Filed 10/24/18 In re Kimberly M. CA2/4

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

In re Kimberly M., a Person Coming Under the Juvenile Court Law.	B287475 (Los Angeles County Super. Ct. No. DK12856)
LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Plaintiff and Respondent, v. D.E., Defendant and Appellant.	

APPEAL from a judgment of the Superior Court of Los Angeles County, Stephen C. Marpet, Juvenile Court Referee. Affirmed.

Jesse McGowan, by appointment of the Court of Appeal, for Defendant and Appellant.

Mary C. Wickham, County Counsel, R. Keith Davis, Assistant County Counsel, and Jessica S. Mitchell, Deputy County Counsel, for Plaintiff and Respondent.

Appellant D.E. (appellant) maintains that the juvenile court erred in denying an oral request for genetic testing to determine if he is the child's biological father, made at the selection and implementation hearing at which parental rights were terminated. He contends the juvenile court had a mandatory duty to determine biological paternity, and remand for that purpose is required. He also claims to have been prejudiced by the court's denial of his request to determine paternity, because he may have been granted reunification services. We conclude that, although the court had a duty to make a paternity finding, no reversal is in order because appellant could not establish an entitlement to reunification services. Any error regarding the court's failure to make a paternity finding was harmless; the results of a genetic test would not change the outcome of this case. Accordingly, we affirm.

FACTUAL AND PROCEDURAL BACKGROUND

Events Involving Kimberly's Siblings

Appellant is the alleged father of Kimberly M., the subject of this appeal. When respondent Department of Children and Family Services (DCFS) intervened on behalf of then five-day-old Kimberly in December 2016, the identity of her biological father was unknown. The newborn's mother was already involved in a dependency action involving her two sons, eight-year-old D.E. and four-year-old Dy.E., who (like mother) are not involved in this appeal. Appellant, mother's companion of eight years, had been identified in the dependency action as the boys' presumed father. Before discussing the proceedings regarding custody,

we briefly review the proceedings involving the two boys leading up to the referral of Kimberly to DCFS.

DCFS intervened in November 2014 on behalf of the boys after receiving a report that appellant had neglected then two-year-old Dy.E., who was found shoeless and alone on the sidewalk after appellant—who admittedly had been smoking marijuana—failed to notice that the toddler had left the house. Allegations of neglect of Dy.E. and a concomitant risk of harm to D.E. were substantiated based on appellant's history of violent altercations with mother in the boys' presence, his violation of a restraining order against him, and mother's failure to protect her sons from domestic violence.[1] In December 2014, mother sought full physical and legal custody of the boys (then living with her) in family law court. Having observed no safety threats or concerns in mother's home at the time, DCFS closed the referral.

In March 2015, DCFS received a referral alleging that D.E. had been sexually abused by mother's cousin, and that mother and appellant neglected the boys. A DCFS investigation revealed that appellant was a current and long-term user of methamphetamine and marijuana, and had recently been arrested for having a knife and marijuana in his car.

The boys were taken into protective custody in August 2015, after appellant failed to show up for a scheduled drug test and acted

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[1] Mother provided this information during an interview in the boys' dependency case.

aggressively toward a DCFS social worker (CSW). On August 11, 2015, DCFS filed a Welfare and Institutions Code[2] section 300 petition, on behalf of D.E. and Dy.E. alleging that appellant had a history of and was a current abuser of illegal drugs and alcohol, which rendered him incapable of providing the boys with regular care and supervision. (§ 300, subd. (b)(1).)

The following month, DCFS received another referral alleging that the boys were victims of parental neglect and emotional abuse. Appellant was arrested after the parents engaged in a verbal confrontation when appellant showed up at mother's home—under the influence of alcohol and in violation of a restraining order—and pushed her onto a bed in the boys' presence. The boys were detained from mother's custody in October 2015, after a DCFS investigation revealed they were at risk of harm by virtue of the parents' conduct in violating a court order prohibiting contact between them. DCFS filed an amended petition adding allegations regarding the parents' history of domestic violence, including the altercation witnessed by the boys when appellant pushed mother onto the bed, and numerous occasions on which he had kicked mother, pulled her hair and caused her to have bruises and marks, and mother had failed to protect the boys from the violence. (§ 300, subds. (a), (b)(1).) The amended petition was adjudicated in November 2015, and mother's reunification services were terminated.

