Filed 3/28/13 In re Jordan K. CA2/3

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

In re JORDAN K., a Person Coming Under the Juvenile Court Law.	B242253
LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Plaintiff and Respondent, v. T. P., Defendant and Appellant.	(Los Angeles County Super. Ct. No. CK83197)

APPEAL from an order of the Superior Court of Los Angeles County, Terry T. Truong, Juvenile Court Referee. Remanded and affirmed.

Julie E. Braden, under appointment by the Court of Appeal, for Defendant and Appellant.

John F. Krattli, County Counsel, James M. Owens, Assistant County Counsel, and William D. Thetford, Prinicipal Deputy County Counsel, for Plaintiff and Respondent.

INTRODUCTION

T. P. appeals from the orders of the juvenile court denying his request for paternity testing (Welf. & Inst. Code, § 316.2)[1] and denying his section 388 petition to be declared a presumed father pursuant to *Adoption of Kelsey S.* (1992) 1 Cal.4th 816, 849 (*Kelsey S.*). We conclude that the court erred in denying appellant's request for paternity testing. However, we also conclude the error does not require reversal of the order terminating parental rights. The evidence supports the court's conclusions that appellant did not qualify as a presumed father under *Kelsey S.*, and that it would not be in the child's best interest to offer appellant reunification services even if testing proved he was the biological father. Accordingly, we remand to the juvenile court to order paternity testing for appellant and affirm the order terminating parental rights.

FACTUAL AND PROCEDURAL BACKGROUND

1. *The dependency*

In September 2010, the Department of Children and Family Services (the Department) detained then 13-month-old Jordan K. from his mother Katie because of neglect and filed a section 300 petition. Katie has herself been a dependent of the juvenile court since 2005.

Katie initially identified Christopher S. as Jordan's father. Christopher S. submitted a Statement Regarding Parentage form JV-505 that indicated he was not Jordan's father. The juvenile court found Christopher S. was not Jordan's father. The case was transferred to another court who questioned Katie about Christopher S.'s paternity and found the man to be an alleged father. Jordan's father's identity was unknown.

The juvenile court declared Jordan a dependent under section 300, subdivision (b), removed the child from Katie's custody, and awarded Katie reunification services. The court denied services to the father whose identify was unknown. Jordan was placed with

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[1] All further statutory references are to the Welfare and Institutions Code.

his prospective adoptive parents Mr. and Mrs. M. in April 2011. He has formed a "close bond" with that family.

Katie gave birth to Jordan's half sister in April 2011. In July 2011, Katie introduced the social worker to a man Katie identified as Jordan's father. The Department notified the juvenile court and began an investigation. The record contains no indication of the results of the investigation.

In August 2011, the Department submitted a declaration of due diligence in its attempts to locate Jordan's father. The court dispensed with notice by publication (§ 294, subd. (g)),[2] terminated reunification services, and set the section 366.26 hearing. The adoptive homestudy was approved. The M.s were committed to adopting Jordan and providing him with a permanent home.

2. *Appellant is identified and seeks to be declared Jordan's biological father.*

A month after reunification services were terminated and the permanency planning hearing was set, in September 2011, Katie and appellant were arrested together and convicted of burglary. Reading the police report, the juvenile court noted that Katie mentioned that appellant was the father of Jordan's half sister. The court continued the section 366.26 hearing and ordered the Department to follow up with Katie about the possibility that appellant was also Jordan's father.

During the ensuing investigation, Katie told the social worker she did not name appellant as Jordan's father to anyone because " '[m]y social worker said if she ever found out that the father was over 18, she would report that it was statutory rape so I didn't say anything. *I spoke with* [*appellant*] *and we decided that we will deal with the statutory rape thing but if nothing else, Jordan needs to be with family so I had to put someone's name down.* I want him with his father or the father's relatives.' " Katie also

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[2] Under section 294, subdivision (g)(2), when adoption is the recommended permanent plan, the juvenile court may dispense with notice to unknown parents by publication, upon a showing that the Department has attempted with due diligence to identify the unknown parent, and the court determines that notice would not be likely to lead to actual notice to the unknown parent.

stated she *identified appellant as the father to keep Jordan from being adopted*. She said she " '*had to do something*' " because the prospective adoptive parents indicated they would not allow Katie to have contact with Jordan. The social worker wrote, "it is clear that [Katie] is cognizant of the fact that the Department is recommending adoption and that the foster parents are inclined *not* to permit further contact between her and child, Jordan[,] should adoption be finalized. Therefore[, Katie] appears to be attempting to find a way to delay the permanency Court proceedings by naming [appellant] as the father of the child." (Italics added.) The Department maintained its recommendation that adoption be Jordan's permanent plan.

