

WHO IS A PARENT? DETERMINING PARENTAGE IN NON-TRADITIONAL FAMILIES

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Below is a summary of the most important California cases attempting to answer the critical question: who is a parent? These cases, read together, give us guidance on some of the issues the courts are grappling with in defining the contemporary family.

SURROGACY CASES:

1. ***Johnson v. Calvert*** (1993) 5 Cal.4th 84: Mark and Crispina Calvert wanted to have a child. Crispina had viable eggs, but could not carry a baby to term. Her eggs were surgically removed and then fertilized *in vitro* with Mark's sperm, and the resulting embryo was implanted in the womb of Anna Johnson. After a number of disagreements between the parties, Anna decided she wanted to keep the baby, and the case went to the California Supreme Court. HELD: Both Anna and Crispina are "natural" mothers, Anna being the gestational mother and Crispina being the genetic mother. When two women have equally valid claims to maternity, the "tie-breaker" is intent at the time of conception. Since Crispina intended to be a mother at conception and Anna did not, the Court honored these intents and found that Crispina was the baby's legal mother.

2. ***In re Marriage of Moschetta*** (1994) 25 Cal.App.4th 1218: Robert and Cynthia Moschetta wanted to have a child. Cynthia was sterile. Elvira Jordan agreed to be inseminated with Robert's sperm, and to carry the baby to term for them. Pursuant to the agreement, Elvira was to allow Robert sole custody, and was to consent to adoption of the child by Cynthia. However, when the Moschettas broke up during her pregnancy, Elvira decided to keep the baby, although when the couple reconciled she relented and allowed the baby to go home with them. Seven months later, the Moschetta's broke up for good. Cynthia petitioned the court, arguing that Cynthia was the baby's legal mother, not Elvira, based on the terms of the surrogacy contract and the fact that the baby had lived with Cynthia for most of its short life. HELD: *Johnson v. Calvert* did not apply, since Elvira was both the genetic and the gestational mother. Enforcing a prebirth contract to give up one's baby would go against the public policies relating to parentage and adoption. Legally, Elvira was the mother and Robert was the father. Remanded for a determination on custody and visitation.

3. ***In re Marriage of Buzzanca*** (1998) 61 Cal.App.4th 1410: John and Luanne Buzzanca wanted to have a child. Both were infertile. They had the eggs of an anonymous egg donor fertilized with the sperm of an anonymous sperm donor,

and the resulting embryos were implanted in the womb of a paid surrogate. When the Buzzancas filed for dissolution of their marriage during the pregnancy, Luanne indicated that the baby (not yet born) was a child of the marriage; John indicated that there were no children of the marriage, maintaining that he should not be held legally responsible for a child that was not genetically his and was not genetically his wife's and was not even being gestated by his wife. The trial court agreed with John, finding that the baby had *no legal parents*. HELD: The Court of Appeal found that when a couple -- unable to procreate on their own -- causes the conception of a child by use of medical technology, with the intent to parent the child, they will be held to the status of legal parents regardless of genetics.

SPERM DONOR CASES:

1. ***Jhordan C. v. Mary K.*** (1986) 179 Cal.App.3d 386: Mary decided to have a child by artificial insemination. Her plan was to be a single mother, but to share parenting responsibilities with a close friend. She found a sperm donor (Jhordan) through friends, and he provided sperm directly to her. Neither of them sought legal advice, and both were unaware of the sperm donor statute. After Devin was born, Jhordan visited him a few times. He eventually went to court to establish paternity and visitation rights. Mary argued that the sperm donor statute (now Family Code §7613(b)) should be applied to her, even though no physician supervised the artificial insemination process; that a married woman would be shielded from a paternity suit by the donor, and that it violated equal protection to fail to so shield her; and that allowing the paternity suit violated her right to family autonomy encompassed by the constitutional right to privacy. HELD: The sperm donor statute is clear on its face and will be strictly construed. It does not violate equal protection to provide protections to married couples not provided to single women when it comes to recognition of paternity. ["Equal protection is not violated by providing that certain benefits or legal rights arise only out of the marital relationship."] Because Mary did not receive Jhordan's sperm from a physician, Jhordan is Devin's legal father.

