Filed 2/28/18 In re C.B. CA2/2

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

In re C.B., a Person Coming Under the Juvenile Court Law.	B284192
LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Plaintiff and Respondent. v. Z.B., Defendant and Appellant.	(Los Angeles County Super. Ct. No. DK15959)

APPEAL from orders of the Superior Court of Los Angeles County. Natalie Stone, Judge. Affirmed.

Megan Turkat Schirn, under appointment by the Court of Appeal, for Defendant and Appellant.

Mary C. Wickham, County Counsel and Kim Nemoy, Deputy County Counsel for Plaintiff and Respondent.

Z.B. (father) appeals from the orders of the juvenile court, challenging the denial of his request to be declared a presumed father and to order reunification services. He contends that the orders must be reversed because he presented substantial evidence of presumed father status, and because the juvenile court abused its discretion in denying services. Finding no merit to father's contentions, we affirm the orders.

BACKGROUND

On March 10, 2016, the Department of Family and Children's Services (the Department) filed a petition under Welfare and Institutions Code section 300, subdivisions (b) and (g),[1] to bring eight-year-old C.B. (born in Apr. 2007) within the jurisdiction of the juvenile court. The petition alleged that J.B. (mother) left C.B. with law enforcement three days earlier, without making an appropriate plan for the child's care and supervision, and was unable to provide the child with ongoing care, supervision, and basic necessities of life, including food, clothing, and shelter. Father's identity was unknown. Based upon the allegations and the Department's report, the juvenile court detained minor in shelter care.

The adjudication hearing was scheduled for April 28, 2016. At that time the Department reported that minor had been placed in foster care, that mother had not contacted the Department or minor since detention, mother's whereabouts were unknown, and that notice of the hearing had been served by mail to mother's last known address. Father's identity remained unknown. Mother appeared at the April 28 hearing and identified Z.B. as minor's father.

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[1] All further statutory references are to the Welfare and Institutions Code, unless otherwise indicated.

The adjudication hearing was continued twice, to August 19, 2016, and the Department was ordered to provide evidence of its due diligence in attempting to locate father. Prior to the continued hearing the Department reported that it had obtained minor's birth certificate, which listed no one as father, but the Department had located father in Georgia. The assigned social worker (CSW) spoke by telephone with father on June 23, 2016. Father initially stated he was not sure he was minor's father, and requested a DNA test. Later he changed his mind, saying a test was unnecessary and that he and his wife were both employed, with the means to care for minor. Father was given contact information and provided with notice of the adjudication hearing. The CSW had scheduled an appointment to meet with mother, who did not show or call, and the CSW's subsequent correspondence was returned stamped, "No Longer at This Address."

On August 19, 2016, the juvenile court found father to be an alleged father and appointed counsel to represent him. Mother appeared, and the court sustained the three counts of the petition as alleged. The trial court adjudicated minor a dependent of the juvenile court, and scheduled a disposition hearing, which was twice continued. In September, mother did not respond to the Department's voicemails or correspondence. Maternal grandmother informed the CSW that father had been paying court-ordered child support, and that there had been a DNA test in the course of the support proceedings.[2] In a

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[2] Maternal grandmother also said that mother was underage when minor was conceived. CSW determined that mother was 17 years old at the time. If mother and father were in Georgia, the age of consent was 16. (See Ga. Code, § 16-6-3.) Father assured CSW that he "[knew] for a fact" that mother was 17 years old

telephone conversation with the CSW, father again stated that he was unsure that he was the biological father, and although he admitted having taken a DNA test, he believed it may have been altered. Father claimed to have had limited contact with mother while they were together, due to his long work hours.

In late September, the Department obtained a copy of the Georgia child support order dated January 20, 2015, and informed the court that the Georgia Department of Human Services reported having no record of any child abuse or neglect investigation relating to mother or father. Father filed a declaration as follows:

> "My relationship with [C.B.] is I'm her father. My daughter and I never lived together. She called me Daddy when I finally spoke to her. I talked to [C.B.] everyday throughout the child support phase. After a while her contact number no longer worked. I never visited her in California but once in Atlanta when she was a toddler. The mother and I was discussing DNA testing but it never happen. No I'm not on the birth certificate. No I wasn't present at birth. No I didn't support her until 2015. I never knew she was my daughter. The mother and I had a short relationship. When we broke up I never heard from [mother] until [C.B.] was a toddler. I told [mother] to meet me at a DNA location in Atlanta to prove (verify) that I was the father. She stop talking to me. Then I learn in 2015 she is my daughter and now [C.B.] lives in California. Yes I will like my daughter [C.B.] to be placed with me. I . . . never had the opportunity of being there for my daughter until now."

