

WICSEC 2015

FORT WORTH
CITY OF COWBOYS AND CULTURE

Shaping the Future for Children

Modern Families are Coming, So What Now?

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Workshop Goals



- We will cover:
 - Structure of Today's Modern Family
 - Marital Presumptions of Parentage
 - Same Sex Marriage
 - Multiple Parents

In The Past . . .



- What percentage of children were born to unmarried mothers in 1960?
- A) 5.3% B) 8.8% C) 11.5% D) 16.4%

55 years ago . . .

- In 1960, there were about 4.25 million children born in the United States
 - Over 4 million children were born into a traditional marital family
 - Only about 225,000 children were born to unwed mothers
 - Children born to unwed mothers were 5.3% of the children born in 1960
- In 1960, there were about 1.5 million marriages and 393,000 divorces

Now . . .



- What percentage of children were born to unmarried mothers in 2010?
- A) 13.4% B) 28.9% C) 35.1% D) 40.8%

Now . . .

- In 2010, there were about 4 million children born in the United States
 - Less than 2.4 million were born into a traditional marital family
 - Over 1.6 million were born to unwed mothers
 - Children born to unwed mothers were 40.8% of the children born in 2010
- In 2010, there were about 2.1 million marriages and 872,000 divorces

Families Today

- Today, less than 20% of all households consist of married couples with children
- For mothers, the percentage with one or more nonmarital births increased from 42% in 2002 to 49% today
- For fathers, the percentage of nonmarital births rose from 40% in 2002 to 47%

Families Today

- According to the 2012 National Health Statistics Report:
- 1 in 4 women with less than a high school diploma had 4 or more children
- 53% of women with a bachelor's degree or higher had a biological child compared with 88% with less than a high school diploma

Families Today

- Women with household income less than 150% of the poverty level were more likely to have 4 or more children than those with higher income
- Men with the lowest level of education were more likely to have four or more children (10%). Only 3.1% of men with a bachelor's degree or higher had four or more children

Families Today

- In 2011, the University of Michigan completed the first national multiple partner fertility study
- 28% of mothers with 2 or more children have children with more than 1 man
- Urban areas have higher rates

Families Today

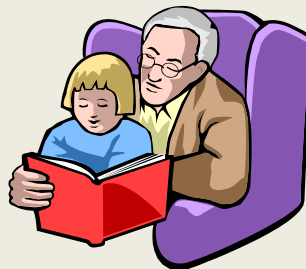
- Having children by different fathers is more common among minority mothers
 - 59% of African American mothers
 - 35% of Hispanic mothers
 - 22% of Caucasian mothers
- Mothers with lower income and less education were more likely to have children by different men

Families Today

- The study's author, Cassandra Dorius, later explained:
- "Multiple partner fertility is an important part of contemporary American family life, and a key component to the net of disadvantage that many poor and uneducated women face every day."

The Relevance

- **Complex parentage litigation**
- **Same sex parents**
- **Controversial disestablishment laws**
- **Genetic testing issues**
- **Grandparent guardianships**
- **Constitutionally protected relationships**
- **Multiple Parental Obligations**



The Relevance

- It also means that the Title IV-D child support program is more important than ever!
- Now to the hard part:
 - How do we formulate policy, litigate cases, and enact laws addressing the unique issues facing today's modern family?

Presumptions of Parentage



Are you my father?



Two Trends in Parentage Law

1. The Fragmentation of Fatherhood into its constituent parts.
2. Growing Emphasis on Parent-Child *relationship*: is there a relationship that deserves legal recognition and protection?

The Fragmentation of Fatherhood

Marital (two kinds)

Adjudicated

Declared

Presumed (dependency)

Presumed (family)

Intentional

Biological

Kelsey S.

IV-D

Adoptive

Alleged

De Facto

PRESUMPTIONS

A presumption is--

A rule of law by which finding of a basic fact gives rise to existence of a presumed fact.

