
Expanding The Recognition Of Family Relationships Through Law

Early family law recognized “traditional” families as consisting of a married man and woman who biologically conceive a child naturally. As time progressed, different social revolutions and technological advancements influenced society to expand their perception of what qualifies as a family. As a result of these adjustments, different laws were reassessed and modified to better suit the changes that these advancements entailed. Throughout history, law has moved towards more inclusive classification of family relationships by redefining family roles and expanding the circumstances in which family units are recognized that go beyond the ‘traditional’ ideology. In part with this broadened perspective, laws and legislations have worked to broaden the legality of nontraditional family procreation through the use of Assistive Reproduction technology. In this essay I will explain how some of these progressive court rulings and amendments to current legislation allowed for individuals, as well as infertile and nonbiological couples to establish and protect their parental rights through circumstances that were not initially accepted under the beliefs of “traditional family” structures. In addition, I aim to address a few of the psychological consequences that exist as a result of this method of legislation.

The social acceptance of using Assisted Reproductive Technology (ART) introduced the need for adjusted laws and regulation for this method of family procreation. It became the responsibility of each individual state to regulate how they handle conflicts associated with assisted reproduction. By using medical facilities and outside donors to assist with procreation, society pushed the boundary of preexisting laws that addressed maternal and paternal rights of offspring. With the involvement of ART, legislators had to change the way they dealt with a number of factors that are involved in the process of assisted reproduction. However, with ART making fast headway, much of the legislation was adapted after conflicts arise. It’s difficult to anticipate and regulate every conflict that could appear, and as a result, much of the legislation involved with assisted reproduction involves assessing each case individually and reflecting on similar past cases in order to determine the proper legal course of action.

Surrogacy

The use of surrogacy as assistive reproduction demonstrated how society’s practices pushed the envelope on what the law had previously constructed before third-party reproduction was introduced. At the time, surrogacy was not well regulated by law, and the idea of nonbiological parental rights only applied in instances of adoption. In the case of *In Re Marriage of Buzzanca*, the appeal court ruling awarded legal parenthood to Luanne Buzzanca and required that John pay child support as he is held responsible for intention of procreation through the practice of surrogacy involving a donated egg and sperm (Wald 1998). In reaching this decision, the Court had to reflect on previous California law that covered the topic of consenting to artificial insemination. Through this they were able to determine that even though the Buzzanca’s were not biologically related to Jaycee, their intent of procreation was more important than biological relationship in determining parental rights in the court of law. This ruling was viewed as having significantly strengthened the rights of infertile couples who chose to have children through surrogacy (Hernandez and Maharaj 1998). This case illustrates how State law demonstrated

progression in the way they adapted to instances that were not previously regulated by law. By addressing the validity of intention of couples to procreate using ART, state legislation was able to broaden the laws by acknowledging the legality of nonbiological parental rights. The case of *Johnson v Calvert* was also brought up in the court proceeding because of the factor of intention on the basis of procreation and a two thirds evaluation that determined who was awarded parental rights through action and intention versus providing gestation services. The *Buzzanca* case ruling, in particular, helped to significantly update legislation on Assistive Reproductive Technology (Hernandez and Maharaj 1998). Prior to this case there had been a significant time period in which ART had advanced immensely and court legislation had updated its policies on the topic. The rulings of this case helped to keep pace with the progression of ART advancements while simultaneously chipping away the concept of “traditional” family relationship and expanding the ways in which we recognize nonbiological adults as having the right to parent and having legal custody despite socially untraditional circumstances.

