Filed 11/25/19 In re Queen M. CA2/2

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

In re QUEEN M., a Person Coming Under the Juvenile Court Law.	B298944 (Los Angeles County Super. Ct. No. DK22329)
LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Plaintiff and Respondent, v. BRANDON T., Defendant and Appellant.	

APPEAL from an order of the Superior Court of Los Angeles County, Kristen Byrdsong, Commissioner. Affirmed.

Amy Z. Tobin, under appointment by the California Court of Appeal, for Defendant and Appellant.

Mary C. Wickham, County Counsel, Kristine P. Miles, Assistant County Counsel, and Navid Nakhjavani, Principal Deputy County Counsel, for Plaintiff and Respondent.

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Brandon T. (Brandon) appeals from a juvenile court order terminating all parental rights over two-year-old Queen M. (Queen). Specifically, Brandon argues that the court violated Welfare and Institutions Code section 316.2[1] by denying his request for a paternity test in order to establish his status as Queen's biological father. Although the court erred in denying his request for a paternity test, this error in no way calls into question the validity of the order terminating parental rights. Accordingly, we affirm.

FACTS AND PROCEDURAL BACKGROUND

Queen was born on March 28, 2017.

When Queen was one week old, the Los Angeles Department of Children and Family Services (Department) filed a petition asking the juvenile court to exert dependency jurisdiction over her because her mother exhibited signs of a "Psychotic Disorder Unspecified" at the hospital after giving birth to Queen. The petition invoked section 300, subdivision (b)(1), which applies as relevant here when a parent's "mental illness" renders her unable to "provide regular care" and thus places the child at "substantial risk" of "serious physical harm." (§ 300, subd. (b)(1).)

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1 All further statutory references are to the Welfare and Institutions Code unless otherwise indicated.

In July 2017, the juvenile court exerted dependency jurisdiction over Queen and ordered the Department to provide reunification services to mother. In March 2018, the court terminated those services due to mother's "nonexistent" progress and set the matter for a permanency planning hearing.

Brandon first learned of these dependency proceedings in July 2018. Mother had identified Brandon as Queen's father back in April 2017, but his whereabouts were unknown, and the juvenile court found Brandon "to only be an alleged father" not entitled to reunification services. The Department's efforts to locate him did not bear fruit until mid-2018.

After becoming aware of these proceedings, Brandon requested a paternity test in a July 2018 call with a Department social worker and, soon thereafter, in a written Statement Regarding Parentage Form. In January 2019, he filed a motion with the juvenile court (1) attacking the sufficiency of the Department's efforts to contact him and (2) asking to be designated as a "presumed father" entitled to reunification services. The juvenile court denied that motion. Brandon appealed that denial, but we dismissed that appeal after his counsel filed a no-merit brief pursuant to *In re Phoenix H.* (2009) 47 Cal.4th 835 (*Phoenix H.*). At no point, however, did Brandon ever visit or call Queen or make any attempt to provide any financial or emotional support to Queen. He had no further contact with the Department after his July 2018 phone call requesting a paternity test.

In June 2019, the juvenile court terminated all parental rights over Queen. Brandon renewed his request for a paternity test, but the trial court denied that request because it was untimely and would not "change the outcome of the case."

Brandon filed a timely appeal of the order terminating parental rights.

DISCUSSION

Brandon argues that the trial court erred in denying his request for a paternity test. Because this argument involves the application of the law to undisputed facts, our review is de novo. (*In re R.C.* (2011) 196 Cal.App.4th 741, 748.)

The trial court arguably erred in not granting Brandon's request for a paternity test. California law requires a juvenile court, if requested to do so, to "take appropriate steps" to "make . . . a determination" of the "parentage of [a] child" subject to its dependency jurisdiction. (Cal. Rules of Court, rule 5.635(a), (e), (h); *In re B.C.* (2012) 205 Cal.App.4th 1306, 1312 (*In re B.C.*) ["[A] juvenile court is required to determine biological paternity of a dependent child if such a determination is requested."]; see also, § 316.2, subd. (e) [vesting juvenile court with authority to hear action under Family Code section 7630]; Fam. Code, § 7630 [granting a person right to seek a finding of "parentage of [a] child"].) The court has options in how it makes this determination: The court may rely on "testimony, declarations, or statements of the alleged parents," or may order "genetic tests." (Cal. Rules of Court, rule 5.635(e)(2), (e)(3).) No matter which method(s) are used, the court's duty to make a determination is nevertheless a "mandatory" one, "not a discretionary" one. (*In re Baby Boy V.* (2006) 140 Cal.App.4th 1108, 1118.) Brandon made three requests to have his parentage determined, each time suggesting that the court order a genetic test. While the juvenile court did not necessarily err in failing to order a genetic test, the court did err in refusing to make a determination of parentage by any method.

