

The Court of Appeal did not, however, explain why the trial Court erred in applying Probate Code Section 6453(a) when both Probate Code Sections 6453(a) and 6453(b) are worded as alternative options for determining when a natural parent and child relationship is established for purposes of intestate succession, and when neither Family Code Section 7611(d) nor Family Code Section 7630(c) require that only Section 7630(c) be used for this purpose with respect to a child whose presumed father is deceased. Indeed, Family Code Section 7630(b) states that any interested party may bring an action at any time for the purpose of determining the existence of the father and child relationship presumed under Family Code Section 7611(d).

In order to provide guidance beyond the mere facts of this case, I would hope that the next appellate panel wrestling with these issues would give its reasoning behind its decision.

References: CALIFORNIA FAMILY LAW PRACTICE AND PROCEDURE, 2nd ed., §§ 31.06 Section establishing parent-child relationship for purpose of intestate succession), 170.06 (equitable adoption, generally).

PARENTAGE ISSUES

Presumptions

“Reception Into Home” Presumption of Fam. Code § 7611(d) Does Not Impose Durational Requirement

Charisma R. v. Kristina S.
(Civ. No. A122264; Ct. App., 1st Dist., Div. 5.
6/26/09)
— Cal. App. 4th —, — Cal. Rptr. 3d —, 2009 Cal.
App. LEXIS 1047
By Simons, Acting P. J. (Needham, Bruiniers, JJ.,
concurring)

The court of appeal held that Fam. Code § 7611(d), which permits a biological mother's former same-sex partner to be declared the

presumed mother of the biological mother's child if the former partner has received the child into her home and openly held the child out as her own, does not require the former partner to cohabit or coparent for any particular length of time in order to establish presumed mother status.

Facts and Procedure. In July 1997, a same-sex couple (Charisma and Kristina) began dating, and in August 1998, they moved into an apartment together. In December 2001, they decided to have children together, and in January 2002, they registered with the state as domestic partners.

Charisma and Kristina contacted a sperm bank, and jointly filled out the paperwork to obtain sperm from an anonymous donor. Charisma then helped Kristina become pregnant through in-home and doctor-assisted artificial insemination. In April 2003, Kristina gave birth to a daughter (Amalia), and Charisma cut the umbilical cord. Kristina signed the birth certificate, which gave Amalia a hyphenated surname that combined the domestic partners' surnames. Charisma and Kristina brought Amalia into their home, and shared parental responsibilities for approximately 13 weeks. In July, Kristina moved out, taking Amalia with her; Kristina also terminated her domestic partnership with Charisma. In the summer of 2005, Kristina relocated with Amalia to Texas.

In May 2004, Charisma filed a petition to establish a parental relationship with Amalia. A trial court dismissed the petition, ruling that Charisma lacked standing under the Uniform Parentage Act (UPA—Fam. Code § 7600 et seq.). Charisma appealed, and in June 2006, the appellate court reversed. It concluded that Charisma had standing to establish parentage under the UPA despite her lack of a biological relationship to Amalia, in light of the California Supreme Court's decision in *Elisa B. v. Superior Court* (2005) 37 Cal. 4th 108, 119–120, 33 Cal. Rptr. 3d 46, 117 P.3d 660. However, because *Elisa B.* was decided after the trial court's ruling, the appellate court remanded for a determination, in light of *Elisa B.*, of whether Charisma was a presumed parent under Fam. Code § 7611(d), and if so, whether the case was an appropriate one in which to rebut the parentage presumption [citing *Charisma R. v. Kristina S.* (2006) 140 Cal. App. 4th 301, 303–304, 307, 44 Cal. Rptr. 3d 332 (*Charisma I*); for further discussion of

matter. If you qualify as a presumed parent under the statute, you will both be obligated to support your child, and entitled to be a parent. Biology is much less important than your commitment and behavior toward your child.

I like this case. It compassionately and clearly states that children need parents, and that non-biological parents should not be deprived of the right to be parents, nor should children be denied their care. Sperm doesn't matter, and our Y or X chromosomes don't either. And if two people want to create a family—they should be prepared for the Court to find that the familiar relationships will survive the decisions of the adults.

Commentary

Stacy D. Phillips & Jeffrey P. Bollinger

A battle is being waged by same-sex couples in California, and across the nation, for equal marriage rights. The truth is, we are all more alike than we know (or are willing to admit). The present case is a good example of just how similar people are, regardless of gender or sexual orientation. The present case is one in a growing line that is applying the Family Code equally to couples who choose to enter into a monogamous relationship and raise a family. When the love is lost and the relationship ends, gay and lesbian people exhibit the same range of emotions and behavior as straight people. Often, the emotions run high, regardless of gender or sexual orientation, especially where children are involved, such as in the present case.

Not that long ago, a lesbian couple in a committed relationship who brought a child into the relationship, where one partner gave birth to the child with the intent that both partners would be the child's parents, could break up (regardless of the length of the relationship and the establishment of a parent-child relationship between the child and non-biological partner), and the non-biological partner would have no parental rights to the child if the biological partner chose to prevent that relationship from continuing. The law did not offer any protections to the same-sex, non-biological partner. The law then developed, in some states, to allow a person to adopt the biological child of their same-sex partner. Today in California, at least on paper, the law is

moving in the right direction, as a result of the domestic partnership law that took effect in 2005, by applying the Family Code equally to all people, regardless of sexual orientation. However, this does not stop the parties in bitter custody disputes from resorting to dirty tactics to frustrate the other parent's access to children.

