Legal Matters®

Family Law
winter 2022

Assisted reproduction and child support

Can a sperm donor be forced to pay child support? You might think, "Of course not!" But the truth is more complicated than you think.

According to the Uniform Parentage Act (UPA), drafted in the 1970s, any man who provides a physician with his sperm in order to artificially inseminate someone other than his wife is not considered the legal father of a child that is produced. Meanwhile, someone who is not a legal father typically cannot be required to pay child support.

But here's where it gets complicated.

First, only about two thirds of all states have adopted the UPA. Additionally, many states that have adopted the UPA do not protect sperm donors if a physician is not involved in the process. This means, generally, that if a child is produced without going through proper medical channels, then even if the intention is that the biological father not be considered the legal father that person may still be on the hook for support.

However, the UPA was revised in 2000, and some states that either have adopted the UPA in the years since or have updated their version of the UPA do not require a physician to be involved in order for the donor to be protected by the law. Instead, these states require a pre-conception agreement between the donor and the mother that the donor is not the legal father.

Other considerations may be at play too. For example, some courts may distinguish between an anonymous donor (like someone who donates to a sperm bank, keeps his identity shielded and does not have a relationship with the child) and a known donor. An anonymous donor would likely be protected from having to pay support. However, if a

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once-unknown donor reveals who he is and gets involved in the child's life, he may find himself responsible for support. Conversely, depending on where you are, a known donor who makes no effort to be involved with a child may be classified as "unknown" for support purposes.

Things can get even more complicated for situations that touch on multiple states. Take, for example, a recent North Carolina case.

That case involved a child who was conceived by artificial insemination in Virginia, where the mother and her same-sex partner lived at the time. The child was born in Virginia as well.

In 2012, the mother, her partner and the donor — who was a friend of the mother — appeared in court in Virginia, where the donor

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Legal marijuana use can still have custody implications


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As more and more states have decriminalized marijuana use, an increasing number of parents have opted to partake. It's important, however, to be aware that cannabis use could potentially impact your child custody arrangements, as a recent ruling out of New Jersey illustrates.

In 2020, New Jersey passed a bill legalizing medical and recreational marijuana.

Not long after, state child welfare authorities instituted proceedings to terminate the parental rights of a couple that they claimed could not adequately care for their school-aged child as a result of their marijuana use.

A family court judge ruled in the state's favor and ordered that the children be given to foster parents. While the judge ruled that way based on a number of factors, the fact that the parents smoked marijuana regularly while caring for the child was part of the analysis.

In appealing the decision, the parents argued that because of the new state laws, a court could not hold their cannabis use against them.

The New Jersey Court of Appeals disagreed.

The court said that even before the new law was enacted, the state had never taken children away from their parents strictly because they smoked marijuana. But the impact of the marijuana use could be a key factor. Post-legalization, while a judge could not rely exclusively on parents' recreational or medical marijuana use as the reason for terminating parental rights, it could still rely on it as a major consideration when, as in this case, there was substantial evidence that the marijuana use was actually endangering the health, safety and welfare of the child.

Cannabis and custody laws differ from state to state, however. So consult with a local attorney to find out the situation where you live.

Defined benefit pensions can be tricky in divorce

A recent Pennsylvania case shows that defined benefit pensions — in other words, retirement plans that provide a specific payment based on salary history and longevity of employment — can be tricky to divide in a divorce and may even create bizarre results, such as an ex-husband's estate potentially receiving a portion of his ex-wife's pension.

In that case, Carl and Sharon Jagnow married in 1983. Both were public school teachers and participated in the state teacher's retirement system, which provided teachers with defined benefit pensions.

In 2003, Carl retired at age 55 for health reasons. At the time of his retirement, he was given a choice of a single life benefit, which would provide for a slightly higher monthly payment but terminate upon his death, or a joint and survivor pension, which would produce a slightly lower monthly payment but would continue to pay a portion to Sharon after his death. Carl chose the higher paying single life annuity and began receiving a $2,900 monthly payout supplemented by Social Security and IRA money.

10 years later, Sharon, also suffering health issues, retired at 58 and, like Carl, took a single life annuity, which by that point paid her $3,769 per month.

That same year, Carl filed for divorce. During the divorce, the couple disagreed on what to do with the pensions, with Sharon arguing that their decision to each take single life annuities while married was, in essence, an agreement to leave things be. Thus, she asserted, they should be considered separate property. Carl, on the other hand, contended that the pensions were marital property and should be divided equally.

