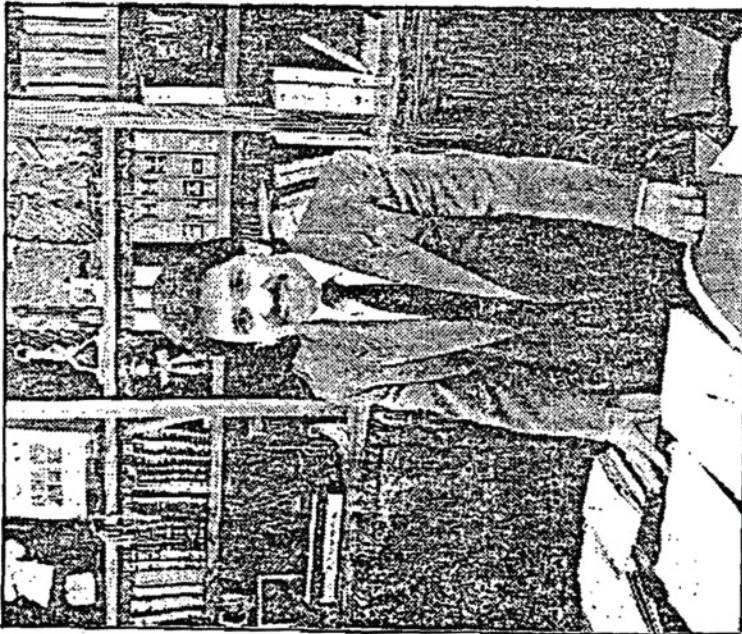


VIEW

Paternity Law More Complicated Than Ever



Glen Schwartz takes on "cutting-edge cases." CON KEYES / Los Angeles Times

By DIANNE KLEIN, Times Staff Writer

Up until a few years ago, the paternity cases that attorney Glen Schwartz tried were pretty straightforward affairs.

Woman and man meet. Woman becomes pregnant. Man says it's not mine. Woman disagrees and files lawsuit.

Such cases, involving everyone from movie stars to world-class athletes to just-the-guy-around-the-corner, are still the most prevalent in the field of family law.

But those are the easy ones, most of them settled out of court.

The others, the so-called "cutting-edge cases," are, perhaps, a sign of our confusing and increasingly complicated times, and Glen Schwartz has handled so many of them that he is widely recognized as one of the state's leading practitioners of paternity law. They are the cases that eventually may force the courts to redefine the meaning of the word *family*.

A biological father comes forward in an attempt to claim a child of a woman married to someone else. A married

woman surprises her husband, via an attorney, with the news that the child he raised is not his own. And a couple seeks to prevent a man from imposing himself on their close-knit family. He claims to be the biological father of their child.

And that's just for starters. Currently before the U.S. Supreme Court, for instance, is the case of Michael H. and Victoria D. vs. Gerald D., Schwartz's client. (Because of the confidential nature of paternity cases, only first names are used.)

Anatomy of a Case

At issue is the constitutionality of a California law that says a woman's husband is "conclusively presumed" to be the father of her child so long as husband and wife are "cohabitating" and he is "not impotent or sterile."

This, the state Legislature believes, helps ensure that fathers take responsibility for their offspring and saves children from endless custody battles. But critics, including the American Civil Liberties Union, charge that it

could deny natural fathers their paternal rights.

Here are the facts of the case—due to be decided by the Supreme Court this month—as culled from the legal briefs of both sides.

In 1978, Michael, a businessman, lived in the same Playa del Rey neighborhood as Carole and Gerald, a movie producer. Carole, a fashion model at the time, had an affair with Michael on-and-off for two years.

Carole became pregnant and headed to Paris for an abortion. But the operation was incomplete. Carole had been carrying twins. On May 11, 1981, she gave birth to a girl, Victoria.

Gerald, meantime, had moved to New York. He returned to Los Angeles to see his wife through the pregnancy. They went to Lamaze classes together and he was there at the birth. Then Carole and Gerald separated. On their own, Carole, Victoria and Michael went in for blood tests to determine who was really Victoria's father. The results: a 98.07% probability

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Michael was the biological father.

Carole and Victoria moved in with Michael, but two months later the new family broke up. Then there was more back and forth—between Gerald and Michael and then a year with another boyfriend, Scott.

Finally, Carole went back to her husband. Today, Carole, Gerald and their three children live in New York together.

In his suit, Michael, who currently has no visitation privileges, seeks to be declared Victoria's biological father. So whose interest should prevail? The personal interest of Michael or the state interest—as spelled out in California law—of preserving the sanctity of Carole and Gerald's family?

In November, 1982, Michael filed his suit in Los Angeles Superior Court as a first step toward gaining the right to see Victoria. He lost.

The court ruled in favor of Schwartz's client, Gerald, who has supported his paternal right based on the section of California law known as Evidence Code 621.

The appellate ruling upholding that decision—the state Supreme Court refused to hear the case—further noted that a court-ordered psychiatric evaluation found that Michael "exhibits virtually all of the characteristics associated with parents who engage in incestuous-type relationships."

Recently, a court-appointed attorney for Victoria has joined with Michael against Carole and Gerald.

"On the face of it, the law sounds really unfair," Schwartz allows. It's denying a man who wishes to establish a relationship with a child. A lot of people say it is an antiquated law. But the parade of horrors that would be created if you abolished it, or even amended to allow [biological] fathers to come forward, would be unbearable."

Schwartz emphasizes the word *unbearable*. He feels for his clients, respects their privacy, and usually, wins their cases.