2. ***Robert B. v. Susan B.*** (2003) 109 Cal.App.4th 1109: Robert and his wife Denise contracted with an anonymous ovum donor to obtain the donor's eggs for fertilization with Robert's sperm. They obtained the eggs, had them fertilized with Robert's sperm, and had some of the resulting embryos implanted into Denise's uterus. The remaining embryos were to be frozen and stored for the exclusive use of Robert and Denise. In February, 2001, Denise gave birth to Madeline. By mistake, some of the remaining embryos created with the donor eggs and Robert's sperm were also implanted into Susan, and Susan gave birth to Daniel in February, 2001, only 10 days apart from when Denise gave birth to Madeline. In December, 2001, the fertility physician informed Robert and Denise of the mistake and of the fact of Daniel's birth. Robert and Denise sought contact with Daniel. Susan was initially open to contact but refused Robert's and Denise's demand that she relinquish custody to them. Robert and Denise subsequently brought a parentage action. The trial court found that Susan was Daniel's

mother, awarded her custody of Daniel, and dismissed Denise from the action with prejudice. However, they found that Robert was Daniel's father and awarded him visitation. Both Denise and Susan appealed. Susan argued that she had fully complied with the statutory mandate of Family Code section 7613(b) -- by receiving donor sperm through a licensed physician -- and that Robert should be held to be a sperm donor and not a father. Denise argued that she should be found to be Daniel's mother as an "intended mother" under *Buzzanca*. HELD: Susan was Daniel's mother under FC 7610, by virtue of her having given birth to him. Robert was Daniel's father under FC 7630. FC 7613(b) did not apply to Robert, because he did not provide sperm to a physician for purposes of inseminating a woman other than his wife but, instead, provided his sperm for the sole purpose of creating a baby with his wife.

3. ***Steven S. v. Deborah D.*** (2005) 127 Cal.App.4th 319: Steven provided sperm to a physician for purposes of artificially inseminating Deborah, who was not his wife. Deborah got pregnant using the sperm, but miscarried. Deborah and Steven then had sexual intercourse over a period of months, but no pregnancy resulted. Eventually, Deborah went back to using the sperm that Steven had previously donated, and she became pregnant with Trevor. After Trevor was born, Steven visited him in the hospital. Deborah gave Trevor Steven's last name as Trevor's middle name. Trevor referred to Steven as "Daddy Steve." However, Steven never married Deborah; never brought Trevor into his home; and never lived with Deborah and Trevor. HELD: Family Code section 7613(b) is clear on its face and will be strictly construed. Steven is a sperm donor and not Trevor's father.

4. ***Estate of Kievernagel*** (2008) 166 Cal.App.4th 1024: Joseph and Iris were married for 10 years prior to Joseph's death. They were involved with a fertility clinic and were trying to conceive a child together through *in vitro* fertilization (IVF). As part of this process, Joseph provided sperm to the clinic which was frozen and stored for use by Iris in case he could not provide fresh sperm on an IVF date. The sperm storage agreement provided that the sperm was Joseph's sole property, and provided that the sperm was to be discarded in the case of Joseph's death or incapacity. Both Joseph and Iris signed the sperm storage agreement. After Joseph died in a helicopter crash, Iris petitioned the court for release of Joseph's sperm to her. Joseph's parents objected to the petition, stating that Joseph did not want to father a child posthumously. HELD: Because the material at issue in this case was only Joseph's sperm, and not an embryo, Joseph was the only person with an ownership interest in the genetic material. His intent must govern disposition of the sperm, and all documents indicated that his intent was to have the sperm destroyed upon his death; therefore, the sperm should be discarded.

HETEROSEXUAL PARENTAGE CASES:

