

2017 ANNUAL CHILD SUPPORT TRAINING CONFERENCE & EXPO



**PARTNERSHIP
OF HEROES**

MAY 1-4, 2017 • GARDEN GROVE, CALIFORNIA

CHILD SUPPORT DIRECTORS ASSOCIATION OF CALIFORNIA

Parentage: Less Popular but

Increasingly Relevant Parentage Issues

Jennifer Oberfell, Lead Child Support Attorney, Sonoma Co.

Lisa Saporito, Managing Attorney, City and County of San Francisco

Jon Riesenbeck, Child Support Attorney IV, Tulare Co.



Parentage by Estoppel

PARENTAGE BY ESTOPPEL

2017 ANNUAL CHILD SUPPORT TRAINING CONFERENCE & EXPO

Doctrine of Equitable Estoppel

“The doctrine of equitable estoppel is a rule of fundamental fairness whereby a party is precluded from benefiting from his inconsistent conduct which has induced reliance to the detriment of another.”

[IRMO Valle (1975) 53 CA3d 837]

Parentage by Estoppel

The conduct of the alleged parent, who is not the biological father of the child, may estop him from avoiding parental obligations.

Parentage by Estoppel

Elements of Parentage by Estoppel:

- The alleged father knows he is not the biological father.
- The alleged father represents to the child that he is his father and intends his representation to be relied upon by the child.
- The child relies upon that representation and treats the alleged father as his father.

Parentage by Estoppel

Elements of Parentage by Estoppel Continued:

- The child is ignorant of the fact that the alleged father is not his biological father.
- The alleged father's representation must be of such long continuance that it frustrates the realistic opportunity of the child to discover his biological father and establish a paternal relationship.

Parentage by Estoppel

Clevenger v. Clevenger (1961) 189 Cal.App.2d 658

- Child was conceived when Husband and Wife were separated. At the time of their separation, Husband was in the Service in the discipline barracks in Montana.
- At the time of the child's birth, Husband and Wife had reconciled.
- Husband knew he was not the biological father but accepted the child into the family for the next 11 years.

Parentage by Estoppel

Clevenger v. Clevenger (1961) 189 Cal.App.2d 658 continued...

- Wife filed for divorce on the grounds of extreme cruelty and asked the court for custody and child and spousal support.
- Husband filed an answer alleging cruelty and excessive drinking and denied paternity.
- Husband testified he accepted the child into his family, that he showed a lot of affection towards the child and he acted as the child's father to the best of his ability.

Parentage by Estoppel

Clevenger v. Clevenger (1961) 189 Cal.App.2d 658 continued...

- Trial court found Husband had accepted the child into his family and he had publicly acknowledged and treated the child as his own. The court ordered Husband to pay \$50.00 per month to Wife for child support.
- Husband appealed the support order stating Wife did not rely on his conduct toward the child nor did the Mother plead estoppel.

Parentage by Estoppel

Clevenger v. Clevenger (1961) 189 Cal.App.2d 658 continued...

Court of Appeals stated parentage by estoppel runs to the child, not the Wife. In addition, Wife did not need to plead estoppel because here the doctrine is being used as a defense to Husband's position that he should not have to pay child support.

Parentage by Estoppel

Clevenger v. Clevenger (1961) Cal.App.2d 658 continued...

Court of Appeals reversed the trial court's finding of Husband's financial responsibility towards the child. The court found that parentage by estoppel did not apply in this case because the record did not reflect, and the trial court did not find, that Husband represented to the child, expressly or by implication, that he was the child's natural father.

Parentage by Estoppel

Clevenger v. Clevenger (1961) 189 Cal.App.2d 658 continued...

The court further added that if Husband had made such a representation, that representation must be of such long continuance that it frustrates the realistic opportunity of discovering the natural father and establishing a paternal relationship.

Parentage by Estoppel

IRMO Valle (1975) 53 Cal.App.3d 837

- Husband and Wife brought the Husband's brother's children from Mexico on forged birth certificates listing themselves as the children's parents. The children were 3 years old and 1 year old.
- Husband and Wife treated the children as their own and the children fully accepted them as their own parents.
- Children did not know of or remember their biological parents.
- Husband, Wife and the children lived together as a family for 6 years until Husband and Wife separated.

Parentage by Estoppel

IRMO Valle (1975) 53 Cal.App.3d 837 continued...

- The trial court found Husband was estopped from denying he was the children's father and ordered him to pay child support of \$85.00 per child per month. Husband appealed.
- Court of Appeals affirmed trial court's finding that Husband was estopped from denying he was the father of the minor children because the record sustains all the elements of estoppel.

Parentage by Estoppel

IRMO Johnson (1979) 88 Cal.App.3d 848

- Husband and Wife married 10 days after child was born.
- Parties stipulated that Husband was not the biological father.
- Husband admitted his conduct was such that people assumed he was the child's father.
- Child called Husband "Daddy" and they had a mutual loving and affectionate relationship.
- Parties separated when child was 6 years old.
- Husband never told child he was not his father.

Parentage by Estoppel

IRMO Johnson (1979) 88 Cal.App.3d 848 continued...

- Husband participated in naming the child. Husband told the priest that he was the child's father during the child's baptism. Husband signed school papers as the child's father.
- The trial court found Husband was not the natural or putative father of the child.
- The Court of Appeal reversed and remanded to the trial court for a determination of child support finding that the elements of estoppel were present.

