Filed 12/22/17 In re Noah M. CA2/2

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

In re NOAH M., a Person Coming Under the Juvenile Court Law.	B282134 (Los Angeles County Super. Ct. No. DK18502)
LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Plaintiff and Respondent, v. JUAN B., Defendant and Appellant.	

APPEAL from an order of the Superior Court of Los Angeles County. Stephen Marpet, Juvenile Court Referee. Affirmed.

Konrad S. Lee, under appointment by the Court of Appeal, for Defendant and Appellant.

Mary C. Wickham, County Counsel, R. Keith Davis, Assistant County Counsel, Sally Son, Deputy County Counsel, for Plaintiff and Respondent.

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Juan B.[1] (appellant) appeals from the dependency court's order denying him status as the presumed father of Noah M. (born July 2014) (child). We affirm.

BACKGROUND AND STATEMENT OF THE CASE

In July 2016, the Los Angeles County Department of Children and Family Services (DCFS) filed a Welfare and Institutions Code[2] section 300 petition alleging the child's mother, Sara M. (Mother), had failed to protect the child from harm and the risk thereof, both due to her abuse of drugs, and to her serious mental and emotional problems.[3]

The DCFS detention report indicated it became involved following violent domestic disturbances between Mother and her then-boyfriend Israel C. in April 2016. When interviewed on May 9, 2016, the maternal grandmother (MGM) expressed great concern for Mother and informed the case social worker (CSW) that Mother had done drugs as a teenager, but had been clean for a long time, until recently. Mother, who had been living with MGM with the child and Mother's child by a different relationship, left on May 1st and since that time "[only came] home to grab clothes and food."

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1 Appellant refers to himself as "Juan G." in his briefs in this court instead of "Juan B.," the name used throughout the trial court proceedings and in his notice of appeal. We refer to him by the name used in the proceedings below.

2 All further undesignated references are to the Welfare and Institutions Code.

3 The same allegations were made as to the child's older half sibling, Amy H. As there is no issue in this appeal with respect to Amy H., we make only limited reference to proceedings involving her in this opinion.

The CSW spoke with appellant, who lived in Missouri, by phone on June 23, 2016. Appellant had heard Mother was struggling with drugs. He also stated he wanted custody of the child and was willing to cooperate with DCFS to obtain it. The CSW told him he would be assessed by a Missouri social worker.

On July 18, 2016, DCFS obtained authorization for removal of both children from their Mother, effected the order and placed the child with her maternal grandparents.

Neither Mother nor appellant appeared at the July 27, 2016 detention hearing. The court detained both children, making detention findings against Mother. The child was released to his maternal grandparents. The court noted DCFS was "looking into and attempting to release the child . . . to his father who resides in the state of Missouri," and ordered that DCFS had "discretion to release the child . . . to his father if it's deemed appropriate."

DCFS reported in its Jurisdiction/Disposition Report on August 24, 2016, that appellant was the biological father of the child. Neither Mother nor appellant was present at the adjudication hearing on August 26, 2016. Counsel for DCFS informed the court that appellant had told a CSW that he would "like his child." The matter was continued to August 31, 2016.

On August 31, 2016, Mother was arraigned. She confirmed appellant was the father of the child, and, following questioning of her by the dependency court, the judge stated, "right now he's an alleged father." The court appointed counsel for appellant and set a further hearing on September 30, 2016. On that date, the matter was continued again because appellant had requested a paternity test.

The adjudication and disposition hearing was held on February 17, 2017. By that date, appellant had had a DNA test which indicated he was

the biological father of the child. All of the DCFS reports and statements of information to date were admitted into evidence without objection. The court sustained DCFS's allegation that Mother's drug use placed the children at risk of harm, and dismissed the allegations pertaining to Mother's mental and emotional problems based on a stipulation of the parties. The court removed the children from Mother and terminated jurisdiction over the child's half sibling, with a home of parent order to her father.

The dependency court found appellant to be "nothing more than a biological alleged father." Accordingly, the court denied him reunification services.

Appellant timely appealed the February 17, 2017 order.

