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Sperm-donor's case challenges old laws

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The question behind a case unfolding in Cook County Circuit Court between a gay man and a lesbian couple over parental rights to the 11-month-old baby he sired boils down to this: When is a sperm donor really a father?

The Chicago case is part of a nationwide legal morass in the area of artificial insemination, one of many where the law has failed to keep pace with social and technological change, experts say.

In the 1970s and '80s many states adopted laws about artificial insemination based on a model called the Uniform Parentage Act. Back then women who conceived through donor insemination typically were wives with infertile husbands. Nearly all donors were anonymous men who sold their semen to sperm banks and had no interest in being fathers.

Those laws—which established the husband as the legal parent and gave the donor no parental rights—were intended as much to protect donors from paternity claims as they were to protect the legitimacy of the child and the integrity of the family unit, which lawmakers viewed as a married couple and their children.

But times—and families—have changed. Today, many users of artificial insemination are single women or lesbian couples who may know the man providing the sperm. In those cases, legal experts say, the law is inadequate for the potential complications.

The Uniform Parentage Act, approved in 1973 by the Chicago-based National Conference of Commissioners on Uniform State Laws, "doesn't address situations where identified donors and intended parents fail to draw up a preconception agreement," said Chicago attorney Terri Finesmith Horwich, who specializes in reproductive technology and adoption law. "It leaves people not knowing what they can do."

The Cook County lawsuit is a case in point.

Lynn Alleruzzo, who operates a psychological testing service with her partner, conceived a child using the sperm of Kevin Green, a Lincoln Park real estate broker and longtime friend. According to her lawyer, Green agreed to allow Alleruzzo's partner, Charlene Crotty, to adopt the baby.

In their view, the two women are the child's intended parents and Green is the sperm donor. Green, however, said the deal was for him to be involved in parenting the child. He contends that he never consented to any adoption and that he, not Crotty, is the boy's second parent.

The Illinois Parentage Act of 1983 provides that a child born as the result of artificial insemination will be treated as a "naturally conceived legitimate child" that the mother's husband "shall be treated in law as if he were the natural father," and that the sperm donor will not be considered the legal father.

But until judges have a chance to interpret the law (or the legislature amends it), Horwich said, "there will be ambiguity—and there will be disputes."

The law works fine in the context of married couples and anonymous donors, said Horwich.

But what about unmarried women? What about known donors, whether the recipients are married or unmarried?

There are other unanswered questions:

If the parties spell out their intentions in advance, is that agreement binding? (Courts have invalidated collaborative reproductive contracts on grounds that they violate public policy or that the parties could not have known in advance how they would feel after the birth. Therefore, they were not in a position to give truly informed consent.)

Also, what role does the law assign to physicians, and what happens if the insemination is performed without one?



Kevin Green, a Lincoln Park real estate broker who donated sperm to a lesbian couple, is seeking parental rights to the child he sired.

Last week, a Cook County Circuit Court judge ruled, on a preliminary motion, that the law does not apply in cases with known donors. Her decision—which is likely to be appealed—means Green can proceed with his paternity claim, in which he is seeking joint custody and visitation rights.

Patricia Logue of the Lambda Legal Defense and Education Fund, a national civil rights organization for lesbians and gay men, said the statute was meant to apply equally to married and unmarried women. "Then-Gov. [James] Thompson vetoed the original version," she said, "because it said 'married' women."

But Horwich said it's ambiguous. "The language is about husbands," she pointed out.

Part of the courts' task in interpreting the Illinois Parentage Act will be to determine the role of the physician.

The statute says the donor of semen "provided to a licensed physician for use in artificial insemination" will not be treated as the natural father.

In Alleruzzo's case, the insemination was not performed by a doctor, although an obstetrician gave Alleruzzo syringes and told her what to do.

Although the 1983 statute may be deficient today, it was quite progressive at the time. In 1954, an Illinois court had ruled that artificial insemination, even with the husband's consent, constituted adultery, and that a child so conceived was illegitimate.

There is no precedent to guide the Illinois courts in interpreting the current law. A handful of similar cases have cropped up in other jurisdictions, but they are not binding here.

In a 1986 case with similar facts and an identical statute, the California Court of Appeal upheld the paternity claim of a man who had donated his sperm to a lesbian friend. That court said California's parentage act did not bar the man's claim because no licensed physician had been involved in the insemination.

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Tribune photo by José M. Osorio

While legal tangles have embroiled some users of non-traditional reproductive techniques, Cindy Hyndman (left) and Wendy Cole of

Wrigleyville are exclusive parents of Rachel, 5 months. Rachel's biological mother is Cole and her biological father is Hyndman's cousin.

Colorado, which also has an identical statute, had a similar case except that the sperm sample was given to a gynecologist. The Colorado Supreme Court ruled in 1989 that the provision barring paternity claims by sperm donors does not apply when a known donor and an unmarried recipient have agreed in advance that the donor will be treated as the child's father.

Professor Lori Andrews of Chicago-Kent College of Law, who has written extensively on reproductive law, said legislatures "never intended that legal parenthood would be based on whether a physician performed the insemination—they just assumed a physician would be involved for medical screening.

"The key question in cases of known parenthood," said Andrews, "should be intent."

Both Logue and Horwich believe intended parents and gamete donors should thoroughly discuss who will play what role in the future child's life, and they should commit their agreement to writing—but that doesn't guarantee a court will enforce it.

Until the law is clearer, said Logue, "I advise all couples that, if they want the least doubt about whether they'll be able to be the sole legal parents, they should use an anonymous donor."

Laura Rissover and Cathy Plotke of Edgewater went that route in conceiving their 14-month-old son.

"Even with the best of intentions," said Rissover, "when a child is born, your emotions come into play, and the donor might change his mind. We weren't willing to risk it."

Many women, however, prefer to use an identified donor, whose personality, health and genetic background are known.

One such couple is Wendy Cole and Cindy Hyndman of Wrigleyville, the proud, legal—and exclusive—parents of 5-month-old Rachel.

Rachel's biological mother is Cole, and her biological father is Hyndman's first cousin—a man who will always be part of Rachel's life, the couple says, but will never threaten the security and integrity of her nuclear family.

"This way Rachel can know who her biological father is—and it's someone we love and care about and have a really good relationship with," said Cole, 37, a correspondent for Time magazine.

But the key for them was trust.

"I was certainly aware that if the donor decided he wasn't going to give up his parental rights, that was a risk we were taking," said Hyndman, 40, a lawyer. "I didn't feel comfortable trusting anyone but my cousin," whom she described as "generous, loving, creative, fun—all qualities that don't show up in catalogs of anonymous sperm donors."

The father, Jeep Johnson of New York, formally surrendered his rights in March, and Hyndman's adoption of Rachel became final last month.

Some ethicists and theologians argue that all third-party reproduction—including surrogacy and egg donation, which have also raised legal issues—should be banned. But as long as such technologies are allowed, legal experts say, the next best approach is to recognize the written intentions of the parties.

Donor insemination laws "should allow the parties' preconception intent to govern paternity," said Andrews, "possibly requiring that some documentation of that intent be filed with the state."