2d Civil No. B182232

IN THE COURT OF APPEAL

OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

FOUAD SAID,

Petitioner and Appellant,

vs.

HENRIETTA JEGAN and FOUAD SAMIR SAID,

Respondents.

Appeal from the Superior Court of Los Angeles County
Honorable Wendy L. Kohn
Los Angeles Superior Court No. BF022743

APPELLANT'S REPLY BRIEF

JAFFE & CLEMENS
Daniel J. Jaffe (SBN 32899)
Aimee H. Gold (SBN 207981)
433 North Camden Drive, #1000
Beverly Hills, California 90210
(310) 550-7477

GREINES, MARTIN, STEIN & RICHLAND LLP
Robin Meadow (SBN 51126)
5700 Wilshire Boulevard, Suite 375
Los Angeles, California 90036
(310) 859-7811

Attorneys for Petitioner and Appellant FOUAD SAID

INTRODUCTION

According to respondents, a man may prove that he is not the father of a child whom he has held out as his own, but he may *not* make the same showing with regard to a child whom he has *never* held out as his own.

What possible goal could the Legislature have sought to serve by such a paradoxical paternity scheme? Respondents do not say. Instead:

- Respondents concede that Family Code section 7630, subdivision (b) (section 7630(b)) grants standing to "any interested party," but they urge that only a "presumed father" can be an "interested party."[1] In doing so, they virtually ignore both the broad statutory language and recent appellate decisions holding that "interested party" includes not only "presumed" fathers, but "alleged" fathers as well.

- Respondents urge that a man must affirmatively allege his "presumed" father status to bring a section 7630(b) action, but they do not address the Catch-22 inherent in this purported scheme: A man who seeks to establish that he is *not* a child's father must first establish a presumption that he *is.*

- Respondents urge that section 7630, subdivision (c) (section 7630(c)) permits actions to establish that an alleged father relationship *exists*, but not that the relationship does *not* exist. They do not seriously grapple with the anomalies this interpretation would inject into the statutory scheme—including an irrational situation in which a man could seek to prove another man's paternity but could not disprove his own.

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[1] All further undesignated citations are to the Family Code.

For all of these reasons, the Court should reject respondents' interpretation of Family Code sections 7630(b) and (c). Instead, it should conclude that Fouad has standing to bring this action, reverse the judgment against him, and direct the trial court to hear the case on the merits.

ARGUMENT

The sole issue raised on appeal is whether Fouad has standing to bring this action under Family Code sections 7630(b) and 7630(c). These sections indisputably permit both a "presumed father" (a man presumed under section 7611 to have fathered a child because, as relevant here, he held the child out as his own) and an "alleged father" (a man who is asserted to be the father but who has not achieved presumed father status) to prove the *existence* of a father-child relationship. (See generally AOB 9-10 [discussing "alleged" and "presumed" fathers].) However, respondents say, these sections permit only a "presumed father," and not an "alleged father," to prove the *nonexistence* of those relationships.

As we demonstrated in the opening brief and further show below, respondents are wrong. The statute permits a man like Fouad—who is unquestionably an alleged father, and who respondents claim is also Samir's presumed father—to bring an action to establish the *nonexistence* of a father-child relationship under both sections 7630(b) and (c).

I.

SECTION 7630(b) CONFERS STANDING BECAUSE FOUAD IS AN "INTERESTED PARTY" WHO RESPONDENTS ALLEGE IS SAMIR'S PRESUMED FATHER.

Section 7630(b) provides:

> "Any interested party may bring an action at any time for the purpose of determining the existence or nonexistence of the father and child relationship presumed under subdivision (d) or (f) of Section 7611."

The opening brief shows that section 7630(b) prescribes two distinct components of a lawsuit: (1) *who* can sue—i.e., "any interested party"; and (2) *what* such a person can sue about—i.e., the "existence or nonexistence of the father and child relationship" presumed by statute to exist. (AOB 14-24.)[2] Both statutory requirements are met here: (1) Fouad is "interested" in the determination of Samir's paternity because Samir's birth certificate (and Samir's and his mother's sworn declarations) identify Fouad as Samir's father; and (2) Fouad seeks resolution of precisely the kind of controversy the statute contemplates: whether "the father and child relationship" actually exists.