A legal device which operates in the absence of other proof to require that certain inferences be drawn from available evidence.

Not evidence.

Two Types of Presumptions

A presumption can be conclusive or rebuttable.

A rebuttable presumption can be overturned upon a showing of sufficient proof (Clear & Convincing).

Once rebutted, the force of the presumption is entirely gone.

A rebuttable presumption can become conclusive.

A conclusive presumption cannot be rebutted.

--But it can be proven inapplicable.

1st Marital Presumption

California Family Code section 7540:

Except as provided in **Section 7541**, 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.

CA Family Code § 7541

(a) Notwithstanding Section 7540, if the court finds that the conclusions of all the experts ... are that the husband is not the father of the child, the question of paternity of the husband shall be resolved accordingly.

Section 7541 (b)

(b) The notice of motion for blood tests under this section may be filed not later than two years from the child's date of birth by the husband, or for the purposes of establishing paternity by the presumed father or the child through or by the child's guardian ad litem.

Marital Presumption limitations

Conception must occur during marriage.

Husband and wife must be cohabitating.

Husband must not be impotent or sterile.

Rebuttable until child turns two.

Now subject to Kelsey S. father's standing.

IV-D Agency Duty: CA Family Code § 17400

Promptly and effectively determining paternity in the case of a child born out of wedlock.

... “out of wedlock” means that the biological parents of the child were not married to each other at the time of the child's conception.

CA Family Code § 7611

2nd Marital presumption

A person is presumed to be the natural parent of a child if the person ... and the child's natural mother are or have been married to each other and the child is born during the marriage.

Michael H. v. Gerald D. (1989)
491 U.S. 110

Presumption does not violate putative father's procedural or substantive due process rights.

Child does not have due process or equal protection rights to maintain filial relationship with both bio-dad and mother's husband.

In other words,

- Biological father has no constitutionally protected interest, therefore no standing, in pursuing paternity action for child in an intact marital family.
- Child does not have constitutional right to maintain parental relationship with both bio-dad and her mother's husband.

Case Law

- Dawn D. v. Superior Court (1998) 17 Cal.4th 932
 - Alleged bio-dad has no standing or protected interest in a parent-child relationship.
- Brian C. v. Ginger K. (2000) 77 Cal.App.4th 1198
 - Bio-dad with relationship has standing.
- V.S. v. M.L. (2013) 222 Cal.App.4th 730
 - *Kelsey S.* father has standing.

Case Law

- Steven S. v. Deborah D. (2005) 127 Cal.App.4th 319
 - Sperm donor, though also an intimate partner, cannot maintain parentage action.
- Jason P. v. Danielle S. (2014) 226 Cal.App.4th 167.
 - Sperm donor with relationship has standing
- R. M. v. T. A. (2015) 233 Cal.App.4th 760
 - Boyfriend with relationship can become presumed father to non-biological child conceived by A.R.T.

Dependency Court

- In re E.O. (2010) 182 Cal.App.4th 722
 - IV-D Judgment alone insufficient for presumed father status.
- In re Levi H. (2011) 197 Cal.App. 4th 1279
 - Purported bio-dad's Paternity Declaration extinguished other presumed father claims.
- In re Cheyenne B. (2012) 203 Cal.App.4th 1361
 - Judgment extinguishes other claims; but no presumed status.
- In re Brianna M. (2013) 220 Cal.App.4th 1025
 - Disagrees with Levi H.--Paternity Declaration does not prevent another man from presumed father status.