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[2] Statutory references are to the Welfare and Institutions Code.

The Dependency Action Involving Kimberly

When Kimberly was born in December 2016, DCFS received a referral alleging that mother had neglected the newborn. The reporting party was particularly concerned because mother was mentally unstable, and had no plan of care for herself or the newborn, who was born inside a toilet. A nurse informed the CSW that mother claimed to have caught the baby's head just before the infant was fully submerged in the toilet. Mother and child were brought to the hospital by paramedics who found mother outdoors in the rain with the infant, who was still attached to mother by the umbilical cord. Mother, who said she had not known she was pregnant, had obtained no pre-natal care and was homeless. Mother was told not to breastfeed after having a positive toxicology test.

A CSW interviewed mother at the hospital and observed that she was incoherent and bruised. Mother had shrugged when asked how she became bruised, and claimed she had not known she was pregnant, although people told her she looked pregnant. She said her sons had been removed from her care. Mother claimed she was not a "druggie," but had been around lots of people who were addicted to drugs, including the boys' father, appellant, who used methamphetamine.

Mother claimed that she did not know the identity of Kimberly's father. When asked if she could think of anything that would help to identify the child's biological father, mother responded, "I am the baby's father." She said she was unable to think of anyone's name because March had been a hard month for her, and said she "[didn't] know him" and did not "feel like sharing anything." DCFS placed Kimberly on a

hospital hold due to risks associated with mother being under the influence of drugs and her incoherent statements.

On December 19, 2016, mother was placed on a hold in the hospital's psychiatric unit. Kimberly, who had tested positive for cannabis and amphetamine/methamphetamine, was detained from mother's custody. A maternal aunt, Heather, expressed interest in being the child's caregiver.

On December 21, 2016, DCFS filed the instant section 300 petition on behalf of Kimberly (in the ongoing action involving the boys), alleging that the newborn was at risk, having tested positive at birth for illegal drugs, and mother's historical and current substance abuse, including during pregnancy. (§ 300, subd. (b)(1).) No father was identified on Kimberly's birth certificate and her father's identity remained unknown. No parent attended the December 21 detention hearing, and no paternity findings were made. Kimberly was detained in hospital/shelter care.

On February 2, 2017, the juvenile court conducted a combined 18-month review hearing as to the boys, and an adjudication hearing as to Kimberly. Appellant appeared with counsel for the 18-month review hearing. Mother's counsel appeared on her behalf. The identity of Kimberly's father remained unknown. The court ordered that the boys be placed with appellant under DCFS supervision in approved housing, and provided with family maintenance services. DCFS informed the court that mother had not appeared for a scheduled interview in January, and numerous unsuccessful attempts had been made to

contact her. The court ordered that Kimberly be detained in the care of a maternal aunt, Katrina, and continued the matter to March 8, 2017.[3]

At the time of the combined jurisdictional and dispositional hearing on March 8, 2017, mother remained homeless and her whereabouts were unknown. DCFS reported that Heather and Katrina were concerned about mother's mental health. Both aunts said mother had told them that she did not know the identity of Kimberly's father. Heather was uncertain of mother's truthfulness, but said mother had been talking to a lot of men. Katrina believed mother, who she said had "multiple partners" after losing custody of the boys, and thought Kimberly could have been conceived as a result of rape. DCFS reported that mother had incoherently suggested that Kimberly's father was a sperm donor named "Dannon."

No parent appeared for the March 8, 2017 hearing. The court sustained the petition, declared Kimberly a dependent of the court, noted that the identity of her father remained unknown, and removed the child from parental custody. Kimberly was placed with Katrina. The court declined to offer mother reunification services. (§ 361.5, subds. (b)(10), (11) & (13).)[4] DCFS was ordered to identify the best

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[3] The record does not reflect that the court inquired regarding the identity of Kimberly's father, and does not contain a reporter's transcript for that hearing.