Parentage by Estoppel

IRMO Pedregon (2003) 107 Cal.App.4th 1284

- Wife met Husband when child was 10 months old and they began living together when child was 18 months old.
- Husband and Wife married when child was 22 months old. They separated when child was 12 years old.
- Child was unaware that Husband was not his biological father.
- Trial court found that Husband rebutted the presumption of paternity by establishing he was not the child's biological father.

Parentage by Estoppel

IRM O Pedregon (2003) 107 Cal.App.4th 1284 continued...

- Court of Appeals stated that the issue was not whether the presumption of paternity under FC §7611(d) had been rebutted but, rather whether Husband is obligated to pay child support based upon parentage by estoppel.
- Husband held himself out to be the child's biological father for over 12 years.
- Husband is the only father child has ever known and is unaware Husband is not his biological father.

Parentage by Estoppel

IRMO Pedregon (2003) 107 Cal.App.4th 1284 continued...

The Court of Appeals found there was substantial evidence supporting a finding of parentage by estoppel and thus the trial court abused its discretions in not ordering Husband to pay child support.

Parentage by Estoppel

County of San Diego v. Arzaga (2007) 152
Cal.App.4th 1336

- Mother and Arzaga met in 1985 and dated for approximately one year.
- In 1988 they resumed their relationship for some period of time.
- The child was born in 1989.
- In 1990, Mother and Arzaga resumed their relationship lasting 5 years with each staying at each other's houses several days during the week.
- After Mother and Arzaga's relationship ended in 1995, Arzaga continued to visit the child until the child turned 14 years old.

Parentage by Estoppel

County of San Diego (2007) 152 Cal.App.2d 1336
continued...

- Mother testified that Arzaga behaved like a father to the child and in return the child called him “Papi” and “Daddy”.
- Arzaga testified he told Mother he didn’t know if the child was his and he wanted a blood test. Mother told him blood tests were not necessary.
- Child testified that Arzaga never told her he was not her father.

Parentage by Estoppel

County of San Diego (2007) 152 Cal.App.2d 1336 continued...

- Trial court found that Arzaga was the father under the doctrine of parentage by estoppel and continued the hearing to determine child support. Arzaga appealed.
- Court of Appeals found that Arzaga did not know whether he was the child's biological father.
- The court stated it would be unfair to apply the doctrine to an individual whose conduct was based on his mistaken belief that he was actually child's biological father.

Speaker Contact Information

Lisa Saporito

lisa.saporito@sfgov.org

(415) 356-2905

ASSISTED REPRODUCTION

2017 ANNUAL CHILD SUPPORT TRAINING CONFERENCE & EXPO

Assisted Reproduction

FC §7606 defines assisted reproduction as “conception by any means other than sexual intercourse”.

The three most common forms of assisted reproduction are:

- assisted insemination
- in vitro fertilization
- and gestational carriers /surrogacy

Assisted Insemination

Insemination by donor conducted outside a licensed facility or hospital?



FC 7613 (a) discusses where insemination is done outside of a licensed facility and provides- If a woman conceives through assisted reproduction with semen or ova or both donated by a donor **not her spouse**, with the consent of **another intended parent**, that intended parent is *treated in law as if he or she were the natural parent of a child* thereby conceived.

Assisted Insemination

The Code provides, under this scenario: The donor parent's consent shall be in writing and signed by him and the woman conceiving through assisted reproduction.

This type of donor is now responsible and likely wants to be. What if this writing explicitly denies a relationship or responsibility?

Assisted Insemination

“ Craigslist Case” - Kansas

- Ad for sperm donation for same sex couple
- Specifically waived responsibility
- Couple splits up
- One mom goes on aid

Assisted Insemination

Analysis of case:

- Under Ca law, FC §7613 applies
- Not a licensed facility (in Kansas case the agency argued that Marotta was legally on the hook for child support — even though he never intended to act as the child's father — because the two women did not use a physician)
- Known donor
- Contract denying responsibility
- Difference is Kansas did not recognize same sex marriage

Assisted Insemination

STEVEN S. v. DEBORAH D. (2005) 127 Cal.App.4th 319

This case involves application of Family Code section 7613, subdivision (b).

Here the donor filed a petition to establish a parental relationship and the court held there was no claim for paternity as the donor was not married to the woman and it was provided to a LICENSED physician.

Assisted Insemination

FC §7613(b)-The donor of semen provided to a **licensed** physician and surgeon or to a **licensed** sperm bank for use in artificial insemination or in vitro fertilization of a woman other than the donor's wife is treated in law as if he were **not** the natural father of a child thereby conceived, unless otherwise agreed to in a writing signed by the donor and the woman prior to the conception of the child.



