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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

Adoption of A.V., a Minor.	B286626
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B.S. et al.,	(Los Angeles County
	Super. Ct. No. BN006208)
Plaintiffs and Respondents,	
v.	
BRIAN V.,	
Defendant and Appellant.	
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APPEAL from a judgment of the Superior Court of Los Angeles County. Margaret S. Henry, Judge. Affirmed.

Janette Freeman Cochran, under appointment by the Court of Appeal, for Defendant and Appellant.

Baron Legal and Brian W. Baron for Plaintiffs and Respondents.

Appellant Brian V. (father) appeals from the trial court's order terminating his parental rights to his seven-year-old son A.V. Father has not lived with A.V. since A.V. was an infant and, in December 2012, father and A.V.'s mother (mother) divorced. In connection with their divorce, the family court granted custody of A.V. to mother and a reasonable right of visitation to father. Father argues the trial court erred in finding father both abandoned A.V. and intended to abandon A.V. within the meaning of Family Code section 7822.¹ We conclude substantial evidence supports the trial court's findings and, therefore, we affirm.

BACKGROUND

In December 2012, when A.V. was two and a half years old, father and mother divorced after nine and a half years of marriage. According to their judgment of dissolution, the family court awarded both legal and physical custody of A.V. to mother. Father was granted a "[r]easonable right of visitation." The judgment did not address child support.

In the spring of 2013, mother and A.V. moved in with mother's boyfriend (stepfather). The following year, mother and stepfather married. They have three children together. A.V. has lived with stepfather since 2013 and with his younger half siblings since each was born.

1. Father's Request to Change Visitation Order

In April 2016, father filed a request to change the family court visitation order. In his request, father stated that mother "refuses to acknowledge, and allow, . . . visitation rights" as ordered by the family court in December 2012. Father requested

¹ Undesignated statutory references are to the Family Code.

a new visitation order with significantly more detailed requirements than the “[r]easonable right of visitation” previously awarded.

2. Petition to Declare Minor Free from Parental Custody and Control

On August 18, 2016, mother and stepfather filed a section 7822 petition with the trial court to terminate father’s parental rights to A.V. so that stepfather could adopt A.V. (petition). The petition stated that, other than approximately seven “token” visits with A.V. between July 2013 and August 2016, father had abandoned A.V. The petition also claimed that, since July 2013, father had failed to pay child support for A.V. In addition, the petition alleged A.V. was not bonded to father, but was bonded with stepfather, father suffered from a mental illness, and father posed a danger to A.V.

3. Reports and Recommendations

a. Probation Report

The trial court ordered a Los Angeles County probation officer to investigate the petition and to file a report on the matter. The probation officer reported that A.V. lived with mother and stepfather and three younger half siblings (all of whom were children of mother and stepfather). A.V. did well in school and participated in after school activities. The probation officer noted father opposed the petition and had filed a request to modify his visitation rights.

The probation officer recommended that the trial court grant the petition. In particular, the probation report stated that, given the contentious nature of mother and father’s relationship, “it is the more stable and proven guidance that should be chosen. [Stepfather] has successfully provided for the

health, safety a[n]d welfare of [A.V.] for several years. He has stable employment and no criminal record. Therefore, the petition for freedom from parental custody and control of [father], the minor's biological father, appears to be in the best interest of the minor and should be granted."

b. Expert Psychologist Report

The trial court also ordered an independent expert, Dr. Nancy Kaser-Boyd, to conduct psychological evaluations of father, mother, stepfather, and A.V. The court ordered Dr. Kaser-Boyd to address and report on the following issues: A.V.'s relationship, extent of bonding, and attachment with each of the three adults, the potential effect of disrupting any such attachment, and whether adoption by stepfather would be in A.V.'s best interest. The court also asked Dr. Kaser-Boyd to give her opinions and recommendations for placement and physical custody of A.V. and whether and to what extent A.V. should have contact with father during and after the adoption proceedings.

Dr. Kaser-Boyd submitted her report in May 2017. In her report, Dr. Kaser-Boyd indicated she had interviewed and administered psychological tests to father, mother, stepfather, and A.V.

i. Father

Dr. Kaser-Boyd met first with father, in April 2017. She reported father was of above average intelligence and currently lived with his mother (paternal grandmother). Father told Dr. Kaser-Boyd that, after undergraduate school, he worked as a probation officer for over 10 years. During much of that time he was married to mother and was also applying to pharmacy schools. Eventually, he was accepted to Marquette School of Dentistry in Wisconsin, where he enrolled. But he did not stay in

the program because mother did not want to move to Wisconsin. He returned to California and enrolled in Loma Linda University. Although he graduated from that program, he was unable to pass the required licensing examination and, therefore, was unable to work as a pharmacist. He was unemployed for a while and, as a result, his and mother's finances suffered.