Respondents agree that section 7630(b) contains two separate requirements, but they claim that Fouad cannot be an "interested party." To qualify, they say, (1) a man must be (or claim to be) a statutory "presumed" father, and (2) he must affirmatively demonstrate that a "presumed" father relationship exists, not merely that there is a dispute

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[2] Presumptions of paternity are created by section 7611. The opening brief provides an overview of those presumptions (AOB 9-10); as relevant, particular presumptions are discussed in this reply brief.

about that relationship. (RB 17-19.) As we now demonstrate, this approach is wrong because it conflates two distinct statutory requirements.

A. Fouad Need Not Be A Presumed Father To Be An "Interested Party."

Section 7630(b) provides that an action to resolve a controversy about presumed father status can be brought by "[a]ny interested party." This language does not limit standing to any particular categories of potential petitioners; rather, it requires only that a petitioner have an "interest[]" in determining a child's paternity. In other words, on its face, the "interested party" requirement does what any standing requirement should do—"ensure that the courts will decide only actual controversies between parties with a sufficient interest in the subject matter of the dispute to press their case with vigor." (*Common Cause v. Board of Supervisors* (1989) 49 Cal.3d 432, 439.)

Accordingly, courts have held that "interested party" includes persons with "an obvious interest in a legal determination" of a parent-child relationship. (*In re Karen C.* (2002) 101 Cal.App.4th 932, 935-936.) Among the persons held to be "interested parties" under section 7630(b) are "alleged" fathers, such as Fouad—men "whose biological paternity has not been established, or, in the alternative, ha[ve] not achieved presumed father status." (*Francisco G. v. Superior Court* (2001) 91 Cal.App.4th 586, 596, quoting *In re Zacharia D.* (1993) 6 Cal.4th 435, 449, fn. 15; see AOB 14, 16-17; *Librers v. Black* (2005) 129 Cal.App.4th 114, 125 (*Librers*) ["interested party" embraces "a broad class of men, including 'alleged' fathers," quoting *Miller v. Miller* (1998) 64 Cal.App.4th 111, 116-117 (*Miller*), original emphasis and internal quotation marks omitted].)

Respondents do not claim that Fouad lacks a legitimate interest in Samir's paternity, but rather that standing under section 7630(b)

requires more: They contend that only an alleged father "who claims to be a presumed father under § 7611(d)" can be an "interested party" under section 7630(b). (RB 14.) But if that is what the Legislature meant, it chose a strange way of saying so. Surely it would have been more logical to follow the format of section 7630, subdivision (a) (section 7630(a)), which limits standing to very specific categories of persons and expressly includes "a man presumed to be the child's father under subdivision (a), (b), or (c) of Section 7611."[3] That the Legislature used different, broader language in section 7630(b) than it did in section 7630(a) suggests that it did not intend to limit the class of men who could pursue actions under section 7630(b) to presumed fathers. (E.g., *Romano v. Mercury Ins. Co.* (2005) 128 Cal.App.4th 1333, 1343 ["When the Legislature uses different words as part of the same statutory scheme, those words are presumed to have different meanings"].)

Our Supreme Court relied on precisely this distinction between sections 7630(a) and (b) to suggest in *Dawn D. v. Superior Court* (1998) 17 Cal.App.4th 932 that standing under section 7630(b) is not limited to presumed fathers, but embraces alleged fathers as well. There, the petitioner, Dawn, began living with Jerry while still married to her husband, Frank. (*Id*. at p. 936.) She became pregnant while living with Jerry, but moved

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[3] In full, section 7630(a) provides: "A child, the child's natural mother, a man presumed to be the child's father under subdivision (a), (b), or (c) of Section 7611, an adoption agency to whom the child has been relinquished or a prospective adoptive parent of the child, may bring an action as follows: [¶] (1) At any time for the purpose of declaring the existence of the father and child relationship presumed under subdivision (a), (b), or (c) of Section 7611. [¶] (2) For the purpose of declaring the nonexistence of the father and child relationship presumed under subdivision (a), (b), or (c) of Section 7611 only if the action is brought within a reasonable time after obtaining knowledge of relevant facts. After the presumption has been rebutted, paternity of the child by another man may be determined in the same action, if he has been made a party."

back in with Frank before the child's birth. (*Ibid*.) Jerry then filed a petition to establish his paternity of the unborn child. (*Ibid.*) Dawn moved for judgment on the pleadings, asserting that Jerry lacked standing to pursue the action. (*Ibid*.)

