The Legal Treatment of the Parental Rights and Obligations of Sperm Donors

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Abstract: The increasing availability and use of donor sperm for artificial insemination along with the changing definition of family has created a new and evolving area of law. Where sperm donation initially was a completely anonymous procedure, there is increasing interest both in the progeny of artificial and insemination to learn more about their donor father. This has largely been driven by advances in the Human Genome Project and a better understanding of genetics, family history, and disease. Additionally, studies have shown a rapid increase in the desire of sperm donors to know more about their offspring. Singe women who wish to have children as well as lesbian couples are more likely to seek donor sperm from men with whom they have some existing relationship. In these cases, the actions of the donor can have significant impact on the obligations that such donors may incur as such as financial support.

INTRODUCTION

With the continually increasing scientific advances in the area of human fertility there comes an assortment of medical technologies aimed at assisting human reproduction. Such technologies include *in vitro* and *in vivo* fertilization, embryo implantation, non-maternal surrogacy, and artificial insemination. Of these technologies, artificial insemination is the most mature and most easily accomplished (Walters, 1996). Presently there is no national reporting mechanism for the number of births resulting from artificial insemination with donor sperm, due largely to the privacy needs of the parties involved. However, it has been estimated that approximately 37,000 – 38,000 births occurred in 2006 (Harmon, 1996). Most cases of artificial insemination occur *in vivo*, where the sperm is introduced directly into the putative mother's womb. In some cases, it is medically necessary to perform the insemination of an ovum previously removed from the mother (or some cases a donor female) followed by the implantation of the human embryo. This process has been commonly referred to as "making test tube babies," since the fertilization occurs outside the womb (Test Tube Babies, PBS Television Broadcast, 2006). While the most common reason for undergoing artificial insemination is a need for viable sperm (e.g., where a husband is infertile, where a single-woman chooses to give birth without a male partner, where lesbian couples desire children, etc.) there are health reasons where donor sperm may be required. Two of the most common health reasons are to prevent passing of genetic disease from the father to the child or to prevent complications due to Rh-factor blood incompatibility, which can lead to a high incidence of still births (Rice, 2006, p. 1055). Donor semen may be used in two types of artificial insemination. Where the donor is the husband of the recipient, the process is referred to as homologous insemination. In all other cases, the process is referred to as either heterologous or donor insemination (Yaworsky, 1991). This manuscript will discuss the evolving law as it relates to donor insemination.

SCIENTIFIC STUDIES

In 1779 Lazaro Spallanzani, an Italian priest, established that in order for an embryo to be formed, physical contact between the egg and sperm must occur (http://www.cryobank.com). While Spallanzani restricted his experiments fish, frogs, and canines; eleven years later the surgeon Dr. John Hunter reported that the "had successfully inseminated the wife of a linen draper, using her husband's sperm" (http://www.cryobank.com). Spallanzani is credited by some for first noting that cooling sperm with snow caused them to become motionless (http://www.cryobank.com). As far back as the 1930's women in search of sperm turned to their physicians for a solution. Much like the state of vegetables before Clarence Birdseye invented the flash-freeze process, the mother was often was provided with the most readily available sample "often the closest medical student at hand. (http://www.cryobank.com)." However, it was not until World War II that further research showed that sperm could be frozen and thawed and still survive. It was in 1953 that Dr. Jerome K. Sherman, an American physician, developed a protocol for the freezing and thawing of human sperm in such a way that the sperm were capable of fertilizing an ovum (http://www.cryobank.com). The 1970's, known as an era of sexual liberation and the proliferation of birth control, was paradoxically the era for the establishment of commercial sperm banks. The most well-known, California Cryobank, was established in 1977 and continues to operate today (http://www.cryobank.com). Today, Scandinavian countries lead the adoption of sperm banks in Europe. Cryos International is the largest multi-national collection of

