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Sperm-Bank Deposit May not Negate Father Status

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LOS ANGELES (CN) - Presumed-father status may be available to a man whose ex-girlfriend conceived a child through his sperm-bank deposit, a California appeals court ruled.

The man, identified in court documents only as Jason P., petitioned to establish a parental relationship with the child born to his ex-girlfriend, identified as Danielle S.

Jason and Danielle had lived together for many years, and had tried unsuccessfully to have a baby naturally beginning in 2006. The couple split up in 2008, and Jason gave Danielle permission to use semen he had deposited a sperm bank in pursuit of single motherhood.

Prior to the in vitro fertilization procedure, both Jason and Danielle signed informed-consent papers. On each of the forms, Danielle filled in both her and Jason's name in the "intended parent" spaces, although Jason had previously told her he was not ready to be a parent.

Danielle gave birth to a son in late 2009, and the couple apparently enjoyed an on-again, off-again relationship until Danielle ended the relationship in 2012.

In his request for presumed fatherhood, Jason told the court that Danielle referred to him as "Dada" when speaking to their son. Danielle and the boy also flew to New York several times to visit Jason after he took a job there temporarily, and communicated by Skype when they were apart, Jason said.

A Los Angeles County judge dismissed Jason's petition, relying on the fact that Jason and Danielle had never been married, and state law that governs sperm donations prevents Jason from seeking a parentage declaration without a pre-insemination agreement otherwise.

On appeal, a panel for the Second Appellate District noted that its previous attempts to link sperm-donor parentage to married couples had been undermined by the California Supreme Court's ruling in *K.M. v. E.G.* In that case, one half of a lesbian couple provided the other with an egg for the purpose of bringing a child into their joint home and raising it together.

In that case, however, K.M. did not call the child her own and had no interest in being the presumed mother. Here, however, Jason's post-birth conduct toward his son should have been examined before rejected his request, the appeals court said.

"By interpreting the law only to preclude a sperm donor from establishing paternity based upon his biological connection to the child, while allowing him to establish that he is a presumed parent under a different section of law based upon a demonstrated familial relationship, we allow both statutes to retain effectiveness and promote the purpose of each," Judge Thomas Willhite Jr. wrote for the panel. "Moreover, we avoid a construction that would lead to unintended, and some might say absurd, consequences. For example, suppose an unmarried couple that had tried unsuccessfully to conceive a child naturally, finally were able to conceive through assisted reproduction. They then got married, after conception but before the birth of the child, and raised the child together. After several years, they divorced and the mother sought child support because she could not afford to care for the child on her own. Under Danielle's interpretation of the sperm donor law, the mother's ex-husband would have no obligation to support the child because he was a sperm donor and could not be found to be the child's presumed father, despite having been married to the mother at the time of the child's birth and having raised the child as his own. The Legislature could not have intended this result."

This interpretation does not mean, however, that a mother loses her right to single parenthood when she allows her child to have some sort of relationship with the sperm donor, the panel stressed.

"Parentage law requires a familial relationship," Willhite wrote. "To qualify as a presumed parent, the presumed parent must show that he or she 'receives the child into his or her home and openly holds out the child as his or her natural child.' A mother wishing to retain her sole right to parent her child conceived through assisted reproduction can limit the kind of contact she allows the sperm donor to have with her child to ensure that the relationship does not rise to the level of presumed parent and child."

Furthermore, Jason also bears the burden of proving how and why he should be considered the presumed father - which the trial court never let him do and should have, Willhite concluded.

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