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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

In re E.Q., a Person Coming  
Under the Juvenile Court Law.

B285226

(Los Angeles County  
Super. Ct. No. DK20602)

LOS ANGELES COUNTY  
DEPARTMENT OF  
CHILDREN AND FAMILY  
SERVICES,

Plaintiff and Respondent,

v.

TINA Q.

Defendant.

JENNIFER L.,

Objector and Appellant.

Appeal from an order of the Superior Court of Los Angeles County, Robert S. Draper, Judge. Reversed.

John L. Dodd, under appointment by the Court of Appeal, for Objector and Appellant.

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

## INTRODUCTION

Jennifer L. appeals from the order of the juvenile court denying her request to be declared a presumed parent of E.Q. (age nine). We conclude the court relied on the incorrect statute in making its ruling. Accordingly, we reverse and remand the matter to the juvenile court to reconsider the issue under the applicable statute (Fam. Code, § 7611, subd. (d)).<sup>1</sup>

## FACTUAL AND PROCEDURAL BACKGROUND

### 1. *Detention*

The Department of Children and Family Services (the Department) detained E.Q. from his mother, Tina Q., and filed a petition under section 300 based on mother's substance abuse.

When the child was detained in 2016, he was living with his maternal grandparents, Monica and George L. Mother had been in a relationship with Jennifer since before E.Q. was born. Mother reportedly lived in many different places with "a lot of people," including Jennifer, the grandparents, and in hotels. Mother moved in with the grandparents in March 2016 but moved out seven months later to live with Jennifer. E.Q.'s education has been irregular because mother took him out of school and did not home school him. The grandparents stated that E.Q. has lived with them all of his life. They raised him and mother never provided for him. E.Q.'s biological father has had no contact with the child.<sup>2</sup>

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<sup>1</sup> All further statutory references are to the Family Code, unless otherwise noted.

<sup>2</sup> The biological father is not named on E.Q.'s birth certificate and is not a party to this appeal.

E.Q. reported that his grandparents, whom he “loves,” were like parents to him. He felt protected, supported, and loved by his maternal grandparents who have raised him “ ‘off and on’ ” since he was born. He considered his grandparents to be his “ ‘mom and dad.’ ”

E.Q. was scared of mother and did not want her in the grandparents’ house where he planned to remain “for life.” E.Q. stated that Jennifer and mother were “not like moms to” him, as they ganged up on and yelled at him “all the time.” Mother and Jennifer use drugs together and with their friends. Mother and Jennifer smoked “funny cigarettes” in E.Q.’s presence and he always smelled smoke and vapor in the car, which bothered him because he is asthmatic. Mother left him alone in hotels, sometimes all night. He claimed Jennifer stole money from his grandfather and called the police on the family which upset his grandmother. He stated he was fearful of Jennifer.

Jennifer wanted the child to be placed with her. Mother agreed, provided Jennifer’s ex-husband was not around E.Q. However, the Department discovered that Jennifer had a criminal history that precluded her as a placement for E.Q. If Jennifer could not take custody of the child, then mother wanted him placed in foster care rather than with the grandparents. Jennifer inquired about putting her name on the child’s birth certificate.

During the detention hearing, mother requested that Jennifer be named a presumed parent. The juvenile court declined to appoint counsel for Jennifer and ordered the Department to locate an alleged father. The court removed E.Q. from mother and placed him with the grandparents.

## *2. Investigation into presumed parenthood status*

Jennifer claimed that E.Q. called her “Momma Jen.” Jennifer testified that she and the child “feel that she is like a second mother.” Jennifer and mother were in a relationship for 10 years, that is since the year before mother became pregnant with E.Q. After mother gave birth, she and E.Q. lived with Jennifer. The relationship was stormy and mother and E.Q. periodically moved back in with the maternal grandparents. But, mother would always return to Jennifer. The two women broke up and mother moved out with E.Q. four years before the child was detained. Jennifer claimed she was present at E.Q.’s events, all of his parent-teacher conferences, and open houses. Jennifer wanted the child to live with her. E.Q. did not want to live with Jennifer.

Jennifer usually drove mother to her monitored visits with E.Q. and participated, although the child preferred that Jennifer attend every other visit. E.Q. also had telephone contact with mother and Jennifer. He admitted that he loved Jennifer because he knew her. The record contained two school projects that referred to Jennifer as E.Q.’s mother.

The maternal grandparents opposed placing E.Q. with Jennifer, arguing that the woman had not been a stabilizing force or played a regular and consistent role in the child’s life, being only sporadically present. They argued that Jennifer had made “no rational decisions” about E.Q.’s education, upbringing, housing, or medical care, and had not been available to provide any type of stability. They observed that mother and Jennifer were never married, and the two have had a contentious, and sometimes violent, relationship. In fact, the grandmother

claimed that mother confided that she did not trust Jennifer with E.Q. because Jennifer used drugs.

During the January 2017 adjudication hearing, mother again requested that Jennifer be declared E.Q.'s presumed parent. Her counsel argued that E.Q. was "open to visitation with" Jennifer and called her "Jen." The juvenile court appointed counsel for Jennifer and continued the matter for a parenthood hearing. The court sustained the petition, declared E.Q. a dependent under section 300, subdivision (b)(1), and ordered reunification services for mother.