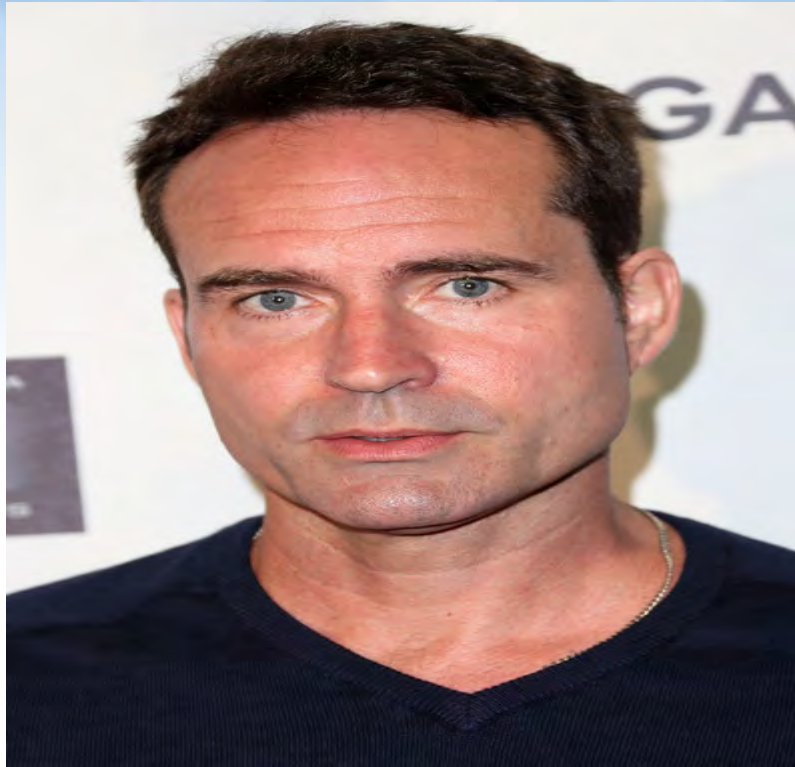
Assisted Insemination

Notwithstanding this finding, the trial court concluded public policy required that it not apply section 7613, subdivision (b). Instead the trial court recognized Steven as Trevor's natural father to be accorded all rights attendant thereto, concluding that Deborah was estopped from relying on section 7613, subdivision (b).

Reversed in favor of Deborah

Assisted Insemination

A donor can be a FC §7611 parent
(*Jason P. v. Danielle S.* (2014) 226 Cal.App.4th 167)



2017 ANNUAL CHILD SUPPORT TRAINING CONFERENCE & EXPO

Assisted Insemination

Is FC §7613 the exclusive means of determining paternity in cases involving sperm donors and unmarried women?

Assisted Insemination

NO-

Further, the court in this case held that the law does not preclude Jason from establishing that he is the presumed parent under section 7611(d) – which gives a person the opportunity to present evidence of his commitment to the child and the child's welfare

In Vitro Fertilization

Requires extracting sperm and ova from a man and a woman and combining them in the laboratory to create a preembryo, which is then implanted in a woman's uterus

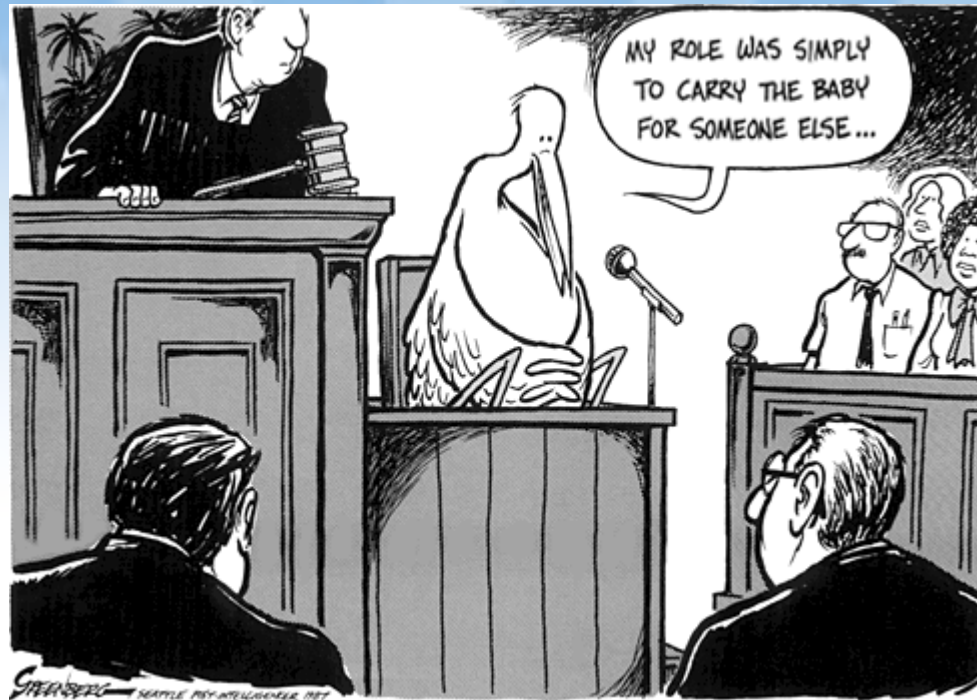
Biology not usually an issue

What if egg or sperm is donated?

Gestational Carriers or Surrogates

Gestational surrogacy is an arrangement in which a woman carries and delivers a baby for someone else. The woman who carries the baby is the gestational surrogate or gestational carrier. The parents-to-be are known as the "intended parents" and are involved in the pregnancy, are present at the birth, and become the child's parents after the baby is born.