Father said he and mother divorced because of their financial troubles. Although he stated he became depressed and sad when his marriage ended, father never mentioned or alluded to having psychological or psychiatric problems. He indicated mother's statements in the petition about his mental health were " 'not true' " and that mother could be " 'conniving,' " " 'controlling,' " " 'very rigid,' " and had a " 'utopian idea of what a family should be, and what a man should be.' " Father seemed to like and respect stepfather.

Father also discussed his relationship with A.V. Father described A.V. as having a sense of humor and being very intelligent, sweet, and generous. Father described taking A.V. to the Natural History Museum, an aquarium, a movie, and pony riding. He said he bought toys for A.V. Father told Dr. Kaser-Boyd that his visits with A.V. " 'were sparingly, absolutely sparingly. In about four years, I have seen him, maybe some 20 odd times. There was a long period where [mother] was not allowing visits at all.' " He also stated he "has had no visits with [A.V.] for two years."

When asked about financial support for A.V., father stated the divorce judgment did not require him to pay child support and although he had found some work as a substitute teacher he had struggled with unemployment. He did not indicate that he ever tried to provide financial assistance for A.V. He told

Dr. Kaser-Boyd that, recently, he had passed both the real estate sales license examination and the insurance broker's examination. He was working as a real estate agent for Coldwell Banker. He told Dr. Kaser-Boyd that, if his current real estate listing sold, he planned to take his mother to the Caribbean and pay off some debts.

Dr. Kaser-Boyd stated father's test answers indicated he may have been trying to present himself as "near perfect, perhaps concerned about the judgments of others."

ii. Mother

Dr. Kaser-Boyd also interviewed mother. Dr. Kaser-Boyd noted that mother "seemed quite different than described by [father]."

Mother told Dr. Kaser-Boyd about father's mental health issues. Mother stated that, while father was enrolled at Loma Linda University, he became depressed and distant. The school told him to take anger management and counseling, which he did, and mother believed he was better. The couple had financial difficulties, however, which required them to sell their home and file for bankruptcy. Mother stated things seemed to improve after that. However, when mother was pregnant with A.V., father was hospitalized on a psychological hold. He was released, and a few weeks before A.V. was born, father graduated from Loma Linda.

Soon after A.V.'s birth, however, mother said father "spiraled downward. He was hearing voices. There was a lot of paranoia. I was pretty much by myself. He said he needed a vacation. He went to Hawaii by himself. When he came back, he didn't come home with me, he went to his parents' house. He wouldn't even talk to me. I didn't understand how he would

abandon me and [A.V.]. I was trying to get him to go get help. He doesn't believe that he has a mental illness.' " Mother told Dr. Kaser-Boyd that eventually father returned home to live with mother and A.V., but it did not last. After they separated, father visited with A.V., but mother stated he was " 'there physically but not mentally. His mind was on something else.' " Mother said father had " 'been on a lot of mental holds' " including one that lasted almost a year during which time paternal grandmother was his conservator.

Mother also told Dr. Kaser-Boyd that she did not believe father's mental disorder was under control. Mother said that, only five months earlier, she heard from father and he was not making sense, saying things like " 'They don't want me to succeed,' " " 'I need the torture relief fund,' " and talking " 'about something passing through his brain.' " Mother also said father frequently came to her home (where she lived with stepfather, A.V., and her three other children). One time, father came to their home with signs taped to his car saying he was King Solomon, and another time police were called.

Mother stated father's "mental illness has interfered with his ability to build a relationship with [A.V.]. . . . 'They don't have a bond. [A.V.] knows he has two dads but he hasn't asked me about [father]. . . . I tried to pursue the father-son relationship when [A.V.] was younger, but now I feel I have to look out for [A.V.'s] safety, his physical and emotional safety. I'm not trying to take [A.V.] away from anyone. . . . [Father] never calls, and [A.V.] is old enough to talk on the phone.' "

Mother also discussed her relationship with stepfather and his relationship with A.V. Mother indicated stepfather cared for A.V. as if he were his own son. Mother also told Dr. Kaser-Boyd

that A.V. is very good with his half siblings and is proud of stepfather.

Dr. Kaser-Boyd reported that mother's test results were "well within normal limits."

iii. Stepfather

Dr. Kaser-Boyd interviewed stepfather, who is a paramedic and firefighter. He stated he loves A.V. and considers A.V. as his own son. Father said he rode bikes and scooters with A.V., he read with him, and they rode the Expo Line together. Stepfather did not want A.V. to be separated from his siblings. Stepfather told Dr. Kaser-Boyd he had met father a few times. He described father as " 'nervous' " and " 'like his mind is spinning about something else. He will ramble about the most random things, inappropriate things' " and would not ask about A.V. Nonetheless, stepfather was supportive of A.V. having a relationship with father, as long as it was safe.

