

Marriage Law Digest

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**KOEBKE V. BERNARDO HEIGHTS
COUNTRY CLUB
S124179
Supreme Court of California
August 1, 2005**

A member of a private country club sued the club for refusing to allow her registered domestic partner to be given the same membership status as a spouse would receive. The couple alleged discrimination under the Unruh Civil Rights Act based on sex, sexual orientation and marital status. The court relied heavily on the recent revision of the state domestic partner law which it held has as a "chief goal" to "equalize the status of registered domestic partners and married couples."

The court held that differential treatment of married couples and domestic partners is a form of marital status discrimination. The court noted that while California had previously refused to extend the coverage of the Unruh Act to unmarried couples, the legal policy favoring domestic partnerships justifies a change in this approach at least for those unmarried couples who register as domestic partners.

The court brushed aside concerns that requiring private businesses to recognize domestic partners as equivalent to spouses would create a stampede of couples into the private club. The court also held that the domestic partnership law "seeks to promote and protect families" so recognizing domestic partners would not detract from a business's policy of promoting a "family friendly" environment.

The court limited the effect of its holding, though, by deciding that the application of the club's policy to the couple before the revision of the domestic partnership law was appropriate.

The court held that the state civil rights law does not apply to disparate impact claims but that plaintiffs should be allowed to show, on remand, that the club's facially neutral policy was applied in a discriminatory way.

One judge wrote a concurring and dissenting opinion, arguing that the holding of the court should have applied to the club's conduct which took place between the time of the couple's registration as domestic partners (under the limited domestic partnership law enacted in 2000) and the revision of the domestic partnership law which became effective in 2005.

**ELISA B. V. THE SUPERIOR COURT OF
EL DORADO COUNTY
S125912
Supreme Court of California
August 22, 2005**

Two women in a same-sex partnership both used artificial insemination to conceive children. After two years the couple broke up and one partner sought support from the other for the children she bore.

The court ruled that "[w]e perceive no reason why both parents of a child cannot be women." Although the couple had not contracted a domestic partnership, the court felt that the legislative policy of treating domestic partners as co-parents of the child

of one partner suggested this result. The court concluded that the partner who was not a biological mother of the children “actively participated in causing the children to be conceived with the understanding that she would raise the children as her own together with the birth mother, she voluntarily accepted the rights and obligations of parenthood after the children were born, and there are no competing claims to her being the children’s second parent.”

The court held that the Uniform Parentage Act, even though directed primarily at establishment of paternity, could apply to this situation. Relying on the provision that a man who takes a child into his home and treats it as his own natural child can be presumed to be the child’s father, the court concluded that this was possible also for mothers and that the partner in this case was covered by this provision.

**K.M. V. E.G.
S125643
Supreme Court of California
August 22, 2005**

One partner in a same-sex couple donated ova to another partner who carried the resulting child to term after conceiving as a result of artificial insemination by a donor they selected. The donating partner signed a form relinquishing all rights to the child. Six years later, the couple split and the donating partner sought custody and visitation.

The issue addressed by the court was whether a statute providing that a sperm donor who provides semen to a physician to inseminate a woman to whom he is not married is not a father.

The court held that California law intended to make artificial insemination available to

unmarried women. The court held that the sperm donor statute did not apply and that under the Uniform Parentage Act, one partner was the child’s mother because the child resulted from the fertilization of her ova and the other because she carried the child (following precedent that a couple intending to have a child through surrogacy are the parents). The court specifically disclaimed language in an earlier opinion that suggested that a child cannot have two mothers (distinguished as applying only if the child already has a father).

Although neither disagreed with the majority’s premise that a child can have two mothers, two justices dissented. The first believed the sperm donation statute should apply to women as well as men. The other believed the intent of the partners (as expressed in the pre-conception relinquishment in this case) should control the determination of maternity.

**KRISTINE H. V. LISA R.
S126945
Supreme Court of California
August 22, 2005**

Two women, one of whom conceived a child (through artificial insemination by a friend who agreed in writing to not seek parental rights) jointly filed for a stipulated judgement that both were parents of the child while the mother was seven months pregnant. Two years later, the couple separated and the mother motioned to set aside the original judgement while the partner sought custody and visitation.

The court held that since the mother had been party to the earlier judgement of legal parenthood, she was estopped from challenging the validity of that judgement.