UNIFORM PARENTAGE ACT—SAY GOODBYE TO DONNA REED: RECOGNIZING STEPMOTHERS' RIGHTS

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NOTES

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INTRODUCTION

Donna Reed has been described as the “quintessential American housewife.”1 Similarly, her family could be described as the quintessential American family—“a husband who was employed, a wife who was a homemaker, and two or three children.”2 However, the definition of the “American family” is constantly in transition.3 For example, consider the evolution of American families in popular television since the “Donna Reed era,”4 such as the blended family in The Brady Bunch,5 and the same-sex couple who adopted and raised a son in Will & Grace.6 Statistics also prove that the composition of the American family is ever changing. In 1970, forty

1. Gilmore Girls: That Damn Donna Reed (WB television broadcast Feb. 22, 2001); see also Richard Delgado & Jean Stefancic, Pornography and Harm to Women: “No Empirical Evidence?,” 53 OHIO ST. L.J. 1037, 1042 n.27 (1992) (stating that “television presented images of the idyllic housewife in The Donna Reed Show” (citing The Donna Reed Show (ABC television broadcast 1958-1966)).

2. Lewis A. Silverman, Suffer the Little Children: Justifying Same-Sex Marriage from the Perspective of a Child of the Union, 102 W. VA. L. REV. 411, 417 n.44 (1999). Furthermore, “[t]he 1950s saw the advent of such television staples as The Ozzie and Harriet Show, Leave it to Beaver, and The Donna Reed Show, all of which featured suburban mothers who cared for their homes and imparted meaningful moral instruction to their children.” Melissa E. Murray, Whatever Happened to G.I. Jane?: Citizenship, Gender, and Social Policy in the Postwar Era, 9 MICH. J. GENDER & L. 91, 123 (2002).


5. The Brady Bunch (ABC television broadcast 1969-1974). This series focused on a blended family in which Mike Brady, who had his three sons from a previous marriage, married Carol, who had three daughters from her previous marriage. Id.

percent of American households consisted of a heterosexual married couple with minor children. By 2003, that percentage had dropped to twenty-three. In order to reflect the continuous change in the definition of family, legislatures and courts must say goodbye to the Donna Reed mold and legalize relationships that society already views as part of the family unit.

While many states have taken a liberal approach to recognizing new familial relationships, some courts and legislatures have been unwilling to expand their definition of family beyond the traditional nuclear family. In *Amy G. v. M.W.*, the California Court of Appeal held that a stepmother, who had raised her stepson since infancy, could not be joined as a necessary party in a maternity suit because she lacked standing as an interested person. The court reasoned that because Amy G. had no biological connection to the child, and the biological mother had also petitioned for maternity, Amy G. did not have standing because she could not be the child's mother. In so deciding, the court applied California's enactment of the Uniform Parentage Act (UPA). This Note examines that

8. Id.
10. Various courts have enacted legislation that limits the definition of marriage as between one man and one woman, and considers marriages entered into by same-sex couples in other jurisdictions to be void. See, e.g., ALA. CODE § 30-1-19 (LexisNexis 2006); ALASKA STAT. § 25.05.013 (2006); MD. CODE ANN., FAM. LAW § 2-201 (LexisNexis 2006); OHIO REV. CODE ANN. § 3101.01 (West 2005); 23 PA. CONS. STAT. ANN. § 1704 (West 2001). Some states directly or indirectly preclude same-sex couples from adopting children. See CHILD WELFARE INFO. GATEWAY, U.S. DEP'T OF HEALTH & HUMAN SERVS., WHO MAY ADOPT, BE ADOPTED, OR PLACE A CHILD FOR ADOPTION? SUMMARY OF STATE LAWS 3 (2006), available at http://www.childwelfare.gov/systemwide/laws_policies/statutes/partiesall.pdf (Florida and Mississippi have enacted specific legislation that disallows same-sex couples to adopt; Utah has enacted legislation that only allows married couples to adopt children and does not allow same-sex couples to marry); see also B.F. v. T.D., 194 S.W.3d 310 (Ky. 2006) (holding that a woman whose partner had adopted a child during their eight-year relationship did not have standing to allege status as a de facto custodian despite her financial and emotional care for the child).
12. Id.
law and proposes that the UPA be read in a gender-neutral fashion to allow a stepmother to have standing as an interested party in an action to establish maternity.

Part I of this Note details the history of the UPA, the guiding principles used by courts in deciding paternity issues, and how courts have interpreted the UPA to find legal parentage in persons who are not the child's genetic parents. Part II examines the factual and legal background of Amy G. and discusses the various arguments as to whether Amy G. should have had standing to assert her claim. Part III concludes that a gender-neutral application of the UPA, which would give stepmothers standing in maternity suits, is the correct interpretation for several reasons: First, a child can have three potential parents for the purpose of standing, and the court can thereafter determine who the child's two legal parents are at a trial on the merits. Second, since biology is not the deciding factor in all parentage determinations, genetics should not trump all other factors in maternity suits. Third, a stepmother should have standing in a maternity suit because a child can have two mothers. Fourth, a stepmother, like a stepfather, should benefit from the presumption of legitimacy, which is also known as the marital presumption. Finally, upon granting a stepmother standing to assert maternity, her claim to maternity can be weighed against the biological mother's claim through a gender-neutral reading of the UPA.


16. See infra Part III.C; see also Elisa B. v. Superior Court of El Dorado County, 117 P.3d 660 (Cal. 2005) (holding that a child can have two legal mothers).

17. See infra Part III.D; see also Pettinato v. Pettinato, 582 A.2d 909, 913 (R.I. 1990) (discussing the presumption of legitimacy).

18. See infra Part III.E. See generally Johnson v. Calvert, 851 P.2d 776, 779 (Cal. 1993) (applying the UPA, in a gender-neutral fashion, to a situation that was not contemplated when the UPA was drafted).
I. THE UNIFORM PARENTAGE ACT

Over time, courts and legislatures have shifted their standing analysis in parentage suits from the principle that biology or marriage trumps all other factors, toward recognition of the rights of persons not traditionally seen as parents. This Part discusses the process that some courts have used in recognizing different familial relationships. Subpart A addresses the drafting of the UPA, from its original purpose of protecting nonmarital children to recent revisions made necessary by advances in science. Subpart B discusses some principles that courts consistently use in determining parentage such as the marital presumption, the importance of a biological relationship with the child, the two-legal-parents paradigm, and the "best interests of the child" standard. Finally, subpart C details the way in which the UPA has been interpreted to allow persons other than biological mothers and fathers to have standing and, in some cases, to be declared legal parents.

A. Enactment and Pertinent Provisions

1. Introduction

In 1972, the National Conference of Commissioners on Uniform State Laws (NCCUSL) drafted the UPA with the purpose of "eliminating the distinction between legitimate and illegitimate

19. See generally Miscovich v. Miscovich, 688 A.2d 726, 728 (Pa. Super. Ct. 1997) (stating that the purpose of the marital presumption was to prevent the stigma of illegitimacy); Carvin v. Britain (In re Parentage of L.B.), 122 P.3d 161, 167 (Wash. 2005), cert. denied, 126 S. Ct. 2021 (2006) ("Washington courts have long recognized that individuals not biologically nor legally related to the children whom they 'parent' may nevertheless be considered a child's 'psychological parent.'").


children."23 At early common law, a nonmarital child "was filius nullius, a child without rights."24 The phrase "filius nullius" summarizes the English and American rule that a nonmarital child had no specific right to support from either biological parent.25 In the late 1960s and early 1970s, the U.S. Supreme Court handed down several decisions declaring that the legislatively mandated unequal treatment of children based upon the marital status of their biological parents was unconstitutional.26 As a result, the UPA was drafted to provide a solution for legislatures in states whose previous laws had discriminated between marital and nonmarital children.27

Changes in technology, primarily those advances in the area of genetic testing, necessitated that a new version of the UPA be drafted in 2000.28 The UPA was further modified in 2002 to include provisions that grappled with new scientific advances and defined parties to paternity and maternity suits.29 Currently, some version


25. Id. at 431. In 1576, the English Parliament passed the Poor Law due to the financial burden on the English Church and State, which was created by the complete lack of support from nonmarital parents. It provided that the government would impose a criminal penalty on biological parents who failed to provide sustenance for their nonmarital children. H. Paul Breslin, Liability of Possible Fathers: A Support Remedy for Illegitimate Children, 18 Stan. L. Rev. 859, 859 n.5 (1966) (citing Poor Law Act of 1956, 18 Eliz. 1, c. 3 (Eng.)). The vast majority of American states have followed suit and enacted similar laws. Id. at 860.

26. See, e.g., Gomez v. Perez, 409 U.S. 535, 538 (1973) (per curiam) (holding that a Texas court's denial of child support for nonmarital minor children was unconstitutional because a state could not "invidiously discriminate against illegitimate children"); Weber v. Aetna Cas. & Sur. Co., 406 U.S. 164, 165-67 (1972) (determining that the denial of the rights of dependent nonmarital children to recover under Louisiana's workmen's compensation laws violated the Equal Protection Clause of the Fourteenth Amendment, considering that their siblings who were marital children were able to recover); Levy v. Louisiana, 391 U.S. 68, 69-72 (1968) (holding that the Louisiana Court of Appeal's interpretation of a "child" who has standing to bring a wrongful death action to mean only a "legitimate" child violated the Equal Protection Clause of the Fourteenth Amendment because it discriminated against a class of persons whose legitimacy had no relation to the tort that was the subject of the action); John G. New, Note, "Aren't You Lucky You Have Two Mamas?": Redefining Parenthood in Light of Evolving Reproductive Technologies and Social Change, 81 Chi.-Kent L. Rev. 773, 777 (2006).


28. Meyer, supra note 20, at 129.

of the UPA has been adopted in twenty-one states. In these states, the UPA plays an integral part in assisting legislators in updating and interpreting their parentage statutes in accordance with the evolving definition of family. Its continuing role is marked by a purpose of preventing discrimination based on legitimacy and revisions addressing scientific advances.

2. Relevant Paternity Provisions of the UPA

In conjunction with its broad purpose to ensure equal treatment of marital and nonmarital children, the UPA includes provisions to determine paternity that encompass the broadest number of potential fathers. These provisions reflect a general concern for the “financial and emotional consequences of a child having only one legally recognized parent.” Specifically, there are three dominant reasons why an increase in the number of potential fathers furthers the UPA’s general goals: First, it prevents the societal problem of having children who have only one legal parent, are financially dependent on the state, and lack the emotional and financial security of the historically recognized two-parent support system. Second, it preserves a child’s relationship with the person that the child recognizes as a parent. Third, it protects the rights that a child acquires through parents, including the rights to receive


33. CAL. FAM. CODE § 7570(a) (West 2004). When the California legislature adopted the UPA, it added a provision regarding the purpose of establishing paternity:

There is a compelling state interest in establishing paternity for all children. Establishing paternity is the first step toward a child support award, which, in turn, provides children with equal rights and access to benefits, including, but not limited to, social security, health insurance, survivors' benefits, military benefits, and inheritance rights. Knowledge of family medical history is often necessary for correct medical diagnosis and treatment. Additionally, knowing one's father is important to a child's development.

Id.