CONTENTION AND DISCUSSION

Appellant argues the dependency court erred in refusing to declare him the child's presumed father, contending he held the child out to the world as his own and received the child into his home (Fam. Code, § 7611, subd. (d)).[4] We disagree.

I. Factual Background of Appellant's Claim

Mother and appellant met in Missouri, where appellant has lived during all of the events relevant to this appeal. Appellant is employed as a cook at a restaurant in Springfield, Missouri. Mother and appellant were in a relationship for a year. When Mother was about three months pregnant, she returned to California for a court appearance and never returned to Missouri. Although Mother at all times considered appellant to be the biological father of the child, appellant's name does not appear on the child's

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[4] The notice of appeal broadly references "[a]ll jurisdictional and dispositional finding[s] and orders, including paternity, on 9-30-16, 12-2-16, 2-3-17, 2-17-17." However, appellant addresses only the contention described above in his briefing on appeal.

birth certificate. Appellant told the CSW this was because "the mother didn't want to put him on." DCFS considers appellant to be a non-offending parent.

Appellant first spoke with DCFS on June 23, 2016, and informed the CSW he wanted custody of the child. He was "supportive of maternal grandparents caring for [the child], in mother's absences," but believed "he would be a better caregiver for [the child]." When notified on July 26, 2016, of the detention hearing, he told the CSW he would not be attending because "he is living in Missouri." Prior to the filing of the Jurisdiction/Disposition Report, appellant told DCFS, "I'd like to have the custody of my son so that I can enjoy him." The paternity test which appellant obtained confirmed he was the biological father of the child.

Appellant's last "physical contact" with Mother was "when he left her at the airport prior to [her return to California and the child's] birth." He later "found out from the mother's aunt . . . that [the child] had been born." "[M]other never notified him of [the child's] birth and never contacted him about [the child's] well-being." He also admitted "he never tried to file for custody or visit [the child]." He "sent the maternal grandparents $250 on multiple occasions but admitted that it has not been consistent." Appellant also admitted that when the child "was an infant the mother complained to him that [the child] was impeding her ability to do things and that she was tired of taking care of him." She told appellant "to pick [the child] up or she would give [the child] away." Appellant "admitted that he never called the police or filed a child abuse report." He "admitted that he was unsure about what was happening in [the child's] life until he was contacted by DCFS."

Appellant reported two visits with the child, both during 2016, and both of which occurred because the maternal grandparents took the child to Missouri. During one of these visits, a Missouri social worker engaged to

evaluate appellant's home happened to arrive, later reporting that while the child was there he seemed comfortable around appellant, his girlfriend, and the girlfriend's child.

At the February 17, 2017 adjudication and disposition hearing, the dependency court found appellant had not proved he was the child's presumed father. The court reasoned that appellant had "made no attempt to seek out this child who [he] knew was around, had information about the location of the child, did nothing about it until the Department intervened . . . and from that point forward has frankly done nothing. He didn't take the child into his home. The child was brought to him. He didn't make efforts to come out here to visit the child at all [since] the inception of the case." "I don't think father is really seeking custody with this child. He hasn't done anything other than being on a phone [and] allowing some investigation to be done in Missouri. He hasn't stepped foot in California to come here and take a look at his kid. Once they—grandmother dropped him off for a week, absent that he hasn't seen the child, supported the child, nothing, other than being a biological father."

II. Legal Standard

"In dependency proceedings, 'fathers' are divided into four categories—natural, presumed, alleged, and de facto. (*In re Jerry P.* (2002) 95 Cal.App.4th 793, 801.) A natural father is one who has been established as a child's biological father. (*Id.* at p. 801.) Use of the term 'natural father' means that while the man's biological paternity has been established, he 'has not achieved presumed father status as defined in [Family Code sections 7611, 7611.5, and 7612].' (*In re Zacharia D.* (1993) 6 Cal.4th 435, 449, fn. 15.)" (*In re A.A.* (2003) 114 Cal.App.4th 771, 779 & fn. 4.) Presumed

fathers are accorded greater rights than are natural fathers. (*In re Zacharia D.*, at pp. 448-449.)