The Court explained that Jerry was not a presumed father: "He has neither married nor attempted to marry Dawn, nor, despite his considerable efforts to assert parental rights, has he actually received the child into his home." (*Id*. at p. 937.) Accordingly, Jerry lacked standing *under subdivision (a)* of section 7630 to challenge the presumption of Frank's paternity that arose from his marriage to Dawn, because that subdivision limits such standing to the child, the child's mother, or the child's presumed father. (*Id*. at p. 938, fn. 5.)[4] The result was different, however, with regard to Jerry's standing *under subdivision (b)* to challenge the presumption of Frank's paternity based upon his receiving the child into his home and holding him out as his natural child (section 7611(d)):[5]

> "Section 7630, subdivision (b), by contrast, allows '[a]ny interested party' to bring an action to determine the existence or nonexistence of the father and child relationship presumed under subdivision (d) of section 7611. . . . Arguably, Jerry would qualify as an 'interested party' for purposes of

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[4] The presumption of Frank's paternity arose under section 7611, subdivision (a), which provides: "A man is presumed to be the natural father of a child if . . . [h]e and the child's natural mother are or have been married to each other and the child is born during the marriage, or within 300 days after the marriage is terminated by death, annulment, declaration of invalidity, or divorce, or after a judgment of separation is entered by a court."

[5] Section 7611, subdivision (d) provides: "A man is presumed to be the natural father of a child if . . . [h]e receives the child into his home and openly holds out the child as his natural child."

> bringing an action to establish Frank's nonpaternity under subdivision (d) of section 7611." (*Ibid.*)[6]

Subsequent appellate decisions also have relied on the differences between sections 7630(a) and (b) to conclude that standing under section 7630(b) is not limited to presumed fathers, but also extends to alleged fathers. For example, in *Librers*, *supra*, the court said:

> "'Under section 7630, subdivision (b), any interested party may bring an action to determine the existence of the father and child relationship presumed under section 7611, subdivision (d). *This is in contrast to section 7630, subdivision (a)*, which limits the class of men who can bring actions to declare the existence of the father and child relationship pursuant to section 7611, subdivisions (a), (b) and (c), to presumed fathers.'" (129 Cal.App.4th at p. 125, emphasis added.)

Thus, it concluded, "'*a broad class of men*, including "alleged" fathers, can bring an action to establish paternity . . . .'" (*Ibid.*, emphasis in original; see also *Miller*, *supra*, 64 Cal.App.4th at pp. 116-117 [same].)[7]

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[6] The Court concluded, however, that Dawn nonetheless was entitled to judgment on the pleadings because there was no scenario in which he could prevail: "[A section 7630(b)] action, whatever its outcome, would appear neither to affect Frank's status as a presumed father under subdivision (a) of section 7611 nor to confer on Jerry presumed father status." (*Id*. at p. 938, fn. 5). That conclusion is irrelevant here, where there is no presumption of another man's paternity and Fouad's parental status remains an open—and hotly disputed—question.

[7] Respondents are correct that this sentence ends with the clause ". . . when such claim is based on the presumed father status which is obtained by receiving the child and openly acknowledging paternity." (RB 14.) But their criticism of our omission of this language suffers

(continued...)

Respondents' only answer to this clear language is to misrepresent *Librers* and *Miller*. According to respondents, these cases relied on subdivision *(c)*, not subdivision *(b)*, to conclude that alleged fathers have standing to bring paternity actions. (RB 14-15.) That is just not true. Neither case even cites subdivision (c); they both interpret *only* section 7630(b). (*Librers*, *supra*, 129 Cal.App.4th at p. 125; *Miller*, *supra*, 64 Cal.App.4th at pp. 116-117.)

Respondents also assert that neither *Librers* nor *Miller* "supports Fouad's claim, that an 'alleged father' is an 'interested party' under § 7630(b)" because in those cases the petitioner "claimed to be the child's biological father, he alleged he was a presumed father under § 7611(d), and he brought the action to establish his paternity." (RB 13-14.) Respondents are right about the petitioners' claims in *Librers* and *Miller*, but wrong in suggesting that the decisions do not support standing here. Although the petitioners in *Librers* and *Miller* alleged that they were presumed fathers, neither case suggests that those allegations were essential to the petitioners' "interested party" status. Quite the contrary, the courts emphasized the breadth of "any interested party."

