Filed 1/14/13 Beth C. v. Marcia B. CA2/7

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

BETH C., Plaintiff and Respondent, v. MARCIA B., Defendant and Appellant.	B233825 (Los Angeles County Super. Ct. No. NF009219)

APPEAL from a judgment of the Superior Court of Los Angeles County, Kenneth Black, Judge. Affirmed.

Keith E. Dolnick and David B. Ezra for Defendant and Appellant.

Manatt, Phelps & Phillips, Brad W. Seiling, Benjamin G. Shatz and Diana M. Kwok for Plaintiff and Respondent.

Appellant, Marcia B., appeals from an order granting respondent, Beth C., presumptive parentage status under Family Code section[1] 7611, subdivision (d). The court found that Beth C. was Ian B.'s legal parent pursuant to section 7611, subdivision (d) because Beth C. received Ian B. into her home and held him out as her son. Before this court, Marcia B. argues that the lower court's finding should be reversed because the court's interpretation of section 7611 was erroneous and the judgment is counter to public policy. As we shall explain, the evidence presented supported the court's conclusion and appellant's "policy" arguments are unpersuasive. Accordingly, we affirm.

Factual and Procedural Background

In 2002, Beth C. and appellant entered into a committed same-sex relationship. In 2003, Beth C. moved from California to Illinois to live with appellant. The couple never registered as domestic partners in any state. After some time, the couple became interested in having children and tried multiple times to have a child through donor insemination of Beth C. However, none of these attempts was successful.

Sometime before 2007, the couple began looking into the possibility of adopting a child from Russia, specifically four-year-old boy, Egor. Once the adoption process began, appellant was formally listed as the adoptive parent because Beth C. was worried about a DUI arrest on her records; and Russia did not permit adoption by same sex couples. In January 2007, the adoption was completed and Egor's name was changed to Ian B.[2] Beth C. began the process to adopt Ian B., but this process was delayed when the couple moved to New York. Beth C.'s adoption process was never completed.

While Beth C. and appellant were in a relationship, Beth C. cared for Ian B. at home while appellant worked full time. Beth C. introduced Ian B. as her son. Ian B.

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1 All statutory references are to the Family Code unless otherwise indicated.

2 Ian B. shares his surname with Marcia B. and his middle name is Beth C.'s surname.

refers to Beth C. as "mommy." Beth C. took him to his various doctor and physical therapy appointments. Beth C. remained a "stay at home mom."

In August 2008, the couple ended their relationship. At the time they were living in Indiana, and Beth C. continued living with appellant for the remainder of the school year, which allowed for Ian B. to finish Kindergarten. Once the school year ended, Beth C. decided to move to California to live with her parents. Appellant agreed that Ian B. should live with Beth C. in California. For the next 18 months Ian B. lived with Beth C. in California. During this time, Ian B. visited appellant several weeks of the year. Beth C. enrolled Ian B. in school in California and was listed as his mother in Ian's medical and school records. She also attended Ian's school functions and introduced Ian B. as her son.

In February of 2011, appellant picked up Ian B. from Beth C.'s residence and did not return Ian B. to the residence. Following this incident, appellant obtained a custody order limiting Beth C.'s visitation rights with Ian B.

Thereafter Beth C. filed a petition to establish her legal parentage. Appellant attempted to obtain legal custody of Ian B. in separate filings in both Indiana and California. Both parties eventually stipulated to a bench trial to resolve the question of whether Beth C. was Ian B.'s legal parent under section 7611, subdivision (d). The trial court found that Beth C. is a presumed parent and that the presumption had not been rebutted. The court, therefore, entered an order and judgment in favor of Beth C. Appellant filed a timely appeal.

DISCUSSION

Before this court, appellant contends that the lower court improperly held that Beth C. was a presumptive parent of Ian B. We disagree.

I. Presumed Parentage Status under Family Code Section 7611

The Uniform Parentage Act (UPA) defines the "[p]arent and child relationship" as "the legal relationship existing between a child and the child's natural or adoptive parents. . . . The term includes the mother and child relationship and the father and child relationship." (Fam. Code, § 7601.)

Section 7611 provides several circumstances in which "[a] man is presumed to be the natural father of a child," including: if "[h]e receives the child into his home and openly holds out the child as his natural child" (Fam. Code, § 7611, subd. (d)). The proponent has the burden of proving the foundational facts by a preponderance of the evidence, i.e., that he received the child into his home and openly and publicly acknowledged paternity. (*In re Spencer W.* (1996) 48 Cal.App.4th 1647, 1653; *In re Salvador M.* (2003) 111 Cal.App.4th 1353, 1357.)

While section 7611 speaks in terms of fathers, the UPA expressly provides that in determining the existence of a mother and child relationship, "[i]nsofar as practicable, the provisions of this part applicable to the father and child relationship apply." (§ 7650.) Thus, section 7611 can be applied in a gender-neutral manner, and a woman is presumed to be the natural mother of a child if she "receives the child into h[er] home and openly holds out the child as h[er] natural child." (§ 7611, subd. (d); *see also, S.Y. v. S.B.* (2011) Cal.App.4th 1023, 1030; *Elisa B. v. Superior Court* (2005) 37 Cal.4th 108, 116.)