Case Law in Illinois

- *People v. Nicole G. (In re N.C.)*, 2014 IL 116532 (2014)
 - Facts
 - Trial Court's Decision to Disestablish Paternity
 - Appellate Court's Decision
 - *In re N.C.*, 993 N.E.2d 134 (3d Dist. 2013)
 - Supreme Court

In re N.C., Ill. Sup. Ct. 116532

- The Illinois Supreme Court immediately took the case and granted the IV-D agency's motion to intervene as a party *against* the State
- The State argued:
 - Parentage law does not apply to juvenile proceedings
 - Even if it does, the State has standing to disestablish paternity on behalf of the child or on its own right
 - Exclusionary genetic tests prove a material mistake of fact as a matter of law

Case Law in Illinois

- The IV-D agency argued:
 - Parentage law applied to juvenile court proceedings
 - Genetic testing on an established legal father was error absent any pleading on the issue of paternity
 - State could not seek disestablishment on behalf of N.C.
 - Exclusionary genetic tests do not constitute a material mistake of fact
- **How would you have decided the case?**



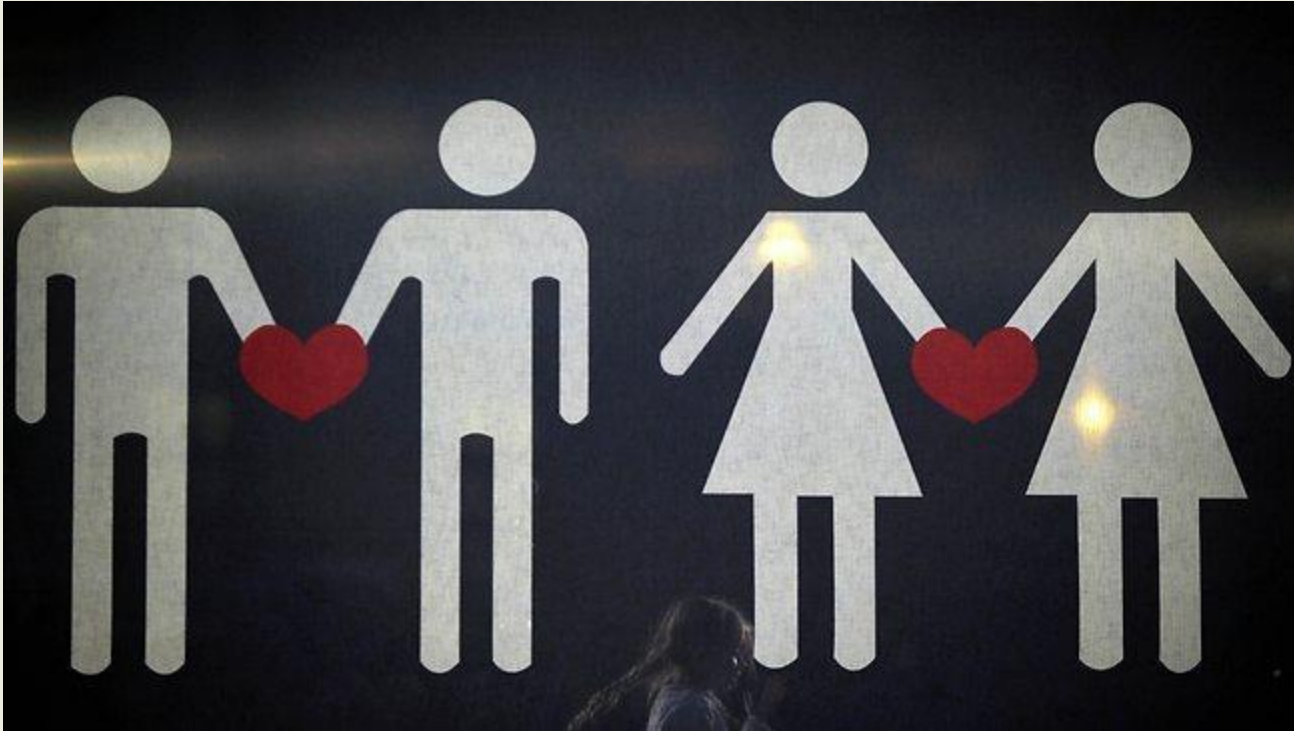
Case Law in Illinois

- On June 19, 2014, the Supreme Court issued its decision:
 - Parentage law applied to juvenile proceedings
 - The State generally had standing to raise parentage issues but did **not** have standing to challenge the acknowledgment of paternity
 - If the child's guardian ad litem raised the issue of paternity, the State would prosecute

