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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FIVE

D.R.,

Plaintiff and Appellant,

v.

M.G.,

Defendant and Respondent.

A143212

(San Mateo County
Super. Ct. No. F0123850)

D.R. (appellant) appeals the trial court’s order declining to find him the presumed father of two children (Minors). We affirm.

BACKGROUND¹

Appellant and Minors’ mother, M.G. (Mother), met in 2000 and engaged in a brief sexual relationship. Mother subsequently gave birth to twins, Minors. Both parties initially thought appellant was Minors’ biological father, but it was subsequently determined that was not the case. It is undisputed that appellant held Minors out as his

¹ “[W]e recite the facts in the light most favorable to the prevailing party, giving that party the benefit of every reasonable inference, and resolving conflicts in support of the judgment.” (*Greenwich S.F., LLC v. Wong* (2010) 190 Cal.App.4th 739, 747.) We note respondents’ brief did not contain a single citation to the record, despite asserting a number of facts. (See Cal. Rules of Court, rule 8.204(a)(1)(C) [“Each brief must . . . [s]upport any reference to a matter in the record by a citation to the volume and page number of the record where the matter appears.”].) Counsel is advised to comply with the relevant rules in the future. (*Doppes v. Bentley Motors, Inc.* (2009) 174 Cal.App.4th 967, 990 [brief without record cites may be stricken or disregarded].)

own children. Appellant generally maintained a separate residence from Mother and Minors and visited Minors at Mother's home. At times, appellant lived with Mother and Minors in Mother's home.

In December 2013, appellant initiated this action seeking presumed father status, custody, and visitation. Following an evidentiary hearing, the trial court found appellant failed to prove he received Minors into his home for purposes of Family Code section 7611, subdivision (d).² This appeal followed.

DISCUSSION

Section 7611, subdivision (d), provides a presumed parent is one who "receives the child into his or her home and openly holds out the child as his or her natural child." Appellant bore the burden of proving both elements. (*In re A.A.* (2003) 114 Cal.App.4th 771, 782 (A.A.)) We review the trial court's finding for substantial evidence (*ibid.*), and affirm.

Appellant emphasizes evidence that he held Minors out as his own children and has been a part of their lives. However, "to become a presumed father, a man who has neither married nor attempted to marry his child's biological mother must not only openly and publicly admit paternity, but must also *physically* bring the child into his home." (*Adoption of Michael H.* (1995) 10 Cal.4th 1043, 1051.) Appellant cites no evidence that he physically brought Minors into his home.³

Instead, appellant argues his time living in Mother's home with Minors satisfies this requirement. Two cases guide our analysis of this argument. First, in *In re Spencer W.* (1996) 48 Cal.App.4th 1647 (*Spencer W.*), Leonard lived for a period of time with the minor and the mother. (*Id.* at p. 1650.) The trial court denied Leonard presumed father status and the Court of Appeal affirmed: "Leonard was required to receive [the minor] into his home. The evidence permitted the conclusion that Leonard did not receive the

² All undesignated section references are to the Family Code.

³ Accordingly, appellant's reliance on *Charisma R. v. Kristina S.* (2009) 175 Cal.App.4th 361, which held there is no minimum duration for which a child must be received into the home of the person seeking presumed parenthood (*id.* at p. 374), is unavailing.

child into *his* home, but instead that mother permitted Leonard to reside in *her* home, and that Leonard's residence with [the minor] 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." (*Id.* at p. 1653.)

In *S.Y. v. S.B.* (2011) 201 Cal.App.4th 1023 (*S.Y.*), *S.Y.* sought presumed parent status for the minors. (*Id.* at p. 1026.) Although *S.Y.* maintained a separate residence from the minors and *S.B.*, their adoptive mother, the trial court found "that *S.B.*'s home served as the family home, and that *S.Y.* received the children into their joint home." (*Id.* at p. 1032.) The Court of Appeal found substantial evidence supported this finding: "While *S.Y.* did not live with *S.B.* and the children on a full-time basis, she slept at *S.B.*'s more than half the time, and was there most other nights and on weekends." (*Id.* at p. 1033.) The court distinguished *Spencer W.* because "*S.Y.* was not financially dependent upon *S.B.* She maintained a separate residence but chose to stay at *S.B.*'s, at least in part, to be with and help care for the children." (*Ibid.*) The Court of Appeal concluded, "*S.B.*'s house served as the parties' joint home, and thus, *S.Y.* received the children into *her home.*" (*Id.* at p. 1034.)⁴

The trial court found appellant's conduct unlike that of *S.Y.*, and substantial evidence supports this finding. Mother testified appellant lived with her and Minors only when "[h]e couldn't afford to live anywhere," and they "never lived together as a family or raised the children together." While appellant's testimony may have been to the contrary, on substantial evidence review "[w]e draw all reasonable inferences, and

⁴ We disagree with appellant's characterization of *S.Y.* as finding presumed parenthood "because all of the circumstances pointed to the fact that *S.Y.* had stepped up and assumed the responsibility of being a co[-]parent."

resolve conflicts in the evidence, in favor of the trial court's findings, and we do not reweigh the evidence." (A.A., *supra*, 114 Cal.App.4th at p. 782.)⁵

Appellant's visits with Minors at Mother's home, even assuming these occurred regularly, are also not sufficient. (A.A., *supra*, 114 Cal.App.4th at p. 786 [receives into the home element not satisfied by regular visits with the minor where "visits were in other people's homes, not in respondent's home"].)

Finally, appellant cites *In re Jerry P.* (2002) 95 Cal.App.4th 793, which held section 7611 unconstitutional to the extent it permits "a mother or third person to unilaterally deny [a person seeking presumed father status] that status by preventing him from receiving the child into his home." (*Id.* at p. 797.) As appellant cites no evidence that Mother or anyone else prevented him from receiving Minors into his home, *In re Jerry P.* is not applicable.

DISPOSITION

The order is affirmed. Mother shall recover her costs on appeal.

⁵ Appellant's challenge to Mother's credibility is unavailing, as testimony credited by the trial court "may be rejected only when it is inherently improbable or incredible, i.e., "unbelievable *per se*," physically impossible or "wholly unacceptable to reasonable minds." " " " " (*Nevarez v. Tonna* (2014) 227 Cal.App.4th 774, 786.)

SIMONS, J.

We concur.

JONES, P.J.

BRUINIERS, J.