34. See Wald, supra note 20, at 145.
child support and health insurance benefits while the parent is alive,35 and to inherit by intestacy, receive life insurance benefits, social security benefits, and standing in a wrongful-death suit in the event of a parent's death.36 In light of these reasons, the UPA's presumed-father provision includes the broadest possible number of potential fathers to protect a child's two-parent support system and the rights acquired with that system.37

The UPA provides a number of specific ways that a parent and child relationship can be established.38 However, only interested parties can bring an action to establish a parent-child relationship.39 In such an action, the child, the natural mother, and any men alleged to be the natural or presumed father, have standing and may be joined as necessary parties.40

The UPA specifies a procedure for determining paternity when there are several alleged fathers.41 It states that a man may be presumed to be the father if he: (1) was married to the mother during the birth of the child, (2) attempted to marry the mother before the birth of the child, (3) married or attempted to marry the mother

36. See generally Levy v. Louisiana, 391 U.S. 68 (1968) (holding that children's rights to sue for the wrongful death of their parents could not be denied because their mother was not married at the time of their births).
38. Compare Unif. Parentage Act (1973) § 3, 9B U.L.A. 391-92 (2001) ("(1) the natural mother may be established by proof of her having given birth to the child, or under this Act; (2) the natural father may be established under this Act; (3) an adoptive parent may be established by proof of adoption . . . "), with Unif. Parentage Act § 201 (amended 2002), 9B U.L.A. 15 (stating that the mother and child relationship may be established by giving birth to the child, adjudication of a woman's maternity, adoption, or adjudication of maternity under a gestational agreement, and the father and child relationship may be established by an unrebutted presumption of paternity, acknowledgment of paternity, adjudication of paternity, adoption, consent to assisted reproduction, or adjudication of paternity under a gestational agreement.).
39. Cal. Fam. Code § 7650(a) (West 2004); Unif. Parentage Act (1973) §§ 6(b), 21, 9B U.L.A. 411, 494 ("Interested persons" are limited to those who have a particular interest in the action, which include mothers, fathers, and potential fathers.). In the new Uniform Act, "the child, the mother of the child, a man whose paternity is to be adjudicated, a support-enforcement agency, an authorized adoption agency or licensed child-placing agency, a representative of a deceased, incapacitated or minor person, or an intended parent under a gestational contract have standing." Nat'l Conference of Comm'rs on Unif. State Laws, Summary: Uniform Parentage Act (2002), http://www.nccusl.org/Update/uniformact_summaries/uniformacts-s-upa.asp.
after the birth of the child, (4) "receive[d] the child into his home and openly [held] out the child as his natural child," or (5) acknowledged paternity in writing. If conflicting presumptions arise, each man will have standing and, at trial, the court will weigh the competing claims according to "policy and logic." Based on these provisions, determinations of paternity follow a three-step procedure: First, a presumed father receives standing in a paternity action. Second, the court determines if it is an "appropriate action" for the presumption to be rebutted. If this is the case, the court will move to the third and final step of weighing the evidence according to "policy and logic" to determine which presumed father should be the child's legal father.

Interestingly, the UPA specifies that those provisions relating to paternity also relate to maternity, "[i]nsofar as practicable." However, the UPA provides separately for the establishment of a mother and child relationship. Under UPA section 201, a mother and child relationship can be established in only four ways: (1) proof of giving birth to the child; (2) adjudication of maternity; (3) adoption; and (4) adjudication to confirm a surrogacy agreement. The narrow scope of section 201 stands in stark contrast to those provisions granting standing to the broadest number of potential fathers in a paternity action in order to avoid a determination of

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42. Unif. Parentage Act (1973) § 4(a), 9B U.L.A. 393-94. The 2002 version of the UPA does not include a presumption for men who have signed an acknowledgment of paternity, and it replaced "received the child into his home" with "for the first two years of the child's life, he resided in the same household with the child." Unif. Parentage Act § 204(a) (amended 2002), 9B U.L.A. 17. Other jurisdictions that have not adopted the UPA have adopted similar statutes. See, e.g., Mass. Gen. Laws ch. 209C, § 6(a) (2007) (creating a presumption of paternity in a man if he was married to the mother, he and the mother "received the child into their home and openly held out the child as their child," or he signed an acknowledgment of paternity).


45. See Librers v. Black, 28 Cal. Rptr. 3d 188, 197 (Cal. Ct. App. 2005) (holding that a man who was not married to the biological mother but who held the child out to be his own child had standing and remanding for a determination of whether it was an appropriate action to rebut the presumption).


47. Id. § 21. Some jurisdictions where the UPA has not been adopted have enacted provisions declaring that paternity provisions also apply to actions to establish maternity. See, e.g., Mass. Gen. Laws ch. 209C, § 21 (discussing actions to establish a mother and child relationship and stating "[i]nsofar as practicable, the provisions of this chapter applicable to establishing paternity shall apply").


49. Id.
illegitimacy.\textsuperscript{50} However, the drafters’ allusion to the application of the presumptions of paternity to maternity claims suggest that section 201 is not the exclusive means of determining a mother and child relationship.\textsuperscript{51}

B. Courts' Central Principles of Determining Parentage

In light of the evolving definitions of parentage and family, courts are often forced to determine parentage among several persons, each of whom has a parental role with the child.\textsuperscript{52} In so doing, courts adhere to several core principles that are fundamental to current definitions of parentage and family; namely: (1) the importance of the marital relationship and the presumption of legitimacy;\textsuperscript{53} (2) the importance of the biological parent-child relationship;\textsuperscript{54} (3) the importance of a child having two legal parents;\textsuperscript{55} and (4) the necessity that the best interests of the child trump all other considerations.\textsuperscript{56} Each of these will be discussed in turn.

1. The Importance of Protecting the Marital Relationship and Presumption of Legitimacy

At early common law, the presumption of legitimacy—that a child born into a marital family was a biological child of that union—was virtually unassailable.\textsuperscript{57} The purpose of this presumption was to protect children from the stigma of illegitimacy.\textsuperscript{58} This

\textsuperscript{50} See id. § 204.


\textsuperscript{53} See generally N.A.H., 9 P.3d at 360 ("[T]he presumption of legitimacy is 'one of the strongest presumptions known to the law.'"

\textsuperscript{54} See Hill, supra note 21, at 370.

\textsuperscript{55} Meyer, supra note 20, at 133 (quoting V.C. v. M.J.B., 748 A.2d 539, 555 (N.J. 2000)).

\textsuperscript{56} Andrew S. Epstein, The Parent Trap: Should a Man Be Allowed to Recoup Child Support Payments If He Discovers He Is Not the Biological Father of the Child?, 42 Brandeis L.J. 655, 663 (2004). Other principles have also been noted: "[T]he mother-child relationship is always seen as primary. The father-child relationships (whether based in biology or not) are always secondary. . . . [W]omen's biological ties to children are seen as largely inseparable from their social ties to children." Susan E. Dalton, From Presumed Fathers to Lesbian Mothers: Sex Discrimination and the Legal Construction of Parenthood, 9 Mich. J. Gender & L. 261, 289 (2003) (citations omitted).

\textsuperscript{57} John M. v. Paula T., 571 A.2d 1380, 1383-84 (Pa. 1990) (stating that the marital presumption is "one of the strongest presumptions known to law").

\textsuperscript{58} "[T]he status "illegitimate" historically subjected a child to significant legal and social discrimination." Miscovich v. Miscovich, 688 A.2d 726, 728 (Pa. 1997)
presumption was only rebuttable under the four-seas doctrine. This doctrine provided that a child is presumed to be born of the marriage unless a party submitted proof that the "man was beyond the reach of both England and the child's mother." Therefore, at English common law, the presumption that a child was conceived from the marital union was conclusive absent proof showing that the husband and wife did not cohabitate at the time of conception.

Currently, the presumption is not as definite as it was under the common law. However, it remains a foundational principle to which many courts adhere. American courts have expanded the available defenses to rebut the presumption of legitimacy beyond the four-seas doctrine. For example, the presumption may be rebutted by proof that there was no marital cohabitation at the time of the child's conception, proof that the husband was sterile or impotent, or, occasionally, a blood test showing that the husband

(Quoting John M., 571 A.2d. at 1383 n.2). There are several reasons for the marital presumption, including the protection it affords to constitutional privacy and parenting rights. See Susan Frelich Appleton, Presuming Women: Revisiting the Presumption of Legitimacy in the Same-Sex Couples Era, 86 B.U. L. REV. 227, 249 (2006); supra text accompanying notes 24-25. See generally Pierce v. Soc'y of Sisters, 268 U.S. 510, 534-35 (1925) (discussing how it is implicit in parents' Fourteenth Amendment due process rights that they are to be in charge of parenting decisions); Meyer v. Nebraska, 262 U.S. 390, 402-03 (1923) (same).


60. Meyer, supra note 20, at 127; Peskind, supra note 59 ("[T]he four-seas doctrine, thus provided that 'if a husband, not physically incapable, was within the four seas of England during the period of gestation, the court would not listen to evidence casting doubt on his paternity.'" (quoting In re Findlay, 170 N.E. 471, 472 (N.Y. 1930))).


62. See, e.g., Fla. Const. art. I, § 9; N.J. Stat. Ann. § 9:17-43(a)(1) (West 2002) ("A man is presumed to be the biological father of a child if . . . [h]e and the child's biological mother are or have been married to each other and the child is born during the marriage, or within 300 days after the marriage is terminated by death, annulment, or divorce."); N.A.H. v. S.L.S., 9 P.3d 354 (Colo. 2000) (en banc) ("[T]he presumption of legitimacy is 'one of the strongest presumptions known to the law.'" (quoting A.G. v. S.G., 609 P.2d 121, 124 (Colo. 1980))).

63. See generally C.C., 550 N.E.2d at 369; Meyer, supra note 20, at 127.

64. Meyer, supra note 20, at 127.


The [marital] presumption elided the biological facts in an era in which they were unknowable. The presumption did not apply to cases in which the mother's husband could not have been the father of his wife's child—cases in which a man was sterile, impotent, or, in Blackstone's words, "extra quattuor maria, [beyond the four seas] for above nine months."
could not be the biological father.\textsuperscript{66} Notwithstanding these exceptions, the burden on the party seeking to rebut the presumption of legitimacy is a heavy one.\textsuperscript{67} In addition to the expansion of available defenses, another difference between the modern and common law applications of the presumption of legitimacy is that some jurisdictions apply the presumption to children born into same-sex relationships.\textsuperscript{68}

2. The Importance of Biology

Biology is particularly important when it comes to parentage—especially maternity.\textsuperscript{69} Under the UPA, there are many ways for an alleged father to have standing.\textsuperscript{70} However, the only ways to establish maternity are by giving birth to the child, legal adjudication, or adoption.\textsuperscript{71} These contrasting provisions illustrate the existence of a strong presumption in favor of using biology in establishing maternity.\textsuperscript{72} Consider the principle of \textit{mater est quam gestation demonstrate}, which means "by gestation the mother is demon-

\textit{Id.} (quoting \textit{1 William Blackstone, Commentaries on the Law of England} 457 (J. Chitty ed. 1857)).

\textsuperscript{66} \textit{C.C.}, 550 N.E.2d at 369.

\textsuperscript{67} \textit{See id.} (stating that presumption of legitimacy is only rebutted by evidence that proves "beyond a reasonable doubt" that the husband either did not have access to the wife during the child's conception, his impotency, or by a blood test that conclusively excludes the husband (citing \textit{In re J.S.V.}, 524 N.E.2d 826, 828-29 (Mass. 1988))). \textit{But see} Traci Dallas, \textit{Note, Rebutting the Marital Presumption: A Developed Relationship Test}, \textit{88 Colum. L. Rev.} 369, 369 (1988) (arguing that if "the putative father ha[s] a developed relationship with his child . . . he may be granted a right of action to rebut the marital presumption").


\textsuperscript{69} Hill, \textit{supra} note 21, at 370.

