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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FIVE

In re Vera M., a Person Coming Under the  
Juvenile Court Law.

HUMBOLDT COUNTY DEPARTMENT  
OF HEALTH AND HUMAN SERVICES,

Plaintiff and Respondent,

v.

Bryan C.,

Defendant and Appellant.

A135533

(Humboldt County  
Super. Ct. No. JV110164)

Appellant Bryan C. (Father), the biological father of dependent child Vera M., was incarcerated during most of the mother’s pregnancy and nearly all of the child’s young life. Father reunited with Vera and her mother (Mother) upon his release from prison. He lived with them for about two months before the child was removed from the parents’ custody after she suffered serious scalding injuries while Father was giving her a bath.

At the jurisdictional hearing, the trial court denied Father’s request to participate because he was at that time only an alleged father. Father established his biological paternity after a disposition hearing had been held and order entered. The court denied his subsequent request for presumed father status and his request to reopen the jurisdiction hearing to contest causation of Vera’s injuries. We conclude the denial of presumed father status is supported by substantial evidence and that a rehearing on the jurisdictional allegations was not required. We affirm.

## I. BACKGROUND

Father had a relationship with Mother in northern California in 2009. In August, shortly after Mother became pregnant, he was arrested as a fugitive from justice and extradited to Florida, where he served a prison term from November 2009 to July 2011. Vera was born in the spring of 2010. After Father was released from prison in July 2011, he returned to California and moved in with Mother, Vera, and Mother's older child in August 2011. On about October 23, 2011, Vera (then 19 months old) suffered scalding burns when Father placed her in the kitchen sink for a bath. Emergency services were not contacted until about 7:00 a.m. on October 24. Vera was then airlifted to a hospital due to severe burns on her lower torso, buttocks and right thigh. She also had bruising on her left side.

Mother made statements to an investigating officer, Deputy Seth Crosswhite, and an emergency social worker. She had been watching a movie in her bedroom when she heard Vera scream. After Father told Mother he was giving the child a bath, her concerns were allayed because Vera often screamed when she got a bath. The crying continued, however, and when she went to see what was happening she saw Father passed out on the bed next to Vera, who was wrapped in a blanket. Mother later found an empty pint bottle of Hot Damn 100 proof alcohol that she thought Father might have drunk that night. Mother saw some red blisters on the child's leg, but discounted them as signs of a recurring rash. When she awoke in the morning, however, she saw that Vera's blisters were "really bad and had broken open." She confronted Father, who said Vera had jerked away from him while he was giving her a bath and got splashed with hot water by accident. When Mother said she might call the police, Father became upset, hit her and left the home.<sup>1</sup> Father had also lashed out at her earlier that morning and had unplugged

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<sup>1</sup> Mother told Crosswhite that Father hit her in the head, face and upper body area, but she declined medical attention and declined to file a domestic violence report. Crosswhite examined Mother later that morning and saw only a pea-size bruise just under the corner of Mother's right eye. Father denied hitting Mother. Crosswhite ultimately declined to arrest Father for domestic violence "as [Mother's] statement was very inconsistent and she stated [*sic*] didn't want to pursue any domestic violence charges at

the phone. Mother eventually called her “IHSS worker,”<sup>2</sup> who came to the home and contacted emergency medical personnel and the police.

Mother said Father “had never done anything like this before” and she did not believe he intentionally harmed the child. She said the water comes out of the faucets in her home at “boiling temperatures” and could easily have burned Vera. She had never had any concern about how Father interacted with the children. The IHSS worker similarly told the social worker she had “never had any concerns about either [Mother’s] or [Father’s] care of the children.”

Father voluntarily contacted the police to talk about the incident. He waived his *Miranda* rights<sup>3</sup> and gave the following account to Crosswhite. While giving Vera a bath in a split sink in the kitchen, he ran very hot water on one side of the sink while she was sitting in the other side of the sink. Before Father could add cold water to cool down the bath water, Vera slipped in the sink. She grabbed the faucet to brace herself, causing the faucet to turn toward her and pour hot water on her right hip and leg area. Her hip and leg were red but the skin did not blister. Father took her out of the sink, wrapped her in a towel, and put her in a diaper, and lay her down. She fell asleep. In the morning, he and Mother saw that Vera’s hip and leg had developed blisters and the blisters had broken. The parents got into an argument about the incident and Mother told him to leave, which he did. He said the bruises on Vera’s face were from an incident a day or two prior when she fell off the bed. He denied drinking heavily on the day of the incident. Father gave a similar account to the Humboldt County Department of Health and Human Services

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the time of my interview with her. I also felt . . . I had no evidence to substantiate her claims as she had no marks or abrasions . . .” Mother later told the social worker that Father had never abused her “other than a couple times when she woke up, he lashed out and hit her (supposedly in his sleep since his eyes were closed).”

<sup>2</sup> Mother has muscular dystrophy, a progressive and incurable disease. She “[u]ses a cane or wheelchair to get around and [when using the cane] still walks holding the wall. Is slow moving.” Her IHSS worker was apparently a support person related to her disability.

<sup>3</sup> *Miranda v. Arizona* (1966) 384 U.S. 436.

(Department). Crosswhite released Father because he did not have enough information to determine if the injury was accidentally or intentionally inflicted.

Crosswhite made arrangements to test the water temperature in Vera's home. He turned on the hot water at the kitchen sink and within 10–15 seconds it was “hot enough it produced visible steam coming from the faucet. The water was to[o] hot to touch with my bare hands.” Using a kitchen thermometer, he measured the water at just under 150 degrees Fahrenheit. Crosswhite then examined the water heater and found a dial with three temperature settings ranging from 122 to 158 degrees. The heater was set at 122 degrees. A social worker at Shriners' Hospital later told the Department that it takes five seconds at 140 degrees to cause a third degree burn. Crosswhite reportedly “forwarded his report to the DA with recommendations that [Father] be charged with felony child abuse.”

