

CALIFORNIA COURT OF APPEAL

E.C. v. J.V.

202 Cal. App. 4th 1076 (Cal. Ct. App. 2012) · Decided January 19, 2012

SUMMARY

The California Court of Appeal considered whether a former same-sex partner qualified as a presumed parent under Family Code section 7611(d) based on receiving the child into her home and holding the child out as her natural child. The court held that the trial court improperly focused on the parties’ relationship, cohabitation, and other irrelevant factors rather than the appellant’s commitment to the child. It reversed and remanded for reconsideration under the proper legal standards, including possible rebuttal of the presumption under section 7612.

CASE DETAILS

COURT	California Court of Appeal
WRITING FOR THE COURT	Raye, P. J.; Hull, J.; Hoch, J.
JURISDICTION	California
DECIDED	January 19, 2012
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	E.C., the former same-sex partner of J.V., appealed from an order determining that E.C. failed to establish presumed-parent status under Family Code section 7611, subdivision (d), and denying her request for custody and visitation-related relief.
STANDARD OF REVIEW	The court reviews factual findings under the substantial-evidence standard. A discretionary order based on improper criteria or incorrect legal assumptions is subject to reversal because it is not an exercise of informed discretion, even if substantial evidence might otherwise support the order.
PRECEDENTIAL VALUE	published California Court of Appeal opinion
PARTIES	E.C. v. J.V.

TOPICS

- parental rights
- family law procedure
- statutory interpretation
- standard of review
- appellate procedure

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether the trial court applied the correct legal standards in determining whether E.C. was a presumed parent under Family Code section 7611, subdivision (d).
2. Whether E.C. received the child into her home within the meaning of section 7611, subdivision (d).
3. Whether E.C. held the child out as her natural child under section 7611, subdivision (d).
4. Whether the trial court improperly relied on facts concerning E.C.'s relationship with J.V., rather than E.C.'s relationship with the child and commitment to the child's welfare.
5. Whether the matter should be remanded for the trial court to exercise its discretion under the correct legal standards and, if presumed-parent status is established, consider rebuttal under section 7612.

HOLDINGS

1. E.C. established the first element of presumed-parent status because the undisputed evidence showed that she received the child into her home when the child was three months old. Section 7611, subdivision (d), does not require that the child be received immediately after birth.
2. The trial court applied improper criteria in evaluating whether E.C. held the child out as her natural child. The relevant inquiry is E.C.'s conduct toward the child and whether that conduct demonstrated an abiding commitment to the child and the child's welfare, not the nature of E.C.'s relationship with J.V.
3. The trial court's order could not stand because it exercised discretion under an incorrect understanding of the governing law. The proper remedy was reversal and remand for reconsideration under the correct standards.
4. If the trial court determines on remand that E.C. held the child out as her natural child and therefore qualifies as a presumed parent, it must then consider whether the presumption should be rebutted under Family Code section 7612.

KEY QUOTATIONS

“The essential consideration is whether appellant received the minor into her home, which she undeniably did.” (202 Cal. App. 4th at 1086)

“The relationship between a child’s alleged parent and biological 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.” (202 Cal. App. 4th at 1088)

“The failure to plan for a child does not demonstrate an alleged parent’s lack of commitment to that child’s well-being; it is the alleged parent’s conduct after the child’s conception and birth that does so.” (202 Cal. App. 4th at 1090)

FACTUAL BACKGROUND

E.C. supported J.V. throughout J.V.'s pregnancy, attended prenatal and Lamaze appointments with her, was present at the child's birth, and cut the umbilical cord. When the child was three months old, J.V. and the child moved into E.C.'s home; E.C. thereafter participated extensively in the child's care, activities, schooling, and family life. E.C. and J.V. maintained a committed relationship for approximately five years, after which they agreed that E.C. would continue visitation until their communication broke down and J.V. prevented further contact.

PROCEDURAL HISTORY

After E.C. petitioned to establish a parental relationship with J.V.'s biological child and sought joint custody and visitation, the matter proceeded to an evidentiary hearing. The trial court found that E.C. had not proved by a preponderance of the evidence that she was a presumed parent under Family Code section 7611, subdivision (d), while reserving jurisdiction concerning visitation. The Court of Appeal reversed and remanded for application of the correct legal standards.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The trial court must reconsider whether E.C. held the child out as her natural child under Family Code section 7611(d), applying the correct legal standards and focusing on E.C.'s conduct and commitment to the child rather than irrelevant aspects of E.C.'s relationship with J.V. If E.C. is found to be a presumed parent, the trial court must then consider whether the presumption should be rebutted under Family Code section 7612.

CASES CITED

- Charisma R. v. Kristina S., 175 Cal. App. 4th 361, 368-369, 376 (2009)
- Mark T. v. Jamie Z., 194 Cal. App. 4th 1115, 1124-1125 (2011)
- In re J.O., 178 Cal. App. 4th 139, 147-148 (2009)
- Johnson v. Calvert, 5 Cal. 4th 84, 88-89 (1993)
- Elisa B. v. Superior Court, 37 Cal. 4th 108, 114, 119-120, 123, 125 (2005)
- In re A.A., 114 Cal. App. 4th 771, 777, 783-784 (2003)
- In re Salvador M., 111 Cal. App. 4th 1353, 1355-1356, 1358-1359 (2003)
- In re Sabrina H., 217 Cal. App. 3d 702, 708 (1990)
- In re T.R., 132 Cal. App. 4th 1202, 1211-1212 (2005)
- Librers v. Black, 129 Cal. App. 4th 114, 123 (2005)
- Ramos v. Countrywide Home Loans, Inc., 82 Cal. App. 4th 615, 629 (2000)

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