

SB 274

As with most new legislation, SB 274, the “more than two parents” bill, is best understood when placed in proper context. This bill is substantially similar to legislation that Governor Brown vetoed last year, stating that he “would like to take more time to consider all of the implications of this change.” Now the new parentage legislation has been signed into law.

The Legislative findings and declarations in section 1 of the bill make clear that the new law is intended to abrogate the appellate court opinion in *In re M.C.* (2011) 195 Cal.App.4th 197, in which the Court of Appeal reversed a dependency court ruling insofar as it held that where there are more than two people who claim parentage under the Uniform Parentage Act, courts are prohibited from recognizing more than two of such people as parents of the child. The reversal was predicated on the fact that the juvenile court had not resolved the competing paternity presumptions under *Family Code* Section 7612(b). The concurring and dissenting opinion by Justice Rothschild illuminates the tensions inherent in this complex mix of fact, emotion, social mores, logic and legal presumptions.

This has long been a subject of judicial difficulty and evolution. In *Johnson v. Calvert* (1993) 5 Cal. 4th 84, the Supreme Court held that California law only recognizes one natural mother. The law has since evolved. In *Sharon S. v. Superior Court (Annette F)* (2003) 31 Cal.4th 417, the Supreme Court concluded that *both* parents of an adopted child could be women. In *Elisa B. v. Superior Court (Emily B)* (2005) 37 Cal.4th 108, the Supreme Court held that when a woman holds out her same sex partner’s child as her own, it is not appropriate to rebut the presumption of presumed parenthood with proof that she is not the child’s biological parent. *Elisa B.* distinguished the Court’s prior holding in *Johnson v. Calvert*, by deciding that a child can have two parents, both of whom are women. Many cases have also dealt with the question of legal parentage for the father, including *In re Nicholas H.* (2002) 28 Cal.4th 56. The question in *Nicholas H.* was whether a presumption under Section 7611(d) (man receives child into his home and openly holds out the child as his natural child) was rebutted under Section 7612(a), when the presumed father seeks parental rights and admits he is not the biological father. The Supreme Court held the non-biodad was a presumed father.

Parentage issues reflect changing mores in society, dealing with previously unimagined questions: who is the legal mother, who is the legal father, the status of children conceived after the death of a parent [*Probate Code* Section 249.5 *et seq.*] Courts are challenged to deal with medical/bioethics issues, including assisted reproduction, artificial insemination, surrogacy, the conclusive presumption of paternity, conflicting presumptions, genetic testing, etc. As noted, *In re M.C.* held the number of legal parents cannot exceed two. The new law, amending *Family Code* sections 3040, 4057, 7601, 7612, 8617, and adding section 4052.5, charts a new course, and opens the door for trial courts to sort out the interwoven threads of the parentage web.

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