\textsuperscript{70} \textit{See supra} note 42 and accompanying text. A man is a presumed father if he was married to the mother at the time of the child's conception, birth or shortly after the birth, or if he resided in the same household as the child and held the child out as his own. \textit{Unif. Parentage Act} § 204(a)(1)-(5) (amended 2002), 9B U.L.A. 16-17 (Supp. 2007). A presumed father has standing to maintain a paternity proceeding if he is the "man whose paternity of the child is to be adjudicated." \textit{Id.} § 602(3).

\textsuperscript{71} \textit{Unif. Parentage Act} § 201(a) (amended 2002), 9B U.L.A. 15.

\textsuperscript{72} \textit{See generally} Appleton, \textit{supra} note 58, 230-31. However, some have argued that "while gestation may demonstrate maternal status, it is not the sine qua non of motherhood." Hill, \textit{supra} note 21, at 370.
Gestation does not create a presumption of maternity, rather, it demonstrates maternity.\textsuperscript{73} This is significant because, in determining paternity, a man's biological relationship with the child only creates a presumption of paternity, it does not demonstrate paternity.\textsuperscript{74} Moreover, a presumption of fatherhood is more often due to the presumption of legitimacy, rather than proof of an existence of a biological relationship.\textsuperscript{75} Accordingly, the importance of a biological relationship with the child, which is given heavy if not dispositive weight in determinations of maternity, is significantly less important in paternity proceedings because paternity is more often linked to the status of marriage.\textsuperscript{77}

3. The Importance of Two Legal Parents

Historically, society and the legal system have recognized the importance of a two-parent family.\textsuperscript{78} A two-parent family is legally important because both individuals provide the child with financial and emotional support, keeping the child from becoming a ward of the state.\textsuperscript{79} Studies have shown that children from two-parent fami-
lies are statistically more likely to become high academic achievers, to have greater access to money, and are less likely to become involved in crime than children from one-parent homes. Practically speaking, some courts have taken the stance that in paternity or custody determinations "the legal paradigm is that of two legal parents." In so doing, it is the common goal of these courts to provide the child with two legal parents, a goal for which they will go to "great lengths" to achieve. Therefore, the two-legal-parents concept is more than a mere presumption, it is the starting point for many courts in determining familial rights.

4. The Best Interests of the Child

In deciding paternity cases, many courts find that the "best interests of the child" are paramount, eclipsing to all other concerns, including the rights and desires of the other parties involved. Application of this standard is determined on a case-by-case basis, often in conjunction with other legal standards, to provide an outcome that is not only in the child's best interest, but is also equitable to the other parties involved. In cases where more than one man is asserting paternity, some courts have used the "best interests of the child" standard as part of their determination. The best
interests of the child standard, while unpredictable because of the judge's vast discretion and reliance on the facts of the case, is often decisive in any action to establish parentage.

In sum, principles involving the presumption of legitimacy, the biological parent-child relationship, the two-parent paradigm, and the best interests of the child standard remain crucial in parentage determinations. These principles consistently provide guidance in an area of law that is constantly changing.

C. Interpretation of the Uniform Parentage Act

Courts have been clear—a legal parent does not necessarily need to be biologically related to the child. For example, in *Michael H.*, the Supreme Court held that a biological father of a child whose natural mother was married to another man during the child's conception and birth, did not have a constitutionally protected liberty interest in a relationship with the child. Instead, the mother's husband was held to be the child's legal father. Since *Michael H.*, courts have declared, under provisions of the UPA, legal parentage in persons who have no biological parental relationship with the child. This subpart will discuss the four primary situations in which this happens: (1) surrogacy agreements, (2) persons raising a child to whom they have no biological parental relationship, (3) stepfathers, and (4) same-sex coparents.


86. Appleton, *supra* note 58, at 228 (presumption of legitimacy); Hill, *supra* note 21, at 370 (biology); Jacobs, *supra* note 78, at 834 (two-parent paradigm); Epstein, *supra* note 56, at 663 (best interests of the child).


89. *Id.* In *Michael H.*, "[t]he state's policy of treating the marital presumption as conclusive . . . was justified by its interest in protecting both marriage and the child's established bonds within the intact marital family from external disruption." Meyer, *supra* note 20, at 128; see also *Stone, supra* note 68, at 508.


92. See infra Part I.C.2; see also *In re Salvador M.*, 4 Cal. Rptr. 3d 705; *In re Karen C.*, 124 Cal. Rptr. 2d at 677.

93. See infra Part I.C.3; see also L.A. County Dep't of Children & Family Servs. v. Heriberto C. (In re Jesusa V.), 85 P.3d 2, 6 (Cal. 2004); Alameda County Soc. Servs.
1. Surrogacy Agreements

The UPA was amended in 2000 and 2002 to account for advances in medicine and technology, specifically the rise of artificial reproduction, and to expand the definitions of maternity and paternity.95 However, even prior to its amendment, the Supreme Court of California applied the UPA to a situation that was not considered when it was drafted.96 In Johnson v. Calvert, the court used provisions of the UPA to settle a parentage dispute between a husband and wife, who were both genetically related to the child, and the woman who gave birth to the child as a gestational surrogate.97 Specifically, the court had to determine who the mother was—the person who gave birth to the child or the other person whose egg was used in the child's creation and who intended to raise the child.98 The court declined to treat this case as one involving conflicting presumptions of maternity or weigh the evidence of both parties.99 The court instead made a legal determination pursuant to California's UPA provisions that when both the genetic relationship with the child and gestation of the child do not abide in one woman, the woman who intended to create and raise the child is the legal mother.100 In so doing, the court specifically noted that it was ap-
plying the UPA to a situation that was unforeseen when the UPA was drafted.\textsuperscript{101} The court's determination of a surrogacy agreement controversy in accordance with the UPA is significant because it recognized that two women can have standing in a maternity dispute and provides an example of how courts have applied the UPA in situations that were not envisioned by its original drafters.\textsuperscript{102}

2. Recognizing Nonbiological Parents

Courts have interpreted the UPA to allow a parent without a biological relationship with the child to have standing and even to recognize a parent-child relationship in situations where the parent and child have a significant familial relationship.\textsuperscript{103} In \textit{Librers v. Black}, the court granted standing as a presumed father to Joseph, a man who lived with the child's biological mother during conception and held the child out as his own.\textsuperscript{104} The court examined evidence that Joseph held the child out as his own, including the fact that Joseph signed a declaration of paternity, the child had Joseph's last name, and the child believed Joseph was her father.\textsuperscript{105} Consequently, the court explicitly stated that because Joseph qualified as a presumed father, the fact that he was not biologically related to the child had no bearing on the issue of standing.\textsuperscript{106}

established by "an adjudication confirming the woman as a parent of a child born to a gestational mother if the agreement was validated under [Article] 8 or is enforceable under other law." \textsc{Unif. Parentage Act} § 201(a)(4) (amended 2002), 9B U.L.A. 15 (Supp. 2007). Other jurisdictions that have not adopted the UPA have reached similar results. \textit{See, e.g.}, Soos v. Superior Court of Ariz., 897 P.2d 1356 (Ariz. App. Ct. 1994) (holding a statute that granted legal maternity to a surrogate but created a rebuttable presumption of paternity in the surrogate's husband to be unconstitutional on grounds of equal protection); Culliton v. Beth Israel Deaconess Med. Ctr., 756 N.E.2d 1133 (Mass. 2001) (granting the request of the plaintiffs—the genetic parents and the gestational surrogate—to declare the genetic parents the legal parents of the twins and for the hospital to list their names and not the name of the surrogate on the twins' birth certificates); Arredondo v. Nodelman, 622 N.Y.S.2d 181 (N.Y. 1994) (declaring legal maternity in the genetic mother, not the gestational mother).

\textsuperscript{101} \textit{Johnson}, 851 P.2d at 779.

\textsuperscript{102} \textit{Id.} "Not uncommonly, courts must construe statutes in factual settings not contemplated by the enacting legislature." \textit{Id.}

\textsuperscript{103} \textit{See} Kern County Dep't of Human Servs. v. Monica G. (\textit{In re Salvador M.}), 4 Cal. Rptr. 3d 705 (Cal. Ct. App. 2003); L.A. County Dep't of Children & Family Servs. v. Leticia C. (\textit{In re Karen C.}), 124 Cal. Rptr. 2d 677, 677 (Cal. Ct. App. 2002) (granting standing in a maternity action to the woman who cared for the child and remanding for a determination of parentage).


\textsuperscript{105} \textit{Id.} at 190, 193, 196.

\textsuperscript{106} \textit{Id.} at 197.
Moreover, in Los Angeles County Department of Children and Family Services v. Leticia C. (In re Karen C.), the California Court of Appeal found that a woman with no biological relationship to the child had standing in a maternity action as a presumed mother.\textsuperscript{107} In Karen C., Karen was born to a married couple who then gave her to Leticia C.\textsuperscript{108} Although she never formally adopted her, Leticia raised Karen as her own child.\textsuperscript{109} In its decision, the court interpreted the presumed father provisions of California's UPA\textsuperscript{110} to be gender neutral, thus giving Leticia standing as a presumed mother.\textsuperscript{111} The court then remanded the case to the juvenile court for a determination of whether it was "an appropriate action" to allow the absence of a genetic relationship to rebut the presumption of Leticia's parentage.\textsuperscript{112} Karen C. is significant because it holds that a parent with no biological relationship to the child, and no legal relationship through adoption, can have standing and possibly be a legal parent if the court deems it to be an "appropriate action."\textsuperscript{113} Even more importantly, the court held that paternity presumptions also apply to maternity actions.\textsuperscript{114}

In addition, in Kern County Department of Human Services v. Monica G. (In re Salvador M.), the California Court of Appeal allowed a child's half-sister to assert standing as a presumed parent where the half-sister took the child into her home and held herself out to the child, but not to the rest of her family, as the child's mother.\textsuperscript{115} The court, in stating that "[t]he paternity presumptions are driven, not by biological paternity, but by the state's interest in the welfare of the child and the integrity of the family," interpreted

\begin{flushleft}
\textsuperscript{107} In re Karen C., 124 Cal. Rptr. 2d 677.  \\
\textsuperscript{108} Id. at 677-78. The biological mother told the hospital that she was Leticia so that Leticia's name would be on Karen's birth certificate. Id. at 678.  \\
\textsuperscript{109} Id. Leticia never formally adopted Karen. Id.  \\
\textsuperscript{110} CAL. FAM. CODE § 7611 (West 2004).  \\
\textsuperscript{111} In re Karen C., 124 Cal. Rptr. 2d at 677. "Insofar as practicable, the provisions of this part applicable to the father and child relationship apply [to the mother and child relationship]." CAL. FAM. CODE § 7650(a).  \\
\textsuperscript{112} In re Karen C., 124 Cal. Rptr. 2d at 681. The court had significant deference to hold a case to be an appropriate action to allow a rebuttal of the presumption of paternity, or in this case maternity. Id.  \\
\textsuperscript{113} Id.  \\
\textsuperscript{114} Id.  \\
\textsuperscript{115} Kern County Dep't of Human Servs. v. Monica G. (In re Salvador M.), 4 Cal. Rptr. 3d 705, 708 (Cal. Ct. App. 2003). The court first stated that she had standing because she was an aggrieved party in the preceding action. Id. Subsequently the court stated that she openly held the child out to be her own after the child's biological mother had passed away. Id. at 708-09.
\end{flushleft}
the UPA to be gender neutral. The court reasoned that the child's half-sister was a presumed parent because the child "believed" that the half-sister was his mother, and the fact that other people knew otherwise did not rebut her status as a presumed parent. Furthermore, the court held that this was not appropriate for the presumption of parentage to be rebutted because to do so would render the child without a family, and maintaining the familial relationship is a compelling state interest. In summary, Librers, Karen C., and Salvador M. are significant because they hold that biology is not the determinative factor when establishing standing in maternity actions where there are no competing claims to parentage.

