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FAMILY LAW FOCUS

Same-sex Partner Awarded Parental Rights

While the parenting of a child by a same-sex couple may not yet be the "hot button" that gay marriage is at the moment, make no mistake . . .

This is an issue that Indiana courts have been grappling with for the last several years. And soon it may take center stage.

As the gulf widens between the law and the realities of today's non-traditional families, judges are increasingly being asked to settle these difficult real-world situations that defy easy answers.

Former Partner Sought Custody

The most recent such case involves a custody battle between the non-biological mother of a child conceived by her lesbian partner through artificial insemination.

The two began sharing their home and their lives in 1993.

"During their relationship, the couple shared joint finances and held themselves out to their families, friends, and community as a couple in a committed, loving relationship," court records show.

Committed Domestic Partners

They "even participated in a commitment ceremony at which they proclaimed themselves to be committed domestic partners before family and friends."

After several years with each other, the couple jointly decided to bear and raise a child together.

Together, they determined that the biological Mother would be impregnated by artificial insemination and that the sperm donor would be the Partner's brother.

Genetically Related to Child

Both intended that each be genetically related to the child, and all parties (including the sperm donor) agreed that the two women would assume equal parental roles.

A baby girl was born on May 15, 1999. And from her birth until July 2003, both women "acted as co-parents, with important decisions concerning [the girl] being determined by them in concert."

Reproductive technology aided in birth.

The Partner "has cared for [the child] as a parent, feeding and bathing her, attending doctor's appointments, providing health insurance coverage, and generally providing the financial and emotional support of a parent."

Romantic Relationship Ended

In January of 2002, the relationship between the two women ended.

The Partner paid child support each month, however, and continued to have regular and liberal visitation with the girl until July 2003.

At that point, the birth Mother unilaterally began rejecting the Partner's support payments and terminated any visitation with the girl.

In October, the Partner filed a declaratory judgment action, seeking to be recognized as the child's "legal second parent with all of the atten-

Continued on Page 2

SPOTLIGHT ON:

Each Woman Recognized As "Legal Parent" of Baby

Continued from Page 1

dant rights and obligations of a biological parent."

No Authority for Relationship

The trial court dismissed the action, saying it could not "create by its order a relationship for which there is no statutory or judicial authority" in the state.

On appeal, the Court of Appeals disagreed and based its decision on the doctrine of estoppel.

This remedy is available, the Court noted, "if one party through his course of conduct knowingly misleads or induces another party to believe and act upon his conduct in good faith without knowledge of the facts."

Women Agreed to Bear Child

Here the two women, as a committed couple who could not marry, decided to bear and raise a child together.

With the aid of reproductive technology and a donation from the Partner's willing brother, they achieved their goal of having a child who was genetically related to both of them.

Both women served as a mother to the child for four years.

They "proceeded, as agreed and intended, to raise the child together, both financially and emotionally, and to hold [her] out as the daughter of both women."

For four years, the birth Mother "consented to and encouraged the formation of a parent-child relationship" between the Partner and the girl.

Child Knew Both As "Mother"

She "has grown up knowing [the Partner] as her mother in the same manner that she knows [the birth Mother] as her mother."

When the birth Mother "agreed to bear and raise a child with [the Partner] and, thereafter, consented to and actively fostered a parent-child relationship" between the Partner and child, "she presumptively made decisions in the best interest of her child and effectively waived the right to unilaterally sever that relationship when her romantic relationship [with the Partner] ended."

It is unknown, prior to our press deadline, whether this decision would be taken on appeal.

See *In Re A.B.*, 818 N.E.2d 126 (Ind.App. 2004). ♦

REALITY CHECKS:

√ Every year, almost 21,000 women in Marion County are physically abused in domestic relationships . . . and children witness 75% of these incidents.

√ Children who are being raised in violent homes are 26 times more likely to commit sexual assault and 57 times more likely to abuse drugs.

√ In the eight-county area of central Indiana, nearly 8,000 women—ages 65 and over—live in poverty; 80% of widows become poor only after the deaths of their husbands.

√ Of families with children in the eight-county area, 22% of them are headed by a single mother.

√ More than 1,600 babies in central Indiana were born in 2000 to single mothers who were under the age of 20 and had no high school diploma.

√ In two central Indiana counties, only 12% of women have graduated from college with a bachelor's degree.

√ Care-giving responsibilities prompted 29% of working women to pass up a promotion.

√ During the last year, 23% of high school girls in the eight-county area seriously considered suicide. ♦

SOURCE: *Women's Fund of Central Indiana*

Step-Granddad Stopped from Visiting Child

At a time in which the Court is looking at non-traditional families, it concluded that step-grandparents have no legal right to visitation with their step-grandchildren.

