Filed 3/19/12 Jo D. v. Ronnie C. CA2/4

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

JO D., Plaintiff and Respondent, v. RONNIE C., Defendant and Appellant.	B229344 (Los Angeles County Super. Ct. No. BF033899)

APPEAL from a judgment of the Superior Court of Los Angeles County, Steff Padilla, Commissioner. Reversed and remanded with directions.

Phillips, Lerner & Lauson, Peter A. Lauzon and Sharon Stark for Defendant and Appellant.

Law Offices of Lemuel B. Makupson and Lemuel B. Makupson for Plaintiff and Respondent.

Appellant Ronnie C. appeals from a judgment of paternity determining him to be the biological father of two children, the mother of whom is respondent Jo D. We reverse and remand with directions.

RELEVANT FACTUAL AND PROCEDURAL BACKGROUND

Beginning in 1991, Ronnie and Jo had an intermittent sexual relationship, but never married. In 2001, Jo moved from Arlington, Texas to California while Ronnie continued to reside in Arlington. In 2006, Ronnie provided sperm to California Cryobank, Inc. (Cryobank). By means of the sperm, Jo became pregnant through an in vitro procedure.

In June 2007, Jo gave birth to triplets. On June 16, 2007, Ronnie signed a declaration of paternity; in addition, he was named as the children's father on their birth certificates. Ronnie married a different woman in December 2007. In March 2008, one of the three children died.

On April 9, 2008, Jo filed a petition for a determination that Ronnie was the father of the two living children.[1] Pursuant to agreements of the parties, the trial court entered pendente lite orders granting Ronnie visitation with the children and directing him to pay child support. Ronnie's response to the petition, filed November 19, 2008, maintained that under Family Code section 7613, subdivision (b), he was not the children's father.[2] In January 2009, at Ronnie's request, the court set aside his declaration of paternity. On October 25, 2010, following a bench trial, the court entered a judgment determining that Ronnie was the

---

[1] Pursuant to an agreement of the parties, the trial court entered a pendente lite order directing Ronnie to pay $4,000 per month in child support.

[2] All further statutory references are to the Family Code, unless otherwise indicated.

children's father and directing him to make child support payments. This appeal followed.

DISCUSSION

Ronnie contends the trial court erred in ruling that he is the children's father. For the reasons explained below, including the rationale of this court's decision in *Steven S. v. Deborah D.* (2005) 127 Cal.App.4th 319, 326 (*Steven S.*), we agree.

A. *Governing Principles*

The central issues concern two provisions of the Uniform Parentage Act (§ 7600 et seq.), which constitutes "'a comprehensive scheme for [the] judicial determination of paternity.'" (*Adoption of Michael H.* (1995) 10 Cal.4th 1043, 1050, quoting *Michael M. v. Giovanna F.* (1992) 5 Cal.App.4th 1272, 1278.) As effective during the underlying proceedings, subdivision (b) of section 7613 provided: "The donor of semen provided to a licensed physician and surgeon or to a licensed sperm bank for use in artificial insemination or in vitro fertilization of a woman other than the donor's wife is treated in law as if he were not the natural father of a child thereby conceived." Also pertinent here is one of the presumptions established in section 7611 regarding a man's status as the "natural father of a child." Generally, section 7611 sets forth several rebuttable presumptions under which a man may achieve this status by marrying or attempting to marry the child's mother, or by publicly acknowledging paternity in a specified manner. (§ 7611, subds. (b), (c).) Under subdivision (d) of section 7611, a man is presumed to be the natural father of a child if "[h]e receives the child into his home and openly holds out the child as his natural child."

B. *Underlying Proceedings*

At the bench trial on the issue of Ronnie's paternity, Jo testified as follows: In 1991, she met Ronnie in Arlington, where they both lived, and began an "off and on" sexual relationship with him. In 1999 and 2000, prior to her move to California, they discussed having children together. After the move, they visited each other six or seven times a year.

