



THE CASE FOR INCLUSION

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SJC Divided Over Legal Parentage Claims

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Today, the Massachusetts Supreme Judicial Court (“SJC”) heard oral arguments on the Partanen v. Gallagher matter, [which I previously wrote about](#). On one side of the case, a de facto mother argued that her legal parentage should be established because the parties planned a family through assisted reproduction, consented to the procedure and held the children out as their own. In objecting to the request, the biological mother argued that legal parentage cannot be established where she did not consent to an adoption and was not married to the de facto parent.

Oral arguments before the SJC show a sharply divided court as to whether an unmarried person may establish legal parentage without a biological connection or adoption of a child. The Justices grilled both sides well beyond the allotted fifteen minute time frame and appeared to indicate that there will be a split decision. Justice Cordy continually expressed his skepticism that legal parentage could be established pursuant to G.L. c. 209C (paternity statute) or G.L. c. 46, § 4B (assisted reproduction). Concerns regarding the implementation of a rebuttable presumption and factors that would need to be demonstrated to overcome a presumption were voiced by Justices Cordy and Spina.

Justice Botsford and Justice Lenk appeared to favor the establishment of legal parentage in this matter. Justice Botsford demanded to know why biology was so important if there is nothing in the statute requiring it. At one point, Justice Lenk asked what about the rights of the children? Watch the entire oral arguments [HERE](#).

It remains uncertain as to whether the SJC will rule that an unmarried person may establish legal parentage without a biological connection, marriage or adoption of a child. Stay tuned for further developments on this landmark case.