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WHO IS A PARENT?
A QUICK GUIDE TO CALIFORNIA PARENTAGE LAW

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Below is a summary of the most important California cases attempting to answer the critical question: which relationships between children and the adults they rely on merit legal protection? These cases, read together, give us guidance on some of the issues the courts are grappling with in defining the contemporary family. Note that adoption cases, where a birth father attempts to assert paternity to prevent the birth mother from placing a child for adoption, are outside the scope of this summary.

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.

NOTE: Effective 1/1/2013, there is statutory authority for gestational surrogacy agreements and court actions based on them. See Family Code §§ 7960, 7962.

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.

5. ***Jason P. v. Danielle S.*** (2014) 226 Cal.App.4th 167: Jason and Danielle were longstanding on-again-off-again romantic partners who never married. They attempted to conceive a child together but were unable to do so. At some point, Jason underwent surgery to increase his fertility; at some point, Jason wrote Danielle a letter saying he couldn't be a father but she could use his sperm; and eventually, they went together to a fertility clinic and signed papers there for an IVF procedure designating themselves as the "Intended Parents." As a result of the IVF procedure, a child was born. Jason had contact with the child and the three cohabited for some period of time. After Danielle cut off contact between Jason and the child, Jason filed a parentage action. The trial court held that Jason was a statutory sperm donor pursuant to Family Code § 7613 and thus was precluded from establishing paternity. Jason appealed. HELD: Although Jason was a statutory sperm donor, he nevertheless had standing to pursue paternity based on his parental conduct (see below). Family Code § 7613 precludes a statutory sperm donor from establishing paternity *based on biology*; it does not preclude him from establishing parentage based on other means available to others not genetically related to the child.

PARENTAL CONDUCT CASES:

* Until 2005, parental conduct did not provide an avenue to a legal determination of parentage for same-sex couples with children. The cases below trace the evolution of the California parentage presumption based on conduct (Family Code § 7611(d)) through some of its history and into the present.

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. ***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."

3. ***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."

4. ***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.

5. ***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.

6. ***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.

7. ***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.

8. ***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."

9. ***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.]

10. ***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.

11. ***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' 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.”]

12. ***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.

13. ***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.

14. ***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.

15. ***Charisma R. v. Kristina S.*** (2009) 175 Cal.App.4th 361. Return to the Court of Appeal after the trial court found, on remand of the above case, that Charisma had attained presumed parent status and that Kristina had failed to rebut the presumption. One of Kristina's critical arguments on this appeal was that Charisma had not acted as a parent for a sufficient duration. HELD: The actual period in which the presumed parent lives with and cares for the child need not last for any particular duration, as long as it is "sufficiently unambiguous as to constitute a clear declaration regarding the nature of the relationship. … Although cohabitation for an extended period may strengthen a claim for presumed parent status, section 7611(d) does not require that cohabitation or coparenting continue for any particular period of time."

16. ***In re J.O.*** (2009) 178 Cal.App.4th 139: Three teenage children, who were being raised by their mother and stepfather, were removed from the mother's home due to abuse by the mother and stepfather. It was determined that their father (Martin) was in Mexico, and he was contacted there. Martin had lived with the mother and children at the time of all of their births, receiving them into his own home; and had held all three children out as his own children. He was listed as the father on all three birth certificates. When the children were young, he

had gone to Missouri for work, sending money back to mother and with the intention that mother and children would join him once he was settled there. However, when Martin was ready for the family to come to Missouri, mother informed him that she was now involved with Carlos (stepfather). Father eventually lost contact with the family, and at the time of the dependency hearing he had had no contact with – nor paid any support for – the children in approximately 8 years. Based on this lengthy absence from the children's lives, the juvenile court determined that Martin was only an "alleged" father, and Martin appealed. HELD: Where a man has achieved presumed father status by receiving children into his home and holding them out as his own, his subsequent failure to maintain contact with and support those children does not constitute sufficient grounds for rebuttal of the 7611(d) presumption, absent another fit parent competing to fill the parental role.