Between 2004 and 2006, Ronnie and Jo tried unsuccessfully to conceive a child. According to Jo, Ronnie assured her that "he would always be there" for any children. Because Ronnie travelled extensively as a professional bodybuilder, Jo suggested that he deposit sperm with a sperm bank. Ronnie agreed. After Ronnie and Jo decided to use Cryobank, she obtained Ronnie's sperm from Cryobank for her physician and became pregnant through an in vitro procedure. Ronnie paid for Cryobank's services and the medical insemination process; in addition, he said that "he was going to take care of the kids."

According to Jo, the pregnancy made Ronnie happy. Although he continued to live in Texas, he accompanied Jo to medical appointments during the pregnancy, and after the children were born in June 2007, he provided for their support. At Ronnie's request, Jo ensured that Ronnie's surname appeared as the children's own surname on their birth certificates. Ronnie and Jo discussed marriage and her return to Texas; in addition, shortly after the children were born, Ronnie gave Jo a "pre pre engagement ring." In October 2007, Jo travelled with the children to Las Vegas, where they met with Ronnie and members of his family, including his mother and sisters. However, after Ronnie married a different woman in December 2007, he stopped supporting the children.

Jo testified that although the children never travelled to Ronnie's home in Arlington, he engaged in frequent visits with them. Because the children were

born prematurely, they remained in the hospital for two to four months, where Ronnie saw them two or three times a month. When the children left the hospital, Ronnie once spent a night with them in Jo's residence.

Moreover, according to Jo, Ronnie had overnight visits with the children outside her residence. After the children were born, Ronnie maintained a two-bedroom apartment in Burbank, and later, a one-bedroom apartment in North Hollywood. Although Ronnie's 19-year-old daughter was the "primary resident" of the apartments, Ronnie paid the rent and also occasionally stayed in the apartments. Ronnie sometimes conducted day visits with the children in the Burbank apartment. Later, after the trial court entered the pendente lite visitation order, Ronnie had one- and two-night visits with the children in the North Hollywood apartment.

Ronnie testified that he rejected Jo's suggestion that they have children together until she declared her intention to obtain sperm from a sperm bank. He agreed to donate sperm to her through a sperm bank solely to ensure that she would know "who the father [was]." He denied that he donated sperm with the intention of marrying Jo or becoming the children's "emotional father."

After Jo became pregnant, Ronnie sometimes came to Los Angeles to visit his adult daughter, and accompanied Jo to medical appointments when she asked him to do so. Ronnie acknowledged that he assisted Jo financially, but maintained that he did so solely because she was a friend, and that he provided funds when she asked. Although he visited the children in the hospital after they were born, he never requested that his surname be used as the children's surname on their birth certificates. He bought a ring for Jo only because his sister told him that "women normally get jewelry after having kids." According to Ronnie, the visit by Jo and the children to his Las Vegas hotel room surprised him.

Ronnie acknowledged that the children had made one or two overnight visits in the North Hollywood apartment, but denied that he lived in the apartment. He paid the rent for his daughter, who lived in the apartment. Although he stayed with his daughter whenever he visited Los Angeles, his own home was in Arlington.

Geena Silva, a Cryobank employee, testified that Cryobank is a licensed sperm bank. On April 4, 2006, Ronnie and Jo executed a Cryobank document stating that they were "currently (within the last 90 days) in an intimate sexual relationship." According to Silva, the document was provided only to a client who intended to transfer his sperm to a "domestic partner or significant other." In addition, Ronnie signed a document authorizing Cryobank to release his sperm to Jo and her physician.[3]

Following the trial, the court issued a detailed statement of decision. In determining that none of the presumptions of natural fatherhood in section 7611 was applicable, the court found that the parties neither married nor attempted to marry. Moreover, in connection with the presumption in section 7611, subdivision (d), the court found insufficient evidence that Ronnie had "received the children into his home" and publicly acknowledged his paternity.

The court nonetheless ruled that Ronnie was the children's biological father, and that subdivision (b) of section 7613 did not bar a paternity determination. The court concluded that the provision was inapplicable, stating: "The Court finds that

---

3 Aside from these witnesses, Thorna La Pointe testified that in September and October 2007, she saw Ronnie and Jo numerous times in a neonatal intensive hospital unit where one of Ronnie's children was being treated. In addition, attorney David Ingram testified that he represented Ronnie at the time the parties agreed to the stipulated pendente lite orders.

this was not an anonymous donation nor an arms[]length transaction. [Ronnie] knew he was donating his sperm to [Jo] with the express purpose of producing children. The Court finds that he paid for the medical expenses and [Jo] relied on him for ongoing support. . . . There were no written documents establishing [Ronnie's] future role in the children's life. However, his actions seem to indicate that he knew he was going to be a father and voluntarily agreed to pay support until his request to terminate his obligations."