Case Law in Illinois

- *People v. Matthew A. (In re A.A.)*, Ill. Sup. Ct. No. 118605
 - Facts
 - Trial Court's Decision to Disestablish Paternity
 - Appellate Court's Decision
 - *In re A.A.*, 2014 IL App (5th) 140252
 - Illinois Supreme Court

Same Sex Marriage



Marriage Equality

- *Obergefell v. Hodges*, 135 S.Ct. 2584 (2015)
 - Facts
 - Questions Presented



Marriage Equality

- *Obergefell v. Hodges*, 135 S.Ct. 2584 (2015)
 - Decision
 - History of Marriage
 - Substantive Due Process
 - Equal Protection

The Equal Protection Clause



Marriage Equality

- The Effect of Marriage Equality on the IV-D Program
 - Marriage Recognition
 - Parentage Recognition
 - What else?



Multiple Parents



**The
California
Experience**

Multiple Fathers in Case Law

- In re Brianna M.: while there can only be one presumed father in dependency actions, there seems to be no issue with having multiple men with parental rights and responsibilities.
- Judgment/biological dads continue to have a legally recognized relationship with the child.
- Presumed/dependency dads have reunification services, notice and hearing rights, and custody.

Multiple Fathers and/or Mothers by Statute

California Senate Bill 274 effective January 1, 2014--

- Applies to the “rare case” where a child truly has more than two parents, and
- A finding is necessary to protect the child from the detriment of being separated from one or more parent.
- Custody and visitation allocated based on best interest of the child.
- Termination of rights can now be waived in adoptions.

SB 274 Abrogates In re M.C. (2011) 195 Cal.App.4th 197

- No change to the requirements for establishing a claim to parentage under U.P.A.
- Following Family Code sections amended:
 - 3040 custody and visitation.
 - 4052.5 and 4057 State Uniform Guideline.
 - 7601 Definitions.
 - 7612 Rebuttals and resolutions of conflicts.
 - 8617 Waiver of termination upon adoption.

CA Family Code § 7612

(c) 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.

§ 7612 (c)

In determining detriment to the child, the court shall consider all relevant factors, including ... the harm of removing the child from a stable placement with a parent who has fulfilled the child's physical and psychological needs for care and affection, and who has assumed that role for a substantial period of time.

Title IV-D Role

Pursue multiple parents at one time or consecutive actions.

Advise the court of the issues and the law.

Assist the court in calculating support.

Enforce orders regarding support.

Calculating Child Support: § 4052.5

- Statewide uniform guideline applies: by dividing support obligations among the parents based on income and amount of time spent with the child by each parent.
- After calculation, presumption may be rebutted if court finds guideline unjust or inappropriate due to special circumstances.
- New law explicitly states no reprogramming of the guidelines is necessary.

Child Support Principles: § 4053

(a) A parent's first and principal obligation is to support his or her minor children according to the parent's circumstances and station in life.

(b) Both parents are mutually responsible for the support of their children.

(c) The guideline takes into account each parent's actual income and level of responsibility for the children.

Child Support Principles

(d) Each parent should pay for the support of the children according to his or her ability.

(e) The guideline seeks to place the interests of children as the state's top priority.

(f) Children should share in the standard of living of both parents. Child support may therefore appropriately improve the standard of living of the custodial household to improve the lives of the children.

Doing the calculation

Determine net disposable income of each parent.

Apply formula for each parent

$$CS = K[HN - (H\%)(TN)]$$

$K = (1 + \text{timeshare of High Earner}) \times .25$

HN = high earner's total net

H % = timeshare of High Earner

TN = total net for all parents

Variables: Timeshare, Income, LIA

The End!



Questions?
Thank you for your time!