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*Biological father did not qualify as presumed father ...*

**In reversal, the Second District held the trial court erred by excluding authenticated, relevant text messages evidencing threats to mother; after such evidence is considered, the record did not show father promptly demonstrated a full commitment to parental responsibilities as required to constitute a *Kelsey S.* father [natural father who makes full and timely commitment to assume parental responsibilities has right to withhold consent to adoption]**

***Adoption of X.D.***

**(September 29, 2025)**

**California Court of Appeal 2 Civ B343632, B343634, Div 8, 114 Cal.App.5th 812, 337 Cal.Rptr.3d 348, 2025 FA 2201, per Rubin (Wiley, Acting P.J., and Viramontes, J., concurring). Los Angeles County: Blackwell, J., reversed. For Jessica W. (Appellant): Dwayne Anton Anderson and Joseph T. Tavano. For Cliff and Rebecca (Appellants): Mark Everett Goldman, Robert R. Walmsley, and John L. Dodd. For X.D. (Appellant): Janette F. Cochran and Annie Yu-Wen Huang. For Raymon M. (Respondent): Jill C. Cucullu and Leslie A. Barry. CFLP § G.168.0.15.**

Raymon M. and Jessica W. met while residing at a substance abuse program. They developed a sexual relationship, became a couple, but never married. At the time, Raymon was recovering from cocaine and alcohol addiction. He also had a lengthy criminal record, which included convictions of kidnapping and forcible rape/unlawful sexual abuse.

Raymon was physically and emotionally abusive toward Jessica during their relationship. This included choking her on three occasions and calling her derogatory names.

On September 7, 2021, Jessica learned she was pregnant with X.D. after taking a home pregnancy test. Raymon was present and reviewed the results with Jessica. Jessica was not happy about the pregnancy and, in front of Raymon, began “looking up doctors to abort.”

On September 21, 2021, Jessica and Raymon, Jr. (baby Ray), the couple’s then-only child, were seated in the backseat of a vehicle that Raymon was driving. After an argument ensued, Raymon struck Jessica in the mouth, causing a bloody lip. Jessica fled with baby Ray to a nearby fast-

food restaurant and called the police. Raymon drove off because he was concerned the police were going to arrive.

Jessica and baby Ray resided at a domestic violence shelter for the next month. During that time, Jessica was not permitted to have contact with Raymon. Jessica and baby Ray then moved to a sober living facility where they lived for the next year and a half.

When Jessica was three months pregnant with X.D., Raymon's sister sent her screenshots of text messages Raymon's sister had received from Raymon from his cell phone number. Raymon's cell phone number was saved in his sister's phone as "Lil big Brother." In these text messages, Raymon accused Jessica of cheating on him and threatened to kill her and their unborn baby.

In the ensuing months, Raymon attempted to contact Jessica, leaving voicemails for her, apologizing for his actions. On November 7, 2021, Raymon left the following message: "I don't even know if you're still pregnant or not." On December 1, 2021, Raymon left another voicemail, saying that Jessica could use his EBT card "for you and my son." On December 15, 2021, Raymon left a message stating, "I hope your pregnancy is going smooth. If you're still are pregnant. I hope you are, but if you're not, I still love you."

On May 10, 2022, Jessica gave birth to X.D. whose birth certificate lists Jessica as mother and the father as "unknown." Prior to the birth, Jessica had been working with an adoption agency. In her declaration to this agency, Jessica stated that she was "unable to identify the birth father." X.D. was released from the hospital two days after birth and immediately placed with prospective adoptive parents, Cliff D. and Rebecca W. On May 13, 2022, Jessica executed a relinquishment form, naming Cliff and Rebecca as X.D.'s prospective adoptive parents.

From May 2022 through December 2022, Jessica received over \$7,400 from Raymon's mother, who told her some of the money was from her and some was from Raymon. According to Jessica, Raymon's mother told her the money was to "buy diapers, buy food, buy whatever you need for you and [baby Ray]." Raymon's mother never told Jessica that the money was for X.D.

During a visitation between Raymon and baby Ray, Raymon asked Jessica, "So whatever happened to the baby?" Jessica said, "The Baby is not here no more." Raymon did not ask any follow-up questions at the time and he later testified that he believed Jessica had miscarried.

Raymon learned for the first time of X.D.'s existence on January 12, 2023, when Cliff and Rebecca served him notice of paternity action. In response, Raymon filed a declaration saying he is "100% against and contest[s] any adoption." On March 6, 2023, Cliff and Rebecca filed a petition to determine the parental rights of Raymon and whether his consent was required for adoption. On

January 17, 2024, Raymon sent Cliff and Rebecca a greeting card for X.D. along with \$250. Raymon also sent \$250 in February 2024, April 2024, July 2024, and October 2024.

