

ASSEMBLY BILL

No. 2020

Introduced by Assembly Member Fletcher

February 17, 2010

An act to amend Sections 7573, 7612, 7630, 7646, 7662, 7667, and 8710 of, and to repeal Section 7631 of, the Family Code, relating to family law.

LEGISLATIVE COUNSEL'S DIGEST

AB 2020, as introduced, Fletcher. Family law.

Under existing law, a man is presumed to be a child's father if he marries or attempts to marry the child's mother or if he holds the child out as his own, as specified. Existing law provides that the presumption of paternity arising under these circumstances is rebuttable, and is rebutted by a judgment establishing paternity by another man. Existing law provides that if conflicting presumptions of paternity arise, the court is required to determine which presumption is founded on the weightier considerations of policy and logic. Under existing law, a voluntary declaration of paternity has the force and effect of a judgment of paternity, except as provided.

This bill would provide that a judgment of paternity by another man does not rebut a presumption of paternity if that judgment was obtained by a plaintiff seeking a child support order against the father or as the result of a voluntary declaration of paternity, and would require the court in those cases to determine which presumption is founded on the weightier considerations of policy and logic. The bill would provide that if another man is presumed to be the child's father, a voluntary declaration of paternity is only valid with that other man's written consent.

Existing law provides that a motion to set aside a judgment of paternity may be brought by the child’s mother or the previously established father within 2 years of the judgment. Under existing law, a man who is not a presumed father may bring an action to establish that he is the natural father of the child if the mother has relinquished for, or consents to, the adoption of the child, as specified.

This bill would include presumed fathers among those who can bring an action to set aside a judgment of paternity during that 2-year period. The bill would provide that a man may bring an action at any time to establish that he is the father of a child, regardless of whether he is a presumed father.

Existing law provides that if a mother consents to, or relinquishes for, the adoption of a child, a petition to terminate the parental rights of the father is required, subject to specified exceptions, and an action to terminate the parental rights of a father shall be set for a hearing.

This bill would authorize the court in an action to terminate parental rights to dispense with a hearing and issue an ex parte order terminating parental rights if the identity or whereabouts of the alleged father is unknown, he has been served with a written notice of his alleged paternity and the potential adoption and has failed to respond, or he has signed a waiver of his right to notice or a denial of paternity.

Existing law provides that if a child is being considered for adoption, the State Department of Social Services or licensed adoption agency is required to first consider adoptive placement in the home of a relative, unless it is not in the child’s best interest, or if other specified conditions exist.

This bill would specify that a parent’s refusal to place the child with relatives or siblings is a sufficient basis for the department or licensed adoption agency to determine that the placement is not in the child’s best interest, except as provided.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 7573 of the Family Code is amended to
2 read:
3 7573. Except as provided in Sections 7575, 7576, ~~and 7577,~~
4 *and 7612*, a completed voluntary declaration of paternity, as
5 described in Section 7574, that has been filed with the Department

1 of Child Support Services shall establish the paternity of a child
2 and shall have the same force and effect as a judgment for paternity
3 issued by a court of competent jurisdiction. The voluntary
4 declaration of paternity shall be recognized as a basis for the
5 establishment of an order for child custody, visitation, or child
6 support. *However, if another man is presumed to be the child's*
7 *father under Section 7611, a voluntary declaration of paternity is*
8 *valid only with that other man's written consent.*

9 SEC. 2. Section 7612 of the Family Code is amended to read:

10 7612. (a) Except as provided in Chapter 1 (commencing with
11 Section 7540) and Chapter 3 (commencing with Section 7570) of
12 Part 2 or in Section 20102, a presumption under Section 7611 is
13 a rebuttable presumption affecting the burden of proof and may
14 be rebutted in an appropriate action only by clear and convincing
15 evidence.

16 (b) If two or more presumptions arise under Section 7610 or
17 7611 that conflict with each other, or if a presumption under
18 Section 7611 conflicts with a claim pursuant to Section 7610, the
19 presumption which on the facts is founded on the weightier
20 considerations of policy and logic controls.

