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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

In re CHRISTOPHER T., JR., a
Person Coming Under the
Juvenile Court Law.

B298839
(Los Angeles County
Super. Ct. No. 19CCJP01196)

LOS ANGELES COUNTY
DEPARTMENT OF
CHILDREN AND FAMILY
SERVICES,

Plaintiff and Respondent,

v.

CHRISTOPHER T., SR.,

Defendant and Appellant.

APPEAL from the dispositional orders of the Superior
Court of Los Angeles County, and Lisa A. Brackelmanns,
Commissioner. Affirmed.

John L. Dodd & Associates and John L. Dodd, under appointment by the Court of Appeal, for Defendant and Appellant.

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

Christopher T., Sr., (Father), a nonoffending parent in a dependency proceeding, thrice requested the juvenile court find him to be the presumed father of his biological child Christopher T., Jr. (Christopher, Jr.). Each time, the juvenile court deferred the determination to a later time. Father appeals from the dispositional orders following the adjudication hearing, the most recent instance in which the juvenile court declined to rule on his presumed parent status. Father argues that the evidence before the juvenile court was sufficient to compel a finding that he is Christopher, Jr.'s presumed father, and that the juvenile court erred by not making that determination.

Because the juvenile court has yet to rule on Father's presumed parent status, there are no findings on that issue for us to review. Father claims the juvenile court erred by not making a determination sooner, but he cites no authority setting a timetable for that determination, nor has he shown any prejudice from the delay. Accordingly, we affirm the dispositional orders pertaining to Father.

PROCEDURAL BACKGROUND

We summarize only those facts relevant to the current appeal.

1. *Pre-detention filings*

On February 22, 2019, respondent Los Angeles County Department of Children and Family Services (DCFS) filed a petition under Welfare and Institutions Code¹ section 300 seeking to detain six-year-old Christopher, Jr. and his two half siblings H.B. and S.L. from mother N.L. (Mother) and her companion Shannon H., who was S.L.'s father. The petition alleged Shannon H. physically abused Christopher, Jr., Mother and Shannon H. engaged in violent altercations in the presence of the children, Mother and Shannon H. left the children home alone without supervision, and Mother abused marijuana. None of the allegations pertained to Father.

In advance of the detention hearing, Mother completed a parentage questionnaire stating that Father was Christopher, Jr.'s father. Mother's questionnaire indicated that Father had "held [him]self out openly as [Christopher, Jr.'s] parent." The questionnaire further indicated that Mother and Father were not married or living together at the time of Christopher, Jr.'s conception or birth, and Father was not present at Christopher, Jr.'s birth.

The questionnaire asked, "Has the parent [meaning Father] received the child in his/her home? (Inquire if parent is helping to support financially, paying rent, buying necessities, and having a relationship with the child.)" Mother responded, "No."

Father submitted a JV-505 "Statement Regarding Parentage" indicating he believed he was Christopher, Jr.'s

¹ Further undesignated statutory citations are to the Welfare and Institutions Code.

father, and requesting that the juvenile court find him to be the presumed father. He checked the box indicating Christopher, Jr. had lived with him, but left blank the spaces indicating when and for how long. He wrote that Christopher, Jr. spent the night with him every other weekend and “during the week when he does not have school.” He wrote, “Everybody knows [Christopher, Jr.] is my son,” including Father’s “relative[s and] friends.” Father indicated that he participated in various activities with Christopher, Jr., including playing games and basketball. He stated, “I provide for [Christopher, Jr.] whenever his mom needs help getting things for him.” He concluded, “I love him very much and I want him placed with me.”

DCFS filed a last minute information the day of the detention hearing stating that Father was on parole and resided at local housing projects. The last minute information further stated that, according to Christopher, Jr., “he has no contact with his father and has no visitation. Maternal relatives had no contact information and no known information of his whereabouts.”

2. *Detention hearing*

Father was present at the detention hearing on February 25, 2019 represented by appointed counsel, and the juvenile court considered his request to be found Christopher, Jr.’s presumed father. Mother said Christopher, Jr. had not lived with Father. Father’s counsel stated that Father had weekend visits and visits when Christopher, Jr. was not in school, the last visit taking place two and one-half weeks earlier. Counsel for DCFS said that, per Mother’s attorney, Father was not listed on Christopher, Jr.’s birth certificate and had not had any contact or visitation. Counsel for DCFS asked that the juvenile court find

Father to be the alleged father until more information was provided.

The juvenile court stated it was “just the first hearing,” and it would hold a paternity determination “in abeyance and get a copy of the birth certificate.” Father’s counsel stated that Father was not on the birth certificate, but that he had held himself out as Christopher, Jr.’s father. The juvenile court said it would not make a finding at that time “because I have some conflicting information about that.”