Gestational Carriers or Surrogates



2017 ANNUAL CHILD SUPPORT TRAINING CONFERENCE & EXPO

Gestational Carriers or Surrogates

Two possible scenarios:

1. Surrogate is where the pregnant woman is the biological mother
2. Gestational carrier is carrying the biological child of two other people

Gestational Carriers or Surrogates

California Family Code §7962 governs surrogacy agreements and requires at least the following information:

- Date of agreement
- Whose eggs/sperm is being used
- Identity of INTENDED parents
- The surrogate or GC and the intended parents shall get separate attorneys
- Written / notarized contract
- Code provides Specific rules for when a challenge occurs as well

Gestational Carriers or Surrogates

Case challenging FC §7962- **Cook v. Harding** (*190 F. Supp. 3d 921*)

The defendants are Los Angeles County Public Health Director Cynthia Harding, Los Angeles County Clerk Dean Logan and Los Angeles County Department of Public Health Director Dr. Jeffery Gunzenhauser.

Cook (surrogate mother) challenged FC 7962 as violating due process and equal protection rights of surrogate mothers and the children they carry.

Gestational Carriers or Surrogates

Result:

case dismissed-The district court granted the defendants' motion to dismiss on the grounds that the matter should be decided by California courts (which so far have ruled against Cook). Rationale: if Cook won it could effectively end surrogacy in the state by allowing a surrogate mother to claim parental rights "at her whim."

Gestational Carriers or Surrogates

One of the most well known cases in California regarding surrogacy occurred in 1993. The case, Johnson v. Calvert, held that **the intended** parents as part of a gestational surrogacy agreement should be recognized as both the legal and the natural parents. In this case note, the surrogate was a **gestational carrier**-not a bio parent. The wife was the INTENDED mother and bio mother even though she did not give birth.

**Supreme Court of California
851 P.2d 776 (1993)**

Speaker Contact Information

Jennifer Obergfell

Jennifer.obergfell@sonoma-county.org

707-565-4056

Parentage Issues Involving More Than Two Parents



2017 ANNUAL CHILD SUPPORT TRAINING CONFERENCE & EXPO

Parentage Issues Involving More Than Two Parents

- Variety of ways parentage can be established. The more common ones include:
 - * Conclusive marital presumption
 - * Family Code section 7611 presumptions
 - * Voluntary declaration of paternity

Paternity Issues Involving More Than Two Parents

What happens when there are more than two presumed parents?

Before F.C. section 7612 was amended, if two or more presumed parents arose under 7610 or 7611, then “the presumption which on the facts is founded on the weightier considerations of policy and logic controls.” (F.C. section 7612(b).)

Paternity Issues Involving More Than Two Parents

Conflicting presumptions of paternity

Similarly, if there was a conflict between a 7611 parent and a voluntary declaration of paternity parent, then “the weightier considerations of policy and logic shall control.” (former F.C. section (d); current F.C. section (e).)

Paternity Issues Involving More Than Two Parents

Presumption conflicts with Judgment

“The presumption under Section 7611 is rebutted by a judgment establishing paternity of the child by another man.” (former F.C. section 7612(c).)

F.C. section 7636: “The judgment or order of the court determining the existence of nonexistence of the parent and child relationship is determinative for all purposes...”

Paternity Issues Involving More Than Two Parents

How were the courts limited under the former law?

- In re M.C. (2011) 195 Cal.App.4th 197
- Unwed bio mother conceives child with unwed father and they move in together. Unwed father holds the unborn child out as his own. Prior to the child's birth, bio mother moves out and does not tell father where she is moving to.
- Subsequently, bio mother marries her girlfriend. The child is born during the women's marriage, and they begin to raise the child together. All the while, father does not know where the mother or child is residing.

Paternity Issues Involving More Than Two Parents

In re M.C. (2011) 195 Cal.App.4th 197

- Eventually, the married women separate, and bio mother contacts father (who has since moved out of state) to ask for support. Father immediately begins providing financial support and then starts to fight for custody in a dependency action involving the child
- Ultimately, the juvenile court finds the child has three presumed parents: (1) presumed bio mother, (2) presumed mother under 7611(a) and (d), and (3) presumed father under *Kelsey S*; and orders visitation for all three parties. What does the appellate court do?

Paternity Issues Involving More Than Two Parents

Result?

- Appellate court reverses the order finding that the child had three presumed parents
- Appellate court remands the matter to the juvenile court to resolve the conflicting presumptions of paternity in accordance with Family Code section 7612.

Paternity Issues Involving More Than Two Parents

The Court's Rationale:

“The juvenile court declined to weigh the presumptions, content to leave (child) with three presumed parents. While we empathize with the desire to leave all options open...that conclusion was improper...” (*In re M.C.* (2011) 195 Cal.App.4th 197, 223)

“(T)he juvenile court must take the next step to reconcile the competing presumptions to determine which of them are founded on the weightier considerations of policy and logic. The Supreme Court has stated clearly that, ... ‘there can be only one presumed (parent).’” (*In re M.C.* (2011) 195 Cal.App.4th 197, 223)

Paternity Issues Involving More Than Two Parents

The Legislature Responds...

- In 2013, the Legislature introduces Senate Bill 274 which states at subdivision (b):
- “The purpose of this bill is to abrogate *In re M.C.* (2011) 195 Cal.App.4th 197 insofar as it held that where there are more than two people who have a claim to parentage under the Uniform Parentage Act, courts are prohibited from recognizing more than two of these people as the parents of a child, regardless of the circumstances.”