Medical personnel at the first hospital to examine Vera reported “there was blood present behind [her] left eardrum, indicating a blow to the head. The report also says that an MD determined that the burns were consistent with immersion burn.” A Shriners' Hospital intake report dated October 24, 2011, stated that the child had “some bruising across her face and her neck, on the jaw site on the left side, as well as on the right side. . . . [S]he has second degree burn injury to her bilateral buttocks, perineum and right thigh. Total amount of burn wound appears to be approximately 12% total body surface area.” A report dated October 25 stated that Vera was diagnosed with hemotympanum (bleeding behind the eardrum) and there was “[c]oncern for child abuse.” A report dated October 27 stated an ophthalmologist found no intraocular hemorrhages and an ear, nose and throat doctor found “mildly injected R tympanic membrane, no signs of hemotympanum.” It is not clear whether the October 27 report meant the hemotympanum had resolved or whether it had never existed.

According to a social worker at Shriners' Hospital, a doctor there said the burn was consistent with an immersion burn even though it was not a “classic” pattern, and there were no “splash burns (hot water splashing up away from main burn).” The social worker also said that “the doctor would not call it a[n] immersion burn if the child

accidentally fell into a tub” and that the hospital staff was very concerned that the injury was not accidental. The doctor also said the bruises were older than the burn and a CT scan indicated mild cerebral edema “from trauma and not a normal childhood fall etc.” The Shriner’s Hospital discharge summary said Vera’s pain was well-controlled with Tylenol and codeine. A CT scan of her head “showed no skull fractures, but mild cerebral edema. . . . She was seen by Ophthalmology who declared her free of any retinal hemorrhages or ocular abnormalities. She was also seen by the Otolaryngology Service who ruled out hemotympanum. . . . She also had a full body skeletal survey that was negative for any new or healed fractures.” Her discharge physical examination cited a “[h]ealing superficial abrasion to the chin.”

The Department reported that Mother had taken prescription methadone and four to six other pills (apparently prescription pills) on the day of the incident. Mother attended Narcotics Anonymous meetings and the extent of her drug use was unknown. She had prior convictions for driving under the influence and transportation and sales of narcotics. The maternal grandmother told the Department she had serious concerns about her daughter’s neglect of her children—she had frequently visited Mother’s home and found Mother asleep and the older boy in a dirty diaper, hungry and unsupervised—and she had considered seeking guardianship of the children. Father had a 2009 conviction for driving without a license and Florida convictions for child neglect and possession of controlled substance. The child neglect conviction occurred when Father and his girlfriend were pulled over and arrested for possession of narcotics while the girlfriend’s little sister was in the car.

#### *Petition and Detention*

On November 3, 2011, the Department filed a juvenile dependency petition on behalf of Vera pursuant to Welfare and Institutions Code section 300, subdivisions (a) (infliction or risk of serious physical harm), (b) (failure to protect), (e) (knowledge of

serious physical abuse of child under five), and (i) (act of cruelty).<sup>4</sup> As later amended, the petition alleged under section 300, subdivision (a) that Vera “was physically injured by her father, which resulted in second degree immersion burns to her lower torso. On 10/23/2011, Vera was immersed in 150 degree water while her father attempted to give her a bath in the kitchen sink. The hot water heater was deliberately set at the highest temperature. The second degree burns extended from [her] back, covering her buttocks and perineum and down the front and side of one leg. Vera’s skin has sloughed off most of the burn which covered 12% of her total body. [¶] A CT-scan was given to Vera while at Shriners Hospital which showed she suffered from Cerebral Edema and Hemotympanium (bleeding behind the eardrum) attributed to blunt force trauma. Vera also has numerous bruises to her face including her chin, bruising to her forehead and left cheek. All these injuries were in different stages of healing.” Similar allegations were made under section 300, subdivisions (e) and (i). The petition alleged that Mother knew or should have known that Father was violent and had been drinking on the day of the incident, that she had unaddressed substance abuse issues that might have contributed to the incident, and that she delayed in obtaining emergency medical care for Vera even though she knew or should have known the child was in severe pain due to her injuries.

At the detention hearing, Father was not present and no counsel appeared on his behalf. Mother’s counsel told the court that Mother would be seeking a restraining order against Father on behalf of herself and Vera. When asked about Father’s whereabouts, Mother said, “[T]here’s been no contact talking. He’s called my phone and stopped at some point three days ago until just last night and then this morning on my cell phone. . . . I have not seen him.” She said Father had no other family in Humboldt County. On November 4, 2011, the trial court ordered Vera detained and placed with her maternal grandmother.

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<sup>4</sup> All statutory references are to the Welfare and Institutions Code unless otherwise indicated.

### *Jurisdiction and Statement Regarding Parentage*

In its jurisdiction report, the Department wrote that both parents had “unaddressed substance abuse issues which contributed to their inability to parent their children and keep them safe. [Mother] has significant physical health challenges which make it nearly impossible for her to move quickly and provide help to her children if an emergency should occur . . . . [¶] The relationship between [the parents] is unstable and plagued by violence, which contributed to [Mother’s] delay in seeking treatment for Vera’s very serious injuries.” The Department recommended the court sustain the petition. A contested jurisdiction hearing was scheduled for December 19, 2011, with a pretrial hearing scheduled for December 7.