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"sperm bank franchises" including a newly established operation in New York (http://www.cryobank.com). Cryos International is well-known for its on-line Ikea-like catalog of donors where detailed donor information can be obtained for a small subscription fee (http://www.cryobank.com). In order to draw distinction between the quality of sperm banks, millionaire optometrist and eugenicist, Robert Clark Graham, established the Repository of Germinal Choice in 1980 and "began asking smart men to make personal contributions (Howley, 2005)." With a passion for collecting quality sperm, Graham began his collection in the 1960's and died at the age of 91 while on his final "collecting trip. (Howley, 2005)" At the time of his death, the repository claimed that 229 offspring have resulted from the sperm of its donors (Plotz, 2008). Despite its reputation of being the "Nobel Sperm Bank," none of the children at that time had been fathered by Nobel Laureates (Plotz, 2008). While the vast majority of sperm donors wish to remain anonymous, in a 2006 study, researchers investigated whether open-identity donor insemination in the U.S. was increasing. The study examined sperm banks which had been in existence for greater than 10 years and showed that in 1996 10.7% of the 28 institutes were open identity, and this number grew by three fold to 32.1% from the period of 1996-2006. The authors proposed that this statistically significant finding is correlated with of a growing need for recipients to know increased information about the donor (Schieb and Cushing, 2007, p. 231). This increased need for donor information is an anticipated result in economic competition and would naturally decrease the number of sperm banks providing complete anonymity. However, this study fails to address any changing perceptions between the sperm donors and their view of anonymity (Schieb and Cushing, 2007, p. 231). Another study addressed whether parents of children conceived by donor sperm were comfortable disclosing this to them upon maturity. In a study which compared 45 families with a child conceived through donor insemination, 55 families for a child adopted at or shortly after birth, and 41 families with a child conceived by *in vitro* fertilization [from the father]: "None of the DI [donor inseminated] parents had told their children about the method of their conception. Most mothers (80%) reported that they had definitely decided not to tell, seven (16%) were undecided, and two (4%) planned to tell their child. The two who planned to tell had children approaching five and seven years old, respectively, and neither parent had yet attempted the disclosure. This contrasts sharply with the adoptive group, where children in all but one family had been told, and the remaining set of parents were planning to tell. The IVF [in vitro fertilization] group fell midway between these two extremes: 11 couples had already told their children something of their method of conception, 22 planned to tell, five were unsure, and three had decided not to tell (^{2}=172.47; $p < .0001$) (Cook, Golombok, Bish, and Murray, 1995, p. 549). Attitudes of sperm donors were examined from the period 1992 – 2002. Over that period the number of men who stated that they would continue to donate if anonymity was abolished fell from 32% to 25% and the number of men agreeing to allow the children to contact them in the future dropped from 22% in 1992 to 13% in 2002 (Cook, et al., 1995, p. 549). This was again investigated in 2005 in 105 couples (61% heterosexual, 39% lesbian). Two thirds of the heterosexual couples and all but one of the lesbian couples had chosen an identified donor. The general thought in doing so was a belief that the offspring has a right to know as much about his or her medical history as possible. 93% of those choosing identified donors intended to tell their child about the conception, while 7% remained undecided. This was in contrast to those choosing anonymous donors of whom only 17% were committed to disclosing the child's conception method (Ernst, Ingersley, Schou, and Stoltenberg, 2007, p. 327). The advent of the Human Genome Program and the increasing awareness of the role of genetics in human disease have helped move public opinion toward the removal of anonymous donation. As society becomes more interested in genetics, it is reasonable to anticipate that children born through donor insemination will have a growing desire to find more information, if not the identity, of the donor. Moreover, even though some important genetic diseases can be tested for directly, it is useful to have the health histories of both parents to predict potential health issues and outcomes. One example of a child conceived by donor insemination demanding access to his genetic heritage is Bill Cordray, a 56-year-old who was told at the age of 35 that his mother underwent donor insemination in order to become pregnant. Cordray's statement is indicative of the growing feeling among those conceived through donor insemination:

"It's infuriating that most banks remain wedded to the idea that sperm donation has to be anonymous. … They want to protect the donor as though he is a victim of some sort. But why should the medical profession have the power to deny someone their full genetic history? It's not fair to allow a child to be deluded about who they are (Villarosa, 2002).

DEFINITIONS

In order to better understand the legal challenges surrounding donor insemination, it is useful to begin with two legal definitions:

Biological Father / Genetic Father:

"The man whose sperm impregnated the child's biological mother. (Black's Law Dictionary, 2004)"

Legal Father:

"The man recognized by law as the male parent of a child. A man is the legal father of a child if he was married to the child's natural mother when the child was born, if he has recognized or acknowledged the child, or if he has been declared the child's natural father in a paternity action. If a man consents to the artificial insemination of his wife, he is the legal father of the child that is born as a result of the artificial insemination even though he may not be the genetic father of the child (Black's Law Dictionary, 2004)."