3. Stepfathers

A stepfather is held to be a presumed father under the UPA in two ways: either by "receiv[ing] the child into his home and openly hold[ing] out the child as his natural child" or by benefiting from the presumption of legitimacy. For example, if a wife conceives a child through an extramarital relationship, her husband will be considered a presumed father under the UPA if he is either married to the wife at the time of conception, or receives the child into his home and openly holds the child out as his natural child.

In interpreting the UPA, courts have held that neither the presumption of legitimacy nor the presumption of biology is conclusive. This nonconclusiveness is further demonstrated by the fact that a stepfather's admission that he has no biological connection to the child does not automatically rebut the presumption.

An example of a court granting a stepfather standing can be seen in Los Angeles County Department of Children and Family

[References]

116. Id. at 708.
117. Id. at 708-09.
118. Id. at 709.
119. Librers v. Black, 28 Cal. Rptr. 3d 188, 197 (Cal. Ct. App. 2005); In re Salvador M., 4 Cal. Rptr. 3d 3d at 708-09; In re Karen C., 124 Cal. Rptr. 2d at 621.
121. Id. § 4(a)(1).
124. In re Nicholas H., 46 P.3d at 933-34.
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Services v. Heriberto C. (In re Jesusa V.).125 In that case, Jesusa was born to her mother and her biological father, Heriberto C.126 During Jesusa’s conception her mother was living with Heriberto, not with her husband, Paul.127 The action was brought when Heriberto raped and battered Jesusa’s mother.128 This incident placed Jesusa’s mother in the hospital and Heriberto in jail.129 Paul took Jesusa in and petitioned for paternity.130 Subsequently, Heriberto also petitioned for paternity.131 The court determined that both Heriberto and Paul fulfilled the statutory requirement of a presumed father under California Family Code section 7611 and granted both men standing.132

At trial, the court weighed the competing interests and held that Paul’s presumption was indeed greater.133 The court determined that Paul had a substantial relationship with Jesusa: he had been married to her mother for eighteen years, he was the father of her five half-siblings, Jesusa stayed with him almost every weekend, and both she and her mother resided with him when her mother was having difficulties with Heriberto.134 The court further stated that Heriberto’s interests were merely biological135 and not in Jesusa’s best interests.136 The court agreed with the juvenile court that “‘there is so much more to being a father than merely planting the biological seed. The man who provides stability, nurturance, family ties, permanence, is more important to a child than the man who has mere biological ties.’”137

The Colorado Supreme Court came to a similar conclusion in N.A.H. v. S.L.S.138 In N.A.H., S.R.H. was born to her biological mother during her ongoing marriage.139 The husband’s name was

126. Id. at 6.
127. Id. at 7.
128. Id. at 6.
129. Id.
130. Id. at 7.
131. Id.
132. Id. at 11.
133. Id. at 15.
134. Id. at 13.
135. Id. at 14.
136. Id. at 29. Family Services had filed a dependency petition to remove Jesusa based on Heriberto’s abuse of her mother, claiming that Jesusa witnessed that abuse and that their home was unsuitable to live in. Id. at 6.
137. Id. at 15 (quoting the juvenile court’s unreported opinion).
139. Id. at 357.
placed on the birth certificate and he accepted the child into his home and held her out as his own child.\footnote{Id.} However, during the time that S.R.H. was conceived, her mother was having an extra-marital affair with the biological father.\footnote{Id.} When the mother and husband reconciled, the mother terminated the biological father's visitation and the biological father sued for paternity.\footnote{Id. at 358.} Genetic testing proved that the husband was not the biological father.\footnote{Id. at 359.} However, the court granted both the biological father and the husband standing and held that "a question of paternity is not automatically resolved by biological testing, but rather calls upon the courts to consider the best interests of the child in analyzing policy and logic as directed by the statute."\footnote{Id. at 357. Other courts have come to similar conclusions. Id. at 361 n.5. (citing Child Support Enforcement Agency v. Doe, 963 P.2d 1135, 1155 (Haw. Ct. App. 1998); Witso v. Overby \textit{(In re Witso)}, 609 N.W.2d 618, 623 (Minn. Ct. App. 2000); K.E.N. v. R.C. \textit{(In re K.E.N.)}, 513 N.W.2d 892, 897 (N.D. 1994)).} The case was then remanded for a determination of whether it was in the best interests of the child to allow the genetic evidence to rebut the presumption of legitimacy.\footnote{Id. at 366.} \textit{In re Jesusa V.} and \textit{N.A.H.} are important because the courts interpreted the UPA to allow a stepfather, who undeniably had no biological connection to the child, to have standing as a presumed parent and could be determined to be the legal parent.\footnote{L.A. County Dep't of Children & Family Servs. v. Heriberto C. \textit{(In re Jesusa V.)}, 85 P.3d 2, 11, 15-16 (Cal. 2004); \textit{N.A.H.}, 9 P.3d at 358, 361.}  

4. Same-Sex Parents

A significant step in the evolution of defining parentage has involved cases where a same-sex coparent has petitioned for maternity.\footnote{These cases fly in the face of California's principle that a child can only have one mother. See \textit{Johnson v. Calvert}, 851 P.2d 776, 781 (Cal. 1993) (one-mother principle).} In \textit{Elisa B. v. Superior Court of El Dorado County}, California's one-mother principle was challenged by a lesbian coparent, Emily, who wanted her former partner, Elisa, to be declared a legal parent to her biological children.\footnote{Elisa B. v. Superior Court of El Dorado County, 117 P.3d 660, 662 (Cal. 2005).} Emily and Elisa planned to build a family together and to have children by artificial insemina-
tion. Moreover, they chose the same donor so that their children would be biologically related. Elisa gave birth to Chance, and Emily gave birth to twins, Ry and Kaia. The children were raised as siblings and referred to both Emily and Elisa as their mothers. When Emily and Elisa separated, the trial court initially ordered Elisa to pay child support to Emily and the twins. The California Court of Appeal dismissed the suit and stated that "Elisa had no obligation to pay child support because she was not a parent of the twins within the meaning of the Uniform Parentage Act." On appeal, the California Supreme Court reversed, holding that a child can have two mothers. The court came to this conclusion by factually distinguishing the case from Johnson. In Johnson, three potential parents had stepped forward—the biological father, the biological mother, and the gestational mother—whereas in this case only two parents had stepped forward, and the issue was whether the child's two legal parents could both be women. The court proceeded to apply a gender-neutral reading of California Family Code section 7611 and determined that Elisa had "received the twins into her home and openly held them out as her natural children." The significance of this decision is twofold: It dispensed with the principle that a child can only have one legal mother and it applied a gender-neutral interpretation of California Family Code section 7611 to recognize a woman as a presumed parent.

149. Id. at 663.
150. Id.
151. Id. at 662-63.
152. Id. at 663.
153. Id. at 664.
154. Id.
155. Id. at 666.
156. Id.; see supra notes 97-102 and accompanying text (discussing Johnson v. Calvert, 851 P.2d 776 (Cal. 1993)).
158. Id. at 667; see also Jacobs, supra note 78, at 819 ("More recently, courts have applied the intent test to legalize the parentage of non-biological lesbian co-parents.").
159. See generally Manternache, supra note 32, at 401. In deciding Johnson, the court adhered to the two-parent family principle in that "the facts of the Johnson case are distinguishable from a situation where a nonbiological lesbian mother is vying for a parentage determination . . . . In Johnson a determination of parentage of the surrogate mother would have given the child three parents from two separate families." Id. (citations omitted).
160. See Charisma R. v. Kristina S., 44 Cal. Rptr. 3d 332, 337 (Cal. Ct. App. 2006) (reversing the trial court's determination that a same-sex parent lacked standing because, under Elisa B., a former same-sex coparent may be able to establish parentage via a gender-neutral application of Cal. Fam. Code § 7611 (West 2004) if the parent
II. CASE DISCUSSION OF AMY G. v. M.W.

Despite the aforementioned decisions declaring parentage in persons who were not biologically related to the child, the court in Amy G. refrained from interpreting the UPA to be gender neutral and refused a stepmother's request to have standing in a maternity case.161 In Amy G., the court held that Amy G., as a stepmother, did not have standing because the child's biological mother was also asserting maternity.162 In effect, this denied stepmothers the right to notice and opportunity to be heard in parentage determinations, a right that has been afforded to stepfathers for years.163 This Part details the facts and procedural posture of the case, the arguments presented by both parties, and the court's reasoning.

A. Facts and Procedural Posture

Nathan was born in May 2003, to his father (G.G.) and biological mother (M.W.).164 At the time of Nathan's conception and throughout his gestational period, G.G. was married to Amy G.165 For the first month of Nathan's life, he resided with M.W. in Virginia.166 In June 2003, his father traveled from California to Virginia to take Nathan to live with him.167 During this visit, M.W. signed a custody and adoption agreement providing that G.G. would have sole custody, M.W. would not have any rights to visitation. Other courts have interpreted parentage statutes to legally recognize the parentage of same-sex couples. See, e.g., In Re Parentage of Robinson, 890 A.2d 1036 (N.J. Super. Ct. Ch. Div. 2005) (holding that a same-sex parent of a child born to her partner via artificial insemination is a legal mother using a gender-neutral application of the Artificial Insemination Statute, N.J. STAT. ANN. § 9:17-44 (West 2002)); Carvin v. Britain (In re Parentage of L.B.), 122 P.3d 161 (Wash. 2005), cert. denied, 126 S. Ct. 2252 (2007) (holding that a same-sex parent had standing for a determination of coparentage where the child was only biologically related to her former partner).

