

RESOLUTION 10-09-2008

DIGEST

Family Law: Joint Petition to Establish Parental Relationship

Amends Family Code section 7630.1 to provide a summary procedure for establishing parent-child relationships.

RESOLUTIONS COMMITTEE RECOMMENDATION

APPROVE IN PRINCIPLE

History:

No similar resolutions found.

Reasons:

This resolution amends Family Code section 7630.1 to provide a summary procedure for establishing parent-child relationships. This resolution should be approved in principle because it will enable litigants to inexpensively establish a parent-child relationship..

This resolution proposes establishing a procedure for a Joint Petition to Establish Parental Relationship, to facilitate parents who are in agreement in obtaining a parentage judgment. The proposed statutory language follows the language of the joint dissolution petition in some aspects, including providing that the joint petition may be revoked by either party at any time before an application for judgment is filed. As with any other parentage action, an action to set aside a judgment would lie under the existing statutory grounds and procedures (Fam. Code, § 7645 et seq.). And, as with any parentage action, should the parties later wish to modify their custody, visitation, or child support agreements, they could do so by noticed motion or stipulated order.

Parentage can be legally established in one of two ways: when the parents of a minor child are married to each other and a child is born into that union or when the parents of a child are not married and parentage is established through a paternity suit. In an action to dissolve a marriage, the minor child is identified in the petition and/or response as the minor child of the parties, and judgment is ultimately entered decreeing that the minor is the child of both parties. Ancillary orders, e.g., child support, custody and visitation, are included in the judgment. In those cases where the parents of a minor child are not married, and the parent-child relationship is established by the filing of a paternity suit, judgment is ultimately entered decreeing that the parent-child relationship (paternity) either exists or does not exist. Ancillary orders, e.g., child support, custody and visitation are included in that judgment, so long as the court can maintain continuing jurisdiction to make such orders.

Allowing summary proceedings of the kind proposed, so long as continuing jurisdiction is preserved, will enable litigants to simply and inexpensively establish a parent-child relationship with ancillary orders e.g., custody, visitation, and child support either by agreement or by judicial involvement. Since this resolution provides a summary process that currently does not exist, this resolution should be approved in principle.

SECTION/COMMITTEE REPORTS

FAMILY LAW SECTION

APPROVE IN PRINCIPLE

The Family Law Section Executive Committee approves this resolution in principle. This resolution proposes to amend Family Code §7630.1 and would establish a procedure for a Joint Petition to Establish Parental Relationship for non-married parents and domestic partners. This Committee approves this resolution as the proposed amendment provides an easy, non-adversarial method of establishing parentage consistent with California policy in Family Code §7570 which addresses the compelling state interest in establishing paternity for all children in a non-adversarial manner to promote further access to justice.

This position is only that of the Family Law Section of the State Bar of California. This position has not been adopted by either the State Bar Board of Governors or overall membership and is not to be construed as representing the position of the State Bar of California.

Membership in the Family Law Section is voluntary, and funding for section activities, including all legislative activities, is obtained entirely from voluntary services.

TEXT OF RESOLUTION

RESOLVED, that the Conference of Delegates of California Bar Associations recommends that legislation be sponsored to add Family Code section 7630.1 to read as follows:

- 1 § 7630.1
- 2 (a) Conditions Necessary at Commencement of Proceedings.
- 3 A judgment of parentage may be entered pursuant to a Joint Petition to Establish
- 4 Parental Relationship if all of the following conditions exist at the time the proceeding is
- 5 commenced:
- 6 (1) California is the child's home state as set forth in Chapter 1 of Part 3
- 7 (UCCJEA).
- 8 (2) The parties have previously signed a Declaration of Paternity which was filed
- 9 with the Department of Child Support Services.
- 10 (3) There are no other court actions pending involving the parentage of any child
- 11 involved and the parties know of no person who would not be a party to the proceeding
- 12 who either has physical custody of any child involved or claims to have custody of or
- 13 visitation rights with any child in the case.
- 14 (4) The parties upon entry of the judgment of parentage waive their respective
- 15 rights to appeal and their rights to move for a new trial.
- 16 (5) The parties desire that the court enter a judgment of parentage with respect to
- 17 the child(ren) named in the petition.
- 18 (b) Joint Petition; Filing; Form; Contents.
- 19 A joint parentage action shall be commenced by filing a joint petition in the form
- 20 prescribed by the Judicial Council. The petition shall be signed under oath by both the

21 mother and the father of the child(ren) named therein, and shall include all of the
22 following:

23 (1) A statement that as of the date of the filing of the joint petition all of the
24 conditions set forth in Section 1 have been met.

