

*County of Orange v. Cole*

Family Code section 7613 provides that the donor of semen provided to a licensed physician and surgeon or to a licensed sperm bank for use in artificial insemination of a woman other than the donor's wife is treated in law as if he were not the natural parent of a child thereby conceived. A man who provides semen for a woman's in vitro fertilization can do so with the expectation that he will have no financial responsibilities toward the intended child. Evolving case law, however, addresses the interplay between Family Code section 7613 and Family Code section 7611, which sets forth a rebuttable presumption that a person is presumed to be the natural parent of a child if the presumed parent receives the child into his or her home and openly holds out the child as his or her natural child. In *Orange County v. Cole*, the Court of Appeal held that the inability to establish parenthood based on Family Code section 7613 does not prevent parenthood (and financial responsibility) from being established under Family Code section 7611(d).

Judicial interpretation of the intersection of these two statutes originated in *Jason P. v. Danielle S.* (2014) 226 Cal.App.4th 167 [2014 Cal.Fam.Law Monthly 187 (July 2014)], in which the Court of Appeal held that Family Code section 7613(b) should be interpreted only to preclude a sperm donor from establishing paternity based upon his biological connection to the child, and does not preclude him from establishing that he is a presumed parent under Family Code section 7611(d), based upon post-birth conduct. The court explained that the premise behind the category of presumed father is that an individual who has demonstrated a commitment to the child and the child's welfare – regardless of whether he is biologically the father – is entitled to the elevated status of presumed father. Thus, a sperm donor who has established a familial relationship with the child, and has demonstrated a commitment to the child and the child's welfare, can be found to be a presumed parent even though he could not establish paternity based upon his biological connection to the child.

In *County of Orange v. Cole*, the court held that the inability to establish parenthood under Family Code section 7613 did not preclude a finding of parenthood under Family Code section 7611(d). Accordingly, Court of Appeal affirmed the trial court's decision in which it concluded that Brian Cole was the child's presumed father and ordered him to pay child support. The court held that the inability to establish parenthood based on Family Code section 7613 did not prevent parenthood from being established under section Family Code 7611(d).

Keep in mind that the father in *Jason P.* wanted to attain the status of presumed father, despite his being a sperm donor and nonparent under Family Code section 7613. To the contrary, Brian Cole sought to avoid financial obligation to the child under Family Code section 7613, but his conduct gave rise to presumed parent status under Family Code section 7611, which was held to prevail and led to the imposition of paternity and a child support obligation.

These cases seem to be arising with increasing frequency. The ruling and rationale in both *Jason P.* and *County of Orange v. Cole*, should be bookmarked for future reference in order to provide proper guidance and advice to clients who find themselves in these legally and emotionally conflicting situations.

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