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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

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

B297275, B297915
(Los Angeles County
Super. Ct. No. 18CCJP07183)

LOS ANGELES COUNTY
DEPARTMENT OF
CHILDREN AND FAMILY
SERVICES,

Plaintiff and Respondent,

v.

ROMAN S.,

Defendant and Appellant.

APPEAL from an order of the Superior Court of
Los Angeles County, Martha Matthews, Judge. Affirmed.

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

Mary C. Wickham, County Counsel, Kristine P. Miles,
Assistant County Counsel, and Veronica Randazzo,
Deputy County Counsel, for Plaintiff and Respondent.

Although the parties raise several issues on appeal, the determinative issue is whether substantial evidence supported the juvenile court's finding that Roman S. was not J.E.'s presumed father under Family Code section 7611, subdivision (d) (section 7611, subdivision (d)). We conclude that substantial evidence supported that finding. J.E. was seven years old when she met Roman for the first time and spent time with him only for a few months while she was visiting California. Prior to then, Roman had made no effort to support or care for J.E. either when mother was pregnant with J.E. or after J.E.'s birth. There was no evidence of any long-standing relationship. He did not provide any financial support or even seek to be identified on her birth certificate. In short, as set forth below, Roman had no established relationship or demonstrated commitment to J.E. We affirm the juvenile court's order denying Roman presumed father status.

FACTUAL BACKGROUND

We summarize only those facts relevant to the current appeal. J.E. was seven years old when dependency proceedings began. At that time, she had known Roman for about a month. Roman purchased tickets for mother, J.E., and J.E.'s half sibling to travel to California from Florida. Roman wanted to meet J.E.

“whom he had never met.”¹ Mother wanted to find out if Roman was J.E.’s biological father. Mother reported that she had a relationship with Roman when she was 14 years old (and Roman was 26 years old). Roman disputed mother’s age, claiming she was 17 or 18 when they had a relationship. Mother reported that Roman sexually abused her.

J.E.’s half sibling I.D. was three years old at the time dependency proceedings began.² During the course of the dependency proceedings, mother gave birth to twins. In addition to Roman, J.E. has three alleged fathers. Roman seeks presumed father status only with respect to J.E., not with respect to J.E.’s half siblings who live in Florida.

1. Dependency Petition

On November 7, 2018, Los Angeles County Department of Children and Family Services (DCFS) filed a Welfare and Institutions Code section 300 petition.³ An amended petition alleged that mother and Roman had a history of engaging in violent altercations in J.E.’s presence. It also alleged that mother physically abused J.E. by striking her with a belt. Mother pled

¹ Mother believes that Roman met J.E. when she was born but said that J.E. was not his child. For purposes of this appeal, we assume the correctness of Roman’s representation that he had not previously met J.E.

² I.D. initially was named in the petition, but eventually the juvenile court found that he was safely in the custody of his father (not Roman).

³ Undesignated statutory citations are to the Welfare and Institutions Code.

no contest to the amended petition, and the juvenile court sustained the allegations.

2. Roman's Statement of Parentage

On November 8, 2018, in connection with the dependency proceedings, Roman completed a statement regarding parentage of J.E. He stated that he believed he was J.E.'s parent. Roman explained that J.E. lived with him, starting in August 2018 when mother, J.E., and I.D. flew to California from Florida. Roman indicated that he told unidentified "Family & Friends" that J.E. was his child. Roman stated that he participated in several activities with J.E. since she came to California.

3. DCFS Reports

DCFS reported, and it is undisputed, that a paternity test showed that Roman was not J.E.'s biological father. Mother wanted to reunify with J.E. and have J.E. return to Florida where J.E.'s half sibling and extended family lived. After J.E. was released to Roman's care, her school reported that she "appears to be less happy than before the DCFS case was opened, has missed school on several occasions, and often appears unkempt and tired."

Social workers observed Roman to act in a nurturing manner with J.E. Roman reported that mother was the aggressor in the domestic violence incidents. DCFS initially placed J.E. in Roman's care. At first, J.E. told social workers that she was afraid of mother and wanted to live with Roman, to whom she referred as father. When Roman learned that he was not J.E.'s biological father, he appeared disappointed and said that he wanted her to be in a good home "if she is not able to stay

with him.” Roman also stated that he wished to remain J.E.’s presumed father.

Although DCFS initially praised Roman, social workers subsequently were critical that he did not seek counseling for J.E. In May 2019 (after the finding that Roman was not J.E.’s presumed parent), DCFS reported that Roman argued with a woman in front of J.E. and had multiple people spend the night in his home. J.E. was afraid that Roman would learn she spoke to mother on the phone. J.E. reported that Roman did not want to be part of a “family unit” with her and mother.

4. The Parties’ Briefs In Support of and in Opposition to Roman’s Claim of Presumed Parentage

The juvenile court initially found Roman to be a presumed father. Mother was not present when the juvenile court made that determination. Pursuant to section 385, DCFS requested that the court set aside the finding that Roman was J.E.’s presumed father.⁴ Roman does not dispute that the juvenile court properly reconsidered its finding.