On May 15, 2024, Cliff and Rebecca filed a petition for freedom from parental custody and control pursuant to [Fam C § 7822](#).

Trial was held in November 2024 and December 2024 with the trial court hearing argument as to the admissibility of the screenshots of text messages between Raymon and his sister. Raymon's sister did not testify at trial and Raymon denied sending these messages. Specifically, Raymon's counsel argued, "[T]here's nothing to indicate that it's from [Raymon's sister] to Jessica. There's absolutely no authentication for where it comes from." The trial court agreed and excluded the screenshots based on lack of authentication and hearsay. On December 6, 2024, the trial court (Los Angeles County's Blackwell) ruled that Raymon qualified as a presumed father pursuant to [Adoption of Kelsey S. \(1992\) 1 Cal.4th 816, 4 Cal.Rptr.2d 615](#) [if an unwed biological father, who was precluded from asserting his parental rights as a result of the mother's actions, promptly comes forward and demonstrates a full commitment to his parental responsibilities, due process prohibits the termination of his parental relationship absent a showing of his unfitness as a parent]. In so ruling, the trial court expressed Jessica "had all reason to leave and I do not fault her for leaving," but concluded she lied to the adoption agency. The trial court also found that father financially provided for Jessica by sending more than \$7,400 to her and in some of his messages to Jessica, Raymon emotionally supported her. Cliff, Rebecca, Jessica, and X.D. appealed, and the Second District reversed.

### **A writing may be authenticated without author testimony ...**

The justices began their analysis by describing the applicable law relating to authentication of a writing, noting that an author's testimony is not required to authenticate a writing. Instead, a writing may be authenticated by its contents, by witness testimony, or by other means. The justices added that the authenticity of a writing may be established by circumstantial evidence. Finally, the justices noted that the standard of review for a trial court's ruling on the admissibility of evidence is abuse of discretion. As a result, such ruling will not be "disturbed except on a showing the trial court exercised its discretion in an arbitrary, capricious, or patently absurd manner that resulted in manifest miscarriage of justice."

With these legal principles in mind, the justices concluded the trial court abused its discretion by excluding the screenshots of text messages between Raymon and his sister. In so concluding, the justices found that Jessica's testimony and the identifying information contained in the text messages were sufficient to authenticate them. As to the former factor, Jessica testified that she remained in contact with Raymon's sister after her breakup with Raymon. Jessica also testified that she knew Raymon "threatened to kill [her] and [her] unborn child." As the latter factor, the text messages themselves contained several identifying information. For example, Raymon

admitted the telephone number in the screenshot belonged to him. Moreover, the contact name was saved as “Lil Big Brother,” which Raymon testified “[d]efinitely my little sister calls me that sometimes.”

The justices also noted additional evidence supported that the exhibit was self-authenticating. Per [Ev C § 1421](#), “A writing may be authenticated by evidence that the writing refers to or states matters that are unlikely to be known to anyone other than the person who is claimed by the proponent of the evidence to be the author of the writing.” Here, the text messages in question referenced the fact that Jessica “left” him and expressed fears that Jessica was cheating on him. At trial, Raymon “acknowledge[d] and admit[ted] that...after Jessica left [him], [he] accused her of having left [him] for somebody else.” The text message also referred to the author calling Jessica from different phone numbers, a fact that Raymon admitted during his testimony at trial.

The justices next noted that once authenticated, the exhibit was admissible for various purposes. First, the exhibit was admissible to show Jessica’s mental state and her reasonable fear of Raymon, which in turn explained why Jessica lied about her pregnancy. Second, the exhibit was admissible for the truth of the matter under several hearsay exceptions, including a statement of a party opponent and to show Jessica’s state of mind and her conduct regarding communications with Raymon. Third, the exhibit was admissible to prove Raymon’s state of mind, including to make an inference how Raymon would act toward Jessica in the future. And fourth, the exhibit was admissible to prove that Raymon did not provide emotional or financial support for Jessica and X.D. On this final point, the justices noted, “[Raymon’s] threats and other statements were the antithesis of what *Kelsey S.* requires of a father.”

In reaching their conclusion that the screenshots in question should have been admitted, the justices rejected Raymon’s argument that they were “very prejudicial.” In so doing, the justices noted that “[n]ot every damaging piece of evidence is prejudicial under the Evidence Code.” Evidence is not prejudicial for purposes of [Ev C § 352](#) “merely because it undermines the opponent’s position or shores up that of the proponent.” Instead, [Ev C § 352](#) permits a court to exclude evidence if its probative value is substantially outweighed by the probability that its admission will create “undue prejudice.” Here, the justices noted the value of the evidence was high since it explained Jessica’s conduct and was relevant to whether Raymon qualified as a *Kelsey S.* father, while the risk of undue prejudice was low, considering “the experienced trial court was fully capable of not being *unduly* prejudiced.”