[4] Section 361.5, subdivisions (b)(10), (11), and (13) permit the court to deny reunification services to a parent in cases in which the court finds, among other things: a court has terminated reunification services for the

permanent plan for Kimberly, preferably adoption. The matter was set for a section 366.26 hearing on July 5, 2017.

The Initial Section 366.26 Hearing Regarding Kimberly

For the July 5, 2017, section 366.26 hearing, DCFS reported that Kimberly remained in Katrina's care, was doing very well and meeting developmental milestones. The baby was very alert, seemed happy, and appeared comfortable with Katrina who was satisfying the child's needs. Katrina told DCFS that mother had had only minimal contact with her or other maternal relatives, and had been incarcerated following an arrest for burglary in mid-May 2017. No one claiming to be Kimberly's father had come forward during the most recent review period.

Mother appeared for the July 5, 2017 selection and implementation (section 366.26) hearing, and the attorney representing her as to D.E. and Dy.E., was appointed to represent mother as to Kimberly. Mother informed the court that the infant's name was "Alora Danon." After DCFS pointed out that the birth certificate identified the child as "Kimberly M.," mother acknowledged having signed that birth

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child's siblings or half siblings due to the parent's failure to reunify, or parental rights over a sibling or half sibling of the child have permanently been severed, and the parent subsequently failed to make a reasonable effort to address the problems that led to removal of the sibling; or the parent has an extensive history of substance abuse and has resisted court-ordered treatment for that problem during the three years immediately prior to the filing of the current petition or at least twice failed to comply with available treatment programs described in the parent's case plan.

certificate, but also claimed that her signature had been forged. Mother's counsel informed the court that mother was "coming in through the mental health . . . wing" of a correctional facility.

The following exchange occurred when the court questioned mother about the identity of Kimberly's father:

> "THE COURT: . . . . Regarding your child, you've indicated that the father of [Kimberly] is whom? What's his name?
> "MOTHER: Jose H.
> "THE COURT: Were you married to Mr. H. when [Kimberly] was born?
> "MOTHER: Yes.
> "THE COURT: And what was the date of marriage?
> "MOTHER: I can't remember.
> "THE COURT: And where were you married?
> "MOTHER: In Hawaii.
> "THE COURT: Hawaii? What part of Hawaii? What island?
> "MOTHER: I have to ask my lawyer she knows. Silvia M. knows where I got married.
> "THE COURT: You don't know where you got married?
> "MOTHER: (Shakes head from side to side.)
> "THE COURT: Did you ever live with Mr. H.?
> "MOTHER: (Nods head up and down.)"

When asked if she was sure that Mr. H. was Kimberly's father, mother said, "Yes and no because there's one other possibility and the other possibility is it was not consensual." Mother told the court she had been "jumped and sexually assaulted," and did not know her assailant's name. Mother claimed she was married to Mr. H. and had last lived with him on October 21, 2016. She said Mr. H. had been born on December 19 or 21, 1972, and his mother's name was "Carmen." Mother said she and Mr. H. had been married in September 2016, but

also said that she could not remember and believed they had been married for 15 years. When asked why appellant was only the father of D.E. and Dy.E., mother explained that the boys (born four years apart), had been conceived during a "brief" separation from Mr. H. The court ordered DCFS to conduct a due diligence search for Jose H., continued the matter to November 1, 2017 for a report on that issue and identified adoption as Kimberly's permanent plan.

The Section 366.26 Hearing Regarding D.E. and Dy.E.

The boys' section 366.26 hearing was conducted on August 3, 2017. Appellant appeared with counsel. The court observed that appellant had taken good care of the boys, and found that the issues which brought the case to the court's attention were resolved. The court terminated jurisdiction as to the boys with a family law order granting appellant full legal and physical custody. Mother was given monitored visitation. The court noted that appellant was not permitted to act as a monitor for her visits in light of an outstanding restraining order against mother as to the boys and their paternal grandmother. The court observed that mother had serious mental health issues, to which appellant responded, "Uh-huh." The court concluded the hearing stating, "In-and-out for mother for the [November 1, 2017, section 366.26 hearing]. That's another minor [Kimberly]." The court did not inquire whether appellant might be Kimberly's biological father. Neither appellant nor his attorney made any inquiries regarding visitation or parentage to the court, despite appellant's conversations in

July with the maternal aunts and DCFS regarding those issues, as discussed below.

