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Is sperm donation a risky business in California?

Judith Daar is a visiting professor at UC Irvine School of Law, clinical professor at UC Irvine School of Medicine and professor at Whittier Law School.



A Kansas man who answered a Craigslist ad soliciting a sperm donor for a lesbian couple has found himself embroiled in a novel legal battle. The dispute does not involve the parties squabbling over parental rights to the now 3-year-old girl, as occasionally plagues third-party reproduction scenarios. Instead, the issue is whether William

Marotta, a married man and foster parent who gratuitously provided his sperm to the women, can be held liable for child support and other expenses by the state's Department of Children and Families. Holding Marotta liable for any child-related expenses would directly contravene a preconception written agreement he and the women signed absolving him of any parental rights or responsibilities. The state's pursuit of this good Samaritan reveals the frailties of family formation with the aid of a known sperm donor.

The state became involved in this family matter after the birth mother filed for Medicaid to secure health insurance for the child. She and her partner had separated two years earlier but remained devoted co-parents to their daughter. Since Kansas does not permit two women to list their names on a birth certificate, nor does it permit second parent adoption by a same-sex partner, the state treated the seeming lack of a legal father as an opportunity to pursue financial support from whoever provided the gametic material for the child's conception. Reportedly the state demanded the donor's name as a condition of benefit conferral. Despite the nonbirth mother's assurances to the department that she was the responsible second parent, the state treated her as a legal stranger to her own daughter.

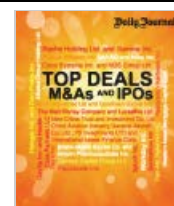
Kansas, like California, is one of 30 U.S. states with statutory law on the parental status of sperm donors. Most of these state laws derive from the 1973 Uniform Parentage Act, which offers a two-part approach to parentage following artificial insemination by donor. First, the act declares that a husband who consents to his wife's insemination under the supervision of a licensed physician will be treated "as if he were the natural father of a child thereby conceived."

The second provision immunizes a donor from parental status if he provides semen "to a licensed physician for use in artificial insemination of a married woman other than the donor's wife." Over time, many states adopting the act, including California, shed the restriction that the law apply only when a married woman was involved, recognizing the rights of unmarried individuals to seek assistance in reproduction. But the requirement that a licensed physician remain part of the equation in order for legal protection to extend has remained largely intact.

Today both Kansas and California law provide that a sperm donor "is treated in law as if he were not the" natural father of any resulting child unless agreed to in writing by the donor and the woman, so long as the semen is provided to a licensed

SPECIAL REPORT

Top Deals



Wednesday, January 16, 2013

U.S. Court of Appeals for the 9th Circuit 'Innocent spouses' can avoid large IRS tax bills, divided 9th Circuit panel rules

The U.S. Tax Court has the authority to go beyond Internal Revenue Service fact-finding to aid an "innocent spouse" who would otherwise be liable for a big tax bill, a divided 9th Circuit panel held Tuesday.

Judges and Judiciary

State Supreme Court justice recuses self from employment law case

State Supreme Court Justice Marvin Baxter recused himself from deciding on an employment discrimination case Tuesday one week after a lawsuit was filed against his daughter alleging pregnancy discrimination and wrongful termination.

Judicial discipline panel rejects judge association's request to allow early discovery

Rejecting a request from the state judges association, the Commission on Judicial Performance said it will not change its rules to give early discovery to judges under investigation.

Corporate

Davis Polk helps Comcast close \$3 billion debt offering

Locking in interest rates that continue to linger near all-time lows, cable giant Comcast Corp. closed a \$3 billion Securities and Exchange Commission-registered debt offering with assistance from Davis Polk & Wardwell LLP.

Law Practice

Shartsis Friese doubles female partner ranks

Shartsis Friese LLP doubled its female partner ranks this week with the addition of Winston & Strawn LLP partner Nicole Dogwill and the promotion of three associates - Christina Hamilton, Larisa Meisenheimer and Lisa Jacobs.

Corporate

physician. For some intended parents, including the couple in Kansas, the use of a physician can prove beyond their financial means. The cost of doctor-supervised insemination often runs in the thousands of dollars, and can cause delays in the process while the sperm and donor undergo medical screening. Thus, the Kansas women opted for a home insemination, a simple procedure they likely never dreamed would place Marotta in legal jeopardy.

Today both Kansas and California law provide that a sperm donor "is treated in law as if he were not the" natural father of any resulting child unless agreed to in writing by the donor and the woman, so long as the semen is provided to a licensed physician.

