

3-15-1976

**In re Lisa R. 13 Cal. 3d 336, 532 P.2d 123, 119 Cal. Rptr. 475  
(1975)**

Elliot Shelton

Follow this and additional works at: <https://digitalcommons.pepperdine.edu/plr>



Part of the [Constitutional Law Commons](#), and the [Family Law Commons](#)

**Recommended Citation**

Elliot Shelton *In re Lisa R. 13 Cal. 3d 336, 532 P.2d 123, 119 Cal. Rptr. 475 (1975)*, 3 Pepp. L. Rev. Iss. 1 (1976)

Available at: <https://digitalcommons.pepperdine.edu/plr/vol3/iss1/12>

This Note is brought to you for free and open access by the Caruso School of Law at Pepperdine Digital Commons. It has been accepted for inclusion in Pepperdine Law Review by an authorized editor of Pepperdine Digital Commons. For more information, please contact [bailey.berry@pepperdine.edu](mailto:bailey.berry@pepperdine.edu).

**In re Lisa R. 13 Cal.3d 336, 532 P.2d 123,  
119, Cal. Rptr. 475 (1975)**

In *Stanley v. Illinois*,<sup>1</sup> the United States Supreme Court held that an unwed father who claims that he is fit to care for his children and desires to do so is entitled to a hearing on the issue of his fitness. This decision has been implemented recently by the California Supreme Court in *In re Lisa*.<sup>2</sup> In that case the court held that a natural father may present evidence of his paternity notwithstanding a statutory presumption,<sup>3</sup> which on its face, precluded him from so doing because the child was born during an existing marriage to which the father was not a party.<sup>4</sup>

In *Stanley*, the unwed parents lived together for eighteen years during which time they had three children. Upon the death of the mother, the illegitimate children, pursuant to the Illinois statutory scheme, were declared wards of the state, removed from their father's custody and placed in guardianship without proof of neglect and without a hearing as to the fitness of the father, who, under the statutory procedure, was presumed to be unfit to raise his children.

The United States Supreme Court held that the Due Process Clause of the Fourteenth Amendment entitles an unwed father to a hearing before his children can be taken from him; it further concluded that the state cannot, consistently with due process, presume that unmarried parents are unfit and that the denial to unwed fathers of a hearing on fitness accorded to all other parents whose custody is challenged is a denial of the equal protection.<sup>5</sup> The Court, however, went beyond the facts of the case and held that the state was required to afford a hearing to all unwed fathers

---

1. *Stanley v. Illinois*, 405 U.S. 645 (1972) [hereinafter *Stanley*].

2. 13 Cal. 3d 336, 532 P.2d 123, 119 Cal. Rptr. 475 (1975).

3. CAL. EVID. CODE § 661 (West 1966). A child of a woman who is or has been married, born during the marriage or within 300 days after the dissolution thereof, is presumed to be a legitimate child of that marriage. This presumption may be disputed only by the people of the State of California in a criminal proceeding under Section 270 of the Penal Code or by the husband or wife, or the descendant of one or both of them. In a civil action, this presumption may be rebutted only by clear and convincing proof.

4. 13 Cal. 3d at 647-51, 532 P.2d at 130-33, 119 Cal. Rptr. at 482-85.

5. 405 U.S. at 656-58.

who claim that they are fit to care for their children when the mother cannot, or will not, provide that care and who desire to care for their children.<sup>6</sup>

It was against the backdrop of the *Stanley* case that the California Supreme Court rendered its decision in *In re Lisa R.* Lisa R. was born in August 1966. Her mother was found in a drunken condition in her gas-filled home with Lisa and another minor. She had previously pleaded guilty to a child neglect charge and was on probation. The county probation office filed a petition to make Lisa a dependent child of the juvenile court. The report disclosed that Lisa's mother had revealed that Lisa was conceived during a casual relationship with appellant Victor R. during the time she and her husband were separated.<sup>7</sup> On July 3, 1969, the petition was sustained and Lisa was adjudged a dependent child of the court pursuant to Welfare and Institutions Code Section 600, subdivision (a).<sup>8</sup>