Dr. Kaser-Boyd reported that stepfather's test results were within normal range.

iv. A.V.

A.V. was six years old when Dr. Kaser-Boyd interviewed him. Dr. Kaser-Boyd described A.V. as happy, friendly, and "like any first-grader." He interacted affectionately with stepfather while they were together in her office.

When asked to draw a picture of his family, A.V. first drew himself, then his baby brother, and then his two sisters. Then he drew " 'my mom and dad.' " He said they were all watching television together, which was his favorite thing to do with his family. Dr. Kaser-Boyd also asked A.V. to list the people that he loved. He listed: " 'My sisters, my brother, my mom and dad, my cousins, my grandma and poppa, my aunt and uncle, and some of

my friends’ ” and “ ‘Gramy Pami,’ ” who is stepfather’s mother. He stated his “ ‘grandma and poppa’ ” live in Santa Barbara, which is where mother’s parents live. He said he did a lot of things with his “dad” including riding bikes and riding trains. He also said they went to Chuck E. Cheese’s, but Dr. Kaser-Boyd believed he meant he went there with the entire family.

Dr. Kaser-Boyd asked A.V. if he had “two daddies,” to which A.V. responded, “ ‘Yes.’ ” He said, “ ‘one is not here, he is somewhere else. I’ve never seen him for a long time. Since I was, like, three.’ ” A.V. said his second daddy “ ‘would take me to some places, and he always got gifts from the place.’ ” Dr. Kaser-Boyd noted A.V. seemed a little sad and very genuine when discussing this topic.

v. Opinions and Recommendations

Dr. Kaser-Boyd also presented her opinions and recommendations for the court. With respect to A.V.’s relationship with father and stepfather, Dr. Kaser-Boyd stated, “It seems clear that [stepfather] is the psychological father. [A.V.] has a memory of his natural father, but his memory is of casual encounters at fun locations, and receiving gifts.” She opined that, because A.V. considers stepfather as his psychological father, it would be “deleterious” to disrupt A.V.’s relationship with stepfather. She stated stepfather “provides security and stability to [A.V.], and [A.V.] feels very included in the ‘family’ created by [stepfather] and his mother. Disrupting this security is likely to create significant anxiety and to impair the bond he now has with [stepfather].”

Dr. Kaser-Boyd further opined it would be in A.V.’s best interest to be adopted by stepfather. She stated, “it appears that the natural father has been unable to maintain a relationship

with [A.V.] and unable to take on the responsibilities of a father. In his absence, [A.V.] has formed a significant bond with his stepfather, [who] has provided, and will likely continue to provide, considerable stability as a responsible father.” Nonetheless, Dr. Kaser-Boyd noted it would be in A.V.’s best interest “at some point” after a “substantial period of emotional stability” to have monitored visits with father. And if father had “continuing stability,” Dr. Kaser-Boyd believed visits could be unmonitored. She did not recommend contact between A.V. and father before or during trial on the petition.

4. Trial on the Petition

Prior to the hearing on the petition, the parties submitted trial briefs. In his brief, father stated, “It is true [father] has not communicated with and/or supported [A.V.] for one continuous year; however, he has been precluded from doing so due to his long-standing psychiatric condition and due to [mother’s] conduct towards [father] which has prevented [father] from having a relationship with his son and supporting him.” Father explained he had been a “hard-working, conscientious, good father and husband until psychiatric issues which were out of his control took over his mind and life.” He argued his own “mental illness, as well as [mother’s] response to protecting [A.V.] from it, has prevented the father-son relationship from being maintained.” Nonetheless, father stated a bond exists between him and A.V. and that A.V. misses him. Father claimed his employment outlook was good, his mental health issues were “resolving,” and his bond with A.V. should not be broken.

In her trial brief, mother asserted father “has willfully and deliberately abandoned his relationship with [A.V.] through his intentional failure to pay child support for a period of one year,

and failed to communicate and have contact with [A.V.] other than token.” Mother also argued it “is in the best interests of [A.V.] to allow for his freedom from the custody and control of his father.”

Counsel for A.V. also submitted a trial brief on A.V.’s behalf. That brief reiterated much of what was reported in Dr. Kaser-Boyd’s report. Counsel for A.V. argued, “it is clearly in [A.V.’s] best interest to be adopted by [stepfather]. As such, the Court should terminate [father’s] parental rights with respect to [A.V.] so that [stepfather] can proceed with the adoption.”