Thus, from the very outset an ambiguity arises concerning the legal definition of the sperm donor. By definition, the donor is the biological father of the child. If the recipient of his sperm is married to another, and her husband consentsto the procedure, then the donor has no parental rights. However, the definitions leave open how one might classify the donor in cases where either (a) the husband of the recipient did not consent to the procedure or (b) the recipient is unmarried at the time of the procedure. It is this ambiguity which makes up the majority of the body of law surrounding donor insemination.

LEGITIMACY

The earliest struggle within the legal system regarding donor insemination was how to classify the legitimacy of the offspring. Legitimacy is defined as the "status of a person who is born within a lawful marriage or acquires that status by later action of the parents (Black's Law Dictionary, 2004)." In the case of first impression, the court in Strnad v. Strnad held that a child conceived by donor insemination was the legitimate child of the husband who consented to the procedure . The court held that this situation was "no different than that pertaining in the case of a child born out of wedlock who by law is made legitimate upon the marriage of the interested parties Strnad v. Strnad , 1948, p. 391)." Conversely, in Gursky v. Gursky the court held that a child conceived by means of an artificial donor, again with the husband's consent, was not the legitimate issue of the husband (Gursky v. Gursky, 1963). The court distinguished this case from Strnad by holding that the "precise question involved in that case [Strnad] was the husband's right of visitation as respects to such child (Gursky v. Gursky, 1963, p. 410)." Moreover, in Gursky the court interpreted the ruling that the "child is deemed to have been 'potentially adopted' or 'semi-adopted' by the husband of its mother" and "implicit recognition of the fact that the birth would otherwise be illegitimate (Gursky v. Gursky, 1963, p. 411)." The court relied on the holdings of Doornbos v. Doornbos that the "artificial insemination by a third party donor, with or without the consent of the husband constitutes adultery on the part of the mother (Gursky v. Gursky, 1963, p. 411)." Thus, a "child so conceived is not a child born in wedlock and is therefore illegitimate (Gursky v. Gursky, 1963, p. 411)." The courts again declined to follow the ruling in Gursky in K.B. v. N.B. (K.B. v. N.B., 1991). Upon divorce proceedings, the husband whose wife had been artificially inseminated with the sperm of an anonymous donor claimed he did not consent in writing to the procedure. Thus, he was not the legal father of the child (K.B. v. N.B., 1991, p. 636). While consent was required to be in writing, the court dismissed such argument claiming the husband ratified the parent-child relationship once the child was born (K.B. v. N.B., 1991, p. 639). This ruling allows a husband, who did not consent to the procedure, to be deemed the legal father solely by remaining in the marital relationship and not taking actions inconsistent with his claim that the child is not his. In People v. Sorenson, the court addressed the issue of whether a child conceived through donor insemination had a "natural father (People v. Sorenson, 1968)." In that case, the husband appealed from a judgment convicting him of willful failure to provide for his minor child (People v. Sorenson, 1968). Both the husband and his wife at the time signed a physician's consent form allowing the wife to be inseminated with the sperm of an anonymous donor. The court held that the "husband of a woman, who with his consent was artificially inseminated with semen of a third-party donor, [was] guilty of the crime of failing to support a child who is the product of such insemination (People v. Sorenson, 1968, p. 283)." In reaching this conclusion, the court ruled that the term "father" as used in the statute "cannot be limited to the biologic or natural father as those terms are generally understood (People v. Sorenson, 1968, p. 284)." The anonymous donor "cannot be considered the 'natural father' as he is no more responsible for the use made of his sperm than is the donor of blood or a kidney (People v. Sorenson, 1968, p. 284)." In addressing the statutory intent the court emphasized the legal concept of "lawful father" holding that the intent of the Legislature was to "include every child, legitimate or illegitimate, born or unborn, and enforce the obligation of support against the person who could be determined to be the lawful parent (People v. Sorenson, 1968, p. 285)." The prevailing trend is that courts hold that a child conceived by donor artificial insemination is legitimate for all practical purposes (People v. Sorenson, 1968; In re Adoption of Anonymous, 1973; Welborn v. Doe, 1990). Or in the alternative, a husband who consents (either orally or in writing) to the artificial insemination of his wife for purposes of having a child is estopped to deny that he is the father of that child, and he has impliedly agreed to support the child and act as its father (R.S. v. R.S., 1983).