1. ***Steven W. v. Matthew S.*** (1995) 33 Cal.App.4th 1108: Julie was married to Matthew. In 1986, she moved out of their marital home and moved in with Steven. She told Steven she was divorcing Matthew, but she secretly maintained an intimate relationship with Matthew on the side. In 1987, she talked with both Steven and Matthew about having a child. In May, 1987, she became pregnant while on a weekend tryst with Matthew (her husband). However, she continued to live with Steven, and she told both men that they were the father. Steven went through the pregnancy and childbirth with Julie, and fed, bathed and cared for the baby -- Michael -- after he was born. Matthew never even saw Michael until he was several months old. Julie, Steven and Michael lived together as a family until 1990, when Steven discovered that Julie was still seeing Matthew. Steven moved out, but continued to share custody and support of Michael, and in December, 1990 he filed a court action asserting his legal paternity. Julie responded, admitting Steven's paternity of Michael. Matthew defaulted. However, Matthew subsequently moved for relief from default and, in April, 1992, the judgment was set aside. Blood tests at that time showed Matthew to be Michael's biological father. HELD: Both Matthew and Steven qualified as presumed fathers under the Uniform Parentage Act -- Matthew because he was married to the child's mother at the time of birth; and Steven, because he received the child into his home and held him out as his natural child. (See Family Code § 7611.) The Court of Appeal resolved these conflicting presumptions in favor of preserving the extant father-child relationship between Steven and Michael. "[I]n the case of an older child [over two years of age] the familial relationship between the child and the man purporting to be the child's father is considerably more palpable than the biological relationship of actual paternity. A man who has lived with a child, treating it as his son or daughter, has developed a relationship with the child that should not be lightly dissolved.... This social relationship is much more important, to the child at least, than a biological relationship of actual paternity."

2. ***In re. Nicholas H.*** (2002) 28 Cal.4th 56: Kimberly was pregnant with Nicholas when she met and moved in with Thomas. Thomas is not Nicholas's biological father, and always knew that he was not, but he acted as a father to Nicholas from the time when Kimberly moved in with him, participating in Nicholas's birth and putting his name on the birth certificate as father. He provided a home for Kimberly and Nicholas for several years and, after he and Kimberly broke up, he remained in Nicholas's life in the role of father. When Nicholas ended up in the dependency system -- due primarily to Kimberly's psychological instability and also somewhat to the volatility in Kimberly and Thomas's relationship -- Thomas filed a petition with the court to establish a parental relationship with Nicholas. The court granted Thomas temporary custody of Nicholas, and Nicholas has resided with Thomas ever since. During a prolonged dependency adjudication process, when it became clear that the court was favoring Thomas over Kimberly, Kimberly finally asserted that Thomas was

not Nicholas's father. She named a different father -- Jason -- but was never able to provide investigators with enough information to locate Jason. Jason has never come forward, and Nicholas has never even met him. However, when questioned, Thomas readily admitted that he was not Nicholas's biological father. The Alameda County Superior Court found that Thomas was a presumed father under Family Code section 7611(d). The Court of Appeal agreed with this finding, but found that the 7611(d) presumption of paternity was necessarily rebutted by Thomas's admission that he was not Nicholas's biological father. HELD: The California Supreme Court held that a man does not necessarily lose his status as a presumed father by admitting that he is not the biological father. While the 7611 presumption of paternity can be rebutted by proof of actual paternity in another man *in an appropriate action* (e.g., in a paternity action by another man seeking to play the role of father), the Court found that where -- as in this case -- rebutting the presumption would leave a child fatherless and homeless, no *appropriate action* for rebutting the presumption existed.

3. ***In re Karen C.*** (2002) 101 Cal.App.4th 932: Karen was the unwanted child of Alicia and Jose. By prior arrangement through a person Alicia had contacted to assist her with a late term abortion, and promptly after Karen's birth, Alicia gave Karen to Leticia. Alicia told the hospital staff that her own name was Leticia, so Leticia's name could go on Karen's original birth certificate as Karen's birth mother. Leticia raised Karen as her own child, and told Karen that Karen was adopted, but Leticia never actually adopted Karen. Karen had no contact with her biological parents -- Leticia was the only parent she ever knew. When Karen was 10 years old, Leticia called authorities expressing fear that she would injure Karen. Leticia's alcoholism and depression came to light, and Karen was placed into dependency proceedings. The dependency court denied Karen's request that it find a mother-child relationship between Leticia and Karen, reasoning that the law does not provide that a woman who is neither the child's birth (i.e. gestational) mother nor the child's genetic mother may be the child's legal mother. (Contrast *Buzzanca*.) Karen appealed. HELD: The principles enunciated by the CA Supreme Court in *Nicholas H.* should apply equally to women. The presumption of maternity flowing from Leticia having taken Karen into her home and raised her as her own child is not necessarily rebutted by Leticia's admission that she is not actually (i.e. biologically) Karen's mother.