"'Presumed fatherhood, for purposes of dependency proceedings, denotes one who "promptly comes forward and demonstrates a full commitment to his paternal responsibilities—emotional, financial, and otherwise [.]"' (*In re Jerry P., supra,* 95 Cal.App.4th at pp. 801-802.) A natural father can be a presumed father, but is not necessarily one; and a presumed father can be a natural father, but is not necessarily one. (*Id.* at p. 801.)" (*In re A.A.*, *supra*, 114 Cal.App.4th at p. 779.) "[P]resumed parent status is based on the 'familial relationship between the man and child, rather than any biological connection.' [Citation.]" (*In re M.R.* (2017) 7 Cal.App.5th 886, 900.)

A person may achieve presumed parent status if "[t]he presumed parent receives the child into his or her home and openly holds out the child as his or her natural child." (Fam. Code, § 7611, subd. (d); see also *in re M.R.*, *supra*, 7 Cal.App.5th at p. 898; *Jason P. v. Danielle S.* (2017) 9 Cal.App.5th 1000, 1018-1019 (*Jason P.*); *In re A.A.*, *supra*, 114 Cal.App.4th at p. 780.) To invoke the presumption, a parent claiming presumed father status has "'the burden of establishing by a preponderance of the evidence that there were present [both] elements . . . .' [Citation.]" (*In re A.A.,* at p. 782.)

"'[R]eceipt of the child into the home must be sufficiently unambiguous as to constitute a clear declaration regarding the nature of the relationship, but it need not continue for any specific duration.' [Citation.]" (*Jason P.*, *supra*, 9 Cal.App.5th at p. 1023.) "It is not the living arrangements, but the relationship between the child and the adult that is the primary factor in determining whether the adult should be deemed a presumed parent." (*In re M.R., supra*, 7 Cal.App.5th at p. 900.)

"In considering a challenge to a juvenile court's finding regarding presumed father status, we apply the substantial evidence test, drawing all reasonable inferences and resolving conflicts in the evidence in favor of the trial court's ruling, and refraining from any reweighing of the evidence. [Citation.]" (*In re M.R.*, *supra*, 7 Cal.App.5th at p. 898.)

III. Substantial Evidence Supports the Court's Denial of Presumed Parenthood Status

Substantial evidence supports the dependency court's findings and order that appellant did not meet his burden of establishing presumed parenthood as required by the Family Code.

A. Appellant Did Not Receive the Child Into His Home

Substantial evidence supports the court's decision that appellant never "receive[d]" the child into his home within the meaning of Family Code section 7611, subdivision (d).

Establishing the presumed parent relationship requires proof of investment of a significant amount of time even when the parent seeking that status is the biological father. For example, in *Jason P., supra,* 9 Cal.App.5th 1000, the record was replete with evidence of the parent-child relationship. "[The child] regularly spent time at the apartment when [the biological father] was living there, [the biological father] made arrangements with his assistant to accommodate [the biological mother] and [the child] during their visits, he and [the child] went to the park when he was not working, he fed, played music for, and read to [the child], he arranged for an allergist to see [the child] in New York, he obtained a baby gate to prevent [the child] from falling down the stairs in the apartment, and there was a room in the apartment that was designated as [the child's] room when he was there." (*Id.* at p. 1022.) The father's involvement in the child's life included the father

taking the child to his first medical appointment and attending the child's first birthday party. (*Id*. at p. 1010.)

In *In re M.R.,* the parental relationship was developed through multiple visits: there was "abundant evidence that [the father] had received [the child] into his home on a regular basis for years (increasingly often, and for longer periods of time) to provide him with paternal love and care." (7 Cal.App.5th at p. 900.)

Here, by contrast, appellant "admitted that [prior to this case] he ha[d] not seen [the child] since he was born." Instead, appellant focuses on the circumstance that there is no specific duration of time mandated to meet the requirement of the child having been received in the home for a substantial period of time. (Fam. Code, § 7612, subd. (c).) This requirement is met when the parent receives the child into the home "'on a regular basis to provide [the child] paternal love and care,' and . . . [holds] the child out as [his child]." (*In re M.R., supra,* 7 Cal.App.5th at p. 900.)