Lisa was placed in the custody of foster parents. After short stays at two foster homes, Lisa was placed in another foster home, where she still resided at the time of the appeal.<sup>9</sup>

In June 1970, the first annual dependency review resulted in an order that Lisa's dependency status be continued. The probation officer's report disclosed that Lisa's mother had become addicted to heroin, and that the whereabouts of Victor R., identified as Lisa's biological father, remained unknown.<sup>10</sup> The 1971 annual review was accompanied by a report that the husband of Lisa's mother

6. *Id.* at 657 n. 9; see *State ex rel. v. Lutheran Soc. Serv. of Wis. & Upper Mich.*, 47 Wis. 2d 420, 178 N.W.2d 56 (1970), *vacated sub nom. Rothstein v. Lutheran Social Services*, 405 U.S. 1051 (1972); Rich, *Plight of the Putative Father in California Custody Proceedings: A Problem of Equal Protection*, 6 U.C. DAVIS L. REV. 1, 2-3 (1973); 13 Cal.3d at 648, 532 P.2d at 130, 119 Cal. Rptr. at 483.

7. 13 Cal. 3d at 630, 532 P.2d at 125, 119 Cal. Rptr. at 477; *In re Lisa R.*, 41 Cal.App. 3d 89, 92-93, 115 Cal. Rptr. 859, 861 (1974).

8. Section 600 provides in pertinent part: Any person under the age of 18 years who comes within any of the following descriptions is within the jurisdiction of the juvenile court which may adjudge such person to be a dependent child of the court. (a) Who is in need of proper and effective parental care or control and has no parent or guardian, or has no parent or guardian, or has no parent or guardian willing to exercise or capable of exercising such care or control.

9. 13 Cal.3d at 640, 532 P.2d at 125, 119 Cal. Rptr. at 477.

10. *Id.*

had died of a drug overdose. The report again identified Victor R. as Lisa's natural father. The child's dependency status was continued at this time and again at the following review in June 1972.<sup>11</sup>

The fourth annual review of Lisa's status was held in July of 1973. At the hearing, Victor R. appeared with counsel whom he had employed to commence proceedings to have Lisa placed in his custody.<sup>12</sup> He offered to prove certain facts in order to establish his standing before the court. Appellant offered to prove that he commenced living with Lisa's mother in September 1965 while she was separated from her husband. She soon became pregnant. Lisa was born on August 1, 1966, as a result of this pregnancy. His surname was used on the birth certificate, and he acknowledged Lisa as his child. He lived with Lisa's mother until the child was four or five months old. Lisa's mother turned to her husband and, contrary to appellant's wishes, would not turn Lisa over to him. He was finally able to locate Lisa in 1970 through county welfare agencies. Appellant and his wife visited her until advised by welfare officials that such visits must be discontinued. In 1973, after a petition brought under Civil Code Section 232 to establish that Lisa had been abandoned by her parents was denied, appellant made arrangements to again visit Lisa. Proof was further offered that appellant was healthy, had a steady job, had a good relationship with his four sons, and that his immediate plans were to establish a relationship with Lisa and make a home for her.<sup>13</sup>

At the hearing, the court first entertained appellant's offer of proof; it then ruled that the juvenile court lacked jurisdiction to determine paternity, that appellant had no standing and that appellant be excluded from the court.<sup>14</sup>

The effect of the juvenile court ruling was that Lisa's only living parent was denied the right to see her and to participate in proceedings concerning her welfare and custody. Health had deprived Lisa of her mother and stepfather. As a result of the denial of a petition in 1973 to have Lisa declared an abandoned child under Civil Code Section 232, Lisa could not be freed for adoption. She would have to remain in foster care until she was eighteen. In effect, Lisa had been made an orphan, even though she had a living parent who wanted to care for her.<sup>15</sup>

---

11. *Id.* at 641, 532 P.2d 126, 119 Cal. Rptr. 478.

