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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
SIXTH APPELLATE DISTRICT

In re JOSHUA C., a Person Coming Under  
the Juvenile Court Law.

H041721  
(Santa Clara County  
Super. Ct. No. 113 JD22841)

SANTA CLARA COUNTY  
DEPARTMENT OF FAMILY AND  
CHILDREN'S SERVICES,

Plaintiff and Respondent,

v.

JUAN P.,

Defendant and Appellant.

Appellant Juan P. challenges the juvenile court's order finding him not to be the biological father of Joshua C.<sup>1</sup> He claims that substantial evidence does not support the court's finding and that the court improperly considered its experiences in other cases. We affirm the court's order.

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<sup>1</sup> Juan also filed a petition for a writ of habeas corpus, which we considered with his appeal. We dispose of his petition by separate order.

## **I. Background**

K.C. (the mother) has been married to M.C. for more than a decade; Juan has been the mother's boyfriend since 2011. In January 2013, the mother gave birth to Mia C., her fourth child. Both the mother and Mia tested positive for methamphetamine at the time of Mia's birth. Mia also was diagnosed with fetal alcohol syndrome. There had been multiple prior referrals concerning Mia's three siblings based on domestic violence and substance abuse that rendered the mother unable to care for the children.

The Santa Clara County Department of Family and Children's Services (the Department) detained Mia and her three siblings and filed petitions asking the juvenile court to take jurisdiction of the four children under Welfare and Institutions Code section 300, subdivision (b) (failure to protect).<sup>2</sup>

At a February 2013 hearing, M.M. appeared and claimed to be Mia's biological father. He said that the mother had told him that he might be Mia's father. M.M.'s attorney was advised that he would need to file a motion to obtain DNA testing. M.M. took no further action. M.C. was found to be Mia's presumed father.

Juan subsequently asserted that he was the biological father of Mia and sought appointment of counsel. The mother told the social worker that Juan was Mia's father and M.C. was not Mia's father. In March 2013, the court appointed counsel to represent Juan and ordered paternity testing. The paternity test excluded Juan as Mia's father, and the court found that Juan was not Mia's biological father.

At the April 2013 jurisdictional hearing, M.C. and the mother submitted the matter on the social worker's report, and the court took jurisdiction over the four children, who were removed from parental custody and placed in the homes of relatives. In May 2014,

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<sup>2</sup> Subsequent statutory references are to the Welfare and Institutions Code unless otherwise specified.

the four children were returned to M.C. with family maintenance services, and the mother's reunification services were terminated.

The mother gave birth to Joshua in September 2014. In October 2014, the Department filed a petition under section 300, subdivisions (b) (failure to protect) and (j) (abuse of sibling) as to Joshua based on the mother's substance abuse and domestic violence. Joshua was not detained but remained in the custody of the mother, who was living at a residential treatment program. Because Juan was considered a possible biological father of Joshua, a paternity hearing was set for December 3, 2014.

Juan was notified of the December 3, 2014 paternity hearing, and he appeared at the hearing with an attorney. M.C. sought to be named the presumed father of Joshua. Juan's attorney told the court that Juan "wishes to be named the father of this child and he does not -- his position is that no biological test is necessary because he knows that he is the father." The court explained to Juan that "[t]here are two ways for to [sic] you establish -- to try to establish paternity; one is to participate in a DNA test where they take a swab from your mouth and then determine whether biologically you are Joshua's father. Another option is for to [sic] you simply tell me what you want me to know and then for me to make a decision." The court also told Juan that "the law would most likely support a presumption that [M.C.'s] the father." "So your choice today is either to tell me what you want me to know or to do a DNA test, but I want you to understand you have the right to request a DNA test. If you give up that right today, you give up that right forever because if I make a decision today my decision today is good in all courts all over the world, forever. So this is your one chance to establish paternity. Most parents choose to do a DNA test because it provides a high degree of certainty. If you just want to offer information to me, then I will weigh that information in light of the other information that I receive and I'll make a decision and that decision will be final."

The court then asked Juan if he wanted a DNA test. Juan replied: "I don't know because too many issues my other kids and Mia. I don't trust the DNA test because I

have paperwork from her saying my daughter reports from this year saying that Mia should have reunification with biological father.” The court interjected that this hearing concerned only Joshua, not Mia. The following colloquy then occurred: “[JUAN]: I don’t know what to do honestly because -- [¶] THE COURT: Hold on. Stop for a moment. You have an attorney. You’ve been consulting with your attorney this morning. Your attorney has given you advice. So I’m asking you now do you want me to order a DNA test or do you want to simply tell me your side of the story today? [¶] [JUAN]: I just want to tell you my side of the story today because I think you need to know. [¶] THE COURT: You understand if we go forward today that you give up your right to request a DNA test forever. Do you understand that? [¶] [JUAN]: I guess, yeah.”

Juan proceeded to testify regarding his belief that he was Joshua’s biological father. He testified that he had had sexual relations with the mother “approximately” nine or 10 months before Joshua’s birth. Juan testified that he knew that the mother was having sex with someone else at the same time, but he believed that Joshua was his son “[b]ecause the time that she thought she was pregnant my baby and is the perfect time.” “[O]ne day we have sex and then she say I think I pregnant and she got pregnant.” Juan said the mother had told him she was pregnant on “like the 30 of December.” She told him “[t]hat I’m going to have another baby with her and I was happy you know.”

