



## MULTI-PARENT FAMILIES: UNDERSTANDING SB 274

By Deborah H Wald.

On October 4, 2013, Governor Jerry Brown signed Senate Bill 274 into law. This bill means that, effective January 1, 2014, California's family and dependency courts will have the discretion to find that the children coming before them have more than two legal parents when necessary to protect the child from detriment. As stated in the bill itself, the purpose SB 274 is "to abrogate *In re M.C.* (2011) 195 Cal.App.4th 197 insofar as it held that where there are more than two people who have a claim to parentage under the Uniform Parentage Act, courts are prohibited from recognizing more than two of these people as the parents of a child, regardless of the circumstances."

*In re M.C.* was a sad and messy case involving a woman, her wife/domestic partner, and a man she had an affair with. The woman (Melissa) and her wife (Irene) were involved in a stormy on-again-off-again relationship. During an off-again period, Melissa became involved with Jesus and got pregnant. Melissa lived with Jesus and his family for a few months of the pregnancy,

during which time he supported and cared for her. However, prior to the baby's birth Melissa returned to Irene, and the baby was born into their marital home.

After Melissa and Irene broke up again, when the baby was only a few months old, Irene filed a petition in the family court asking for custody and visitation. In the meantime, Jesus had moved to Oklahoma and had had no contact with the child. Melissa reacted to Irene's custody motion by convincing a new boyfriend, Jose, to attack Irene with a knife. Melissa ended up in prison as an accessory to attempted murder, and Irene ended up in the hospital with serious injuries.

The Dependency Court found that Melissa was the mother, Irene was the presumed mother (based on both the marital presumption and on having received the baby into her home and openly held the baby out as her own child), and Jesus was the presumed father (based on his having cared for and supported Melissa during her

pregnancy). Not wanting to eliminate either Jesus or Irene from the child's life, the trial court found that all three were parents. The Court of Appeal expressed sympathy for what the Dependency Court had tried to do, but said that the courts could not find that a child had more than two parents without specific authorization from the Legislature. And thus Senate Bill 274 was born.

Because there is so much confusion and misinformation about this bill, I will try to outline here some of the things this new law does and does not do.

### WHAT THE BILL DOES:

Prior to passage of SB 274, when more than two people qualified as parents – whether through application of marital presumptions or through actual parenting or by other means – many courts believed they had to "cull the herd" down to two (even though the California Supreme Court had indicated in two separate decisions that whether a child could have more than two legal parents was still an open question). Generally speaking, this was done through application of Family Code section 7612(b), which provides that: "If two or more presumptions arise under [the Uniform Parentage Act] that conflict with each other, ... the presumption which on the facts is founded on the weightier considerations of policy and logic controls." This section was interpreted to mean that the courts lacked discretion to confirm the presumptions of two or more people thereby causing a child to have more than two full legal parents.

SB 274 has added a section (c) to Family Code section 7612, which provides that: "In an appropriate action, a court may find that more than two persons with a claim to parentage under this division are parents if the court finds that recognizing only two parents would be detrimental to the child. In determining detriment to the child, the court shall consider all relevant factors, including, but not limited to, the harm of removing the child from a stable placement with a

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parent who has fulfilled the child's physical needs and the child's psychological needs for care and affection, and who has assumed that role for a substantial period of time. A finding of detriment to the child does not require a finding of unfitness of any of the parents or persons with a claim to parentage."

What this means, in practical terms, is that courts will remain free to "cull the herd" but will not be required to do so if doing so would cause detriment to a child.

Further, SB 274 has codified our Supreme Court's holding in *Sharon S. v. Superior Court* (2003) 31 Cal.4th 417 that the provisions of our adoption statutes that provide for termination of parental rights upon granting of an adoption can be waived, allowing for 2nd parent – and 3rd parent – adoptions if a court finds them to be in the best interest of the child being adopted.

#### WHAT THE BILL DOES NOT DO:

(1) **SB 274 does not create any new ways for people to be recognized as parents.** The bill has made no changes to any of the statutes that address how a person gains parental status. That body of law will remain exactly the same after 1/1/2014 as it was before. The bill simply says that if there are more than two people who qualify as parents under current law, the courts are not required to eliminate parents until they get down to two.

(2) **SB 274 will never, under any circumstances, mean that a child automatically has more than two parents.** Prior to enactment of SB 274, our Uniform Parentage Act was being interpreted to provide that when more than two people qualified as parents of the same child – which most frequently occurs when a child has a biological mother, a biological

father, and a man who has consistently been in the "father" role without being biologically related to the child (e.g. the mother's husband or long term boyfriend) – the courts had no discretion to do anything other than pick which two would remain in the picture. Since California does not provide visitation rights to non-parents except under extremely limited circumstances (i.e. some grandparents and stepparents), what this meant was that children frequently were completely losing access to adults they had understood were their parents – and relied on as parents – without the courts having any recourse. What SB 274 says is that if a court finds that eliminating parents to get down to the number two would be detrimental to a child, the court does not have to eliminate them anyway. That is the only change this law makes. Absent a finding of detriment by a court, children will continue to have no more than two parents.