C. *Section 7613, Subdivision (b)*

Ronnie contends that under subdivision (b) of section 7613, as effective during the underlying events, he must be "treated in law as if he were not the natural father" of the children. Because he does not challenge the trial court's factual findings, his contention presents only a question of statutory interpretation that we resolve de novo (*Enterprise Ins. Co. v. Mulleague* (1987) 196 Cal.App.3d 528, 540).[4]

In *Steven S.*, this court examined the application of section 7613, subdivision (b), in similar circumstances. There, over a period of months, a man and woman who were not married to each other tried to conceive a child. (*Steven S.*, *supra*, 127 Cal.App.4th at pp. 322-323.) To this end, they engaged in sexual intercourse, and the man donated sperm to a physician for artificial insemination.

---

4 Generally, "[t]he objective of statutory interpretation is to ascertain and effectuate legislative intent. To accomplish that objective, courts must look first to the words of the statute, giving effect to their plain meaning." (*In re Jerry R.* (1994) 29 Cal.App.4th 1432, 1437.) In addition, "[b]oth the legislative history of the statute and the wider historical circumstances of its enactment may be considered in ascertaining the legislative intent." (*Dyna-Med, Inc. v. Fair Employment & Housing Com.* (1987) 43 Cal.3d 1379,1387.)

(*Id*. at p. 322.) During this period, the man travelled long distances to attempt conception, in reliance on the woman's conduct, which encouraged him to believe that she would acknowledge his paternity regarding a child and permit ongoing contact with such child. (*Id*. at p. 324.) After artificial insemination resulted in a pregnancy, the man attended prenatal medical procedures, including an ultrasound. (*Id*. at p. 323.) When a boy was born, the woman identified the man as the boy's father, used the man's surname as the boy's middle name, and invited him to an infant CPR course in her home; in addition, the man openly avowed his paternity. (*Id*. at p. 324.) However, the woman opposed the man's petition to establish a parental relationship, relying on the then-effective version of section 7613, subdivision (b), whose language was identical to the provision before us. (127 Cal.App.4th at p. 322.) Notwithstanding the statute, the trial court ruled that the woman was estopped from denying the man's paternity, pointing to the public policy favoring the identification of fathers and the enforcement of their support obligations. (*Id*. at p. 324.)

In reversing, we concluded that section 7613, subdivision (b), is clear and makes no exception for donations stemming from known donors or intimate relationships. (*Steven S.*, *supra*, 127 Cal.App.4th at pp. 326-327.) We further concluded that the omission of such exceptions represented the Legislature's decision regarding competing policies, namely, the state's interest in establishing paternity, and its interest in shielding participants in artificial insemination procedures from paternity claims. (*Id*. at p. 325.) Regarding the latter policy, we noted: "'Our Legislature has already spoken and has afforded to unmarried women a statutory right to bear children by artificial insemination (as well as a right of men to donate semen) without fear of a paternity claim, through provision of the semen to a licensed physician.' [Citation.] The Legislature 'has likewise

provided men with a statutory vehicle for donating semen to married and unmarried women alike without fear of liability for child support. . . .' [Citation.]" (*Ibid*., quoting *Jhordan C. v. Mary K.* (1986) 179 Cal.App.3d 386, 397-398.) As only the Legislature is authorized to enact laws based upon a choice among competing policy considerations, we declined to find any pertinent exception within section 7613, subdivision (b), not supported by its express language. (127 Cal.App.4th at p. 327.)

In view of *Steven S*., the statute bars a determination that Ronnie is the children's father based on his role as the sperm donor who contributed to the conception of the children. The parties jointly acted to conceive children through a sperm donation falling within the scope of the statute. Although they may have had an implied or informal agreement that envisaged mutual recognition of biological parenthood, the statute contains no exception for such agreements. Nor is the statute inapplicable because Ronnie, unlike the man in *Steven S*., seeks to avoid a paternity determination, as the statute was enacted to shield sperm donors from liability for child support (*Jhordan C. v. Mary K.*, *supra*, 179 Cal.App.3d at pp. 397-398).