### *3. The hearing into presumed parenthood status*

At the June 2017 hearing into the disposition and into Jennifer's request to be declared a presumed parent, mother testified that Jennifer had assisted her during the pregnancy, financially, physically, and emotionally "[i]n every way." After his birth, E.Q. and mother moved in with Jennifer, who bonded with the baby and was a mother to him. Mother testified that Jennifer gave her rides and bought diapers, or whatever mother needed, such as clothing. Mother and Jennifer have "been side by side with each other raising" E.Q. and going to doctors' appointments. Jennifer testified that before E.Q. was born, she took mother to doctor's appointments, "helped throw his baby shower," and helped "prepare for him." They lived together for three or four years after the child was born and she maintained a relationship with him ever since by babysitting and attending medical appointments. Jennifer testified that she referred to E.Q. as "my son," and "[e]verybody knew he was my son." She testified that E.Q.'s name on his birth certificate includes the initials J. and T. which stand for Jennifer and mother.

After the evidentiary hearing, the juvenile court denied Jennifer's request to be declared presumed mother. The court concluded, pursuant to section 7612, that declaring Jennifer a presumed parent would be detrimental to E.Q. because it would require removing him from a stable placement where he has been for four years, with grandparents who have met his physical and psychological needs, and with whom he wanted to live. The court added that it did not doubt that Jennifer has a relationship with E.Q., "but I don't think that's happened for the last four years. So I'm denying the presumed motherhood status for" Jennifer. Jennifer appealed.

## DISCUSSION

The juvenile court made its challenged ruling under section 7612. That statute reads in relevant part, "In an appropriate action, a court may find that more than two persons with a claim to parentage under this division are parents if the court finds that recognizing only two parents would be detrimental to the child." (*Id.*, subd. (c).)

Reviewing the court's application of the statute de novo (*In re David T.* (2017) 13 Cal.App.5th 866, 871), we conclude that section 7612, subdivision (c) does not apply in this case. "In enacting section 7612, subdivision (c), the Legislature expressed its intent that it 'only apply in the rare case where a child truly has more than two parents, and a finding that a child has more than two parents is necessary to protect the child from the detriment of being separated from one of his or her parents.' (Stats. 2013, ch. 564, § 1.)" (*In re L.L.* (2017) 13 Cal.App.5th 1302, 1316.) There is no biological father involved in E.Q.'s life and so the child does not have more than two parents. Indeed, the juvenile court acknowledged the inapplicability of section

7612 during the hearing when it stated that the premise of that statute, “*is not exactly what we have here.*” (Italics added.) As the juvenile court applied the wrong statute, its order must be reversed.

Jennifer contends that the juvenile court’s application of section 7612 was prejudicial (Cal. Const., art. VI, § 13) and that based on the evidence we should direct the court to find in her favor.

The applicable statute is section 7611, which sets forth a rebuttable presumption of parenthood.<sup>3</sup> (*In re Salvador M.* (2003) 111 Cal.App.4th 1353, 1357.) Section 7611 provides in relevant part, “A person is presumed to be the natural parent of a child if the person meets the conditions . . . in any of the following subdivisions: [¶] . . . [¶] (d) The presumed parent receives the child into his or her home and openly holds out the child as his or her natural child.” (§ 7611, subd. (d).) The proponent has the burden of proving the foundational facts by a preponderance of the evidence. (*In re Salvador M.*, at p. 1357.) Determination whether the proponent has met the statute’s requirements is a factual one (*In re M.Z.* (2016) 5 Cal.App.5th 53, 63–64) involving the evaluation of a wide range of factors, of which the core consideration is whether the proponent has established a relationship with and demonstrated a commitment to the child. (*In re M.R.* (2017) 7 Cal.App.5th 886, 898.)

The juvenile court’s reliance on section 7612 and its requirement of detriment prejudiced Jennifer because she

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<sup>3</sup> “Most decisions focus on the definition of the presumed father, but the same legal principles apply to a woman seeking presumed mother status. [Citations.]” (*In re Jose C.* (2010) 188 Cal.App.4th 147, 162, fn. 12.)

adduced foundational facts relevant under section 7611, subdivision (d), making it reasonably probable that a result more favorable to her would have been reached absent the court's error. (*In re J.S.* (2011) 196 Cal.App.4th 1069, 1078.)

However, “[a] reasonable probability for these purposes does not mean an *absolute* probability; the likelihood that the error affected the outcome need not be greater than the likelihood that it did not. [Citation.] The test is satisfied, and prejudice appears, if the case presents ‘an equal balance of reasonable probabilities.’ [Citation.]” (*In re J.S.*, *supra*, 196 Cal.App.4th at p. 1079, quoting from *People v. Watson* (1956) 46 Cal.2d 818, 837.) Many of Jennifer's foundational facts were disputed. For example, Jennifer claimed that E.Q. lived with her for the first four years of his life, whereas the maternal grandparents reported that the child lived with them for his entire life and they provided him with all necessities. Jennifer testified she attended E.Q.'s parent-teacher conferences and open houses, but there is also evidence that the child was not attending school. Jennifer claims E.Q. considers her a mother, whereas the child says he is afraid of Jennifer and does not want her to attend every visit. The appellate court has “no power to judge the effect or value of the evidence, to weigh the evidence, to consider the credibility of witnesses or to resolve conflicts in the evidence or the reasonable inferences which may be drawn from that evidence. [Citations.]” (*In re Casey D.* (1999) 70 Cal.App.4th 38, 52–53.) That is the role of the juvenile court (*ibid.*) who did not evaluate relevant and disputed evidence in this case. Accordingly, although the order denying Jennifer's motion to be declared a presumed parent must be reversed, we cannot direct the juvenile court to enter an order in her favor, as she requests.



## **DISPOSITION**

The order appealed from is reversed and the matter is remanded to the juvenile court to reconsider the matter in accordance with Family Code, section 7611, subdivision (d).

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KALRA, J.\*

We concur:

EDMON, P. J.

LAVIN, J.

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