November 1, 2017: Due Diligence Report, Status Review Report and Last Minute Information

On November 1, 2017, DCFS reported that its due diligence search for Jose H. was complete, but its efforts to locate him were unsuccessful. In a status review report and a last minute information for the November 1, 2017 continued section 366.26 hearing, DCFS reported that Kimberly continued to thrive in her aunt's care, that Katrina's home study had been completed and approved. Katrina was meeting the child's needs, and the maternal aunts were committed to providing the child a stable and nurturing home. DCFS also reported that mother (who had not been in contact with DCFS) had been released from custody on the burglary charge in August 2017, but had been reincarcerated after being arrested (on an unknown charge) in October 2017.

DCFS also reported that Kimberly, D.E. and Dy.E. had a monitored visit on July 18, 2017, at which a CSW, both maternal aunts and appellant were present. During the visit the aunts discussed with appellant how much Kimberly seemed to like him, and asked appellant "if he felt as though he needed a DNA test." Appellant responded that "he didn't need a DNA test[, but] would be willing to take on the step father role to Kimberly since she is his son's sister."

About two weeks after that visit, the CSW followed up with appellant regarding his conversation with the aunts during the July 18

sibling visit. The CSW asked appellant "if there was a chance that [Kimberly] may be his daughter." Appellant responded "that he honestly didn't keep up with the timeline in which he and [mother] were sexually involved." Appellant told the CSW he was "willing to take a paternity test so that he [would] know whether [Kimberly was] or [wasn't] his daughter, especially since she [was] in the adoption process." He said that, "either way, he [was] willing to take on a father–figure role to [Kimberly] being that she is his son's sister." A few days later the CSW telephonically informed appellant about the date for Kimberly's section 366.26 hearing, and said he should also receive notice by mail. Appellant agreed.

Kimberly's Continued Section 366.26 Hearing on November 1, 2017

Mother, who was still in custody, appeared through counsel at Kimberly's section 366.26 hearing on November 1, 2017. Appellant and the attorney appointed to represent him as to the boys attended the hearing, and asked to address the court. The court noted that appellant lacked standing, and asked what his counsel wished to add given that appellant "[was] not a father that's on this case." The court observed that no father was listed on Kimberly's birth certificate, and mother had identified Jose H. as the child's biological father. Appellant's counsel replied that appellant "is the father of Kimberly's siblings" and, although the boys' dependency case had been closed, appellant was "interested in . . . Kimberly," and was requesting genetic testing. Appellant's counsel acknowledged that she had "explained to [appellant] that, even if the court order[ed] a D.N.A. test, he would be

[Kimberly's biological father] only," because he had "no true relationship with the child and the court [could] even find that he [had] not come forward at the most soonest opportunist moment." Mother joined appellant's request for a DNA test, and informed the court that appellant might "be the father of [Kimberly] . . . . There was an incident—there was a time, yes, we slept together and maybe." The court noted that mother had waited until the day of the section 366.26 hearing to assert this claim, after having been asked about Kimberly's paternity, identifying Jose H. as the child's biological father, and telling DCFS that she could not identify anyone else who could be Kimberly's father. When asked "[w]hat [had en]lightened [her] up today," apart from the fact that appellant was in court asserting paternity, mother said it was, "The timing. . . . It must be February. After I had gotten a black eye. I got jumped. I had gotten beat up." Mother's counsel objected to termination of parental rights, and said mother "would like the children to be together," and had "indicate[d] that she [was] in a position to begin programs and [to] try to get [Kimberly] back into her care." Mother requested a plan of legal guardianship.

