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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

In re A.W. et al., Persons Coming Under
the Juvenile Court Law.

SAN BERNARDINO COUNTY
CHILDREN AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

K.S.,

Defendant and Appellant.

E065662

(Super.Ct.Nos. J262754,
J262755 & J262756)

OPINION

APPEAL from the Superior Court of San Bernardino County. Steven A. Mapes,
Judge. Affirmed.

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

Jean-Rene Basle, County Counsel, Danielle E. Wuchenich, Deputy County
Counsel, for Plaintiff and Respondent.

The juvenile court denied the request of defendant and appellant K.S. (Father) for presumed father status of AW1, AW2, and AW3 (the children). (Fam. Code, § 7611.)¹ Father contends the juvenile court's denial of his request is not supported by substantial evidence. We affirm the judgment.

FACTUAL AND PROCEDURAL HISTORY

AW1 is male and was born in December 2001. AW2 is female and was born in October 2004. AW3 is male and was born in March 2006. In October 2015, it was reported to San Bernardino County Children and Family Services (the Department) that M.W.'s (Mother) boyfriend choked Mother and threw AW1 to the floor when AW1 tried to defend Mother. In October 2015, Father was incarcerated in a California prison. The Department removed the children from Mother's custody and placed them in foster care. At the detention hearing, the juvenile court ordered the children continue to be removed from Mother.

On November 12, Father signed a form reflecting he waived his right to be physically present at the juvenile court proceedings. On November 23, Father filed a Statement Regarding Parentage, in which he requested the court grant him presumed father status for the children. On the form, Father asserted he lived with the two older children from 2001 through 2005, took trips with the two older children, told his family and Mother's family the children were his, and gave the children "di[a]pers, toys, [and]

¹ All subsequent statutory references will be to the Family Code unless otherwise indicated.

love.” Father signed the form, but there is nothing indicating the form was signed under penalty of perjury.

In a separate letter, Father requested a transportation order from prison so that he could attend the court proceedings. Father explained that he wanted to be transported so that he could “show [the court] that [he has] always loved [his] kids.”

The Department’s Jurisdiction/Disposition report reflects Mother told the Department that Father is the father of the children. Mother and Father were not married when the children were born. Father is not listed on any of the children’s birth certificates. Father does not provide support for the children, and Father has not had contact with the children for the majority of their lives. The Department recommended Father remain an alleged father.

The December 1, 2015, jurisdiction and disposition hearing was continued to December 18 so Father could participate in the proceedings. On December 17, the juvenile court received a letter from Father wherein he requested to submit a voluntary declaration of paternity for the children, although the declaration was not included with the letter. The December 18 hearing was held, but Father was not present because 30 days are needed for a transportation order. Father’s attorney explained that Father would like to participate in the hearing and would like to be given presumed father status. Father’s attorney asked for time to have a transportation order issued.

Mother’s attorney made an offer of proof reflecting: (1) Father was not on the children’s birth certificates; (2) he had not visited the children for the eight-year period leading to the hearing; (3) when Father did reside with the children, “he was in and out

because he had another family”; and (4) Father never provided financial support for the children because he was unemployed during the entirety of the children’s lives.

Father’s attorney asserted Father had a right to testify about why he believed he was a presumed father. The court continued the matter until January 22; the court issued an order for Father to be transported on January 22.

The transportation order was returned to the court because Father waived his appearance. Father signed a waiver form on January 12 reflecting he did not want to be present at the contested jurisdiction/disposition hearing. A prison official explained that Father wanted to participate in the juvenile court hearing, but did not want to interrupt his classes, such as substance abuse and anger management classes.

On January 22, the juvenile court received a letter from Father. In the letter, Father requested the hearing be continued until April, when he was scheduled to be released from prison. The January 22 hearing was held and Father was not present. Father’s attorney explained that Father waived his presence at the hearing because if Father were absent from his prison programs then he would lose his place in the programs and could not complete them.

The court asked if Father’s attorney had evidence concerning presumed father status. Father’s attorney replied that she had Father’s letter reflecting he lived with the children, held the children out as his own, and that there was a 2011 child support case against him. The court asked if the attorney had evidence to support Father’s claims. The attorney did not have evidence to offer.

The children's attorney said Father was not on the children's birth certificates, was not present at the children's births, and had not contacted the children for eight years. The court said, "I'm not convinced of presumed status. There are too many questions there for me to allow him to be raised to presumed status. Even assuming his own sworn statements at face value, I'm not convinced he is presumed status. I have no real evidence before me that would sway me." The court found Father was an alleged father.

Father's attorney "objected" to the court's finding, but conceded she had no evidence to offer. The court said, "I don't really have good evidence that suggests presumed or setting up visits when he gets out if he hasn't seen the children, so I will overrule your request."

DISCUSSION

Father contends substantial evidence does not support the finding that he is merely an alleged father.

