

**I. THE COURT ERRED AS A MATTER OF LAW IN FAILING TO WEIGH THE COMPETING PRESUMPTIONS BEFORE DETERMINING WHETHER K. OR T. SHOULD BE DECLARED L.'S PRESUMED FATHER.**

K. had signed voluntary declaration of paternity pursuant section 7570, *et seq.*

This made him a presumed father under the provisions of the first paragraph of section 7611 which states that a man is presumed to be the natural father of a child if he meets the conditions provided in section 7570, *et seq.* The juvenile court found that because no one had moved to set aside the voluntary declaration of paternity, the presumption was “conclusive.” (CT ; RT .) The juvenile court judge then denied presumed father status to T., because, “I don’t think it is the child’s best interests to have two presumed fathers.” (RT .) The court did not find that Timothy had failed to meet his burden of proof under section 7611, subdivision (d) and was therefore not a presumed father. The court only found that it was not in the best interests of children to have two presumed fathers.

There are two problems with the court’s conclusions. The first is that the declaration of paternity did not create a conclusive presumption that K. was L.’s presumed father. The second is that the court failed to recognize that section 7612, subdivision (b) requires that, in those cases where two or more presumptions arise under section 7611, the court must engage in a weighing process to determine which of those men should be declared the presumed father for the purposes of the dependency proceedings. (*In re Jesusa V.* (2004) 32 Cal.4th 588, 603; *In re Kiana A.* (2001) 93 Cal.App.4th 1109, 1118.)

K.’s declaration of paternity did not establish a “conclusive” presumption of

paternity as the county argued and the court apparently believed, because according to K.'s testimony, his declaration of paternity was executed after December 31, 1996. Section 7576 is expressly limited to those declarations signed before that date. Therefore, the declaration of paternity in this case did not create a conclusive presumption of paternity. Rather, it simply gave rise to a presumption under section 7611 that the man who has signed the declaration is the child's father. (*In re Liam L.* (2000) 84 Cal.App.4th 739, 746.) Since two presumptions arose under section 7611, one in favor of K. and one in favor of T. (under subdivision (d)), the court was required to apply section 7612, subdivision (b) and decide which presumption, on the facts, was founded on weightier considerations of policy and logic.

The weighing process required by section 7612, subdivision (b) obliges the juvenile court "to weigh all relevant factors . . . in determining which presumption was founded on weightier considerations of policy and logic. (*In re Jesusa V.*, *supra*, 32 Cal.4th at p. 608.) *Jesusa V.* set forth several factors important to this determination, such as whether a parent-child relationship between each father and the child, the nature of any such parent-child relationship, the nature and quality of the care each had provided to the child, and whether the mother supports either father's case for presumed father status. (*Id.*, at pp. 606-607.)

The process of weighing all of the relevant factors is entrusted to the juvenile court's discretion but the juvenile court must actually use that process to resolve the competing claims of more than one presumed father. (*Id.* at pp. 606, 608.) "To exercise

the power of judicial discretion, all material facts and evidence must be both known and considered, together with legal principles essential to an informed, intelligent and just decision. [Citation.] (*People v. Lara* (2001) 86 Cal.App.4th 139, 165.) “[W]here fundamental rights are affected by the exercise of discretion of the trial court, ... such discretion can only be truly exercised if there is no misconception by the trial court as to the legal basis for its action.” (*In re Carmaleta B.* (1978) 21 Cal.3d 482, 496.) The juvenile court did not engage in any weighing process here. It rejected T.’s application for presumed father status solely on the erroneous ground that K. was already a presumed father by virtue of having signed a declaration of paternity. The juvenile court erroneously thought K.’s declaration of paternity decided the matter. Thus, the court misunderstood the scope of its discretion. Further, it failed to exercise any discretion based on considerations of policy and logic as required under section 7612.

Where a statute entrusts the court with discretion to make a decision, the failure to exercise that discretion at all is an abuse of discretion requiring reversal. (*Law Offices of Dixon R. Howell v. Valley* (2005) 129 Cal.App.4th 1076, 1090-1091.) “Failure to exercise a discretion conferred and compelled by law constitutes a denial of a fair hearing and a deprivation of fundamental procedural rights, and thus requires reversal . . .” [Citations].” (*Fletcher v. Superior Court* (2002) 100 Cal.App.4th 386, 391.) Here, the court’s failure to employ the proper procedure for making this determination denied T. a fair hearing and his fundamental procedural rights. Reversal of the paternity order is therefore required.