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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

In re A.G., a Person Coming
Under the Juvenile Court Law.

B270959
(Los Angeles County
Super. Ct. No. DK11648)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN
AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

PHILLIP G.,

Defendant and Appellant.

APPEAL from orders of the Superior Court of Los Angeles County, Stephen Marpet, Juvenile Court Referee. Affirmed in part; dismissed in part.

Judy Weissberg-Ortiz, under appointment by the Court of Appeal, for Defendant and Appellant.

Mary C. Wickham, County Counsel, R. Keith Davis,
Assistant County Counsel, and Aileen Wong, Deputy County
Counsel, for Plaintiff and Respondent.

* * * * *

In the juvenile dependency proceedings, Phillip G. initially acknowledged A.G. (then two years old) was his daughter. Nevertheless, on appeal, Phillip argues that he wanted no role in her life and that the juvenile court should have ordered a DNA test to determine paternity. More specifically, father wanted the DNA test to show that he was *not* A.G.'s biological father. We conclude the juvenile court was not required to order a DNA test, and instead properly relied on other evidence when it found father was A.G.'s biological father.

Father also purports to challenge the sufficiency of the evidence to support jurisdiction, but he did not appeal from the jurisdictional order, and his jurisdictional challenge therefore is not cognizable. We affirm the orders denying father's requests for a paternity test.

BACKGROUND

In June 2015, Los Angeles County Department of Children and Family Services (DCFS) filed a Welfare and Institutions Code section 300 petition identifying four children. This appeal concerns only one child—A.G. who was two years old at the time the petition was filed. The juvenile court sustained allegations that A.G. was at risk of harm due to her mother's use of

controlled substances, her mother's companion's use of marijuana and his violence against mother.¹

The following allegations were sustained against Phillip: "Phillip . . . has an unresolved history of illicit drug abuse and criminal convictions including but not limited to felony possession of a controlled substance and possession of substances for sale, and force/great bodily injury. The father's last known arrest was on or about 03/22/2012 for which he remains incarcerated. Further, the father . . . is currently incarcerated awaiting trial for murder. The father's propensity to [commit] violent criminal acts and use of illicit drugs remains unresolved. Said conduct, violent criminal history and acts by the father impairs his ability to adequately parent and protect the child and places the child at substantial risk of harm."

In June 2015, mother told a social worker that Phillip was A.G.'s father. She stated that father was at the hospital just after A.G. was born and signed her birth certificate. Mother indicated that father had been released on bail when A.G. was born. Mother reported that Phillip had no contact with A.G. A.G. was placed with Phillip's mother, her paternal grandmother.

In July 2015, DCFS located Phillip, who was incarcerated. Phillip had an extensive criminal history including assault with a deadly weapon, bringing a controlled substance into prison, possession of a controlled substance, and criminal conspiracy. He reported that he had been charged with murder and acknowledged that he was a gang member. Phillip indicated that he did not have contact with A.G. since she was two months old.

¹ Mother did not challenge the findings on appeal. In a prior order, mother's companion's appeal was dismissed.

Phillip completed a JV-505 form. He indicated that he did not know if he was A.G.'s father and requested a blood or DNA test. Phillip did not check the box stating that he was not A.G.'s parent and did not want to participate in juvenile court proceedings.

Phillip reported that he was incarcerated at the time A.G. was born and was not at the hospital for her birth. He represented that his name was not on A.G.'s birth certificate. In contrast to Phillip's statement, A.G.'s birth certificate contained his name.² In further contrast to Phillip's representation, mother reported that Phillip was at the hospital when A.G. was born.

The juvenile court repeatedly denied Phillip's requested DNA tests. For example, on July 24, 2015, the court stated: "At this point, I don't see any legal basis to provide father with a D.N.A. test. The child is over the age of two. He had two years to do it." On November 13, 2015, the court denied Phillip's request for a DNA test, noting that Phillip's name was on A.G.'s birth certificate. The court initially indicated that Phillip was an alleged father and later found him to be a biological father. Phillip renewed his request for a DNA test at the jurisdictional hearing, and his request was again denied. He was not given reunification services. He was permitted monitored visitation with A.G.

