

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.111.5.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

In the Matter of JEWEL M. et al., Persons
Coming Under the Juvenile Court Law.

2d Juv. No. B241488
(Super. Ct. No. JV50750)
(San Luis Obispo County)

SAN LUIS OBISPO COUNTY
DEPARTMENT OF SOCIAL SERVICES,

Plaintiff and Respondent,

v.

ROBERT G.,

Defendant and Appellant.

Robert G., the alleged father of Jewel M., J. G., and Jonah G., appeals from a juvenile court order denying him presumed father status and bypassing services. (Fam. Code, § 7611, subd. (d); Welf. & Inst. Code, § 361.5, subd. (b)(6).)¹ We affirm on the ground that appellant failed to show that he received the children into his home and openly and publicly acknowledged paternity. (*In re Spencer W.* (1996) 48 Cal.App.4th 1647, 1653.)

¹ All statutory references are to the Welfare & Institutions Code unless otherwise stated.

Procedural History

On March 28, 2011, San Luis Obispo County Department of Social Services (DSS) filed a petition for failure to protect Jewel, J., and Jonah (§ 300, subd. (b)), sexual abuse (§ 300, subd. (d)), and abuse of a sibling (300, subd. (j)). The petition was filed after appellant was arrested for sexually molesting Jewel and facing a 10 to 15 year state prison sentence. Although the children's mother believed appellant was the biological father, appellant's name was not on the children's birth certificates and he was absent much of the time due to alcohol-related crimes and domestic violence.

At the April 12, 2012 hearing on the petition, the trial court found that appellant was the alleged father of the children. Appellant did not contest the children's placement and waived services and future court appearances.

At the May 17, 2012 jurisdiction/disposition hearing, appellant filed a JV-505 Statement Regarding Parentage for presumed father status. (Fam. Code, § 7611, subd. (d).) The trial court denied the request because appellant's name was not on the children's birth certificates, there was no declaration of paternity, there was no paternity judgment or biological testing to establish parentage, and appellant was married to another woman when the children were born. The trial court found that granting appellant services would be contrary to the children's best interests.

Presumed Father Status

Appellant argues that the order denying him preferred father status is contrary to Family Code section 7611, subdivision (d).² On appeal, "we review the facts most favorably to the judgment, drawing all reasonable inferences and resolving all conflicts in favor of the order. [Citation.]" (*In re Spencer W.*, *supra*, 48 Cal.App.4th at p. 1650.)

² Family Code section 7611 provides in pertinent part: "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."

In dependency proceedings, fathers are divided into four categories: de facto fathers (a man who has assumed the role of father), alleged fathers, natural [i.e., biological] fathers, and presumed fathers. (*In re Jerry P.* (2002) 95 Cal.App.4th 793. 804.) The "term "alleged father" refers to "[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. . . . [Citation.]" (*In re Zacharia D.* (1993) 6 Cal.4th 435, 449, fn. 15.)

To establish presumed father status, appellant bears the burden of proving more than just some family relationship. (See e.g., *In re Spencer W.*, *supra*, 48 Cal.App.4th at pp. 1654-1655 & fn. 5.) Appellant is an alleged father because he did not actively and consistently hold himself out as the children's father, is not listed on the children's birth certificates, has never signed a declaration of paternity or had a judgment of paternity entered against him, and did not request or submit to paternity testing. Appellant was married to another woman when the children were born and told the children's mother and others that Jewel is not his child. Appellant was also incarcerated when J. and Jonah were born. When not in prison or jail, appellant stayed with the family on and off, drank and used drugs, committed acts of domestic violence, and jeopardized mother's Section 8 housing because he was not supposed to be living there.

It is uncontroverted that appellant physically and verbally abused the children, was convicted of physically abusing Jewel in 2011, and sexually molested Jewel on various occasions. "[T]he current allegations of molestation were found to be true by clear and convincing evidence when the dependency petition was sustained, and are not challenged on appeal. [Appellant's] conduct was antithetical to a parent's role and was a blatant violation of parental responsibilities. It more than counterbalanced the factors favoring [appellant's] presumed father status. . . . 'In dependency proceedings . . . the purpose of [Family Code] section 7611 . . . is to determine whether the alleged father has demonstrated a sufficient commitment to his parental responsibilities to be afforded rights not afforded fathers - the rights to reunification services and custody of the child.' [Citation.] If an individual can qualify for presumed status based on his good deeds

consistent with parental responsibilities, it follows that under certain circumstances he can be disqualified by repugnant conduct that is detrimental to the child. [Citations.]" (*In re T.R.* (2005) 132 Cal.App.4th 1202, 1211-1212.)

Reunification Services

Appellant's assertion that the trial court erred in not granting services is without merit. A presumed father is entitled to reunification services, but not an alleged father or biological father. (*In re Paul H.* (2003) 111 Cal.App.4th 753, 760; *In re Jerry P.*, *supra*, 95 Cal.App.4th at p. 801.) When the juvenile court orders that the children remain in the custody of a parent subject to court supervision, the court may order services solely for the custodial parent. (§ 361.2, subd. (b)(3).) Had the trial court granted appellant presumed father status, appellant's sexual and physical abuse of the children would have warranted an order bypassing services. (§ 361.5, subd. (b)(6).)

Appellant waived services at the first hearing on the petition, was incarcerated and awaiting trial on sexual molestation charges, and was subject to a criminal court no-contact order. We reject the argument that appellant can do an end run around the no-contact order based on the theory that he enjoys presumed father status. Paternity presumptions are driven not by biological paternity, but by the state's interest in the welfare of the child and the integrity of the family. (*In re T.R.*, *supra*, 132 Cal.App.4th at p. 1209.)

The judgment (order denying presumed father status) is affirmed.

NOT TO BE PUBLISHED.

YEGAN, J.

We concur:

GILBERT, P.J.

PERREN, J.

Linda D. Hurst, Judge
Superior Court County of San Luis Obispo

Joseph D. Mackenzie, under appointment by the Court of Appeal, for
Appellant.

Rita L. Neal, County Counsel, County of San Luis Obispo, and Leslie H.
Kraut, Deputy County Counsel. for Respondent.