21 (c) The presumption under Section 7611 is rebutted by a
22 judgment establishing paternity of the child by another man, *unless*
23 *that judgment was obtained by a plaintiff seeking a child support*
24 *order against the father or as the result of a voluntary declaration*
25 *of paternity, in which case the court shall decide the issue of*
26 *paternity pursuant to subdivision (b). A motion to challenge a*
27 *judgment of paternity shall be brought within the time period*
28 *specified in Section 7646.*

29 SEC. 3. Section 7630 of the Family Code is amended to read:

30 7630. (a) A child, the child's natural mother, a man presumed
31 to be the child's father under subdivision (a), (b), or (c) of Section
32 7611, an adoption agency to whom the child has been relinquished,
33 or a prospective adoptive parent of the child may bring an action
34 as follows:

35 (1) At any time for the purpose of declaring the existence of the
36 father and child relationship presumed under subdivision (a), (b),
37 or (c) of Section 7611.

38 (2) For the purpose of declaring the nonexistence of the father
39 and child relationship presumed under subdivision (a), (b), or (c)
40 of Section 7611 only if the action is brought within a reasonable

1 time after obtaining knowledge of relevant facts. After the
2 presumption has been rebutted, paternity of the child by another
3 man may be determined in the same action, if he has been made
4 a party.

5 (b) Any interested party may bring an action at any time for the
6 purpose of determining the existence or nonexistence of the father
7 and child relationship presumed under subdivision (d) or (f) of
8 Section 7611.

9 (c) ~~An~~ *Except as to cases coming within Chapter 1 (commencing*
10 *with Section 7540) of Part 2, an action to determine the existence*
11 *of the father and child relationship with respect to a child who has*
12 *no presumed father under Section 7611 or whose presumed father*
13 *is deceased* may be brought by the child or personal representative
14 of the child, the Department of Child Support Services, the mother
15 or the personal representative or a parent of the mother if the
16 mother has died or is a minor, a man alleged or alleging himself
17 to be the father, or the personal representative or a parent of the
18 alleged father if the alleged father has died or is a minor.

19 (d) (1) If a proceeding has been filed under Chapter 2
20 (commencing with Section 7820) of Part 4, an action under
21 subdivision (a) or (b) shall be consolidated with that proceeding.
22 The parental rights of the presumed father shall be determined as
23 set forth in Sections 7820 to 7829, inclusive.

24 (2) If a proceeding pursuant to Section 7662 has been filed under
25 Chapter 5 (commencing with Section 7660), an action under
26 subdivision (c) shall be consolidated with that proceeding. The
27 parental rights of the alleged natural father shall be determined as
28 set forth in Section 7664.

29 (3) The consolidated action under paragraph (1) or (2) shall be
30 heard in the court in which the proceeding under Section 7662 or
31 Chapter 2 (commencing with Section 7820) of Part 4 is filed, unless
32 the court finds, by clear and convincing evidence, that transferring
33 the action to the other court poses a substantial hardship to the
34 petitioner. Mere inconvenience does not constitute a sufficient
35 basis for a finding of substantial hardship. If the court determines
36 there is a substantial hardship, the consolidated action shall be
37 heard in the court in which the paternity action is filed.

38 (e) (1) If any prospective adoptive parent who has physical
39 custody of the child, or any licensed California adoption agency
40 that has legal custody of the child, has not been joined as a party

1 to an action to determine the existence of a father and child
2 relationship under subdivision (a), (b), or (c), or an action for
3 custody by the alleged natural father, the court shall join the
4 prospective adoptive parent or licensed California adoption agency
5 as a party upon application or on its own motion, without the
6 necessity of a motion for joinder. A joined party shall not be
7 required to pay a fee in connection with this action.

8 (2) If a man brings an action to determine paternity and custody
9 of a child who he has reason to believe is in the physical or legal
10 custody of an adoption agency, or of one or more persons other
11 than the child’s mother who are prospective adoptive parents, he
12 shall serve his entire pleading on, and give notice of all proceedings
13 to, the adoption agency or the prospective adoptive parents, or
14 both.

15 (f) A party to an assisted reproduction agreement may bring an
16 action at any time to establish a parent and child relationship
17 consistent with the intent expressed in that assisted reproduction
18 agreement.