Finally, respondents assert that if "interested party" were broad enough to include an alleged father like Fouad, it would "be virtually

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[7] (...continued)
from the same mistaken who-what conflation as their other arguments. The omitted clause does not define *who* is an "interested party," but rather summarizes the *subject matter* requirement of section 7630(b)—that is, a petitioner must be seeking a determination of "the existence or nonexistence of the father and child relationship presumed under [section 7611(d)]." In other words, *Librers* and *Miller* did *not* suggest that only a presumed father can be an interested party, but rather that *in addition to being an interested party*, a petitioner must assert a claim that is based on presumed father status. We address this second requirement in the opening brief at pages 17-24 and in the present brief in section I.B., *post.*

meaningless, since every man who brings an action to establish his nonpaternity of a minor child has an 'obvious interest' in establishing his nonpaternity." (RB 16.) Certainly any man falsely accused of fathering a child has an "'obvious interest'" in a paternity adjudication. But that hardly shows—and respondents do not even attempt to explain—why it would be "meaningless" for the Legislature to grant standing to these men. Certainly there could have been no concern about protecting the courts from a flood of paternity suits. As to any given child, the universe of men with an interest in a paternity adjudication—i.e., men who are alleged to be, or allege themselves to be, the child's father—is extremely small and well-defined. Moreover, interpreting "interested party" in the broad, common-sense manner Fouad suggests will do precisely what standing requirements are supposed to do: ensure there is a justiciable controversy based on a petitioner's legitimate interest in the subject matter of the litigation.

B. Fouad Need Not Affirmatively Allege Presumed Father Status To Have Standing Under Section 7630(b). He Need Only Demonstrate A Controversy About His Status, Which He Has Done.

Section 7630(b) identifies not only *who* can bring an action under this section, but also *what* can be determined—i.e., "the existence or nonexistence of the father and child relationship presumed under subdivision (d) or (f) of Section 7611." But while the statute plainly predicates the right to sue on whether the action concerns a presumption of paternity, it is ambiguous regarding what specific issues can be raised. It does not explicitly say what happens when, as here, the facts giving rise to the presumption—"receiv[ing] the child into his home" and "openly hold[ing] out the child as his natural child" (§ 7611, subd. (d))—

are themselves disputed. In particular, the statute does not say whether in these circumstances the petitioner must *prove* presumed father status as a predicate to bringing a section 7630(b) action, or merely demonstrate that the status is *alleged* but disputed. (AOB 17-18.)

As the opening brief demonstrates (AOB 19-21), the statutory ambiguity has been clarified by two recent decisions, *Librers*, *supra*, 129 Cal.App.4th 114 and *Craig L. v. Sandy S*. (2004) 125 Cal.App.4th 36. In both cases, the trial courts had dismissed section 7630(b) petitions for lack of standing because the petitioners had not demonstrated they were presumed fathers; in both cases, the courts of appeal reversed on the basis that the petitioners' *allegations* that they were presumed fathers were sufficient to create standing, even in the absence of factual findings establishing those allegations.[8] Thus, both cases are consistent with Fouad's contention that allegations of presumed father status are sufficient to establish standing under section 7630(b).

Notwithstanding *Librers* and *Craig L.*, respondents assert that standing requires not merely allegations of presumed fatherhood but also that "those allegations must be proven." (RB 19.) Respondents' sole authority, however—*Miller*, *supra*, 64 Cal.App.4th 111—does not support that claim. (RB 18-19.) There, as in *Librers* and *Craig L.*, the petitioner alleged that he was a presumed father, and the respondent moved to quash the petition for lack of standing. (*Miller*, *supra*, at p. 115.) The trial court

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[8] The *Librers* court explained that reversal was mandated by section 7630(b), which "plainly confers standing on 'any interested person' in order to *determine* whether the presumption of paternity created by section 7611, subdivision (d) does or does not exist." (*Librers*, *supra*, 129 Cal.App.4th at 126, original emphasis.) *Craig L.* contained a similar analysis, explaining that section 7630(b) required reversal because "the level of contact Craig *has alleged* during the first year of [the child's] life is sufficient to establish paternity under section 7611, subdivision (d.)" (*Craig L.*, *supra*, 125 Cal.App.4th at p. 609, emphasis added.)