DONOR RIGHTS AND OBLIGATIONS

In 2007 the Supreme Court of Kansas In re K.M.H. addressed a Kansas statute barring presumption of paternity for a sperm donor (In re K.M.H., 2007). Under the Kansas Determination of Parentage Act, "[t]he donor of semen provided to a licensed physician for use in artificial insemination of a woman other than the donor's wife is treated in law as if he were not the birth father of a child thereby conceived, unless agreed to in writing by the donor and the woman (In re K.M.H., 2007, p. 1046)." In this case the mother was an unmarried attorney who wanted to become a parent and asked a friend to donate sperm. There was no written agreement between the parties accepting the donor as father. Subsequent to the birth of twins, the mother filed a petition seeking the determination that the donor had no parental rights. This was done largely to provide for protection from a claim of parentage in another state. The donor filed an answer to the petition as well as a separate paternity action claiming parental rights including joint custody and visitation. The donor also acknowledge financial responsibility for the twins (In re K.M.H., 2007, p. 1030). The donor alleged that K.S.A 38-1114(f) was unconstitutional under the Equal Protection Clause and Due Process Clause of the Kansas Constitution (In re K.M.H., 2007, p. 1030). In the review of the statute, the court relied on: "[t]he constitutionality of a statute is presumed. All doubts must be resolved in favor of its validity, and before the act may be stricken down it must clearly appear that the statute violates the constitution. In determining constitutionality, it is the court's duty to uphold a statute under attack rather than defeat it. If there is any reasonable way to construe the statute as constitutionally valid, that should be done. A statute should not be stricken down unless the infringement of the superior law is clear beyond substantial doubt (In re K.M.H., 2007, p. 1034)." The court distilled the question down to whether the "statute's requirement that any opt-out agreement between an unmarried mother and a known sperm donor be 'in writing' results in an equal protection or due process violation? (In re K.M.H., 2007, p. 1028)" The court found that the there was no violation of the equal protection clause because: "[T]he male's ability to insist on father status effectively disappears once he donates sperm. Until that point, he can unilaterally refuse to participate unless a written agreement on his terms exists. After donation, the male cannot force the fatherhood

issue. The female can unilaterally decide if and when to use the donation and can unilaterally deny any wish of the male for parental rights by refusing to enter into a written agreement (In re K.M.H., 2007, p. 1039)". As for the argument that such an action violated due process, the donor failed to address explicitly whether the challenge was procedural or substantive. As to procedural due process, the defendant's argument that K.S.A. 38-114(f)'s requirement of a writing, strictly interpreted, denied him a "meaningful opportunity to be heard" since the record reflected his consent was oral was not acceptable to the court (In re K.M.H., 2007, p. 1040). The court held that "for purposes of ruling . . . we accept D.H.'s evidence that there was [only] an oral agreement. Still, he [the defendant] has been denied no procedural right to which he was entitled; the statute merely sets up a burden of proof that his [the defendant's] own inaction before donating his sperm left him unable to meet (In re K.M.H., 2007, p. 1040)." As for substantive due process:

"It is apparent to us that the only potentially meritorious due process argument before us focuses on the assertion of D.H.'s fundamental right to care, custody, and control of his children. This raises a substantive due process concern, rather than a problem over the absence of a specific procedural protection. Indeed, if anything, D.H. and the Center advocate for less rather than more formality in process; they regard the requirement of a writing to memorialize any agreement between a sperm donor and a recipient as so heavy a procedural burden that it tips the constitutional scales in favor of D.H. here (In re K.M.H., 2007, p. 1040)." Thus, the donor was not awarded parental rights. And this recent case presents a good introduction as to the statutory and common law treatment of sperm donors.