The Department located appellant in North Kern State Prison and sent him a letter asking him to contact the Department to address Katie's claims he was Jordan's father. On January 25, 2012, appellant called the social worker and denied having known about Jordan's existence until " 'right before I got incarcerated' " in late 2011. Appellant did not know if he was the father. Appellant stated he and Katie were together for about eight months. She did not tell appellant she was pregnant. " 'She basically disappeared. She wrote to me on Facebook [in late 2011]. She told me that she had a son with me. I had thought the baby was the other guy's when I found out. . . . She asked me if my family could take him.' " *He stated he had never seen the child*. " 'I think he's like 2 years old now. *I don't know if he's mine*. I mean she's never lied to me before. I would be willing to take a paternity test.' " " '[S]he told me he is in foster care and that she wants him with family.' " Appellant did not remember any conversation with Katie about statutory rape, stating that as far as he knew, Katie was an adult when they were seeing each other.

Four months later, on May 31, 2012, appellant submitted a Statement Regarding Parentage form JV-505 in which he indicated the following: Jordan and he *used to see each other* "*every other weekend*" *from November 2009* to just before Jordan's first birthday in August 2010. "I did not know he was in the system until late last year. *I contacted [the Department] around 12/2010*. The social worker said [Katie] had a court date and [Katie] was getting *her* [*sic*] back. I didn't know [I] had the right to come

to court." (Italics added.) Appellant also declared he believed he was Jordan's biological father and asked the juvenile court to declare him Jordan's presumed father based on the fact that he had told "family, friends, and the world at large" that the child was his and had "take[n] him to play with my daughter," and provided Jordan with "toys, gifts, sent mom money for necessities." Appellant also claimed that Jordan had spent Thanksgiving and Halloween with appellant's family and "spent time [with] my other child."

At the permanency planning hearing on May 31, 2012, Katie testified that appellant was Jordan's father. She did not identify appellant to the Department earlier, she explained, *because she did not want him to know that Jordan was a dependent of the juvenile court*, the implication being that he knew of Jordan's existence and of his paternity. Katie lived with appellant when Jordan was conceived but not when Jordan was born. *Appellant testified he lived with Jordan for about six months starting in November 2009* when the child was three months old. Confronted with his contradictory assertions, appellant then testified that he only visited Jordan and had never lived with the child. The juvenile court found appellant did not qualify as Jordan's presumed father under the Family Code because appellant never accepted Jordan into his home. The court also rejected appellant's *Kelsey S.*-based argument that Katie had lied about who the father was and effectively shut appellant out of fatherhood. The court declared appellant to be an alleged father.

Appellant filed a second Statement Regarding Parentage form JV-505 and a section 388 petition. On the second JV-505 form, appellant stated only that he did not know if he was Jordan's father and requested a paternity test. Unlike his first JV-505 form, appellant made no assertions about holding Jordan out as his son. In his section 388 petition, appellant asked the juvenile court to order a paternity test, to declare appellant a *Kelsey S.* father, and to "revert the proceedings back to the jurisdiction/disposition hearing so that [appellant] can participate in the hearing or, in the alternative provide [appellant] reunification services and allow [him the] chance to elevate his status [to that of presumed father]." As changed circumstances, appellant declared that "[m]other has finally named father and the court is now aware of father's

identity. [Appellant] has been noticed [*sic*] of the proceedings to participate meaningfully in the hearings. [*sic*]" The requested relief would be in Jordan's best interest, appellant alleged, because Katie "knowingly withheld father's information from this court and [the Department]. [Katie] . . . precluded [appellant] from these proceedings" and " 'it is implicit in the juvenile dependency statutes that it is always in the best interests of a minor to have a dependency adjudication based upon all material facts and circumstances and the participation of all interested parties entitled to notice.' " Appellant declared that Katie "has not been forthcoming of my paternity to Jordan. She would go back and forth telling me that I was Jordan's father and that I was not Jordan's father." Appellant's attorney argued that California Rules of Court, rule 5.635(h) mandated that appellant be tested in order to determine whether he is Jordan's biological father. Nowhere in either of his Statements Regarding Paternity form JV-505 or in his section 388 petition has appellant declared his desire to take parental responsibility for, or custody of, Jordan when he is released from prison. He stated only that Katie wanted the child to be placed with "family" and checked off the box on his first JV-505 Statement that he understood he would be financially responsible for Jordan if he were found to be the child's biological father.

