

Woodland Hills Tax & Estate Planning Council - Roundtable
October 14, 2026
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**DO YOU KNOW WHO YOUR CHILDREN ARE? DETERMINING PARENTAGE
IN PROBATE AND TRUST ADMINISTRATION PROCEEDINGS**

ISSUE

How do you draft the estate plan to ensure that your intended beneficiaries are actually the only beneficiaries who take?

Where do we believe that the courts will likely head and what do we tell our clients?

STATUTES

PC §26 – Child – “Child” means any individual entitled to take as a child under this code by intestate succession from the parent whose relationship is involved.

PC §44 – Heir – “Heir” means any person, including the surviving spouse, who is entitled to take property of the decedent by intestate succession.

PC §48 – Interested Person – (b) The meaning of “interested person” as it relates to particular persons may vary from time to time and shall be determined according to the particular purposes of, and matter involved in, any proceeding.

PC §50 – Issue – “Issue” of a person means all his or her lineal descendants of all generations, with the relationship of parent and child at each generation being determined by the definitions of child and parent

PC §6402 – Intestate estate not passing to surviving spouse – Except as provided in §6402.5, the part of the intestate estate not passing to the surviving spouse under §6401, or the entire intestate estate if there is no surviving spouse, passes as follows:

(a) To the issue of the decedent, the issue taking equally if they are all of the same degree of kinship to the decedent, but if of unequal degree those of the more remote degree take in the manner provided in §240. ...

PC §6450 – Relationship existence – [A] relationship of parent and child exists for the purpose of determining intestate succession by, through or from a person in the following circumstances:

(a) The relationship of parent and child exists between a person and the person’s natural parents, regardless of the marital status of the natural parents;

(b) The relationship of parent and child exists between an adopted person and the person's adopting parent or parents.

PC §6453 – Natural Parents (Former Version) – For the purpose of determining whether a person is a “natural parent” as that term is used in this chapter:

(a) A natural parent and child relationship is established where that relationship is presumed and not rebutted pursuant to the Uniform Parentage Act (commencing with Family Code §7600 et al.).

(b) A natural parent and child relationship may be established pursuant to any other provisions of the Uniform Parentage Act, except that the relationship may not be established by an action under subdivision (c) of Section 7630 of the Family Code unless any of the following conditions exist:

(1) A court order was entered during the father's lifetime declaring paternity;

(2) *Paternity is established by clear and convincing evidence that the father has openly held out the child as his own*; or

(3) It was impossible for the father to hold out the child as his own and paternity is established by clear and convincing evidence.

(c) A natural parent and child relationship may be established pursuant to PC §249.5. (Posthumous conception deemed born during lifetime)

PC §6453 – Natural Parents – For the purpose of determining whether a person is a “natural parent” as that term is used in this chapter:

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(b) A natural parent and child relationship may be established pursuant to any other provisions of the Uniform Parentage Act, except that the relationship may not be established by an action under subdivision (c) of Section 7630 of the Family Code unless any of the following conditions exist:

(1) A court order was entered during the **parent's** lifetime declaring **parentage**;

(2) **Parentage** is established by clear and convincing evidence that the **parent** has openly held out the child as **that parent's** own; or

(3) It was impossible for the **parent** to hold out the child as **that parent's** own and **parentage** is established by clear and convincing evidence, **which may include genetic DNA evidence acquired during the parent's lifetime**.

(d) A natural parent and child relationship may be established pursuant to PC §249.5. (Revised, effective January 1, 2019)

PC §21620 – Child born or adopted after execution of will; share in estate – Except as provided in §21621, if a decedent fails to provide in a testamentary instrument for a child of decedent born or adopted after the execution of all of the decedent’s testamentary instruments, the omitted child shall receive a share in the decedent’s estate equal in value to that which the child would have received if the decedent had died without having executed any testamentary instrument.

PC §21621 – Child not to receive share; circumstances – A child shall not receive a share of the estate under §21620 if any of the following is established:

(a) The decedent’s failure to provide for the child in the decedent’s testamentary instruments was intentional and that intention appears from the testamentary instruments.

(b) The decedent had one or more children and devised or otherwise directed the disposition of substantially all the estate to the other parent of the omitted child.

(c) The decedent provided for the child by transfer outside of the estate passing by the decedent’s testamentary instruments and the intention that the transfer be in lieu of a provision in said instruments is shown by statements of the decedent or from the amount of the transfer or by other evidence.

PC §21622 – Decedent’s erroneous belief or lack of knowledge; child’s share of estate – If, at the time of the execution of all of decedent’s testamentary instruments effective at the time of decedent’s death, the decedent failed to provide for a living child solely because the decedent believed the child to be dead or was unaware of the birth of a child, the child shall receive a share in the estate equal in value to that which the child would have received if the decedent had died without having executed any testamentary instruments.

CASES

PROBATE CASES

Old Law (pre-1993 cases)

William M. v. Superior Court (1990) 225 Cal.App.3d 447 – Court does not have authority to order genetic testing from putative grandparents and out-of-wedlock mother for purposes of determining paternity in non-Family Law matter.