The justices next concluded that substantial evidence did not support the trial court’s determination that Raymon was a *Kelsey S.* father. In *Kelsey S.*, the Supreme Court created a new class of recognized fathers. Where a biological father does not meet the statutory criteria to qualify as a presumed father, he may still attain parental rights equal to those of mother by meeting the following criteria: (1) that he promptly stepped forward to assume full parental responsibilities for

his child's well-being; (2) the child's mother or some third party thwarted his efforts to assume his parental responsibilities; and (3) he demonstrated a willingness to assume full custody of the child. When deciding whether a father qualifies as a *Kelsey S.* father, the court considers the father's conduct both before and after the child's birth. Other factors the courts consider are the father's public acknowledgement of paternity, payment of pregnancy and birth expenses commensurate with his ability to do so, and prompt legal action to seek custody of the child. The California Supreme Court again address this issue in [Adoption of Michael H. \(1995\) 10 Cal.4th 1043, 43 Cal.Rptr.2d 445](#), wherein it clarified that a person seeking status as a *Kelsey S.* father must demonstrate his full commitment to his parental responsibilities "within a short time after he learned that the biological mother was pregnant with his child."

### **Father did not qualify as a *Kelsey S. father* ...**

Applying these principles, the justices concluded Raymon failed to meet his burden to show he is a *Kelsey S.* father. The justices noted that Raymon first learned that Jessica was pregnant on September 7, 2021, and, during the 14-months from then until Jessica informed him the baby was no longer here, Raymon made no meaningful efforts to investigate the status of the pregnancy or assert his parental rights. Instead, Raymon made only passive inquiries during that time. Moreover, Raymon did not ask any follow up questions of Jessica when she told him the baby "is not here no more."

The justices next noted that not only was Raymon unsupportive of Jessica during the pregnancy but he was physically and emotionally abusive toward her. For example, Raymon attacked Jessica two weeks after learning she was pregnant. After the attack, when Jessica ran into a fast-food restaurant to hide from Raymon, he drove off out of concern police would confront him. At other times during the pregnancy, Raymon threatened Jessica. For example, on September 24, 2021, Raymon left a voicemail for Jessica in which he called her several derogatory names and said, "I swear to God...I'm doing everything I can to hurt you, bruh." A month later, Raymon's sister sent Jessica screenshots of Raymon wherein Raymon stated, "cheating bitch when I ketch her ima kill that selfish bitch I hate her with all my hear I swea[r] I'll go to jail for life cheating ass bitch fuck everything ima make that bitch hurt that bitch is my enimie I ho she die and that baby she carrying die evel bitch." For these reasons, the justices noted that to the extent that Raymon found it difficult to contact Jessica during the pregnancy, it was due to his abuse and threats.

Lastly, the justices concluded that it is not in X.D.'s best interest for Raymon to retain his parental rights. Although the trial court did not have occasion to determine this issue since it found Raymon to be a *Kelsey S.* father, the justices determined that no reasonable trier of fact could find that it is in the best interest of X.D. for Raymon to retain parental rights. In reaching this conclusion, the justices relied on the report of an expert who was appointed to interview and conduct a psychological evaluation of the parties. The report noted that X.D. is now three and a half years old and since birth "knows no other parents than [Cliff] and [Rebecca]." The report further noted

that a disrupted attachment at X.D.’s age may result in “mourning and depression and long-term disruptions in trust and security.”

For these reasons, the Second District reversed the trial court’s order finding that Raymon was a *Kelsey S.* father and directed the trial court on remand to enter an order permitting the adoption to proceed.

### COMMENT ...

Several courts have denied *Kelsey S.* status to fathers who fail to demonstrate their commitment to parental responsibilities based on their own criminal conduct. Here, the justices noted “[i]t was Raymon’s own threats, misconduct, and violent behavior that drove Jessica to seek safety and peace by distancing herself and their unborn child from him.” In *Adoption of O.M.* (2008) 169 Cal.App.4th 672, 87 Cal.Rptr.3d 135, the First District held that a biological father did not qualify as a *Kelsey S.* father where his “ability to demonstrate his commitment was impeded...by the predictable consequences of his own criminal activity.” And *In re D.S.* (2014) 230 Cal.App.4th 1238, 179 Cal.Rptr.3d 348, the Sixth District denied *Kelsey S.* status to a biological father after noting “We tend to agree that a father whose own bad decisions preclude him from carrying out his parental responsibilities does not satisfy the high bar set by *Kelsey S.*”

### Library References

10 Witkin, Summary of Cal. Law (11th ed. 2025) P &C § 131

Hogoboom & King, Cal. Practice Guide: Family Law (The Rutter Group) ¶ 6:8.7

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