The presumption of parenthood is a presumption, which can rebutted only by clear and convincing evidence. (§ 7612.) A person seeking the benefit of the presumption does not have to show that he or she is in a registered domestic partnership with the legal parent. (*Elisa B., supra*, 37 Cal.4th at pp. 114, 125; *E.C. v. J.V.* (2012) 202 Cal.App.4th 1076, 1085 (*E.C.*).) "Nevertheless, a presumed parent is not just a casual friend of the other parent, or even a long-term boyfriend or girlfriend, but someone who has entered into a familial relationship with the child: someone who has demonstrated an abiding commitment to the child and the child's well-being, regardless of his or her relationship with the child's other parent." (*E.C., supra*, 202 Cal.App.4th at p. 1085; see also *In re Sabrina H.* (1990) 217 Cal.App.3d 702, 708; *In re T.R.* (2005) 132 Cal.App.4th 1202, 1211-1212.)

The paternity presumptions are driven by the state's interest in the welfare of the child and the integrity of the family. (*In re Nicholas H.* (2002) 28 Cal.4th 56, 65.) The familial relationship resulting from years of living together in a purported parent/child relationship "should not be lightly dissolved." (*Ibid.*) These presumptions are in line with

the well-established policy in California that "whenever possible, a child should have the benefit of *two* parents to support and nurture him or her." (*Librers v. Black* (2005) 129 Cal.App.4th 114, 123; emphasis in original.)

II. Standard of Review

"We review a lower court's determination of presumed parentage status for substantial evidence." (*In re Salvador M.* (2003) 111 Cal.App.4th 1353, 1358.) In determining whether substantial evidence supports a finding or order, "'we must consider all of the evidence in the light most favorable to the prevailing party, giving it the benefit of every reasonable inference, and resolving conflicts in support of the judgment. [Citations.] [¶] It is not our task to weigh conflicts and disputes in the evidence; that is the province of the trier of fact. Our authority begins and ends with a determination as to whether, on the entire record, there is any substantial evidence, contradicted or uncontradicted, in support of the judgment. Even in cases where the evidence is undisputed or uncontradicted, if two or more different inferences can reasonably be drawn from the evidence this court is without power to substitute its own inferences or deductions for those of the trier of fact, which must resolve such conflicting inferences in the absence of a rule of law specifying the inference to be drawn. We must accept as true all evidence and all reasonable inferences from the evidence tending to establish the correctness of the trial court's findings and decision, resolving every conflict in favor of the judgment. [Citations.]' [Citation.]" (*Charisma R. v. Kristina S.* (2009) 175 Cal.App.4th 361, 369, quoting *Howard v. Owens Corning* (1999) 72 Cal.App.4th 621, 630-631.)

To the extent we are called upon to review the trial court's legal interpretation of the "receiving" and "holding out" requirements in section 7611, subdivision (d), we shall exercise our independent legal judgment. (See *Ghirardo v. Antonioli* (1994) 8 Cal.4th 791, 796; accord *S.Y. v. S.B., supra,* 201 Cal.App.4th at p. 1031.) We review the trial court's determination that there is no basis to rebut the parentage presumption for abuse of discretion. (*Charisma R. v. Kristina S, supra,* 175 Cal.App.4th at p. 378.)

III. Substantial Evidence Supports the Trial Court's Finding.

In reviewing whether there is sufficient evidence to support the lower court's finding that Beth C. was a presumptive parent of Ian B., we do not reweigh the evidence or exercise independent judgment, but merely determine if there are sufficient facts to support the findings of the trial court. (*Charisma R. v. Kristina S, supra,* 175 Cal.App.4th at p. 368.) Here, the record contains ample support for the lower court's determination that Beth C. received Ian B. in her home and held him out as her son.

Beth C. and appellant were in a committed relationship, decided to adopt a child, and both women were to be this child's parents. From the time Ian B. was adopted until mid-2009, the child lived with both women as his mothers. Appellant concedes the women were "co-parents" while they were together and that appellant recognized that Beth C. treated and introduced Ian B. as her son.

In June of 2009, after the couple ended their relationship, Beth C. and Ian B. moved to California with appellant's knowledge and consent. Thereafter, until February 2011, Ian B. lived with Beth C. in her parents' home and Ian B. visited appellant during school breaks. In California, Beth C. enrolled Ian B. in school as her son and was listed in the school's records as his mother. She introduced Ian B. as her son and the child called her "mommy" or "mom."

Appellant does not contest the fact that Beth C. held Ian B. out to the world as her son and, as we shall explain, none of her arguments assailing the court's order is persuasive. However, appellant contends that the court incorrectly held that Ian B. was received into Beth C.'s home because Beth C. lived in her mother's home and did not personally own this home. Appellant cited no legal authority in support of this argument and our research has not revealed any basis for it.