The trial on the petition began in late October 2017 and continued over the course of a few days. Mother, father, paternal grandmother, father’s sister (paternal aunt), and Dr. Kaser-Boyd each testified. The court admitted into evidence Dr. Kaser-Boyd’s report and some photographs of father and A.V. together.

a. Mother’s Testimony

During her testimony, mother described father’s contacts with A.V. She stated that, since A.V. was an infant, father did not spend much time with, and did not seem to enjoy being with, A.V. In fact, when A.V. was approximately one month old, father moved out of their home for about six months, then returned home for two to three months, only to leave again.

Mother stated that, in 2013 after she and father divorced, father visited with A.V. one time. Mother further testified that, in 2014, father visited with A.V. three times, all of which visits were at a Chuck E. Cheese’s location. Father’s 2014 visits lasted about two hours each, during which time mother did not leave A.V. alone with father. Mother testified that, in July 2015, father visited with A.V. one time, for one hour, again at a Chuck E. Cheese’s. The July 2015 visit took place entirely at the Chuck E.

Cheese's, with mother supervising and other paternal family members present.

Mother also testified that, between 2013 and 2017, other than the visits at Chuck E. Cheese's father did not visit with, communicate with, or pay child support for A.V. She stated that, although she spoke with father on the phone between 2013 and the present, he did not ask about visitation with A.V. during those calls. Mother said paternal grandmother initiated all of father's visits with A.V.

On cross-examination, however, mother testified that, at some point after their divorce, father also visited with A.V. three additional times by taking A.V. on separate day trips to Universal Studios, Disneyland, and the San Diego Zoo. Again, paternal grandmother initiated each of those visits.

b. Father's Testimony

Father also testified at the trial. He said he was "ecstatic" when he learned mother was pregnant with A.V. and that he loved A.V. very much. Father said that, during the first couple months of A.V.'s life, he put A.V. to bed and watched videos and television with him. Father believed he and A.V. "had a very close bond." He stated he and mother separated approximately two months after A.V. was born, at which time father moved to a different apartment. While he and mother were separated, mother brought A.V. to visit with father "sparingly." Mother and father reunited for a few months, before separating permanently.

Father testified that, once he and mother were permanently separated and headed toward divorce, father believed mother purposely refused to answer his phone calls. Father stated that, when mother did not answer his phone calls, he left voice messages for her stating he wanted to see A.V.

Because mother would not respond to his calls, father eventually asked paternal grandmother to call mother and coordinate visits with A.V. He stated mother would answer paternal grandmother's calls. Father later testified, however, that he and paternal grandmother called from the same phone and they would both leave messages for mother.

After the divorce, father believed he saw A.V. only "sparingly" and that mother was not allowing him a reasonable amount of time to spend with A.V. He said, "I have always objected to the unreasonable visitations that were presented to me."

Father's testimony regarding his visits with A.V. was inconsistent and confusing. Father stated that, in 2012, he saw A.V. a total of five times, but he wanted to see A.V. more. And in 2013, before being hospitalized (discussed below), father saw A.V. "maybe once or twice," although father again testified he wanted to see A.V. more. Father was not sure, but he believed his visits with A.V. in 2013 took place at the Long Beach Aquarium, Disneyland, or Universal Studios. Later in his testimony, however, father stated that in 2013 mother brought A.V. to paternal grandmother's home for "[m]aybe three" visits with father, each of which lasted four to five hours.² Father also testified that, in 2014 after being released from the hospital, he saw A.V. "[t]wo or three times at the most." One or two of those visits was at paternal grandmother's home, another was in San Diego, and another was for a few hours at the Los Angeles car show.³ It was unclear how many visits father had with A.V.

² Father later testified he had "[m]aybe four visits" in 2013.

³ Father also testified that he and paternal grandmother took A.V. to the Long Beach Aquarium in 2014. It is unclear

in 2015. At one point, father testified he spent a day with A.V. in September 2015 at Griffith Park, seeing a movie, and visiting some museums. He also said he and his sister took A.V. to the San Diego Zoo for a day in 2015.⁴ Later, however, father testified that, between April 1, 2015 and April 1, 2016, he had “[m]aybe two at the most” visits with A.V., one of which was at Chuck E. Cheese’s and the other was at Griffith Park. But still later, father testified he had “[a]t least five visits” with A.V. in 2015. He believed altogether between 2013 and 2015 he had two to three visits with A.V. at Chuck E. Cheese’s while other family members were present.

