

WOMEN'S MAGAZINE DIVORCE

Featured In



Questions & Answers

about your divorce



Q: "Six years ago, my wife and I had a three-month trial separation. Soon after we reconciled, she told me she was pregnant. I didn't think anything about the timing because we weren't apart for too long. But now that we're getting a divorce, I'm starting to wonder if our little daughter, Sara, is really mine. My spouse, our other two kids, and I have brown hair and eyes, but Sara has flaming red hair and blue eyes. I love her dearly, but I think I have a right to know whether she's my child. How can I find out without damaging our relationship? and if I'm not actually her father, what are the implications for our custody and support negotiations?"



A: *Stacy D. Phillips, Esq., is a co-founder of the L.A.-based firm Mannis & Phillips, which specializes in high-profile marital dissolution and family-law matters. Phillips is also co-chair of the Women's Political Committee and board member of NOW legal Defense/Education Fund. She responds:*

You're seeking the same answers to questions that many judges are being asked today. In our complex society, the definitions of a traditional home and family are constantly being challenged by our Legislature (which still controls how laws are enacted), and by our courts and judges (who are duty-bound to follow those laws). Neither the Legislature nor the courts have yet found an easy way of handling your situation.

There's a long tradition in California of protecting and promoting important social policies – including the preservation of the integrity of the family and the protection of the welfare of children. California long ago overturned its statutes that deny "children out of wedlock" any protection under its laws.

When it comes to the issue of child support, the law will not allow a loophole that will leave a child without a parent to support him or her, even if that means there is some injustice to that parent. The state has a "compelling interest" in finding a parent for a child and giving that child all of the benefits attendant to being someone's child (i.e., health insurance, social security benefits, and inheritance rights.) On the other hand, when it comes to the issue of visitation, the Legislature has recognized that a child may have significant connections

with individuals who are not their biological parents but who have an interest in the welfare of the child (i.e., grandparents, new spouses, and live-in relationships of either parent) and has promoted visitation with such individuals where it's in the child's best interest.

The California Legislature has determined that one of the ways that it will protect children being supported is by narrowly defining when a parent will be able to make a claim that he's not the father, and therefore shouldn't be forced to support the child. If a child is born from a relationship where the husband and wife are cohabiting and the husband is not impotent or sterile that child will be presumed to be a child of the marriage (Family Code Section 7540).

If an individual, like yourself, claims that the child was conceived while the parents were not cohabiting, the Legislature has provided only a two-year window in which to challenge that finding through blood test: (Family Code Section 7541). Since Sara is now over the age of two, you cannot challenge the fact that you are Sara's father. The Courts have been unwilling to deviate from these principles even where there is a man ("presumed father") who wants to assert his rights as a father and who is willing to provide support to the child. The Legislature has an interest in having the issue of paternity resolved quickly for the child's sake so that the child can know that he/she is part of a family unit.

Many individuals, mostly presumed fathers, have tried to challenge the above principles by bringing their cases before our appellate courts. However, the appellate courts have stood firm in supporting the Legislature's intent in preserving the family unit, protecting children, and having these issues determined quickly – even where there is a presumed father who will care for the child.

At the heart of our laws and our court system is the belief that children and their protection come first. The law, as it is today, will not allow you to determine that you aren't her father and leave a five year old without a father to support her. Our society will no longer condone a finding that any child is a "bastard" without family ties and family roots. Your having given your love to Sara for five years is proof of those strong family ties. You must feel the same; otherwise, you would not love her so dearly as your own. While your divorce may be difficult for you, emotionally and financially, you need to savor your rights as a father and maintain your relationship with your *three* children!