In Vitro Fertilization

In Vitro Fertilization introduces a variety of new factors that contribute to family reproduction in ways that would be perceived as deviant of ‘traditional’ family construction. With all this technology being integrated into the practice of reproduction, standard “traditional family” beliefs were no longer valued as being critical factors in identifying familial legitimacy. Along with this broadened identification of familial construct, the increasing popularity of IVF heightened the State’s pressure to regulate the rights and responsibilities of all parties involved. In the case of *Johnson v Calvert*, Mark and Crispina Calvert were unable to have children on their own and opted to use In Vitro Fertilization to create a zygote and utilize the availability of a gestational surrogate (Panelli 1993). A contract was made, and all parties consented that upon birth, Mark Johnson was to be given full custody of the child and Anna (their surrogate) would relinquish her birth rights and allow for Crispina to adopt the child, in exchange for a payment of \$10,000 and a life insurance payout. Conflicts arose due to lack of full disclosure of the surrogate’s previous health risks and Anna changed her mind and fought to keep custody of the child. Under the Law of the Court, the surrogacy contract was voided because it conflicted with the residing law in California at the time that prohibited the exchange of money for adoption of children. It was enforced, however, that the contract was made before conception and it laid out the clarification that even though she was the birth mother, Anna’s involvement was to provide a gestation service whereas the Calvert’s had the genetic parental ties to the child and acted with intent to procreate and raise the child from the start (Panelli 1993). This case was important in clarifying the parental rights of genetic versus birth relationship to the child. The court referred to the Uniform Parentage Act which recognized only one natural mother. Since both women were able to establish their maternal ties to the child, the court decision favored the relationship that consisted of intended procreation. The court ruling awarded the Calverts with parental custody of the child, but this case highlighted the need for better regulation of Assisted Reproductive Technology as it became evident that a majority of this process was excluded from laws and legislations referenced in the case. The State was able to determine that even though the Calverts used nontraditional methods of procreation, their parental rights were acknowledged for having the justifiable intention to establish a family. Even though the legal jurisdiction of this circumstance still needs some revamping, the state was able to resolve this issue, and acknowledge the rights of infertile couples to maintain custody through this unconventional method of establishing family.

State's Responsibility for revamping legislation involving ART practices

Even though individual States have made progress in the way they expand laws to address situations involving the more modern methods of assisted reproduction, there are still many factors of ART that needs to be included in state regulation of medical practices and parental rights. Lack of well-structured regulation in this field promotes uncertainty and variation in the way conflicts are addressed. The lack of structured proactive legislation has psycho-social consequences for those who are affected by this reactive method of governing.

In the case of *Davis v. Davis*, the State's absence of regulation in IVF contributed to the issue of not knowing how to determine the rights of a father to have control over embryos situated outside of the mother's body (Sanger 212). Many questions arose in this case pertaining to the status of the eggs and whether to classify them as persons or property. Under Tennessee Law, the eggs were not covered as being living thing's or property, but rather somewhere in-between, so the ruling was decided on a three-stage process that assessed how the two parties disagreed, discussed any prior arrangement, and expressed relative interest in how both parties wanted rights to the embryos (*Davis v. Davis* 1992). During this era, the gender roles of family organization and reproduction catered to women because of how gestation occurred within the mother, so when the court protected Juniors right to not procreate it was a very new concept that individuals right to parenthood were recognized in that context. Despite this expansion of the rights of parenthood between individuals, the lack of regulation of this process prior to conflict raises a lot of issues in how we deal with problems relating to IVF. Much of this dispute could have been resolved much easier had there been a method of established protocol enforced when engaging in IVF treatment. The same scenario of reactive legislation overlays in many of the cases mentioned previously. The lack of proactive regulation of ART practices results in avoidable legal problems and psychological strain on those affected by these developing case issues (for instance the case of Anna Johnson reacting negatively to sudden court rulings).

While state laws have made a lot of progress in the way we recognize parental rights, there is much more that needs to be addressed in regard to ART practices and how it is regulated by law. These unregulated circumstances create confusion and strain on how we address further cases involving third-party reproductive assistance. If states continue to address current and potential conflicts that relate to IVF regulation, more expansion and progressive legislation would help to make the laws surrounding assistive reproduction more concise and standardized to preserve equality in the way we recognize parental rights through nontraditional methods of procreation.