17. ***T.P. v. T.W.*** (2011) 191 Cal.App.4th 1428: Father filed a Petition to Establish Parental Relationship. Mother filed a response admitting Father's biological paternity, and simultaneously filed a petition to terminate Father's parental rights and free the child from Father's custody and control. Mother alleged that Father had abandoned the child, as defined in Family Code section 7822. According to Mother, Father had neither seen nor provided for the child since the child's birth 6 years earlier; had never shown any interest in the child; had not participated in the child's medical care or education; and had no parental relationship with the child. Mother alleged that she had provided for all of the child's financial and emotional needs from birth to the present. The trial court denied Mother's petition and granted Father's petition, finding that a child has a right to a relationship with both parents and that Mother lacked *standing* to pursue termination of Father's parental rights in the absence of an adoption proceeding. HELD: Mother was an "interested person" under Family Code § 7841, with standing to pursue termination of Father's parental rights, whether or not an adoption was anticipated. *Note: the Court of Appeal was careful to state that they were taking no position on the merits of Mother's action but were, instead, only addressing the issue of standing. It remains unclear whether California law and public policy will support termination of a parent's rights for abandonment where that would leave the child with only one parent – see Kristine M. v. David P. and In re Marriage of Jackson above.*

18. ***In re M.C.*** (2011) 195 Cal.App.4th 197: Melissa and Irene lived together as a couple, in a "stormy" relationship "marked by physical and verbal abuse by both women, and allegedly peppered throughout with problems arising from Melissa's mental illness and drug and alcohol abuse." They registered as domestic partners with the state of California in February 2008, then separated in May 2008. During their separation, Melissa was in an intimate relationship with Jesus and became pregnant with MC. Jesus was supportive of the pregnancy, encouraging Melissa to live with him and his family, assuring that she got prenatal care, and providing her with financial support. In July 2008, Melissa

filed a petition to dissolve her domestic partnership with Irene and seeking a TRO. However, Melissa and Irene reconciled in September 2008 and resumed living together and Melissa cut off contact with Jesus. Melissa and Irene married on October 15, 2008. They were together when MC was born in March 2009, and Irene was present at the birth. However, when MC was a few weeks old, Melissa moved out and took MC with her. Irene filed a motion seeking joint custody and visitation, but Melissa opposed the request. A TRO issued but, starting in July 2009, Irene was allowed weekly supervised contact with the child. In the meantime, Melissa contacted Jesus and let him know she had left Irene and needed help supporting the child. Jesus had moved to Oklahoma but sent Melissa money for MC several times, and Melissa regularly took MC to visit with Jesus's family in California. MC was taken into protective custody in September 2009, after Melissa's new boyfriend attacked Irene with a knife and almost killed her. Melissa was arrested and charged as an accessory to the crime, and MC ended up in the dependency system. Irene remained injured, was unemployed and sleeping on a sofa in a friend's apartment, and had no means to care for the child. Jesus was employed, engaged to be married, and living in stable and adequate housing in Oklahoma. He indicated that he had always been ready and willing to care for the child had Melissa given him an opportunity to do so. Following full evidentiary proceedings, the trial court found that *both* Irene and Jesus qualified as "presumed" parents and that MC therefore had three legal parents. The court placed the child with Melissa's mother, but ordered reunification services to all three parents. All three adults appealed. HELD: The trial court's determination that the child had three legal parents – "a biological presumed mother, a statutorily presumed mother and a constitutionally presumed father" – was in error. "We are left with three individuals claiming legal status as parents …. Only two of these individuals may retain that status." Remanded to the trial court for it to weigh the competing presumptions and determine which two of the three adults should retain legal rights with regard to MC. *Note: the Court of Appeal acknowledged the temptation "to accommodate rapidly changing familial structures, and the need to recognize and accommodate novel parenting relationships." They "agree[d] these issues are critical, and California's existing statutory framework is ill-equipped to resolve them. But even if the extremely unusual factual circumstances of this unfortunate case made it an appropriate action in which to take on such complex practical, political and social matters, we would not be free to do so. Such important policy determinations, which will profoundly impact families, children and society, are best left to the Legislature." This invitation for legislative reform was heard, and in 2013 SB 274 (Leno) was signed into law (effective 1/1/2014) allowing trial courts the discretion to recognize more than two parents if more than two people qualify as parents under existing law and "culling the herd" down to two would be detrimental to the child.*