In a brief in support of obtaining presumed father status, Roman represented that he lived in a family unit with mother and J.E. According to Roman, he enrolled J.E. in school, “introduced himself to others as her father, and she responded in a similar fashion.” Roman stated that he introduced J.E. as his daughter to his friends at work. Roman claimed that “[f]or the

⁴ Section 385 provides: “Any order made by the court in the case of any person subject to its jurisdiction may at any time be changed, modified, or set aside, as the judge deems meet and proper, subject to such procedural requirements as are imposed by this article.”

last three months since the detention hearing, he has been the sole caretaker of the child.”

In a brief opposing Roman’s presumed father status, DCFS contended Roman did not assist mother with prenatal care and was unaware of J.E. for her first seven years. According to DCFS, Roman did not pay for mother’s expenses related to J.E., did not promptly seek to obtain custody of J.E., and only briefly cared for J.E. when she and mother traveled to California.⁵

5. The Juvenile Court Findings

In February 2019, approximately six months after J.E. left Florida, the juvenile court concluded Roman was not J.E.’s presumed father.⁶ The court stated that Roman offered mother and J.E. a place to live when they came to California. This occurred either in August or September 2018. “There . . . was no preexisting relationship between” J.E. and Roman. Roman bought mother a “one-way ticket to California, and then the issue of whether he is the biological father does not get resolved for several months.” The court stated: “I just think this is not the kind of situation that the Legislature meant to have covered by section 7611(d).” “This just doesn’t fall within what I think the purpose of that statute was.” The juvenile court also stated that the presumption was rebutted. The juvenile court indicated that Roman was not J.E.’s “father, period.” The court further noted

⁵ DCFS also argued that reunification should occur in Florida where mother and J.E.’s half sibling reside. The juvenile court observed that no court case was pending in Florida and the Florida court was “not inclined to take jurisdiction.”

⁶ Roman timely appealed from the order denying him presumed father status.

that mother and J.E.'s sibling were residents of Florida, and that J.E. had been in California for less than six months.

Subsequent to the juvenile court's finding that Roman was not J.E.'s presumed father, the juvenile court ordered J.E. removed from Roman's care and ordered no contact between the two. The court ordered DCFS to initiate an expedited interstate compact for J.E. in Florida.

DISCUSSION

A. Substantial Evidence Supported the Conclusion that Roman did not Fall within the Section 7611, Subdivision (d) Presumption

Roman argues that he satisfied the requirements of section 7611, subdivision (d), which creates a rebuttable presumption of presumed father status if a father "receives the child into his . . . home and openly holds out the child as his . . . natural child." (§ 7611, subd. (d).)⁷ "In considering a

⁷ *Adoption of Kelsey S.* (1992) 1 Cal.4th 816 (*Kelsey S.*) held that former Civil Code section 7004 continued in Family Code section 7611 "violates the federal constitutional guarantees of equal protection and due process for unwed fathers to the extent that the statutes allow a mother unilaterally to preclude her child's biological father from becoming a presumed father and thereby allowing the state to terminate his parental rights on nothing more than a showing of the child's best interest." (*Id.* at p. 849, italics omitted.) The *Kelsey S.* court held that "[t]he statutory distinction between natural fathers and presumed fathers is constitutionally invalid only to the extent it is applied to an unwed father who has sufficiently and timely demonstrated a full commitment to his parental responsibilities." (*Ibid.*, italics omitted.) Roman did not timely demonstrate a full commitment

challenge to a juvenile court’s finding regarding presumed father status, we apply the substantial evidence test, drawing all reasonable inferences and resolving conflicts in the evidence in favor of the trial court’s ruling, and refraining from any reweighing of the evidence.” (*In re M.R.* (2017) 7 Cal.App.5th 886, 898.) As set forth below, we conclude no substantial evidence supported the determination that Roman satisfied the prerequisites to be a presumed father under section 7611, subdivision (d).

“While the juvenile court may consider a wide range of factors in making a presumed parent determination, as appropriate to the circumstances [citation], the core issues are the person’s established relationship with and demonstrated commitment to the child.” (*In re M.R., supra*, 7 Cal.App.5th at p. 898.) In this context, a parent is one “who has fulfilled the child’s physical needs and the child’s psychological needs for care and affection, and who has assumed that role for a substantial period of time.” (Fam. Code, § 7612, subd. (c).)

Under section 7611, subdivision (d), “‘courts have looked to such factors as whether the man actively helped the mother in prenatal care; whether he paid pregnancy and birth expenses commensurate with his ability to do so; whether he promptly took legal action to obtain custody of the child; whether he sought to have his name placed on the birth certificate; whether and how long he cared for the child; whether there is unequivocal evidence that he had acknowledged the child; the number of people to whom he had acknowledged the child; whether he provided for

to his parental responsibilities and makes no argument that he qualifies as a father under *Kelsey S.*

the child after [he or she] no longer resided with him; whether, if the child needed public benefits, he had pursued completion of the requisite paperwork; and whether his care was merely incidental.’” (*In re J.H.* (2011) 198 Cal.App.4th 635, 646.) “ ‘No single factor is determinative; rather, the court may consider all the circumstances when deciding whether the person demonstrated a parental relationship by holding out the child as his or her own and assuming responsibility for the child by receiving the child into his or her home.’ ” (*County of Orange v. Cole* (2017) 14 Cal.App.5th 504, 509–510.)