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when the child was conceived, because he had seen her identification.

The court ordered the Department to evaluate possible placement with father and to investigate any criminal background he might have, and scheduled a contested disposition hearing for October 14, 2016. At the October hearing, the juvenile court found mother to be in partial compliance with the previously ordered case plan, ordered her to participate in counseling and a psychiatric evaluation, and ordered monitored six-hour weekly visits. The court ordered monitored visits with father, including telephone and Skype visits. Custody of C.B. was taken from mother and given to the Department for suitable placement. The court scheduled a review hearing for late November 2016, and ordered a disposition recommendation as to father, as well as a DNA test for father.

In November, the Department reported that the DNA test result had confirmed father as C.B.'s biological father. The CSW reported that father had twice attempted to call C.B. on a single day in October, left a voicemail, but did not hear back. The foster mother told the CSW that her calls to father were unanswered and unreturned. As mother had no contact with the Department, she had not been referred for a psychiatric evaluation. The Department had served a request to Clayton County, Georgia for an ICPC[3] evaluation of father's home, which was being processed there. Father filed a Statement Regarding Parentage (form JV-505), requesting a judgment of parentage, seeking to be elevated from alleged father status to that of presumed father, and to receive reunification services. His request was based upon the same declaration filed in September 2016. The court continued disposition and the parentage issue to late January 2017 to permit the parties to file briefs, and then to March 2, 2017.

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[3] See the Interstate Compact on Placement of Children, Family Code, section 7900 et seq.

In the meantime, social services authorities in Georgia notified the Department that it had denied the home study on the grounds that father was going through a divorce, did not have stable housing, and had agreed to close the home study and request a new one after his situation stabilized. Also on March 2, the Department reported that father had not communicated with the Department about his life changes or agreement with the authorities in Georgia. The Department added that father had only one telephone conversation with C.B. since a visitation schedule was arranged on November 22, 2016, despite foster parents' effort to call him weekly. The Department recommended that prior orders remain in place, and that the court order reunification services for both parents, including parent education for father.

The parties submitted the parentage issue on the briefs. The court found that father had not met his burden to demonstrate that he qualified for presumed father status. The court explained: "[F]rom reviewing all the facts [including father's] declaration and statement regarding parentage . . . , it does not show a concerted effort by this father to step up as her father. So the fact that he paid child support is not enough. Recently, he was granted the right to have phone contact regularly. He's had one phone call. That's the last minute information for today's date. He had one phone conversation since that visitation was ordered on November 22nd, 2016, despite the fact that . . . they make an effort to call him on a weekly basis." The court concluded that father did not qualify for presumed father status, that he was a biological father, and whether to grant reunification services was discretionary with the court. The court found that it was not in the minor's best interest to grant reunification services, as the ICPC home study was denied, father was going through a divorce, did not have

stable housing, had not had consistent contact with C.B., and did not really seem motivated.

With regard to disposition, the court stated that it found by clear and convincing evidence that it would be detrimental for the child to be placed in father's care, custody, and control, declined to order reunification services, and ordered that the prior suitable placement order remain in effect. The court ordered additional services for mother, and scheduled a status review hearing for April 24, 2017.

Father filed a timely notice of appeal from the judgment.

DISCUSSION

I. Presumed father status

Father contends that the juvenile court erred in finding that he failed to establish that he met the criteria set forth in *Adoption of Kelsey S.* (1992) 1 Cal.4th 816 (*Kelsey S.*), to be C.B.'s presumed father.

"In dependency proceedings, fathers are divided into four categories: de facto fathers, alleged fathers, natural fathers and presumed fathers." (*In re Jerry P.* (2002) 95 Cal.App.4th 793, 801.) "A biological or natural father is one whose biological paternity has been established, but who has not achieved presumed father status." (*In re Zacharia D.* (1993) 6 Cal.4th 435, 449, fn. 15 (*Zacharia D.*).) California law accords presumed fathers greater rights than mere natural or biological fathers; a natural father who is not a presumed father has no right to custody or reunification services. (*Id.* at pp. 448-450.)