4. ***In re Salvador M.*** (2003) 111 Cal.App.4th 1353: Monica was living with her mother, Rosa, when Rosa gave birth to Salvador in 1994. At the time, Monica was 18 years old with a one-year-old daughter of her own. Salvador's father was a married man, and Rosa never identified him to the family. Together, Monica and Rosa cared for both babies. Monica treated Salvador as if he were her own son, and even breast fed him when Rosa couldn't. In 1997, Rosa died in a car accident. Monica continued to care for then 3-year old Salvador in her home. She later had another child, Luis, and all 3 children were raised as siblings. Salvador believed that Monica was his mother and that her children were his brother and sister. The only people who knew differently were Monica's family

and the officials where Salvador attended school. When Monica was arrested for possession of methamphetamine for sale in 2002, all three children were placed into protective custody. Monica told the social worker that Salvador was her brother. The social worker also spoke to Salvador, who referred to Monica as "mom" and to the other kids as his siblings. The social worker's impression was that 8-year-old Salvador was unaware that Monica was really his sister, and the other kids were really his niece and nephew, and DHS found that Salvador was very bonded to Monica and believed she was his mother. Monica filed a motion to establish maternity, but the trial court found that she did not qualify for presumed mother status because she had admitted in official documents (i.e. to Salvador's school, DHS and the police) that she was Salvador's sister. HELD: "The paternity presumptions [of Family Code § 7611] are driven, not by biological paternity, but by the state's interest in the welfare of the child and the integrity of the family." (Citing *Nicholas H.*) Monica's admission to authorities that she was not Salvador's mother did not rebut the presumption of parenthood created by her having held him out as her child to the world, since "there was no competing maternal interest and to sever this deeply rooted mother/child bond would contravene the state's interest in maintaining the family relationship." Monica was Salvador's presumed mother, entitled to full reunification services.

5. *In re Jesusa V.* (2004) 32 Cal.4th 588: Jesusa became the subject of dependency proceedings shortly before her second birthday, after her biological father, Heriberto, was arrested for beating and raping Jesusa's pregnant mother and Jesusa's mother was hospitalized for her injuries. At the detention hearing, the juvenile court ordered Jesusa placed with Paul, the mother's husband and father of the mother's other five children. Paul -- who was married to Jesusa's mother at the time of Jesusa's birth and who had received Jesusa into his home and held her out as his own on weekends and during times when Jesusa's mother had sought refuge with him from Heriberto -- promptly requested a declaration by the juvenile court that he was Jesusa's presumed father under Family Code § 7611 (a) and (d). Nine days later, Heriberto also filed a request to be declared Jesusa's presumed father. After a hearing, at which Heriberto was represented by counsel but was not himself present, having been sentenced to state prison for the rape of Jesusa's mother, the juvenile court found that Paul was Jesusa's legal presumed father. Jesusa's mother supported the court's decision to place Jesusa with Paul. Heriberto appealed. HELD: The California Supreme Court affirmed the lower courts' holding that Paul was Jesusa's legal father. It applied *Nicholas H.* to the facts of this case, even though this case differed significantly from *Nicholas H.* and *Karen C.* because in this case there were two presumed fathers battling for the child. Finding that where there are competing presumptions between two potential fathers, public policy and the best interests of the child should control, and finding that Paul was a fit parent who had bonded with Jesusa and had offered both Jesusa and her mother a refuge from Heriberto during outbreaks of violence -- whereas Heriberto had failed to provide a safe and stable home for Jesusa or her mother -- the court affirmed the juvenile court's judgment that Paul was the presumed father.

