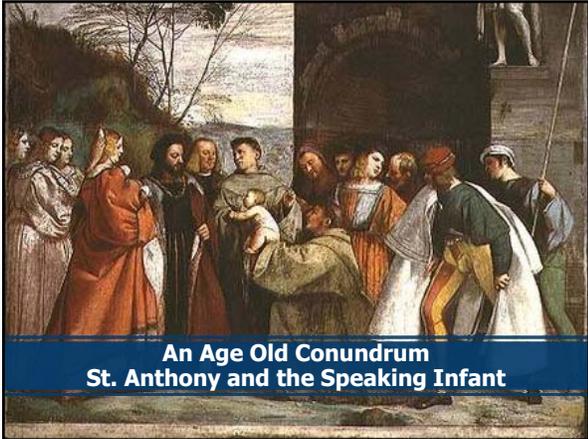


Bringing up Baby: Making Parentage Determinations in the 21st Century

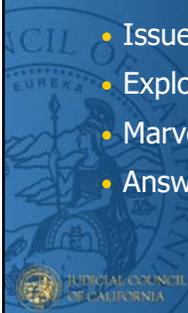
Hon. Sharon L. Kalemkarian, San Diego
Hon. Erin M. Childs, San Luis Obispo

23rd Annual AB 1058 Child Support
Training Conference
August 27-30, 2019



Today We Will:

- Issue Spot: Who's the Parent?
- Explore Challenges to Parentage
- Marvel at "True Life" Scenarios
- Answer Each Other's Queries



Throughout History, Parentage Has Mattered

- History of Parentage & Paternity
- Community Knowledge v. Biology
- Parentage = social standing, wealth, security, stability, rights



Cultural Trends Point to Cont'd Role for the Court

- More births out of wedlock: 37.5% in California
- Greater child support enforcement
- Variety of Actions re: parentage
- DV custody orders for unmarried parents





A Spanish court has ruled that the pop star Julio Iglesias is the biological father of a 42-year-old man whose mother said she had a brief affair with the singer in the 1970s. In a case that has dragged on for two years, a judge in Valencia ruled that Javier Sánchez Santos, is Iglesias' son despite him repeatedly refusing to give a DNA sample. The judge's decision was based on the testimony of María Edite, who said she had a one-week affair with Iglesias in 1975, and on a finding that Julio and Javier look alike.



Preliminary Inquiries in Every Case:

- Does the Court have jurisdiction over the parties?
- Does the person have standing to bring request?
- Is the mother the natural parent/birth mother – FC 7610?
- Are there any other Parentage “Judgments”: VDOP, Juvie, other state, Family?



The Most Common Ways to Establish Parentage in Court

- Marital Presumption
- Voluntary Declaration of Parentage
- Presumptions under FC 7611
- Genetic Testing
- Equitable Estoppel



The Marital Presumption: Cohabitation FC 7540 “conclusive presumption”

Current 7540:

Except as provided in section 7541, the child of a wife cohabitating with her husband, who is not impotent or sterile, is conclusively presumed to be a child of the marriage.



As of 1.1.20: Marital Presumption

- (a) Except as provided in section 7541, the child of spouses who cohabited at the time of conception and birth is conclusively presumed to be a child of the marriage.
- (b) The conclusive marital presumption in subdivision (a) does not apply if the court determines that the husband of the woman who gave birth was impotent or sterile at the time of conception and that the child was not conceived through assisted reproduction.



Queen Marie of Romania met Lieutenant Gheorghe Cantacuzene, a member of an ancient Romanian princely family. Although not very good looking, Cantacuzene stood out using his sense of humor and fashion, as well as his talent in horse-riding.

The two soon became romantically involved, but their affair was terminated after it became known by the public. There was speculation on whether Marie's second daughter, "Mignon", was Cantacuzene's daughter, and not Ferdinand's.



The Happy Couple



Queen Marie



Princess by Birth



The dashing Lieutenant



Voluntary Declaration of Parentage

WARNING: statute change 1.1.20

- Parents Signed and Presented Copy to the Court
- Same Force as Judgment: FC 7573(d)
- Rescission Rules by signatories: 60 days from signing (FC 7575)



The Voluntary Declaration of Parentage

SAMPLE

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7611 Rebuttable Presumptions—It's me/it's him/it's her!

Most Commonly Used Presumptions:

- Rebuttable Marital Presumption: FC 7611(a)
- FC7611(d): presumed parent receives the child into his or her home and openly holds out the child as his or her natural child.