granted the motion on the ground that the petitioner lacked standing to bring the paternity action. (*Id.* at p. 116.) Although the court of appeal affirmed on the merits the trial court's finding that the petitioner had not established that he was a presumed father, it concluded that the trial court erred when it dismissed the petition for lack of standing. According to the court, even though the petitioner failed to establish the elements necessary to invoke the section 7611(d) presumption, "as an interested party, [he] *had standing* to pursue a claim." (*Id*. at p. 117, emphasis added.) Thus, as in *Librers* and *Craig L.*, *Miller* held that *allegations* of presumed father status were sufficient to establish standing under section 7630(b).

Respondents also claim that *Miller* holds that "if a man brings an action under § 7630, he will lose . . . if he fails to allege he is the child's presumed father or if he fails to prove those allegations because, in such circumstances, 'he cannot prevail as a matter of law,' [citation]." (RB 18.) *Miller* does not so hold. Instead, *Miller* says that because there the petitioner sought to *establish* his paternity, he had the substantive burden of demonstrating by a preponderance of the evidence that he was a presumed father under section 7611(d). (*Miller*, 64 Cal.App.4th at pp. 117-118.) *Miller* did not reach the question presented here: whether a petitioner must affirmatively prove presumed father status when he seeks to *disprove*, rather than *prove*, his paternity.

Respondents also assert that even if *Librers*, *Craig L.* and *Miller* hold that allegations of presumed fatherhood are sufficient to create standing when a petitioner seeks to *prove* paternity, the rule should be different where he seeks to *disprove* paternity, and thus where the allegations of presumed fatherhood are the respondent's, not the petitioner's. (RB 18-19.) But they cite no statutory or policy basis for this distinction, and they suggest no principled reason why the Legislature would grant standing to men who *allege themselves* to be presumed fathers, but deny it to men who *are alleged*

by others to be presumed fathers. (RB 17-19.) Nor do they even address the absurd "heads I win, tails you lose" effect of their interpretation: A man who seeks to *disprove* paternity must *prove* a presumption of paternity—a presumption as that at best he must then turn around and rebut, and that at worst he will have no right to rebut at all. (AOB 22-23 and cases cited; *Miller*, *supra*, 64 Cal.App.4th at p. 117.)

Finally, there is no support for respondents' claim that Fouad has improperly attempted to premise his standing on events that occurred after this action was filed. In *Fuss v. Superior Court* (1991) 228 Cal.App.3d 556, 561-562, respondents' sole authority (RB 13, fn. 14, 19), the court held that so long as an alleged father had standing to bring a paternity suit at the time he filed it, his standing could not be destroyed by subsequent events—in that case, the mother's post-petition marriage to another man. (*Ibid.* [the mother's "later marriage . . . and the consequent presumption of (her husband's) paternity do not destroy (the alleged father's) right to continue his previously filed lawsuit"].) That holding is irrelevant here, where Fouad does not premise his standing on events that occurred after he filed the present suit. As we have demonstrated, Fouad's standing under section 7630(b) is premised on respondents' contention that Fouad is Samir's presumed father. That contention is not a new one—according to their own declarations, respondents have always believed that Fouad is Samir's biological and presumed father. (See 1 CT 195-196; 2 CT 221-227.) Thus, although Fouad cited respondents' declarations as *evidence* of his standing, his standing did not depend on the declarations as such. Rather, it was respondents' *contentions*, of which the declarations were merely evidence, that created Fouad's standing. Because those contentions preceded the filing of this action, Fouad necessarily had standing to file.

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To have standing under section 7630(b), Fouad need not be an adjudicated presumed father; instead, he need only demonstrate that he has an interest in the resolution of the present action and that there is a controversy over his presumed father status. Because he has shown both, the trial court erred in concluding that he lacked standing to pursue this action.

II.

SECTION 7630(c) CONFERS STANDING BECAUSE SAMIR HAS NO PRESUMED FATHER OTHER THAN FOUAD AND FOUAD IS "A MAN ALLEGED . . . TO BE" SAMIR'S FATHER.

