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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

In re T.V., et al., Persons Coming
Under the Juvenile Court Law.

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN
AND FAMILY SERVICES,

Plaintiff,

v.

S.A. et al.,

Defendants and Respondents;

T.V.,

Minor and Appellant.

B281072

(Los Angeles County
Super. Ct. No. DK19154)

APPEAL from orders of the Superior Court of Los Angeles County. Robert S. Draper, Judge. Affirmed.

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

Megan Turkat Schirn, under appointment by the Court of Appeal, for Defendant and Respondent, S.A.

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

T.V. is the mother of a 13-year-old daughter and 14-year-old son. Daughter appeals from the dependency court's order granting presumed father status to the minors' stepfather, as well as the jurisdictional order dismissing domestic violence allegations against mother and stepfather. She also argues the trial court erred in not disqualifying the siblings' counsel due to a conflict of interest. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

The children's biological father committed suicide in 2007 when daughter was four and son was five. Son found father's body. Approximately a year later, stepfather moved in to the family home. Mother worked outside the home, and stepfather cooked, cleaned and took the kids to school. Mother and stepfather married in 2013.

On June 7, 2016, when daughter was 13 and son was 14, mother attempted suicide by overdosing on pills. Mother and stepfather had been arguing at home. Son saw mother try to grab stepfather while she was sitting on the bed. She could not reach him and fell on the ground instead. Son told stepfather to leave so the fight would not escalate, and stepfather left the home. Both son and daughter saw mother ingest a lot of pills. The paramedics came, and mother was taken to the hospital. She tested positive for opioids and cocaine.

Mother remained in the hospital for several weeks, and the minors went to live with their adult brother. The Department of Children and Family Services (Department) interviewed mother who said she had used cocaine for many years “to get through daily life” and had had “a few suicide attempts.” She had overdosed on pills because she was depressed about stepfather’s relationship with a female friend. After mother asked to meet the friend, stepfather brought the friend to a lunch with mother and the minors. The following day, mother fought with stepfather about the friend, and then “began to take a lot of pills.”

On June 27, 2016, mother was granted a temporary restraining order against stepfather based on her statements that stepfather had physically “abused” her on the night of her attempted suicide, and “provided” her with cocaine and pain medications. The Department interviewed the minors the following week. Son cried and said the restraining order prevented him from talking to stepfather. Stepfather was “like a father to him.” Daughter said she did not view stepfather “as a father, but more as a friend.” She did not want to live with him.

When mother was released from the hospital, she reunited with stepfather. The minors remained living with the adult brother. Mother agreed to enroll in a drug treatment program. In August 2016, mother tested positive for cocaine. By the end of the month, she still had not enrolled in a drug treatment

program. In September 2016, mother tested positive for cocaine again. She denied using drugs.

On September 8, 2016, the Department filed a petition alleging the minors were endangered by mother's illicit drug use, mental and emotional problems, and history of violent altercations with stepfather. The minors were detained. Son wanted to return home and asked for visits with mother and stepfather. Daughter did not want to return home and did not want visits with stepfather. The court ordered weekly one-hour visits for mother with both minors; stepfather was ordered three hours of visits with son per week.

On October 17, 2016, the court found stepfather to be the presumed father of the minors. Daughter objected to the finding: she viewed stepfather as a "stepparent and not her father."

In November 2016, both minors denied having witnessed any physical violence between mother and stepfather. However, the following month, daughter said mother and stepfather "would fight a lot like yelling at each other" and "would push each other." She did not want to return home, saying she was angry at mother and stepfather for "recent events" including mother's suicide attempt.

The minors continued to attend weekly one-hour visits with mother. Daughter did not want any additional time with mother, and continued to refuse visits with stepfather. Son enjoyed his

weekly three-hour visits with stepfather and wanted more visits with him. Son did not request additional visits with mother.

Both son and daughter testified at the jurisdiction hearing. Daughter testified that mother and stepfather would argue once a week. She saw mother push stepfather and throw things. Daughter was uncomfortable around stepfather because he smoked marijuana at home. He smoked about once a week in front of mother and the minors. Daughter preferred living with the adult brother because he did not fight with his girlfriend, and they took her to school every day. Mother and stepfather sometimes slept late and did not take the minors to school.

Son testified that mother and stepfather fought once or twice a month. Son had seen them push each other, but mother was more aggressive. Mother broke a plate once during an argument. He had seen stepfather smoking marijuana once in the home. Son wanted to return home.