Turning to this case, no substantial evidence supported the conclusion that Roman triggered the rebuttable presumption in section 7611, subdivision (d). At the time that dependency proceedings commenced, Roman knew J.E. for only one or two months. Roman was not named on J.E.’s birth certificate. Roman did not seek legal custody of her; he did not support mother or J.E. during mother’s pregnancy or for seven years thereafter; and he had only a short relationship with J.E., who along with her mother and half sibling, resided in Florida. There was no evidence that Roman fulfilled her physical and psychological needs over a period of time. Nor did Roman indicate a desire to live on a long term basis with mother and J.E. as a family unit; indeed, the evidence was to the contrary. Although Roman represented that he introduced himself to people as J.E.’s father, the identity of those “people” is not clear. In sum, Roman’s relationship with J.E. was merely incidental to mother’s visit to California. The trial court did not err in finding that Roman did not fall within the section 7611, subdivision (d) presumption. The fact that J.E. once referred to Roman as her father does not undermine this conclusion.

Our conclusion is supported by *In re D.A.* (2012) 204 Cal.App.4th 811, 827. In *In re D.A.*, D.A. was placed in E.A.'s home after detention, and E.A. was identified as D.A.'s father on D.A.'s birth certificate. (*Id.* at p. 827 & fn. 3.) Additionally, E.A. lived with mother for two weeks after D.A. was born, and E.A. babysat D.A. overnight on an "unspecified number of occasions." (*Id.* at p. 827.) The appellate court held that the foregoing evidence was insufficient to establish the section 7611, subdivision (d) presumption. (*Ibid.*) Similarly here, the fact that Roman lived with mother and J.E. for a short period of time does not trigger the section 7611, subdivision (d) presumption. The evidence here is even weaker than in *In re D.A.* because Roman was not even identified as J.E.'s father on her birth certificate.

Policies underlying section 7611, subdivision (d) also support the conclusion that Roman is not J.E.'s presumed father. "The purpose of the presumption of parenthood in section 7611(d) is rooted in the ' " 'strong social policy in favor of preserving [an] ongoing [parent] and child relationship.' " [Citation.] The presumption is based on the state's interest in " 'preserving the integrity of the family and legitimate concern for the welfare of the child. The state has an " 'interest in preserving and protecting developed parent-child . . . relationships which give young children social and emotional strength and stability.' " ' " ' " (County of Orange v. Cole, supra, 14 Cal.App.5th at p. 509.)

Roman did not have an *ongoing* parent and child relationship with J.E. He had a relationship with her for only a few months when mother and J.E. visited California before the juvenile court removed J.E. from Roman's custody.

B. Because Roman Ignores the Dispositive Issue, His Other Arguments Lack Merit

Roman contends that the juvenile court found he had established the elements of section 7611, subdivision (d). According to Roman, the juvenile court “agreed that Roman met the requirements of Family Code section 7611, subdivision (d).” (Boldface omitted.) The record does not support this contention. The juvenile court expressly stated that he did not fall within the ambit of that provision: “This just doesn’t fall within what I think the purpose of that statute was.”

Based on his incorrect assumption that he satisfied the requirements for section 7611, subdivision (d), Roman argues that the presumption under that statute was not rebutted. Specifically Roman argues that “the juvenile court incorrectly determined that policy considerations were sufficient to rebut the presumption arising under Family Code section 7611, subdivision (d).” (Boldface omitted.) Roman cites cases discussing when a presumption under section 7611 may be rebutted. However, because we conclude that Roman failed to satisfy the threshold requirements to trigger the presumption of paternity, we need not consider whether sufficient evidence rebutted a nonexistent presumption of paternity. “One need not decide whether an action is appropriate to rebut the presumption of parenthood unless the evidence supports the presumption in the first place.” (*In re D.M.* (2012) 210 Cal.App.4th 541, 555.)

Finally, Roman incorrectly argues that as a matter of law, he satisfied the prerequisites under section 7611 to be J.E.’s presumed father. As we have explained, substantial evidence supported the finding that Roman was not J.E.’s presumed father under section 7611, subdivision (d). To recap, Roman had only

incidental caretaking responsibilities for seven-year-old J.E. for the brief period when her mother and J.E. visited California. Roman had no longstanding relationship with J.E. over her seven years and only acknowledged her a month or two prior to the commencement of the dependency proceedings. At the time the juvenile court decided paternity, Roman had no demonstrated commitment to parenting J.E. (See *In re M.R.*, *supra*, 7 Cal.App.5th at p. 898.) “[A]n unmarried man who is not biologically related to the child is not entitled to custody or to reunification services merely because he wants to be the parent.” (*In re D.M.*, *supra*, 210 Cal.App.4th at p. 554.)

DISPOSITION

The juvenile court order denying Roman presumed father status is affirmed.

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BENDIX, J.

We concur:

ROTHSCHILD, P. J.

JOHNSON, J.