162. Id. at 310.
164. Amy G., 47 Cal. Rptr. 3d at 298-99.
165. Id. at 299. G.G. and M.W. had been involved in an extramarital relationship. Id.
166. Id.
167. Id.
tion, and M.W. would consent to Amy G. adopting Nathan.168 From that point on, Nathan resided with his father and Amy G.169

In September 2003, M.W. filed a petition against G.G. seeking to establish a parental relationship with Nathan.170 G.G. then requested a judgment of parentage to recognize Amy G. as Nathan's legal mother and filed a motion to join Amy G. as a necessary party to the action.171 After G.G.'s request to join Amy G. was denied, Amy G. filed a separate petition to contest maternity as an interested person pursuant to California Family Code section 7650(a).172 The trial court granted M.W.'s motion to quash and dismissed Amy G.'s action.173 Amy G. and G.G. appealed this decision.174 While Amy G. was pursuing her own action, G.G. again moved to join Amy G. to the action commenced by M.W.175 When the trial court denied G.G.'s motion to join Amy G., he filed a petition for a writ of prohibition seeking to vacate the trial court's order and to allow Amy G. to join the action.176 The California Court of Appeal consolidated the appeal from Amy G.'s action and G.G.'s petition in M.W.'s action.177 On August 17, 2006, the court filed its decision denying Amy G. and G.G.'s motion and petition.178 Amy G. and G.G.'s subsequent petition for review was denied on November 29, 2006.179 Furthermore, their writ of certiorari to the U.S. Supreme Court was also denied.180

168. Id.
169. Id. at 300.
170. Id.
171. Id.
172. Id. "Any interested person may bring an action to determine the existence or nonexistence of a mother and child relationship." CAL. FAM. CODE § 7650(a) (West 2004). On February 9, 2004, M.W. received monitored visitation with Nathan for four hours per week. Amy G., 47 Cal. Rptr. 3d at 300.
173. Amy G., 47 Cal. Rptr. 3d at 300.
174. Id.
175. Id. G.G. also sought to join Steven, M.W's husband at the time of Nathan's conception and birth. However, Steven filed a responsive declaration in which he stated that he had no desire to become a party to the action and would sign a waiver relinquishing his rights to a paternity claim. Id. at 300-01.
176. Id. at 299-300.
177. Id. at 299.
178. Id.
B. Plaintiffs' Arguments

Amy G. and G.G. presented several arguments concerning why Amy G. should have been afforded standing or joined as a necessary party to the action. First, they contended that Amy G. should have been treated similarly to a stepfather and granted standing under a gender-neutral application of the UPA.181 Second, they argued that maternity determinations, like paternity decisions, should not be decided solely on the basis of biology.182 Finally, they asserted that the court should have decided the issue of Amy G.'s standing before discussing the merits of the action.183

1. Amy G.'s Situation Is Analogous to that of a Stepfather

Amy G. and G.G. argued that Amy G. should have been granted standing because, since she was married to the child's biological father at the time of Nathan's conception,184 her situation was analogous to one in which a stepfather would be joined in an action for paternity.185 Because of the marital presumption, stepfathers have standing by proof of marriage to the biological mother during the child's conception.186 Since Amy G.'s situation is similar to that of stepfathers who have been afforded standing, Amy G. should have been granted standing under a gender-neutral interpretation of the UPA.187

Furthermore, Amy G. and G.G. argued that it is practical to apply the presumed father statutes to maternity actions.188 This argument is one of statutory construction. California Family Code section 7650 states that paternity provisions apply equally to mater-
nity provisions, "[i]nsofar as practicable."\textsuperscript{189} Amy G. argued, "If the legislature had intended birth mothers to always prevail in maternity cases involving competing claims, it could have said so with clarity and precision, rather than incorporating the presumed-father laws into maternity law by reference."\textsuperscript{190} Therefore, because practicability does not require that biology trump other considerations in maternity actions, requiring such an effect ignores that the statute clearly states that paternity provisions apply to maternity determinations.\textsuperscript{191}

Additionally, Amy G. and G.G. argued that Amy G. should have had standing under a gender-neutral application of the UPA because she should benefit from the presumption of legitimacy.\textsuperscript{192} Under that presumption, codified in California Family Code section 7611, Nathan is presumed to be a child of the intact marriage.\textsuperscript{193} Therefore, Amy should have a claim to custody and thus should be joined.\textsuperscript{194}

2. Biology Is Not Determinative

Amy G. and G.G. argued that Amy G. should have been granted standing because biology and gender are not determinative of legal parentage. They stated,

Because biological parenthood is not required for a man to have standing to assert his legal parenthood, and to win recognition as a legal parent over the claims of a biological father, the absence of biological ties can't bar a similarly-situated woman from standing, and from winning recognition of her legal parenthood over the claims of a biological mother.\textsuperscript{195}

Furthermore, they argued that in \textit{In re Nicholas H.} and \textit{In re Jesusa V.}, biology was not the deciding factor in nonsurrogacy cases.\textsuperscript{196} Therefore, biology should not have been the deciding factor in this case.\textsuperscript{197}

\textsuperscript{189} \textit{Cal. Fam. Code} § 7650.
\textsuperscript{190} Petition for Review, \textit{supra} note 183, at 22.
\textsuperscript{191} \textit{Id}.
\textsuperscript{192} \textit{Amy G.}, 47 Cal. Rptr. 3d at 303.
\textsuperscript{193} \textit{Id}.
\textsuperscript{194} See \textit{id}.
\textsuperscript{195} Appellants' Reply Brief, \textit{supra} note 182, at 16.
\textsuperscript{196} \textit{Id} at 18; see also L.A. County Dep't of Children \& Family Servs. v. Heriberto C. (\textit{In re Jesusa V.}), 85 P.3d 2, 14 (Cal. 2004); Alameda County Soc. Servs. Agency v. Kimberly H. (\textit{In re Nicholas H.}), 46 P.3d 932, 933-34 (Cal. 2002).
\textsuperscript{197} See Appellants' Reply Brief, \textit{supra} note 182, at 16.
3. Standing Should Have Been Decided Before the Merits

The court held that Amy G. lacked standing because she could not be Nathan's mother. In so doing, Amy G. and G.G. declared that the court decided the issue of standing by deciding the merits of the claim. This decision denied Amy G. notice and an opportunity to be heard on the merits of her claim. They stated that this is contrary to prior California case law in which persons with a fostered parental relationship have standing to be heard at a trial on the merits. Thus, Amy G. and G.G. argued that the court should have granted Amy G., the woman who had raised Nathan since infancy, standing so that her views could be heard before a decision was rendered on the merits.

C. Defendant's Arguments

M.W. argued that the court was correct in holding that Amy G. did not have standing and could not be joined as a necessary party because all of Amy G. and G.G.'s claims were grounded in the assertion that Amy G. could be Nathan's mother. Since M.W.'s biological maternity was uncontested, she stated that Amy G. could not be a presumed mother under California Family Code section 7611 because under California law a child can only have one mother.

M.W. argued that it is consistent, in light of the UPA's purpose of preventing unequal treatment of children based on their parents' marital status, to treat biological mothers differently than biological fathers. She discussed how there is an innate difference between biological fathers and biological mothers in that "[w]here a child is born out of wedlock, the identity of the father is often unclear. The

198. See Amy G., 47 Cal. Rptr. 3d at 307.
199. Petition for Review, supra note 183, at 36 (“The result of that holding is that trial courts can determine . . . that a party's claim to parental status has no merit, without first joining the claimant as a party.”).
200. Id. at 35.
203. Amy G., 47 Cal. Rptr. 3d at 303.
204. Id. at 304.
identity of the mother is seldom unclear.\textsuperscript{206} Since biological maternity is almost always certain, the only situation that warrants granting standing in a maternity case to a nonbiological mother is when the biological mother is not asserting her claim.\textsuperscript{207}

D. The Court’s Holding

The court distinguished the cases upon which Amy G. and G.G. relied, holding that this was not a situation where the court should apply the presumptions of paternity to women.\textsuperscript{208} The court held that both \textit{In re Karen C.}\textsuperscript{209} and \textit{In re Salvador M.}\textsuperscript{210} were distinguishable because in those cases there was no competing claim to maternity.\textsuperscript{211} The court also held that \textit{Elisa B.} was distinguishable because, in that case, the Supreme Court of California only recognized two parents (although both of them were women).\textsuperscript{212} In this case, the court would have had to recognize three parents: G.G., Amy G., and M.W.\textsuperscript{213}

Furthermore, the court determined that \textit{In re Jesusa V.} was not applicable to this case, because there were no competing claims of maternity since M.W. was Nathan’s biological mother.\textsuperscript{214} Structurally, there is no framework in the UPA to weigh competing claims of maternity like there is for competing claims of paternity.\textsuperscript{215} This is due to the fact that where the biological relationship of the mother is uncontested, maternity is determined.\textsuperscript{216}

In light of the arguments proposed by each of the parties, the court decided that Amy G. did not have standing.\textsuperscript{217} The court based its decision in the fact that the identity of Nathan’s biological maternity was not contested.\textsuperscript{218} Therefore Amy G. could not be

\textsuperscript{206} Id. at 23 (emphasis omitted).
\textsuperscript{207} See id.
\textsuperscript{208} Amy G., 47 Cal. Rptr. 3d at 304.
\textsuperscript{210} Kern County Dep’t of Human Servs. v. Monica G. (\textit{In re Salvador M.}), 4 Cal. Rptr. 3d 705 (Cal. Ct. App. 2003).
\textsuperscript{211} Amy G., 47 Cal. Rptr. 3d at 304.
\textsuperscript{212} Id. at 305; see Elisa B. v. Superior Court of El Dorado County, 117 P.3d 660 (Cal. 2005).
\textsuperscript{213} Amy G., 47 Cal. Rptr. 3d at 305.
\textsuperscript{214} Id. at 306; L.A. County Dep’t of Children & Family Servs. v. Heriberto C. (\textit{In re Jesusa V.}), 85 P.3d 2 (Cal. 2004).
\textsuperscript{215} Amy G., 47 Cal. Rptr. 3d at 306; see \textit{CAL. FAM. CODE} § 7611(d) (West 2004).
\textsuperscript{216} Amy G., 47 Cal. Rptr. 3d at 306.
\textsuperscript{217} Id. at 309-10.
\textsuperscript{218} Id.
Nathan's mother or presumed mother. However, this Note argues that Amy G. should have received standing through a gender-neutral interpretation of the UPA because courts should not treat her any differently from stepparents or same-sex coparents who are in similar situations.

III. A STEPMOTHER CAN HAVE STANDING IN A MATERNITY SUIT THROUGH A GENDER-NEUTRAL INTERPRETATION OF THE UNIFORM PARENTAGE ACT

This Part considers why Amy G. should have received standing as an interested person through a gender-neutral application of the UPA. This issue is important for several reasons. First, if gender roles were reversed, a stepfather would have had standing. For example, a stepfather would have had standing in a paternity action where the child was a result of his wife's extramarital affair with the biological father, and the stepfather had taken the child into his home and held the child out as his own. Thus, but for Amy G. being a woman, she would have been granted standing. Second, if Amy G. had no biological relationship with Nathan, but had taken care of the child all of his life and there were no other possible parental figures, Amy G. would have standing in a maternity action. Third, a same-sex coparent petitioning for maternity of a child born to her partner through alternative reproduction technology would have standing. Finally, if the court had granted Amy G. standing, the door would have been opened for other stepmothers to have standing in maternity actions.