Although appellant cites the correct statute and case authority, he ignores the circumstance that the facts of this case do not meet these requirements. As in *In re A.A.*, there is no "evidence that the minor was received into [appellant's] home on a consistent visitation basis." "[T]here is no evidence that . . . [appellant] asserted a right to custody or visitation. Rather, he just let contact with the minor slide." (114 Cal.App.5th at pp. 775, 787.)

In fact, appellant did not even know what was happening in the child's life prior to being contacted by DCFS, at which time the child was nearly two years old. Appellant also admitted that when the child was an infant, Mother told him if he didn't take care of the boy, she would give him away, after which appellant did nothing to claim the child or to assist the child in

any other manner other than intermittently providing small amounts of money to the MGM once the child first went to Missouri.

Appellant simply ignores that he never sought out the child, even though he was aware of his birth and of the mother's drug addiction. Instead, he relies on the circumstances that he had two visits with the child, and that the visit described in the record went well. However, these visits took place only after DCFS became involved and contacted *him* and only when the MGM was in Missouri visiting, taking the child with her to initiate contact. There is no evidence that appellant invited or encouraged this visit. Instead, it was merely convenient for the MGM to leave the child with appellant while she visited elsewhere in that state.

This type and degree of contact do not amount to evidence of the existence of a "relationship between the child and the adult" that the court in *In re M.R.* found to be the "primary factor in determining whether the adult should be deemed a presumed parent." (*In re M.R.*, *supra*, 7 Cal.App.5th at p. 900.) While there has "'[h]istorically . . . been a liberal interpretation of "receiving" as used in the statute'" (*Jason P., supra*, 9 Cal.App.5th at p. 1021), even such a liberal interpretation of Family Code section 7611, subdivision (d) cannot encompass appellant's claim.

The mere fact that appellant is "the biological [father] of [the child]" is irrelevant to this analysis. (*In re A.A.*, *supra*, 114 Cal.App.4th at pp. 778, 786-788 [finding respondent was not a presumed father although tests showed he was the biological or natural father].) Also, appellant's reliance on *In re J.O.* (2009) 178 Cal.App.4th 139, 147-148, abrogated on other grounds by *In re R.T.* (2017) 3 Cal.5th 622, 628, is misplaced. *In re J.O.* applied the rule that an *already demonstrated* presumption of paternity may not be *rebutted* where no other man claims parental rights. (*In re J.O.*, at pp. 147-

148.) Here, by contrast, the issue is whether appellant achieved the status of presumed fatherhood in the first instance.

The court correctly concluded there was substantial evidence appellant had "made no effort at all to be a father to [the child] under [Family Code] section 7611.

B. Appellant Did Not Hold the Child Out to the World as His Own

Substantial evidence also supports the finding appellant did not openly hold "out the child as his . . . natural child" (Fam. Code, § 7611, subd. (d)).

Appellant's citations to the record in an effort to substantiate his contention that he satisfied this element are either irrelevant or relate to events or statements post-dating DCFS's first contact with him. There is no evidence in the record that appellant ever held the child out as his own to the world, or told anyone about the child, before DCFS contacted him. As in *In re A.A.*, *supra*, 114 Cal.App.4th at page 787 (which found a man had not held himself out as the father of that child), "there is no evidence [appellant] took steps to have his name put on the minor's birth certificate, or sought tests to affirm paternity prior to his entry into the dependency case." It is true that appellant (inconsistently) sent money for the benefit of the child, but this is not an announcement to the public, the timeframe is unclear, and appellant only began sending money after the child was brought to visit him.

We conclude that substantial evidence supports the court's determination that appellant did not meet his burden to achieve presumed father status.

DISPOSITION

The February 17, 2017 order is affirmed.

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GOODMAN, J.*

We concur:

CHAVEZ, Acting P.J.

HOFFSTADT, J.

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