25 (2) The mailing address of both the mother and the father.

26 (c) Joint Petition; Concurrent Filings.

27 Concurrently with the filing of a Joint Petition the parties must also sign and file
28 the following:

29 (1) Advisement and Waiver of Rights re: Establishment of Parental Relationship;

30 (2) Declaration Under Uniform Child Custody Jurisdiction and Enforcement Act
31 (UCCJEA).

32 (d) Revocation of Joint Petition; Termination of Proceedings; Notice; Filing; Copy
33 to Other Party.

34 At any time before the filing of application for judgment pursuant to Section 4,
35 either party to the joint petition to establish parental relationship may revoke the joint
36 petition and thereby terminate the joint proceeding filed pursuant to this chapter. The
37 revocation shall be effected by filing with the clerk of the court where the proceeding was
38 commenced a notice of revocation in such form and content as shall be prescribed by the
39 Judicial Council. The revoking party shall send a copy of the notice of revocation to the
40 other party by first-class mail, postage prepaid, at the other party's last known address.

41 (e) Entry of Judgment of Dissolution; Notice.

42 Upon the application of the parties, in such form and content as shall be prescribed
43 by the Judicial Council, the court may enter the judgment (Uniform Parentage). The clerk
44 shall send a notice of entry of judgment to each of the parties at the party's last known
45 address.

46 (f) Final Judgment as Final Adjudication of Rights and Obligations.

47 Entry of the judgment pursuant to Section 4 constitutes a final adjudication of the
48 parentage of the child(ren) named therein, and a waiver of their parties right to appeal to
49 move for a new trial.

50 (g) Actions to Set Aside Final Judgment.

51 Entry of the judgment pursuant to Section 4 does not prejudice nor bar the rights of either
52 of the parties to institute an action to set aside the judgment pursuant to the provisions set
53 forth in the Uniform Parentage Act (Family Code section 7645 et seq.).

(Proposed new language underlined; language to be deleted stricken.)

PROPONENT: Bar Association of San Francisco

Existing Law: Currently, if two unmarried parents (or parents who are not registered domestic partners) wish to initiate a parentage action, one must file and serve a “Petition to Establish Parental Relationship” and a Summons. Personal service is required. The other party must then file and serve a Response. In the arena of marital dissolution, when spouses wish to proceed amicably, the option of a Joint Petition for Summary Dissolution of Marriage exists. Here, both parties signing a joint petition, so neither needs to be served, and there is only one filing fee.

This Resolution: Proposes establishing a procedure for a Joint Petition to Establish Parental

Relationship, to facilitate parents who are in agreement in obtaining a parentage judgment. The proposed statutory language follows the language of the joint dissolution petition in some aspects, including providing that the joint petition may be revoked by either party at any time before an application for judgment is filed. As with any other parentage action, an action to set aside a judgment would lie under the existing statutory grounds and procedures (Family Code §7645 et seq.). And, as with any parentage action, should the parties later wish to modify their custody, visitation, or child support agreements, they could do so by noticed motion or stipulated order. A set of appropriate judicial council forms would be used to implement these new provisions.

The Problem: Parents who have no disagreement about parentage may seek a judgment of parentage for at least two reasons: 1) so that parentage is clearly established for a variety of purposes (estate planning and confirming inheritance rights, to ensure full faith and credit by other jurisdictions, etc.) and 2) to have a forum in which to lodge or record agreements about the custody, visitation, child support, or other matters. At this time, to initiate such an action, one parent must file and serve the other. Such an adversarial action can be an awkward and unpleasant for the parties. This was recognized when, in 1978, the legislature created the joint, summary dissolution proceeding as an alternative to regular dissolution actions where the parties wished to proceed amicably.

California law provides that “[t]here is a compelling state interest in establishing paternity for all children.” (Fam. Code § 7570, subd. (a)). The option of a joint parentage proceeding would make it easier and less awkward for parents to obtain a parentage judgment, and is accordance with that policy.

IMPACT STATEMENT:

This resolution would call for the creation of new judicial council forms.

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