California Family Law Report

Case of the Month – May 2026

Topic: Parentage

VDOP void despite apparent fatherhood…

In writ proceeding, the Fourth District held that the trial court erred in denying mother's motion to set aside a voluntary declaration of parentage (VDOP) as void, because when the VDOP was signed, the child already had a presumed parent under Fam. C. §7611(b) [presumed parentage applies where a person attempted to marry the child's natural mother before the child's birth, even if marriage is or could be declared invalid].

Steven N. v. Priscilla C.
March 26, 2026

California Court of Appeal 4 Civ D085731 (Div 1) 119 Cal.App.5th 639, 342 Cal.Rptr.3d 796, 2026 FA 2224, per Buchanan, J. (O'Rourke, P.J., and Rubin, J., concurring). San Diego County: Church. For Priscilla C. (Appellant): Pro Per. For Steven N. (Respondent): Yvonne M. Rizzo. CFLP §E.0.0.12.1.

In August 2024, Steven N. filed a petition seeking custody of Stella, who was then two years old. He attached a voluntary declaration of parentage (VDOP) signed by him and Priscilla C. Priscilla moved to set aside the VDOP as void, arguing that when Stella was born, Priscilla was married to another man, Gianni, who therefore qualified as Stella's presumed parent under Fam. C. §7611. In support of her motion, Priscilla submitted a confidential marriage license and certificate of marriage.

Steven opposed the motion. He argued that Priscilla and Gianni had falsely represented that they were living together as spouses, a requirement for obtaining a confidential marriage license.

After a hearing on the matter, the trial court concluded Priscilla and Gianni had not cohabited as spouses before obtaining their confidential marriage license. On that basis, the trial court (San Diego County's Church) concluded that Priscilla was not precluded from executing the VDOP with Steven and denied her motion to set aside

the VDOP. Priscilla appealed, and the Fourth District treated the appeal as a petition for writ of mandate and granted relief.

Appealability and writ review...

At the outset, the court held that the trial court's order denying Priscilla's motion to set aside the VDOP was not appealable. First, the court concluded that the order was not appealable as a postjudgment order under CCP §904.1(a)(2). That statute authorizes an appeal from certain orders made after an appealable judgment. But the court reasoned that a VDOP is not itself an appealable judgment. Although Fam. C. §7573 provides that a valid VDOP has the force and effect of a judgment of parentage, it is not a court judgment entered after judicial action. Instead, a VDOP arises from the parties' private declaration. The court further noted that even assuming a VDOP could be characterized as a judgment, it would be akin to a stipulated judgment, which is ordinarily not appealable. For these reasons, the court concluded that a VDOP is not an appealable judgment for purposes of CCP §904.1(a)(2).

The justices also noted that not every order following a final appealable judgment is itself appealable. To qualify as an appealable postjudgment order, the order must satisfy additional requirements: the issues raised by the appeal from the order must be different from those arising from the judgment and the order must either affect the judgment or relate to it by enforcing it or staying its execution. Here, the February 25 order denying Priscilla's application to set aside the VDOP did not satisfy those requirements because it was entered in contemplation of further proceedings. In other words, the order did not finally resolve Steven's underlying custody petition.

The court also rejected Priscilla's argument that the February 25 order was appealable under the collateral order doctrine. Under that doctrine, an order may be appealable if the trial court's ruling on a collateral issue is substantially the same as a final judgment in an independent proceeding, even though other matters in the case remain unresolved. The order must be truly distinct and severable from the general subject of the litigation. Here, the court concluded that Steven's parentage was not collateral to the case. Rather, determining Steven's parentage was a predicate step toward resolving his custody petition.

The court nevertheless exercised its discretion to treat Priscilla's appeal as a petition for writ relief. In *Olson v. Cory* (1983) 35 Cal.3d 390, 197 Cal.Rptr.843, the California Supreme Court found it appropriate to treat a purported appeal as a petition

for writ of mandate where several factors supported doing so, including: (1) uncertainty over whether the order was appealable; (2) the possibility that delaying review would lead to unnecessary trial proceedings; and (3) the existence of an adequate record and briefing to decide the issue as a writ matter. The Fourth District found those circumstances present here. First, appealability was unclear because no published California case had addressed whether an order denying an application to set aside a VDOP is appealable. Second, requiring the parties to wait for final resolution of the custody proceeding before addressing the validity of the VDOP could lead to unnecessary proceedings and potentially disruptive changes in custody. And third, the existing record and briefing were adequate to decide the issue.

Existing presumed parentage...