The court denied appellant's request for a paternity test and his section 388 petition. The court explained that at best, appellant could only attain the status of a biological father and would not be automatically entitled to reunification services absent a determination by the court that it would be in the child's best interest. On that issue, the court found it would *not* be in Jordan's best interest to give appellant reunification services as appellant "failed to take care of this child when he could have. He was not in custody throughout Jordan's entire life. He was out of custody, and he failed, during that time period, to step up as a father and provide for Jordan. . . . He could have found out about his child. I don't have any information in here that he even tried to do so or that he even tried to contact anyone who would know what happened to Jordan." The court terminated the parental rights of Katie and appellant. Appellant filed his timely appeal.

CONTENTIONS

Appellant contends the juvenile court erred in (1) denying his petition for modification (§ 388) to declare him a presumed father under *Kelsey S.*; (2) failing to order paternity testing; and (3) failing to offer him the opportunity to complete a declaration of paternity.

DISCUSSION

1. *The record supports the juvenile court's finding that appellant is not a presumed father under* Kelsey S.

The juvenile court declared appellant an alleged father and twice concluded he did not qualify as a presumed father under *Kelsey S.*, once at the May 31, 2012 hearing and again based on appellant's section 388 petition. Appellant contends that the juvenile court abused its discretion in denying his section 388 petition to be declared a presumed father under *Kelsey S.* and be awarded reunification services. Appellant has not asked for custody of, or to visit Jordan.

Section 388, subdivision (a) enables a person who has an interest in a dependent child to petition to change or modify a previous order "upon grounds of change of circumstance or new evidence." "[T]he burden of proof is on the moving party to show by a preponderance of the evidence that there is new evidence or that there are changed circumstances that make a change of placement in the best interests of the child." (*In re Stephanie M.* (1994) 7 Cal.4th 295, 317.) A petition under section 388 is addressed to the juvenile court's sound discretion and on appeal, we will disturb the decision only on a clear abuse of that discretion. (*In re Jasmon O.* (1994) 8 Cal.4th 398, 415.)

" 'In dependency proceedings, "fathers" are divided into four categories - natural [or biological], presumed, alleged, and de facto. [Citation.]' [Citation.] A biological father is one whose paternity has been established, but who does not qualify as a presumed father. [Citation.] . . . 'Presumed father status ranks highest.' [Citation.] '[O]nly a presumed, not a mere biological, father is a "parent" entitled to receive reunification services under section 361.5. [Citation.]' [Citation.]" (*In re B.C.* (2012) 205 Cal.App.4th 1306, 1311, fn. 3 (*B.C.*).) If a man fails to achieve presumed father

status before the expiration of any reunification period, he is not entitled to custody under section 361.2 or services under section 361.5. (*In re Zacharia D.* (1993) 6 Cal.4th 435, 453-454 (*Zacharia D.*).) However, he may move under section 388 based on new evidence or changed circumstances. (*Id.* at p. 454.)

To determine whether a man qualifies as a presumed father, courts look to the series of rebuttable presumptions set out in Family Code section 7611. (*In re Jerry P.* (2002) 95 Cal.App.4th 793, 804.) "[T]he purpose is to determine whether the alleged father has demonstrated a sufficient commitment to his parental responsibilities to be afforded rights *not* afforded to natural fathers," including the right to reunification and custody. (*Ibid*.) However, if the mother prevents it, a natural father may not be able to attain presumed father status. Thus, *Kelsey S.* declared the statutory distinction between natural and presumed fathers violates the federal constitutional right to due process if it is applied to an unwed father who made a sufficient, timely, and full commitment to his parental responsibilities — emotional, financial, and otherwise, absent a showing of his unfitness as a parent. (*Kelsey S.*, *supra*, 1 Cal.4th at pp. 849-850; *Zacharia D.*, *supra*, 6 Cal.4th at p. 450.)

Kelsey S., which applies to dependency proceedings (*In re Jerry P.*, *supra*, at p. 797), directs courts to assess "whether [the] petitioner has done all that he could reasonably do *under the circumstances*." (*Kelsey S., supra*, at p. 850.) Juvenile courts should "consider all factors relevant to that determination. The 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.] A court should also consider the father's public acknowledgment 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." (*Id.* at p. 849, fn. omitted, second italics added.)