Father testified that each visit at paternal grandmother’s home lasted about four to five hours and involved playing games, watching television, and father giving A.V. a gift he had purchased in advance. Father believed the last time he visited with A.V. at paternal grandmother’s house was in “the latter part of 2014.” When asked how many times since his divorce he had seen A.V. at paternal grandmother’s home, father’s testimony was unclear. At first, father stated he visited with A.V. about “six to seven times” at paternal grandmother’s home. Later, father stated “[m]aybe” he had “about 10 to 12” visits with A.V. at paternal grandmother’s house. And at another point, father stated he visited with A.V. “[a]bout 15 times” at paternal grandmother’s home.

whether this was the same visit father earlier had said took place in 2013 .

⁴ It is unclear whether this is the same San Diego visit referenced earlier in father’s testimony as having taken place in 2014.

Father testified that, after his September 2015 visit with A.V., neither he nor paternal grandmother was able to coordinate any further visits with A.V. Although father stated mother called him one time after the September 2015 visit, he testified he could not remember the purpose of that call other than that “it was for her benefit.” In April 2016, because he was unable to visit with A.V., father filed a request to modify the visitation order to “get the judge to enforce reasonable visitation.” Father explained he did not file such a request earlier because he wanted to give mother an undetermined amount of time to “have an introspective look at what she was doing.” Although father never believed mother allowed him reasonable visits with A.V., he hoped that at some point mother would realize the error of her ways and would eventually “bump up” his visits with A.V. Father could not explain why he waited until 2016 to seek assistance from the court to obtain more visits with A.V.

Father also testified about his attempts to provide financial support for A.V. Father stated he was unemployed from the end of 2013 (when he was hospitalized) through March 2017. Nonetheless, he said that, in 2014, he gave mother a \$500 check and told her, “‘[T]his is for [A.V.]. Deposit it into an account for him. Buy him clothes or whatever.’” Father testified that, although at the time he was unemployed, he told mother he “‘would like to make it a regular event . . . to help out as much as possible.’” Father stated mother never cashed the \$500 check, he never asked her about it, she never asked him for financial support, and he never gave mother any other money. Father testified he did not set aside any money for A.V. until 2017, after the petition was filed and he was employed. Although he could not remember anything specific, father stated he sent gifts to

A.V. between April 2015 and April 2016. Father could not remember if during that same time period he sent any cards to A.V. and he indicated mother would not allow him to speak with A.V. on the phone.

Father also testified about his mental disorder. He stated he began hearing voices in 2009 and, as a result of those voices, had been committed to psychiatric hospitals a few times between 2010 and 2017. In 2010, father voluntarily sought medical help at a hospital, where he was put on a 22-hour psychiatric hold. Then, a few years later, for eight months between August 2013 and April 2014, father was again hospitalized. It was unclear whether in 2013 father voluntarily committed himself or whether he was involuntarily hospitalized.⁵ In any event, father explained he again had been hearing voices and having trouble sleeping. During that eight-month hospitalization, father took prescribed medications and paternal grandmother acted as his conservator. At some point possibly in 2016, father stated he was hearing voices and could not sleep. The voices were telling him things related to King Solomon, father's discovery of the existence of God, and that father was going to become a king and would not lose his son. As a result of these voices, father twice went to mother and stepfather's home because he believed stepfather (who is a firefighter) could help him. In early 2017, father again voluntarily committed himself in order to see a

⁵ Father's testimony on the topic was somewhat confusing. Initially, father stated he voluntarily committed himself in 2013. Later, however, father testified his hospitalization in 2013–2014 was not voluntary. But, he explained that, in 2010 (just before A.V. was born) and again in 2017 (approximately nine months before the hearing on the petition), he had voluntarily committed himself.

psychiatrist. At the trial, father testified he continued to see a psychiatrist and to take medications for his disorder, which his doctor explained to him as being “depression with auditory hallucinations.” Father stated the medication he takes helps “tremendously,” the voices he used to hear are “barely discern[able],” and he sleeps well.

c. Paternal Grandmother’s Testimony

Paternal grandmother testified at the trial and reiterated much of what father had stated with regard to his eight-month hospitalization in 2013–2014. She also discussed visits with A.V. Paternal grandmother indicated she coordinated the visits with mother because mother would not answer father’s telephone calls. Paternal grandmother stated that, after mother and father divorced, mother used to bring A.V. for visits at paternal grandmother’s home every other weekend. Those visits continued even when father was hospitalized from August 2013 through April 2014. Paternal grandmother estimated she and father visited with A.V. at her home 36 times before father was hospitalized in 2013, 12 times in 2014 after father was released from the hospital, and approximately 8 times in 2015. She believed father had sufficient visits with A.V. Paternal grandmother stated that, although the visits were for father and A.V., other family members were present, and she “basically was a babysitter.” Paternal grandmother testified they “had maybe three visits at Chuck E. Cheese[’s],” with the last one being in June 2015 for A.V.’s birthday. She said she had not seen A.V. since their September 2015 visit to Griffith Park. After that visit, paternal grandmother called mother three or four times, but mother did not answer or return paternal grandmother’s calls.