On March 1, 2016, Phillip appealed from the juvenile court's "[p]aternity finding," and the juvenile court's "[f]ailure to order a paternity test"

² Health and Safety Code section 102425 prohibits placing an unmarried father's name on a child's birth certificate unless the father signed a voluntary declaration of paternity.

DISCUSSION

On appeal, Phillip’s principal challenge is to the juvenile court’s denial of his requested paternity test. Phillip also argues that no substantial evidence supported the jurisdictional findings. As we shall explain, his first argument lacks merit, and the second was not encompassed in his notice of appeal.

1. The Juvenile Court Was Not Required to Order a Paternity Test

When a father completes a JV-505 form, the juvenile court is required to determine whether the father is a biological parent of the child. (*In re D.P.* (2015) 240 Cal.App.4th 689, 696; *In re B.C.* (2012) 205 Cal.App.4th 1306, 1308.) “The court may make such determination *either* by ordering blood testing or based on testimony, declarations or statements by the mother and alleged father.” (*In re D.P.*, *supra*, at p. 696, italics added.) A juvenile court is not required to order a paternity test to determine if a father is a biological father. (*Id.* at p. 697.) In *In re H.D.* (2016) 245 Cal.App.4th 1277, 1284, we made clear that a juvenile court is not required to order genetic testing to determine whether a father is a biological parent.

Here, the juvenile court determined Phillip was A.G.’s biological father based on her birth certificate. Her birth certificate lists Phillip’s name as father. Additionally, mother asserted that that Phillip was A.G.’s father. Further, Phillip initially “acknowledged he is the father of the child [A.G.]” The juvenile court was permitted to rely on this evidence; it was not required to order a DNA test.³ (*In re H.D.*, *supra*, 245 Cal.App.4th at p. 1284.)

³ In his opening brief Phillip mentions that he was sent notice of the jurisdictional and dispositional hearing by first class

2. Phillip Did Not Appeal from the Juvenile Court's Jurisdictional Finding

As respondent argues, Phillip's notice of appeal did not encompass the juvenile court's jurisdictional finding, and his challenge to that order therefore is not cognizable. (*In re Daniel D.* (1994) 24 Cal.App.4th 1823, 1831-1832.) Phillip's notice of appeal indicated that he was appealing from "1. Paternity finding, and 2. Failure to order a paternity test as requested by Phillip [G]."

In any event, Phillip does not and cannot challenge the necessity of jurisdiction based on A.G.'s mother's abuse of controlled substances and half sibling's positive test for controlled substances at birth. "[A] jurisdictional finding good against one parent is good against both." (*In re Alysha S.* (1996) 51 Cal.App.4th 393, 397; see *In re H.D.*, *supra*, 245 Cal.App.4th at pp. 1285-1286 [jurisdiction may be based on the conduct of either parent].)

Finally, assuming it were cognizable, Phillip's challenge to the sufficiency of the evidence to support the allegations that he posed a risk of harm to A.G. lacks merit. Phillip basically abandoned A.G., having no contact with her most of her life. At the time of the dependency proceedings, A.G. was two years old and Phillip had made no arrangement for her care during his extended incarceration. Phillip's propensity to commit crimes

mail instead of certified mail. Phillip does not argue that he lacked actual notice, and in any event a parent's appearance at the hearing is a waiver of the right to challenge notice. (*In re Raymond R.* (1994) 26 Cal.App.4th 436, 441.) The juvenile court continued the adjudication hearing to assure father's presence, and he was present at the hearing.

placed A.G. at risk because he was unable to care for her. He also was unwilling to care for her as he repeatedly requested DNA tests in an effort to show that he was *not* her biological father. (*In re I.J.* (2013) 56 Cal.4th 766, 773 [in reviewing a challenge to the sufficiency of the evidence, reviewing court considers evidence in the light most favorable to the judgment below].)

DISPOSITION

The juvenile court's orders denying Phillip's requested paternity test are affirmed. The portion of the appeal challenging the juvenile court's jurisdictional order is dismissed.

FLIER, J.

WE CONCUR:

BIGELOW, P. J.

SORTINO, J.*

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