Obviously, determination under *Kelsey S*. is fact specific. Thus, "our task ' "begins and ends with a determination as to whether there is any substantial evidence, contradicted or uncontradicted" ' to support the trial court's ruling. [Citation.] That ruling is presumed correct, and 'all intendments and presumptions are indulged in favor of its correctness.' [Citation.] In other words, the evidence must be viewed in the light most favorable to the prevailing party. [Citations.]" (*Adoption of Michael H*. (1995) 10 Cal.4th 1043, 1064, conc. & dis. opn. of Kennard, J.)

Appellant's statements to the social worker, his Statements Regarding Parentage form JV-505, his section 388 petition, and his testimony at the section 366.26 hearing all contained wildly contradictory descriptions about his knowledge of and relationship with Jordan. Katie also contradicted herself many times. Thus, it fell on the juvenile court to determine what to believe. (*In re Casey D*. (1999) 70 Cal.App.4th 38, 52.)

The court found that appellant knew of Jordan's existence early in the child's life but took no steps to assume any parental responsibilities when he was not incarcerated. The record supports that conclusion. Appellant's first JV-505 Statement indicated that he saw the child every other weekend between 2009 and August 2010. Katie indicated that she had told appellant about his fatherhood because she stated she discussed "the statutory rape thing" with him, and that she wanted to hide Jordan's dependency from him. The juvenile court was entitled to conclude that appellant was aware of Jordan's existence from as early as 2009, the year he was born.

Despite appellant's awareness of Jordan's existence, there is no evidence credited by the juvenile court that appellant promptly came forward to assert his paternity. The court was entitled to believe appellant had no actual relationship with Jordan. Appellant's claims in his first form JV-505 that he saw Jordan every other weekend and held the child out as his own are contradicted by appellant's first impulse to deny he knew about Jordan, and by his later testimony he *lived* with Jordan. During this year-long dependency until he was arrested in late 2011, when appellant was not incarcerated, and especially when he was living with Katie, he was fully able to claim his paternity by promptly coming forward and asking the Department for visits or custody. And yet, there

is no evidence believed by the court that he attempted to locate Jordan, to contact the Department to request custody of, or visits with, the child, or to assert his paternity. In fact, appellant has yet to request custody, to care for Jordan, or to assume anything other than financial responsibility for the child.

As the record supports the juvenile court's findings that appellant knew about Jordan as early as the year he was born, we reject appellant's argument that he should be declared a presumed father under *Kelsey S*. because Katie prevented him from discovering his fatherhood. It is therefore apparent from the evidence that Katie and appellant claimed paternity for the sole purpose of obstructing adoption contrary to the goals of *Kelsey S*. (*Kelsey S*., *supra*, 1 Cal.4th at p. 849.) Katie indicated that she gave the Department a name because she " '*had to do something*,' " she " 'had to put someone's name down' " to obstruct the adoption. Appellant confirmed this by reporting that Katie wanted Jordan placed with family.

Appellant relies on *In re Andrew L*. (2004) 122 Cal.App.4th 178, which actually supports the juvenile court's ruling. There, faced with conflicting evidence, the juvenile court believed the biological father that the mother and the Department precluded the biological father from having contact with the child even though he attempted unsuccessfully to contact the mother and social worker numerous times. (*Id*. at pp. 185, 193.) In his section 388 petition, the biological father repeatedly requested custody of the child (*In re Andrew L*., *supra*, at pp. 183, 184), to integrate the child into his family, and to provide for his needs (*id*. at p. 185). The biological father was employed and had a home waiting for the dependent child. (*Id*. at p. 193.) The court explained: "his strenuous efforts to establish paternity showed that his motivation was a genuine and admirable commitment to the son he had fathered." (*Ibid*.) In contrast, although appellant was aware of Jordan's existence in 2009, according to the evidence credited by the juvenile court here, appellant made no effort to establish paternity and has never expressed a desire to visit Jordan or take custody of the child even after his release from prison, except to block the adoption. The evidence supports the juvenile court's finding that appellant was not a presumed father under *Kelsey S*.

2. *The court erred in denying appellant's request for a paternity test.*

Appellant contends the juvenile court violated section 316.2 and California Rules of Court, rule 5.635(a) and (b) by failing to order paternity testing. We agree but conclude the error does not require reversal of the order terminating parental rights.