The effect of the domestic partnership law in California on the Family Code is that the language of the Code is to be read in a gender-neutral manner, so as to apply equally to same-sex couples as it does to opposite-sex spouses. Among these rights and responsibilities is the presumption that both partners are the parents of a child born into the partnership. The couple in the present case, Kristina and Charisma, presumably registered their partnership with the California Secretary of State to take advantage of the State's domestic partnership laws, which afford same-sex couples many of the same rights common to married spouses. Kristina, the biological mother, then attempted to avoid the responsibilities and obligations of the domestic partnership laws when they did not suit her. Kristina wanted to have it both ways.

The court noted that public policy favors a child having two parents to provide emotional and financial support, and that prior courts have emphasized this public policy in interpreting the Uniform Parentage Act (UPA). The court also noted that the gender-neutral application of the UPA has been applied to establish that a non-biological same-sex partner was a presumed parent, to impose child support obligations on her, despite her denial of her parental status, in the *Elisa B.* case. The public policy is sound, we want to protect our children. But what is notable, though not surprising, is that the biological mother in the present case and the non-biological mother in *Elisa B.* both attempted to take advantage of their situations to bolster their positions in the litigation. They acted no differently than many, if not most, of our heterosexual clients who are engaged in bitter custody disputes. As with all cases, the courts in the present case and *Elisa B.* applied the law to ensure the best result for the child, based on public policy. While the courts deserve praise for "doing the right thing," practically speaking, these cases can have long-term negative effects on the families. In the present case, Kristina was successful in preventing Charisma from having a relationship with the parties' child for five years, a rift that will

likely require a significant period of time to heal, and the child may grow up to resent Kristina for her actions.

As more and more same-sex couples have families, the equal application of the Family Code (and all laws that affect married spouses and their children) will be paramount to ensuring respect, stability and success for all families. Equality for all, encompasses not only rights, but obligations. Many people are surprised by, if not indignant at, the obligations imposed by laws of community property, child and spousal support, and child custody, and they engage in behavior motivated by a desire to hurt the other spouse (and to soothe their own bruised ego), unaware of the damage they inflict on their children. Why should homosexual partners be any different in this regard than heterosexual spouses? In the words of Depeche Mode: "People are people so why should it be / You and I should get along so awfully?"

Commentary

Bernard N. Wolf

This very interesting and thorough court of appeal opinion takes us, once again, through the labyrinth of presumed parentage law under Family Code Section 7611(d). Justice Simons convincingly explains how that presumption operates when the child of an artificially inseminated mother is in a recognized same-sex relationship at the time of the child's conception and birth.

Charisma and Kristina registered their domestic partnership in 2002. That year may seem a bit distant to some of us, since the law relating to same-sex couples has changed dramatically since then. After 2004, registered domestic partners now have virtually the same rights and responsibilities as married couples. And, for a brief period of time in 2008, same-sex couples in California could lawfully marry.

What might have been different if Charisma and Kristina had registered as domestic partners, or had married, after 2004? It is interesting to speculate.

For instance, Family Code Section 7540 prescribes a conclusive presumption of parentage with respect to the child of a wife cohabiting with her husband, who is not impotent or sterile. Might this statute now

apply to preclude someone in Kristina's position from contesting the parentage claims of a partner like Charisma? After all, at the time of the child's conception and birth, the mother (Kristina) was cohabiting with her spouse/domestic partner (Charisma), who was not impotent or sterile.

Alternatively, Family Code Section 7611(a) creates presumed parentage status if a man "... and the child's natural mother are or have been married to each other and the child is born during the marriage, or within 300 days after the marriage is terminated by death, annulment, declaration of invalidity, or divorce, or after a judgment of separation is entered by a court..." If the word "woman" is substituted for "man", as it must be to comport with statutory equal protection, the presumption of subsection 7611(a) would fit perfectly.

Lastly, Family Code Subsection 7611(b) provides, in pertinent part, that a person is a presumed parent if, "... [b]efore the child's birth, he and the child's natural mother have attempted to marry each other by a marriage solemnized in apparent compliance with law, although the attempted marriage is or could be declared invalid..." Might subsection 7611(b) apply to children of same-sex couples whose marriages became invalid because of a ballot initiative measure?

References: CALIFORNIA FAMILY LAW PRACTICE AND PROCEDURE, 2nd ed., §§ 30.03, 30.06 (constitutional protection of parent-child relationship, generally), 31.05 (establishing maternity), 31.12[4],[6] ("reception into home" presumption of paternity).

SPOUSAL SUPPORT

Modification

Briefly Noted

In re Marriage of Dietz

(Civ. No. G040640; Ct. App., 4th Dist., Div. 3. 8/3/09)

— Cal. App. 4th —, — Cal. Rptr. 3d —, 2009 Cal. App. LEXIS 1282