On December 6, 2011, a privately-retained attorney entered an appearance for Father, and Father filed a statement regarding parentage (Judicial Council Forms, form JV-505). In the statement, Father wrote that he believed he was Vera’s father and asked for presumed father status, while also asking for blood or DNA testing to confirm his paternity. Father wrote that he moved in with Mother and the child as soon as he was released from prison; he lived with them from August to October 23; he contributed his wages to the household; he told his family, Mother’s family and the local community that he was Vera’s father; and he believed his family, who lived in Louisiana, had sent Vera gifts. “I have certainly held myself out to the world as Vera’s father. I have lived with her and supported her. However, the current allegations, my own anguish, and the anger that I sense from the mother’s side of the family cause me to pause and reflect on my present and future role in Vera’s life. I think that at this point in time it is prudent, for both Vera’s sake and mine, to request confirmation of paternity via a D.N.A. test. [¶] I do want to participate in these proceedings. I understand that I will not be able to request reunification services and custody until I elevate myself as either her natural father and/or her presumed father. However, I would like an opportunity to review the allegations and reports that have been filed against me and provide the court with additional information as may be necessary to allow the court to understand what occurred on October 23.”

At the December 7, 2011 pretrial hearing, Father's counsel requested, and the court granted, an order for DNA paternity testing. Father was not present.

Father filed an at-issue memorandum before the scheduled contested hearing on jurisdiction. *"The Father does not dispute the evidence of neglect and injury.* The Father strongly questions the evidence of any intentional abuse." He asserted a right to participate at the jurisdictional phase as the alleged father. "The purpose of a juvenile hearing is to ascertain the jurisdiction facts and 'all information relevant to the present condition and welfare of the child.' (Cal. Rules of Court Rule 5.534(a).) Without the Father's input, this hearing will be less of a fact-finding enterprise than a ratification process for the [Department's] requested findings." (Italics added.)

At the December 19, 2011 pretrial hearing on jurisdiction (before Hon. Joyce D. Hinrichs), Father did not appear personally, but he was represented by retained counsel. Mother's counsel informed the court that Mother and the Department had reached a settlement on jurisdiction. Father continued to assert his right to contest the jurisdictional allegations that related to his conduct. He specifically expressed concern that if the allegations of intentional abuse were sustained he would face a bypass of services even if he was later able to establish paternity. However, the court ruled that "until he does become [a] presumed father, he doesn't have standing to contest jurisdiction. If he . . . becomes a presumed father, he can request some kind [of] hearing as relates to any information he believes may have been inaccurate, but it can't delay the process at this time, and he doesn't have standing to litigate the matter until he is a presumed father." Father's counsel offered to point out "the factual problems with the petition" but the court ruled he had no standing to do so.

Mother submitted on the petition. On the Department's motion, the court struck the cruelty allegations under section 300, subdivision (i) and sustained the petition as modified. A disposition hearing was scheduled for January 6, 2012, and later continued to January 12.

### *Disposition*

On December 20, 2011, Father's counsel wrote to the Department and minor's counsel on behalf of Father's parents, who offered to adopt Vera if she would otherwise be placed in foster care. He reported that Father was living with his parents in Louisiana, "where he is clean, sober, working, and attending church." The letter said Father "understands . . . that he will not reunify with Vera through this dependency action . . . [and his] only connection to Vera will be premised on the good will of her care providers and a lengthy track record over the next several years of leading a stable, sober, and moral life." Father's counsel similarly stated in a December 20 email to the Department and deputy county counsel that Father "realizes that he won't reunify with Vera through this process. . . . [Father's] plan is to try to preserve his parental rights (obviously assuming he is the father). When he has established a sufficient amount of time under his belt (he understands that this may be years) so that the family trusts him, he would like to slowly start a relationship again with Vera. To this end, we are hoping that his 'monster' status in this case is not overstated. My reading of the reports is that this was a tragic accident brought on by negligence and alcohol. I would hope that whatever recommendations you make to the court leave open the possibility that [he] can play a small role in Vera's life sometime in the future." He asked for the Department's cooperation in completing paternity testing.

Attachments to the Department's January 5, 2012 disposition report included a medical history for Vera that stated inter alia that, as of November 14, 2011, Shriner's Hospital determined her burns had "healed well with nice pink tissue formed, no signs of scarring." The Department identified the family issues as domestic violence and substance abuse. "[Father] was physically violent to [Mother] and yet she continued to allow him to remain in her home. If [Mother] had removed him from the home, Vera's physical abuse would not have happened." Mother "stated that she is sorry she ever allowed [Father] to come into their lives." The Department recommended continued removal from Mother's home and reunification services for Mother.

At the January 12, 2012 disposition hearing, Father was not present, but he was represented by counsel. Mother submitted on the report. The court removed Vera from Mother's custody. The court found that Vera was brought within the jurisdiction of the court under section 300, subdivision (e) because of the conduct of both parents, and that the child had been adjudicated a dependent as a result of the infliction of severe physical harm by "a parent." Each of these findings triggered bypass provisions that allowed the court to deny services to Mother. (§ 361.5, subds. (b)(5), (6).)<sup>5</sup> The court found by clear and convincing evidence that "[i]t would benefit the child to pursue reunification services with the mother," which allowed it to grant Mother services despite section 361.5, subdivision (b)(6). (§ 361.5, subds. (b)(6), (c).)<sup>6</sup> The court also found "based on competent evidence, that reunification services to the mother are likely to prevent reabuse or continued neglect of the child or that failure to try reunification will be detrimental to the child, because the child is closely and positively attached to that parent," which allowed it to provide services to Mother despite section 361.5, subdivision (b)(5), which is based on the section 300, subdivision (e) jurisdictional finding. (§ 361.5, subd. (c).)<sup>7</sup>

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<sup>5</sup> Section 361.5, subdivision (b) provides in relevant part: "Reunification services need not be provided to a parent or guardian described in this subdivision when the court finds, by clear and convincing evidence, any of the following: [¶] . . . [¶] (5) That the child was brought within the jurisdiction of the court under subdivision (e) of Section 300 because of the conduct of that parent or guardian. [¶] (6) That the child has been adjudicated a dependent pursuant to any subdivision of Section 300 as a result of severe sexual abuse or the infliction of severe physical harm to the child, a sibling, or a half sibling by a parent or guardian, as defined in this subdivision, and the court makes a factual finding that it would not benefit the child to pursue reunification services with the offending parent or guardian."

