

In re P. A.

In re P. A., a dependency court parentage proceeding, can be read on two levels, each equally interesting and important. On the first level, the competing claims and presumptions between the biological father and a presumed father under *Family Code* Section 7611, subd. (d), are presented and addressed. A biological father can be confirmed by DNA testing; a presumed father can achieve that status by compliance with the criteria specified in Section 7611. But what happens if two men each meet the respective criteria, and there arise competing claims to paternity? That is *In re P. A.* The answer comes from level two.

Level two of the analysis informs us how courts resolve the clash of claims between two competing fathers, both seeking paternity, one the biological father and the other a presumed father, both “with a legitimate presumption of paternity.” Case law has made clear that a man’s status as a biological father based on genetic testing does not entitle him to the rights and status of a presumed father. The Court of Appeal makes clear that Section 7612, subd. (b), sets forth the procedures for reconciling competing interests when two or more men claim paternity of a child based on two or more presumptions that conflict with each other. The tribunal concludes that the Court must make factual findings as to each claim, and then determine which one is entitled to greater weight. Section 7612, subd. (b), requires an evidentiary hearing for the purpose of resolving the conflicting paternity interests. In this case, the Court of Appeal resolved the conflict in favor of Roger, as a presumed father, instead of Alvaro, as the biological father. Thus, the trial court’s paternity judgment in favor of the biological father based solely on evidence of genetic testing, deprived Roger, as a presumed father, of the opportunity to present evidence of the nature of his relationship with the child, and was therefor reversed. The Court emphasized that no single factor – whether social or biological – controls resolution of the conflict between these two fathers.

In re P. A. must be read in connection with newly enacted AB 1439 [see this issue of California Family Law Monthly, page ___] which is the Legislature’s answer to resolve competing claims of paternity between a father who has signed and filed a voluntary declaration of paternity versus other classifications of fathers in parentage proceedings: presumed, biological, and alleged fathers. Advances in medical technology have given us judicial birth pangs in determining who is a legal mother of a child [*Johnson v. Calvert* (1993) 5 Cal.4th 84, and its progeny], as well as the competing claims for paternity seen in *In re P. A.*

In a world where Dependency Courts and Family Law Courts are burdened with neglected, unwanted or abused children, where enforcement of child support is a constant struggle, perhaps it is not entirely a negative factor that our judiciary must deal with competing claims by both men and women to achieve much cherished parenthood status, so children can be properly loved, nurtured and raised with their best interests at heart.

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