Despite the written agreement absolving Marotta of parental responsibilities, the Kansas Department of Children and Families is pursuing him because it refuses to recognize the nonbirth mother as the child's lawful second parent. Essentially, the state is treating the donor as if he had a brief sexual encounter with the birth mother and then skipped out on his responsibilities. But orchestrated assisted conception is and must be recognized as an entirely different arrangement than natural conception.

If Marotta and the birth mother had been intimate, he could be held responsible for any resulting child - even if the couple signed an agreement waiving future support. But with intent-based assisted conception, Kansas law provides that a sperm donor will have no rights to any child unless he and the woman agree otherwise in writing. With natural conception, a sperm provider cannot contract away parental responsibilities; with assisted conception, a sperm provider is presumed to assume no parental responsibilities. In this case, if Marotta had a change of heart and wanted to claim parental rights, he would not prevail according to a 2007 Kansas Supreme Court decision upholding the written assent requirement. *In the Interest of K.M.H. and K.C.H.*, 285 Kan. 53, 169 P.3d 1025.

How would this case proceed in California? Even though we maintain the same requirement that a licensed physician participate in artificial insemination for the donor to be relieved of parental responsibilities, our laws on family formation by same-sex couples would have likely kept Marotta out of the legal picture. First, if the women registered as domestic partners, the nonbirth mother would be the presumed parent of any child born into that relationship (Cal. Family Code 297). Second, California law permits same-sex partners to opt for second parent adoption, thus recognizing the legal parentage of the birth and nonbirth mother. *Sharon S. v. Superior Court*, 31 Cal. 4th 417 (2003)). Finally, in same-sex relationships our law recognizes the parentage of a nonbiologic partner who receives a child into her home and holds her out as her natural child. *Elisa B. v. Superior Court*, 37 Cal. 4th 108, 117 P.3d 660 (2005). By all accounts, that was the case in Kansas.

There is still much for us to learn from this case of sperm donation gone awry. Given the general lack of health insurance coverage for artificial insemination and the relative ease of access to the materials and the technique, it may be time to disaggregate the donor's immunity from parental status from presence of a licensed physician. California remains one of only 15 states to retain the physician requirement. Moreover, an updated version of the Uniform Parentage Act dispenses with the physician requirement, stating simply, "A donor is not a parent of a child conceived by means of assisted reproduction."

Since there remain scenarios in which a sperm donor could be hauled into court for child support - for example, if a single woman self-inseminates without securing a parental waiver from a known donor - it could be time to update our law. In an era of increasing reliance on assisted reproductive technologies, making plain that a donor is not a parent seems a sensible approach.

Judith Daar is a visiting professor at UC Irvine School of Law, clinical professor at UC Irvine School of Medicine and professor at Whittier Law School.

Asset firm names Irell & Manella partner new general counsel

Los Angeles-based international asset management firm The TCW Group named a former Irell & Manella LLP partner as the financial firm's new general counsel.

Education

Stanford establishes new religious liberty clinic

Stanford Law School's new Religious Liberty Clinic aims to train students in conflicts between church and state.

Government

Trial Court Funding Workgroup struggles to gauge success of funding centralization

Despite meeting for a third time and facing an April deadline, the Judicial Council's Trial Court Funding Workgroup continued Tuesday to struggle to measure how well the law centralizing state court funding improved access to justice.

Mergers & Acquisitions

Fenwick, Gunderson aid in search engine purchase

Fenwick & West LLP and Gunderson Dettmer Stough Villeneuve Franklin & Hachigian LLP guided two California companies in a purchase expected to enable advanced search functionality.

Litigation

Plaintiffs' lawyers awarded \$23.5 million in LCD price-fixing case

U.S. District Judge Susan Illston has awarded \$23.5 million to plaintiffs' attorneys this week in an ongoing class action alleging the price fixing of flat panel displays.

Family

Is sperm donation a risky business in California?

A Kansas man who answered a Craigslist ad soliciting a sperm donor for a lesbian couple has found himself embroiled in a novel legal battle over whether can be held liable for child support. Could it happen here? By **Judith Daar**

When does getting remarried terminate spousal support obligations?

Does the marriage ceremony of a spousal support recipient constitute a "remarriage" terminating her right to continue to receive spousal support when no marriage license was obtained? By **Mitchell Jacobs and Christina Griffith**

Administrative/Regulatory

Review proposed rules for FDA's regulation overhaul

The Food Safety Modernization Act, signed into law in 2011, is the most significant reform of U.S. food safety laws in over 70 years. Proposed rules for two important provisions were issued Jan. 4.