



THE CASE FOR INCLUSION

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Notice of Adoption Not Required for Known Sperm Donor in MA

MAY 7, 2015

In Massachusetts, children who are conceived during a marriage through the use of assisted reproductive technology (such as in vitro fertilization or artificial insemination) are legally children of both parents so long as there was spousal consent to the conception. In those situations, because each spouse is a “lawful parent” of the child at birth, there is no separate obligation for either spouse to adopt the child in order to assert their parental rights.

However, because same-sex marriages are not universally recognized by all 50 states, same-sex couples tend to take additional steps to protect their parental rights, including adopting their children. This ensures recognition of their parentage when they travel outside of Massachusetts, or if the family relocates to a state where same-sex marriages are not recognized.

Adoptions are governed by statute in Massachusetts, specifically G. L. c. 210, § 2. The statute requires that notice be provided to and written consent given by any individual who may assert parental rights over a child, such as the lawful parents, before an adoption may be granted. The statute is silent on whether sperm donors fall into the category of those individuals who may assert parental rights over a child created from their sperm.

Because the statute is unclear, a Massachusetts probate and family court was unable to decide whether the lawful parents of a child must give notice to, and get written consent from, the known biological father/sperm donor before putting a child up for adoption. The probate and family court reported the issue to the appeals court for a determination.

Today, the SJC decided the issue, holding that the relevant statutes and case law confer legal parentage on the birth mother and her consenting spouse. Therefore, it is presumed that marital children have only two legal parents. Although the SJC acknowledged that there are certain circumstances where a “putative father,” a man whose legal relationship to a child has not been established but claims that he may be the biological father of a child who is born to an unmarried woman, may establish paternity, the SJC distinguished that circumstance from the issue of a known

sperm donor.

The SJC ultimately held that G.L. c. 210, § 2 does not require the lawful parents of a child to give notice of the petition for adoption to a known sperm donor.

You can read the full opinion [HERE](#).