"Under section 316.2, at the detention hearing or as soon thereafter as is practicable, the juvenile court must inquire as to the identity of all presumed or alleged fathers. (§ 316.2, subd. (a).) Rule 5.635 implements the provisions of section 316.2. [Citation.] It provides that, if there has been 'no prior determination of parentage of the child, the juvenile court must take appropriate steps to make such a determination.' (Rule 5.635(e)(1) . . .) Rule 5.635(e)(1) requires the man claiming biological paternity to file a Statement Regarding Parentage and rule 5.635(e)(2) permits the juvenile court to order genetic testing to make the paternity determination." (*B.C., supra,* 205 Cal.App.4th at pp. 1311-1312, italics & fn. omitted.)

Subdivision (h) of California Rules of Court, rule 5.635 states: "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." We held in *B.C.* that where the alleged father files a JV-505 Statement, requests genetic testing to determine whether he is the dependent child's biological father, and declares that if he were found to be the biological father, he would meet the paternal obligations, the juvenile court must make a determination of biological paternity. (*B.C., supra,* 205 Cal.App.4th at pp. 1312-1313.) " '*This is a mandatory, not a discretionary, rule*.' " (*Id*. at p. 1312, italics added, quoting from *In re Baby Boy V*. (2006) 140 Cal.App.4th 1108, 1118.) We observed further that "nothing 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" and rejected a contrary holding in *In re Joshua R*. (2002) 104 Cal.App.4th 1020. (*B.C., supra,* at p. 1313.)

Here, appellant indicated a willingness to take a paternity test, and after the section 366.26 hearing, filed a JV-505 Statement specifically requesting a test so he could attain biological-father status, and checked off the box indicating that if found to be the biological father, he would financially support Jordan. The juvenile court denied the request to test. The denial was error; appellant should be tested.[3]

3. *The juvenile court did not err in ruling it would not be in Jordan's best interest to provide appellant with reunification services.*

The paternity test results however could not change the outcome in this case. As a consequence of the juvenile court's finding appellant was not a presumed father under *Kelsey S.*, appellant is an alleged father. At most, a paternity test might show that appellant is Jordan's biological father, which has the salutary effect of providing Jordan access to the medical history of appellant's family. (*B.C.*, *supra*, 205 Cal.App.4th at p. 1314.) But, such a result does not automatically qualify appellant as a presumed father and to reunification services. (*Id*. at p. 1311, fn. 3, citing *Zacharia D.*, *supra*, 6 Cal.4th at p. 451.) Neither an alleged nor a mere biological father is a "parent" entitled to receive reunification services under section 361.5. Section 361.5, subdivision (a)[4] does allow the juvenile court to offer a biological father reunification services, but only if it determines such services would benefit the child.

The record here supports the juvenile court's finding that resurrecting the dependency to provide reunification services for appellant more than six months after

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[3] The Department argues that to the extent California Rules of Court, rule 5.635 conflicts with section 316.2, we should declare the rule invalid. We need not reach that issue because the result remains the same here.

[4] Section 361.5, subdivision (a) reads in relevant part, "whenever a child is removed from a parent's or guardian's custody, the juvenile court shall order the social worker to provide child welfare services to the child and the child's mother and statutorily presumed father or guardians. Upon a finding and declaration of paternity by the juvenile court or proof of a prior declaration of paternity by any court of competent jurisdiction, the juvenile court may order services for the child and the biological father, if the court determines that the services will benefit the child."

services should have been terminated (§ 361.5, subd. (a)(1)(B))[5] would not be in the child's best interest. " ' "[P]arental rights are generally conferred on a man not merely based on biology but on the father's connection to the mother [and/or] child through marriage (or attempted marriage) *or his commitment to the child*." ' [Citation.]" (*In re Vincent M*. (2008) 161 Cal.App.4th 943, 954, italics added, quoting from *Zacharia D*., *supra*, 6 Cal.4th at p. 449.) As analyzed, appellant knew of Jordan's existence at least as early as 2009 but failed to make any parental commitment to the child. He did not take custody of Jordan when he was out of jail and did not accept Jordan into his home. (Cf. *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 was set, where father did not have custody at any time, disappeared, tested positive for drugs, failed to visit, to comply with case plan, and showed minimal effort to act as a parent].) Appellant demonstrated neither a relationship with Jordan nor a commitment to his parental obligations when not in jail. Jordan's best interests would not be served by being reunified with the person who claims paternity solely by virtue of a biological tie. Accordingly, the juvenile court did not abuse its discretion in denying appellant's section 388 petition even though it's denial of appellant's paternity test request was error.