<sup>6</sup> Section 361.5, subdivision (c) provides in relevant part: "The court shall not order reunification for a parent or guardian described in paragraph . . . (6) . . . of subdivision (b) unless the court finds, by clear and convincing evidence, that reunification is in the best interest of the child."

<sup>7</sup> Section 361.5, subdivision (c) also provides in relevant part: "In addition, the court shall not order reunification in any situation described in paragraph (5) of subdivision (b) unless it finds that, based on competent testimony, those services are likely to prevent reabuse or continued neglect of the child or that failure to try reunification will be detrimental to the child because the child is closely and positively

The court found Father to be an alleged father only, and it found by clear and convincing evidence that placement with Father and visitation with Father would be detrimental to Vera. The order finding stated that visitation between Vera and Father was “suspended.” However, an order finding that reunification services to Father would not be in the best interests of Vera, and denying such services was stricken at the request of the Department, apparently pursuant to prior agreement with Father’s counsel. An interim status review hearing was scheduled for April 12 and a six-month review hearing was set for June 28.

*Section 388 Petition Seeking Presumed Father Status and Services*

On February 28, 2012, Father received confirmation of paternity. On March 2, 2012, he filed a section 388 petition seeking presumed father status, discovery, a reopened jurisdiction hearing, and reunification services. He alleged that he had “moved expeditiously” since December 19, 2011, to confirm his paternity and had obtained positive DNA results, which were attached to the petition. He argued the requested orders would be in the Vera’s best interests because, assuming he could establish her injuries were accidental, she should have the benefit of having a father. The court granted a hearing on the petition on April 17, which was later continued to April 19 and then to May 21, 2012.

On March 12, 2012, the Department prepared a “Report in Response to 388,” which was not filed until May 21. “Although [Father] allegedly engaged in a sexual

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attached to that parent. The social worker shall investigate the circumstances leading to the removal of the child and advise the court whether there are circumstances that indicate that reunification is likely to be successful or unsuccessful and whether failure to order reunification is likely to be detrimental to the child. [¶] The failure of the parent to respond to previous services, the fact that the child was abused while the parent was under the influence of drugs or alcohol, a past history of violent behavior, or testimony by a competent professional that the parent’s behavior is unlikely to be changed by services are among the factors indicating that reunification services are unlikely to be successful. The fact that a parent or guardian is no longer living with an individual who severely abused the child may be considered in deciding that reunification services are likely to be successful, provided that the court shall consider any pattern of behavior on the part of the parent that has exposed the child to repeated abuse.”

relationship with [Mother] around the time that she was impregnated with Vera, he was shortly [there]after incarcerated in Florida. [He] was not named as the father on Vera's birth certificate, and did not sign the Proof of Paternity. [He] remained incarcerated for the duration of [Mother's] pregnancy and the majority of Vera's life. [He] had only returned to Humboldt County and lived with [Mother] and her children for two months prior to the time that he inflicted a severe immersion burn on Vera. During the time [he] lived with [Mother] and her children, [he] and [Mother] engaged in severe domestic violence and substance abuse in the presence of the children. Vera will likely have life-long scarring as a result of [Father's] physical abuse of her, and still suffers from a fear of water. [Father's] criminal prosecution for Vera's injuries is still pending. [¶] [Father] has not once attended court in this dependency proceeding. Although [he] requested a DNA test and one was ordered by the court, he fled the state without completing the test. [He] currently remains out of state . . . . [He] has not attempted to make any contact with the department since 11/08/2011. He never inquired about Vera's progress, healing or general wellbeing. [His] parents, who acquired counsel for [him], appear to be the only party interested in elevating [his] fatherhood status. [¶] . . . [¶] It is recommended that the request to elevate [Father] to presumed fatherhood be denied."

In a "trial brief" filed before the hearing on the petition, Father protested the Department's withholding of information from him and alleged that it had mischaracterized the facts. He alleged that the only documentation he had received from the Department was the petition and detention report, and the Department had refused his request for a copy of the jurisdiction report.<sup>8</sup> He said that he had received copies or partial copies of some other reports from other parties and he argued the Department's Report in Response to 388 mischaracterized the burn injury as intentional, whereas the evidence pointed to accidental injury; overstated the evidence of domestic violence; misinformed the court that Vera would suffer from permanent scarring; and misstated

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<sup>8</sup> At an April 12, 2012 hearing, Father's counsel stated he had just received from the Department "a one-paragraph redacted copy of a section of the County's Interim Review Report."

that Father had left California before completing paternity testing, even though testing had not been ordered until he was already in Louisiana. Father's attorney had been told by another attorney in the case that Father "had been deemed the designated 'monster' in this case." Moreover, the Department did not assist Father in obtaining paternity testing, which was contrary to counsel's prior experience with the Department.