Observing that the case was "[n]ot even close," the juvenile court denied the request for genetic testing on the grounds that appellant lacked standing, and as untimely. It noted that appellant had been coming to court in this case on behalf of his sons for almost a year, and had been given "every opportunity to voice his opinion" earlier if he thought he might also be the father of Kimberly. The court noted that appellant had known that mother had been questioned and had never indicated he might be Kimberly's biological father. The court dismissed

counsel's representation that, because Mr. H. had been identified, appellant "didn't even know that he was the possible father initially," stating "Please. If he thought he was the father he should have voiced it a long time ago." The court also said that appellant was "a man who was the father of two of [mother's] earlier children so if he thought he was the father of [Kimberly], even if it was just a speck in his mind, he should have done something but he didn't do anything," and had instead waited "until . . . the day [the court was] terminating parental rights" even to mention the possibility that he might be Kimberly's father.

By clear and convincing evidence, the court found that Kimberly was likely to adopted, and terminated parental rights as to mother and "all other persons claiming to be the father, including any identity unknown fathers." This timely appeal followed. (§ 395, subd. (a)(1).)

DISCUSSION

Appellant maintains that the juvenile court erred in denying his eleventh hour oral request for genetic testing to determine if he was Kimberly's biological father. He contends that the court had a mandatory duty to determine biological paternity, and that remand for that purpose is required. He also claims to have been prejudiced by the court's failure to determine paternity, because he might have filed a section 388 petition and been granted reunification services. Appellant is partly correct. The court had a duty to make a paternity finding. Nevertheless, we are not persuaded that reversal is in order. Even if appellant could establish that he is Kimberly's biological father, he

would have been denied reunification services as either a presumed or alleged father. Accordingly, any error with respect to the court's failure to make a paternity finding was harmless because the results of a genetic test would not have changed the outcome of this case.

1. *Controlling Principles*

"'Dependency law recognizes three types of fathers: presumed, alleged and biological.' [Citation.] A biological father is one whose paternity of the child has been established, but who has not established that he qualifies as the child's presumed father . . . . (*In re Zacharia D.* (1993) 6 Cal.4th 435, 449, fn. 15.) 'A man who may be the father of a child, but whose biological paternity has not been established, or, in the alternative, has not achieved presumed father status, is an "alleged" father.' [Citation.]" (*In re Kobe A.* (2007) 146 Cal.App.4th 1113, 1120 (*Kobe A.*).) "'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.] . . . Presumed father status entitles the father to appointed counsel, custody (absent a finding of detriment), and a reunification plan. [Citations.]' [Citation.] The court *may* provide reunification services to a biological father, if it determines that the provision of services will benefit the child. (§ 361.5, subd. (a).) Due process for an alleged father requires only that he be given notice and an opportunity to appear and assert a position and attempt to change his paternity status, in accordance with procedures set out in section 316.2. [Citation.]" (*Kobe A., supra,* 146 Cal.App.4th at p. 1120.)

Section 316.2, requires that the court inquire regarding the identity of all presumed or alleged fathers, at the detention hearing or as soon as practicable. (§ 316.2, subd. (a); *Kobe A., supra,* 146 Cal.App.4th at p. 1120.) California Rules of Court,[5] rule 5.635 "implements the provisions of section 316.2." (*In re B.C.* (2012) 205 Cal.App.4th 1306, 1311.) If no prior determination of a child's parentage has been made, the juvenile court "must take appropriate steps to make such a determination." (Rule 5.635(e).) An alleged father and his counsel must complete and submit a "Statement Regarding Parentage (Juvenile) (form JV–505)" (Rule 5.635(e)(1)), and the "court *may* order the child and any alleged parents to submit to genetic tests" (Rule 5.635(e)(2), italics added). Alternatively, the court "may make its determination of parentage or nonparentage based on the testimony, declarations, or statements of the alleged parents." (Rule 5.635(e)(3).) "If a person appears at a hearing in dependency matter . . . and requests a judgment of parentage on form JV–505, the court must determine: [¶] (1) Whether that person is the biological parent of the child; and [¶] (2) Whether that person is the presumed parent of the child, if that finding is requested." (Rule 5.635(h)(1)–(2).)

2. *The Court Erred in Failing to Make a Paternity Finding*

When Kimberly was born, mother was unable or unwilling to identify the child's father. No parent attended the December 21, 2016

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[5] Rule references are to the California Rules of Court.

detention hearing, at which the court inquired as to the newborn's paternity, but made no paternity finding. In March 2017, when the court sustained the petition and declared Kimberly a dependent of the court, the identity of her father remained unknown.