12. *Id.*

13. *Id.* at 642, 532 P.2d at 127, 119 Cal. Rptr. at 478 n.4.

14. *Id.* at 642, 532 P.2d at 127, 119 Cal. Rptr. at 478.

15. Brief for Appellant at 4 and 17, *In re Lisa R.*, 13 Cal. 3d 636, 532 P.2d 123, 119 Cal. Rptr. 475 (1975).

The Supreme Court of California reversed the court below. The threshold question of whether the juvenile court is vested with jurisdiction to determine the paternity of a minor dependent was answered in the affirmative.<sup>16</sup> Although the juvenile court is not specifically vested with such jurisdiction, it does have the authority to make such determinations incidentally necessary to its functions.<sup>17</sup> For example, the determination that a child should be a dependent ward because she has no parent cannot be made without a contemporaneous determination of parentage.<sup>18</sup>

After disposition of the jurisdictional question, the critical question remaining before the court was whether appellant, Victor R. could offer proof that he was Lisa's natural father, notwithstanding a statutory presumption which, on its face, precluded him from so doing.<sup>19</sup> Evidence Code Section 661 provides that the child of a married woman is presumed to be the legitimate child of that marriage, and that the presumption can only be rebutted by the married woman, her husband, the descendants of one or both of them or the State of California in an action under Section 270 of the Penal Code.<sup>20</sup>

In holding that the presumption violated due process, the court followed the approach in *Stanley* by balancing the interests of the father in his child against the interest of the State in precluding the father from proving his paternity.<sup>21</sup> The court was careful to point out that the interest of the appellant, as in *Stanley*, arose from more than the mere biological fact of parenthood.<sup>22</sup> Appellant resided with Lisa's mother both before and after her birth, contributed to Lisa's support, and his name appeared on her birth certificate. He was deprived of Lisa's custody against his wishes,

---

16. *Id.* at 644, 532 P.2d at 128, 119 Cal. Rptr. at 480.

17. CAL. WELF. & INST. CODE § 701 (West 1972).

18. 13 Cal.3d at 643, 532 P.2d at 127-28, 119 Cal. Rptr. at 479-80.

19. *Id.* at 647, 532 P.2d at 130, 119 Cal. Rptr. at 482.

20. CAL. EVID. CODE § 661 (West 1966); Section 270 of the Penal Code provides: "If a father of either a legitimate or an illegitimate minor child willfully omits, without lawful excuse, to furnish necessary clothing, food, shelter or medical attendance, or other remedial care for his child, he is guilty of a misdemeanor punishable by a fine not exceeding one thousand dollars (\$1,000), or by imprisonment in the county jail not exceeding one year, or by both such fine and imprisonment."

21. 13 Cal.3d at 649-51, 523 P.2d at 132-33, 119 Cal. Rptr. at 484-85.

22. *Id.* at 649, 532 P.2d at 131, 119 Cal. Rptr. at 483.

and consistently sought to assert his rights as her father. Appellant's wife was aware that he lived with Lisa's mother and gave her permission and encouragement for appellant to acknowledge<sup>23</sup> Lisa as his child. Furthermore, appellant had no alternative remedy by which to protect his interest as Lisa's father.<sup>24</sup>

On the other hand, the court noted the interest of the state in the welfare of the child was not served by statutory presumption, and in fact, might be defeated if the natural father was a fit parent. The interest of the state in relieving the child of the strain of illegitimacy is not served because a natural father seeking to establish paternity would undoubtedly intend to legitimize the child. The interest in the preservation of the family unit is likewise not served when the family unit has been dissolved by the death of the mother and the presumed father.<sup>25</sup> With respect to the state's interest in administrative convenience and judicial economy based on the assumption that most unwed fathers are unfit parents, the court looked to *Stanley* in rejecting the proposition:

A possible legitimate interest which the state might assert in support of the conclusiveness of the presumption is speed and efficiency of judicial inquiry in circumstances where such inquiry might seldom be productive. In *Stanley* it was stated that it may be argued that unwed fathers are seldom fit parents. It was nevertheless concluded that due process precluded the conclusiveness of the presumption of unfitness. "The establishment of prompt efficacious procedures to achieve legitimate state ends is a proper state interest worthy of cognizance. . . . But the Constitution recognizes higher values than speed and efficiency. Indeed, one might fairly say of the Bill of Rights in general, and the Due Process Clause in particular, that they were designed to protect the fragile values of a vulnerable citizenry from overbearing concern for efficiency and efficacy . . . . The state insists on presuming rather than proving Stanley's unfitness solely because it is more convenient to presume than prove. Under the Due Process Clause that advantage is insufficient to justify refusing a father a hearing when the issue at stake is the dismemberment of his family . . . ."<sup>26</sup>

The order of the court below was reversed to allow the appellant to present evidence of his paternity. However, the status of the child was not affected and she remained subject to the jurisdiction

---

23. CAL. CIV. CODE § 230 (West 1954). The father of an illegitimate child, by publicly acknowledging it as his own, receiving it as such, with the consent of his wife, if he is married, into his family, and otherwise treating it as if it were a legitimate child, thereby adopts it as such; and such child is thereupon deemed for all purposes legitimate from the time of its birth. The foregoing provisions of this Chapter do not apply to such an adoption.

24. 13 Cal.3d at 649, 532 P.2d at 131-33, 119 Cal. Rptr. at 483-84.

25. *Id.* at 650, 532 P.2d at 132, 119 Cal. Rptr. at 484.

26. *Id.* at 650-51, 532 P.2d 133-34, 119 Cal. Rptr. at 484-85 quoting *Stanley v. Illinois*, 405 U.S. 645, 656-58.

of the juvenile court. If appellant can establish paternity, the court must determine that he is a fit parent before he may be awarded custody.<sup>27</sup>

The court declined the invitation of *amicus curiae* to issue a comprehensive interpretation of *Stanley*<sup>28</sup> and limited its decision to the holding that the presumption which strictly precludes a natural father from offering proof of his paternity under the facts of this case is a violation of due process.<sup>29</sup> The decision does, however, indicate the posture which the California Supreme Court has taken with respect to *Stanley*. The court noted that due process does not require that the unmarried father be afforded an opportunity to prove his parentage in all cases. Rather, the reasonableness of the statutory limitation on the right to offer proof of parentage depends upon the circumstances of each particular case.<sup>30</sup> Therefore, the court must make a preliminary determination, as by offer of proof, that due process would be offended if the particular claimant were denied the opportunity to prove his paternity.<sup>31</sup>

This requirement suggests that the California Supreme Court has interpreted *Stanley* to mean that the interest of a father in his child is not cognizable under the Due Process Clause of the Fourteenth Amendment, unless there is a social as well as a biological relationship between father and child. Indeed, the court points out that "[T]he private interest which appellant seeks to preserve in the instant case as in *Stanley* arose from more than the mere biological fact that he is Lisa's natural father."<sup>32</sup> The court in *Stanley* likewise referred to the unwed father's interest as "[T]hat of a man in the children he has sired and raised. . . ."<sup>33</sup> Such a restrictive reading of *Stanley* poses practical limitations.<sup>34</sup>

Though the court indicated that the existence or non-existence of the right to a hearing under due process will require a factual

27. 13 Cal.3d at 651, 532 P.2d at 133, 119 Cal. Rptr. at 485.

28. Brief for Children's Home Society of California as *amicus curiae* at 23, & *In re Lisa R.*, 13 Cal.3d 636, 532 P.2d 123, 119 Cal. Rptr. 475 (1975).

29. 13 Cal.3d at 648 n.14, 532 P.2d at 131 n.14, 119 Cal. Rptr. at 483 n.14.

30. *Id.* at 651, 532 P.2d at 133, 119 Cal. Rptr. at 485.

31. *Id.*

32. *Id.* at 649, 532 P.2d at 131, 119 Cal. Rptr. at 483.

33. 405 U.S. at 651 (emphasis added).