The brief also described Father's goals in filing the petition: "[Father] does not have the financial resources to relocate to Humboldt County. He realizes that he will probably not 'reunify' with Vera within the six-month time frame. What [he] wants . . . is to be given an opportunity to be vetted by the social worker. He would very much like to travel to Humboldt County. He has been saving his money. He wants to see his daughter, and he would like to meet with the social worker and minor's counsel. However, he fears that the County will forbid any contact with the Minor and the social worker until the Court recognizes his status as 'presumed father.' " In a later filing, Father wrote that, despite his limited financial resources, Father and his parents intended to fly to California to attend the contested hearing. However, the Department social worker refused their request to meet before the hearing and the Department denied their requests to visit the child. Moreover, he had learned that the district attorney intended to file felony child abuse charges against him and Mother, so he knew he would have to make another trip to California to attend an arraignment.

The Department filed an at-issue memorandum on May 9, 2012, in which it argued that Father had "acted in a manner inconsistent with the parental role" and cited *In re T.R.* (2005) 132 Cal.App.4th 1202, 1212. The Department further argued, " 'Presumed fatherhood for purposes of dependency proceedings, denotes one who promptly comes forward and demonstrates a full commitment to . . . parental responsibilities—emotional, financial and otherwise. . . .' *In re A.A.* (2003) 114 Cal.App.4th 771, 779; [*Adoption of*] *Kelsey S.* (1992) 1 Cal.4th 816, 849. Here, [Father's] actions are hardly those of a man demonstrating a 'full commitment' and they are anything but 'prompt.' "

### *Hearing on Section 388 Petition*

At the May 21, 2012 contested hearing on the section 388 petition (before Hon. John T. Feeney), Father was again not present, but appeared through retained counsel. The court considered the following evidence: the detention and jurisdiction reports; DNA testing results that established Father's biological paternity; Father's statement regarding parentage; Father's court-filed consent to a child support order (which was filed in March); and an offer of proof by Father that he was sober, working, and attending church in Louisiana, and that he had undergone a psychological evaluation and was deemed not to have an anger management problem.

Father argued he had met his initial burden of proof by establishing that he openly held out Vera as his own and received her in his home as required by Family Code section 7611, subdivision (d). The Department argued, "Even if the Court believes that [Father] somehow has minimally complied with [Family Code section 7611, subdivision (d)], . . . that minim[al] compliance [must] be balanced . . . with the egregious injury this child suffered. [¶] That's an injury that [Father's counsel] has admitted was caused by [Father]. It was at best, negligent, at worst, an intentional act. . . . [¶] . . . [¶] We have shown by clear and convincing evidence that the father's conduct toward this child has been inappropriate. It's undisputed that he . . . fled the state after the Court ordered the DNA testing. He continues to reside out of state. He has never personally appeared in this court ever since this case started. He has never paid a dime in child support, and there is no evidence that he has." Mother's counsel joined in the Department's argument and added, "My client feels strongly about her position." Minor's counsel said, "[I]f we're going to say that [Father's] actions rose to the level of making him not able to be presumed . . . , we'd have difficulty in all our cases ever getting alleged fathers to presumed father status. [¶] . . . [W]hy is mother getting services? Because I don't think her actions were any less egregious than [Father's]." She also specifically noted that Father had contributed income to the household. However, she argued that Father's conduct in leaving the state amounted to abandonment and was sufficient to deny his petition.

The court denied the petition. “[T]he Court cannot ignore and disregard the circumstance of the injuries sustained by . . . Vera. Also, the Court cannot ignore and disregard the fact that [Father] apparently left California shortly after the detention hearing, has not returned and has . . . abandoned the minor child. [¶] The Court finds by clear and convincing evidence that this matter does not fall within Family Code section 7611 subdivision (d). Although[] [Father] has from all indications openly held out . . . Vera as his natural child[,] [h]e has not received the child into his home within the intent and meaning of subdivision (d) of 7611 of the Family Code.”

## II. DISCUSSION

The Uniform Parentage Act (Fam. Code, § 7600 et seq.; formerly Civ. Code, § 7000 et seq.) distinguishes “alleged,” “biological,” and “presumed” fathers. “ ‘ ‘A man who may be the father of a child, but whose biological paternity has not been established, or, in the alternative, has not achieved presumed father status, is an ‘alleged’ father. [Citation.]” [Citation.] “A biological or natural father is one whose biological paternity has been established, but who has not achieved presumed father status . . . .” [Citation.] [¶] “Presumed” fathers are accorded far greater parental rights than alleged or biological fathers. [Citation.]’ ” (*In re T.G.* (2013) 215 Cal.App.4th 1, 4–5.) A biological father’s rights are limited to establishing his right to presumed father status. (*In re A.S.* (2009) 180 Cal.App.4th 351, 362.) Only presumed fathers are entitled to reunification services, although the court may in its discretion grant services to a biological father if doing so will benefit the child. (*In re Zacharia D.* (1993) 6 Cal.4th 435, 451; § 361.5, subd. (a).)

Biological paternity nevertheless carries weight in the presumed fatherhood assessment, especially if there is no one else competing for the status. “The biological connection between father and child is unique and worthy of constitutional protection if the father grasps the opportunity to develop that biological connection into a full and enduring relationship.” (*Adoption of Kelsey S., supra*, 1 Cal.4th at p. 838.) “ ‘The significance of the biological connection is that it offers the natural father an opportunity that no other male possesses to develop a relationship with his offspring. If he grasps that opportunity and accepts some measure of responsibility for the child’s future, he may

enjoy the blessings of the parent-child relationship and make uniquely valuable contributions to the child's development.' ” (*Id.* at p. 837, quoting *Lehr v. Robertson* (1983) 463 U.S. 248, 262.)

Father argues on appeal that the trial court erred in denying him presumed father status. He argues he established his prima facie case for presumed father status under Family Code section 7611, subdivision (d)<sup>9</sup> and the Department did not produce clear and convincing evidence rebutting the presumption. He also argues his due process rights were violated because jurisdictional findings of infliction of intentional harm to Vera were used against him in denying him presumed father status and he never had an opportunity to contest those findings. We conclude the court's finding that Father was not a presumed father is supported by substantial evidence and Father's due process rights were not violated at the hearing on his status.