Paternal grandmother also echoed father's testimony that, although she and father called mother from the same phone number, mother would answer the phone when paternal grandmother called, but not when father called. Paternal grandmother also testified that, in 2016, she suggested to father that he should file a request to modify his visitation rights.

d. Paternal Aunt's Testimony

Paternal aunt also testified at the trial. She stated she and her husband lived with paternal grandmother from June 2014 until April 2015. During that time, paternal aunt said A.V. visited approximately 12 times. Paternal aunt testified that mother would drop A.V. off at paternal grandmother's house for the day and the family, including father, would "play like a normal family." Sometimes paternal aunt went out with A.V., father, and others. For example, paternal aunt stated that, in 2015, they visited the San Diego Zoo and Chuck E. Cheese's together. Paternal aunt testified that the last time she was with A.V. and father was when they celebrated A.V.'s birthday in mid-2015 at Chuck E. Cheese's.

e. Dr. Kaser-Boyd's Testimony

Dr. Kaser-Boyd testified at the trial and reiterated what she previously had reported to the court. She stated she had no reason to doubt the credibility of either mother or stepfather. And, although father had not been forthcoming about his mental health issues and in fact had not mentioned them to her at all, Dr. Kaser-Boyd believed father "was a very nice person, who is trying hard to get himself back on track." At the time of her report, however, Dr. Kaser-Boyd did not find father to be "stable," but believed he could become stable.

5. The Trial Court's Ruling

Trial concluded on November 1, 2017. That same day, after hearing argument from counsel, the trial court issued its ruling. The court stated on the record that it was familiar with the relevant case law, concluded father had abandoned A.V., and that it was in A.V.'s best interest to be adopted by stepfather. In particular, the trial court held, "I have absolutely no doubt that [father] loves [A.V.] and would like to have contact with [A.V.]. But the contact has never been of a real father taking on father roles. He's had visits that have been like an uncle who got to have fun visits with a nephew, rather than really playing that parental role. The intent was therein that he never pursued taking on the role of a real father. And now [A.V.'s] got a real father, as Dr. Kaser-Boyd testified, that's the father figure. ¶¶ With respect to the elements in the case, the evidence is clear and convincing with respect to each element." The trial court also held, "It's clearly in [A.V.'s] best interest that adoption be granted."

The trial court's final judgment is not included in the record on appeal. The parties and clerk of the superior court indicate the signed and filed judgment has been lost. However, the trial court's November 1, 2017 minute order is in the record. As stated in the minute order, the court found father "left child with Petitioner(s) for a period of 6 months/1 year or greater with no contact or no support, other than token efforts, which raised the presumption of [father's] intent to abandon." The minute order further indicates that the trial court concluded father "has failed to rebut this presumption. The court finds that [father's] failure to communicate and/or failure to support was willful and without lawful cause." The court held, "[i]t is in the child's best

interests within the meaning of Family Code §§ 7800 and 7801, that [father's] parental rights be terminated. . . . The parental rights of [father] are hereby terminated.”

Father appealed.

DISCUSSION

1. **Applicable Law and Standard of Review**

Section 7822 provides grounds for terminating parental rights due to a parent's abandonment of his or her child. Relevant here, subdivision (a)(3) of that section provides: “A proceeding under this part may be brought if any of the following occur: . . . [¶] (3) One parent has left the child in the care and custody of the other parent for a period of one year without any provision for the child's support, or without communication from the parent, with the intent on the part of the parent to abandon the child.” And subdivision (b) of section 7822 states that the “failure to provide support, or failure to communicate is presumptive evidence of the intent to abandon. If the parent or parents have made only token efforts to support or communicate with the child, the court may declare the child abandoned by the parent or parents.” The required one-year period of abandonment need not be the one year immediately preceding the filing of the petition. (*Adoption of A.B.* (2016) 2 Cal.App.5th 912, 922.) “This statute is liberally construed ‘to serve and protect the interests and welfare of the child’ (§ 7801) and the juvenile court's findings must be based on clear and convincing evidence. (§ 7821.)” (*Id.* at p. 919.)