STATUTORY HOLDINGS

In 1964, Georgia became the first state to enact legislation regarding donor insemination. The statute held that children conceived by donor insemination, on the condition that both the husband and wife consented in writing, would be deemed the legitimate child of both parents (Ga. Code. Ann. § 74-9904, 1968). The most sweeping legislation in regard to this occurred in 1973 when the Uniform Parentage Act was approved by the Commissioners on Uniform State Laws, and later approved by the American Bar Association (Unif. Parentage Act, 1973). The Uniform Parentage Act of 1973 addressed the issue of fatherhood for sperm donors. It states that "the donor of semen provided to a licensed physician for artificial insemination of a married woman other than the donor's wife is treated in law as if he were not the nature father of a child thereby conceived (Unif. Parentage Act § 5(b), 1973)." Most states have adopted some form of the UPA as it relates to artificial insemination. The key differences in their drafting are:

I. Whether a physician must perform the procedure

II. Whether written or oral consent from the paternal spouse is required

III. Whether screening (e.g., genetic) is required

IV. Whether a donor to an unmarried woman has parental rights or duties (Patt, 1988);

As for part (IV), New Jersey allows the donor and recipient to enter into a written contract regarding paternity with the default that the donor is not treated as the natural father of any child conceived (N.J. Stat. Ann. § 9:17-44, 2006). In New Mexico, the donor may be treated as if he were the natural father if he and the recipient consent and writing, and the writing certified by the performing physician (N.M.S.A. § 40-11-6, 1978). There are still 19 states and the District of Columbia which do not have statutes pertaining to artificial insemination by donor. The states are: Arizona, Delaware, Hawaii, Indiana, Iowa, Kentucky, Maine, Mississippi, Missouri, Nebraska, New Hampshire, North Dakota, Pennsylvania, Rhode Island, South Carolina, South Dakota, Utah, Vermont, West Virginia (Patt, 1988, p. 130).

COMMON LAW

While the majority of states have enacted statutes governing donor insemination, in their absence, the courts have generally relied on the common law principles of equitable and promissory estoppel for guidance (Patt, 1988, p. 121). The intent of the parties is often controlling when deciding issues involving parental rights and obligations of donors (Miller, 2000). The interplay between the acts of the donor (e.g., in asserting parental rights) and the acquiescence of the donee has resulted in the interpretation that the donee has recognized and adopted the donor's asserted rights (Miller, 2000). That acquiescence also may result in the donor's adoption of full parental obligations commensurate with his rights (Miller, 2000).

PATERNITY

As previously discussed, the majority of sperm donors prefer to remain anonymous and the states' adoption of the Uniform Parentage Act of 1973 has statutorily severely limited or denied any parental rights of the donors. However, there exists a body of case law, which in limited circumstances, allows sperm donors to obtain parental rights. In LaChapelle v. Mitten, the sperm donor (LaChapelle) commenced a paternity proceeding after the child's biological mother (Mitten) severed visitation between him and the child (LaChapelle v. Mitten, 2000). The child's mother and her lesbian partner signed an agreement with the donor granting the couple both physical and legal custody, but entitling the donor to a "significant relationship" with the child (LaChapelle v. Mitten, 2000, p. 157). The two most relevant issues were (a) whether the donor had standing to seek custody and (b) whether the donor was liable for past (or future) child support. During pre-trial motions in limine, Mitten agreed to accept joint legal custody with either LaChapelle or her lesbian partner. At a chambers conference on the first day of trial, LaChapelle withdrew his demand for legal custody based on an agreement granting him "various rights to the child (LaChapelle v. Mitten, 2000, p. 161)." Mitten later argued on appeal, that the trial court created a "'triumvirate parenting scheme" which would be untenable and not in the best interest of the child (LaChapelle v. Mitten, 2000, p. 161). However, the appellate court found that "any rights LaChapelle has under agreement …are not those of a joint legal custodian," thus, the argument was invalid (LaChapelle v. Mitten, 2000, p. 161). Neither the trial court nor the appellate court had to address the issue of donor custody, though

