SJC to Consider Parentage Claims by Unmarried Same-Sex Partner

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We previously wrote about a landmark decision by a Massachusetts Probate and Family Court judge that granted shared legal and physical custody to a de facto mother. Prior to the issuance of this de facto judgment, the non-biological mother filed a separate complaint to establish her legal parentage to the children based on two Massachusetts laws. The court dismissed that complaint and she has now appealed that decision in Partanen v. Gallagher.

The Supreme Judicial Court ("SJC"), Massachusetts' highest court, is poised to determine whether an unmarried, same-sex partner has the legal right to assert a claim of parentage pursuant to G.L. c. 46 §4B (presumption of paternity by artificial insemination) or G.L. c. 209C (paternity statute for children born out of wedlock), or whether such claims of parentage must be litigated pursuant to the Probate and Family Court's equity jurisdiction. It is argued that establishing a legal parent is preferable to de facto status, as the children would then be entitled to share in inheritance rights and other privileges granted to other children with legal parents.

"Any child born to a married woman as a result of artificial insemination with the consent of her husband, shall be considered the legitimate child of the mother and such husband." G.L. c. 46, §4B. The couple in this case jointly made the decision to start a family by utilization of artificial insemination. However, they were never married and their relationship disintegrated in 2014. The utilization of the term husband in this law does not exclude same-sex partners, per the 2012 Massachusetts Appeals Court decision in Della Corte v. Ramirez. Instead, the dispute centers around the marriage requirement. There is no dispute that these women were not married at the time one gave birth to the children. Karen (the non-biological parent) argues that the couple's joint decision to use artificial insemination to bring children into the world to form their family gave her the right to establish that she is a legal parent.

Additionally, Karen claims that she is entitled to assert a claim of parentage pursuant to G.L. c. 209C, the so-called paternity statute governing children born out of wedlock. A male may sign a voluntary acknowledgement of paternity, but the law precludes the same for same-sex couples. Karen carefully points to prior case law holding that a man could not be relieved of his obligation to pay child support, even though he had no biological connection to the child. It is argued that a biological connection is not required to establish paternity pursuant to 209C.

It is clear that this case raises substantial questions and the implications of any decision may be far reaching. No briefs have been filed as of this writing, but the SJC plans to hold oral arguments in April of 2016.

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