6. **Craig L. v. Sandy S.** (2004) 125 Cal.App.4th 36: Sandy was married to Brian. Craig was a close family friend. During the spring of 2001, Sandy and Craig had a brief sexual relationship. Sandy became pregnant, and delivered Jeffrey on 2/11/2001. Everyone believed that Brian was Jeffrey's father until routine neonatal blood tests showed that Jeffrey was "Rh negative." Because both Sandy and Brian were "Rh positive," this discovery eliminated Brian as a possible biological father for Jeffrey. At this point, Sandy admitted the affair to Brian and explained that Craig was the only other possible biological father. The disclosure led to a brief separation, but the couple and baby were eventually reunited as a family in the marital home. However, Craig and his wife, Kathryn, participated in Jeffrey's life in the following ways: Craig signed a support agreement and made support payments to Sandy; when Sandy returned to work, Kathryn took care of Jeffrey 3-4 days per week in her and Craig's home; and when Jeffrey was a few months old the families initiated one overnight visit per week between Jeffrey, Craig and Kathryn. Although disputed by Sandy and Brian, Craig asserts that he has held Jeffrey out to his family and friends as his natural son. Then, on March 31, 2003, Sandy sent Craig an e-mail advising him that she and Brian no longer needed the "childcare services" that Craig and Kathryn had been providing. Craig filed a petition with the court to establish his status as Jeffrey's father under Family Code § 7611(d); Brian responded that because he was Sandy's husband at the time of Jeffrey's conception and birth, he was Jeffrey's presumed father under § 7611(a). The trial court ruled in favor of Brian, noting that: "There is a strong public policy in California to maintain the integrity of the unitary family and the welfare of Jeffrey requires a concern for Jeffrey's perceived legitimacy. The court finds that pursuant to Statute, Decisional Law, and California's strong public policy to maintain the integrity of a child's legitimacy, Craig does not have standing to establish a paternal relationship." The trial court also refused Craig's motion for DNA testing to establish his genetic link to Jeffrey. Craig appealed. HELD: Craig has standing to pursue his claim of paternity, based on his factual assertion that he meets the definitions of a presumed father set forth in § 7611(d). Brian also has standing to pursue a paternity claim under §§ 7611(a) and 7540 [providing that, subject to certain exceptions, "the child of a wife cohabiting with her husband, who is not impotent or sterile, is conclusively presumed to be a child of the marriage"]. There is no statutory preference between these two claims. As stated by the Court of Appeal, "we have found no case which holds that ... the state's interest in marriage will always outweigh the interests of a man and a child with whom the man has established a paternal relationship...." The case is remanded to the trial court for it to engage in a fact-finding process to determine the nature of Craig's actual relationship with Jeffrey, and to weigh that relationship against the interests embodied in Brian's status and his relationship with Jeffrey. "[I]n weighing the conflicting interests ... the trial court must in the end make a determination which gives the greatest weight to Jeffrey's well being."

7. ***Librers v. Black*** (2005) 129 Cal.App.4th 114: Maria lived with Joseph, was married to David, and was having a sexual relationship with Robert. In 2001, she gave birth to a daughter, N., whom she believed was Robert's biological child. At birth, Joseph signed a voluntary declaration of paternity, and Joseph was listed as the father on the birth certificate, so that the child could get health benefits through Joseph. Neither David nor Robert had any contact with the child. Maria and the child continued to live in Joseph's home for the first 22 months of the child's life. Although the parties disputed how involved Joseph was with the child, she called him "da da." When the child was approximately 2 years old, Maria tried to move with her to Florida and Joseph filed a paternity action and attempted to prevent the move. Maria argued that *Nicholas H.* should be limited to dependency cases. Since N. had a fit, loving parent (Maria), who was the child's primary caretaker from birth, the court should not interfere to adjudicate paternity in a man who is not the child's biological father nor Maria's spouse. HELD: Nothing in *Nicholas H.* limits its applicability to dependency cases. "The clear import of *Nicholas H.* and *Jesusa V.* is that whenever possible, a child should have the benefit of *two* parents to support and nurture him or her. The court's concern, stated repeatedly, was that biology should not be used to render children *fatherless*. The fitness or unfitness of the mother did not figure in the equation. ¶ Nor do we agree with the trial court's finding that applying [the] '*Nicholas H.* case to this setting would be to invite boyfriends, uncles, or housemates to begin to petition the court for standing in matters where they may have assisted the mother for a period of time with a child, however have no biological or primary attachment for and to the child.' As we see it, the import of *Nicholas H.* is that a boyfriend, uncle or housemate who receives a child into his home and holds the child out as his own is not disqualified from asserting parental rights and responsibilities to the child by virtue of his lack of a biological attachment."

8. ***Kristine M. v. David P.*** (2006) 135 Cal.App.4th 783: Kristine gave birth to Seth and raised him as a single mother. Seth's biological father, David, saw Seth when he was born and on 4 other occasions, but never lived with Kristine and Seth. Kristine filed a petition to establish a parental relationship between David and Seth and sought temporary orders re: visitation, custody and support. After a finding that David was Seth's father, the parties stipulated to termination of David's parental rights with an agreed-upon lump sum payment by David to Kristine to cover child support. The basis for the stipulation was the parties' agreement that since David was in the military, did not live in the same area as Kristine, and did not have any interest in parenting Seth, it was in Seth's best interest to have the relationship terminated rather than for Seth to continue to have sporadic contact with a disinterested father. HELD: "Public policy and common sense" prefer, where possible, that children have two legal parents. Parents are not allowed to waive or limit, by contract, a child's right to support; nor will a court terminate a parent's rights outside of certain specified circumstances that arise in dependency and adoption cases.