No one came forward claiming to be Kimberly's father before or at the initial July 5, 2017 selection and implementation hearing. At that hearing, the court specifically questioned mother regarding the identity of Kimberly's father. Mother identified Jose H. —her purported husband—with whom she claimed to have lived during a brief separation from appellant (her sons' father), but also said the child's father might have been an unknown assailant. The hearing was continued to permit DCFS to conduct a due diligence search for Jose H.

A few days later, at what appears to have been the sole visit between the siblings, Kimberly's aunts raised the possibility that appellant could be Kimberly's father, and asked if a DNA test was in order. The CSW later followed up, asking appellant again if Kimberly could be his child. Appellant claimed he had no idea, but was willing to take a DNA test. He also said, however, that the test was not necessary, because he was willing to take on a step–father role to his sons' sister whether or not he was Kimberly's biological father.

Four months later, at the section 366.26 hearing, appellant orally requested a DNA test to determine if he was Kimberly's biological father. At no point did appellant or his counsel file the requisite JV–505 form, or a section 388 petition requesting a delay to permit genetic testing. The court denied appellant's request, noting that appellant lacked standing and also that he had actively participated in the case

for nearly a year, and had "every opportunity to voice his opinion" if he thought there was a chance Kimberly was his child.

Appellant is correct that the court was required to make a parentage determination. Rule 5.635(h) is "a mandatory, not a discretionary, rule." (*In re Baby Boy V.* (2006) 140 Cal.App.4th 1108, 1118 [error for court to deny alleged father's request for a paternity test to determine biological parentage]; *In re J.H.* (2011) 198 Cal.App.4th 635, 648 [same]; *In re Vincent M.* (2008) 161 Cal.App.4th 943, 959 [dependency court must determine child's biological parentage if a man appears and requests paternity finding]; *In re Paul H.* (2003) 111 Cal.App.4th 753, 761.) Here, the court never made the requisite paternity determination. "[N]othing in rule 5.635 limits the juvenile court's obligation to determine biological paternity to situations in which the alleged biological father might thereafter qualify as a presumed father." (*In re B.C., supra,* 205 Cal.App.4th at p. 1313; see *In re Joshua R.* (2002) 104 Cal.App.4th 1020, 1027 [holding that biological paternity alone may be relevant "where an alleged father desires to confirm his biological connection with a child as a step toward initiating a relationship that could lead to presumed father status"].)

Although appellant was not likely to attain the status of presumed father here, other reasons warrant a rule requiring the juvenile court to determine biological paternity, including the salutary effect of providing a dependent child access to the medical history of her family. (See *In re B.*C., *supra,* 205 Cal.App.4th at p. 1314.) But such a result would not have qualified appellant as a presumed father entitled to reunification

services. (*Id.* at p. 1311, fn. 3; *In re Zacharia D., supra,* 6 Cal.4th at p. 451.)[6]

3. *Judicial Error Does Not Require Reversal of the Order Terminating Parental Rights*

Court's "typically apply a harmless-error analysis when a statutory mandate is disobeyed, except in a narrow category of circumstances when we deem the error reversible per se. This practice derives from article VI, section 13 of the California Constitution, which provides: 'No judgment shall be set aside, or new trial granted, in any cause . . . for any error as to any matter of procedure, unless, after an examination of the entire cause, including the evidence, the court shall be of the opinion that the error complained of has resulted in a

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[6] We note that neither appellant nor his counsel presented such a request for a judgment of parentage by filing form JV–505, which technically triggers a mandatory paternity inquiry. Rule 5.635(e)(1) provides that the required form JV–505 "be made available in the courtroom." Appellant does not claim, nor is there any indication in the record, that the form was not available. We presume that it was. A """"judgment or order of the lower court is *presumed correct* [, and a]ll intendments and presumptions are indulged to support it on matters as to which the record is silent[.]"""" (*In re Julian R.* (2009) 47 Cal.4th 487, 498.) Arguably, appellant's failure to file the form militates in favor of a conclusion that he did not properly request a judgment of paternity which the court failed to pursue. Given the important interests at stake, we find it troublesome to base our conclusion solely on appellant's failure to submit a form. For reasons discussed above, even if appellant had filed the requisite Judicial Council form, he would not have been able to establish the elements to be declared a presumed father. Undisputed facts in this case preclude any realistic possibility that the court would have found the belated provision of reunification services to be in Kimberly's best interest.

miscarriage of justice.'" (*In re Jesusa V.* (2004) 32 Cal.4th 588, 624.) Applying this standard, we conclude the error here was harmless.

