

B269290

(Los Angeles County
Super. Ct. No. CK64791)

APPEAL from an order of the Superior Court of
Los Angeles County, Teresa T. Sullivan, Judge. Affirmed.

Andre F.F. Toscano, under appointment by the Court of
Appeal, for Defendant and Appellant.

Office of the County Counsel, Mary C. Wickham, County
Counsel, R. Keith Davis, Assistant County Counsel, and
William D. Thetford, Deputy County Counsel, for Plaintiff and
Respondent.

INTRODUCTION

Annette D., the former domestic partner and current spouse of minor Ariana D.'s mother, Yvette D. (mother), appeals from the dependency court's order denying her modification petition filed under Welfare and Institutions Code¹ section 388 and terminating parental rights.² Annette claims the court erred in failing to grant her presumed parent status, and her due process rights were violated because the court did not provide her written notice of the dependency proceedings or appoint her counsel until after the court set the selection and implementation hearing. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

1. Family background

Ariana was born in March 2012. About three months later, mother and Annette registered as domestic partners with the County of Los Angeles. In July 2012, mother executed a notarized letter stating that she was giving Annette "all rights" to Ariana, including the right to seek emergency medical attention. The letter also stated that Annette was the sole provider of the family and had "taken all responsibilities of [Ariana]." Although Ariana's last name on her birth certificate is a hyphenated combination of mother's and Annette's last names, Annette is not listed as a parent on the certificate.³

¹ All undesignated statutory references are to the Welfare and Institutions Code.

² Mother and Ariana's father, Alex G. (father), are not parties to this appeal.

³ Mother is the only parent listed on Ariana's birth certificate.

2. The dependency petition

On March 6, 2014, the Department of Children and Family Services (Department) filed a dependency petition under section 300, subdivisions (a) and (b), after mother was arrested for assaulting Annette and possessing cocaine. The petition alleged mother and Annette had engaged in domestic violence, which placed Ariana at risk of physical harm (a-1 and b-1 allegations). The petition further alleged that mother had a history of substance abuse and had been in possession of cocaine when she was arrested for assaulting Annette (b-2 allegation), and that she had a history of mental health issues (b-3 allegation), all of which rendered her incapable of providing appropriate care for Ariana and placed the child at risk of physical harm. The petition named only mother and father as Ariana's parents; Annette is referred to as mother's "female companion."⁴ The Department did not provide Annette with a copy of the petition, a copy of the detention report, or notice of the detention hearing.

Mother and Annette did not appear at the detention hearing. The court detained Ariana, and she eventually was placed with Silver L.,⁵ the manager of an apartment complex where Ariana and mother had previously lived.

⁴ Father never attended any of Ariana's hearings.

⁵ Throughout the Department's reports, the spelling of Silver's name varies; it sometimes appears as "Silver," while at other times appearing as "Silverr." We use the spelling with only one "r" throughout this opinion.

3. Jurisdiction and disposition

The Department's jurisdiction and disposition report noted that Annette has been involved in Ariana's life since infancy and that she considers the child her "baby," and that Ariana recognizes Annette as one of her caretakers. The Department recommended that Annette be included in Ariana's case plan because of her relationship with Ariana and her domestic partnership with mother. The Department also recommended that Annette receive reunification services and provided a list of domestic violence and other case-related services that Annette should participate in. Although mother and father were provided notice of the jurisdiction and disposition hearing and a copy of the Department's report, Annette was not.

On April 24, 2014, the court conducted a jurisdiction hearing. Mother attended the hearing, but Annette did not. The court amended and sustained the b-1 and b-2 allegations in the dependency petition, but dismissed the a-1 and b-3 allegations. The court set the disposition hearing for May 22, 2014.

Annette made her first court appearance at the May 22, 2014 hearing. Annette was accompanied by an advocate from a domestic violence program that she was attending. The Department informed the court that it needed to interview mother about Annette's relationship with Ariana to determine to what extent, if any, Annette should participate in the dependency proceedings. The court did not make any substantive rulings and stated that it was continuing the disposition hearing to June 18, 2014.

The Department interviewed mother and Annette in June 2014. Mother reported that she had not spoken to Annette for about a month. Although mother acknowledged that she had

been financially dependent on Annette and that Annette had helped raise Ariana, mother believed she and Annette needed to resolve their issues with drug use before renewing their relationship. Mother claimed she had entered a domestic partnership with Annette for “medical” reasons, and not for the purpose of allowing Annette to have shared custody of Ariana.

Annette reported that she and mother were still “together.” Annette was attending domestic violence classes and participating in individual counseling. Annette wanted to address the issues that led to Ariana’s dependency proceedings so that she could reunite with mother and Ariana.

On June 1, 2014, the Department granted Annette monitored visits with Ariana. Silver monitored the visits, which occurred once a week. The visits went well and without incident.