We review the trial court's findings for substantial evidence. (*Adoption of A.B., supra*, 2 Cal.App.5th at p. 922.) Under this standard of review, we consider whether substantial evidence, contradicted or not, supports the trial court's findings

that father both abandoned, and intended to abandon, A.V. “In making this determination, we draw all reasonable inferences from the evidence to support the findings and orders of the [trial] court; we review the record in the light most favorable to the court’s determinations; and we note that issues of fact and credibility are the province of the trial court. We do not reweigh the evidence or exercise independent judgment, but merely determine if there are sufficient facts to support the findings of the trial court. [T]he [appellate] court must review the whole record in the light most favorable to the judgment below to determine whether it discloses substantial evidence . . . such that a reasonable trier of fact could find [that the order is appropriate].” (*In re I.J.* (2013) 56 Cal.4th 766, 773, internal quotation marks and citations omitted. *Adoption of A.B., supra*, 2 Cal.App.5th at pp. 922–923 [“We do not evaluate ‘the credibility of witnesses, resolve conflicts in the evidence or determine the weight of the evidence.’ ”].) “The appellant has the burden of showing there is no evidence of a sufficiently substantial nature to support the findings or order.” (*In re R.V.* (2012) 208 Cal.App.4th 837, 843.)

2. Substantial evidence supports the trial court’s findings that father both abandoned and intended to abandon A.V. within the meaning of section 7822.

a. Father “left” A.V. within the meaning of section 7822.

Father argues he did not “leave” A.V. within the meaning of section 7822. As noted above, subdivision (a)(3) of section 7822 requires that a parent leave the child with the other parent for at least one year without communication or support. Token visits with the child or token efforts to support the child during that

one-year period are not sufficient to demonstrate the parent did not abandon the child. (§ 7822, subd. (b).) We conclude substantial evidence supports the trial court's finding that father left or abandoned A.V. within the meaning of section 7822, subdivision (a)(3).

Mother and father described father's relationship with A.V. very differently. According to father, after his divorce from mother, he visited with A.V. consistently, although "sparingly" and not as much as he would have liked. He indicated mother would not allow more visits. Father's testimony on the number of his visits with A.V. and when and where they occurred was confusing and inconsistent. However, paternal aunt supported father's account that he had regular visits with A.V. at least for a time. And paternal grandmother testified that, until September 2015, she and father enjoyed considerably more visits with A.V. than father indicated.

Mother described things differently. According to mother, both before and after their divorce, father was not particularly involved with A.V., even leaving mother and A.V. for a time soon after A.V.'s birth. Mother testified that, after their divorce, father visited with A.V. only a handful of times, always at paternal grandmother's initiation, and always with other people present. Mother also stated that, when she did speak with father on the phone, he did not ask to visit with or talk to A.V. Dr. Kaser-Boyd's report and testimony supported mother's account that, other than spending some fun family outings or visits together and buying gifts, father was not present in A.V.'s life.

Father cites *In re Jacklyn F.* (2003) 114 Cal.App.4th 747 (*Jacklyn F.*) for the proposition that, whether a parent has

communicated with a child or intended to abandon the child “does not become material unless the parent has ‘left’ the child within the meaning of section 7822.” That case states that, when considering abandonment under section 7822, the threshold issue “is whether the minor was ‘left’ within the meaning of the statute.” (*Id.* at p. 754.) In *Jacklyn F.*, the child was taken from the mother by a judicial order making paternal grandparents the child’s guardians, and the mother was directed not to have contact with the child other than by mail. (*Id.* at pp. 750, 752.) Despite the court order, the mother attempted to stay involved with her child by sending “ ‘stacks’ of letters” to her. (*Id.* at p. 756.) The court there found mother had not “left” the child with the grandparents within the meaning of the statute. (*Ibid.*) However, the court left open “the possibility that, under different circumstances, it might be proper to conclude that a parent has ‘left’ a child within the meaning of section 7822 despite court intervention.” (*Ibid.*)

In re Amy A. (2005) 132 Cal.App.4th 63 (*Amy A.*) was such a case. There, a court order gave custody of the child to the mother. (*Id.* at p. 66.) Relying on *Jacklyn F.*, the father argued the custody order precluded a finding that he “left” the child with the mother for purposes of section 7822. (*Id.* at p. 70.) The court disagreed and distinguished *Jacklyn F.*, stating that the father in its case “made no attempt in the following years to seek modification of the custody order,” made no efforts to exercise his visitation rights, did not support his child, and did not have a parental relationship with her. (*Ibid.*) The court held the father’s “repeated inaction in the face of the custody order provides substantial evidence that he voluntarily surrendered his

parental role and thus ‘left’ [the child] within the meaning of section 7822.” (*Ibid.*)

We conclude the facts of this case are more akin to the facts of *Amy A.* than those of *Jacklyn F.* As noted above, when reviewing for substantial evidence, we do not reweigh the evidence or make credibility determinations. (*Adoption of A.B.*, *supra*, 2 Cal.App.5th at pp. 922–923.) Rather, we must determine whether substantial evidence, even if contradicted, supports the trial court’s rulings. In effect here, father presents his side of the story and asks us to find no substantial evidence supports the trial court’s conclusion that he abandoned A.V. However, when mother’s testimony is considered, as of course it must be, we conclude substantial evidence supports the court’s abandonment finding. In particular, we conclude substantial evidence supports the findings that, at least between April 1, 2015, and April 1, 2016, father had at best token visits with A.V., offered no support for A.V., and did not seek to change the visitation order, which he testified provided him an unsatisfactory number of visits with A.V.

b. Father did not rebut the presumption that he intended to abandon A.V.