In a case that is high on the sympathy quotient, the child in question was two years old when her parents divorced. Her mother was awarded custody.

Upon the death of her mother, the ten-year-old lived with her Step-Grandfather whose deceased wife was her maternal grandmother.

Father Gained Custody of Girl

Soon thereafter the girl's Father sought and gained custody of her.

During the child's life, the Step-Grandfather had given love and care to her, and the two had a deep bond.

He hoped to continue seeing the girl and had petitioned the lower court, under the Grandparent Visitation Act (Indiana Code Section 31-17-5-1 et seq.), for visiting rights.

On appeal, the Father argued that the Step-Grandfather lacked standing as a "grandparent" under the Act to seek any such rights.

Court of Appeals Reversed

The Court of Appeals agreed and reversed the earlier decision.

According to the Act, "a child's grandparent may seek visitation rights if: (1) the child's parent is deceased; (2) the marriage of the child's parents has been dissolved in Indiana; or (3) . . the child was born out of wedlock."

For the purposes of this Act, Indiana Code Section 31-9-2-77 defines "maternal or paternal grandparent" as including: "(1) the adoptive parent of the child's parent; (2) the parent of the child's adoptive parent; and (3) the parent of the child's parent."

Step-Grandfather sought court-ordered visitation rights.

Statutory Definition Controlled

In the case at hand, the Step-Grandparent "is the step-father of [the child's] mother; thus, he does not fit into any of the categories in the statutory definition of a grandparent entitled to petition for grandparent visitation rights."

The Act "applies only to requests for visitation made by grandparents," the Court declared.

"We decline to expand the plain meaning of the statute by including step-grandparents as 'grandparents' for purposes of the application of the Grandparent Visitation Act."

As such, the Step-Grandfather "did not have standing" to petition for visitation under the Act.

See *Maser v. Hicks,* 809 N.E.2d 429 (Ind.App. 2004). ♦

Dueling Parents Split Girl's Ashes

In a case that turned the death of a 17-year-old into a weapon to be used by her divorced parents, the Court made new law.

Both had planned the girl's funeral, and both had authorized her cremation. Only later did the Mother—who had sole custody—say she alone should get the ashes.

Addressing for the first time "whether a custodial parent has the right to make decisions regarding the disposition of a minor child's remains," the Court decided no.

No Distinguishing Difference

Citing Indiana's burial statutes, it found no distinction was made "between a custodial and non-custodial parent" in references to the decedent's surviving parents.

Furthermore, the Court noted, "[T]he practice of dividing the remains . . . among the survivors is common and acceptable in the funeral service industry."

As such, the Court upheld the lower court's equal distribution of the ashes between the parents.

See *In Re Estate of K.A.,* 807 N.E.2d 748 (Ind.App. 2004). ♦

Mother Told to Pay for Private College Costs

Court modified agreement to cover costs of private college.

As high school seniors anxiously await acceptance letters from colleges countrywide, their parents are just as nervous, trying to figure out how to pay for the pricey educations.

In the case at hand, Mother and Father were married for twenty years before divorcing in 1994. They had two daughters.

According to their Settlement Agreement, they agreed to share college costs "in such sum as would be appropriate for a student attending a state supported Indiana University, unless otherwise agreed, in shares proportionate to their incomes (63% for Father and 37% for Mother)."

College-Shopping with Father

When their oldest child was a senior, Father took her to visit four colleges—including Baylor University, a private school in Texas.

Mother knew of these trips and helped with one by providing transportation for the younger child to join them. She even drove the oldest to Baylor for the start of classes.

But Mother would not pay 37% of the costs of Baylor, arguing her share "was capped at 37% of the cost of attending Indiana University."

Mother Must Pay Private College

The lower court disagreed, ordering her to pay 37% of the cost of her child's first year at Baylor—and, on appeal, this ruling was affirmed.

According to the Court, parties to a dissolution may enter settlement agreements that include provisions for paying college expenses.

These provisions may be modified by a trial court "upon a showing of changed circumstances so substantial and continuing as to make the terms unreasonable."

In the face of Mother's claim that the court had failed to enforce the terms of the parties' agreement, the Court of Appeals noted: "To the contrary, it was modifying the agreement based on a substantial change of circumstances."

Both Parents Increased Earnings

At the time of the dissolution, Mother earned $41,000, and Father earned $81,800. Ten years later, she was earning $91,000, and he was earning $140,000.

"This 89% increase in the parties' income, coupled with [their daughter's] decision—(which they facilitated)—to attend an out-of-state institution, represents a substantial change of circumstances justifying modification of the support order," the Court concluded.

See *Borth v. Borth*, 806 N.E.2d 866, (Ind.App. 2004). ♦

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