the trial court adjudicated LaChapelle as the biological father, which was upheld on appeal (LaChapelle v. Mitten, 2000). As for issue of child support, Mitten brought a motion for past child support retroactive to the child's date of birth. The appellate court upheld the trial court's ruling awarding child support retroactive to June 1, 1997, not the date of the child's birth (January 4, 1993) due to the "procedural issues" of the case (LaChapelle was not adjudicated as the child's biological father until 1997) (LaChapelle v. Mitten, 2000, p. 158). In Welborn v. Doe the court addressed the issue of whether a husband whose wife underwent donor insemination could legally adopt the child (Welborne v. Doe, 1990). The controlling statute at that time held that the child conceived through donor insemination may not terminate possible parental rights of the donor (Va. Code Ann. § 32.1-57, 2003). The Welborns filed an adoption petition whereby Mrs. Welborn consented to her husband's adoption of twins conceived through donor insemination (Welborne v. Doe, 1990, p. 733). Since Mr. Welborn was already listed on the birth certificate as the twins' father, the Department of Social Services held that adoption was "inappropriate and unnecessary (Welborne v. Doe, 1990, p. 733)." Va. Ann. Code addressed the issue of artificial insemination providing that: "Any child born to a married woman, which was conceived by means of artificial insemination performed by a licensed physician at the request of and with the consent in writing of such woman and her husband, shall be presumed, for all purposes, the legitimate natural child of such woman and such husband and the same as a natural child not conceived by means of artificial insemination (Va. Code Ann. § 64.1-7.1, 2003)." The court, however, held that the statute did not terminate the rights of the sperm donor, but "merely establishes a presumption that the husband is the natural father (Welborne v. Doe, 1990, p. 733)." The court noted that Virginia had not adopted legislation similar to the Uniform Parentage Act of 1973 which would have unambiguously terminated any potential parental rights of the donor. Therefore, Mr. Welborn was within his legal rights to adopt the children and that by doing so adoption was the only manner by which any residual rights of the sperm donor could be divested (Welborne v. Doe, 1990, p. 733). This case exemplifies the ambiguities which the Uniform Parentage Act of 1973 was created to remove. While the Uniform Parentage Act of 1973, where adopted, provides guidelines for establishing paternity in donor insemination cases, it is of little use when the parties fail to use the anticipated institutional process for fertilization. In Jhordan C. v. Mary K., Mary and her lesbian partner solicited sperm from Jhordan for artificial insemination. What is unusual about this case is that over a six month period Jhordan traveled to Mary's house and provided her with semen which she apparently (or with the help of her partner) inseminated herself (Jhordan C. v. Mary K., 1986). Mary told Jhordan that she did not want him to have any involvement in the child's life, but would allow Jhordan to "see the child to satisfy his curiosity on how the child would look (Jhordan C. v. Mary K., 1986, p. 389)." In contrast, Jhordan asserted that he had indicated he would care for the child "as much as two of three times a week (Jhordan C. v. Mary K., 1986, p. 389)." Mary gave birth in March 1980 and allowed Jhordan to visit approximately five times through August of that year (Jhordan C. v. Mary K., 1986, p. 390). Upon terminating Jhordan's visits, he filed an action to establish paternity and seek visitation rights (Jhordan C. v. Mary K., 1986, p. 390). Both the trial and appellate courts held that because Mary failed to invoke California's Civil Code Section 7005 when she did not obtain semen through a licensed physician, she could not seek protection under that artificial insemination statute (Ann. Cal. Fam. Code § 7613). While the court did not feel that physician involvement is a necessary component to abolish paternal rights of donors, they applied the doctrine of strict interpretation to statute stating that the "Legislature's apparent decision to require physician involvement in order to invoke the statute cannot be subject to judicial second-guessing and cannot be disturbed, absent infirmity (Jhordan C. v. Mary K., 1986, p. 394)."