19. ***S.Y. v. S.B.*** (2011) 201 Cal..App.4th 1023: SY and SB were two women who were in a committed relationship for over 13 years. During the majority of

their relationship, they maintained separate residences; however, SY spent the majority of nights in SB's home, sharing SB's bed. Over the course of their relationship, SB adopted two children: GB and MB. SY did not adopt the children with SB, but she participated in raising and supporting them both during and after her relationship with SB. SY was a Colonel in the US Air Force Reserves, and she "believed her position in the military precluded her [under Don't Ask Don't Tell] from adopting the children or formalizing her relationship with SB." After break-up, SB cut off contact between SY and the children and SY filed a petition with the court to establish herself as the children's second legal parent. SB maintained that SY wasn't a presumed parent because she had never received the children into *her own home*, instead spending her time with them in SB's home. SB also contended that a finding that SY was a parent would undermine the state's adoption laws, since only SB had gone through a home study and been granted an adoption of the children. HELD: "While SB may not have intended for SY to obtain any legal rights to the children, the record is replete with evidence that she not only allowed, but encouraged, SY to co-parent both children from the beginning." SY's co-parenting of the children in the "family home"' was sufficient to satisfy the "receiving" requirement under Family Code § 7611(d). Neither SY's maintenance of a separate residence nor her failure to legally adopt the children were legally dispositive, especially given her credible explanation of why these things were necessitated by Don't Ask Don't Tell.

20. ***E.C. v. J.V.*** (2012) 202 Cal.App.4th 1076: JV was in a sexual relationship with Brian P, and became pregnant. Soon afterwards, she ended her relationship with Brian. Around the same time, she became good friends with EC. EC took JV to her prenatal appointments, was JV's Lamaze partner, they often spent the night in each other's homes, and EC was present at the minor's birth and cut the umbilical cord. After the minor was born, JV and the baby lived with JV's mother for a few months and then moved into EC's home. Sometime thereafter, EC and JV became sexually involved but did not initially tell their families. They were together in a committed relationship for 5 years, but never married or registered as domestic partners (which may have been explained by EC's status in the military). The women broke up when the minor was 5 years old. They continued to share custody for a year, then JV cut EC off. Five months later, EC filed a petition to establish her parental relationship and for custody and visitation. Despite testimony from numerous sources that JV and EC had acted as a family and had raised the child together, the trial court found that EC was *not* a presumed parent based on the women's failure to register as domestic partners and the fact that they did not conceive the child together with the intention to both be parents, were only "very good friends" when the child was born, and did not initially live together. EC appealed. HELD: The trial court erred by focusing on the relationship between the two women rather than the relationship between EC and the child. "The trial court … found it relevant that when appellant and respondent began having a sexual relationship, they did not immediately inform their families. Whether and when the women told their

families they were having sex is not a relevant factor in determining appellant's commitment to the minor."