On the contrary, courts have adopted an expansive view of the "received child into her home" requirement of 7611, subdivision (d) and have never applied it to require that a presumed parent own the home in which they dwell. (*See Charisma R. v. Kristina S, supra,* 175 Cal.App.4th at p. 374 [holding that presumptive parent still received child into her home even though her name was not on the lease of the apartment]; *S.Y. v. S.B.,*

supra, 201 Cal.App.4th at p. 1032 [holding that presumptive parent who lived in a separate residence as child did not undermine the court's finding that the parent received the child into a family home].) Thus, we conclude that the evidence is sufficient to support the trial court's finding that the child was received into Beth C.'s home.

The majority of appellant's other arguments on appeal are that the trial court's holding should be overturned on policy grounds. We find that these policy arguments do not affect the court's determination that Beth C. is a presumed parent under 7611, subdivision (d).

Appellant first argues that the trial court's determination is counter to public policy because it excuses Beth C.'s decision to not form a legal relationship with Ian B. and encourages individuals to avoid taking responsibility for children. Appellant presumes that Beth C. did not want the legal and financial responsibility and was free to walk away from Ian B. before this proceeding. This argument fails to take into account that section 7611, subdivision (d) could have been used by Marcia B. had she sought financial or legal accountability from Beth C. (*See Elisa B, supra*, 37 Cal.4th at p. 126 [holding that former lesbian partner was obliged to pay child support to mother because she was the presumed parent].) Since any interested party can bring a presumed parenthood claim we fail to see how section 7611 relieves a presumed parent of the financial and legal responsibility of a child. (§ 7650.) Accordingly, this policy argument is meritless.

Appellant next contends that the trial court's application of 7611, subdivision (d) is so expansive that "any person who spends considerable time with a child (and refers to the child by the right terms) could claim parentage when it becomes in their interest to do so." Appellant recognizes that recent case law does not support this argument, but seeks to distinguish the instant case from precedent. In *S.Y. v. S.B.*, *supra*, 201 Cal.App.4th at page 1036, and *E.C. v. J.V.*, *supra*, 202 Cal.App.4th at page 1091, the Third Appellate District held that section 7011, subdivision (d) should be applied to same-sex couples who do not enter into a domestic partnership in a manner consistent with the trial court in the instant case. However, appellant argues that these cases are not dispositive because

each case involved a same-sex couple with one partner in the military and therefore precluded from entering into a domestic partnership because of "Don't Ask, Don't Tell."

We fail to see how this fact is material to a section 7011, subdivision (d) determination. Section 7611, subdivision (d) does not consider the relationship between the parents of a child and courts have been explicit in holding that the relationship between the parents of a child is immaterial to a presumptive parentage determination. In *E.C. v. J.V.* the Third Appellate District has succinctly summarized the law on this issue:

> To be a presumed parent, a person does not have to be married to the other parent (*Johnson v. Calvert* (1993) 5 Cal.4th 84, 88–89, [ ]) or registered as his or her domestic partner (*Elisa B., supra*, 37 Cal.4th at pp. 114, 125, [ ]). A presumed parent need not have ever lived with the child's other parent (*In re A.A.* (2003) 114 Cal.App.4th 771, 784, [ ]) and may not have even known the other parent (*In re Salvador M.* (2003) 111 Cal.App.4th 1353, 1355–1356, 1358, [ ])." (*E.C. v. J.V., supra,* 202 Cal.App.4th at p. 1085.)

A section 7611, subdivision (d) parentage determination is an evaluation of an individual's relationship with a child and not an evaluation of that individual's relationship with the child's parent. (*E.C. v. J.V., supra,* 202 Cal.App.4th at p. 1088 ["The relationship between a child's alleged parent and biological [or legal] parent is legally irrelevant in determining whether the alleged parent held out that child as his or her natural child. The relevant relationship is that between the child and the alleged parent."].) Accordingly, Beth C.'s failure to enter into a domestic partnership does not, in our view, preclude her from showing her presumed parenthood under section 7611, subdivision (d).

Appellant's final policy argument is that the court's application of section 7611, subdivision (d) allows for a person to circumvent formal adoption proceedings by showing that he or she is the presumed parent instead of formally adopting the child. Appellant presumes that Beth C.'s "likelihood of a successful adoption appears to be minimal" and she is using section 7611 as a way of avoiding adoption proceedings. As

the Fourth Appellate District has recently recognized in *L.M. v. M.G.* (2012) 208 Cal.App.4th 133, 147, "Adoption and an order determining parentage under the UPA are *alternative* methods for someone to establish parental status." (*Ibid.*, emphasis in original.) Case law recognizes parental statuses under the UPA even when a stepparent did not elect to adopt a child in the past. (*See ibid.* [holding that failure to seek an adoption does not prevent an individual from seeking parentage under the UPA]; e.g. *Charisma R. v. Kristina S, supra*, 175 Cal.App.4th 361; *S.Y. v. S.B., supra*, 201 Cal.App.4th 1023.) Thus, appellant's argument is without merit.

In view of all the foregoing, we conclude that the court did not err in granting Beth C. presumptive parent status.

DISPOSITION

The order is affirmed. Respondent is entitled to costs on appeal.

WOODS, Acting P. J.

We concur:

JACKSON, J. **SEGAL, J.***

*Judge of the Los Angeles County Superior Court assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.