Annette did not appear at the June 18, 2014 disposition hearing, even though she was aware the court had continued the May 22, 2014 hearing to this date. She would not appear again in Ariana’s dependency case until more than a year later. The court declared Ariana a dependent of the court, removed her from her parents’ custody, and placed her in the care and custody of the Department. The court granted reunification services for mother only, and it awarded her monitored visits with Ariana. The court did not address whether Annette was entitled to reunification services, and the issue was not raised at the hearing.

4. Post-disposition and setting of the selection and implementation hearing

By early August 2014, mother and Annette were living together again, but mother was looking to move because she was not getting along with Annette. Around October 2014, mother

told Silver that she planned to enter a residential treatment facility and wanted Annette to visit Ariana while she was away. Annette also contacted Silver to request visits with Ariana. Silver refused to provide Annette monitored visits while mother was away because Annette was not named in Ariana's case plan.

The court conducted a contested six-month review hearing on January 29, 2015. The court terminated mother's reunification services and set a section 366.26 selection and implementation hearing for May 28, 2015.

In March 2015, Annette married mother. In May 2015, mother started visiting Ariana on a weekly basis, and Annette attended the visits every other week. Ariana appeared most closely bonded with Silver, and she would sometimes be hesitant to approach mother, often hiding behind Silver. Ariana would approach Silver for help if she needed something during a visit, or mother would direct Ariana to ask Annette for help. Ariana appeared to have a closer bond with Annette than with mother.

The Department reported there was a high likelihood that Ariana would be adopted by Silver. Ariana, who had been in Silver's custody for more than a year, was thriving. Ariana liked to be around Silver and looked to her for emotional support. While in Silver's care, Ariana was always clean, appropriately dressed, and well cared for, and she was eating and sleeping well. According to the Department, Silver was doing an "excellent job of ensuring that Ariana's medical, emotional and developmental needs [were] being met," and she arranged for regular visits between Ariana and her two older siblings.⁶

⁶ Ariana's two older siblings, Liliana C. and Fernando Z., who have different fathers than Ariana, were adjudged minors of the court under separate petitions and placed with a different caretaker.

At the May 28, 2015 hearing, mother's counsel stated that Annette might qualify as Ariana's presumed parent and requested the court appoint Annette counsel.⁷ The court responded, "At this stage in the proceedings I'm going to deny that request. I don't see any biological or legal relationship to the child . . . at this date." Mother's attorney responded that he had advised Annette to file a "motion or a JV-505" so that the court would consider appointing her counsel. The court thanked mother's counsel and reiterated that, based on the information it had before it at that point, it did not believe there was a legal basis to appoint Annette counsel. The court continued the selection and implementation hearing to September 2015.

5. Annette's section 388 petition and the termination of parental rights

On July 28, 2015, Annette filed a pro se section 388 petition requesting the court to appoint her counsel and return Ariana to her custody. Annette also submitted a JV-505 parentage statement requesting the court to declare her Ariana's parent. On August 10, 2015, the court appointed Annette counsel and set a hearing on her petition for the same date as the selection and implementation hearing.

On September 6, 2015, Annette assaulted mother in front of Ariana. After a monitored visit between mother, Annette, and

⁷ It is not clear whether Annette attended the May 28, 2015 hearing. Annette is not listed as having attended the hearing in the court's minute order. But in the reporter's transcript from the hearing, the court states that "Mr. Parks" was representing Annette, who was present at the hearing. It appears the court was mistaken, since Mr. Parks was mother's attorney, and Annette had yet to be appointed counsel.

Ariana, mother asked Silver for a ride to the train station. Annette became angry and began screaming at and pushing mother. Ariana, who was watching from inside Silver's car, told Annette "to leave her mommy alone." Annette was later arrested.

In October 2015, Annette, through her counsel, filed a brief in support of her section 388 petition. Annette argued she was Ariana's presumed parent, and that the court had violated her due process rights by failing to appoint her counsel and provide written notice of Ariana's proceedings until after the court set the selection and implementation hearing. Both Ariana and the Department opposed Annette's petition.

On November 3, 2015, the court conducted a hearing on Annette's petition, at which Annette appeared with counsel. The court denied the petition, finding Annette did not qualify as Ariana's parent. The court also found it would not be in Ariana's best interests to place her in Annette's custody because she was closely bonded with Silver and Annette had not adequately addressed her issues with domestic violence.

In finding Annette did not qualify as Ariana's parent, the court weighed several factors. The court acknowledged there was evidence that would support a finding Annette was Ariana's presumed parent. Specifically, the court recognized Annette had described Ariana as her child when interviewed by the Department; she had expressed an interest in participating in Ariana's case plan; she had entered a domestic partnership with Ariana's mother; and Ariana's name on her birth certificate was a combination of Annette's and mother's last names.