This Note argues that there is no difference between stepmothers and stepfathers, same-sex coparents, and persons who have no biological relationship to the child but have cared for the child as

219. Id. at 310.
221. In re Jesusa V., 85 P.3d at 7.
223. Elisa B. v. Superior Court of El Dorado County, 117 P.3d 660 (Cal. 2005) (holding that Elisa B., as the biological mother's partner, was a presumed parent to Emily's biological children Ry and Kaia, who were conceived using a sperm donor, because she actively participated in causing the children's conception, accepted the obligations of parenthood, and no competing claims of a second parent existed).
the sole parental figure. This analysis will focus solely on Amy G.'s standing to assert her claim for maternity and to be joined as an interested party. Part III.A discusses how Nathan can have three parents for the purposes of standing and how the court should have distinguished between the issues of standing and the merits of the action. Part III.B discusses how biology is not conclusive in parentage determinations and should not automatically govern when determining standing in maternity actions. Part III.C compares Amy G.'s case with Elisa B. and leads to the conclusion that Nathan can have two mothers for the purposes of standing. Part III.D analyzes how the marital presumption is applied with a gender bias and determines that it should be applied equally when the husband is biologically related to the child and the wife is not, as when the wife is biologically related to the child and the husband is not. Finally, Part III.E analyzes how courts can weigh both Amy G.'s claim as a

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224. This Note does not discuss whether Amy G. would have been declared Nathan's legal mother if she were determined to have standing, if the court should have recognized and declared that Nathan had two legal mothers, or if the court's decision violated Amy G.'s procedural due process or equal protection rights under the Fourteenth Amendment. See generally Amy G., 47 Cal. Rptr. 3d at 307-08 (holding that the denial of Amy G.'s standing and joinder claims did not violate her rights under the Equal Protection or Due Process Clauses of the Fourteenth Amendment). This Note does not discuss other legal options that stepparents—or others with a parental relationship with a child—can pursue to acquire certain rights regarding custody and visitation with the child. See generally, e.g., Carvin v. Britain (In re Parentage of L.B.), 122 P.3d 161 (Wash. 2005), cert. denied, 126 S. Ct. 2021 (2006) (acknowledging the common law status of a de facto parent as a person who has performed a parent-like role in the child's life, and with that status has standing to petition the court for other rights and obligations associated with parenthood); Melanie B. Jacobs, Micah Has One Mommy and One Legal Stranger: Adjudicating Maternity for Nonbiological Lesbian Coparents, 50 BUFF. L. REV. 341, 359-63 (2002) (discussing how courts have used the psychological parent status and the parent-like relationship status to accord visitation rights to nonbiological lesbian coparents); Solangel Maldonado, When Father (or Mother) Doesn't Know Best: Quasi-Parents and Parental Deference After Troxel v. Granville, 88 IOWA L. REV. 865 (2003) (discussing the rights acquired with the quasi-parent status); Survey of 2004-2005 Developments in Alabama Caselaw, 57 ALA. L. REV. 567, 613 (2005) (discussing the new requirements adopted by the Alabama Supreme Court to acquire in loco parentis status, "[f]irst, the non-parent must, without legally adopting a child, assume parental obligations. Second, the non-parent must voluntarily provide for the child" (citing Smith v. Smith, 922 So. 2d 94 (Ala. 2005) (footnotes omitted))). Furthermore, this Note does not address how a parent may be estopped from petitioning for a paternity determination. See generally, e.g., Doe v. Doe, 52 P. 3d 255 (Haw. 2002) (holding that a mother was estopped from filing a petition for paternity where she had affirmatively asserted that the presumed father was the natural father of her child); In re Paternity of Cheryl, 746 N.E.2d 488 (Mass. 2001) (holding that a father was estopped from setting aside a judgment of paternity when he had voluntarily acknowledged paternity five years prior to the genetic determination that he was not the biological father).
presumed mother and M.W.'s claim as a biological mother through a gender-neutral reading of the UPA's paternity provisions. This analysis leads to the conclusion that a stepmother should be granted the same rights as a stepfather or same-sex coparent, and should have standing in a maternity action through a gender-neutral interpretation of the UPA.

A. Nathan Can Have Three Parents for the Purposes of Standing

In Amy G., the court decided that Amy G. did not have standing because she could not be Nathan's mother. In so doing, the court decided the issues of standing and maternity simultaneously. This subpart proposes that the court should have (1) distinguished between standing and the determination of parentage, and (2) found that Amy G. was an interested person and should have been given standing or joined in the maternity action.

1. The California Court Should Have Distinguished Between Standing and the Parentage Determination

The court should have first determined whether Amy G. had standing and, if she did, then determined whether she could be Nathan's mother. The court's decision in Amy G. was simple: Amy G. cannot have standing because she cannot be Nathan's mother. The result of this determination was that the court decided the merits of the case before deciding standing. This denied Amy G. notice and opportunity to be heard, which has been afforded to others in similar situations where courts recognized three potential parents for the purposes of standing only and then made a legal maternity determination at trial.

225. Amy G., 47 Cal. Rptr. 3d at 310.

226. It is common practice for issues of standing to be decided before the merits. See, e.g., Michael H. v. Gerald D., 491 U.S. 110, 119-21 (1989) (holding that a biological father did not have standing when he moved for a blood test of a child born into an intact marriage, between the biological mother and her husband, because the only ones who could bring the paternity action under section 621 of the California Evidence Code were the husband or wife).

227. Amy G., 47 Cal. Rptr. 3d at 310.

228. See Petition for Review, supra note 183, at 36.

a. By declaring that Amy G. did not have standing because she could not be Nathan's mother, the court decided the merits of the action, not standing

As a general principle, the issue of standing must be decided before a court hears the merits of a particular action.\(^{230}\) In Librers v. Black, the California Court of Appeal decided that the district court had erred by deciding the case on the merits without first determining standing—in effect “putting the cart before the horse.”\(^{231}\) In Librers, the district court denied standing to a man who was living with the child’s mother, who was married to another man during conception, “for the very reason that it had already determined that [he] was not a presumed father.”\(^{232}\) In doing so, the district court looked at two factors: “biology [and] depth of bond.”\(^{233}\) However, the factors to determine whether a man is a presumed father include more than biology and depth of bond, such as being married to the mother at the time of conception and openly holding the child out as one’s own child.\(^{234}\) Therefore the California Court of Appeal reversed because the man had produced adequate evidence that he held the child out as his own. The court held that he did have standing, and remanded for a determination of legal paternity.\(^{235}\)

However, in denying Amy G. standing, the California Court of Appeal used similar reasoning as the district court in Librers.\(^{236}\) The Amy G. court said that the “father and Amy’s arguments are all predicated on Amy’s claim that she is Nathan’s mother. Therefore our threshold question is whether Amy can assert status as Na-


\(^{231}\) Librers, 28 Cal. Rptr. 3d at 197.

\(^{232}\) Id.

\(^{233}\) Id. at 195.

\(^{234}\) Id.; see supra Part I.B.1.-3 (discussing the importance of the marital presumption, the two-parent paradigm, and biology in parentage determinations).

\(^{235}\) Librers, 28 Cal. Rptr. 3d at 197.

\(^{236}\) Compare Amy G. v. M.W., 47 Cal. Rptr. 3d 297, 307 (Cal. Ct. App. 2006) (“Because Amy cannot legally be Nathan’s mother under these circumstances, Amy cannot ‘claim an interest relating to the subject of the action . . .’” (quoting CAL. CIV. PROC. CODE § 389(a) (West 2004))); review denied, No. S146841, 2006 Cal. LEXIS 14215 (Cal. Nov. 29, 2006), cert. denied, 127 S. Ct. 2252 (2007), with Librers, 28 Cal. Rptr. 3d at 195 (stating that the court relied on “biology or depth of bond,” which was unrelated to standing but related to the merits).
than's mother." The court stated that a reason to deny Amy G. standing was, if she had standing, she would ultimately lose on the merits. Similar to Librens, the issue should not have been whether Amy G. could assert status as Nathan's mother or whether she could win at trial, it should have been whether she could assert status as a presumed mother. By predicating its analysis on whether Amy G. could be Nathan's mother, the court put the cart before the horse and decided standing by determining the merits of the action.

b. The court should have granted all three parents standing and made a legal determination of maternity at trial

Amy G., G.G., and M.W. should all have had standing and Nathan's two legal parents should have been determined at trial. In paternity cases where a stepfather asserts a claim that opposes the claim of a biological father, courts have granted both men standing and determined who the child's two legal parents are from the three possible parents. For example, in In re Jesusa V., the court allowed both Paul, Jesusa's stepfather, and Heriberto, her biological father, to have standing in a paternity action. The court found that Paul and Heriberto were presumed fathers under California Family Code section 7611. The identity of Jesusa's biological parents was not at issue and, therefore, she had three potential parents for the purposes of standing: her mother, Paul, and Heriberto. Both presumed fathers were first granted standing and later given an opportunity to be heard at trial where the juvenile court considered the paternity claims on their merits and determined which pre-

237. Amy G., 47 Cal. Rptr. 3d at 303.
238. Respondent's Brief, supra note 205, at 40 ("The trial court thus believed that even if he found that Amy qualified as a presumptive parent under section 7611, subdivision (d), her claim would be defeated by section 7612 because Kim is both the biological mother and did not wait a long time to assert per parentage rights." (citing CAL. FAM. CODE §§ 7611(d), 7612 (1993)).
239. Cf. Librens, 28 Cal. Rptr. 3d at 195 ("The relevant inquiry under the statute is whether the prospective plaintiff claiming presumed father status under section 7611, subdivision (d) can allege facts that bring him within the statutory language of that subdivision"). For Amy G. to assert status as a presumed mother, the court would have had to interpret the UPA to be gender neutral under California Family Code section 7650(a). See CAL. FAM. CODE § 7650(a).
240. Librens, 28 Cal. Rptr. 3d at 197.
243. Id. at 7.
sansumption was weightier pursuant to California Family Code section 7611.244 The result in *In re Jesusa V.* was not an isolated incident. Many other courts have recognized that two men can concurrently qualify as presumed fathers, where the natural mother was not contested, and granted both standing for the determination of who was the child’s legal father.245

The situation in *Amy G.* is virtually identical to *In re Jesusa V.* Nathan has three potential parents for the purposes of standing: his father, Amy G., and M.W. The only difference between these two cases is that the gender roles are reversed.246 However, a gender role reversal does not warrant opposite treatment in regard to standing.247 In granting standing to stepfathers while denying the same to a similarly situated stepmother, the court is effectively saying that one has a greater interest in the child because of gender differences. The court should have avoided this inequitable result by treating Amy G. like Paul in *In re Jesusa V.* by granting her standing as an interested party, and subsequently determining whether Amy G. or M.W. is Nathan’s legal mother by weighing the two claims.

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244. *Id.* at 7-8. It should be noted that Heriberto was not present at the trial because he was in jail. *Id.* at 8.

245. See, e.g., *Johnson v. Calvert*, 851 P.2d 776 (Cal. 1993) (determining parenthood of a child whose conception was arranged through a surrogacy agreement using the husband’s sperm and carried by a donor; the husband, wife, and donor were all granted standing and the final determination pronounced the husband and wife to be the legal parents); *In re Kiana A.*, 113 Cal. Rptr. 2d at 675-76 (granting standing to two men who fulfilled the requirements for the presumption of paternity, where the mother of the child was not contested). Moreover, "Although more than one individual may fulfill the criteria that give rise to a presumption of paternity, there can be only one presumed father." *Id.* (citing *Brian C. v. Ginger K.*, 92 Cal. Rptr. 2d 294 (Cal. Ct. App. 2000)).

246. Compare *Amy G. v. M.W.*, 47 Cal. Rptr. 3d 297, 299 (Cal. Ct. App. 2006) (stepmother asserting maternity where a child was conceived through her husband’s extramarital affair with the biological mother), *review denied*, No. S146841, 2006 Cal. LEXIS 14215 (Cal. Nov. 29, 2006), *cert. denied*, 127 S. Ct. 2252 (2007), with *In re Jesusa V.*, 85 P.3d at 6-7 (stepfather asserting paternity where a child was conceived through his wife’s extramarital affair with the biological father). An additional difference is that Heriberto was incarcerated during these proceedings and was unable to care for Jesusa. This fact, however, has no relation to standing. *Id.* at 7. Furthermore, Paul and Jesusa’s mother, his wife, had lived apart for three years preceding Jesusa’s birth, whereas Amy G. and Nathan’s father had not spent any time apart. *Id.*

247. It is a violation of a person’s equal protection rights if treatment differs solely on the basis of gender and if the classification does not serve “‘important governmental objectives’” and the means are not “‘substantially related to the achievement of those objectives.’” United States v. Virginia, 518 U.S. 515, 533 (1996) (quoting Miss. Univ. for Women v. Hogan, 458 U.S. 718, 724 (1982)).
Furthermore, consideration of three parents for the purposes of standing would not be antithetical to the two-parent paradigm. In this situation, the court could determine Nathan's two legal parents at trial using the best interests of the child standard. Thus, while the two-parent paradigm would not apply to standing, it would be the mold used at trial. Therefore, the state's interest in a child having two legal parents would be protected.