21. ***L.M. v. M.G.*** (2012) 208 Cal.App.4th 133: LM and MG were a same-sex couple, but they never married or registered as domestic partners. Each had a child of her own from prior to the relationship. In 2001, MG adopted another child. LM was present at the adoption hearing, and the two women raised the child together until he was 3 years old. After they broke up, the child lived primarily with MG but regularly spent nights at LM's house. The child also went on vacations with LM, and LM cared for the child whenever MG was out of town. The child called LM "mom," and LM openly referred to the child as her son. In 2009, MG informed LM that she planned to relocate to Europe with the child. LM responded by filing a Petition to Establish Parental Relationship and sought custody and visitation orders. MG argued that the judgment of adoption she obtained in 2001, adjudging her to be the child's sole parent, was the equivalent of a "judgment establishing paternity of the child by another man" within the meaning of Family Code § 7612, which conclusively rebutted LM's presumption of parentage under Family Code § 7611(d). HELD: "[A]lthough the adoption decree obtained by MG implicitly served as an adjudication that the Child's best interests were served by conferring parental status on MG and severing the Child's legal ties with his birth parents, there is no basis to characterize the adoption decree as establishing that, *regardless of future developments*, the Child should be limited to one parent. … Put simply, the adoption decree establishes that MG is the Child's mother, but it does not preclude a determination under the UPA that LM is the Child's *second* mother."

22. ***R.M. v. T.A.*** (2015) 233 Cal.App.4th 760: TA lived in San Diego but was in the Navy. She was posted to New Orleans from 2003-2005. During this time, she was in an intimate relationship with RM. After returning to San Diego, TA underwent fertility treatment there, ultimately conceiving a child by IVF using the sperm of an anonymous donor. She did this alone, without RM's involvement, and she testified that she did so intending to be a "single mother by choice." However, by the time the child was born, she and RM again were in a relationship and RM was present at the hospital (although not in the delivery room) for the child's birth. He also was present in San Diego for the child's baptism; however, his name does not appear on the child's birth certificate or her baptismal certificate. TA regularly visited RM in New Orleans with the child from when the child was born in 2008 until she and RM finally broke up in 2010, and there was evidence that she referred to RM as "Daddy" both publicly and when speaking to the child. They were active in RM's church in Louisiana, and TA identified RM as the child's father to that community. In 2010, TA became pregnant with a second child, conceived through sexual intercourse with RM. She subsequently returned permanently to San Diego and ended her relationship with RM. She admitted that the second child was RM's child, but denied that he had a legal relationship with the first child. She claimed a statutory and

constitutional right to raise the first child without interference from RM or the court. The trial court heard extensive testimony for both parties and issued a statement of decision in which it concluded that TA had made a substantial emotional and financial investment in having the child as a single mother, but that through her subsequent conduct she allowed RM to assume a parental role with the child – co-parenting the child with her and assisting with the child's financial support – such that he qualified as a presumed parent under Family Code section 7611(d). The court found that, because TA allowed RM to develop a strong parent-child bond with the child, rebuttal of the parentage presumption would be inappropriate. HELD: "[C]ase authority reflects that judicial application of the section 7611(d) presumption and the [public policy favoring two parents] does not seek to *impose* a two parent choice to the detriment of a single parent choice, but rather seeks to *further* a two parent familial arrangement that has *already been developed* in the parenting of the child. … Mother's constitutional claims are unavailing given that the policy underlying the section 7611(d) presumed parent presumption is *the protection of already developed parent-child relationships for purposes of providing stability to children.* When viewed through the lens of this core policy, the relevant inquiry is not whether a single parent choice should be afforded the same level of protection as a two parent arrangement, but rather whether a two parent relationship has *in fact* been developed with the child. In this latter circumstance, the interests of the child in maintaining the second parental relationship can properly take precedence over one parent's claimed desire to raise the child alone."