Denial of appellant's request for genetic testing does not necessitate reversal of the order terminating parental rights. The results of a paternity test would not have changed the outcome in this case. Appellant is an alleged father. Neither an alleged nor a mere biological father is a "parent" entitled to receive reunification services. Although section 361.5, subdivision (a) permits a court to offer a biological father reunification services, the court may do so only if it determines such services would benefit the child. Here, there is no indication that resurrecting the dependency action to provide reunification services for appellant long after services should have been and were terminated would be in Kimberly's best interest.

"'"[P]arental rights are generally conferred on a man not merely based on biology but on the father's connection . . . or his commitment to the child."' [Citation.]" (*In re Vincent M., supra,* 161 Cal.App.4th at p. 954, quoting from *In re Zacharia D., supra*, 6 Cal.4th at p. 449.) Because presumed fatherhood is based not on a mere biological connection but on a man's relationship with the child, genetic testing alone has no bearing in determining presumed father status. (Cf., *In re Nicholas H.* (2002) 28 Cal.4th 56, 69 [disallowing genetic testing to rebut presumed father status].)

Appellant knew he had sexual relations with mother during 2016, and was aware of Kimberly's existence no later than February 2017, but did nothing to suggest or establish his biological parentage, let alone presumed father status. There is no evidence appellant offered

financial support for Kimberly, attempted to establish a relationship with the child, or even inquired about her well-being. Appellant never requested custody of Kimberly, nor did he accept her into his home (although he did ambiguously indicate a willingness to "act in the role of step-father"). Appellant's failure to demonstrate a "full commitment to his parental responsibilities—emotional, financial and otherwise" precludes him from attaining presumed father status, and a determination of biological paternity would not have sufficed to elevate him to that status. (*Adoption of Kelsey S.* (1992) 1 Cal.4th 816, 849; *In re Eric E.* (2006) 137 Cal.App.4th 252, 256, 260 [granting presumed father status not in child's best interest after the 366.26 hearing has been set, where, among other things, he did not have custody at any time, failed to visit, and showed minimal effort to act as a parent].) As the Supreme Court explained in *In re Zacharia D., supra*, 6 Cal.4th at page 452, "[w]hile under normal circumstances a father may wait months or years before inquiring into the existence of any children that may have resulted from his sexual encounters with a woman, a child in the dependency system requires a more time-critical response. Once a child is placed in that system, the father's failure to ascertain the child's existence and develop a parental relationship with that child must necessarily occur at the risk of ultimately losing any 'opportunity to develop that biological connection into a full and enduring relationship.' [Citation.]"

Implicit in the court's denial of genetic testing was its conclusion that Kimberly would not benefit from having appellant identified as her father, as her best interests would not be served by being "reunified"

with the person who claimed paternity solely by virtue of a biological tie. The juvenile court did not err in terminating parental rights. Consequently, any failure to comply with the statutory mandate to establish paternity was harmless. Nothing in this record suggests that delaying the section 366.26 hearing to permit appellant to try to establish a biological tie to the child might have "initiat[ed] a relationship that could lead to presumed father status." (*In re Joshua R., supra*, 104 Cal.App.4th at p. 1027.) To the contrary, there is sufficient information about appellant's circumstances to permit us to conclude that the court's failure to satisfy the requirements of section 316.2 and rule 5.635 did not affect the ultimate outcome of this proceeding. Accordingly, we conclude appellant was not prejudiced by the juvenile court's failure to comply with the statutory requirements.

DISPOSITION

The order terminating parental rights and selecting adoption as a permanent plan is affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

WILLHITE, J.

We concur:

MANELLA, P. J. MICON, J.*

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