Our conclusion finds additional support from the Legislature's amendments to the statute. Generally, "when the Legislature amends a statute without altering portions of the provision that have previously been judicially construed, the Legislature is presumed to have been aware of and to have acquiesced in the previous judicial construction." (*Marina Point, Ltd. v. Wolfson* (1982) 30 Cal.3d 721, 734.) Similarly, "when . . . the Legislature undertakes to amend a statute which has been the subject of judicial construction[,] . . . , and . . . substantial changes are made in the statutory language[,] it is usually inferred that the lawmakers intended to alter the law in those particulars affected by such changes."

(*Palos Verdes Faculty Assn. v. Palos Verdes Peninsula Unified Sch. Dist.* (1978) 21 Cal.3d 650, 659.) In 2011, after our decision in *Steven S.*, the Legislature amended subdivision (b) of section 7613 to provide: "The donor of semen provided to a licensed physician and surgeon or to a licensed sperm bank for use in artificial insemination or in vitro fertilization of a woman other than the donor's wife is treated in law as if he were not the natural father of a child thereby conceived, *unless otherwise agreed to in a writing signed by the donor and the woman prior to the conception of the child*." (Stats. 2011, ch. 185, § 4, No. 5 West's Cal. Legis. Service, p. 2398, italics added.) The fact that the Legislature amended the statute solely to except donors who execute such written agreements confirms the statute's application under the circumstances present here.[5,6]

D. *No Other Grounds To Affirm Judgment*

Jo contends that the ruling regarding Ronnie's paternity may be affirmed on two other grounds, namely, (1) that Ronnie is subject to the presumption of natural fatherhood in section 7611, subdivision (d), and (2) that he signed a voluntary

---

5 Jo suggests that the Cryobank documents that Ronnie signed prior to the children's birth constitute a written agreement obliging him to acknowledge his paternity. However, the documents impose no such obligation: they state only that the parties were then in "an intimate sexual relationship," and authorize the release of Ronnie's sperm to Jo and her physician.

6 In addition to the amendment noted above, the Legislature modified section 7612 to add subdivision (e)(3), which provides that a voluntary declaration of paternity is invalid if, at the time the declaration was signed, "[t]he man signing the declaration is a sperm donor, consistent with subdivision (b) of [s]ection 7613." (Stats. 2011, ch. 185, § 3, No. 5 West's Cal. Legis. Service, p. 2398.) This amendment corroborates the Legislature's intent to impose strict limits on the extent to which such donors can be determined to be fathers.

declaration of paternity. Because the trial court found that the presumption did not apply and it set aside the voluntary declaration of paternity, Jo's contentions constitute challenges to the court's rulings. Ordinarily, a respondent may not raise contentions of error without filing a cross-appeal. (*Estate of Powell* (2000) 83 Cal.App.4th 1434, 1439.) Nonetheless, despite Jo's failure to notice a cross-appeal, we may examine the contentions for purposes of determining whether the judgment can be affirmed on another legal theory. (*Platypus Wear, Inc. v. Goldberg* (2008) 166 Cal.App.4th 772, 781; *Citizens for Uniform Laws v. County of Contra Costa* (1991) 233 Cal.App.3d 1468, 1472.) For the reasons discussed below, we reject Jo's contentions.

1. *Section 7611, Subdivision (d)*

We begin with the presumption in section 7611, subdivision (d). In determining that the presumption was inapplicable, the trial court found in the statement of decision that Ronnie had never received the children into his home. We are obliged to accept this finding if it is supported by substantial evidence, notwithstanding any conflicts in the testimony. (See *In re Marriage of Hoffmeister* (1987) 191 Cal.App.3d 351, 358 ["Where the statement of decision sets forth the factual and legal basis for the decision, any conflict in the evidence or reasonable inferences to be drawn from the facts will be resolved in support of the determination of the trial court decision."].)