The court concluded, however, these factors were outweighed by evidence demonstrating that Annette was not

Ariana's parent. The court focused on evidence that: Annette never tried to adopt Ariana; Annette never tried to have herself listed as a parent on Ariana's birth certificate; mother never identified Annette as a parent during the early stages of the dependency proceedings; and mother and Annette had entered a domestic partnership for medical insurance purposes only, and not to allow Annette to have legal custody of Ariana.

In addition, the court focused on the fact that Annette did not try to assert parental status over Ariana, obtain custody of the child, or even try to insert herself into the dependency proceedings until more than a year after she had actual notice of Ariana's case. The court also looked at the nature of Annette's relationship with mother. Although Annette and mother had become domestic partners in 2012, and later married in May 2015, their relationship was unstable throughout most of the dependency proceedings and, according to mother, had ended in October 2015. The court concluded, "While it's clear that [Annette] is bonded to the child, the relationship is not one of a parent."

After denying Annette's petition, the court conducted the selection and implementation hearing. The court found by clear and convincing evidence that Ariana was likely to be adopted and terminated mother's and father's parental rights. Although mother's parental rights were terminated, the court awarded mother visits with Ariana twice per month. The court identified Silver as Ariana's prospective adoptive parent and designated her the child's de facto parent.

Annette filed a timely appeal.

DISCUSSION

Annette contends the dependency court erred in denying her section 388 petition requesting to be declared Ariana's presumed parent and have Ariana returned to her custody. She also claims that, because she was Ariana's presumed parent, her due process rights were violated when the court failed to provide her written notice of the dependency proceedings and appoint her counsel until after the court set the selection and implementation hearing. We conclude the court properly denied Annette's petition because Annette did not hold herself out to the public as Ariana's parent.

1. Relevant law and standard of review for a presumed parent determination

In the dependency context, there are three statuses a person claiming to be a minor's parent can achieve: (1) an alleged parent; (2) a biological or natural parent; and (3) a presumed parent. (See *In re Zacharia D.* (1993) 6 Cal.4th 435, 448 (*Zacharia D.*.) A person's status is critical in a dependency case because it dictates the extent to which he or she can participate in the case and the rights to which he or she is entitled. (*In re Christopher M.* (2003) 113 Cal.App.4th 155, 159 (*Christopher M.*.) A presumed parent is accorded greater rights than either a biological or an alleged parent. (*Zacharia D.*, *supra*, 6 Cal.4th at pp. 448–449; see also *In re J.L.* (2008) 159 Cal.App.4th 1010, 1018.) Only a presumed parent is entitled to appointed counsel and reunification services. (*Zacharia D.*, *supra*, 6 Cal.4th at p. 451; *Christopher M.*, *supra*, 113 Cal.App.4th at p. 159.) While alleged and biological parents are entitled to notice of the disposition and jurisdiction hearing so

that they may attempt to establish their status as presumed parents (see § 291, subd. (a)(1)), they are not entitled to notice of post-disposition hearings, such as a review hearing, if they are not receiving reunification services. (See § 292.)

Family Code section 7611 sets forth the circumstances under which a person may establish he or she is a child's presumed parent. (See *Zacharia D.*, *supra*, 6 Cal.4th at p. 449; see also *L.M. v. M.G.* (2012) 208 Cal.App.4th 133, 139 [Family Code section 7611 applies to issues of establishing both paternity and maternity].) The only circumstance applicable here is where the person seeking to be declared a presumed parent “receives the child into his or her home and openly holds out the child as his or her natural child.” (Fam. Code, § 7611, subd. (d); see *Zacharia D.*, *supra*, 6 Cal.4th at p. 449.) A person's status as a biological or stepparent does not automatically render that person a presumed parent. (See *id.* at pp. 448–449.) Instead, the person claiming to be a presumed parent must demonstrate that he or she has received the child into his or her home **and** publicly acknowledged his or her status as the child's parent. (*In re Jose C.* (2010) 188 Cal.App.4th 147, 162 (*Jose C.*).)

In determining whether a person has satisfied the requirements of Family Code section 7611, subdivision (d), courts weigh several factors, all of which may not necessarily apply in any given case. (*In re T.R.* (2005) 132 Cal.App.4th 1202, 1211.) Those factors include, “whether the [person] actively helped the mother in prenatal care; whether [she] paid pregnancy and birth expenses commensurate with [her] ability to do so; whether [she] promptly took legal action to obtain custody of the child; whether [she] sought to have [her] name placed on the birth certificate; whether and how long [she] cared for the child; whether there is

unequivocal evidence that [she] had acknowledged the child; the number of people to whom [she] had acknowledged the child; whether [she] provided for the child after it no longer resided with [her]; whether, if the child needed public benefits, [she] had pursued completion of the requisite paperwork; and whether [her] care was merely incidental.” (*Ibid.*)