A trial judge ruled that the combined pensions should be divided equally and that should Carl die first, a portion of Sharon's annuity would be paid to Carl's estate.

Sharon appealed, arguing that if Carl was to die, there was no rational reason for money due her from wages deferred until retirement to go to the estate of a dead person.

But an appellate court upheld the decision, pointing out that Sharon benefited from Carl's pension payments for 10 years during their marriage and thus it was equitable for him and potentially his estate to share in the benefits of her extra 10 years of pension contributions.

This was a Pennsylvania case and courts elsewhere might handle such issues differently. So if you are contemplating divorce and you and/or your spouse have defined benefit plans, it's important to talk to a family law attorney to discuss potential options.

Divorce and the child tax credit

As part of the American Rescue Plan Act (ARPA) of 2021, Congress provided families with a $3,000 tax credit per child under 18 and a $3,600 credit per child under six. This credit is also refundable. Families have been receiving half the credit in monthly increments since mid-July, and will receive the other half upon filing their 2021 income tax return.

This benefit could raise issues between divorced or single parents. That's because according to IRS regulations, each minor dependent can only be claimed by one taxpayer, leading to a potential dispute over who gets the tax credit.

In most cases, the parent with physical custody a majority of the year gets to claim the credit. However, a custody agreement that splits parenting time equally might result in the parent with the higher adjusted gross income claiming the credit.

In other cases, divorced or unmarried couples might come to some sort of agreement. For example, if they have more than one child, each might claim different ones as dependents. Or they might alternate the years that they claim a dependent for tax purposes and fill out the relevant tax forms accordingly.

The structure of the payments under ARPA could cause complications. That's because the IRS is likely to send the monthly benefit to the person who claimed the child as a dependent on their 2020 tax return, which would be the most up-to-date information that the IRS has on file. This could create issues where children are moving between households or for families who alternate years claiming their children as dependents for tax purposes.

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Given the complexity of these issues, if you are going through a divorce right now, you should consider talking to a family law attorney about how to resolve these potential issues with the other parent. If you are already divorced, it may be worth calling an attorney to discuss the possibility of modifying your custody arrangement given this change in the law.

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signed over his parental rights so that the mother and her partner could formally adopt the child (though the record is unclear on whether the adoption ever went through).

Seven years later, a county social-services agency in North Carolina, where the mother and child had since moved, filed a legal action against the donor, asserting that he was the child's father and was obligated to pay support.

The donor objected, arguing that Virginia law, which states that a sperm donor does not legally qualify as a parent, applied to the dispute and therefore he didn't owe anything.

A trial judge, however, ruled that the donor was, in fact, the child's legal father and ordered him to pay past due support, get medical insurance for the child and pay $50 per month going forward.

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The North Carolina Court of Appeals reversed the decision. The court found that even though the child support claim was being filed and could be heard in North Carolina, where the child lived, the laws of Virginia should apply to the actual legal issues in the case because that was where the agreement was executed and the child was conceived.

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Leaving kids with grandparents results in lost parental rights

A state appeals court recently decided that a mother who left her children with a grandparent for several years without ever making clear that the arrangement was temporary had surrendered her parental rights.


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In 2015, the mother of 7-year-old "Brittany" and 4-year-old "Brianna" left the children with their father when the couple separated.

By 2018, the mother was living with her new husband, visiting the children on occasion but providing no financial support and engaging in no parental decision-making.

That same year, the father was charged with several crimes and the kids were left in their paternal grandmother's care.

The mother was awarded bi-weekly visitation at that point. Meanwhile, she and her husband entered an agreement with the court requiring them to maintain stable employment and to complete a parenting course.

A court-appointed guardian, however, recommended that the children be placed permanently with the grandmother, pointing out that the stepdad had anger issues while the mother, in addition to offering no financial support, rarely called the children or asked to see them over the previous several years and left all parental decisions to the grandmother.

Upon further assessment, the trial court found that the mother was unfit, that she'd acted in a manner inconsistent with her constitutionally protected status as a parent, and that it was in the children's best interest to live with their grandmother.

The court of appeals upheld the decision, ruling that the mother chose to forego her parental rights by leaving her daughters in the grandmother's care while expressing no intention that the arrangement be temporary.