Citing *Ansley v. Superior Court* (1986) 185 Cal.App.3d 477, 490-491, appellant argues that it was in Jordan's best interest for appellant to be given presumed father status because "it is implicit in the juvenile dependency statutes that it is always in the best interests of a minor to have a dependency adjudication based upon all material facts and circumstances and the participation of all interested parties entitled to notice." All of the material facts and circumstances were adjudicated here and support the juvenile court's

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[5] Section 361.5, subdivision (a)(1) reads in part, "Family reunification services, when provided, shall be provided as follows: [¶] . . . [¶] (B) For a child who, on the date of initial removal from the physical custody of his or her parent or guardian, was under three years of age, court-ordered services shall be defined for a period of six months from the dispositional hearing as provided in subdivision (e) of Section 366.21, but no longer than 12 months from the date the child entered foster care as defined in Section 361.49 unless the child is returned to the home of the parent or guardian."

finding that appellant was not entitled to presumed fatherhood status and that it would not be in Jordan's best interest to grant appellant reunification services, even assuming he were able to demonstrate his biological connection to Jordan through testing.

4. *The juvenile court's efforts to locate and identify Jordan's father were appropriate*.

Appellant contends the juvenile court failed to determine paternity in a timely manner and to provide him the opportunity to sign a declaration of paternity.

Appellant is wrong when he asserts that the court "made no effort of inquiry as to the identity of the minor's father" for over a year. The record shows that at the detention hearing, the juvenile court engaged in a significant inquiry about Christopher S., and ultimately determined in October 2010 that Christopher S. was not Jordan's biological father. The Department investigated another possible father and notified the court as much in July 2011. Then, the juvenile court itself discovered appellant's name in the police report of Katie's and appellant's arrests for burglary in September 2011. Rather than to rely on Katie, the court took the initiative to order an inquiry into whether appellant may be the father. In short, appellant is wrong that the court "made no effort."

Even had appellant demonstrated a failure to timely inquire about paternity, the error was harmless under any standard. Appellant argues the court's delay prevented him from having reunification services. However, at best, appellant could have only attained biological fatherhood status. As analyzed, it is not in Jordan's best interest to provide appellant with services.

As to appellant's second contention, neither the juvenile court nor the Department was under any obligation to provide appellant with the opportunity to execute a voluntary declaration of paternity until he appeared in court (see Cal. Rules of Court, rule 5.635(e)(1)). Family Code section 7571, subdivisions (f), (j), and (k)[6] upon which

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[6] Family Code section 7571, subdivision (f) reads, "Declarations shall be *made available without charge* at all local child support agency offices, offices of local registrars of births and deaths, courts, and county welfare departments within this state. Staff in these offices *shall witness* the signatures of parents wishing to sign a voluntary

appellant relies do not require either the court or the Department to provide a man with these documents. Subdivision (k) of section 7571 obligates those agencies that are "required to offer" declarations to *identify* parents who are willing to sign. However, subdivision (f) of that section does not list the juvenile court or the Department as organizations or agencies "required to offer" the declarations. Subdivision (f) merely obligates the court and the Department to make declarations "available without charge."

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declaration of paternity and shall be responsible for *forwarding* the signed declaration to the Department of Child Support Services within 20 days of the date the declaration was signed." (Italics added.)

Subdivision (j) of section 7571 reads in relevant part, "Publicly funded or licensed health clinics, pediatric offices, Head Start programs, child care centers, social services providers, prisons, and schools *may* offer parents the opportunity to sign a voluntary declaration of paternity. . . ." (Italics added.)

Subdivision (k) of section 7571 reads, "Any agency or organization *required to offer* parents the opportunity to sign a voluntary declaration of paternity shall also identify parents who are willing to sign, but were unavailable when the child was born. The organization shall then contact these parents within 10 days and again offer the parent the opportunity to sign a voluntary declaration of paternity." (Italics added.)

DISPOSITION

The matter is remanded to the juvenile court with directions to order paternity testing for appellant. In all other respects the order terminating parental rights is affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

ALDRICH, J.

We concur:

CROSKEY, Acting P. J.

KITCHING, J.