MARITAL PRESUMPTION CASES:

1. ***Dawn D. v. Superior Court*** (1998) 17 Cal.4th 932: Dawn was married to Frank. During a period of separation, she began living with Jerry. She became pregnant by Jerry, but moved out of his home and returned to her husband while still pregnant. The child was born into the marital home, and Frank held the child out as his own. Jerry attempted to negotiate an agreement for child support and visitation, but Dawn and Frank declined. Jerry subsequently filed an action to establish paternity of the child, and Dawn moved for judgment on the pleadings based on the marital presumption. The trial court denied Dawn's motion and Dawn appealed all the way to the state Supreme Court. HELD: Even though the conclusive marital presumption does not apply under these circumstances – given that Dawn and Frank were not cohabiting at the time of the child's conception – Frank is entitled to the benefit of the rebuttable marital presumption under 7611(a), as well as to the behavior-based presumption of 7611(d). Jerry does not have standing to challenge these presumptions, given that he never succeeded in receiving the child into his home; and he does not have a constitutionally protected liberty interest in establishing his paternity, given that he has no actual established relationship with the child. As stated by Justice Kennard: "A man who wishes to father a child and ensure his relationship with that child can do so by finding a partner, entering into a marriage, and

undertaking the responsibilities marriage imposes. One who instead fathers a child with a woman married to another man takes the risk that the child will be raised within that marriage and that he will be excluded from participation in the child's life. The due process clause of the United States Constitution provides no insurance against that risk and is not an instrument for disrupting the marital family in order to satisfy the biological father's unilateral desire, however strong, to turn his genetic connection into a personal relationship."

2. ***Brian C. v. Ginger K.*** (2000) 77 Cal.App.4th 1198: Ginger married William in March 1994. She met Brian in December 1994 and began an affair with him that same month. During the period when her daughter Kennedy was conceived, Ginger was having sex with both men. Ginger subsequently left her husband (William) and moved in with Brian, and Kennedy was born into the home that Ginger and Brian shared. Brian was present at the birth and was listed on the birth certificate as the father; and he raised Kennedy as his own daughter, "doting on" her, for the first year of her life, and continued to see her on a regular basis – including having custody of her on weekends – for another six months after that. However, when the child was roughly 1½, Ginger reconciled with William and unilaterally cut off contact between Brian and Kennedy. After prolonged efforts to work things out, Brian ultimately filed a paternity action. This action was dismissed on Ginger's summary judgment motion on the basis that Ginger was cohabiting with William at the time of Kennedy's conception, and that William was not impotent or sterile, bringing this case within the conclusive marital presumption of Family Code section 7540. Brian appealed. HELD: Because Brian had received Kennedy into his home and held her out as his own child, he had attained presumed parent status and had statutory standing to bring his paternity action. Further, because Brian had an established parental relationship with Kennedy, if DNA tests showed him to be the genetic father he would have a constitutionally protected liberty interest in his relationship with Kennedy, under the due process clause. Granting of summary judgment reversed, and case remanded for DNA testing and further proceedings.

3. ***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."

4. ***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 – and particularly the marital presumption – to provide the child with another mother.

5. ***V.S. v. M.L.*** (2013) 222 Cal.App.4th 730: Mother and V.S. were in a long distance intimate relationship, and mother became pregnant. She initially agreed to marry V.S. but subsequently changed her mind. Instead, she married R.G. prior to the baby's birth, and the two of them entered their names on the baby's birth certificate based on the marital presumption of Family Code § 7611(a) and went on to raise the child together, along with R.G.'s two children from his prior marriage. When the baby was 8 months old, V.S. filed an action to establish paternity, and mother filed a motion to quash for lack of standing under *Dawn D.*. The trial court dismissed V.S.'s action for lack of standing, and V.S. appealed. HELD: A 2010 amendment to Family Code § 7630(c) means that all alleged fathers now have standing to challenge the 7611(a) marital presumption even if the alleged father has never met the child. *Note: The standing provisions for our UPA are codified in Family Code § 7630. 7630(a) says that only the husband, the wife, the child or an adoption agency has standing to challenge the marital presumption. That statute has not been amended. However, a 2010 adoption bill amended 7630(c) – which used to say that* where there is no presumed father *an alleged father has standing to pursue a court action to establish his paternity – to simply say that an alleged father has standing to pursue a court action to establish paternity, regardless of whether or not there is a presumed father – thereby substantially overruling Dawn D.. Legislation has been introduced in the state Assembly to correct this unintended change in the law.*