But was this error harmless? A juvenile court's refusal to make a determination regarding a dependent child's parentage is harmful only if it would have caused "the ultimate outcome of the dependency proceedings"—here, the termination of parental rights over Queen—to be different. (*In re Kobe A.* (2007) 146 Cal.App.4th 1113, 1124.)

Under the law of juvenile dependency, a man can qualify, as pertinent here, as (1) an "alleged" father, (2) a "natural" or "biological" father, or (3) a "presumed" father.[2] (*In re Zacharia D.* (1993) 6 Cal.4th 435, 448-449 (*Zacharia D.*).) An "alleged" father is a man "who may be the father of a child, but whose biological paternity has not been established"; a "natural" or "biological" father is a man "whose biological paternity has been established, but who has not achieved presumed father status"; and a "presumed" father is a man who satisfies the requirements for presumed fatherhood set forth in Family Code section 7611. (*Id.* at p. 449, fn. 15; *Francisco G. v. Superior Court* (2001) 91 Cal.App.4th 586, 595-596 (*Francisco G.*).) A man's fatherhood status determines his rights vis-à-vis the child, with presumed fathers having the most rights and alleged or biological fathers having very limited rights. (*In re H.R.* (2016) 245 Cal.App.4th 1277, 1283; *In re J.H.* (2011) 198 Cal.App.4th 635, 644; *In re T.R.* (2005) 132 Cal.App.4th 1202, 1209; *Francisco G.*, at p. 596.)

Granting Brandon's request for a paternity test—and for a related determination of parentage—would have, at most,

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2 There is arguably a fourth category that exists when a mother "unilaterally . . . preclude[s] her child's biological father from becoming a presumed father" by concealing that father's identity or whereabouts (*Adoption of Kelsey S.* (1992) 1 Cal.4th 816, 849), but that is not at issue here.

elevated him from an alleged father to a biological father. It could not and would not have elevated him to a presumed father for two reasons. First, a man can become a presumed father to a child when he has not married or attempted to marry the child's mother only if he proves that he "receive[d] the child into his . . . home and openly holds out the child as his . . . natural child." (Fam. Code, § 7611, subd. (d).) However, it is undisputed that Brandon at no point ever visited, spoke to, or provided any support for Queen—let alone received her into his home. Second, and more to the point, the trial court considered and rejected Brandon's motion to be elevated to presumed father status; that order was subsequently appealed, and that appeal was dismissed as without merit under *Phoenix H.* Indeed, Brandon himself acknowledged at the permanency planning hearing that a biological test would, at best, "elevate his parental status to possibly biological."

It is well settled, however, that a "biological father's rights are limited to establishing his right to presumed father status, and [a juvenile] court does not err by terminating a biological father's parental rights when he has had the opportunity to show presumed father status and has not done so." (*In re T.G.* (2013) 215 Cal.App.4th 1, 5; *In re A.S.* (2009) 180 Cal.App.4th 351, 362 [collecting cases]; accord, *Zacharia D.*, *supra*, 6 Cal.4th at p. 451 ["a biological father's paternal rights may ultimately be terminated in the dependency process [and s]uch termination is almost inevitable if a father is not involved in the dependency process prior to the [permanency planning hearing]"].) Because elevating Brandon to biological father status would have, at most, given him "the opportunity to show presumed father status" before his rights were terminated, and because Brandon had

already (unsuccessfully) availed himself of that opportunity, the juvenile court's refusal to order a genetic test or make a determination of parentage had no effect whatsoever on the court's order terminating parental rights over Queen.

Brandon resists this conclusion. Citing language from *In re B.C.*, *supra*, 205 Cal.App.4th at p. 1313, that "nothing . . . 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," Brandon asserts that the juvenile court's refusal to determine his parentage—even if it would not elevate him to presumed father status or affect the court's order terminating parental rights—was nevertheless prejudicial because his status as a biological father could (1) provide familial medical history for Queen, or (2) identify who Queen's "relatives" are for purposes of her being placed with relatives. We reject this assertion. *In re B.C.* did not involve the termination of parental rights (*id.* at p. 1314, fn. 4 [so noting]), and the language Brandon cites was dicta because the father's status as a biological father in that case was *itself* relevant to the proceedings. Here, it is not because, as noted above, granting Brandon biological father status would at most entitle him to apply for presumed father status—an application he already sought and that was already rejected. To the extent Brandon suggests we should read *In re B.C.* to create a free-floating right to a determination of parentage and fatherhood status that has no effect on a pending dependency proceeding, we decline to do so because it would render any denial of that right per se reversible error in contravention of the mandate of our Constitution to reverse only when an error is prejudicial. (Accord, Cal. Const., art. VI, § 13; *People v. Watson* (1956) 46 Cal.2d 818, 836-837.)

DISPOSITION

The order terminating parental rights is affirmed.

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_____, J.
HOFFSTADT

We concur:

_____, P. J.
LUI

_____, J.
CHAVEZ