However, the court in Amy G. found that In re Jesusa V. was not analogous because there were not two conflicting presumptions. The court stated that M.W., the biological mother, had standing under the maternity statute and, as such, was not a presumed parent so it could not weigh the two claims. This argument is again predicated on the differential treatment of stepparents based on gender. In In re Jesusa V., Heriberto and Paul were both presumed fathers and as such both independently had standing independently. It is conceded that M.W. has standing under California Family Code section 7650(b) because she gave birth to Nathan. However, Amy G. should also have standing as a presumed parent under a gender-neutral application of California Family Code sections 7611(a) and (d). Other than the gender of the parties, there is no difference between Heriberto and M.W.—as biological parents—or between Paul and Amy G.—as stepparents. If gender is ignored, the differences become semantic, and, by applying paternity provisions to maternity claims, any differences become nonexistent. Therefore, both M.W. and Amy G. should have independent standing to assert a claim. Once they have standing, the court may choose either to treat their claims like conflicting presumptions of paternity, or to devise a different method of weighing M.W.'s interest as the biological mother and Amy G.'s

248. See supra Part I.B.3.
250. See Jacobs, supra note 78, at 834; Meyer, supra note 20, at 133.
251. Amy G., 47 Cal. Rptr. 3d at 306 (stating that M.W.'s maternity is established by giving birth to Nathan; thus, the court stated she is not a presumed parent).
252. Id. (citing CAL. FAM. CODE § 7610(a) (West 2004)).
253. Id.; see CAL. FAM. CODE § 7650(b).
254. L.A. County Dep't of Children & Family Servs. v. Heriberto C. (In re Jesusa V.), 85 P.3d 2, 7 (Cal. 2004). Heriberto had a rebuttable presumption under California Family Code section 7611(d) and Paul had a rebuttable presumption under sections 7611(a) and (d). Id.
255. Amy G., 47 Cal. Rptr. 3d at 306.
256. But see id. at 304.
258. CAL. FAM. CODE § 7612(b).
presumption as a stepmother. Either way, Amy G. should be afforded the chance to assert her claim. Denying her this opportunity treats her differently solely on the basis of gender, and it decides the issue of standing on the merits of the action without giving Amy G. an opportunity to be heard.

2. A Stepmother Is a Presumed Parent, Is an Interested Person in a Maternity Suit, and Should Have Standing

It would be consistent with the UPA to determine that Amy G. is a presumed parent under a gender-neutral reading of California Family Code section 7611. The Amy G. court held that because Amy G. could not be Nathan’s natural mother or presumed mother, she could not be made a party. The court began with the presumption that the “father and Amy’s arguments all are predicated on Amy’s claim [that] she is Nathan’s mother.” As noted above, this unwisely conflates the issues of standing and success on the merits. If the court had separated these issues, Amy G. could have argued that she should have been afforded standing because she was entitled to a presumption of maternity through a gender-neutral reading of the UPA. Amy G.’s argument that she was Nathan’s mother went to the merits of the action and should not have been part of the consideration of standing.

In the case of N.A.H., for example, the Colorado Supreme Court granted both a biological father and a husband standing in a paternity action, where a child was conceived through a wife’s extramarital affair. The husband did not claim that he was the biological father. Rather, he asserted that he benefited from two presumptions of paternity under the UPA, and that the court should decide what was in the best interest of the child in determin-

259. See discussion infra Part III.E.
260. CAL. FAM. CODE § 7611.
261. Amy G., 47 Cal. Rptr. 3d at 307-08.
262. Id. at 303.
263. It is a much higher standard for Amy G. to prove that she is Nathan’s natural mother rather than a presumed mother. Compare, e.g., CAL. FAM. CODE § 7610 (providing that a parent-child relationship is established “[b]etween a child and the natural mother . . . by proof of her having given birth to the child”), with CAL. FAM. CODE § 7611 (stating that a presumption of paternity is established by a man being married to the natural mother or taking the child into his home and holding the child out as his own).
265. Id. at 360, 362.
ing which presumption held greater weight. Similarly, Amy G.’s claim is not that she is Nathan’s biological mother. Rather, her claim is that she has standing because she benefits from two presumptions of maternity, and that the court should determine who Nathan’s legal mother is at trial. Since Amy G.’s claim is not predicated on her being Nathan’s biological mother, she should have been treated like Paul in In re Jesusa V. and been granted standing.

B. Biology Should Not Trump in Determinations of Standing for Parentage

This subpart details several reasons why a biological relationship with the child should not be the sole factor in determining standing in a maternity action. Part III.B.1 puts biology in proper context as one of many factors that determines parentage. Part III.B.2 analyzes why allowing a stepmother to have standing violates neither policy nor logic because stepmothers are a class of presumed parents who are accorded standing in parentage actions.

1. Biology Is One of Many Factors that Determines Parentage

The court should not have held that M.W.’s biological relationship with the child trumped all other considerations in determining maternity. Biology should be only one of many factors that the court considers in determining parentage. The California Supreme Court held that “biological paternity by a competing presumed father does not necessarily defeat a nonbiological father’s presumption of paternity.” Other cases have held that a person with no biological parental relationship with the child can be a presumed parent. Therefore, since a biological relationship with the

266. Id. The husband claimed he benefited from the presumptions created by being married to the mother at the time of the child’s conception and taking the child into his home. Id.

267. Amy G., 47 Cal. Rptr. 3d at 302-03. Amy G. should benefit from the presumptions created by being married to Nathan’s father at the time of Nathan’s conception and taking Nathan in and holding him out as her own. CAL. FAM. CODE § 7611.

268. The court weighed factors beyond “planting the biological seed” such as looking at which person provided “stability, nurturance, family ties, and permanence” in determining that a stepfather was the legal father. L.A. County Dep’t of Children & Family Servs. v. Heriberto C. (In re Jesusa V.), 85 P.3d 2, 7 (Cal. 2004).

269. Id. at 12.

270. See, e.g., Alameda County Soc. Servs. Agency v. Kimberly H. (In re Nicholas H.), 46 P.3d 932 (Cal. 2002) (holding that a father’s admission that he was not the biological father did not rebut his presumed parent status because to do so would
child does not trump all other factors in all cases, biological maternity should not automatically defeat a nonbiological mother’s presumption of maternity.271

Furthermore, legislatures, in adopting the UPA, have striven to include the greatest number of presumed fathers so that a child would not be rendered parentless.272 A biology-only approach to standing would clearly frustrate this legislative intent. If biology trumped all other presumptions, Jesusa, for example, would virtually not have a father because Heriberto was incarcerated when Jesusa’s parentage was determined.273 One can imagine that a situation similar to Jesusa’s may arise in which the biological mother is incarcerated and the failure to grant a stepmother standing would render the child, at least temporarily, motherless. Therefore, because these cases show that men who are not biologically related to the child can have standing, it is apparent that biology is not a conclusive factor in making parentage determinations.

2. Allowing a Stepmother to Have Standing in a Maternity Action Does Not Violate “Policy and Logic”

As previously mentioned, many cases have declared that a parent-child relationship exists between the child and a person who has no biological relationship to the child.274 There is no reason that Amy G.’s situation should be treated any differently. However, courts are still reluctant to declare maternity without a biological relationship to the child. Professor Dalton noted, pre-Elisa B., that

a hierarchical system for categorizing non-biological parents has developed. Non-married (usually lesbian) non-biological render the child fatherless); Kern County Dep’t of Human Servs. v. Monica G. (In re Salvador M.), 4 Cal. Rptr. 3d 705 (Cal. Ct. App. 2003) (reversing the trial court’s decision to deny presumed parent status to the half-sister of the child who took the child in when the mother died and where the child’s biological father was unknown, because the half-sister held the child out as her own son and the child believed that he was her son); L.A. County Dep’t of Children & Family Servs. v. Leticia C. (In re Karen C.), 124 Cal. Rptr. 2d 677 (Cal. Ct. App. 2002) (remanding an order that denied a child’s petition for a mother-child relationship where the child was taken in and cared for by a nonrelative woman).

271. If biology were to automatically trump all other presumptions, it should be the same presumption for fathers and mothers. Furthermore, if the principle was that biology always trumps, each and every child should have a blood test at birth. Appleton, supra note 58, at 270.

272. See supra Part I.A.


274. See, e.g., In re Salvador M., 4 Cal. Rptr. 3d 705; In re Karen C., 124 Cal. Rptr. 2d 677.
Mothers exist at the bottom of the hierarchy. . . . Married non-biological mothers exist in the middle of that hierarchy. . . . Married non-biological fathers exist at the top of that hierarchy. . . .

The courts' assignment of parental status (and all of the rights and responsibilities that adhere to that status) is based primarily on an adult's position in this parenting hierarchy, a position that is based on his/her sex and marital status. 275

After Elisa B. was decided, however, nonmarried, nonbiological mothers have been afforded maternity rights in the context of same-sex relationships. 276 Therefore, it seems that married, nonbiological mothers have fallen to the bottom of this hierarchy. This hierarchy was reinforced by Amy G., in which the court declined to hold that Amy G. had standing. 277 The Amy G. court stated that giving standing to Amy G. would have been antithetical to policy and logic. 278 However, a finding of legal parentage in Amy G. and G.G. would have been consistent with the marital presumption and would have maintained the nuclear family—both favorable factors in the parentage determination. 279 A decision to grant standing in a maternity claim that is in line with policy and logic does not require a biological relationship. 280 Therefore, Amy G. should have been granted standing.

C. Nathan Can Have Two Mothers Because Elisa B. Applies

The Amy G. court should have applied the principles of Elisa B. 281 and held that Amy G. had standing because she could be Na-

275. Dalton, supra note 56, at 311-12 (citation omitted).
276. See, e.g., Charisma R. v. Kristina S., 44 Cal. Rptr. 3d 332, 334 (Cal. Ct. App. 2006) (reversing the trial court's determination that a same-sex parent lacked standing because under Elisa B., a "former lesbian partner may be able to establish parentage under the Uniform Parentage Act as a presumed parent under a gender-neutral application of section 7611, subsection (d)" and remanding for a factual finding of whether Charisma received the child into her home, held the child out as her own, actively participated in causing the child to be conceived, accepted the obligations of parenthood, and whether there were any competing claims for status as the child's second parent).
278. Id. at 305.
279. See supra Part I.B.1 & .2. "[I]t is actually the nuclear family model, and not the biological parent-child relationships that theoretically support and define the standard, to which courts are actually committed" instead of a biological presumption. Dalton, supra note 56, at 322.
281. Id. at 666-69.
than’s mother. In *Elisa B.*, the court held that a child can have two female parents.\textsuperscript{282} The principle was applied to the situation where one mother had no biological relationship to the child, but had received the child into her home and held the child out as her own.\textsuperscript{283} As a result of *Elisa B.*, “[a] person’s status as a presumed parent may be established regardless of gender or biological connection.”\textsuperscript{284} Furthermore, “[a]fter *Elisa B.* it is much clearer that the statutory presumption of parentage actually does apply equally regardless of biology, gender, sexual orientation, or marital status.”\textsuperscript{285} Therefore, it should not matter that Amy G. is Nathan’s stepmother and not his stepfather. Under the reasoning of *Elisa B.*, Amy G. is a presumed parent because her gender is irrelevant to the presumptions of parentage.\textsuperscript{286}

The court in *Amy G.* chose not to follow *Elisa B.* because in *Elisa B.* the court’s holding that Elisa was a presumed parent, and ultimately a legal parent, was contingent on the statement that there were “no competing claims to her being the children’s second parent.”\textsuperscript{287} Since M.W. had a competing claim to Amy G.’s maternity, the court distinguished its decision from that in *Elisa B.*\textsuperscript{288} However, there are cases in which there have been competing claims for paternity, and each of the presumed fathers was granted standing and the court determined which one was the legal father.\textsuperscript{289} Therefore, the application of *Elisa B.* should not be contingent upon whether there are competing claims because this creates an inequitable result based on gender. If Amy G. had been a man asserting paternity, she would have had standing despite competing claims.\textsuperscript{290}

\textsuperscript{282} *Id.* at 666.

