



## **What Makes a Parent?**

### **More on Paternity and Parental Rights**

Once upon a time life was simple, people got married, had children and raised the children together until the kids went away to school. Now the average American family looks much different. There are families which have one parent (either a father or mother), families with two mothers, and families with two fathers. There are changes to modern medicine and to the way that a child is conceived or even as to who carries the child prior to birth. So this question arises: What makes someone a parent?

#### **Biology**

In California, the least effective means of establishing a parental relationship with a child is through biology. There are numerous presumptions in California which will override biology as a determining factor in a parental relationship. The presumptions will be discussed below. Barring any of the presumptions however, a parent may seek to establish paternity based on a biological relationship with the child. In cases where the parents are unmarried, the courts may order a DNA test to establish a relationship between a father and his child.

#### **Marriage**

In California there is a conclusive presumption that a child born into a marital relationship is a child of the marriage. The marital presumption may only be rebutted in the first two years of the child's life and may only be rebutted by the married couple. For more information on the marital presumption, please read my previous post on paternity.

#### **Surrogacy/Sperm Donation**

As modern medicine makes advances, many children are carried by women who are surrogates. This enables men that are in a same sex relationship to be the genetic fathers of their children. Surrogate mothers are also an aid to a couple that is for whatever reason unable to conceive or carry their own child. There have been many cases which have made rulings concerning what makes a person a natural parent of a child. The courts will look at the intent of the parties at the time of conception as well as whether or not there is a valid surrogacy or sperm donor agreement.

*Johnson v. Calvert* (1993) 5 Cal.4th 84, The parties wanted to have a child. The wife had viable eggs, but was unable to carry a child. The parties, through invitro-fertilization, planted their embryo in the womb of a surrogate mother. The surrogate decided she wanted to keep the baby. The court ruled that both women were the "natural" mothers of the child. The court also said that where two women have equally valid claims to maternity, the court will consider the intent at the time of conception. Since the wife intended to be a mother at conception and the surrogate did not, the Court found that the wife was the baby's legal mother.

### **Courts have now held that a child can have more than two natural parents.**

In cases of same-sex couples, the law offers protection to parents when they have taken the child into their homes and have raised them as their own child. Prior to the year 2005, the courts did not provide same sex couples with the same rights as opposite sex couples or married persons. Prior to that date the intent and conduct of the parents did not provide protection or a means to a legal determination of parentage, rather than reliance on genetics, for same-sex couples with children. Courts now recognize parental relationships where there are same sex couples.

*K.M. v. E.G.* (2005) 37 Cal.4th 130 was a case where 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. 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 the fact that she was their genetic mother and that she had welcomed them into her home and parented them for five years. The court ruled that K.M. and E.G. are legal mothers. The court ruled that this was neither an egg donation nor a surrogacy situation, by virtue of the parties remaining in the home together and raising the children.

### **Voluntary Declarations of Paternity**

In 1997, California courts created a procedure to eliminate some of the confusion with paternity disputes. Where two persons are the unmarried parents of an infant, they may enter into a voluntary declaration of paternity which is signed at the birth of the child or shortly thereafter allowing the unmarried father's name to be placed on the birth certificate. The Voluntary Declaration of Paternity is valid as Judgment in most cases, but there have been exceptions.

*H.S. v. Superior Court* (2010) 183 Cal.App.4th 1502: The 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. When the baby was born, she entered into a Voluntary Declaration of Paternity with the biological father. The mother reconciled with husband shortly after the child's birth; and mother, husband and child lived together as a family. The biological father then attempted to establish paternity and requested genetic testing. The court ruled that a Voluntary Declaration of Paternity was not effective for use by married women to defeat the marital presumption of paternity in a husband and is voidable as a matter of law. The court also ruled that biological father lacked standing to challenge the legal paternity of the husband.

A parent can be made through numerous ways in California, each of them with various protections. Public policy dictates that a child have two parents therefore a court will use any of the above means to establish parentage of the children.



**About Patricia C. Van Haren:** Family Law attorney Patricia C. Van Haren has been a practicing attorney since May of 2011. Prior to attending law school, Patricia was a family law paralegal for approximately 20 years. For several years before becoming an attorney, she assisted couples through uncontested divorces as a paralegal. After establishing her own practice, she used all of her skills to develop her family law practice.

Ms. Van Haren focuses solely on family law matters ranging from paternity actions, divorces, child custody & visitation, move aways, parental abduction, child and spousal support and property division. She also focuses on guardianships and adoptions. She handles uncontested divorces and mediations as well as family law litigation. We have offices in Torrance and Irvine and handle cases throughout Los