

Who's Daddy?

A Los Angeles Lawyer Specializes in Helping Nonbiological Fathers

Glen Schwartz Wins Rulings
By Stressing Care Giving
Over the Mere Genetics

'The Child Believes the Lie'

By AMY STEVENS

Staff Reporter of THE WALL STREET JOURNAL
LOS ANGELES — The five-year-old blonde girl on a swing glides backward into the arms of a heavysset, balding man. "Push me higher, Daddy!" she squeals. "OK," he says with a smile, "as long as you come right back to me."

Until recently, Kevin Thomas wasn't sure that Courtney would be coming back at all. He had helped raise her from birth, but last year the girl's mother stopped allowing them to spend time together. Mr. Thomas, who is gay, isn't Courtney's biological father; he is a former friend of her mother's.

But instead of walking away, Mr. Thomas turned to attorney Glen Schwartz, who marched into court and declared that his client's close relationship with the child is the essence of what it means to be a father. That pretrial argument persuaded a judge to award Mr. Thomas temporary visitation rights, with an implicit recognition of fatherhood. Courtney's mother is contesting the ruling, and trial is set to begin Monday, the day after Father's Day.

"If not for Glen Schwartz, I wouldn't have my daughter with me now," says Mr. Thomas, a bill-collections manager, as he walks hand-in-hand with Courtney out of a playground in a small neighborhood park. Courtney, her hair tied in pink-ribboned pigtails, smiles up at him. She has never known her natural father, a onetime boyfriend of her mother.

Mr. Schwartz has become a specialist in "nonbiological father" cases. By persuading several judges to recognize men's parental claims to children who aren't their natural or adoptive offspring, he has figured prominently in an intensifying legal debate. It's the mirror-image of the surrogate-mother question confounding the courts: Does biology or the intent to care for a child constitute parenthood?



Glen Schwartz

Defining Fatherhood

The victories of Mr. Schwartz and a few others are forcing appellate judges in California to consider a legal definition of fatherhood that acknowledges men who act as a parent but lack biological ties to the child or even formal ties to the mother. "It would mean a new approach to recognizing the father-child relationship in our court system and perhaps nationwide," says Los Angeles County Superior Court Judge Richard Denner.

In the past, courts didn't have much trouble deciding where babies came from — legally speaking. Motherhood was easy to determine. Fatherhood, although elusive as a matter of proof, could be defined as a matter of law. For example, an anti-illegitimacy statute in most states presumes that a baby born to a married woman is her husband's child.

But with the spread of single parenthood and other nontraditional homes, the old legal doctrines have become less applicable. The presumption of fatherhood in marriage doesn't dictate what happens when a couple only lives together and then breaks up — or, as in the Thomas case, when an unwed pregnant woman decides with a friend that they both will participate in raising her baby, and then have a falling out.

Three Court Victories

That hasn't deterred Mr. Schwartz, an affable man who looks like a compact version of Geraldo Rivera and has a courtroom style only slightly less persistent than the talk-show host's. In the past two years, he has won three cases on behalf of nonbiological fathers and has at least two more in the pretrial stage. In addition, another case has been tried and is awaiting a decision, as early as today, by a judge in Northern California.

"I have Larry Junior today because Glen wasn't afraid to try and make new law," says Larry McLinden, a Los Angeles banker whose live-in girlfriend, after they broke up, surprised him with the news that their two-year-old "son" wasn't his biological child after all. Mr. Schwartz won paternity rights for Mr. McLinden last year, prevailing over the claims of the mother, her new husband and the boy's natural father. Last month, the mother's appeal was dismissed.

California, which gave the country paternity suits and liberal community-property laws, is where family law is evolving the fastest. And the 43-year-old Mr. Schwartz is credited by colleagues and judges with handling the most cases involving the paternity issue. "He really knows the arguments in this area," says retired Los Angeles Superior Court Judge Dana Henry.

Mr. Schwartz doesn't fit the flashy "L.A. Law" image. Married for 16 years, with two school-age children, he works out of a nondescript building beside a commer-

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cial strip in San Fernando Valley. He puts in long days and prepares his cases mostly from memory. A congenital nervous-system disorder left him with a tremor that affects his ability to take notes.

Although Mr. Schwartz takes on a variety of clients and sometimes represents the other side in parenthood cases — he recently represented a mother against a nonbiological father and won — he has made his mark helping nonbiological fathers with their unusual custody fights. To do so, he seeks parallels in another area of family law: child support. Three key decisions of the California Court of Appeals dictate that a man who marries a woman and acts as father to her child for a number of years can't suddenly stop support payments if he later divorces her.

"Those cases mean that once you've represented to a child you're his father, and the child relied on that, you can't deny it," Mr. Schwartz says. "Now I'm using that argument in the affirmative."

Mr. Schwartz didn't invent the tactic, but he prides himself on having come up with a way to present it clearly. In court, he frames the theory as a simple statement: "The child believes the lie." Regardless of biological evidence to the contrary, he contends, the legal system should favor the "lie" about paternity that the child has been led to accept. As proof, Mr. Schwartz typically offers evidence of statements made by either "parent" and calls for the testimony of a psychologist who has interviewed the child about the emotional bond with the person seeking paternity.