A presumed father is one who falls within one of several categories enumerated by statute. (*Zacharia D.*, *supra*, 6 Cal.4th at pp. 449-450; see Fam. Code § 7611 (formerly Civ. Code, § 7004).) An unmarried biological father is considered a presumed father under California law if he "receives the child into his . . . home and openly holds out the child as his . . .

natural child." (Fam. Code, § 7611, subd. (d).) In *Kelsey S.*, the California Supreme Court recognized that "under the due process clause of the Fourteenth Amendment to the federal Constitution an unmarried father was entitled to a hearing on his fitness as a parent before his children were taken from him." (*Kelsey S.*, *supra*, 1 Cal.4th at p. 830, fn. omitted, citing *Stanley v. Illinois* (1972) 405 U.S. 645, 651.) However, the court also recognized that if a father was not a presumed parent under the California statutory scheme, his parental rights could be terminated merely by showing that termination would be in the child's best interest, without a finding of unfitness. (*Kelsey S.*, at p. 831.) Thus, to protect the federal constitutional right to due process of unwed fathers who do not meet the statutory requirements, the court held: "If an unwed father promptly comes forward and demonstrates a full commitment to his parental responsibilities -- emotional, financial, and otherwise -- his federal constitutional right to due process prohibits the termination of his parental relationship absent a showing of his unfitness as a parent. Absent such a showing, the child's well-being is presumptively best served by continuation of the father's parental relationship. Similarly, when the father has come forward to grasp his parental responsibilities, his parental rights are entitled to equal protection as those of the mother." (*Id.* at p. 849, fn. omitted.)

"'The burden is on a biological father who asserts *Kelsey S.* rights to establish the factual predicate for those rights.' [Citation.]" (*Adoption of Baby Boy W.* (2014) 232 Cal.App.4th 438, 452.) To meet his burden, the biological father must show by a preponderance of the evidence that he promptly demonstrated a "full commitment to the responsibilities of parenthood." (*Adoption of T.K.* (2015) 240 Cal.App.4th 1392, 1398, 1401; see also *Zacharia*, *supra*, 6 Cal.4th at p. 450.) "In determining whether a biological father has demonstrated such a

commitment, '[t]he father's conduct both *before and after* the child's birth must be considered. Once the father knows or reasonably should know of the pregnancy, he must promptly attempt to assume his parental responsibilities as fully as the mother will allow and his circumstances permit. In particular, the father must demonstrate "a willingness himself to assume full custody of the child -- not merely to block adoption by others."' [Citation.]" (*Zacharia*, at p. 450, fn. 19, quoting *Kelsey S.*, *supra*, 1 Cal.4th at p. 849.) "'A court should also consider the father's public acknowledgement of paternity, payment of pregnancy and birth expenses commensurate with his ability to do so, and prompt legal action to seek custody of the child.' [Citation.]" (*Zacharia*, at p. 450, fn. 19.)

Here, father contends that the order denying reunification services must be reversed because substantial evidence supports a finding that he met his burden to establish that he was a presumed father under the *Kelsey S.* criteria. We reject any suggestion that the test on appeal is whether substantial evidence supports a finding in father's favor. Rather the test is whether substantial evidence supports the juvenile court's determination that father was not a presumed father. (See *In re Sarah C.* (1992) 8 Cal.App.4th 964, 972.) We review the evidence in the light most favorable to the order, drawing all reasonable inferences and resolving all conflicts in favor of the court's determination. (*E.C. v. J.V.* (2012) 202 Cal.App.4th 1076, 1084.) However, as father had the burden of proof below, we do not apply the typical substantial evidence test to the court's determination; instead, the reviewing court must determine whether father'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.]" (*In re I.W.* (2009) 180 Cal.App.4th 1517, 1528.)