We review a trial court's ruling on presumed father status for substantial evidence. Under this standard, "[w]e view the evidence in the light most favorable to the ruling, giving it the benefit of every reasonable inference and resolving all conflicts in support of the judgment. [Citation.] We defer to the trial court's credibility resolutions and do not reweigh the evidence. [Citation.] If there is substantial evidence to support the ruling, it will not be disturbed on appeal even if the record can also support a different ruling." (*R.M. v. T.A.* (2015) 233 Cal.App.4th 760, 780.)

“An alleged father, by definition, means the possibility exists that the man is the biological father of the child. He has simply not shown that is the case to the degree of proof required for a judgment of biological paternity.” (*In re H.R.* (2016) 245 Cal.App.4th 1277, 1286.)

Mother told the Department that Father was the father of the children. At the detention hearing, the juvenile court ordered paternity tests for the children at the Department’s expense. The results of the paternity tests are not reflected in the Department’s Jurisdiction/Disposition report, and the results were not discussed at the January 22 hearing concerning presumed father status. Given Mother’s allegation that Father is the father of the children, and the lack of paternity test results, there is substantial evidence reflecting Father is an alleged father because the evidence reflects a possibility that he is the biological father of the children.

A father qualifies for presumed father status if he “receives the child into his . . . home and openly holds out the child as his . . . natural child.” (§ 7611, subd. (d).) A man seeking presumed father status bears the burden of proving by a preponderance of the evidence that he satisfied the requirements of section 7611, subdivision (d). (*In re Spencer W.* (1996) 48 Cal.App.4th 1467, 1652-1653.) If the father meets his burden, then the burden shifts to the Department, and it may rebut the presumption of fatherhood by clear and convincing evidence. (*Ibid.*)

As to the first prong—receiving the child into his home—there is inadequate evidence, and therefore a trier of fact could reasonably conclude Father has not met his burden of proving presumed father status. Father asserted the two older children lived

with him from 2001 through 2005. Mother asserted that from 2001 through 2005 Father had a second family, and therefore was “in and out” of the home. Father explains in one of his letters that he “won father of the year 2 times at [his] step-son’s school.” Only the three children at issue in this case were detained, and there is nothing indicating they have a half-sibling. Accordingly, it appears Father’s stepson is not Mother’s child, which provides support for the assertion that Father had a second family.

Additionally, on the portion of the “Statement Regarding Parentage” form that asks about activities and gives examples such as “school, daycare, sports,” Father wrote that he took trips with the children. Notably, Father did not mention daily or routine activities such as grocery shopping, bathing, playing in the park, or visiting friends. This provides further support for the assertion that Father was not residing with the two older children on a daily basis.

The juvenile court could reasonably conclude Father did not meet his burden of proving presumed father status because there are basic questions that remain unanswered. For example: (1) Father needs to clarify if he was residing solely with Mother and the two older children from 2001 through 2005; and/or (2) was Father merely visiting Mother and the two older children at their residence when he had contact with them from 2001 through 2005. Father’s failure to submit his own declaration, affidavit, or testimony, or evidence from other sources, such as his family members, caused there to be a lack of evidence to support his claim. Given the inadequate evidence in the record, the juvenile court could reasonably conclude that

Father failed to meet his burden of showing he received the children into his home. In sum, the juvenile court did not err.

Father contends that if he did not meet the requirements of section 7611, then he should be granted presumed father status so as to not render the children fatherless. Our “Supreme Court has repeatedly stated that section 7612(a) should not be applied to rebut a presumption of fatherhood arising under section 7611(d) where the result would be to leave children with fewer than two parents.”² (*In re J.O.* (2009) 178 Cal.App.4th 139, 148.) For example, where a man lacked a biological connection to a six-year-old boy, but had taken care of the boy for five years, and no other man came forward to claim presumed father status, the Supreme Court concluded the child should not be rendered fatherless. (*Ibid.*)

Father’s argument is not persuasive because it was found that Father did not meet his initial burden. We are not at the stage wherein Father met his burden and the evidence has been rebutted. Father failed to establish that he spent a substantive amount of time with the children by receiving them into his home. As a result, Father has failed to show that he has a substantive connection to the children. The information in the record reflects only that Father spent some time with the two older children at a residence between 2001 and 2005. It is unclear exactly how much time was spent with the two older children and whether they were in Father’s home. The court cannot grant

² Section 7612, subdivision (a), provides in relevant part, “[A] presumption under Section 7611 is a rebuttable presumption affecting the burden of proof and may be rebutted in an appropriate action only by clear and convincing evidence.”

what could merely be a friendly visitor presumed father status simply because no other person has come forward to claim fatherhood of the children.

DISPOSITION

The judgment is affirmed.

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MILLER
J.

We concur:

HOLLENHORST
Acting P. J.

CODRINGTON
J.