A. *Father was Not Denied Due Process at Presumed Father Status Hearing.*

As a preliminary matter, we reject Father's argument that his due process rights were violated when the court “denied him presumed fatherhood based on [jurisdictional] allegations he had no chance to contest.” More specifically, Father implies that the court relied on its previous jurisdictional *findings* against him under section 300, subdivisions (a) and (e), when it denied him presumed father status.

Father does not specifically challenge in this appeal the trial court's denial of his request to actively participate in the jurisdictional hearing.<sup>10</sup> Father had in any event only limited due process and statutory rights at the time of that hearing. “ ‘Alleged fathers have less rights in dependency proceedings than biological and presumed fathers. [Citation.] An alleged father does not have a current interest in a child because his

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<sup>9</sup> “A man is presumed to be the natural father of a child if . . . : [¶] . . . [¶] (d) He receives the child into his home and openly holds out the child as his natural child.” (Fam. Code, § 7611.)

<sup>10</sup> Father's related petition for writ of habeas corpus (No. A137392), which we deny by separate order, directly challenges his exclusion from the hearing (by way of a claim of ineffective assistance of counsel in failing to appeal the jurisdictional order on that basis).

paternity has not yet been established. [Citation.]’ (*In re O.S.* [(2002)] 102 Cal.App.4th 1402, 1406.) As such, an alleged father is not [automatically] entitled to appointed counsel or reunification services. (§§ 317, 361.5, subd. (a); *In re Zacharia D.*, *supra*, 6 Cal.4th 435, 448–449; *In re O.S.*, *supra*, at p. 1406.) [¶] Due process for an alleged father requires only that the alleged father be given notice and ‘an opportunity to appear and assert a position and attempt to change his paternity status. [Citations.]’ [Citation.]” (*In re Paul H.* (2003) 111 Cal.App.4th 753, 760.) An alleged father has no right, however, to continuance of a jurisdiction hearing to allow him to establish paternity before the hearing takes place. (*In re Karla C.* (2003) 113 Cal.App.4th 166, 179–180.) And even “ ‘[A] *biological* father’s “desire to establish a personal relationship with [his] child, without more, is not a fundamental liberty interest protected by the due process clause.” [Citation.]’ [Citation.]” (*In re A.S.*, *supra*, 180 Cal.App.4th at p. 359.)

Even assuming that the allegations of intentional infliction of injury on the child would require that Father be given an opportunity at some point in the proceedings, as a subsequently determined biological father, to contest those allegations,<sup>11</sup> he proffered no evidence on this issue in the section 388 hearing, and declined the opportunity to conduct discovery.<sup>12</sup>

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<sup>11</sup> See *Humphries v. County of Los Angeles* (9th Cir. 2008) 554 F.3d 1170, 1182–1183, 1185–1188, reversed in part on other grounds by *Los Angeles County v. Humphries* (2010) 131 S.Ct. 447 (persons inaccurately listed in the statewide child abuse registry under Pen. Code § 11169, subdivision (a) as having substantiated charges of child abuse were entitled to challenge inclusion as a matter of procedural due process). Also, nothing precludes Father from seeking reunification services as a biological father if he so desires. (§ 361.5, subd. (a) [“[u]pon a finding and declaration of paternity by the juvenile court . . . , the juvenile court may order services for the child and the biological father, if the court determines that the services will benefit the child”]; see *In re J.H.* (2011) 198 Cal.App.4th 635, 649–651.) The court expressly left that issue open in its January 12, 2012 disposition order. At a hearing on a section 388 petition for such services, Father presumably could present the evidence and arguments that he was unable to present at the jurisdictional hearing.

<sup>12</sup> The trial court did not expressly rule on that portion of Father’s section 388 petition that asked the court to “if necessary, allow father to re-open jurisdiction hearing on limited issue of sufficiency of evidence re causality and . . . order provision of

Moreover, we find that the basic premise of Father’s argument—that the court relied on the jurisdictional findings in denying him presumed father status—to be unsupported. The record clearly reflects that the court considered only the detention and jurisdiction *reports* at the hearing on presumed father status and that Father had a full and fair opportunity to contest the information contained in those reports at the hearing.

Before the hearing on Father’s request for presumed father status, Father served subpoenas duces tecum on the social worker and deputy county counsel, who responded with motions to quash. At the hearing, the court addressed this discovery matter first. The court granted the motions on the ground the subpoenas were procedurally improper, but stated that Father could seek access to the same documents under section 827. Father further complained that the Department had not provided him with copies of all reports in the case and argued his due process rights were being violated because information had been withheld. The Department responded that Father had been provided all relevant information in the Department’s possession. The court suggested that Father could seek a continuance, but Father’s counsel said that he was “prepared to proceed.”

At the Department’s request, the court took “judicial notice” of the detention and jurisdiction reports at the hearing. We infer that the court did not merely judicially notice the existence of the reports, but considered the content of the reports as evidence, as is typical in juvenile dependency hearings. (§§ 281, 355, subd. (b); Cal. Rules of Court, rule 5.684(c); *In re M.B.* (2011) 201 Cal.App.4th 1057, 1070–1071.) The Department represented that Father had received these reports, and Father did not challenge this representation. Father objected only to the court’s taking judicial notice of *conclusions* in the jurisdiction report or prior court findings based thereon.

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reunification services.” But counsel did not bring this to the court’s attention at the time the court denied presumed father status and Father’s appellate brief does not directly argue that the court erred by failing to address or impliedly denying these parts of the petition. In dependency litigation, “[a] party forfeits the right to claim error as grounds for reversal on appeal when he or she fails to raise the objection in the trial court. [Citations.]” (*In re Dakota H.* (2005) 132 Cal.App.4th 212, 221–222.)