19 SEC. 4. Section 7631 of the Family Code is repealed.

20 ~~7631. Except as to cases coming within Chapter 1 (commencing~~
21 ~~with Section 7540) of Part 2, a man not a presumed father may~~
22 ~~bring an action for the purpose of declaring that he is the natural~~
23 ~~father of a child having a presumed father under Section 7611, if~~
24 ~~the mother relinquishes for, consents to, or proposes to relinquish~~
25 ~~for or consent to, the adoption of the child. An action under this~~
26 ~~section shall be brought within 30 days after (1) the man is served~~
27 ~~as prescribed in Section 7666 with a notice that he is or could be~~
28 ~~the father of the child or (2) the birth of the child, whichever is~~
29 ~~later. The commencement of the action suspends a pending~~
30 ~~proceeding in connection with the adoption of the child until a~~
31 ~~judgment in the action is final.~~

32 SEC. 5. Section 7646 of the Family Code is amended to read:

33 7646. (a) Notwithstanding any other provision of law, a
34 judgment establishing paternity may be set aside or vacated upon
35 a motion by the previously established mother of a child, the
36 previously established father of a child, *a man presumed to be the*
37 *father pursuant to Section 7611*, the child, or the legal
38 representative of any of these persons if genetic testing indicates
39 that the previously established father of a child is not the biological

1 father of the child. The motion shall be brought within one of the
2 following time periods:

3 (1) Within a two-year period commencing with the date on
4 which the previously established father *or presumed father* knew
5 or should have known of a judgment that established ~~him~~ *the*
6 *previously established father* as the father of the child or
7 commencing with the date the previously established father *or*
8 *presumed father* knew or should have known of the existence of
9 an action to adjudicate the issue of paternity, whichever is first,
10 except as provided in paragraph (2) or (3) of this subdivision.

11 (2) Within a two-year period commencing with the date of the
12 child's birth if paternity was established by a voluntary declaration
13 of paternity. Nothing in this paragraph shall bar any rights under
14 subdivision (c) of Section 7575.

15 (3) In the case of any previously established father who is the
16 legal father as a result of a default judgment as of the effective
17 date of this section, within a two-year period from January 1, 2005,
18 to December 31, 2006, inclusive.

19 (b) Subdivision (a) does not apply if the child is presumed to
20 be a child of a marriage pursuant to Section 7540.

21 (c) Reconsideration of a motion brought under paragraph (3)
22 of subdivision (a) may be requested and granted if the following
23 requirements are met:

24 (1) The motion was filed with the court between September 24,
25 2006, and December 31, 2006, inclusive.

26 (2) The motion was denied solely on the basis that it was
27 untimely.

28 (3) The request for reconsideration of the motion is filed on or
29 before December 31, 2009.

30 SEC. 6. Section 7662 of the Family Code is amended to read:

31 7662. (a) If a mother relinquishes for or consents to, or
32 proposes to relinquish for or consent to, the adoption of a child
33 ~~who does not have a presumed father under Section 7611~~, or if a
34 child otherwise becomes the subject of an adoption proceeding,
35 the agency or person to whom the child has been or is to be
36 relinquished, or the mother or the person having physical or legal
37 custody of the child, or the prospective adoptive parent, shall file
38 a petition to terminate the parental rights of the father, unless one
39 of the following occurs:

1 (1) The father’s relationship to the child has been previously
2 terminated or determined not to exist by a court.

3 (2) The father has been served as prescribed in Section 7666
4 with a written notice alleging that he is or could be the natural
5 father of the child to be adopted or placed for adoption and has
6 failed to bring an action for the purpose of declaring the existence
7 of the father and child relationship pursuant to subdivision (c) of
8 Section 7630 within 30 days of service of the notice or the birth
9 of the child, whichever is later.

10 (3) The alleged father has executed a written form developed
11 by the department to waive notice, to deny his paternity, relinquish
12 the child for adoption, or consent to the adoption of the child.

13 (b) The birth father may validly execute a waiver or denial of
14 paternity before or after the birth of the child, and once signed, no
15 notice of, relinquishment for, or consent to adoption of the child
16 shall be required from the birth father for the adoption to proceed.