Paternity Issues Involving More Than Two Parents

Family Code section 7612(c)

- In 2014, the current version of Family Code section 7612(c) goes into effect:
- “In an appropriate action, a court may find that more than two persons with a claim to parentage under this division are parents if the court finds that recognizing only two parents would be detrimental to the child....

Paternity Issues Involving More Than Two Parents

Family Code section 7612(c) continued

“...In determining detriment to the child, the court shall consider all relevant factors, including, but not limited to, the harm of removing the child from a stable placement with a parent who has fulfilled the child’s physical needs and the child’s psychological needs for care and affection, and who has assumed that role for a substantial period of time. A finding of detriment to the child does not require a finding of unfitness of any of the parents or persons with a claim to parentage.”

Paternity Issues Involving More Than Two Parents

Requirements for a finding the child has more than two parents:

- Three parties with a claim to parentage
- Recognizing only two parents would be detrimental to the child
- Child would be harmed by removal from a stable placement
- Third parents have fulfilled child's physical needs for a substantial period of time
- Third parents have fulfilled child's psychological needs for care and affection for a substantial period of time

Paternity Issues Involving More Than Two Parents

In re Donovan L. (2016) 244 Cal.App.4th 1075 [4th App. Dist.]

- Husband and wife were married at time of child's conception and birth
- Husband was not the bio father of the child. Wife had an affair with the actual bio father during the marriage. Bio father was told by Wife that she was pregnant, but he did not seek involvement in the pregnancy.
- Bio father saw mother and child one year after the child's birth, saw a resemblance, took a paternity test, and it was confirmed that he was the bio father

Paternity Issues Involving More Than Two Parents

In re Donovan L. (2016) 244 Cal.App.4th 1075 continued

- After this meeting, bio father began to tell family and friends he was the child's bio father, and he then had a few visits with the child, unbeknownst to Husband
- Later that same year (2012), Wife and Husband had marital problems, and so Wife and child went to live with bio father for two weeks.
- Subsequently, law enforcement is called to the home and a dependency action is commenced. At the detention hearing, Husband is found to be the conclusively presumed father under 7540, the child is released to him, and ultimately the dependency action is dismissed.

Paternity Issues Involving More Than Two Parents

In re Donovan L. (2016) 244 Cal.App.4th 1075 continued

- 3 years later (2015), another dependency action is initiated when mother tests positive for drugs when giving birth to another child.
- At the detention hearing in March 2015, the court notes Husband is the conclusively presumed father and releases child to him provided that Wife moves out of the marital home.
- One month later, in April 2015, bio father appears at a disposition hearing and requests presumed father status under 7611(d)

Paternity Issues Involving More Than Two Parents

In re Donovan L. (2016) 244 Cal.App.4th 1075 continued

- At the continued disposition hearing in May 2015, bio father is awarded supervised visitation with the child so that child and bio father can develop a relationship.
- At the contested disposition hearing in June 2015, the court declared bio father to be a presumed father under 7611(d), holding that the child would suffer detriment were the court to rule that the child only had two parents.

Paternity Issues Involving More Than Two Parents

In re Donovan L. (2016) 244 Cal.App.4th 1075 continued

- In making its ruling, the court also stated, “I’m going to note that (bio father) does not have a strong relationship with this child.” (*In re Donovan L.* (2016) 244 Cal.App.4th 1075, 1082.)

- The court went on to explain why only supervised visitation had been granted: “At least maybe the first two, you want to see how the exchange goes...I’m not concerned that he’s a danger to the child but because he has to develop a relationship, and there is some testimony about the child’s reactions, I wanted to just cover that.” (*In re Donovan L.* (2016) 244 Cal.App.4th 1075, 1083.)

Paternity Issues Involving More Than Two Parents

In re Donovan L. (2016) 244 Cal.App.4th 1075 continued

- The appellate court holds that the juvenile court erred in declaring bio father a presumed father under 7611(d), and that this case did not qualify as one of those rare instances where 7612(c) should apply.
- “Because the juvenile court determined (child) did not have an existing relationship with (bio father), there is no substantial evidence to support a finding that ‘recognizing only two parents would be detrimental to the child’ within the meaning of section 7612, subdivision (c).” (*In re Donovan L.* (2016) 244 Cal.App.4th 1075, 1083.)

Paternity Issues Involving More Than Two Parents

Important take-aways

- We have a clarification of what an “appropriate action” is for three-parent cases
- “ ‘(A)n appropriate action’ for application of section 7612, subdivision (c) requires a court to find **an existing, rather than potential**, relationship between a putative third parent and the child...” (*In re Donovan L.* (2016) 244 Cal.App.4th 1075, 1089.)
- Court must examine the quality of the existing relationship
- No substantial evidence to support “detriment”

Paternity Issues Involving More Than Two Parents

Important take-aways continued

- 7612(c) allows a court to recognize three parents only in “rare cases”
- “Application of section 7612, subdivision (c) to the facts presented here would open the floodgates to virtually all biological fathers who may qualify as presumed fathers who may qualify as a presumed parent under section 7611 and seek to form a relationship with the child. Such an interpretation would apply far beyond the ‘rare case’ envisioned by the Legislature.” (*In re Donovan L.* (2016) 244 Cal.App.4th 1075, 1093.)

