

A.G. v County of Los Angeles (2018) 28 Cal. App. 5th 373

A non-biological child has standing to bring a wrongful death claim if the defendants cannot rebut the parentage presumption.

FACTS/PROCEDURE

On January 6, 2015, Brian Pickett had an encounter with members of the Sheriff’s Department, which led to his death. Tamai Gilbert was Pickett’s partner, and the mother of his biological sons, Brian and Micah, as well as the mother of A.G. A.G. sued as Pickett’s surviving child against the County of Los Angeles and the Los Angeles County Sheriff’s Department (Defendants) for wrongful death.

Defendants moved for summary judgment and summary adjudication asserting that A.G. was not a surviving child of Pickett and had no standing to sue. Defendants based this on the fact that Pickett was not A.G.’s biological father and therefore A.G. had no standing to sue under Code of Civil Procedure section 377.60.

A.G. argued that Pickett, having accepted A.G. into his home and held him out as his natural son, and therefore Pickett should be presumed to be his father pursuant to Family Code section 7611. The trial court concluded that the presumption of parentage established in Family Code section 7611 has no application to standing and granted summary judgment against A.G. The trial court denied A.G.’s motion for a new trial and A.G. appealed.

DISCUSSION

The Court of Appeal for the Second District reversed and remanded. The Court found that Defendants failed to meet their burden on summary judgment. “To satisfy its initial burden, a Defendant must present evidence and not simply point out that the plaintiff does not possess, and cannot reasonably, obtain, needed evidence.”¹

The Court relied on *In re Nicholas H.*² which addressed whether the admission by a presumed father that he was not the biological father of the child necessarily rebutted the presumption. The Supreme Court found that a non-biological parent can be a presumed parent. Applying the reasoning in *Nicholas H.* the Court concluded that purely biological evidence, such as that provided by Defendants would fail to rebut the presumption under Family Code section 7611.

Thus, the trial court erred in granting Defendants’ motion for summary judgment because Defendants did not meet their burden. Additionally, the trial court erred by ruling that the presumption of parentage established in Family Code section 7611 had no application to standing.

¹ (*Aguilar v. Atlantic Richfield Co.*, (2001) 25 Cal.4th 826, 854.)

² ((2002) 28 Cal.4th 56.)