17 (c) All proceedings affecting a child under Divisions 8
18 (commencing with Section 3000) to 11 (commencing with Section
19 6500), inclusive, and Parts 1 (commencing with Section 7500) to
20 3 (commencing with Section 7600), inclusive, of this division,
21 other than an action brought pursuant to this section, shall be stayed
22 pending final determination of proceedings to terminate the parental
23 rights of the father pursuant to this section.

24 (d) Nothing in this section may limit the jurisdiction of the court
25 pursuant to Part 3 (commencing with Section 6240) and Part 4
26 (commencing with Section 6300) of Division 10 with respect to
27 domestic violence orders.

28 SEC. 7. Section 7667 of the Family Code is amended to read:

29 7667. (a) Notwithstanding any other provision of law, an action
30 to terminate the parental rights of a father of a child as specified
31 in this part shall be set for hearing not more than 45 days after
32 filing of the petition therefor and completion of service thereon or
33 the entry of an order dispensing with notice of the proceedings.
34 The petition shall either specify the date of the hearing or state
35 that a hearing will be held on a date as determined pursuant to this
36 section, which shall be separately noticed.

37 (b) The matter so set shall have precedence over all other civil
38 matters on the date set for trial, except an action to terminate
39 parental rights pursuant to Part 4 (commencing with Section 7800).

1 (c) *The court may dispense with a hearing and issue an ex parte*
 2 *order terminating parental rights if any of the following apply:*

- 3 (1) *The identity or whereabouts of the father are unknown.*
- 4 (2) *The alleged father has validly executed a waiver of the right*
 5 *to notice or a waiver or denial of paternity.*
- 6 (3) *The alleged father has been served with written notice of*
 7 *his alleged paternity and the proposed adoption, and he has failed*
 8 *to bring an action pursuant to subdivision (c) of Section 7630*
 9 *within 30 days of service of the notice or the birth of the child,*
 10 *whichever is later.*

11 SEC. 8. Section 8710 of the Family Code is amended to read:

12 8710. (a) If a child is being considered for adoption, the
 13 department or licensed adoption agency shall first consider adoptive
 14 placement in the home of a relative or, in the case of an Indian
 15 child, according to the placement preferences and standards set
 16 out in subdivisions (c), (d), (e), (f), (g), (h), and (i) of Section
 17 361.31 of the Welfare and Institutions Code. However, if a relative
 18 is not available, if placement with an available relative is not in
 19 the child’s best interest, or if placement would permanently
 20 separate the child from other siblings who are being considered
 21 for adoption or who are in foster care and an alternative placement
 22 would not require the permanent separation, the foster parent or
 23 parents of the child shall be considered with respect to the child
 24 along with all other prospective adoptive parents where all of the
 25 following conditions are present:

- 26 (1) The child has been in foster care with the foster parent or
 27 parents for a period of more than four months.
- 28 (2) The child has substantial emotional ties to the foster parent
 29 or parents.
- 30 (3) The child’s removal from the foster home would be seriously
 31 detrimental to the child’s well-being.
- 32 (4) The foster parent or parents have made a written request to
 33 be considered to adopt the child.

34 (b) In the case of an Indian child whose foster parent or parents
 35 or other prospective adoptive parents do not fall within the
 36 placement preferences established in subdivision (c) or (d) of
 37 Section 361.31 of the Welfare and Institutions Code, the foster
 38 parent or parents or other prospective adoptive parents shall only
 39 be considered if the court finds, supported by clear and convincing

1 evidence, that good cause exists to deviate from these placement
2 preferences.

3 *(c) Except as required by the Indian Child Welfare Act (25*
4 *U.S.C. Sec. 1901 et seq.), the refusal of a birth parent to place the*
5 *child with relatives or siblings shall be a sufficient basis for the*
6 *department or licensed adoption agency to find that the placement*
7 *is not in the best interest of the child.*

8 *(e)*

9 *(d) This section does not apply to a child who has been adjudged*
10 *a dependent of the juvenile court pursuant to Section 300 of the*
11 *Welfare and Institutions Code, or to a child whose prospective*
12 *adoptive parents were selected pursuant to subdivision (f) of*
13 *Section 8700 or Section 8801.*

14 *(e) Nothing in this section shall be construed to require a child*
15 *who has been placed for adoption to be removed from the adoptive*
16 *home for the purpose of placement with siblings or other relatives.*

O