The juvenile court ordered the children detained. The court ordered monitored visitation for Father as well as family reunification services, with DCFS to conduct a pre-release investigation to assess him for unmonitored visits and possible placement of Christopher, Jr.

3. *Pre-release investigation report*

DCFS filed a pre-release investigation report regarding Father on March 8, 2019. Per Father’s parole agent, Father had been on parole for second degree robbery since March 2018, and had complied with the conditions of parole.

According to the report, Christopher, Jr. told a social worker that he sometimes visited Father and would watch movies when he did. He said that although he was not afraid of his father, he wanted to stay with his current caregiver. He said, “I do want to see my dad, but only on Fridays when I can play x-box.”

Christopher, Jr.’s caregiver, who was Mother’s cousin, said she had seen Father on a few occasions but did not know him well. Her understanding was that Christopher, Jr. would visit Father for a day or a couple of days, and when these visits happened, Father suddenly would call Mother to pick up

Christopher, Jr. because Father could not care for him. The caregiver acknowledged that she was unsure of the true dynamic of the visits.

Father was not home at the time arranged for a social worker to inspect his residence. The social worker instead spoke with Father's father, Royce T., with whom Father was living. Royce T. said that since Father had been out on parole, Father would have regular overnight visits with Christopher, Jr. at Royce T.'s home.

Father later called the social worker and said his housing situation was unstable but he wanted Christopher, Jr. placed with him when he had stable housing. He said that Christopher, Jr. had regular overnight visits with him before DCFS was involved, and he did not know why Mother and her relatives were not forthcoming regarding his relationship with Christopher, Jr.

Father stated he never lived in the same house as Christopher, Jr., but had been involved in Christopher, Jr.'s life since he was born and had regular visits with him.

The report recommended that Christopher, Jr. not be placed with Father or that Father have unmonitored visits.

The juvenile court reviewed the report, found "Negative PRI," and ordered monitored visits for Father, with DCFS having discretion to liberalize visitation.

4. *Pre-adjudication filings and proceedings*

The jurisdiction and disposition report stated that both Mother and Father claimed that he was Christopher, Jr.'s biological father. DHCS requested the juvenile court make a paternity finding.

Per the report, Father stated that he had last seen Christopher, Jr. in December 2018.

The report attached Christopher, Jr.'s birth certificate, which did not list a father.

On April 17, 2019, Father filed another JV-505 "Statement Regarding Parentage." Unlike in his first JV-505, Father did not check the box indicating that Christopher, Jr. had lived with him. He wrote that Christopher, Jr. had spent the night with him many times since he was born, that Christopher, Jr. called him "dad," and that "[e]veryone knows he's my son." He stated that Christopher, Jr.'s maternal grandmother and maternal aunt would testify that Christopher, Jr. had overnight visits with Father with "no problems." Father indicated that he had "bought [Christopher, Jr.] things thru the years."

At the next hearing on April 17, 2019, the juvenile court granted DCFS's request to continue adjudication. Father asked to be declared Christopher, Jr.'s presumed father, and the juvenile court asked if there were any objections. Counsel for DCFS objected that the issue "was not brought to my attention today. We have addressed this before. I just would like to reserve that for the next hearing." The juvenile court said, "Okay."

A last minute information filed June 13, 2019 stated that Father "is reportedly no[t] involved with [Christopher, Jr.], and has not contacted DCFS for an assessment or visit."

Father filed another copy of his April 17 JV-505 in advance of the adjudication hearing on June 20, 2019.

5. *Adjudication hearing*

Father was not present at the June 20, 2019 adjudication hearing but was represented by counsel. The juvenile court reviewed Father's JV-505 and asked if anyone objected to the

court finding Father to be the presumed father. Counsel for DCFS, Mother, and the children objected.

Counsel for DCFS argued that Father was not on Christopher, Jr.'s birth certificate and that Father "hasn't visited very often." Counsel for DCFS objected to a finding of presumed fatherhood without a hearing with Father present.

Father's counsel responded that Christopher, Jr.'s maternal grandmother and maternal aunt were present and willing to testify regarding the overnight visits. She summarized the information in the JV-505 and noted that Father was nonoffending for purposes of the section 300 petition.

Children's counsel stated she had spoken with Christopher, Jr.'s maternal grandmother and maternal aunt and "they have indicated that recently [father] has played more of a role in [Christopher, Jr.'s] life." Nevertheless, Christopher, Jr., while "recogniz[ing] [Father] as his father," "describes having [a] fairly minimal relationship with him." Children's counsel continued, "[E]ven recently, since the court cases ha[ve] started, [Christopher, Jr.] has not been visiting regularly with his father and doesn't describe any kind of substantial relationship with him."