Section 7630(c) provides that "a man alleged or alleging himself to be the father" may bring an action "to determine the existence of the father and child relationship with respect to a child who has no presumed father under Section 7611 or whose presumed father is deceased."[9] The opening brief demonstrates that actions "to determine the existence of" the father and child relationship necessarily include not only actions to determine that such a relationship *does* exist, but also actions to determine that it *does not* exist. Thus, the statute authorizes Fouad's petition to establish that he is not Samir's father. (AOB 24-31.)

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[9] In full, section 7630(c) provides: "An action to determine the existence of the father and child relationship with respect to a child who has no presumed father under Section 7611 or whose presumed father is deceased may be brought by the child or personal representative of the child, the Department of Child Support Services, the mother or the personal representative or a parent of the mother if the mother has died or is a minor, a man alleged or alleging himself to be the father, or the personal representative or a parent of the alleged father if the alleged father has died or is a minor."

Respondents disagree, contending that section 7630(c) only permits actions to determine that a father and child relationship does exist, not that it does not exist. (RB 20.)[10] They advance three arguments in support; none is persuasive.

There is no historical distinction between "existence" and "nonexistence" actions. According to respondents, California law has long distinguished between "existence" and "nonexistence" actions. They rely on 1939 legislation (former Civil Code section 196a) which they say "authorize[d] an award of *pendente lite* attorney fees in an action to establish a man's paternity," and on *Mule v. Superior Court* (1944) 62 Cal.App.2d 247, which held that that section 196a did not authorize an award of fees in a nonpaternity action. (RB 11.) But respondents' premise is false. Section 196a, did not, in fact, authorize an award of attorneys' fees in an action to establish paternity. It concerned only actions for *support*— to "'enforce [the] obligations'" of parents of an illegitimate child "'[to] give him support and education suitable to his circumstances.'" (*Carbone v. Superior Court* (1941) 18 Cal.2d 768, 770, quoting former Civ. Code, § 196a.) And it was because the statute only authorized attorneys' fees in *support* actions, and *not* in paternity actions, that the court in *Mule v. Superior Court* held that there was no statutory authority to award fees in an action to declare that the petitioner was not the respondent's father. (62 Cal.App.2d at p. 249 ["Plainly (section 196a) is limited to actions brought to enforce a parent's obligation to support and educate his or her, minor child. But that is not the nature of the action pending in the

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[10] Respondents repeatedly assert that the statute authorizes actions to "establish" that a father and child relationship exists (RB 1, 2, 7, 8, 9, 11, 17, 18, 20, 22), at one point even using the word in quoting the statute (RB 20). That isn't what the statute says. Sections 7630(b) and (c) authorize actions to "*determine*" the existence of a father and child relationship, not to "establish" its existence.

respondent court. It is an action for declaratory relief."].) The case says nothing whatsoever about any distinction between paternity and nonpaternity actions.

"Existence" need not have the same meaning in sections 7630(b) and (c). Respondents next contend that "existence" cannot mean "existence or nonexistence" in subdivision (c) of section 7630, because subdivision (b) specifically refers to "existence or nonexistence" and "there is a presumption 'that a repeated phrase or word in a statute is used in the same sense throughout.'" (RB 21-22.) But, as the opening brief demonstrates, that presumption must yield in appropriate cases: "'When the occasion demands it, the same word may have different meanings to effectuate the intention of the act in which the word appears.'" (*People v. Hernandez* (1981) 30 Cal.3d 462, 468; see also *Anderson v. City of Los Angeles* (1973) 30 Cal.App.3d 219 [discussed in AOB, pp. 27-28].)

Here, "the occasion demands" that "existence" include "nonexistence" in section 7630(c) because the alternative is an arbitrary and irrational result. As the opening brief shows, under section 7630(c) an action to determine "the existence of the father and child relationship with respect to a child who has no presumed father" can be brought by identified classes of persons, including "a man alleged or alleging himself to be the father." Since a man seeking to establish his own paternity necessarily "alleg[es] himself to be the father," the companion phrase—"*alleged to be* the father"—has meaning only if the statute permits an action to be brought by a man who disclaims paternity. Such a man would never bring an action to establish his own paternity, but only to disprove it. Thus, the statute must permit both "existence" and "nonexistence" actions. (AOB 29-30.)