The court dismissed the allegations based on mother's mental and emotional problems and domestic violence. The court sustained the allegation that mother's history of illicit drug abuse endangered the minors, and ordered mother to participate in a drug treatment program and counseling. The court issued a home of parent order for both minors but ordered that daughter could remain living with the adult brother. Daughter timely appealed.

DISCUSSION

1. *Conflict of Interest*

The daughter contends the trial court erred in not disqualifying her counsel from representing both her and her brother because of a purported conflict of interest: the daughter objected to stepfather having presumed father status, and the son viewed stepfather as his father. According to daughter, the minors' counsel was not able to effectively present the daughter's position on this issue because of the siblings' different views.

“When first appointing counsel [for multiple siblings] in a dependency matter, the court may generally appoint a single attorney to represent all the siblings. It would have to appoint separate attorneys if, but only if, there is an actual conflict among the siblings or if circumstances specific to the case . . . present a reasonable likelihood an actual conflict will arise.” (*In re Celine R.* (2003) 31 Cal.4th 45, 56–57.)

“If an attorney believes that an actual conflict of interest existed at appointment or developed during representation, the attorney must take any action necessary to ensure that the siblings' interests are not prejudiced, including: (i) Notifying the juvenile court of the existence of an actual conflict of interest among some or all of the siblings; and (ii) Requesting to withdraw from representation of some or all of the siblings.” (Cal. Rules of Court, rule 5.660(c)(2)(D).)

“If the court determines that an actual conflict of interest exists, the court *must* relieve an attorney from representation of some or all of the siblings.” (Cal. Rules of Court, rule 5.660(c)(2)(E) (emphasis added).) “A court should set aside a judgment due to error in not . . . relieving conflicted counsel only if it finds a reasonable probability the outcome would have been different but for the error.” (*In re Celine R.*, *supra*, 31 Cal.4th at p. 60.)

Here, the minors’ counsel did not inform the court of any conflict of interest, and the court did not identify any. Even if the court erred in not finding a conflict of interest and relieving counsel, there is no reasonable probability the outcome would have been different but for the error. If the daughter had had separate counsel, it is still very unlikely that such counsel would have convinced the court to make a different ruling on the issue of presumed fatherhood, as we explain below.¹

2. *Presumed Father*

Daughter challenges the court’s finding that stepfather was a presumed father. She argues there was no substantial evidence

¹ Daughter also argues that the conflict of interest impeded counsel’s ability to adequately represent her interest at the jurisdiction hearing. However, she does not identify how the outcome would have been different had she had separate counsel. Rather, she states “it is unknown how the conflict affected her trial counsel’s line of questioning.” Accordingly, she has not shown prejudice.

stepfather held himself out as her father or had fully committed to his parental responsibilities. We disagree.

“In dependency proceedings, ‘fathers’ are divided into four categories—natural [or biological], presumed, alleged, and de facto.” (*In re A.A.* (2003) 114 Cal.App.4th 771, 779.) “A father’s status is significant in dependency cases because it determines the extent to which the father may participate in the proceedings and the rights to which he is entitled. [Citation.]” (*In re T.R.* (2005) 132 Cal.App.4th 1202, 1209.) Only presumed fathers are entitled to receive reunification services and custody of the child. (*In re Zacharia D.* (1993) 6 Cal.4th 435, 451.)

Family Code section 7611 sets out several rebuttable presumptions under which a man may qualify for presumed parent status. (*In re J.L.* (2008) 159 Cal.App.4th 1010, 1018.) At issue here is the presumption that arises when a man “receives the child into his [] home and openly holds out the child as his [] natural child.” (Fam. Code, § 7611, subd. (d).) A person seeking presumed parent status has the burden of demonstrating “an established parental relationship with the minor and commitment to the minor’s well-being.” (*In re Alexander P.* (2016) 4 Cal.App.5th 475, 493.)

We review a trial court’s finding of presumed father status for substantial evidence. (*In re A.A.*, *supra*, 114 Cal.App.4th at p 782.) We draw all reasonable inferences and resolve all conflicts

in the evidence in favor of the trial court's findings. (*In re Spencer W.* (1996) 48 Cal.App.4th 1647, 1652.)

Here, when the trial court found that stepfather was the presumed father, it had before it the jurisdiction/disposition report and mother's declaration regarding paternity. Mother's declaration set forth the following evidence: she and stepfather had been married for over three years, stepfather held himself "out openly as the parent" of her children, and he had "received" the children in his home. The Department's report contained the following evidence: stepfather lived with mother and the children; stepfather had been a "stay at home dad" for the children during the past eight years; he cooked, cleaned, and took the children to school; he took daughter shopping and had bought toiletries for her; stepfather said that he loved both of the children and had "tried to make their life the best"; son referred to stepfather as "dad"; daughter referred to stepfather as her "step-dad"; and daughter referred to both stepfather and her mother as her "parents."