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Sylvester Stallone: In 1994, supermodel and future reality TV star Janice Dickinson thought her then-boyfriend, Sylvester Stallone, was the father of her daughter, Savannah. Stallone dumped his other gal, model Jennifer Flavin, planning to wed Dickinson and make a family. A DNA test proved Janice's former boyfriend, Michael Birnbaum, was Savannah's daddy instead. The movie star eventually returned to Flavin, marrying her in 1997 and having three daughters.

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Genetic Testing

- In any civil action, the court may order, or on motion by a party FC 7551
- If refusal, court may resolve question of parentage against that parent FC 7551(d)
- Admissible genetic testing must be by court order
- New: no testing if more than one person other than natural mother asserts a claim FC 7558(b)(2)





**Anni and Ashot Manukyan and
CHA Fertility Clinic**



Three couples went to CHA Fertility Clinic, expecting the mothers to get their own embryo. Instead, Anni's embryo and that of a third couple were implanted in a couple in NYC (who thought they were getting their own embryos). Twins were born – and because the birth couple was Asian, they realized the babies were not their genetic babies. They wanted however to keep them. Anni and Ashot went to NYC Court, and won custody based upon NY law because it was their DNA and they had the intention to have a child. Many tears on all sides.

Equitable Estoppel

- Equitable Doctrine (Ev Code 623)
- Non-Bio Dad must know he isn't bio Dad, but act as Dad and:
 - Represent to child he was Dad
 - Child relies upon that representation
 - Child is ignorant of true facts
 - Relationship of long duration frustrated discovery of natural father





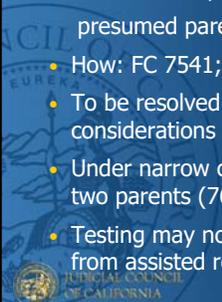
CHALLENGING PARENTAGE



Your Honor - "I'm the parent", or "I'm not the parent"!

- Does that person have standing?
- Is the challenge timely?
- Are there competing claims?

.... don't forget to always go back to how you got here to begin with.



Challenge: Marital Presumption FC 7541

- When: two years from birth
- Who: either spouse, 7611
presumed parent or child GAL wants 7611
- How: FC 7541; Genetic Testing per code
- To be resolved per FC 7612 (weightier considerations of policy and logic)
- Under narrow circumstances, can be more than two parents (7612(c))
- Testing may not be used to challenge parentage from assisted reproduction

Challenge: POP DEC: FC 7575, FC7577

- Who: Signatory or 7611 Presumed Parent
- When:
 - If Signatory, within 60 days of signing;
 - or – w/in 2 years if based on fraud;
 - or – no time limit if VDOP is void (7573.5 after 2020)
 - or – if non-signatory w/in 2 years of VDOP (1.1.20)
- What: Request for Genetic Test
- Result: Weigh Factors as to Whether to Set Aside (7575 and 7577)



Challenge: Competing 7611 Presumptions

- Who: 7611 parent, 7540 parent, genetic parent
- What: Rebut by clear and convincing standard
- How: If two or more presumptions arise, the claim "founded on the weightier considerations of policy and logic controls" 7612 (b)
- More than 2 parents if detrimental to child to limit to 2 (7612 (c))





Padma Lakshmi: The Top Chef hostess was involved in a paternity scandal after she gave birth to daughter Krishna in 2010. Lakshmi initially didn't reveal the father's identity, but it was later proved to be venture capitalist Adam Dell.

Dell believed the star's other boyfriend, financier Theodore Forstmann, was acting like the girl's father and sued the cooking star for full custody of Krishna. Dell ultimately won extra custody and visitation rights.

Challenge: Judgment of Parentage

- FC 7646 to set aside judgment (not a VDOP) if genetic testing indicates judgment father not bio Dad
- By parent, child, or legal rep
- 2 years from date father “knew or should have known” of judgment or parentage action
- Does not apply to assisted reproduction case
- Many factors to weigh: FC 7648 – best interest of child



FC 7630 action to determine existence or non-existence of parentage

- By child, natural mother, or presumed parent under 7611 (a-c) or an assisted reproduction donor, at any time to declare existence of parent/child relationship
- By same, to declare nonexistence of 7611 (a-c) parent/child relationship within reasonable time after knowledge of facts
- At any time for purpose of declaring non-existence of parent/child relationship of a donor
- Any interested party may bring an action at any time for purposes of determining existence/non-existence or parent/child relationship under 7611(d) or (f) (held child out or in utero child of decedent natural mother)





Liv Tyler: The Lord of the Rings star, the daughter of Playboy Playmate Bebe Buell, believed for nearly ten years that her biological dad was rocker Todd Rundgren.

But after Aerosmith front man Steven Tyler kept stopping by their home, and Liv noticed a resemblance, she confronted her mother, who confirmed he was her real dad.