Generally, "to become a presumed father, a man who has neither married nor attempted to marry his child's biological mother must not only openly and publicly admit paternity, but must also *physically* bring the child into his home." (*Adoption of Michael H., supra*, 10 Cal.4th at p. 1051.) Thus, "constructive receipt is not sufficient. [Citations.]" (*Glen C. v. Superior Court* (2000) 78

Cal.App.4th 570, 585.) Although there is no requirement regarding the duration of the child's presence in the father's home, "the receipt of the child into the home must be sufficiently unambiguous as to constitute a clear declaration regarding the nature of the relationship." (*Charisma R. v. Kristina S.* (2009) 175 Cal.App.4th 361, 374, disapproved on another ground in *Reid v. Google, Inc.* (2010) 50 Cal.4th 512, 532, fn. 7.) Under these principles, when the father's own home is available for visitation, he does not receive a child "into his home" (§ 7611, subd. (d)) by conducting visits in homes belonging to other people. (*In re A.A.* (1996) 114 Cal.App.4th 771, 786-787 [father did not receive child into his own home through visits in the homes of child's and father's relatives].)

Here, the trial court properly found that the children never physically entered Ronnie's home. The record unequivocally establishes that the children never visited Ronnie's home in Arlington. Furthermore, Ronnie's visitation with the children in Jo's home cannot be viewed as their reception into Ronnie's own home, as the evidence at trial showed that he never lived in Jo's home, and that his presence there was transitory. Accordingly, the remaining issue is whether Ronnie, in conducting visits with the children in the apartments he maintained in Los Angeles, "physically br[ought] the child[ren] into his home." (*Adoption of Michael H.*, *supra,* 10 Cal.4th at p. 1051.)

As there is little case authority regarding the meaning of the term "home" in subdivision (d) of section 7611, we confront a question of statutory interpretation. Because the statute does not define the term, we look to its ordinary or common meaning for guidance. (*In re Jerry R.*, *supra*, 29 Cal.App.4th at p. 1437.) The term "home" is usually defined to mean one's residence or dwelling place. (Merriam Webster's Collegiate Dict. (10th ed. 1995) p. 554 ["one's place of residence"]; Black's Law Dict. (6th ed. 1990) p. 733, coll. 1. ["[o]ne's own

dwelling place"; alternatively, "[t]hat place in which one in fact resides with the intention of residence, or in which he has so resided, and with regard to which he retains residence or to which he intends to return."].)

In view of these definitions, the trial court properly determined that Ronnie did not make a home of the Burbank and North Hollywood apartments. At trial, there was no dispute that the primary resident of the apartments was Ronnie's 19-year-old daughter, an aspiring actor. Regarding the apartments, Ronnie testified that his home was in Arlington, that he had rented the apartments for his daughter, and that he stayed with her when he visited Los Angeles. In contrast, Jo maintained that Ronnie resided in the apartments, in addition to his home in Arlington. According to Jo, Ronnie asked her to help him secure the Burbank apartment because he wanted a place to live near the children. On this conflicting evidence, the trial court reasonably concluded that Ronnie did not reside in the apartments or make them his home, but merely paid the rent for them to provide a residence for his daughter. Accordingly, the court properly determined that the presumption of natural fatherhood in section 7611, subdivision (d), was inapplicable to Ronnie.

2. *Voluntary Declaration of Paternity*

Jo also maintains the judgment may be affirmed on the basis of Ronnie's voluntary declaration of paternity which, if effective, has "the same force and effect as a judgment for paternity" (§ 7573). As explained below, the trial court did not err in granting Ronnie's request to set aside his voluntary declaration of paternity.

a. *Governing Standards*

Subdivision (c)(1) of section 7575 permits the trial court to set aside such a declaration pursuant to the discretionary provisions for relief in Code of Civil Procedure section 473 subdivision (b), on the grounds of "'mistake, inadvertence, surprise, or excusable neglect.'" (*Kevin Q. v. Lauren W.* (2009) 175 Cal.App.4th 1119, 1132.); § 7575, subd. (c)(1). A party is obliged to file a request for relief within the time period specified in Code of Civil Procedure section 473, commencing "on the date that the court makes an initial order for custody, visitation, or child support based upon a voluntary declaration of paternity." (§ 7575, subd. (b).) Under Code of Civil Procedure section 473, subdivision (b), relief must be sought "within a reasonable time, in no case exceeding six months."