Father was on notice that the Department intended to oppose his request for presumed father status by relying on the circumstances of Vera’s injury and Father’s relocation to Louisiana. Before Father told the court he wanted to proceed with the hearing, the Department said that Father had a “copy of the 388,” which we understand to be its “Report in Response to 388,” and said it intended to submit on that report. Father did not deny that he had received the report. In the report, the Department argued *inter alia* that the circumstances of the child’s injury and Father’s relocation to Louisiana weighed against granting him presumed father status. The evidence Father presented at the hearing was designed in part to rebut these arguments. In addition to his DNA test results and his statement regarding parentage,<sup>13</sup> he submitted a recently-filed consent to payment of child support and he elicited testimony from the social worker that a psychiatrist who had examined him in Louisiana opined that Father did not have an anger management problem. In lieu of eliciting further testimony from the social worker, Father made an offer of proof, which the court accepted: Father had provided the Department with several letters describing Father’s conduct in Louisiana—showing “that he is sober, that he is working, that he’s attending church, that he’s essentially a new man from the man who injured Vera back in October”—as well as the results of a hair follicle test showing he was negative for all controlled substances except marijuana, but the Department refused to meet with him to assess his fitness as a presumed Father in the event he traveled to California for the hearing.

In sum, we find no evidence in the record that the court relied upon the prior jurisdictional findings of intentional misconduct in its decision or that Father was denied a full and fair opportunity (including an opportunity for a continuance and further discovery) to contest the allegations against him regarding Vera’s injury, at least insofar as it related to his petition for presumed father status.

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<sup>13</sup> The court took judicial notice of the statement regarding paternity over the Department’s objections that it had not opportunity to cross-examine Father on his statements, as Father was not present at the hearing.

B. *Substantial Evidence Supports Denial of Presumed Father Status.*

“A man is presumed to be the natural father of a child” if he “receives the child into his home and openly holds out the child as his natural child.” (Fam. Code, § 7611, subd. (d).) With exceptions not relevant here, this presumption “is a rebuttable presumption affecting the burden of proof and may be rebutted in an appropriate action only by clear and convincing evidence.” (Fam. Code, § 7612, subd. (a).) A man seeking presumed father status bears the initial burden of proving by a preponderance of the evidence that he satisfied the requirements of Family Code section 7611, subdivision (d). (*Charisma R. v. Kristina S.* (2009) 175 Cal.App.4th 361, 368 (*Charisma R.*), disapproved on other grounds by *Reid v. Google, Inc.* (2010) 50 Cal.4th 512, 532, fn. 7; *In re Spencer W.* (1996) 48 Cal.App.4th 1647, 1653.) We review the trial court’s ruling on whether he met this initial burden for substantial evidence. (*Charisma R.*, at p. 368.) If the initial showing has been made, the burden shifts to the party opposing presumed father status to rebut the presumption by persuading the court the case is “an appropriate action” for rebuttal and producing clear and convincing evidence that supports rebuttal. (See *In re Nicholas H.* (2002) 28 Cal.4th 56, 62–64, 70.)<sup>14</sup>

We conclude that substantial evidence supports the trial court’s finding that Father did not meet his initial burden, and we thus do not need to address the rebuttal analysis.

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<sup>14</sup> An alleged father seeking status as a biological father after the reunification period must proceed by filing a section 388 petition. (*In re Zacharia D.*, *supra*, 6 Cal.4th at pp. 454–455; *In re Vincent M.* (2008) 161 Cal.App.4th 943, 955.) The court’s ruling on a section 388 petition is normally governed by the “best interests of the child” standard. (§ 388, subd. (a)(2).) In the absence of dilatory behavior on the part of the alleged father, however, presumed father status cannot be denied based on the best interest of the child even if the request for presumed father status is presented in the form of a section 388 petition. (*In re Julia U.* (1998) 64 Cal.App.4th 532, 540–544.) The potential presumed father’s substantive due process right to parent his child is at stake and cannot be disturbed except “in extreme cases of persons acting in an incompatible fashion with parenthood.” (*Id.* at p. 544.) Here, Father came forward almost immediately to seek presumed father status and the hearing took place early in the reunification period. Therefore, the Family Code section 7611 standard alone governs. The Department does not argue otherwise.

In reviewing a ruling for substantial evidence, “we are required to view the evidence in the light most favorable to those determinations. We draw all reasonable inferences, and resolve conflicts in the evidence, in favor of the trial court’s findings, and we do not reweigh the evidence.” (*In re A.A.*, *supra*, 114 Cal.App.4th at p. 782.)

It was undisputed in the trial court, and it is undisputed on appeal, that Father openly held out Vera as his natural child. (See Fam. Code, § 7611, subd. (d).) The trial court, however, found that Father did not receive the child into his home within the meaning of the presumed father statute. Substantial evidence supports this finding.

Although the requirement of receipt into one’s home could literally be satisfied by a de minimis visit or brief stay by the child in a father’s residence, it has been given more substantive meaning by the courts. Under Family Code section 7611, “the father’s rights flow from his *relationship . . . to the mother and/or child.*” (*In re Sarah C.* (1992) 8 Cal.App.4th 964, 972, italics added.) Subdivisions (a) through (c) of Family Code section 7611 turn on the father’s acts of formalizing the relationship through marriage or an attempted marriage. Subdivision (d) of that section is designed to identify a similar commitment to the parental relationship for unwed fathers. (See *In re Sarah C.*, at pp. 973, 975 [presumed father status properly denied where alleged father lacks a “substantial familial relationship to the child . . . [, and in] such [a] case, the provision of services does not ‘reunite’ a family but creates a new one”]; *In re A.A.*, *supra*, 114 Cal.App.4th at p. 787 [presumed father finding reversed as to biological father who never established himself as “a true *family* member”].) To satisfy this standard, receipt into the home must be substantial enough to signify assumption of parental responsibility for the child. (See *Charisma R.*, *supra*, 175 Cal.App.4th at p. 374 [“receipt 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”].)

