

R.M. vs. T.A.

Those family law practitioners who skim over paternity cases because they are unusual and infrequent better rethink that attitude. Just in the past year, we have seen a parade of interesting and important issues in such cases. In *J.P. v. Danielle S.* (2014) 226 Cal. App. 4th 167, the court held, in a case of first impression, that although a sperm donor father had no rights under Family Code section 7513, he did have the right to establish presumed father status under section 7611. *J.M. v. G.H.* (2014) 228 Cal.App. 4th 925, was a paternity case involving an international custody move-away. Now we have *R.M. v. T.A.*, where Mom became pregnant through a sperm bank with an unknown donor. She wanted and intended to be a single parent and raise her child as such.

R.M., the man with whom mother had an on and off relationship, claimed presumed father status under Family Code section 7611. He claimed the presumed father presumption of section 7611(d), because he received the child into his home, openly held the child out as his own, provided physical and financial support for the child, tried to place his name on the birth certificate, among other evidentiary factors. The trial court agreed with him, found the presumption was not rebutted by mother, and confirmed to him the rights of presumed father status. Over Mom's objections, the Court of Appeal affirmed.

Mom's challenges, based on her perception of a Constitutionally protected right to parent on her own, asserted that the trial court impermissibly favored a two-parent family, and gave insufficient consideration of her right to single parent, and that the evidence was insufficient to sustain a finding of presumed father status, were all rejected.

The parentage presumption "is a rebuttable presumption affecting the burden of proof and may be rebutted in an appropriate action only by clear and convincing evidence" (Family Code § 7612 subd, (a)). Case law has made clear that presumed father status may be afforded a person who is not the biological parent. These cases are not easy. They are necessarily very fact intensive. Emotions run high. The legal technicalities are complex. But paternity cases of myriad variations are neither unusual or infrequent. It used to be that the two parent nuclear family was the norm. Now we see *J.P. vs. Danielle S.*, *supra*, and *R.M. vs. T.A.* argue that a woman has a protected right to raise a child as a single parent. Recently enacted Family Code section 7601(c), recognizes that a child may have "more than two parents." Changing societal norms and evolving medical technology are creating one, two, and three parent families, rights asserted by non-bio-dads, parenting by same-sex couples, adoptive parental rights, grandparent visitation claims, blended families, estate planning consideration, financial obligations...the list is extensive and growing, all with attendant claims of legal rights. It takes special experience and competence to properly handle these cases. The challenge is there. The cases are there, and will continue. Perhaps these recent 2014-2015 paternity cases will illuminate the fascination of these issues,

and the compelling need for constant study and creative lawyering in an uncertain and constantly evolving area of the law.

MARSHALL S. ZOLLA