The juvenile court stated that Father could "raise this issue at another time to have a full-blown hearing. But at this point, based on the evidence the court has before her, I'm inclined to find him as the biological father. But it doesn't mean that I won't revisit the issue again in the future. But I did not know this was going to be calendared today for a hearing on father seeking to have his status elevated to presumed."

The juvenile court sustained all counts in the petition except one that DCFS requested be dismissed without prejudice.

Among its dispositional orders, the juvenile court ordered monitored visits for Father with discretion to liberalize, and ordered parenting counseling and housing referrals for him as well.

Father appealed.

DISCUSSION

Father challenges what he characterizes as the juvenile court “denying [him] presumed father status.” In dependency proceedings, a “presumed” father is one who meets criteria under Family Code section 7611. (*In re H.R.* (2016) 245 Cal.App.4th 1277, 1283 (*H.R.*)) “Presumed father status . . . entitles the father to appointed counsel, custody (assuming the court has not made a detriment finding), and reunification services.” (*Ibid.*)

Father’s characterization of the juvenile court’s orders is incorrect. The record reflects that the juvenile court has not yet ruled on Father’s presumed parent status, but has deferred the question for a later time.

At the detention hearing, the juvenile court did not rule on Father’s parental status, but held the question “in abeyance.” At the April 17 hearing the juvenile court granted a request by DCFS to “reserve” the issue of presumed parenthood “for the next hearing.” At the adjudication hearing, the juvenile court stated that it “did not know this was going to be calendared today for a hearing on father seeking to have his status elevated to presumed,” and that Father could “raise this issue at another time to have a full-blown hearing.” The juvenile court also stated that its finding of biological paternity “doesn’t mean that I won’t revisit the issue again in the future.”

These statements indicate the juvenile court’s intention to defer deciding Father’s presumed parent status until it has the

opportunity to receive further evidence. The court at the adjudication hearing found that Father was, at minimum, Christopher, Jr.'s biological father, but there is no indication the court intended that finding to deny Father's presumed parent claim. Thus, contrary to Father's characterization, there was no "final order" as to his presumed parent status. Although Father argues there already is sufficient evidence before the juvenile court to compel the conclusion that he is Christopher, Jr.'s presumed father, in the absence of a ruling one way or the other, we have nothing to review.

Father also fails to show error in the juvenile court's decision to defer a presumed parent determination until later. He correctly notes that the juvenile court has a mandatory duty to determine his presumed parent status. (Cal. Rules of Court, rule 5.635(h)(2) [juvenile court "must determine . . . [¶] . . . [w]hether [a] person is the presumed parent of the child, if that finding is requested"].) He argues the juvenile court has breached this duty by not determining his presumed father status the three times he requested such a finding.

This argument fails. The Welfare and Institutions Code and California Rules of Court require the juvenile court to inquire about the "identity and address of all presumed or alleged fathers" at the initial hearing (§ 316.2, subd. (a); Cal. Rules of Court, rule 5.635(b)), but Father cites no authority setting a timeframe for determining whether an identified parent is a presumed parent.

More important, Father shows no prejudice from the delay. As a presumed father, he would be entitled to appointed counsel, reunification services, and, potentially, custody. (*H.R.*, *supra*, 245 Cal.App.4th at p. 1283.) The juvenile court has appointed

him counsel and granted him reunification services, and he has not sought custody. Absent a showing of prejudice, we cannot reverse the juvenile court. (*F.P. v. Monier* (2017) 3 Cal.5th 1099, 1108.)

Father argues he has been prejudiced because, if he is not the presumed father, the juvenile court may decide to terminate his reunification services without following the procedures to which a presumed parent is entitled. He argues the juvenile court may also apply a different standard when deciding whether to terminate his parental rights. These arguments assume the juvenile court already has rejected Father's presumed parentage claim, which, as we have discussed, it has not. Absent a negative finding on that question, Father does not face these potential consequences.²

Father further argues he has been prejudiced because under principles of *res judicata*, the juvenile court's determination of his parental status is binding, limiting his ability to contest it later. In a similar vein, he argues that the juvenile court might require him to file a section 388 petition to change its prior order, imposing on him the additional burden of showing both a change in circumstances and that a change of order would be in Christopher, Jr.'s best interests. (See § 388, subds. (a)(1), (d).)

These concerns are without merit. As we have discussed, the juvenile court has not issued an order regarding Father's presumed parent status, instead deferring a determination to a

² We assume without deciding that Father may face these consequences upon a negative finding as to his presumed parent status.

later time. There is no final order on that issue for purposes of res judicata or section 388.

DISPOSITION

The juvenile court's dispositional orders regarding Father are affirmed.

NOT TO BE PUBLISHED.

BENDIX, J.

We concur:

JOHNSON, Acting P. J.

WEINGART, J.*

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