

We know doctors deliver babies.

Now, thanks to a first-in-the-nation state Supreme Court ruling, Connecticut lawyers can now create parents – by contract.

Without any biological connection or the need for an adoption, a would-be parent who has a valid contract with a surrogate mother can now become a legal mother or father, with a Superior Court's blessing.

That's the ruling in *Raftopol v. Ramey*, a watershed decision that creates a new fourth way to legally become a parent, in addition to conception, adoption or artificial insemination. Victoria Ferrara, the Fairfield surrogacy lawyer who represented the fathers in this case, said: "It's a tremendous benefit to any couple who have to use donated genetic material – egg donor or sperm donor. So whether it's a gay male couple or a straight couple, that couple can now establish legal parental rights ahead of the birth of the child, so the child is then born with two legal parents. That's crucial. It's crucial to the child, and it's crucial to the couple having the baby."

Attorney Karen Loewy filed an amicus curiae brief for Boston-based Gay and Lesbian Advocates and Defenders (GLAD).

"This is really a wonderful precedent," she said. "When you have a couple who has entered into this agreement, they are the parents. The importance is honoring the intentions of the family, and [legally] protecting the children from the moment of their birth."

The Jan. 5 decision legally made a father of Shawn Hargon, who is married to Anthony Raftopol. The two men entered into a gestational surrogacy agreement with Karma A. Ramey, of Connecticut. She was then implanted with donated eggs that had been fertilized by Raftopol *in vitro* and frozen. Ramey carried the fertilized eggs to term, producing twins. In the contract, she agreed to relinquish any parental claims and to support adoption by Hargon.

However, Connecticut's artificial insemination law, as read by the state Supreme Court, suggests that only "biological or adoptive parents have parental rights with respect to the subject children."

This meant, that if Raftopol had died before their birth, the twins might have arrived legally parentless, and not entitled to inherit from their biological father, a New York business lawyer who works in Europe. The Raftopol-Hargon family lives in Holland.

In addition, Hargon would have had to go through a time-consuming adoption process to attain parentage of the twins, even though all parties to the agreement already viewed the baby boys as his own. Karma Ramey, who would appear on the original birth certificate as mother, had contractually disclaimed parental rights. Nevertheless, without Raftopol, she might be pressed by the state to act as the boys' mother, Raftopol explained in an interview with *The Law Tribune*. "Nobody wanted any of these things to happen," he said.

Fitness Review

The Connecticut Department of Public Health, represented by the Attorney General's Office, contended that Hargon needed to go to probate court for a co-parent adoption. Ferrara, the surrogacy lawyer who represents the fathers, noted that a probate court might also order a parental fitness review, adding more time, expense and uncertainty to the process.

So Ferrara, using the declaratory judgment statute, sought a ruling that would uphold the validity of the surrogacy contract, directing the Department of Public Health to have Hargon listed as a parent on the birth certificate. The state countered that the case belonged in probate court, and argued that New Haven Judge Trial Referee James G. Kenefec lacked jurisdiction to handle it.

The DPH argued that before it could declare Hargon a fa-



Shawn Hargon (left) and Anthony Raftopol entered into a contract with a Connecticut surrogate mother who delivered twin boys. Though it was Raftopol who donated the sperm, Hargon wanted to be declared a legal parent without enduring the adoption process.

Photo credit: Pattyswan.com

Court ruling pioneers new route to legal parenthood

By THOMAS B. SCHEFFEY



Surrogacy lawyer Victoria Ferrara said the Supreme Court ruling will make things less complicated for both straight and gay parents who use surrogate mothers to deliver their children.

ther, the Superior Court would have to have jurisdiction to terminate the parental rights of Ramey, the gestational carrier, the egg donor, and any husbands either may have. Judge Kenefec disagreed. He ruled the contract valid, Raftopol the genetic and legal father, Hargon the legal father and surrogate Ramey neither the legal nor genetic mother of the twins.

On appeal to the state Supreme Court, a unanimous court upheld the judge trial referee. The justices ruled that the state's parental rights law "allows an intended parent who is a party to a *valid* gestational agreement to become a parent without

first adopting the children, without respect to that intended parent's genetic relationship to the children."

Thus, the trial judge properly ordered a replacement birth certificate adding Hargon as a parent, and removing the woman who carried the twins.

Justice C. Ian McLachlan, writing for the Supreme Court, examined the parties the state Department of Public Health said might raise claims of parental rights. They really can't raise those claims, he found. The donors of eggs or sperm, whether identified or anonymous, "shall not have any right or interest in any child born as a result of A.I.D.," reads the artificial insemination and egg donation statute. Furthermore, a gestational surrogate who has signed a valid surrogacy contract, or her husband, would acquire no parental status, the court reasoned.

But the state, on appeal, contended it could not legally issue a corrected birth certificate. The statute covering the substitute birth

certificate procedure only applied to couples who have some biological link to the surrogate's baby, the Department of Public Health argued.

Analyzing the problem, McLachlan envisioned a couple whose surrogate needed donations of both egg and sperm. If the substitute certificate law applies only to parents with a biological link, as DPH contended, "Every possible parent to the child would be eliminated as a matter of law," he fumed, adding: "The legislature cannot be presumed to have intended this consequence, which is so absurd as to be Kafkaesque."

Legislative History

The court applied the rule that the legislature is presumed not to draft statutes creating absurd results. It also found numerous ambiguities in the statute, such as what constitutes a valid gestational agreement. That opened the door for the court to explore the legislative history of the act covering birth certificate amendments.

In remarks by Rep. Donald B. Sherer on the House floor in 2004, the court found support. Sherer explained that for some parents in a surrogacy situation, "the only way to obtain a new birth certificate would be to go to the probate court and basically adopt their own child, which no one really thinks is the right thing to do."

McLachlan, a former family law attorney at Cumming & Lockwood, suggested the legislature iron out the ambiguities surrounding the definition of "parentage" – whether it's primarily based on the intent of the parties, genetic relatedness, or the act of giving birth. He and a majority also called for a better definition of a legally valid gestational surrogacy agreement.

In a concurrence, Peter T. Zarella disagreed that the statute required "legislative history" analysis because it wasn't really ambiguous. He wrote that the majority's call for additional legislative work "far exceeds any prior call for legislative action by this court," and said it amounted to an "inappropriate intrusion into the legislative domain."

Ferrara, who argued the Supreme Court appeal, saluted the decision. It will help out-of-state couples who employ a Connecticut surrogate mother.

Previously, whether the couple was gay or straight, the one without a biological link to the child had to adopt to gain legal parenthood, she said. "If they went home to a country or a state where they didn't have co-parent adoption, they couldn't get the other parent on the birth certificate."

Raftopol said his spouse, Hargon, raises the twins and a daughter full time, and frequently travels with the children in Europe. Without birth certificate proof of parentage, "it looks like he's trafficking in children," Raftopol said. "He has to carry a thick file of documents."

He praised the decision. "I think Connecticut has now become a leader in this. When other state legislatures find out – as with the same sex marriage debate – they'll see the sky hasn't fallen." ■

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