Respondents' alternative reading of the statute must be rejected. According to respondents, the quoted statutory language need not be read to permit "nonexistence" actions; instead, they say, it only means that a man "alleged to be the father" can "bring[] an action . . . to establish *another man's* paternity." (RB 22, emphasis added.) That can't be right. If, as respondents contend, such an action results in a judgment *only* of the other man's paternity and *not* the petitioner's (RB 23, fn. 17), then the statute would grant standing to a man who has no stake in the litigation because his own status would not be adjudicated. That violates the general standing requirement that courts will decide only "actual controversies between parties with a sufficient interest in the subject matter of the dispute to press their case with vigor." (*Common Cause v. Board of Supervisors*, *supra*, 49 Cal.3d at p. 439.) Moreover, it assumes that the Legislature intended to permit an action that no man would ever bring because it could result in no possible benefit to himself—while declining to permit an action that would certainly be utilized in appropriate circumstances, such as those here.

Finally, as the opening brief demonstrates, respondents' suggested reading of the statute would arbitrarily discriminate between alleged fathers who can identify a child's biological father and those who cannot. (AOB 29-30.) Respondents assert that this discrimination is permissible because an alleged father who establishes another man's paternity confers a benefit on the child, while an alleged father who disproves his own paternity serves only his own interest. (RB 23.) That view erroneously assumes that there can never be a benefit to a child when someone he believes is his father turns out not to be. While that may be true in some cases, it is far from obvious—certainly not so obvious that the Court should impute such a view to the Legislature when nothing in the legislative history supports it.

Respondents' asserted distinction between "existence" and "nonexistence" actions is not supported by any rational legislative policy. Respondents assert finally that it would be rational to permit "presumed" fathers to bring "existence" or "nonexistence" actions, but to limit "alleged" fathers to "existence" actions because a presumption of paternity under section 7611(d) "may become conclusive if not rebutted; hence, a presumed father must be accorded an opportunity to rebut it." (RB 2; see also RB 7-8.) But respondents do not identify any statutory authority for the proposition that a presumption of paternity can "become conclusive" other than through a judicial proceeding. Moreover, section 7630 suggests that it cannot. The statute provides that the existence or nonexistence of a relationship presumed to exist under section 7611 will be determined in "*[a]n action*." (§ 7630, subds. (a)-(c), emphasis added.) In other words, it is only through "an action"—i.e., a judicial proceeding—that a paternity presumption can be determined to exist. In any such proceeding, every man alleged to be a presumed father has the right to appear and introduce evidence to rebut the alleged presumption of his paternity. (§ 7635, subd. (b).) Thus, the law does not force an alleged presumed father to rely on a "nonexistence" action to rebut the presumption of his paternity—he can rebut the presumption in the same "action" in which another party (i.e., the child or the child's mother) seeks to establish it. (§§ 7611, 7612, 7630, 7635.)

Nor are respondents correct that a presumption of paternity can become conclusive if an alleged presumed father "delay[s] bringing an action to rebut the presumption." (RB 7-8.) *First*, none of the cases respondents cite suggests that a presumption of paternity becomes irrebutable through mere passage of time. In each case, what mattered was the length and nature of the relationship between the child and the alleged father, *not* delay in initiating an action. (*Elisa B. v. Superior Court* (2005) 37 Cal.4th 108, 123 (*Elisa B.*); *In re Jesusa V.* (2004) 32 Cal.4th 588, 606-607; *In re Nicholas H.*

(2002) 28 Cal.4th 56, 64-65; *In re Raphael P.* (2002) 97 Cal.App.4th 716, 723-724; *In re Jerry P.* (2002) 95 Cal.App.4th 793, 806-807; *In re Kiana A.* (2001) 93 Cal.App.4th 1109, 1116-1117.) *Second*, all but one of respondents' cases (*Elisa B.*) are dependency proceedings, not paternity proceedings. The issue before the courts was whether the alleged father had demonstrated a sufficient commitment to parental responsibilities to be entitled to reunification services and custody, *not* whether he should be adjudicated the legal father. (E.g., *In re Jerry P.*, *supra*, 95 Cal.App.4th at p. 804.)[11] *Third*, in all but one of respondents' cases (again, *Elisa B.*), the petitioners were seeking to establish a presumption of paternity, not to rebut it. Thus, the question before the courts was whether the alleged fathers' conduct entitled them to parental *rights*—not whether they should be saddled unwillingly with parental *responsibilities*. (*In re Jesusa V.*, *supra*, 32 Cal.4th at pp. 595-596; *In re Nicholas H.*, *supra*, 28 Cal.4th at p. 58; *In re Raphael P.*, *supra*, 97 Cal.App.4th at p. 718; *In re Jerry P.*, *supra*, 95 Cal.App.4th at p. 797; *In re Kiana A.*, *supra*, 93 Cal.App.4th at p. 1111.)