Citing his declaration, father asserts here that he established that mother concealed her pregnancy and C.B.'s birth from him until 2015. We have quoted father's declaration in full above, and contrary to father's assertion, father declared that he did not know about C.B. until she was a *toddler*. C.B. was born in 2007, and was not a toddler in 2015. Father declared that he visited C.B. once when she was a toddler, and asked mother to submit her to a DNA test, but mother stopped speaking to him. In addition, father told the CSW in June 2016 that mother had informed him "a few years ago" that C.B. was his child. 2015 was less than a few years before 2016.

Drawing unreasonably strained inferences from his declaration, father also asserts here that "[s]ubstantial evidence reflects that mother thwarted father's efforts to assume his parental responsibilities by concealing the birth of their daughter and then concealing her whereabouts." We are unaware that father declared that mother concealed the birth from him. Instead, he has stated that it was not until C.B. was a toddler that mother informed father that C.B. was his child. And although father claimed in his declaration that mother stopped speaking to him on an unstated date for an unspecified period of time, father indicated he had a contact phone number for her until it stopped working after mother moved to California. Thus, the evidence did not reflect that mother concealed her whereabouts prior to the move to California.

Father claims that mother alerted him he had a daughter when she sought child support in 2015, and he "immediately offered to provide her with financial and emotional support but mother disappeared again." However, there were no facts stated in the declaration regarding an offer of emotional support, and

the financial support father offered was to agree to a court order which provided for salary deductions. Father was also ordered to provide health insurance and pay 50 percent of medical costs, but he provided no evidence that he did so. Also, mother did not disappear after the court order. Father admitted to the CSW that he spoke to mother when she telephoned in early 2016 and blamed her problems on the child. Father told the CSW that he then told mother if she and the child needed support they could return to Georgia and reside with him.

Father apparently offered no support during the pregnancy, and does not claim to have offered any support when C.B. was a toddler, although he had ample reason to know at that time that she was his child. Father visited C.B. once when she was a toddler, and does not claim to have made any effort to do so after mother stopped talking to him. Father made no public acknowledgement of paternity until after this case was filed, and took no legal action to seek custody of the child. Instead, he simply offered a DNA test and paid no child support until child support proceedings were instituted against him in 2015.

As father's evidence fell far short of the required showing, we conclude that the juvenile court did not err in finding that father failed to meet his burden to prove that he met the *Kelsey S.* criteria for presumed father status.

II. Denial of reunification services

Father contends that the juvenile court abused its discretion in refusing to grant father reunification services.

A juvenile court has discretionary authority to order reunification services for a biological father who is not a presumed father "if the court determines that the services will benefit the child." (§ 361.5, subd. (a); *Francisco G. v. Superior Court* (2001) 91 Cal.App.4th 586, 597.) The juvenile court has broad discretion to determine what would benefit the child. (See

In re Christopher H. (1996) 50 Cal.App.4th 1001, 1006.) We will not disturb the court's discretionary determination unless father can show that it "'exceeded the bounds of reason. 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.' [Citations.]" (*In re Stephanie M.* (1994) 7 Cal.4th 295, 318-319.)

Moments before the juvenile court declined father's request for reunification services, the court ruled that father did not qualify for presumed father status as he had done little more than pay child support, and although he had been granted regular weekly telephone contact more than three months earlier, he had only one telephone visit in that time. The juvenile court found that reunification services were not in the best interests of the child because father did not seem motivated.

Father contends that the court's order "appears unsupported and arbitrary" because "[i]t is hard to see how ordering services that includ[ed] phone contact and a parenting class . . . could not be in the child's best interests." Father also suggests that a finding that he was unmotivated had no bearing on whether services would benefit the child. We disagree. The court's reasoning was not arbitrary. Contrary to father's remark, it is difficult to find a benefit to the child in one telephone call every three months, instead of the weekly call she might look forward to from a more committed father. Nor was the court's finding unsupported, as father argues. The court considered the Department's last minute information report filed before the hearing. It stated that father had not contacted the Department about his recent life changes such as his divorce proceedings, and had only one telephone conversation with C.B. since November 22, 2016.

As father has failed to show that the juvenile court's denial of reunification services exceeded the bounds of reason, we find no abuse of discretion.

DISPOSITION

The orders of the juvenile court are affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS.

_____, J.
CHAVEZ

We concur:

_____, P. J.
LUI

_____, J.
HOFFSTADT