CHILD SUPPORT

In LaChapelle, discussed previously, the donor was obligated to pay child support to the mother. However, in that case, the donor brought a paternity action and later made a contractual agreement in which he would receive limited parental rights. In 2007 the Supreme Court of Pennsylvania ordered a sperm donor to pay child support. In Ferguson v. McKiernan, the court addressed whether a sperm donor involved in "private sperm donation (i.e., one that occurs outside the context of an institutional sperm bank)" can be held liable to pay child support (Ferguson v. McKiernan, 2007) . Both the sperm donor and recipient had previously been lovers and entered into an agreement whereby McKiernan would donate sperm in a clinical and confidential setting and would not seek visitation (Ferguson v. McKiernan, 2007, p. 1238). In return, Ferguson agreed that she would demand any support "financial or otherwise" from McKiernan (Ferguson v. McKiernan, 2007, p. 1238). Ferguson gave birth to twins in 1994 and in the period from 1994 to 1999 McKiernan's only contact (other than at the hospital upon birth) with the children occurred two years later when he spent "an afternoon with [Ferguson] and the twins while visiting his parents (Ferguson v. McKiernan, 2007, p. 1240)." However, in 1999 Ferguson brought suit against McKiernan for child support. The trial court held that the oral agreement had been made; but also found the agreement unenforceable as against public policy (Ferguson v. McKiernan, 2007, p. 1248). Relying on Kesler v. Weniger, the lower courts held that "a parent cannot bind a child or bargain away that child's right to support (Kesler v. Weninger, 2000, p. 795)." However, on appeal the court held that it was in the best interest of the children to hold the contract enforceable (Ferguson v. McKiernan, 2007, p. 1248). The court held that The parties in this case agreed to an arrangement that to all appearances was to resemble-and in large part did resemble for approximately five years-a single-parent arrangement effectuated through the use of donor sperm secured from a sperm bank. Under these peculiar circumstances, and in considering as we must the broader implications of issuing a precedent of tremendous consequence to untold numbers of Pennsylvanians, we can discern no tenable basis to uphold the trial court's support order. Rather, we hold that the agreement found by the trial court to have been bindingly formed, which the trial court deemed nevertheless unenforceable is, in fact, enforceable (Ferguson v. McKiernan, 2007, p. 1248).

In a child support case between former lesbian partners, the sperm donor of two of their children was equitably estopped from avoiding child support obligations. In Jacob v. Shultz-Jacob, two lesbian partners sought the assistance of a friend who donated sperm which resulted in the birth of two children (Jacob v. Shultz-Jacob, 2007). Upon dissolution of the relationship, Jacob, the biological mother of the two children, sought child support from her former partner (Jacob v. Shultz-Jacob, 2007, p. 476). It is important to note that Pennsylvania has not statute governing parental rights and obligations for sperm donors. Frampton, the sperm donor, was awarded partial physical custody of one weekend per month as to the two children he fathered (Jacob v. Shultz-Jacob, 2007, p. 476). The biological mother sought and was awarded child support from her former partner (Jacob v. Shultz-Jacob, 2007, p. 476). Her partner argued that in determining the support award, Frampton was an indispensible party and must be added to the litigation and should share in the financial burden (Jacob v. Shultz-Jacob, 2007, p. 480). The appellate court agreed, holding that the continued close interaction between Frampton and the children demonstrated "parental involvement beyond the merely biological (Jacob v. Shultz-Jacob, 2007, p. 481)." The court saw no difference between the interaction of Frampton and that of the former partner and remanded the case to the trial court with the direction that "Frampton be joined as an indispensible party for a hearing at which the support obligation of each litigant is to be calculated (Jacob v. Shultz-Jacob, 2007, p. 382)." This case is unique in that it demonstrates that a sperm donor, who by his own action plays a role in the lives of the resulting children, opens himself up to the possibility of obligating himself to pay child support. In this case, the donor frequently visited the children, gave them money and was even called "Papa (Jacob v. Shultz-Jacob, 2007, p.481)." What the court did not do in this case is set guidelines for the amount of interaction which would potentially hold the donor liable for child support. Thus, it leaves open for further interpretation and refinement where that line may be drawn.