Father also argues he did not intend to abandon A.V. As indicated above, under subdivision (b) of section 7822, a rebuttable presumption of intent to abandon arises when there has been a failure to communicate with or failure to provide support for the child. “In determining a parent’s intent to abandon, the superior court must objectively measure the parent’s conduct, ‘consider[ing] not only the number and frequency of his or her efforts to communicate with the child, but the genuineness of the parent’s efforts. [Citation.] There is no

requirement that a parent intend to abandon the child permanently. [Citation.] The Legislature has determined that a child's need for stability cannot be postponed indefinitely to conform to an absent parent's plans to reestablish contact 'in the distant future.' ” (*Adoption of A.B.*, *supra*, 2 Cal.App.5th at p. 923.) The trial court is not required to believe father's testimony as to his intent, “nor does such testimony of itself overcome the presumption of abandonment as a matter of law.” (*In re B. J. B.* (1986) 185 Cal.App.3d 1201, 1212.) “ ‘Intent to abandon, as in other areas, may be found on the basis of an objective measurement of conduct, as opposed to stated desire.’ ” (*Ibid.*)

Here, substantial evidence supports the finding that, other than token efforts, father failed to communicate with or to provide support for A.V. for at least one year. As such it is presumed he intended to abandon A.V. Nonetheless, father asserts he did not intend to abandon A.V. For example, although the evidence established that paternal grandmother, and not father, initiated father's visits with A.V., father claimed that was only because mother would not answer his phone calls. However, the testimony on that point was conflicting. Mother said she did speak with father on the phone and, when she did, he did not ask to visit A.V. Moreover, it was never fully explained how, given that father and paternal grandmother used the same telephone, mother could know and, therefore, answer the phone when paternal grandmother, as opposed to father, was calling. Thus, the evidence supports a finding that father did not take an active role even in coordinating the visits (however many there were) he had with A.V. over the years.

Father also points to his 2016 request to modify the visitation order as proof he did not intend to abandon A.V. However, father's 2016 request to modify came after years of what he called "sparing" visits with A.V. Indeed, father testified he never thought he received adequate visitation with A.V. He stated, "I have always objected to the unreasonable visitations that were presented to me." Other than stating he wanted to give mother time to realize the error of her ways, father did not give a satisfactory reason why, if he truly thought he never had sufficient visits with his son, he waited years to seek relief from the court. Indeed, paternal grandmother testified it was she who suggested in 2016 that father should seek relief from the court. Given father's years of inaction and waiting until A.V. was almost six years old before formally seeking additional visitation rights, we conclude father did not rebut the presumption of intent to abandon A.V. "The reality is that childhood is brief; it does not wait while a parent rehabilitates himself or herself. The nurturing required must be given by someone, at the time the child needs it, not when the parent is ready to give it.'" (*In re Daniel M.* (1993) 16 Cal.App.4th 878, 884.)

c. We assume the trial court applied the correct legal standard.

Father questions whether the trial court applied the correct legal standard. Father bases his argument on the fact that the November 1, 2017 minute order refers to a period of "6 months/1 year or greater" and the trial court did not otherwise specify the time period it was applying. As father correctly points out, the relevant time period is one year—i.e., the trial court was required to decide whether father left A.V. with mother for a period of one

year or more. (§ 7822, subd. (a)(3).) We are not persuaded that the trial court applied an incorrect legal standard.

We presume the trial court's judgment is correct. (*Denham v. Superior Court* (1970) 2 Cal.3d 557, 564.) “ ‘All intendments and presumptions are indulged to support it on matters as to which the record is silent, and error must be affirmatively shown.’ ” (*Ibid.*) Other than speculate that the trial court may have applied an incorrect legal standard, father has not affirmatively shown the trial court incorrectly applied a six-month time period instead of one year. Moreover, as discussed above, the evidence presented amply supports a finding that father left A.V. with mother for at least one year, all parties addressed the issue in terms of the required one-year period, and the trial court stated it was familiar with the relevant law.

DISPOSITION

The judgment is affirmed.

NOT TO BE PUBLISHED.

LUI, P. J.

We concur:

ASHMANN-GERST, J.

CHAVEZ, J.