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For all of these reasons, section 7630(c) must be read to permit *both* "existence" and "nonexistence" actions. Under this reading, Fouad has standing to assert a "nonexistence" action.

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[11] The petitioner in *Elisa B.*, *supra*, 37 Cal.4th 108 sought to avoid a paternity adjudication, but the decision does not suggest that a section 7611(d) presumption becomes conclusive if a petitioner delays bringing an action. Instead, the Court held that the petitioner could not rebut the presumption in view of the particular facts of the case—where the petitioner "actively participated in causing the children to be conceived" and "voluntarily accepted the rights and obligations of parenthood after the children were born." (*Id.* at p. 125.) In other words, the point was not how long petitioner waited to bring a nonexistence action, but rather the Court's reluctance to relieve her of parental obligations to children who would not have been conceived but for her active participation.

III.

ROBERT J. IS NOT DISPOSITIVE OF THIS APPEAL.

Respondents urge that the principle of stare decisis requires this Court to follow *Robert J.*, *supra*, 51 Cal.App.4th 1642. (RB 9-11.) It does not: Since "there is no 'horizontal stare decisis' within the Court of Appeal" (*In re Marriage of Shaban* (2001) 88 Cal.App.4th 398, 409), this Court is "*not bound* by a decision of another Court of Appeal with which [it] disagree[s]" (*Geffen v. County of Los Angeles* (1987) 197 Cal.App.3d 188, 193, emphasis added; see also *Los Angeles Police Protective League v. City of Los Angeles* (1985) 163 Cal.App.3d 1141, 1147, disapproved on another ground in *Laurel Heights Improvement Ass'n v. Regents of University of California* (1988) 47 Cal.3d 376 ["we are not bound by the holding in the *United Firefighters* case inasmuch as one district or division may decline to follow a prior decision of a different district or division"]).[12]

There is good reason here not to follow *Robert J.* As the opening brief demonstrates, *Robert J.* is sparsely reasoned and does not grapple with the difficult problems that its interpretation of the ambiguous statutory language poses. It also fails to consider the Legislature's intent and to reconcile its interpretation with other sections of the statute. (AOB 31-32.)

But even if the Court were to adopt *Robert J.*'s minimal analysis, the case still would not be dispositive of this appeal. As we have demonstrated, Fouad claims standing under two separate sections of the Family Code—

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[12] Respondents' cases do not suggest otherwise. (RB 10-11.) In *Galloway Crane & Trucking Co. v. Truck Ins. Exch.* (1977) 67 Cal.App.3d 386, 388, a sister court's decision was said to be binding because it "was cited with approval by the Supreme Court"—*not* because the appellate court's opinion was itself decisive. *In re Ruth H.* (1972) 26 Cal.App.3d 77, 86, also does not suggest that an appellate decision is binding on another court of appeal. Rather, it suggests only that the court elected to avoid conflict with another appellate court, presumably for prudential reasons.

sections 7630(b) *and* 7630(c). *Robert J.* considered the petitioner's standing *only under section 7630(c)*, because it was undisputed that the petitioner was not the child's presumed father. The court had no reason to consider, and did not consider, a central issue here: whether a court may adjudicate nonpaternity *under section 7630(b)* where a man's presumed father status is disputed. (Section I, *ante*.) Accordingly, *Robert J.* cannot be fully dispositive of the present case.

CONCLUSION

Establishing paternity for all children is a valid legislative goal, but it is not furthered by permitting false allegations of paternity to go unchallenged. The statute should be interpreted to permit alleged fathers *both* to establish *and* to challenge their paternity in appropriate cases. Because this is such a case, the trial court erred in concluding that Fouad lacks standing. The judgment should be reversed so that Fouad can pursue his nonpaternity claim on the merits.

Dated: June __, 2006

JAFFE & CLEMENS
Daniel J. Jaffe
Aimee H. Gold

GREINES, MARTIN, STEIN & RICHLAND LLP
Robin Meadow

By______________________________________
Robin Meadow

Attorneys for Petitioner and Appellant FOUAD SAID