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<div style="text-align: right;">Bookmark Reprints</div> <p><small>This is the property of the Daily Journal Corporation and fully protected by copyright. It is made available only to Daily Journal subscribers for personal or collaborative purposes and may not be distributed, reproduced, modified, stored or transferred without written permission. Please click "Reprint" to order presentation-ready copies to distribute to clients or use in commercial marketing materials or for permission to post on a website. Friday, January 20, 2012</small></p> <h2>Same-sex custody ruling reversed on appeal</h2> <p>By Laura Ernde</p> <p>A 3rd District Court of Appeal decision Thursday gives family law judges a road map for recognizing parental relationships within nontraditional families.</p> <p>The case concerned a San Joaquin County child whose mother got into a serious relationship with a woman shortly after the child was born. When the couple split up five years later in 2008, the girlfriend sought custody and visitation.</p> <p>San Joaquin County Superior Court Judge Xapuri B. Villapudua found that the former girlfriend was not a presumed parent under the Uniform Parentage Act, which covers unmarried parents who are gay or straight.</p> <hr/> <h3>'Whether you're a legal parent doesn't depend on your sexual orientation, gender or marital status.' - Cathy Sakimura</h3> <hr/> <p>But Justice Vance Raye wrote that the judge mistakenly focused on the relationship between the two women instead of the former girlfriend's relationship with the child. <i>E.C. v. J.V.</i>, 2012 DJDAR 720.</p> <p>"Thus, by focusing its attention on the sexual relationship between appellant and respondent, the court failed to analyze the relationship between appellant and the minor. This was error," he wrote, sending the case back to the trial court for a second look in light of the opinion.</p> <p>The girlfriend's failure to include the girl on her tax returns shouldn't have been a factor either because she was precluded from doing so under federal law, the court said.</p> <p>Identified in the court ruling by her initials, E.C., the girlfriend was present at the birth of the child, lived with the child on and off and enrolled the child in school, the court said.</p> <p>The biological mother did not have a lawyer for the appeal.</p> <p>Merri A. Baldwin of Chapman, Popik & White LLP, who represented E.C. pro bono, said the ruling gives trial court judges guidance in cases involving not only same-sex couples but also other unmarried couples.</p> <p>"What I really like about it, is the opinion really validates the strong interest the state has in fostering the relationship between children and parents and focuses on that relationship as opposed to the relationship between the two parents," she said.</p> <p>Cathy Sakimura, an attorney at the National Center for Lesbian Rights, said the ruling affirms and strengthens California law.</p> <p>"Whether you're a legal parent doesn't depend on your sexual orientation, gender or marital status," Sakimura said. "It's about your actions as a parent to the child."</p>				
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