9. ***In re Marriage of Jackson*** (2006) 136 Cal.App.4th 980: Following dissolution of their marriage, Michael Jackson's wife Deborah moved for termination of her parental rights. Michael agreed to this termination and to his assuming full legal and physical custody of the children. Deborah's motion was initially granted in 2001; however, more than two years later she filed for custody of the children and requested that the prior order be set aside. The court set aside its order terminating her parental rights, but denied her visitation with or custody of the children. Michael moved to vacate the order declaring the termination order void. HELD: A court cannot enter a judgment terminating parental rights based solely on an agreement between the parents. Instead, prior to termination of one parent's rights, the court must order an investigation of the children's circumstances; appoint counsel for the children; and/or independently consider the long-term interests of the children. By failing to conduct an independent investigation and make independent findings as to the best interests of the children prior to terminating Deborah's rights and leaving the children with only one legal parent, the court exceeded its jurisdiction – that is, even though it had fundamental subject matter and personal jurisdiction, the court exceeded its jurisdiction by contravening the public policy against leaving a child with only one parent. Therefore, the termination order was voidable upon Deborah's motion.

10. ***Amy G. v. M.W.*** (2006) 142 Cal.App.4th 1: Father is married to Amy, but fathered a child (Nathan) with Kim during an extramarital relationship. Kim was married to Steven, but they had separated at the time of Nathan's conception and remained separated at the time of Nathan's birth. According to father, Kim agreed to become pregnant to bear a child that he would raise with Amy; according to Kim, she was in a romantic relationship with father and expected that she and father would raise the child together. Kim concealed her pregnancy from friends and colleagues in California, and went to Virginia to give birth to Nathan. When Nathan was one month old, father traveled to Virginia to get Nathan, and Kim signed paperwork giving him full custody of Nathan and agreeing to Amy's adoption of Nathan. Father returned to California with Nathan and all of Nathan's clothes, formula, diapers and toys. From then on, Nathan lived exclusively with father and Amy; however, three months after surrendering Nathan to father, Kim filed a petition to establish her maternity of Nathan and for custody and visitation. Amy argued that she was Nathan's presumed mother, since she had received him into her home and held him out as her own child from the time he was one month old, and also under the marital presumptions, since she was married to Nathan's father at the time of his conception and birth. HELD: Although courts have applied the paternity presumptions to women (in *Karen C.*, *Salvador M.* and *Elisa B.*), in each of these cases there was no competing claim to be the child's second parent. Where both the child's biological mother and the child's biological father are asserting legal parentage, it is not appropriate to invoke a gender-neutral reading of the paternity presumptions to provide the child with another mother.

LESBIAN PARENTAGE CASES:

1. ***Nancy S. v. Michele G.*** (1991) 228 Cal.App.3d 831: Nancy and Michele began living together in 1969, and they had a marriage ceremony that same year. They eventually decided to have kids, and Nancy became pregnant by artificial insemination. Their daughter was born in June, 1980 and their son was born in June, 1984. Both children were given Michele's last name, and Michele was listed as the "father" on both birth certificates, however Michele never formally adopted either child. In January, 1985 Nancy and Michele separated. They agreed that their daughter would live with Michele, while their son would live with Nancy, with liberal visitation back and forth so that the children would be together four days a week. After approximately three years, Nancy wanted to change this custody arrangement, but Michele opposed any changes. Attempts to mediate failed, and Nancy brought a proceeding under the Uniform Parentage Act to be declared the sole parent of both children. HELD: Acknowledging that the result was "tragic" for the children, the Court of Appeal found that Michele was not a parent and did not have standing to seek custody or visitation of the children she had raised.