VOLUNTARY DECLARATION OF PATERNITY CASES:

1. ***In re William K.*** (2008) 161 Cal.App.4th 1: Mother and Ronald (with whom she was not married) planned to have a child together. While pregnant, mother discovered that Ronald was a convicted sex offender, and Ronald was subsequently incarcerated for failure to register. When the child was born, mother entered into a Voluntary Declaration of Paternity (VDP) with W.K., in an effort to protect the child from Ronald (due to her discovery that he was a sex offender). The child was removed from the mother at birth, having tested positive for narcotics. When Ronald got out of prison, he promptly contacted DSS and made efforts to have contact with and provide for the baby. Paternity tests

confirmed that he was the genetic father. However, the court concluded that he was only an alleged father and that W.K. was the presumed father, based on the VDP. HELD: Under the circumstances of this case, it was not in the child's best interest to set aside the VDP. *Note: This case includes a lengthy discussion of the various procedural options available for attempting to set aside a VDP, and will be useful to anyone trying to obtain that outcome.*

2. ***Kevin Q v. Lauren W.*** (2009) 175 Cal.App.4th 1119: Kevin (a family law attorney in Orange County) began a relationship with Laruen in 2003. Mother and her older child moved in with Kevin for some period, then moved out, then moved back in when she was pregnant with a second child. The child was born while mother and Kevin were together, was brought home to Kevin's home which they shared, and lived with Kevin until the child was 20 months old, at which point mother moved out again and took both children with her. Kevin promptly petitioned to establish a parental relationship with the younger child, asserting presumed parentage under 7611(d). Evidence indicated that Kevin had supported the mother – both emotionally and financially – throughout the pregnancy; had been present at the birth and cut the cord; that Kevin's friends and family believed Kevin to be the child's biological father; that Kevin played a primary caretaking role in the child's life; and that Kevin bought a larger family home near a park for himself and the family. Kevin was granted temporary visitation, and the matter was set for further hearing. In mid-litigation, mother and biological father – who had had no involvement whatsoever with the child – entered into a Voluntary Declaration of Paternity and stipulated to the biological father's paternity in a separate court action. The trial court weighed the two men's paternity claims against each other, and concluded that Kevin's paternity presumption prevailed. Mother appealed. HELD: The genetic father's signing and filing of the VDP had the force and effect of a legal judgment of paternity in the genetic father, and trumped Kevin's paternity presumption under 7611(d). It was improper for the court to engage in a weighing process. The genetic father was the sole legal father as a matter of statutory law. *Note: This case has been widely referred to as the worst family law decision of 2009. Legislation to overrule it by allowing a court to weigh the competing claims of a presumed parent against those of a VDP parent was enacted in 2011 – see amended Family Code § 7612.*

3. ***H.S. v. Superior Court*** (2010) 183 Cal.App.4th 1502: Mother was living with her husband on weekends, but was apart from him during the week. She had an affair and became pregnant, and separated from husband so he would not find out. When the baby was born, she entered into a VDP with the biological father. However, they never lived together as a family. Mother reconciled with husband shortly after the child's birth; and mother, husband and child lived together as a family. Biological father filed a petition to establish his paternity and requested genetic testing. The trial court ordered genetic testing, and husband and mother appealed. HELD: The VDP process was not intended for use by married women

to defeat the marital presumption of paternity in a husband, and a VDP executed by a married woman is voidable as a matter of law. Since biological father had no other basis for asserting presumed father status, he lacked standing to challenge the legal paternity of the husband. *The holding that a married woman cannot enter into a VDP to assign paternity to a man other than her husband was codified in 2011 Assembly Bill 1349. See amended Family Code § 7612.*

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