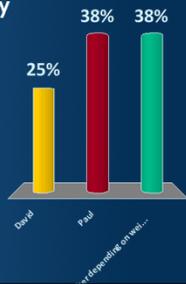
Hypo 1:

Susan and Peggy had a legal wedding ceremony on January 1, 2018. Susan gives birth to a child on April 1, 2019, through assisted reproduction. Peggy wants to be placed on the birth certificate as the other parent.



Can Peggy be placed on the birth certificate?

- A. Yes
- B. No
- C. I have no clue...That's why I'm here!



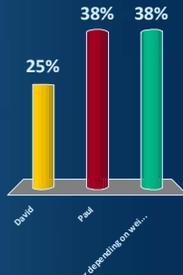
Hypo 2

Sally is married to John and have a happy home. While John is on deployment, she has an affair with Peter and conceives a child from Peter. She knows it is Peter's child, and tells him she is pregnant. When John comes home after an 8-month deployment, he is thrilled see her pregnant. She won't let Peter near her, and John is at the hospital for the birth, and is listed as the father on the birth certificate. When Peter sees the child in the park at age 3, and sees how much he looks like him, he brings a petition to challenge the marital presumption.



Who is the father?

- A. John
- B. Peter



HYPO 3

Mom is dating boyfriend #1, David, and boyfriend #2, Paul. As these things go, mom becomes pregnant. She tells Paul that he is the father, but does not tell David about the child at all. Paul is present at the birth, is listed on the birth certificate and signs a voluntary declaration of parentage (VDOP).

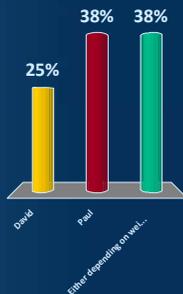
Who is the legal dad?



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Who is the dad?

- A. David
- B. Paul
- C. Either depending on weightier considerations



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HYPO 4

Mom and boyfriend #1, David, start dating again and mom tells him about junior. Both mom and David believe that he is in actuality the bio-dad. They tell their friends and family that he is the real father.

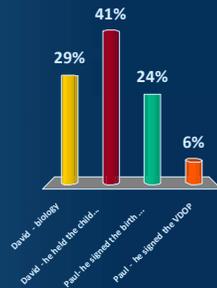
Who is legally the dad and why?



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Who is legally the parent and why?

- A. David - biology
- B. David - he held the child out as his own
- C. Paul - he signed the birth cert.
- D. Paul - he signed the VDOP



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HYPO 5

Mom leaves boyfriend #2, Paul, and starts a relationship with boyfriend #1, David, and they move in together. They have a DNA test; it shows that David is the bio-dad. Paul has little contact with the child.

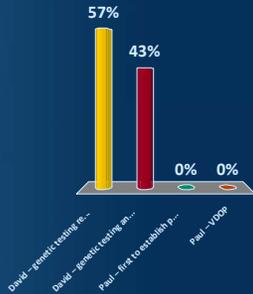
Who is legally the parent and why?



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Who is legally the parent and why?

- A. David – genetic testing results
- B. David – genetic testing and living together/holding out
- C. Paul – first to establish parentage prevails
- D. Paul – VDOP



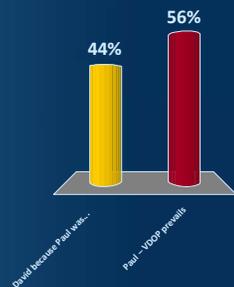
HYPO 6

Mom and boyfriend #1, David, are on again-off again. Mom dumps boyfriend #2, Paul, altogether, but neither party moves to set aside the VDOP signed by Paul. David files, but does not prosecute a petition to establish parental relationship (FL – 200). Then, Mom cuts David's access to junior.

- Who is legally the parent and why?

Who is legally the parent and why?

- A. David because Paul was dumped and is not in the picture anymore
- B. Paul – VDOP prevails



HYPO 7

Mom meets, falls in love with and marries Mike. Mom and Mike hold Junior out as his own child. Junior calls Mike "dad" and believes Mike is his father. They live happily together for over a year. Mom and Mike have a child, Cindy, together. Junior has no contact with David or Paul and has no recollection of either of them.



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HYPO 7, continued

DCSS serves Paul with a child support petition (FL – 600) based on the VDOP. Paul responds by saying that he wants access to Junior if he has to pay support. David (bio-dad) files a new request in his case, indicating that he is the bio-dad and wants access to Junior as mom has prevented him from seeing Junior.

- What is the legal status of David, Paul and Mike?



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And in Closing...

Rich relations give
Crusts of bread and such
You can help yourself
But don't take too much

Mama, may have, papa, may have
But God, bless the child that's got his own
That's got his own

He just don't worry about nothin'
'Cause he's got his own
Yes he's got his own