Paternity Issues Involving More Than Two Parents

Martinez v. Vaziri (2016) 246

Cal.App.4th 373 [6th App. Dist.]

- Mother and presumed father were in relationship for many years, but were not married.
- During that relationship, mother conceived a child with presumed father's brother. In a separate paternity action, genetic testing confirmed that the brother was the bio father.
- Bio father abandoned the mother during the pregnancy, and was subsequently incarcerated for extended periods of time. Judgment was entered in that action and Mother received sole legal and physical custody of the child.

2017 ANNUAL CHILD SUPPORT TRAINING CONFERENCE & EXPO

Paternity Issues Involving More Than Two Parents

Martinez v. Vaziri (2016) 246

Cal.App.4th 373 continued

- Despite knowing the child was not his bio child, presumed father accompanied mother to her prenatal appointments, was present at the birth, and lived with mother and child for the first 6 months of the child's life. Presumed father held the child out as his own to everyone, except for a small group of family and friends who knew he wasn't the bio father.

- After the first 6 months of the child's life, presumed father moved out of the home, but he continued to see the child 2-3 times per week.

Paternity Issues Involving More Than Two Parents

Martinez v. Vaziri (2016) 246

Cal.App.4th 373 continued

- Approximately 6 months later, presumed father spanked the child, leaving bruises, and he went through a 6-month period when he did not have contact with the child pursuant to a CPS case plan.

- Following the 6-month no-contact period, presumed father resumed his visits with the child, averaging 5-20 hours per week. Presumed father and mother also continued to communicate with a therapist for guidance on raising the child.

- Presumed father subsequently initiated his own proceedings to establish parentage of the child pursuant to 7612(c) and 7611(d)

Paternity Issues Involving More Than Two Parents

Martinez v. Vaziri (2016) 246

Cal.App.4th 373 continued

- At the hearing on presumed father's request, he testified that the child recognized him as her father and would ask for him several times per day in order to spend time together.
- Mother testified that the child knew presumed father as "her father...in an emotional sense" and that it would be detrimental to the child if that were taken from her.
- Trial court's findings?

Paternity Issues Involving More Than Two Parents

Martinez v. Vaziri (2016) 246

Cal.App.4th 373 continued

- While presumed father showed he qualified as a presumed father under 7611(d), he did not meet the requirements of 7612(c) by providing the court with clear and convincing evidence that it would be detrimental to the child to only recognize two parents.
- The trial court reasoned that there would be no harm from “removing the child from a stable placement” because that removal had occurred a significant time ago (i.e., presumed father moved out of the home he had shared with child and Mother).

Presumed father appealed. Appellate court’s findings?

Paternity Issues Involving More Than Two Parents

Martinez v. Vaziri (2016) 246 Cal.App.4th 373 continued

- The appellate court reversed the order and remanded the matter.
- In doing so the appellate court found that the trial court misconstrued the harm element of 7612(c) by interpreting the statute's language as applying primarily to the child's living arrangement.
- "The critical distinction is not the living situation but whether a parent-child relationship has been established." (*Martinez v. Vaziri* (2016) 246 Cal.App.4th 373, 384.)

Paternity Issues Involving More Than Two Parents

Martinez v. Vaziri (2016) 246 Cal.App.4th 373 continued

- “It is this familial relationship with a parent, who has fulfilled the child’s needs for care and affection for a considerable amount of time, that modifies the phrase ‘stable placement’ and that provides the context for the trial court’s evaluation of detriment under section 7612, subdivision (c).” (*Martinez v. Vaziri* (2016) 246 Cal.App.4th 373, 385.)

- “Under the circumstances presented here, a meaningful evaluation of potential detriment to the child pursuant to section 7612, subdivision (c), must include a realistic assessment of those parents’ respective roles in providing care and support for the child.” (*Martinez v. Vaziri* (2016) 246 Cal.App.4th 373, 388.)

Paternity Issues Involving More Than Two Parents

Important take-aways

- “Stable placement” does not require that the potential 3rd parent reside with the child at the time of the hearing.
- The court is to examine the quality of the existing relationship between the 3rd parent and the child in determining whether it will be detrimental to the child to remove them from a stable placement.

Paternity Issues Involving More Than Two Parents

In re M.R. (2017) 7 Cal.App.5th 886
[4th App. Dist.]

- Juvenile court hearing in regard to a 12 year old child
- No genetic test was ever performed confirming who the bio father was, but Mother asserted it was her husband at the time of the child's birth (marriage occurred after child's conception)
- Husband lived with Mother and child for first 3 years of child's life (7611(a) and 7611(d) parent)

Paternity Issues Involving More Than Two Parents

In re M.R. (2017) 7 Cal.App.5th 886 cont.

- Former boyfriend started having visitation with the child when child was 6 months old, as Mother told him at the time the child was his. Former boyfriend holds the child out as his own.
- After Husband's incarceration, former boyfriend and/or his family starts having child approx. every other weekend
- In the 5 years prior to the juvenile hearing, former boyfriend also has child in his care during the child's spring and winter breaks from school

Paternity Issues Involving More Than Two Parents

In re M.R. (2017) 7 Cal.App.5th 886 cont.