(3) **SB 274 will not, as a general rule, turn caretaking grandparents and stepparents into legal parents.** While there unquestionably are thousands of grandparents raising their grandchildren in California, it is very uncommon for these grandparents to publicly hold these children out to the world as their children. Instead, the vast majority of caretaking grandparents are completely up front about the fact that they are grandparents taking care of their grandchildren. This alone will prevent most grandparents from qualifying as "parents" for purposes of SB 274, because to become a parent under our Uniform Parentage Act without actually being a biological parent, a person has to either (a) be married to (or in a registered domestic partnership with) the child's mother or (b) have received the child into the person's home and openly held that child out as his or her natural child. Similarly, most stepparents openly acknowledge that they are stepparents, not parents. For this reason, while there likely will be

some stepparents and grandparents who will, as before, meet the definition of a presumed parent because they have openly held the child out as their own child, this will continue to be the exception and not the rule. This bill merely allows courts to recognize that when this occurs and the child also has two other potential parents, the court may decide the child has more than two parents if that is necessary to protect the child from harm.

A simple way to think about the distinction I am making here is this: if you showed an adult a photograph of a family gathering and asked him or her to identify the people in the photograph, would s/he point to the child in question and say "that's my child"? If so, that person may qualify as a parent under current interpretation of our Family Code; but if the person would say "that's my grandchild" or "that's my niece" or "that's my stepchild," the person probably will not be able to establish the parental relationship required for recognition as a presumed parent under our Code.

(4) **SB 274 will not force courts to allocate parenting time between more than two parents.** Even if a court makes a finding that reducing the number of parents down to two would be detrimental to a child, SB 274 will not require the court to allocate parenting time in a manner that it not a child's best interest. The new Family Code section 3040(d) – added by SB 274 – specifically states that: "In cases where a child has more than two parents, the court shall allocate custody and visitation among the parents based on the best interest of the child, including, but not limited to, addressing the child's need for continuity and stability by preserving established patterns of care and emotional bonds. The court may order that not all parents share legal or physical custody of the child if the court finds that it would not be in the best interest of the child as provided in

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Sections 3011 and 3020.” In other words, if a child has been raised by her mother and her mother’s steady residential boyfriend, who has been in a parenting role since the child’s birth, but the child also has had consistent positive contact with her biological father, a court could divide physical custody between mom and boyfriend/presumed father after a break-up while giving visitation time to dad, thus preserving the child’s established patterns and bonds.

Our family and dependency courts are faced with what sometimes appear to be insurmountable challenges, trying to tend to the needs of our state’s children under myriad circumstances and with both court and family resources frequently stretched to breaking. SB 274 will give our family and dependency court judges one more tool with which to look after the vulnerable children whose lives they impact. ♦♦

Deborah H. Wald is the founder of Wald & Thorndal, PC, a full-service family law practice serving the needs of families throughout Northern California. While her law partner Paul Thorndal primarily focuses on Dissolutions, Ms. Wald’s primary practice areas include Parentage Litigation, Adoption and Assisted Reproduction Law. Ms. Wald is a member of the Family Law Executive Committee of the State Bar of California (FLEXCOM), and is a fellow of the American Academy of Assisted Reproductive Technology Attorneys and the Academies of California Adoption and Family Formation Lawyers. She also is Chair of the National Family Law Advisory Council for the National Center for Lesbian Rights. She



**Deborah H. Wald**  
**Biography**

received her B.A. from the University of Massachusetts/Amherst, and her J.D. from Northeastern University School of Law in Boston, Massachusetts.

## ENDNOTE

by Steven Friedlander, Ph.D.

This is the final issue of the AFCC-CA Newsletter under my stewardship. As I rotate off the AFCC-CA Board of Directors I am pleased, and, admittedly, a bit relieved as well, to pass the torch on to Michael Powell, who represents the Central Region on our Board. Michael is not only enthusiastic about taking over the reins of the Newsletter, but is eminently qualified to take the Newsletter to the next level and beyond.

I extend my sincere thanks to all who have supported me in this endeavor, and particularly to those who have contributed interesting and informative articles during my tenure as Editor and Chair of the Newsletter Committee. I am most appreciative. I offer a very special thanks to each of the members of the

Newsletter Committee who, in fact, when it came right down to it, did most of the work.

Serving on the Board has been an honor, and I have been extremely enriched by the impressive and wonderful people with whom I have been privileged to work.

My best wishes to all for a happy holiday and an especially good and happy New Year. ♦♦

## New Email Address

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We look forward to hearing from you!