Turning to the merits, the court concluded the VDOP was void as a matter of law. The justices first explained that although Fam. C. §7573 authorizes a person to establish legal parent status by coexecuting a VDOP, Fam. C. §7573.5 makes a VDOP void if, at the time it is signed, the child already has a presumed parent under specified provisions, including Fam. C. §7611(a)-(c). The Legislature's purpose in precluding a married woman from executing a VDOP is to preserve marriages and the marital presumption of parentage. The author of the bill that amended Fam. C. §7573.5 to clarify that a VDOP is invalid if the child already has a presumed parent explained that the VDOP process "'was meant to facilitate the establishment of parentage in uncontested situations; it was never designed to address competing parentage presumptions.'"

The court then considered whether Gianni was Stella's presumed parent under Fam. C. §7611(b). That provision applies when a person and the child's natural mother have attempted to marry each other by a marriage solemnized in apparent compliance with law, even though the attempted marriage is or could be declared invalid.

Apparent compliance with marriage law...

After noting there was no California authority interpreting the phrase "attempted to marry each other by a marriage solemnized in apparent compliance with law," the Fourth District looked for guidance to a Utah Supreme Court decision interpreting similar language in Utah's version of the Uniform Parentage Act. The Utah court held that an attempted marriage is in apparent compliance with law when it is entered into in ostensible or seeming compliance with legal requirements. More

specifically, that requirement is satisfied when the would-be spouses apply for and receive a marriage license and procure an official certificate. The Utah court also rejected the argument that presumed parent status is unavailable if one or both parties to the attempted marriage knew the marriage did not actually comply with the law.

Adopting that reasoning, the Fourth District held that a presumed parent and the child's natural mother have attempted to marry each other by a marriage solemnized in apparent compliance with law under Fam. C. §7611(b) when they have applied for and received a marriage license and procured an official certificate of marriage, even if the attempted marriage is or could later be declared invalid.

The court next considered whether a confidential marriage obtained through an inaccurate statement that the parties were living together as spouses is invalid only by court order or invalid even without a court order. This distinction mattered because Fam. C. §7611(b) applies different timing rules depending on whether the attempted marriage is void without a court order or may be declared invalid only by court order.

The justices concluded that nothing in the plain language of the relevant statutes provides that a confidential marriage obtained through an inaccurate statement that the parties are living together as spouses is automatically invalid without a court order. The court also noted that parties who incorrectly state that they are living together as spouses may still comply with the essential components of a confidential marriage under California case law. For these reasons, the court held that a person who obtains a confidential marriage certificate with a birth parent based on an inaccurate statement that the couple has been living together as spouses nevertheless obtains presumed parent status under Fam. C. §7611(b)(1) over a child who is born during the attempted marriage.

Applying those principles, the Fourth District concluded that Gianni and Priscilla attempted to marry by obtaining a facially valid confidential marriage certificate on October 19, 2020. Stella was born on October 4, 2021, and Priscilla and Steven signed the VDOP the following day, October 5, 2021. Because Stella was born during the attempted marriage, Gianni was Stella's presumed parent at the time of her birth and when Priscilla and Steven signed the VDOP. Accordingly, the VDOP was void under Fam. C. §7573.5.

In reaching this conclusion, the court rejected Steven's argument that Priscilla and Gianni did not act in good faith in obtaining their confidential marriage because,

according to Steven, they committed perjury by falsely stating they were living together as spouses. The court noted that the trial court had not determined that either Priscilla or Gianni knew the statement was false. In any event, Fam. C. §7611(b) turns on whether the attempted marriage was solemnized in apparent compliance with law, not on whether the parties subjectively believed all legal requirements had actually been satisfied.

Accordingly, the Fourth District granted Priscilla's petition for writ of mandate and directed the trial court to vacate its order and enter a new order granting the motion.

COMMENT...

The court also noted that Priscilla arguably forfeited the argument that the VDOP was invalid under Fam. C. §7611(b) because she had not raised that specific argument in the trial court. The Fourth District nevertheless exercised its discretion to consider the claim. The court gave several reasons for doing so. First, the claim presented a question of law based on undisputed facts and was closely related to the argument Priscilla had raised below. Second, the same underlying facts were relevant to both theories. Third, the outcome had the potential to affect nonparties, including Stella and Gianni. Finally, the court gave the parties the opportunity to submit supplemental briefing on the issue. For these reasons, the court considered Priscilla's Fam. C. §7611(b) argument notwithstanding any possible forfeiture.

Library References

10 Witkin, Summary of Cal. Law (11th ed. 2025) P&C §27
Hogoboom & King, Cal. Practice Guide: Family Law (The Rutter Group) ¶ 6:61