"He's the only attorney I know about whom I've never heard a negative comment," says Dvorah Markman, a Los Angeles lawyer who, like Schwartz, is a specialist in family law.

Adds family law attorney Liza Mercovici of Studio City: "He is definitely the top paternity specialist in Southern California. Most family law attorneys are not like Robin Bensen on 'L.A. Law,'

flashy, showy. Those types aren't particularly effective attorneys."

Glen Schwartz, 39, married, and the father of two, is indeed a far cry from flashy.

His penthouse office is in unfashionable Encino, where he moved several years ago after practicing mostly criminal law in West Los Angeles. His voice has a soft edge, his smile comes easily and he shakes a visitor's hand with both of his own.

A congenital illness tentatively diagnosed as cerebral palsy causes his body to shake constantly. But it is something that he rarely, if ever, discusses. A Los Angeles attorney who has been a friend for 15 years says the subject never once has come up between them.

"I'll never be a cocktail waitress," Schwartz says with an uneasy grin. "This is part of me. I don't have a handicap. A handicap is just sad. It handicaps you. And I don't think my problem in any way handicaps my ability to practice law."

So the conversation moves on. Schwartz's eyes grow bright again. He is talking about his cases and the tricky, fascinating legal issues involved. Not to mention the human drama.

One case that seems to have a particularly emotional hold on Schwartz is that of a "very working-class couple, lovely people."

Working-Class Case

Here's how Schwartz tells their story:

"Husband and wife get married. She gets pregnant. As soon as she gets pregnant, she says, 'It's not yours.' He says, 'OK, but I love you and I am going to love the child.' It was a one-time fling. Then three years later, a man comes forward and says the child is his.

"The couple looks in the phone book. Picks out a lawyer with a big ad. The lawyer says, 'There is nothing you can do. You have to take a blood test' . . . So an agreement is entered in favor of the boyfriend. Now we have a husband who for three years raised this child as his own and because of an error by an attorney, we have a new father in the picture who comes on Sundays to pick up the child!"

But it took the couple another three years to reach Schwartz. The child is now 7. Had he known the law, Schwartz says, almost moaning, the couple's original attorney would have advised that the hus-

band had every legal right to refuse the blood test.

So Schwartz has filed a lawsuit on behalf of the husband to establish that he is the legal father and reverse the current situation. The case is pending, while psychiatric evaluations are under way to determine to what extent the child is bonded to the biological father.

Playing Two Sides

Yet, ever the attorney, Schwartz can play different sides of the issue so close to his heart.

Last year, for example, there was Cory, an aspiring actor and, presumably, the father of a child born to Gail during her marriage to Bob.

After five years of marriage, Bob and Gail were divorcing. Schwartz says he got a call from another attorney asking for advice on what to tell Gail and Cory, who were in his office with a rather complicated tale.

Bob didn't know, but Gail was convinced that Cory was the father of her 1-year-old child.

"So Gail and Cory came down here an hour later," Schwartz says, "and tell me the story of their one-time liaison. And she has no doubt in her mind that the child was Cory's . . . So I file a suit on Cory's behalf and name as defendants Gail and Bob.

"Now, on the face of it, you say Cory doesn't have a chance," Schwartz adds, drawing out his voice like a physics teacher about to impart the answer to a riddle of the universe.

But Cory does have a chance. As he tells it, Schwartz grabs that chance and wins the case.

A 1981 amendment to the paternity law gives a mother, if she is joined by the presumed biological father, the right to present blood tests in court to determine a child's paternity.

Cory, Gail and the child took blood tests. The court ruled in Cory's favor.

But there are still more twists in California's laws of paternity.

Just the other day, Schwartz says, an attorney who lost a case in Superior Court called to ask that Schwartz take the case as an appeal.

The husband and wife agreed that the husband was the father of a child born during marriage, and the husband relinquished his rights to parenthood. The wife then sued the man believed to be the biological father for child support.

The Superior Court ruled, however, that the boyfriend was the legal father because the child was born within the confines of another marriage—the same Evidence Code 621 that has protected the sanctity of Carole and Gerald's family.

"I have some personally real strong feelings about this case," Schwartz says. "The application of the statute in that fashion, I believe, is unconstitutional. It leaves the child without a father and there is no state interest being implemented."

Which leads to yet another Solomon dilemma currently before the Los Angeles Superior Court.

Custody Battle

Schwartz is defending Susan Bowling, a lesbian who was impregnated by artificial insemination and gave birth to a girl in December, 1986. The sperm donor was the gay brother of Bowling lover, Terri Sabol.

The couple broke up last year. The baby stayed with her natural mother. And now Sabol, represented by attorney Gloria Allred, asking for joint custody of the child.

But because California has no law governing same-sex relationships, Sabol, like a man seeking to share custody with a child's mother, is legally bound to first establish paternity under the state's Uniform Parentage Act.

Allred, citing a California case where a man was ordered to pay child support for children he had not fathered or legally adopted, notes that her interpretation of the law is not as strict as Schwartz's.

"We asked the court to recognize that this was a family, although not a traditional one, and that it would be unfair to deprive our client of contact with the child," she says.

Schwartz, brought into the case only recently, says this:

"I don't find this a gay-lesbian rights issue. You have a young child. The brother is known to the child as Daddy. So what is Mis-

Sabol asking? She is not asking to be declared the father. She is saying this child should have three parents. Does it stop there? Maybe there should be four, five or six parents? Maybe there is a neighbor who took a fond interest in the child?"

The point is, Schwartz continues, the Legislature, not the court, should make the law.

But this case, and the others, are far from over. Stay tuned...