2. ***West v. Superior Court*** (1997) 59 Cal.App.4th 302: Barbara West and Pamela Lockrem lived together as a couple and decided to have children. Barbara became pregnant by artificial insemination and, in 1993, their daughter was born. The three lived together, with Barbara and Pamela sharing parental responsibilities, for two and one-half years, but Pamela never legally adopted their daughter. In spring, 1995, the two broke up but continued to share parenting responsibilities until early 1997. When Barbara tried to terminate visitation between Pamela and their daughter, Pamela went to court for an order allowing joint custody and visitation under the Uniform Parentage Act. The trial court ordered visitation. HELD: In a particularly harsh opinion, the Court of Appeal found that the trial court had no subject matter jurisdiction over the issue of custody and visitation, since Pamela was a "nonparent" -- "a nonparent in a same-sex bilateral relationship has no standing to obtain custody or visitation of the child of the partner or former partner."

3. ***Sharon S. v. Superior Court*** (2003) 31 Cal.4th 417: Sharon and Annette were in a longterm lesbian relationship from 1989 through mid 2000. They decided to have children and Sharon became pregnant by artificial insemination. In 1996, their older son was born, and Annette adopted him in a "second parent" adoption procedure. In 1999, Sharon again became pregnant using sperm from the same anonymous donor, and gave birth to their second son. Annette again filed a petition for adoption, and Sharon consented. The San Diego County Department of Health and Human Services conducted a home study and found that the adoption was in the child's best interest. However, before the adoption was finalized the couple broke up and Sharon tried to withdraw her consent. When the court found that her consent had become final under the statutes, and ordered the case to go forward to an adoption hearing, Sharon filed a writ petition

in which she alleged that the entire "second parent" adoption procedure was invalid. The Court of Appeal agreed with her, throwing thousands of second parent adoptions into limbo. HELD: The California Supreme Court held that same-sex "second parent" adoptions are valid under California law.

4. ***K.M. v. E.G.*** (2005) 37 Cal.4th 130. K.M. and E.G. are two women who entered into a committed relationship in 1993. They registered as domestic partners in San Francisco in 1994. In 1995, E.G. became pregnant through an *in vitro* fertilization procedure using embryos created from eggs provided by K.M. and sperm from an anonymous sperm donor. Both K.M. and E.G. signed the standard ovum donor and ovum recipient paperwork at the clinic; neither consulted legal counsel and no contract was signed between them. E.G. gave birth to twins on December 7, 1995. Soon afterward, E.G. asked K.M. to marry her and on Christmas day 1995 the couple exchanged rings. For the next five years, K.M., E.G. and the twins lived together as a family. K.M. "acted as an affectionate mother to the girls." The couple separated in 2001, and E.G. filed a notice of termination of the domestic partnership. K.M. filed a petition to establish her parental relationship with the twins, based both on her being their genetic mother and on her having welcomed them into her home and parented them for five years. The trial court and court of appeal both found that because K.M. signed the ovum donor paperwork at the clinic giving up any parental rights she had as the genetic mother, and because the trial court found -- applying the *Johnson* test -- that K.M. did not intend to be a parent at the time of conception, E.G. was the twins' only legal mother. HELD: Both K.M. and E.G. are legal mothers. Although K.M. signed the ovum donor paperwork, a parent cannot contract out of their parental rights and responsibilities to their genetic children. This was not either an egg donation nor a surrogacy situation, by virtue of the parties remaining in the home together and raising the children. [NOTE: This is an impressively confusing decision, with strong dissents. The majority chose to apply neither the *Johnson v. Calvert* intent test (since this presumably would have resulted in a finding that E.G. was the only legal parent) nor the *Nicholas H.* conduct test. Their rationale for not applying *Nicholas H.* to hold that K.M. -- having welcomed the children into her home and held them out for 5 years as her children -- was a mother through her parental conduct, apparently was that a genetic parent must hold out the children *as her genetic children*, which K.M. did not do. (In other words, K.M. did not publicly correct the perception that E.G. was the twins' full biological parent and that K.M. was parenting them based on her non-biological connection to them as other lesbian mothers do.) The applications of this holding to other families is confusing, and may well be limited to the context of lesbian couples sharing their reproductive functions as K.M. and E.G. did here.]

