

**I. THE JUVENILE COURT ERRED IN DENYING PRESUMED FATHER STATUS TO PETITIONER.**

The juvenile court ordered that K. was L.'s presumed father by virtue of his having filed a voluntary declaration of paternity, and based on the court's belief that it was not in L.'s best interest to have two presumed fathers. (RT .) The court also ordered that W. was J.'s presumed father, because genetic testing showed that W. was J.'s biological father, W. "asked for genetic testing" and "stepp[ed] forward and indicat[ed] that he wants to have a role—a stronger role in the child's life." (RT .) The court concluded that since T. "knows he is not the biological father," he is not entitled to presumed father status. (RT .)

Family Code section 7611 sets forth the various situations in which a man will be recognized as the presumed father of a child. In addition to the presumptions created by sections 7540 [child of a woman cohabiting with her husband who is not sterile or impotent] and 7570 [establishment of paternity by voluntary declaration], a presumption of paternity arises where a man who neither legally marries or attempts to legally marry the mother of the child both "receives the child into his home and openly holds out the child as his natural child." (*In re Tanis H.* (1997) 59 Cal.App.4th 1218, 1228, quoting Fam. Code § 7611, subd. (d).) For the rebuttable presumption to arise, the putative father must establish these two elements by a preponderance of the evidence. (*In re Spencer W.* (1996) 48 Cal.App.4th 1647, 1652.)

Family Code section 7612, subdivision (a) provides, in pertinent part that, "a presumption under Section 7611 [subdivision (d)] is a rebuttable presumption affecting

the burden of proof and may be rebutted in an appropriate case only by clear and convincing evidence.” In other words, once the man claiming presumed father status presents evidence giving rise to the presumption under section 7611, the burden shifts to the party or parties opposing presumed father status to produce clear and convincing evidence to rebut the presumption.

Both of the elements required under subdivision (d) of section 7611 [receiving the child into the home and holding him/her out as the parent’s natural child] were established in T.’s declaration [and/or testimony]. That declaration [and/or testimony] established . . . (CT .) These facts were likewise undisputed by any other party . . . . Indeed, the juvenile court’s findings were based upon facts irrelevant to the question whether T. received L. and J. into his home and held them out as his own natural children. Therefore, the juvenile court’s orders designating K. and W. presumed fathers were in error.

The significance of presumed father status in a dependency case is that only presumed fathers are eligible for reunification services. (Welf. & Inst. Code §361.5 subd. (a); *In re A.A.* (2003) 114 Cal.App.4th 771, 779-780.) The erroneous order here prejudiced petitioner’s access to the reunification services to which he was entitled.