- In the 3 years prior to the juvenile hearing, former boyfriend and/or his family also had the child during the child's summer vacation
- In the 3 months leading up to the juvenile hearing, child was in former boyfriend's care full-time.
- Juvenile court finds Husband is a presumed parent, but also applies 7612(c) and finds that former boyfriend is a presumed parent under 7611(d). Husband appeals where child did not live full time with boyfriend until 3 months prior to the hearing. Result?

Paternity Issues Involving More Than Two Parents

In re M.R. (2017) 7 Cal.App.5th 886 cont.

- Appellate court upholds the finding that ex-boyfriend is a presumed parent under 7611(d)
- “It is not the living arrangements, but the relationship between the child and the adult that is the primary factor in determining whether the adult should be deemed a presumed parent.” (*In re M.R.* (2017) 7 Cal.App.5th 886, 900.)
- Developing a relationship through visits rather than living with the child full-time is sufficient to satisfy the requirements of 7611(d)

Paternity Issues Involving More Than Two Parents

In re Alexander P. (2016) 4 Cal.App.5th 475 [1st App. Dist.]

- Mother becomes pregnant, but bio Father initially does not want the child. Mother stops communicating with bio Father.
- Mother is in an on-again/off-again relationship with boyfriend. Knowing he is not the bio Father, boyfriend goes to pre-natal visits, is at the hospital at birth, and signs a POP declaration in February 2012.
- Boyfriend lives with Mother and child for first year of child's life. Following a break-up, boyfriend initiates a custody action and a mediated stipulation is entered into which gave boyfriend visitation with the child.

Paternity Issues Involving More Than Two Parents

In re Alexander P. (2016) 4 Cal.App.5th 475 cont.

- 7/2013: Mother and child begin living with another man (eventual step-Father).
- In late 2013, Mother lets bio Father back into the picture, and GT confirms that he is father to the child.
- Beginning 9/2013, bio Father begins weekly visitation with the child, which visits continue uninterrupted.
- Bio Father initiates a paternity action in 4/2014, which results in a Judgment finding that he is a presumed parent and the child's father. Court sets aside boyfriend's POP dec.

Paternity Issues Involving More Than Two Parents

In re Alexander P. (2016) 4 Cal.App.5th 475 cont.

- 8/2014: Mother marries step-Father, who has assumed the day-to-day physical and emotional responsibilities of a father since moving in with Mother and child. Child alternates in referring to step-Father both by name and as “Daddy”

- 3/2015: On boyfriend’s motion, family law court sets aside the POP declaration set aside, but preserves the finding that bio Father is a presumed parent.

2017 ANNUAL CHILD SUPPORT TRAINING CONFERENCE & EXPO

Paternity Issues Involving More Than Two Parents

In re Alexander P. (2016) 4 Cal.App.5th 475 cont.

- Late 3/2015: After an incident of DV between step-Father and Mother, a dependency action is initiated.

- 4/2015: Family law court makes finding that both bio Father and boyfriend are presumed parents, and that it would be detrimental under 7612(c) if either of the parents were not deemed presumed parents. Court declines to set aside the POP declaration, finding there is an attachment between boyfriend and child.

Paternity Issues Involving More Than Two Parents

In re Alexander P. (2016) 4 Cal.App.5th 475 cont.

- 8/2015: Juvenile court finds that bio Father and boyfriend are presumed parents on account of the 4/2015 family law order, and also finds that step-Father is a 7611(d) presumed father.

- Juvenile court concludes it would be detrimental to the child to limit the child's parentage to Mother, bio Father, and boyfriend under 7612(c).

- Mother, boyfriend, and bio Father appeal. Result?

2017 ANNUAL CHILD SUPPORT TRAINING CONFERENCE & EXPO

Paternity Issues Involving More Than Two Parents

In re Alexander P. (2016) 4 Cal.App.5th 475 cont.

- Juvenile court's commencement of a dependency proceeding divested the family court of jurisdiction over paternity, and so the 4/2015 family law orders ought not have been made.

- 4/2015 finding that bio Father was a presumed parent was harmless because that had already been done in 8/2014 and 3/2015 prior to the commencement of the dependency proceedings.

Paternity Issues Involving More Than Two Parents

In re Alexander P. (2016) 4 Cal.App.5th 475 cont.

- There was no stated basis for boyfriend's presumed parent status other than the 4/2015 family law order, and so the juvenile court's finding that he was a presumed parent on that basis is set aside. The juvenile court is to resolve boyfriend's request to be declared a father independent of the family law court ruling.
- Evidence is sufficient to support the finding that step-Father is a presumed parent under 7611(d)

Paternity Issues Involving More Than Two Parents

In re Alexander P. (2016) 4 Cal.App.5th 475 cont.

- Step-father has an established, parental relationship with the child.
- 7611(d) does not require proof that the presumed parent claims the child is a biological child.
- 7611(d) requires that the presumed parent treat the child as though the child was his or her own by developing a parental relationship.
- 20 months of cohabitation between step-Father and child was enough to create this parental relationship such that the requirements of 7611(d) and 7612(c) were fulfilled.

Can you predict the outcome of the 3-parent scenario?



2017 ANNUAL CHILD SUPPORT TRAINING CONFERENCE & EXPO

Paternity Issues Involving More Than Two Parents

Can you predict the result #1?