Generally, a ruling under Code of Civil Procedure section 473 subdivision (b) must be affirmed absent a "clear showing" of abuse of discretion. (*Generale Bank Nederland v. Eyes of the Beholder Ltd.* (1998) 61 Cal.App.4th 1384, 1398-1399.) Under this standard of review, "we indulge all legitimate and reasonable inferences to uphold the judgment and reverse only upon a showing that the trial court exceeded the bounds of reason . . . ." (*Ayala v. Southwest Leasing & Rental, Inc.* (1992) 7 Cal.App.4th 40, 44.)

b. *Underlying Proceedings*

On May 21, 2008, the trial court filed the initial pendente lite visitation and child support order, which was predicated on an agreement of the parties. Under the order, Ronnie was obliged to pay $4,000 per month in child support. On July 17, 2008, again pursuant to an agreement of the parties, the court issued a pendente lite child support order, which directed Ronnie to pay $6,750 per month.

On November 19, 2008, Ronnie filed his request to set aside the voluntary declaration of paternity, which he had signed shortly after the children were born. The request sought relief on the basis of a purported mistake of fact or law, arguing that he would not have signed the voluntary declaration of paternity had he known what he was signing or understood that section 7613, subdivision (b), barred a paternity determination based on his status as a sperm donor.

According to Ronnie's supporting declaration, he agreed to donate sperm to Jo only after she "made clear to [him] that [he] would simply be the sperm donor and not the father." He provided sperm to Jo "[w]ith the understanding that [he] would have no responsibility for and no relationship with any children [Jo] conceived." Approximately five days after the children were born, while Ronnie was visiting his adult daughter, Jo asked him to go to the hospital with her to sign some forms. She told him that the documents were "'standard forms'" that the hospital required. When Jo directed him to sign the forms at the hospital, he did so in the belief he was merely acknowledging his role as the sperm donor. He did not read the forms, no one explained their legal significance to him, and he was not then represented by counsel. According to Ronnie, if he had understood the import of the voluntary declaration of paternity, he would not have signed it, as he had learned that subdivision (b) of section 7613 bars a paternity determination.

On December 17, 2008, Ronnie filed a motion for relief from the July 2008 support order. His supporting declaration stated that in July 2008, his counsel told him of a possible stipulation that would increase his monthly child support obligations from $4,000 to $6,750. Although Ronnie told his counsel to reject the stipulation, his counsel agreed to the July 2008 order. Because Ronnie's counsel did not communicate with him, Ronnie did not discover the July 2008 order until late August 2008, when he discharged his counsel. After "carefully researching

family law attorneys," he hired the counsel responsible for filing his requests for relief from the voluntary declaration of paternity and the July 2008 order.[7]

Jo filed no oppositions to Ronnie's requests for relief. On January 21, 2009, the trial court conducted a hearing on both requests. As the record lacks a reporter's transcript of the hearing, it is silent regarding what occurred at the hearing. Following the hearing, the trial court set aside the voluntary declaration of paternity and the July 2008 order.

c. *Due Diligence*

Jo maintains that Ronnie failed to show he requested relief from the voluntary declaration of paternity within a reasonable time. Because Code of Civil Procedure section 473 provides that relief must be sought "within a reasonable time, in no case exceeding six months," a party requesting relief must make a showing of due diligence. (8 Witkin, Cal. Procedure (5th ed. 2008) Attack on Judgment in Trial Court, § 178, p. 777.) Jo acknowledges that Ronnie's request was filed within the six-month period, but argues that Ronnie never explained why he "waited the full six months to seek relief."[8]

---

[7] Although the record contains the declaration supporting the December 17, 2008 motion, it lacks the memorandum of points and authorities. At our request, Ronnie has supplied us with a copy of the motion. We hereby augment the record to include it. (*Estate of Joslyn* (1995) 38 Cal.App.4th 1428, 1432, fn. 3, overruled on another ground in *Newman v. Wells Fargo Bank* (1996) 14 Cal.4th 126, 140; Cal. Rules of Court, rule 8.155(a)(1)(A).)