A person seeking to be declared a presumed parent has the burden of establishing by a preponderance of the evidence the two elements under Family Code section 7611, subdivision (d). (*In re Spencer W.* (1996) 48 Cal.App.4th 1647, 1652–1653 (*Spencer W.*)). A determination of presumed parent status is typically reviewed for substantial evidence. (*In re D.A.* (2012) 204 Cal.App.4th 811, 824.) However, where, as in this case, the appellant challenges a finding that turns on his or her failure to satisfy her burden of proof at trial, some courts have recognized that the question on appeal “ ‘becomes whether the evidence compels a finding in favor of the appellant as a matter of law. [Citations.] Specifically, the question becomes whether the appellant’s evidence was (1) “uncontradicted and unimpeached” and (2) “of such a character and weight as to leave no room for a judicial determination that it was insufficient to support a finding.” [Citation.]’ [Citation.]” (*Los Angeles County Dept. of Children & Family Services v. Superior Court* (2013) 215 Cal.App.4th 962, 967.)

2. Application

As our summary of the facts makes clear, the court thoroughly considered the evidence that weighed both in favor of, and against, a finding that Annette is Ariana’s presumed parent. As we will explain, there was substantial evidence to support the court’s finding that Annette did not satisfy all of the elements of

Family Code section 7611, subdivision (d). Specifically, Annette did not establish that she held herself out to the public as Ariana's parent. Accordingly, the court properly found Annette is not Ariana's presumed parent, and it therefore did not abuse its discretion in denying Annette's section 388 petition.

As a preliminary matter, the Department agrees that Annette received Ariana into her home and provided essential care for the child. For example, there is no dispute that Annette was the primary provider of food and shelter for Ariana. Annette lived with and helped raise Ariana for the first two years of the child's life before Ariana was detained in March 2014, and Ariana recognized Annette as one of her caretakers. This evidence therefore satisfies the first element of Family Code section 7611, subdivision (d).

Although it is beyond dispute that Annette took Ariana into her home and helped raise the child, such conduct does not by itself satisfy the requirements of Family Code section 7611, subdivision (d). (See, e.g., *In re Bryan D.* (2011) 199 Cal.App.4th 127, 139–140 [although it was undisputed the child's grandmother received the child into her home and assumed all parental responsibilities, the grandmother was not the presumed parent because she did not openly hold herself out to the public as the child's parent].) As noted, a person seeking presumed parent status must also hold herself out to the public as the child's parent. (*Jose C.*, *supra*, 188 Cal.App.4th at p. 162.)

Here, Annette did not prove that she had publicly held herself out as Ariana's parent. In the two years of Ariana's life before the dependency proceedings were initiated, Annette never tried to adopt Ariana or obtain legal custody of the child. Although Ariana's name is a hyphenated combination of

Annette's and mother's last names, mother is the only parent listed on Ariana's birth certificate. There is also no evidence that Annette ever took any steps to have her name included on the birth certificate or to become legally recognized as Ariana's parent. (See *Spencer W.*, *supra*, 48 Cal.App.4th at p. 1654 [failure to take formal steps to assume parental status supports a finding that a person is not the child's presumed parent].)

Perhaps most indicative of the fact that she did not hold herself out to be Ariana's parent, Annette waited more than a year and two months after she had actual notice of Ariana's dependency proceedings to assert her status as Ariana's parent. As the court recognized, Annette attended what was originally scheduled to be a disposition hearing in late May 2014. The issue of Annette's parental status was raised at that hearing, which was continued to the next month. Although Annette had notice of when that hearing would be conducted, she did not attend the subsequent hearing, or attend any other hearings until after the selection and implementation hearing was set. While Annette did not receive written notice of all of the hearings in Ariana's case, she was in regular contact with the Department and Silver, Ariana's caretaker throughout the proceedings, and she periodically lived with mother, who was receiving written notice of the hearings. Nevertheless, Annette waited more than a year from the disposition hearing to formally assert that she was Ariana's parent. This lack of urgency in asserting her parental status supports a finding that Annette did not hold herself out to be Ariana's parent. (See *Spencer W.*, *supra*, 48 Cal.App.4th at p. 1654.)

In sum, we conclude the court properly found Annette failed to demonstrate that she met the requirements for

establishing presumed parent status under Family Code section 7611, subdivision (d). Because the court properly denied Annette's request to be declared a presumed parent, we do not need to address Annette's due process arguments concerning notice and appointment of counsel. (See *Christopher M.*, *supra*, 113 Cal.App.4th at p. 159.)

DISPOSITION

The dependency court's order denying Annette's section 388 petition and terminating parental rights is affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

LAVIN, J.

WE CONCUR:

EDMON, P. J.

ALDRICH, J.