Estate of Saunders (1992) 2 Cal.App.4th 462 – No DNA test ordered in intestate proceeding where no holding out a child during father’s lifetime

Estate of Corcoran (1992) 7 Cal.App.4th 1099 – Intestate decedent’s half-brother was “natural brother” within meaning of statute prohibiting inheritance by or through parent of child born out of wedlock if that parent does not acknowledge or support child, except for “natural” brothers & sisters (superseded by statute per *Estate of Griswold* (2001) 25 Cal.4th 904)

Current Law (post-1993 cases)

Estate of Griswold (2001) 25 Cal.4th 904 (Santa Barbara) – voluntary admission of paternity by father of husband in foreign bastardy proceeding constituted an “acknowledgment” of parentage for purposes of inheritance by husband’s surviving half-siblings, and (2) foreign judgment of paternity constituted a court order entered during husband’s lifetime that sufficiently established his alleged father as his “natural parent” for purposes of the CA probate proceeding

In re Estate of Burden (2007) 146 Cal.App.4th 1021 (Ventura) – Putative heir established by clear and convincing evidence that decedent openly held out putative heir as his child, entitling putative heir to equal share of estate with daughter (disagreed with by *Estate of Britel* (2015) 236 Cal.App.4th 127)

Estate of Chambers (2009) 175 Cal.App.4th 891 (LA – Beckloff) – Decedent’s nephew filed petition alleging he was decedent’s sole heir by intestate succession. Decedent’s alleged “natural child” challenged petition which was granted by preponderance of the evidence. On appeal reversed – when child born out of wedlock wants to show he is natural child of a man who died without leaving a will, if the child relies on proof that alleged father openly held him out as his child, he must do so by clear and convincing evidence, under the statute describing who has standing to bring action to determine the existence of a father and child relationship “with respect to a child who has no presumed father” OR “whose presumed father is deceased.” (PC §6453(b)(2); FC §7630(c).

Estate of Britel (2015) 236 Cal.App.4th 127 – after father died intestate (in bicycle accident), mother of child born out of wedlock petitioned to administer father’s estate and for child to be declared father’s heir. Father’s sister petitioned to administer father’s estate. Trial court denied mother’s petition and granted sister’s. On appeal, court held: (1) “openly held out” standard for determining paternity for purposes of intestate succession required unconcealed affirmative representation of paternity in open view; (2) father’s estate not liable for support of child under law governing child support; (3) substantial evidence supported finding that mother failed to show by clear and convincing evidence that father openly held out child as his own; and (4) statutory scheme governing whether person is a natural parent for purposes of intestate succession did not violate equal protection rights of nonmarital children. NOTE: trial court allowed introduction of DNA test showing a 99.9996% probability that decedent was child’s father. Father had known mother was pregnant; deeply held religious beliefs prevented father from acknowledging child born out of wedlock; mother told father she’d had abortion; some evidence that father may have known that child had in fact been born.

Estate of Manson, 2021 WL 1379103 (Cal. Ct. App., 2d Dist. 2021 – Unpublished) – “While section 6453, subdivision (b)(3) refers to genetic evidence ... [it] does not authorize a probate court to order genetic testing.” The “limited” power of a court to order genetic testing is authorized under Family Code Section 7551 and does not include power “to order genetic testing of a person and the remains of another to prove or disprove a grandparent-grandchild relationship.” (See *William M.*, *supra*)

NOTE: Impossibility – see *Cheyanna M. v. A. C. Nielson Co.* (1998) 66 Cal.App.4th 855, 877 – “The legislative history indicates that the ‘impossibility’ provision was enacted to cover the situation ... where the father dies before the child is born.” A report prepared by the Office of Senate Floor Analyses with respect to the amendment to PC §6453 in 1993 described the situations in which the “impossibility” provision was meant to apply:

“In a current case in Kern County, the alleged father (unmarried) was in an automobile accident which left him paralyzed. His son was born the same day as the father’s accident. The father was in traction until his death 28 days later.

“In another Los Angeles County case, *the alleged father (unmarried) was killed while the mother of the illegitimate child was still pregnant*. Under these facts, if the father did not hold out the child as his own, no court order establishing paternity could have been entered during the father’s lifetime. *Current law would bar the child from establishing paternity.*

“This bill would offer another alternative for establishing the parent-child relationship.

No case yet reported where the mother simply keeps child’s birth undisclosed to father.

FAMILY LAW CASES

J.R. v. D.P. (2012) 212 Cal.App.4th 374 – Biological father petitioned to establish parental relations with child over objections of mother and presumed father who was listed on child’s birth certificate. Trial court granted petition and set aside presumed father’s voluntary declaration of paternity. On appeal, Court held: (1) Trial court had the authority to set aside the voluntary declaration of paternity; (2) alleged biological father qualified as a *Kelsy S.* presumed father (where mother has unilaterally precluded father from becoming presumed father); and (3) trial court did not abuse its discretion in paternity action by using biological paternity (by DNA test compelled under FC §7575(b)) as determining factor.

But see *In re Riley G* (2014 – Unpublished) – biological father in jail and with extensive criminal history denied right to seek reunification services and visitation with child.

SUGGESTED DRAFTING SOLUTIONS

Definition by inclusivity

Definition by exclusivity

DNA cautions

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