[8] Ronnie filed his request for relief on November 19, 2008, 182 days after the initial pendente lite order, which issued on May 21, 2008. Because six months is 182 days for the purposes of relief under Code of Civil Procedure section 473 (see *Davis v. Thayer* (1980) 113 Cal.App.3d 892, 901), Ronnie filed his request within the period specified in the statute.

This contention fails on the record before us. A fundamental rule of appellate review is that "'"[a] judgment or order of the lower court is presumed correct. All intendments and presumptions are indulged to support it on matters as to which the record is silent, and error must be affirmatively shown. . . ." [Citations.]'" (*In re Marriage of Bower* (2002) 96 Cal.App.4th 893, 898, italics omitted, quoting *Denham v. Superior Court* (1970) 2 Cal.3d 557, 564.)

Generally, the requisite showing of due diligence may be made by affidavits or other proof (8 Witkin, Cal. Procedure, *supra*, Attack on Judgment in Trial Court, § 179, at p. 779), including testimony (*Elston v. City of Turlock* (1985) 38 Cal.3d 227, 234). Here, the limited record discloses that at the January 21, 2009 hearing, the trial court had before it -- at a minimum -- two declarations from Ronnie on closely related motions. Although the declarations do not state precisely when Ronnie learned that subdivision (b) of section 7613 barred a paternity determination, they jointly raise the reasonable inference that he made this discovery only after he hired new counsel. Taken together, the declarations are reasonably regarded as attributing delays in the filing of Ronnie's request to set aside the voluntary declaration of paternity to his ignorance of the law, his original counsel's failure to communicate with him, and his hiring of new counsel. This showing is sufficient to establish due diligence. (See *In re Marriage of Jacobs* (1982) 128 Cal.App.3d 273, 280-281 [notwithstanding party's delay of almost six months in seeking relief from judgment, party showed due diligence by showing that after she developed doubts regarding the judgment, she unsuccessfully sought assistance from her original counsel and then hired new counsel].) Furthermore, Jo has forfeited any contention that the trial court may have erred in viewing the declarations together, as she filed no opposition to Ronnie's requests for relief, and the record discloses no objection to the court's

determination of the requests. (*Fredrickson v. Superior Court* (1952) 38 Cal.2d 593, 598-599 [defects in notice regarding a motion under Code of Civil section 473 are forfeited for want of objection]; *Perez v. Perez* (1952) 111 Cal.App.2d 827, 828-829 [party forfeited contention that trial court considered evidence not mentioned in motion by failing to object].)

d. *Mistake*

Jo also contends that Ronnie's declaration failed to establish "mistake," for purposes of relief under Code of Civil Procedure section 473, subdivision (b). Generally, "[w]hen relief is sought on the grounds of mistake, the inquiry is whether a reasonably prudent person under the same or similar circumstances might have made the error." (*Premium Commercial Services Corp. v. National Bank of California* (1999) 72 Cal.App.4th 1493, 1496.) As there is no case authority regarding the application of this standard to voluntary declarations of paternity, we look to the principles governing agreements for guidance. Although parties are ordinarily bound by agreements they sign, regardless of whether they read them, relief from an agreement is warranted when a party acted "under the mistaken but reasonable belief, induced by the action of the other party, that the subject matter of the [agreement] is other than it in fact is," even though the other party may not have intended to deceive. (*Balistreri v. Nevada Livestock Production Credit Assn.* (1989) 214 Cal.App.3d 635, 643.)

In view of this principle, the trial court did not err in granting relief based upon a mistake. Ronnie's uncontroverted declaration stated that he signed the voluntary declaration under the mistaken belief, induced in part by Jo, that the declaration did not address the issue of paternity. In sum, because subdivision (b)

of section 7613 bars a paternity determination and there is no other basis for such a determination, we conclude that the judgment must be reversed.

DISPOSITION

The judgment is reversed. The matter is remanded with directions to the trial court to vacate the judgment, enter a new judgment determining that Ronnie is not the children's father, and conduct any further proceedings in accordance with this opinion. Ronnie is awarded his costs.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

MANELLA, J.

We concur:

EPSTEIN, P. J.

SUZUKAWA, J.