5. ***Elisa B. v. Superior Court*** (2005) 37 Cal.4th 108. Elisa B. and Emily B. were partners in a committed relationship. Using sperm from the same anonymous donor, each became pregnant. Elisa gave birth to a boy in 1997; and Emily had twins, a girl and a boy, in 1998, one of whom was severely disabled. Emily and

Elisa chose the children's names together, hyphenated their last names as the children's surnames, and considered both of themselves parents to all three children. Because of the one child's disability, Emily remained at home as a full-time care-taker, while Elisa returned to work. Elisa provided medical insurance for all three children and claimed all three as dependants for income tax purposes. The couple separated in 1999. Elisa continued to provide financial support for the twins for another year-and-a-half after the break-up. After the support ended, and because Emily still was unable to work due to her baby's disability, Emily obtained public assistance for the twins from El Dorado County. El Dorado County in turn sued Elisa for child support on the theory that Elisa had intentionally create the children with Emily using reproductive technology and therefore was legally responsible for them as a parent (see *Buzzanca*). The trial court ruled for Emily, but the Court of Appeal reversed, finding that: "[F]or any child California law recognizes only one natural mother.... Since Elisa is not the twins' natural mother and, for obvious reasons, she is not their father, and because she did not adopt the twins, Elisa does not have any of the rights, privileges, duties, or obligations of a parent under the UPA." Further, *Nicholas H.* and its progeny do not apply because "the twins have a natural, biological mother, Emily, who is not disclaiming her maternal rights and obligations, and the children can have only one natural mother." Thus, Emily is the twins' only legal mother and they remain on county welfare. HELD: Children born to lesbian couples in California can have two natural mothers (disapproving the language in *Johnson v. Calvert* stating that a child can only have one natural mother). "A person who actively participates in bringing children into the world, takes the children into her home and holds them out as her own, and receives and enjoys the benefits of parenthood, should be responsible for the support of those children--regardless of her gender or sexual orientation. ... We conclude, therefore, that Elisa is a presumed mother of the twins under section 7611, subdivision (d), because she received the children into her home and openly held them out as her natural children, and that this is not an appropriate action in which to rebut the presumption that Elisa is the twins' parent with proof that she is not the children's biological mother because she actively participated in causing the children to be conceived with the understanding that she would raise the children as her own together with the birth mother, she voluntarily accepted the rights and obligations of parenthood after the children were born, and there are no competing claims to her being the children's second parent." To the extent that they are inconsistent with this decision, *Nancy S.* and *West* are overruled.

6. ***Kristine H. v. Lisa R.*** (2005) 37 Cal.4th 156. Two women in a long-term committed relationship decided to have a child together. They arranged for one of them (Kristine) to conceive the child through artificial insemination. One month before the baby's birth, they obtained a judgment of parentage from the Superior Court finding that they both were legal mothers, based on the intentional procreation doctrine of *Buzzanca*. When their daughter, Lauren, was born, they gave her a name that reflected both Lisa's and Kristine's names, and both Lisa and Kristine are listed as parents on Lauren's birth certificate. Following the

child's birth, the couple raised Lauren together for almost two years. However, after they separated, Kristine brought a motion to vacate the judgment of parentage on the ground that the family court had lacked jurisdiction under the UPA to determine that Lisa was the child's legal parent. The family court denied the motion, and Kristine appealed. The Court of Appeal found that because the parentage judgment was based on a stipulation of the parties was not adequately grounded in the UPA itself, it "exceeded the family court's jurisdiction and is void and of no legal effect." HELD: Because the trial court had fundamental subject matter jurisdiction, and based on her having been a party to the action, Kristine is estopped from now challenging the judgment of parenthood. Both women are legal parents. [NOTE: The court declined to rule on the validity of the judgment itself, instead confining its ruling to the estoppel issue. The court explicitly noted that: "Nothing we say affects the rights or obligations of third parties, whatever they may be."]

7. ***Charisma R. v. Kristina S.*** (2006) 140 Cal.App.4th 301. Lesbian domestic partners had a child together through artificial insemination. When the child was only three months old, the biological mother (Kristina) moved out, taking the child with her. The non-biological mother (Charisma) petitioned for parentage, custody and visitation, but her case was dismissed by the trial court for lack of standing under *Nancy S. v. Michele G.*. She appealed. HELD: Charisma is presumed to be a parent pursuant to Family Code section 7611(d) if she (1) received the child into her home and (2) held the child out as her natural child. This is not an appropriate case for rebuttal of the presumption, pursuant to Family Code section 7612, if Charisma (1) actively participated in the child's conception with the understanding that she would raise the child as her own together with the birth mother; (2) voluntarily accepted the rights and obligations of parenthood after the child was born; and (3) there are no competing claims to her being the child's second parent (relying on *Elisa B.*). Remanded to the trial court for factual findings on these five points.

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