\textsuperscript{283} *Id.* at 669; see Stone, *supra* note 68, at 531.

\textsuperscript{284} Wald, *supra* note 20, at 149.

\textsuperscript{285} *Id.*

\textsuperscript{286} See generally *Elisa B.*, 117 P.3d at 666 (“We perceive no reason why both parents of a child cannot be women.”).


\textsuperscript{288} *Id.*


\textsuperscript{290} See generally *Elisa B.*, 117 P.3d at 666; *In re Jesusa V.*, 85 P.3d 2; *N.A.H.*, 9 P.3d 354.
D. The Marital Presumption Should Still Exist when the Husband Is Biologically Related to the Child and the Wife Is Asserting Maternity

The marital presumption or the presumption of legitimacy has been a foundational principle for courts when determining parentage.291 This presumption should apply not only to husbands, but also to wives. Part III.D.1 discusses how the marital presumption is ingrained in case law in a gender-biased way. Part III.D.2 argues that the marital presumption should apply equally to women and should not be rebutted when a wife admits that she has no biological relationship with the child.

1. The Historical Benefit of the Presumption of Marriage Is Inequitably Linked to the Gender of the Spouse

The presumption of legitimacy "traditionally operates in a gendered way."292 It "makes a married man the legal father of his wife's biological children, but does not make a married woman the legal mother of her husband's biological children."293 The presumption of legitimacy for women has been hindered because legal determinations of maternity are constantly linked to biology.294 This creates an inequitable result. Professor Frelich Appleton noted that a husband may be presumed to be the father of his wife's child because of the marital presumption, but a wife is not presumed to be the mother of her husband's child.295

If there is to be a presumption of legitimacy, it should extend to both the wife and the husband.296 The marital presumption protects a child's welfare by promoting a two-parent structure and

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292. Appleton, supra note 58, at 237; see Dalton, supra note 56, at 289.
293. Appleton, supra note 58, at 237; see also New, supra note 26, at 776 ("[T]he legal definition of motherhood has historically been biological in nature . . . . Paternity . . . has largely been socially defined . . . .").
294. Appleton, supra note 58, at 238.
296. See Appleton, supra note 58, at 238. "When it comes to parentage, . . . even-handed treatment of male and females eludes the courts because they 'remain incapable of imagining a gender-free subject.'" Id. (quoting Dalton, supra note 56, at 266). Moreover, Professor Appleton argued that the marital presumption should also apply to same-sex couples because it supports child welfare and helps eliminate discrimination based on sexual orientation. Id. at 230-31, 246.
maintaining stability in a child’s life.\textsuperscript{297} Courts’ differential treatment of parentage determinations based on gender is inequitable because when women who are not biologically related to the child seek legal maternity, “judges frequently respond by narrowly constructing parenthood in ways that preserve traditional conceptions of motherhood and family.”\textsuperscript{298} Thus, when women want to establish parentage based on the marital presumption, courts tend to shy away. However, when men want to establish parentage based on the marital presumption, they are granted standing merely because of an unwarranted and inequitable adherence to traditional notions of family and reproduction.\textsuperscript{299} Amy G. should not have been denied standing in the parentage action solely on the basis of gender—the marital presumption should apply to both the husband and the wife.

2. Because the Marital Presumption Is Not Rebutted by a Husband Admitting He Is Not the Biological Father, It Should Not Be Rebutted by a Wife Admitting She Is Not the Biological Mother

Amy G.'s marital presumption should not be rebutted by her admission that she is not the biological mother. In \textit{N.A.H.}, a stepfather's claim to paternity was not rebutted\textsuperscript{300} and his standing was retained even after it was stipulated that he was not the child's biological father.\textsuperscript{301} With the exception of her gender, Amy G. is in the same position as the husband in \textit{N.A.H.}.\textsuperscript{302}

\textsuperscript{297} See \textit{id.} at 243-46; see also Pettinato v. Pettinato, 582 A.2d 909, 913 (R.I. 1990) (holding that a trial judge in a divorce proceeding erred in allowing evidence that disproved the husband's paternity because the “court's adherence to the statutory presumption of paternity . . . and [its] application of the equitable-estoppel doctrine lead to the same point: the genetic blood test results offered into evidence were not relevant because legal paternity had been established and biological paternity was not at issue.” (citing R.I. GEN. LAWS § 15-8-3(a)(3)(ii) (2003))); Zinsmeister, \textit{supra} note 80, at 1006-07; \textit{supra} Part I.B.3 (discussing the two-parent paradigm).

\textsuperscript{298} Dalton, \textit{supra} note 56, at 293.

\textsuperscript{299} See generally L.A. County Dep't of Children & Family Servs. v. Heriberto C. (\textit{In re Jesusa V.}), 85 P.3d 2, 7 (Cal. 2004); Appleton, \textit{supra} note 58, at 238.

\textsuperscript{300} N.A.H. v. S.L.S., 9 P.3d 354 (Colo. 2000) (en banc). The court ultimately did not decide the issue of legal paternity, but remanded to determine the best interest of the child. \textit{Id.} at 366. However, in \textit{N.A.H.}, the parties agreed that genetic testing would show the putative father to be the biological father within ninety-seven percent accuracy. \textit{Id.} at 358.

\textsuperscript{301} \textit{Id.} at 358-59 (procedural posture); see also \textit{In re Jesusa V.}, 85 P.3d 2.

Section 106 of the UPA provides that sections of that Act governing paternity apply equally to maternity actions. The holding in Amy G., that the marital presumption did not apply because of her gender, was a drastic deviation from the court's prior gender-neutral application of the UPA. Along these lines, Professor Appleton noted that "[d]epartures from gender neutrality raise significant policy concerns that compel proceeding with caution. What message does the law signal in treating female and male parents differently?" As the husband in N.A.H. retained his standing in his paternity action after admitting that he was not the biological father, so too should Amy G. have retained her standing in her maternity action. Notwithstanding her gender, she should benefit from the marital presumption and her admission of the lack of a biological relationship to the child should not rebut that presumption.

E. Courts Can Weigh Competing Presumptions for Maternity Through a Gender-Neutral Reading of the Paternity Statutes

The court can weigh presumptions of maternity in the same way that it weighs presumptions of paternity. In denying Amy G. standing, the court stated that even if it found that Amy G. had standing as a presumed mother, it could not weigh Amy G.’s and M.W.’s claims because “[n]o mechanism exists in other provisions of the UPA to resolve such a conflict.” In effect, the court was stating that because the drafters of the UPA did not include a mechanism for weighing maternity claims, such a mechanism was not intended and the UPA should not be interpreted to include it. However, this assertion is inconsistent with the way that courts have previously interpreted the UPA.

For example, in Johnson v. Calvert, the court decided that the UPA governed surrogacy disputes and applied it to hold that a hus-
band and wife, whose genetic material was implanted into the gestational mother, were the legal parents of a child born to the gestational mother.\textsuperscript{309} The court noted that the passage of the UPA "clearly was not motivated by the need to resolve surrogacy disputes, which were virtually unknown in 1975."\textsuperscript{310} Accordingly, the 1975 version of the California's Act did not have an applicable provision for weighing the claims of a gestational mother against those of a genetic mother.\textsuperscript{311} However, noting that the UPA "facially applies to any parentage determination," the court applied it to the surrogacy dispute.\textsuperscript{312} Thus, the court in \textit{Johnson} found the UPA applicable to competing maternity claims, notwithstanding its lack of an expressly provided mechanism because, "[n]ot uncommonly, courts must construe statutes in factual settings not contemplated by the enacting legislature."\textsuperscript{313}

\textit{Johnson} shows that courts should be flexible in applying the UPA because advances in science and the evolving definition of family frequently result in situations not considered by the drafters. The court in \textit{Buzzanca v. Buzzanca} stated that the reason that the legislature and the courts have not made an explicit statement applying paternity presumptions to maternity "is that the issue almost never arises except for extraordinary cases involving artificial reproduction."\textsuperscript{314} \textit{Buzzanca} was decided in 1998.\textsuperscript{315} Since then, there have been increasing scientific advances, and the definition of family has evolved. These changes have increasingly resulted in the need to apply the UPA to unforeseen scenarios. As the court stated in \textit{Buzzanca}, even though cases involving maternity are not as common as paternity actions, courts can still apply various provisions of the UPA in the same manner that they apply to all parentage actions.\textsuperscript{316} Similarly, a court is not precluded from interpreting the UPA in a gender-neutral fashion to weigh maternity claims.\textsuperscript{317} Therefore, the court should have accorded Amy G. standing and subsequently weighed her claim against M.W.'s claim.

\textsuperscript{309} Id. at 779, 782.
\textsuperscript{310} Id. at 779. The court was referring to California's version of the UPA, which was introduced and enacted in 1975. Id.
\textsuperscript{311} Id.
\textsuperscript{312} Id.
\textsuperscript{313} Id.; see also Milena D. O'Hara & Andrew W. Vorzimer, In re Marriage of Buzzanca: Charting a New Destiny, 26 W. St. U. L. Rev. 25, 29 (1999).
\textsuperscript{315} Id. at 280.
\textsuperscript{316} Id. at 289-290.
\textsuperscript{317} Id.; see \textit{Johnson}, 851 P.2d at 779.
CONCLUSION

The enactment and adoption of the UPA has been critical to parentage determinations. However, the evolution of the definition of family and scientific advances increasingly “make it difficult to speak of an average American family”;\(^\text{318}\) and make the Donna Reed mold simply insufficient. Therefore, courts must interpret the UPA to apply to situations that were unforeseen when the UPA was drafted. There are a number of reasons why Amy G. should have standing as an interested person in the maternity action through a gender-neutral interpretation of the UPA. First, the presence of competing claims to maternity is not dispositive because Nathan can have more than two parents for the purposes of standing, and the court must weigh the competing claims for a determination of his two legal parents.\(^\text{319}\) Second, it should not matter that Amy G. was not biologically related to Nathan because biology does not trump all in parentage determinations.\(^\text{320}\) Third, Elisa B. applies because standing in a maternity suit should not be contingent upon the absence of competing claims to parentage, as this creates a discriminatory result based on gender.\(^\text{321}\) Fourth, Amy G. should have benefited from the marital presumption, which should not just be afforded to the husband, but also to the wife.\(^\text{322}\) Finally, the court should have granted Amy G. standing and weighed her presumption against M.W.’s claim at trial because the UPA can be used to resolve new issues not anticipated when the Act was drafted.\(^\text{323}\)

The court should have allowed Amy G. to have standing to assert her claim so that other stepmothers, who have an established relationship with their stepchildren, can raise a claim to maternity and have standing to be heard. The time has come to say goodbye to Donna Read and to embrace a gender-neutral reading of the standing provisions of the Uniform Parentage Act.

*Megan S. Calvo*

\(^\text{319}\) See supra Part III.A.
\(^\text{320}\) See supra Part III.B.
\(^\text{321}\) See supra Part III.C.
\(^\text{322}\) See supra Part III.D.
\(^\text{323}\) See supra Part III.E.

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