ANALYSIS

In its original form, artificial insemination was developed to allow married couples who were unable to conceive because of the husband's infertility or other medical reasons which were not conducive to child birth to become pregnant. The donor was to be anonymous; however, it was possible that some basic genetic and health traits would be made available to the couple. In most cases, this information was provided to allow the couple to select for traits most closely associated with the husband (e.g., race, hair color, eye color, etc.). However, as society evolved, so did the implementation of artificial insemination. What were basic traits focused on gross phenotype and health now evolved into "genius" sperm banks and organizations providing the semen of Nobel Laureates. In essence, in some instances it donor insemination became eugenics in a test tube. A major sociologic change occurred which has significantly impacted the legal ramifications of artificial insemination. That change was the evolving view of the family. The nuclear family of a mother, father, and two children is now more the exception than the rule. As of 2000 single parent households made up 16% of U.S. households, with 26.2% of all children under the age of 21 living in families having only one parent in the household (http://www.parentswithoutpartners.org/Support1.htm). This acceptance of a single parent family has made it more acceptable for women who do not desire a traditional marital relationship to seek artificial insemination. Also, the growing number of lesbian households coupled with the readily available artificial insemination technology has also resulted in creating more households where no male parent is present. Medical intervention related to human reproduction inevitably precedes societal debate. This is most readily exemplified by the debate concerning abortion and the balance of protecting "human life" with rights of the "bodily privacy" of women. The development of applications for human embryonic stem cells is the most recent example. However, the issues surrounding such debates, even when a term such as a woman's right to an abortion, are centered on the question of "when does life begin." The issues surrounding donor insemination do not. Rather, societal debate on donor insemination has focused exclusively on rights and responsibilities of three parties: the donor, the recipient (mother), and the recipient's husband (spouse). There is little debate that donor insemination provides a "good" to society by allowing infertile couples to have children. Even when the procedure is used for an unmarried and single woman, or a woman in a lesbian relationship, there is little societal resistance to the procedure. In fact, the drafting of the Uniform Parentage Act of 1973 and its adoption by the majority of states supports the assessment that there is a societal benefit to donor insemination by limiting (or eliminating) any concerns of anonymous donors that they could incur parental responsibilities solely due to the act of donation. Presently, there is no case law concerning situations where an anonymous donor has been sought out by the mother solely for the purposes of providing her child support. Acceptance of donor insemination is also manifested by both statute and common law eliminating illegitimacy of children conceived through that process. There is no compelling societal interest why a child conceived in this manner should undergo any stigmatization based solely on his or her parentage. Again, this is demonstrated by the Uniform Parentage Act of 1973.

It is when the donor is known to the mother, and in particular when the donor attempts to assert parental rights, that the courts are challenged to balance the rights of the two or three parties involved. The nexus of whether a donor will have parental rights and/or responsibilities is the interrelation between the parties. Where contractually the donor has relinquished his parental rights, the courts are hard pressed to restore them, even when the donor has contact with the child.

When there is meaningful contact between the donor and the recipient and child, the courts are more likely to find that the donor has parental rights and their resulting obligations. Mothers who allow such contact open the door for the donor's assertion of parental rights; because it is the mother who controls access to the child. Where there is no ambiguity, contractually, on the relinquishment of parental rights by the donor, there is no precedent of court intervention compelling the mother to provide the donor access to the child.

CONCLUSIONS

Absent an aberrant legal decision or statute, the law seems to have matured in regards to the legal issues surrounding parental rights and obligations of sperm donors. One is hard pressed to discern black-letter law in this area; however, there are common themes. First, a child born through donor insemination is considered issue of the husband of its mother. A child who is born to a single mother or one who is in a lesbian relationship may be adopted by a non-donor party without violating the due process concerns of the donor. This is consistent with not placing a stigma on the child for being conceived through donor insemination. It also retains the rights of the parents as to determining when and if the child should be informed of the circumstances surrounding his conception. It should be noted that the adoption of statutes based on the Uniform Parentage Act of 1973 apply to all donors (both anonymous and identified). It is when the donor is known to the mother and the donor has not unequivocally relinquished parental rights through contract, that the donor may have standing to seek those rights. In cases such as these, the courts look toward the relationship between the parties before birth to determine the anticipated relationship with the child that the donor and mother had anticipated. Both in law and in equity, the donor may move to have parental rights established. Finally, where the donor is allowed by the mother to have a relationship with the child, the donor may be found to have parental rights and responsibilities regardless of whether the donor anticipated or desired such. By applying a "meaningful interaction" test, the courts may determine that a donor has established a relationship through his actions which make him liable for child support. The best interest of the child created by donor insemination is not ignored. Through statutes and common law creating rules for paternity, the goal is to unambiguously settle parental rights before conception. Where that is not possible, and a relationship exists between donor and child, the courts look at that relationship, in conjunction with what was agreed to before birth, in determining both the intent of the parties and the best interest for the child. Thus, in establishing laws surrounding donor insemination, there will be a continual balancing between maintaining an environment which does not discourage sperm donation; while at the same time respecting the potential parental rights of a known donor who undertakes a meaningful relationship with the child.

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