

SB 274: THE LAW AND MULTI-PARENT FAMILIES

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On October 4, 2013, Governor Jerry Brown signed Senate Bill No. 274 into law. This bill means that, effective January 1, 2014, California's family and dependency courts have the discretion to find the children coming before them to have more than two legal parents when necessary to protect the child from detriment. As stated in the bill itself, the purpose of Senate Bill No. 274 is "to abrogate", *In re M.C.*, 195 Cal. App. 4th 197 (2011) 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 with whom she had an affair. 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 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 the courts could not find a child had more than two parents without specific authorization from the Legislature – and thus Senate Bill No. 274 was born.

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In November 2013, even before Senate Bill No. 274 officially was in effect, at least one dependency court in California used the bill to find that a child had more than two parents under circumstances where prior law would have required the court to sever the longstanding bonds between the child and his presumed mother. The child's attorney sent a thank you to Senator Leno's office, noting, "so many families like [this child's] are frequently dehumanized by a system that excludes families that don't fit traditional models, even in California." Because of Senate Bill No. 274, this child was saved from that trauma. As the bill goes into effect, its proponents – myself included – hope that happy stories like this continue to flow from our dependency and family courts.

Since there is so much confusion and misinformation about Senate Bill No. 274, I will outline some of the things this new law does and does not do.

What the Bill Does:

Prior to passage of Senate Bill No. 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 FAM. CODE § 7612(b), which provides:

"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 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.

Senate Bill No. 274 has added a section (c) to FAM. CODE § 7612, which provides:

“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 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 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, Senate Bill No. 274 has codified our Supreme Court’s holding in *Sharon S. v. Superior Court*, 31 Cal. 4th 417 (2003) that the provisions of our adoption statutes provide for termination of parental rights upon granting of an adoption can be waived – allowing for second parent and third 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. Senate Bill No. 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. Senate Bill No. 274 will never, under any circumstances, mean that a child automatically has more than two parents. Prior to enactment of Senate Bill No. 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). This meant children were frequently losing complete access to adults they had understood to be their parents – and relied on as parents – without the courts having any recourse. What Senate Bill No. 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. Senate Bill No. 274 will not invalidate California’s child support guidelines. Senate Bill No. 274 added a subsection (D) to Family Code section 4057(b)(5), providing a new basis for deviation from the standard child support formula of Family Code section 4055 where a child has been found by a court to have more than two parents. In these cases, according to the Assembly Judiciary Committee Analysis, appropriate child support figures can be determined by dividing the child support obligations among the parents based on income and the amount of time each parent spends with the child. Specifically, a child support determination under these circumstances requires adding the net incomes of the lower earners to calculate the high earner’s share, and then repeating the formula for the two lower earners. The author’s office has approached the Judicial Council about creating additional guidance on this process.

4. Senate Bill No. 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 Senate Bill No. 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 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 when this occurs and the child also has two other potential parents,

the court may decide the child has more than two parents if it 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 she or 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.

5. Senate Bill No. 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, Senate Bill No. 274 will not require the court to allocate parenting time in a manner that it not a child’s best interest. The new FAM. CODE § 3040(d) – added by Senate Bill No. 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 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, then 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 a myriad of circumstances, and with both court and family resources frequently stretched to a breaking point. Senate Bill No. 274 will give our family and dependency court judges one more tool with which to look after the vulnerable children whose lives they impact.



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