This was substantial evidence of stepfather's presumed father status. Daughter unsuccessfully attempts to distinguish this case from *In re Alexander P.*, *supra*, 4 Cal.App.5th 475 where the Court of Appeal affirmed a finding of presumed father status. In *Alexander P.*, the presumed father said he treated the minor "as though he were his own child," the minor referred to him as

“Daddy,” and he lived with the minor and the mother for over a year during which time he took on “the various duties and responsibilities demanded of an infant’s parent.” (*Id.* at p. 493.) The presumed father had been forced out of the family home due to a restraining order, but was married to the mother and had reaffirmed his commitment to return to her and the minor. (*Ibid.*)

Here, similarly, the evidence showed that stepfather treated the children as his own, he acted as a “stay at home dad” for eight years, the minors referred to him as their parent, he was married to mother, and he participated in the responsibilities of a parent including cooking, cleaning and ferrying the children to and from school. Although daughter did not want visits with stepfather, it was reasonable for the trial court to infer that daughter’s refusal to visit—and adamant wish not to return home—were the result of the trauma she had experienced and not the lack of a parental relationship with stepfather.

Daughter argues that even if stepfather met the criteria for a presumption to apply, the presumption was rebutted due to his “dangerous behavior which was inconsistent with the role of a parent.” In particular, she points to stepfather’s decision to bring a female friend to meet mother, stepfather’s departure from the home when mother fell off the bed, the domestic violence between

stepfather and mother, and stepfather's use of marijuana in the family home.

In support of this argument, daughter cites to *In re T.R.*, *supra*, 132 Cal.App.4th 1202. In *T.R.*, the court found that the minor's stepfather had demonstrated in many ways that he was entitled to presumed father status. (*Id.* at p. 1211.) However, the presumption of fatherhood was rebutted by evidence he had sexually molested the minor, and had multiple prior convictions for sexually molesting children. (*Id.* at p. 1212.)

Here, evidence that stepfather had introduced a female friend to mother, had left mother in a vulnerable position the night of her attempted suicide, and had smoked marijuana in the family home was insufficient for us to conclude that the fatherhood presumption was rebutted as a matter of law. This was not evidence he had abused daughter as the father in *T.R.* had. With respect to the inconsistent evidence of domestic violence, the trial court was entitled to decide which statements to find credible as explained below, and it found no domestic violence. Accordingly, the presumed father finding is supported by substantial evidence.

3. *Domestic Violence Allegations*

Daughter contends the allegation that mother and stepfather engaged in domestic violence was supported by

substantial evidence and the trial court erred when it dismissed that allegation. We disagree.

The petition alleged under Welfare and Institutions Code section 300 subdivisions (a) and (b) that mother and stepfather “have a history of engag[ing] in violent altercations. On 06-07-16, [stepfather] struck the mother’s body inflicting marks and bruises The mother pushed [him].” The court dismissed the allegations, finding that stepfather had not injured mother on June 7, 2016, but that mother had injured herself when she fell off the bed.

An order dismissing petition allegations is reviewed for substantial evidence. (*In re Sheila B.* (1993) 19 Cal.App.4th 187, 200 [affirming dismissal of petition where record did not contain “indisputable evidence of abuse”].) Under the substantial evidence standard of review, the appellant has the burden of showing there is no substantial evidence to support the finding or order. (*In re L. Y. L.* (2002) 101 Cal.App.4th 942, 947.)

Here, we cannot say there was such “indisputable evidence” of domestic violence such that the trial court was required to sustain these allegations. (*Sheila B., supra*, 19 Cal.App.4th at p. 200.) With respect to the incident on June 7, 2016, the evidence was disputed: son testified that mother had fallen off the bed on her own accord; mother filled out a request for a restraining order stating that stepfather had physically “abused”

her. The trial court was entitled to find son's testimony on the matter to be credible.

The other evidence of domestic violence was also disputed. Both son and daughter initially denied having witnessed any physical altercations between mother and stepfather, and then both later said that the parents had pushed each other during fights. The court was entitled to find the minors' initial statements credible. Therefore, we affirm the court's order dismissing the allegations about domestic violence between mother and stepfather.

DISPOSITION

The judgment is affirmed.

RUBIN, J.

WE CONCUR:

BIGELOW, P. J.

HALL, J.*

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