The mother testified that she had been married to M.C. for 11 years and that Joshua had been conceived during her marriage to M.C. She testified that it was “a possibility” that Juan was Joshua’s biological father. The mother explained that she had been having sex with both Juan and M.C., but no one else, at the time of Joshua’s conception. It was also “a possibility” that M.C. was Joshua’s biological father. The mother testified that M.C. had had a vasectomy six years earlier. However, he had never gone back to check whether the vasectomy was successful, and the mother knew that vasectomies were not always successful because her own father’s vasectomy had not

been successful. There was no objection to this testimony. The mother also testified without objection that a DNA test had ruled out Juan as Mia's father despite Juan's belief that he was Mia's father. M.C. testified that he had had a vasectomy six years earlier after the birth of their third child. Juan's attorney asked M.C.: "As far as you know was that procedure successful?" M.C. responded: "I assume it would have."

The court found that Juan "has failed to meet his burden to prove that he is the biological father of Joshua. And the reason for that is he has a strong belief that he is the father. That belief has been wrong in the past. He strongly believes that he was Joshua's sibling Mia's father and he was excluded by DNA testing. So [Juan's] belief is not enough to establish biological paternity. He declined a DNA test. His reason for declining that test the Court does not find to be credible. So I'm left with two [possible] biological fathers. [M.C.] has had a vasectomy but the Court, based on experiences in other cases is aware that vasectomies are not always one hundred percent successful. So the evidence leads me to conclude that either [M.C.] or [Juan] may be the biological father, but [Juan] has the burden to prove by a preponderance of the evidence that he is the biological father and I find that the evidence submitted today does not meet that burden. So the Court will deny [Juan's] request that he be declared the biological father of the child."<sup>3</sup> Juan timely filed a notice of appeal from the court's finding of nonpaternity.

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<sup>3</sup> The court noted: "The request was for a finding of biological paternity. So we don't get to weighing one right against the other until the Court makes a determination as to whether there's biological paternity." Hence, the court did not weigh M.C.'s presumed father status against Juan's status when it made the nonpaternity finding. The court subsequently found M.C. to be the presumed father of Joshua based on his marriage to the mother.

## II. Discussion

“If a person appears at a hearing in a dependency matter . . . and requests a judgment of parentage on form JV-505, the court must determine: [¶] (1) Whether that person is the biological parent of the child; and [¶] (2) Whether that person is the presumed parent of the child, if that finding is requested.” (Cal. Rules of Court, rule 5.635(h).) “To determine parentage, the juvenile court may order the child and any alleged parents to submit to genetic tests and proceed under Family Code section 7550 et seq. [¶] . . . The court may make its determination of parentage or nonparentage based on the testimony, declarations, or statements of the alleged parents.” (Cal. Rules of Court, rule 5.635(e).)

In this case, Juan requested a finding that he was the biological parent of Joshua. Since he was the party seeking the finding, he bore the burden of proof. (Evid. Code, § 500.) He declined the court’s offer to order genetic testing. Instead, he elected to have the court make the parentage determination based on testimony. The court found that the testimony presented did not support Juan’s claim that he was the biological father of Joshua.

### A. Substantial Evidence Challenge

Juan contends that the evidence does not support the court’s decision. “[W]here the issue on appeal turns on a failure of proof at trial, the question for a reviewing court becomes whether the evidence compels a finding in favor of the appellant as a matter of law. [Citations.] Specifically, the question becomes whether the appellant’s evidence was (1) ‘uncontradicted and unimpeached’ and (2) ‘of such a character and weight as to leave no room for a judicial determination that it was insufficient to support a finding.’ [Citation.]” (*In re I.W.* (2009) 180 Cal.App.4th 1517, 1528.)

Juan’s showing at the paternity hearing left ample room for a finding that he had not established he was Joshua’s biological father. His evidence consisted of (1) his belief

that he was Joshua's biological father, (2) his and the mother's testimony that they had engaged in sexual relations sometime around the time of Joshua's conception, (3) the mother's testimony that she had been having sex with only Juan and M.C. at that time, and (4) testimony by the mother and M.C. that M.C. had had a vasectomy prior to Joshua's conception.

All of Juan's evidence was at least partially impeached or contradicted by other evidence. Juan had believed he was Mia's biological father, but his belief had been proven inaccurate by a paternity test. The mother's testimony that she had engaged in sexual relations with only Juan and M.C. at the time of Joshua's conception was open to question given her lack of credibility. The mother had not been a reliable source of information about Mia's biological father's identity. She had told both Juan and M.M. that they were Mia's biological father. Although there was testimony that M.C. had had a vasectomy, it was undisputed that he had never confirmed that the vasectomy had been successful. Juan's adamant refusal to have a paternity test suggested that he was aware that the test results would not support his claim to biological paternity.

The juvenile court was entitled to conclude that Juan's disputed evidence lacked the character and weight necessary to support a finding that he was Joshua's biological father. Accordingly, we reject Juan's challenge to the sufficiency of the evidence to support the court's nonpaternity finding.

### **B. Fallibility of Vasectomies**

Juan contends on appeal that the juvenile court judge prejudicially erred in considering his own knowledge from other cases that vasectomies are not always successful. The juvenile court stated: "[M.C.] has had a vasectomy but the Court, based on experiences in other cases is aware that vasectomies are not always one hundred percent successful." Assuming *arguendo* that the court erred in relying on its "experiences in other cases," we find no prejudicial error in this case. The mother

testified, without objection, that her own father had had an unsuccessful vasectomy. Hence, there was evidence before the court *in this case* that vasectomies are not always successful. The court's reliance on its "experiences in other cases" was merely cumulative of this testimony. Juan did not attempt to counter this evidence. Juan has failed to establish that the juvenile court's nonpaternity finding was a result of its reliance on its "experiences in other cases." Hence, any error was harmless.

### **III. Disposition**

The juvenile court's order finding that Juan was not Joshua's biological father is affirmed.

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Mihara, J.

WE CONCUR:

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Bamattre-Manoukian, Acting P. J.

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Grover, J.

In re Joshua C.

H041721