At least two courts have upheld findings that fathers failed to receive a child into his home even though the fathers lived with the mother and child for some period of time. The *In re Sarah C.* court cited the following evidence as support for the trial court’s

finding that the biological father did not receive the child into his home: “Paul moved in with Sarah and her mother because he needed a place to stay. He lived with Sarah and Dawn for only a short period of time. He only once contributed any money to provide for a home (i.e., to pay for rent, food, etc.); people other than Paul (e.g., Dawn’s friends and Mr. C.) were the ones providing a home for Sarah. Paul lived with Sarah in the same home for only a brief period of time and once arrested for being absent without leave did not provide her with a home.” (*In re Sarah C.*, *supra*, 8 Cal.App.4th at p. 973.) In *In re Spencer W.*, the evidence similarly supported a finding that a possible biological father did not receive the child into his home, even though he lived with the child and mother for two years: “The evidence permitted the conclusion that Leonard did not receive the child into *his* home, but instead that mother permitted Leonard to reside in *her* home, and that Leonard’s residence with Spencer was not demonstrative of Leonard’s commitment to the child but reflected that Leonard acted out of personal convenience and self-interest. This conclusion is amply supported by these facts: (1) mother paid for the apartment (and apparently most other expenses); (2) she supported an unemployed Leonard; and (3) when mother’s funding ceased Leonard stopped residing with Spencer.” (*In re Spencer W.*, *supra*, 48 Cal.App.4th at p. 1653.)

Father properly notes that certain facts of this case distinguish it from *In re Sarah C.* and *In re Spencer W.* Here, Father held a job, contributed to the household, and helped care for Vera. Nothing in the record indicates that he was just visiting or that he maintained another home elsewhere. Moreover, the fact that Father (unlike the fathers in *In re Sarah C.* or *In re Spencer W.*) indisputably openly held out Vera as his own child supports the inference that he considered Mother’s home his home and planned to continue living there.

Nevertheless, Father had lived with Mother and Vera for only a little over two months of 19-month-old’s life and for none of Mother’s pregnancy. It is Father who bears responsibility for his incarceration, which could not have been unexpected, since he was a fugitive from justice when Mother was impregnated. (See *In re Kobe A.* (2007) 146 Cal.App.4th 1113, 1123 [alleged father did not receive child into home due to his

incarceration]; *Glen C. v. Superior Court* (2000) 78 Cal.App.4th 570, 585–586 [father did not receive children into his home in part because he committed crimes leading to his incarceration during the children’s early lives].) Father argues it is irrelevant that he received Vera into his home for only a short period. He cites *Charisma R.*, which held there was no specific durational requirement for this element of Family Code section 7611, subsection (d). (*Charisma R.*, *supra*, 175 Cal.App.4th at p. 374.) He also cites *In re A.A.*, which held that a father qualified under the same statute based on the child’s regular visits to his home even though they never lived together. (*In re A.A.*, *supra*, 114 Cal.App.4th at p. 784.) However, each case is distinguishable. In *Charisma R.*, a same-sex couple had lived together for five years and planned the pregnancy with the intent they would jointly parent the child. The nonbiological mother was present at birth and cared for the child in the couple’s joint home for six weeks, at which point the biological mother moved out and denied her more than minimal further access to the child. (*Charisma R.*, at pp. 366–367, 374.) Despite the brief period of cohabitation with the child, we held, “The record overwhelmingly supports the trial court’s findings that Charisma welcomed Amalia into her shared home with Kristina and consistently acknowledged her parental relationship and responsibilities to the child.” (*Id.* at p. 377.) In *In re A.A.*, the presumed (nonbiological) father’s visits took place regularly over a period of years, apparently since the child’s birth except for one year when he was incarcerated. (*In re A.A.*, at pp. 777, 783–784.) Significantly, the child saw herself as part of a family unit that included the presumed father and his biological son, her half-sibling. (*Ibid.*)

Moreover, the trial court properly took into consideration other evidence that Father had not yet established any significant family relationship with Vera in the two short months he lived with her. There was evidence that he engaged in domestic violence with Mother in the home, that Vera incurred nonaccidental bruising and a head injury in the home (a result of either physical abuse or a failure to protect by Father), that he drank heavily while the child was in his care on the night she was burnt, and that he was grossly negligent (at best) in both allowing her to be burned and in failing to obtain prompt

medical care for her burns. This evidence undermines the inference that Father's cohabitation with Mother and Vera reflected a commitment to assuming full parental responsibility for his child.

Further undermining the inference that Father had assumed full parental responsibility for Vera is evidence that Father initially fled the home when police were called (although he later contacted and spoke to the police) and moved to Louisiana following the incident, rather than remaining in California and asserting presumed father rights. Even at the time of the section 388 hearing he had attended none of the dependency hearings, had not sought visitation with Vera, and had no plans to move back to California if granted presumed father status.

On these facts, we cannot conclude that the court erred in finding that Father was not Vera's presumed father because he did not receive her into his home within the meaning of Family Code section 7611, subdivision (d).

### **III. DISPOSITION**

The trial court's denial of Father's section 388 petition is affirmed.

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Bruiniers, J.

We concur:

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Simons, Acting P. J.

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Needham, J.