- Child is born November 2010.
- Mother is involved in a relationship with boyfriend, and believes boyfriend to be the father, although it is possible another man could be the child's father.
- Boyfriend is not the bio father, unbeknownst to all parties.
- Bio father is unaware of Mother's pregnancy as relationship with Mother was only approx. 1 month.
- Mother and boyfriend executed a POP declaration upon child's birth.

Paternity Issues Involving More Than Two Parents

Can you predict the result #1?

- Mother and boyfriend do not live together, and eventually break-up, but boyfriend has periodic visitation with the child over the years, usually 2 hours/day, and never overnight or at his house.
- 12/2013: Bio father reconnects with Mother on the internet.
- 1/2014: Bio father meets child for the first time and notices resemblance.
- 4/2014: Bio father begins having semi-regular contact with Mother and child. A dating relationship begins thereafter.

Paternity Issues Involving More Than Two Parents

Can you predict the result #1?

- Mother initiates a paternity action against boyfriend in June 2014. Genetic testing is performed which excludes boyfriend as the bio father. No Judgment is entered, but case remains open.
- 9/2014: Bio father files his own paternity action. Boyfriend has no notice of this action.
- 9/2014: Judgment of paternity entered in bio Father's action establishing him as Father to child.

Paternity Issues Involving More Than Two Parents

Can you predict the result #1?

- 11/2014: Boyfriend files request to set aside bio Father's paternity Judgment. Bio Father files request to set aside the POP declaration. Ultimately, boyfriend files separate request for a 3rd parent determination if the POP declaration is set aside.
- 2/2015: Mother and bio Father move in together with child. Child begins referring to bio Father as "Dad".
- Hearing concludes 9/2015. Result?

Paternity Issues Involving More Than Two Parents

Can you predict the result #2?

- Child is born out of wedlock.
- Bio father not involved in child's life at birth or for extended period afterward (i.e., years), although he did executed a voluntary declaration of paternity.
- Mother marries a different man shortly after child's birth. Husband, Mother, and child live together for more than 10 years, with Husband holding the child out as his own natural child.

Paternity Issues Involving More Than Two Parents

Can you predict the result #2?

- Over time, child begins to have a relationship with bio Father, which relationship continues for approximately 5 years prior to the initiation of a family law action between Mother and Husband.
- At the time of the family law action between Mother and Husband, child spends approximately 50% of his time with bio Father, 40% of his time with Mother, and 10% of his time with Husband.

Paternity Issues Involving More Than Two Parents

Can you predict the result #2?

- Husband and Mother agree that child essentially chooses his own custodial schedule due to his age (16), and that all parties are accepting of that. Further, the parties inform the court that no matter what orders the court might make, it is expected that child will continue to choose his own custodial schedule, which is acceptable to them.
- Is Husband granted 3rd parent custodial rights?

Paternity Issues Involving More Than Two Parents

Can you predict the result #3?

- Two high school girls are involved in a relationship in 2011.
- While in class, they approach a male friend and ask if he will donate sperm so that the women can have a child together. Father agrees. All three parties are in agreement that the two women will be the child's parents and that Father will have no involvement in the child's life.
- The parties' agreement is not reduced to writing.

Paternity Issues Involving More Than Two Parents

Can you predict the result #3?

- The parties meet up at a hotel where Father provides a sample in a turkey baster and then leaves.
- Bio Mother is successfully impregnated by non-bio Mother using the sample.
- Non-bio Mother goes to bio-Mother's prenatal appointments, and the two women move in together 3 months prior to the child's birth.

Paternity Issues Involving More Than Two Parents

Can you predict the result #3?

- Child is born 11/2011. The two mothers raise the child together for a period of time, as their relationship is on-again/off-again. Father has no involvement in the child's life, while non-bio Mother holds the child out as her natural child.
- Non-bio mother moves out 2/2012, but continues to see the child.

Paternity Issues Involving More Than Two Parents

Can you predict the result #3?

- Non-bio Mother moves back in with bio-Mother and child in 9/2013 and they reside together for approximately one year before non-bio Mother moves out again for approximately 7 months.
- Non-bio Mother moves back in with bio-Mother and child in 4/2015 and they reside together for multiple months before their final, contentious break-up. All the while Father still has no contact with child.

Paternity Issues Involving More Than Two Parents

Can you predict the result #3?

- A case is opened with the Department, and bio-Mother tells the Department that the child was born as a result of a romantic encounter she had with Father.
- Ultimately, the Department files a Summons and Complaint against Father, while non-bio Mother files a paternity action against bio-Mother. Eventually, the matters are heard together at a contested hearing.

Paternity Issues Involving More Than Two Parents

Can you predict the result #3?

- GT is conducted and Father is not excluded by the results. Father still does not want to be involved in the child's life.
- At the contested hearing, under oath, bio-Mother testifies consistently with Father and non-bio Mother that the parties agreed that Father would donate sperm so that the two women might conceive and raise a child together with no involvement from Father.
- Three parent finding? If not, what is the result?

Speaker Contact Information

Jon Riesenbeck

JRiesenbeck@co.tulare.ca.us

559-713-5799

Please be sure to complete the session evaluation.



2017 ANNUAL CHILD SUPPORT TRAINING CONFERENCE & EXPO