34. Comment, 70 MICH. L. REV. 1581, 1606 (1972); Note, 59 VA. L. REV. 517, 522 (1973).

determination in each case, there is no objective standard to determine the extent of the social relationship between father and child necessary to require constitutional protection. The courts will be presented with difficult problems of interpretation which may lead to arbitrary standards.<sup>35</sup> A standard which does not recognize the biological relationship alone as constitutionally protected does not take into account the interest of a father in the future relationship with his child. In many cases, the failure of the unwed father to establish a relationship with his child may be the result of circumstances beyond his control. Since the mother of an illegitimate child has the right to custody,<sup>36</sup> she has the power to frustrate the establishment of any social relationship between father and child. Since the natural father is not entitled to notice of adoption,<sup>37</sup> she may put the child beyond his reach for all time. Even if the court holds that the father is entitled to notice under *Stanley*, the mother may frustrate its effectiveness by her failure to identify the father.

Although the decision in *In re Lisa R.* deals solely with a procedural question, that is, whether the unwed father under the circumstances of this case is entitled to a hearing to prove his parentage, the substantive effects of this decision are substantial. If the appellant were to be denied a hearing he would lose the rights attendant to the status which he sought to assert. The status of a parent includes the right to the companionship, care, management and custody of the child if the parent is fit, as well as the right to inherit from the child. It is important to note that in balancing the interests which the unwed father here sought to protect against the interest of the state in denying a hearing, the court relied<sup>38</sup> on *Nebbia v. New York*.<sup>39</sup> The United States Supreme Court in *Nebbia* considered the constitutionality of an economic regulation. When regulating an economic interest, due process only requires that the law have a reasonable relationship to effectuate a purpose within the legitimate police power of the state without being arbitrary or capricious.<sup>40</sup> However, the Supreme Court pointed out in *Stanley* that "[i]t is plain that the interest of a parent in the companionship, care, custody, and management of his or her children come[s] to this Court with a momentum for respect

---

35. Note, 59 VA. L. REV. 517, 522.

36. CAL. CRV. CODE § 200 (West 1954).

37. Adoption of Laws, 201 Cal.App. 2d 494, 500, 20 Cal. Rptr. 64, 68 (1962).

38. 13 Cal.3d at 651, 532 P.2d at 133, 119 Cal. Rptr. at 485.

39. *Nebbia v. New York*, 291 U.S. 502 (1934) [hereinafter *Nebbia*].

40. *Id.* at 537.

lacking when appeal is made to liberties which derive merely from shifting economic arrangements."<sup>41</sup> *Stanley* was premised, as the California Court noted in its opinion, on the rights to conceive and raise one's children,<sup>42</sup> rights that have been deemed "essential",<sup>43</sup> "basic civil rights of men",<sup>44</sup> and "rights far more precious than property rights".<sup>45</sup> Rather than recognizing the fundamental nature of these rights, the court in *In re Lisa R.* merely held the presumption in this case to be "unreasonable, arbitrary and capricious, and a denial of due process".<sup>46</sup> The court has thus left open for future adjudication the question of whether or not the impairment of the interests of an unwed father in his children will require a showing of compelling necessity by the state rather than the mere showing of a reasonable relation to a legitimate state purpose necessary to uphold an economic regulation.

ELLIOT SHELTON

---

41. 405 U.S. at 651, quoting *Kovacs v. Cooper*, 336 U.S. 77, 95 (1949) (concurring opinion).

42. 13 Cal.3d at 648, 532 P.2d at 131-32, 119 Cal. Rptr. at 482-83.

43. 405 U.S. 651, quoting *Meyer v. Nebraska*, 262 U.S. 390, 399 (1923).

44. 405 U.S. at 651, quoting *Skinner v. Oklahoma*, 316 U.S. 535, 541 (1942).

45. 405 U.S. at 651, quoting *May v. Anderson*, 345 U.S. 528, 533 (1953).

46. 13 Cal. 3d at 651, 532 P.2d at 133, 119 Cal. Rptr. at 485.