The rationale infuriates the women sued by his clients. "This man never married me, has no biological ties to my son and didn't adopt him. But now they're trying to say he's this 'emotional father,'" fumes Stephanie K., a Southern California office manager who is appealing her defeat last year in a nonbiological-father case. The case was filed under seal, and Ms. K. asks that her last name be withheld.

Mr. Schwartz represented her former boyfriend, Paul Comino, a consumer-loan officer who says he believed that the child they raised together to age two was his biological son — until they separated and blood tests proved otherwise.

An Orange County trial judge awarded Mr. Comino shared custody of the boy, Joshua Paul, now four years old. Says Ms. K.: "The issue isn't: Do I want Mr. Comino to see Josh or visit with him? It's: Does Mr. Comino have a right to be called my son's father? Because he took him fishing, because Josh calls him 'Daddy' — does he have a right to have a controlling interest in my child?"

In preparation for trial in the case of Kevin Thomas and Courtney, Mr. Schwartz has already laid much of the groundwork for trying to prove an emotional connection. Awaiting a hearing recently in Los Angeles Superior Court, he carried an album of photos taken over the past five years at Mr. Thomas's house, at Courtney's school and at the Special Olympics, where Courtney, who is mildly retarded, participated.

There also are Father's Day and birthday cards that Courtney's mother has signed to Mr. Thomas on her daughter's behalf. "I like to show the judge tangible evidence of the bond," Mr. Schwartz says. He has a copy of Courtney's birth certificate, naming Mr. Thomas as the father, and a document showing that Mr. Thomas had changed his last name to that of Courtney's mother, Cathy Thomas, because the child's doctors and teachers were calling him "Mr. Thomas."

Ms. Thomas's lawyer, Arnold Freedland, protests that Mr. Schwartz and his client are exploiting a single woman's acquiescence to "a stranger" who contrived to share her family life because he knew he would never have children of his own. Mr. Freedland says the appellate decisions cited by Mr. Schwartz are inapplicable because they dealt with broken marriages, and his client and Mr. Thomas were never even romantically involved.

"Does Courtney comprehend what 'Daddy' really means?" Mr. Freedland asks. "Maybe she'll think something else when she gets a little older. A lot of people defer some of their child-raising to another person. Does that make such a person the child's parent?"

Ms. Thomas didn't return phone calls seeking comment. Courtney's natural father plans to appear in court to support Ms. Thomas's claim, her lawyer says.

Mr. Schwartz faces an uphill battle. In other cases involving unrelated or non-adopting men who want parental rights, higher courts have nearly always deferred to biology. In a rare case in which a higher court did specifically provide for paternity rights of a nonbiological father, a Michigan appeals court in Detroit in 1987 ruled in favor of a man who learned during divorce proceedings that he wasn't the natural father of a child born during his marriage. The court recognized a special category called "equitable parent," which has been applied in very limited circumstances.

In California, an appeals court denied visitation rights to a man who had married

a woman after her child was conceived and acted as the baby girl's father until the couple separated when she was 11 months old. The trial judge had called it "patently almost ridiculous" to assume that so young a child knew the man as her father. But that decision is 11 years old and, Mr. Schwartz says, isn't applicable because it involved an infant.

Steven Rein, the lawyer who represented the mother of young Larry McLinden, disagrees. He says California courts are still inclined to favor a biological parent's claim over that of a person with only emotional ties. He cites a 1959 ruling denying parental rights to the lesbian lover of the mother of two teenagers.

But Mr. Schwartz's argument echoes other calls to recognize emotional ties, not genetics, as paramount. "Knowing a scientific fact about a relationship isn't the answer to really fundamental questions that go to love and care giving," says Barbara Bennett Woodhouse, a University of Pennsylvania professor of family law, who contended in a recent law-review article that a child's bond with a would-be father should hold sway.

However, some critics worry that that could invite parental-rights claims by all sorts of child-care providers, such as nannies or distant relatives. Others, such as organizations that advocate the right of birth parents to open adoption records, say Mr. Schwartz's analysis of nonbiological-father cases slights the importance of filial ties. "There's got to be sensitivity to the nonrelated person who helps raise a child, but there should be a higher right for the biological parent," says Steve Sheldon of the Traditional Values Coalition, a conservative lobbying group.

Leslie Shear, a Los Angeles attorney who has opposed Mr. Schwartz in a nonbiological-father case, asks: "If we define a family on the basis of attachment, what moment in history do you pick? What happens if the first man drops out and then you have a biological father who's interested in reclaiming his role?"

Mr. Schwartz will take his chances in court. In the fluorescent-lighted hallway on the second floor of the Los Angeles County Courthouse, where most family-law cases are heard, the benches are full of children and adults eyeing each other warily, but Mr. Schwartz is relaxed. He playfully pulls at the handkerchief in the breast pocket of a lawyer who once went up against him. After years of representing people in torment, he has learned not to become too involved with his clients' families. He never met Larry McLinden Jr. or Joshua Comino. He saw Courtney Thomas once.

"I have no particular interest in meeting these children," he says. "That sounds cold and detached. But when a lawyer crosses the line and becomes emotionally involved, he loses his effectiveness."