

CERTIFIED FOR PUBLICATION
IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION SIX

In re adoption of CHARLOTTE D.,

A Minor.

CORNELIS D. and BRIDGETT D.,

Respondents,

v.

RONALD D.,

Appellant.

2d Civil No. B183788
(Super. Ct. No. A14917)
(Ventura County)
ORDER MODIFYING OPINION
AND DENYING REHEARING
(No Change in Judgment)

THE COURT:

It is ordered that the opinion filed herein on February 15, 2006. be modified as follows:

1. Delete all of the text commencing with the word "Moreover" of the first full paragraph on page 15 and ending with the word "unfitness" at the end of the first full paragraph on page 16 and insert in its place:

In any event, the 2002 amendment of Family Code section 3041 (Stats. 2002, ch. 1118, § 3) supersedes any suggestion in the 1995 *Cody W.* decision that a finding of detriment under that section is equivalent to a finding of unfitness. The 2002 amendment added subdivision (c), which, as previously noted, provides that "[a] finding of detriment does not require any finding of unfitness of the parents."10/

3. Add as footnote 10 the following footnote, which will require renumbering of all subsequent footnotes.

10/ Family Code section 3041, subdivision (c), provides in full: "As used in this section, 'detriment to the child' includes the harm of removal from a stable placement of a child with a person who has assumed, on a day-to-day basis, the role of his or her parent, fulfilling both the child's physical needs and the child's psychological needs for care and affection, and who has assumed that role for a substantial period of time. A finding of detriment does not require any finding of unfitness of the parents." Subdivision (d), also added in 2002, provides that "if the court finds by preponderance of the evidence that the person to whom custody may be given is a person described in subdivision (c), this finding shall constitute a finding that the custody is in the best interest of the child and that parental custody would be detrimental to the child absent a showing by a preponderance of the evidence to the contrary."

[There is no change in the judgment.]

Respondents' petition for rehearing is denied.