The Los Angeles Daily Journal

Section II

Friday, October 14, 1988

Practicing Lawyer

Paternity Law: More than Just a Blood Test

By JOE APPLEGATE

Domestic lawyer Glen H. Schwartz, who appeared before the U.S. Supreme Court on Tuesday in a rare paternity case, has noticed a common misunderstanding among non-specialists in paternity law:

"They think you just get a blood test and go from there," he said in his top-floor office in Encino, where he maintains a solo practice that began in a storefront in 1974.

Schwartz recalled a court trial he lost in which his client, a nurse, sought to establish that her secret liaison with her former employer, a doctor, had resulted in the birth of her child.

Schwartz thought he had a sure winner. He felt he had the doctor pinned down by the blood test, which showed a high degree of probability that he was the father. Even more convincing, Schwartz felt, was the way he had refuted the doctor's excuse of impotence by putting two women on the stand who testified that, during the relevant dates, the doctor's sexual performance was normal.

But Schwartz lost on the ground that he never established an act of intercourse between the doctor and nurse. The doctor, Schwartz said, "had been very careful." The two were never seen together outside their workplace. Where the nurse claimed he had rented an apartment for their trysts, the contract was in her name and the payments all in cash.

"Now the first thing I get to when I talk to a client is access," Schwartz said. "I find out whether or not . . . an incident of sexual intercourse can be established."

Formerly a criminal defense lawyer, Schwartz, 39, worked his way into family law, and into the subspecialty of paternity law, from a background in psychology. "People open up to me," said Schwartz, whose bearing is anything but threatening.

Daily Journal

Attorney Glen Schwartz has made a subspecialty out of paternity law, and earlier this week brought a case before the U.S. Supreme Court.

Psychology

He studied psychology as an undergraduate with the single-minded intention of becoming a lawyer, took his legal training at the USC Law Center and promptly opened a solo office in Westwood with high hopes and no clients. "I got lucky," he said. "The guy who installed the telephone needed some work," he recalled. "The janitor in the building had a small criminal problem. So I started from there."

Schwartz said his practice satisfies his need for contact with people and his interest in the intellectual fringes of domestic law. Of late, he has frequently been asked where the Supreme Court case, *Michael H. v. Gerald D.*, 87-746, is taking society. As a practical matter, not far, he says.

The case involves a single man insisting on paternity rights to a girl born of a married woman. It challenges the presumption, set down in Section 621 of the Evidence Code, that a child born in a marriage is the child of the husband.

On its face the case would seem to confirm that a fresh wind in society has shifted to a different quarter, where the rights of fathers, equal to those of mothers over children, extend even to the biological father who is unwed.

But from where he sits, says Schwartz, "I don't see many unmarried men clamoring for custody of kids. I can't say it's any kind of trend . . . My practice is still mostly women trying to establish the paternity of a man, and conversely, men trying to avoid being labeled the father of a child."

In paternity cases, Schwartz sits back and lets his clients tell their stories while winnowing key facts about access, marital status, dates of marriage and dissolution. "Know your presumptions," he counsels new practitioners. "Before you jump in, know where your case can stop."

He says he rarely advises calling for blood tests until he has collected many other relevant facts in a case. Who calls for the blood-testing is the crucial fact in some cases, he said.

In a case that Schwartz recently tried in Los Angeles Superior Court, his client, an unmarried man, won paternity rights to a child born of a married woman.

The client prevailed over the Section 621 presumption because of an amendment in the law, made in 1981, that allows the putative father to prove paternity with a blood test taken within and wanted her child to stay completely within the confines of her marriage, it was too late, Schwartz said.

Why? Because in authorizing a blood test that challenged the 621 presumption, she had placed herself in an adversarial relation to her husband, who relied on the presumption to retain his paternity of the child. The law is set up to protect the family, said Schwartz, but when the family is divided into adversaries, its sanctity ceases. Paternity can then be awarded strictly on the basis of biological contribution, as proved in a blood test.

In *Michael H. v. Gerald D.*, in which Schwartz represents the father-defendant, the mother never authorized the blood test that conferred a 98.07 percent probability that Michael H. is the father of her child. Therefore in resisting Michael H.'s challenge to the 621 presumption, Carol and Gerald D. have stood together as a family, said Schwartz, and thus have prevailed at the trial and state appellate levels.

The opinion of 2nd District Court of Appeal Justice Armand Arabian in *Michael H. v. Gerald D.*, 191 Cal.App.3d 995 (1987), notes that the mother, Carol, on several occasions nearly acknowledged the paternity of Michael H., but "she did fail each time to take the final, critical step . . ."

The attorney for Michael H., Joel S. Aaronson of Sherman Oaks, has argued that California law deprives his client of due process. In a brief, he argued that "the right of a biological mother to remain a parent is never open to question without access to a full panoply of due process protections, whereas a biological father may be deprived of parental rights without any determinations to his fitness or otherwise."

Bad Parent?

In a curious twist, evidence developed for litigation suggests that Michael H. in the long run could be a bad parent. Arabian wrote, "We appreciate that Michael H. has shown an interest in . . . (the child) almost since her birth, has established an affectionate relationship with her and has at times even contributed to her support."

But he also noted a psychological evaluation that "indicated that Michael H.'s personality has failed to bring him the close relationships he seeks, leading him to feel victimized, and that those feelings exacerbate his sympathy-eliciting and aggressive pursuit of relationships, establishing a potentially endless cycle."

At present, Gerald D., Carol and their two children are living in New York. Carol is pregnant with a third child, Schwartz said.