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Adoption, LGBTQ+ Rights in Colorado

By
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It can be particularly difficult for members of the LGBTQ+ community to go through custody battles in the current political climate. For example, an Oklahoma City court

recently ruled that Kris Williams did not have legal rights to the child she shared with her former partner, Rebekah Wilson, because she had never formally adopted the child.

As reported by The Oklahoman, Williams and Wilson were in a long-term relationship when they decided to have a baby through a known donor rather than a sperm bank. Williams and Wilson met a donor and Wilson decided to carry the child. Two months before the child was born, Williams and Wilson were married. Two years later, Wilson filed for divorce. Even though Williams was listed as "Second Mother" on the birth certificate and acted in a parental role throughout the child's life, the court ruled that because she did not adopt the child, she was not legally his parent and had no parental rights under Oklahoma law. Williams has stated her intention to appeal the trial court's denial of her parental rights.

For LGBTQ+ parents in Colorado, this case raises a question with life-changing implications: are they at risk of losing their parental rights if they choose not to adopt their child? Fortunately, the law in Colorado is clear that parentage can be established beyond biology or adoption.

Under Colorado law, "[a]ny interested party may bring an action to determine the existence … of a mother and child relationship." While the statute does not define "interested party," courts have determined that the term includes "any man presumed to be the child's father under section 19-4-105, C.R.S." and "any woman who is presumed to be the child's mother" under the same section.

Once an individual's capacity to bring an action to determine parentage has been established, the court must then determine if a parent-child relationship exists. Under the Uniform Parentage Act, a non-biological parent may establish paternity or maternity over a child by demonstrating that "[w]hile the child is under the age of majority, the party received the child into his or her home and openly holds out the child as his or her natural

child." In other words, "a person may gain the status of a child's natural parent by holding the child out as his [or her] own."

Importantly, the UPA allows a parent to establish paternity or maternity "based upon considerations other than biology or adoption." In determining parentage, courts will look at what is in the child's best interests.

Colorado courts have made it abundantly clear that under the UPA, a child may have two legal same-sex parents. The legislature intentionally included gender-neutral language in the UPA and "specifically allows the terms 'father' and 'mother' to be used interchangeably, where practicable."

More importantly, the court in A.R.L. (recognizing that interpreting the UPA as allowing for a child to have two legal same-sex parents was supported by "the compelling interest children have in the love, care, and support of two parents, rather than one, whenever possible") held that: "The prerogative of a child to claim the love and support of two parents does not evaporate simply because the parents are the same sex. It applies to all children, regardless of whether they were conceived during a heterosexual or same-sex relationship. Thus, we conclude that a child who is born during a same-sex relationship can have two legal parents of the same sex, if the nonbiological parent can demonstrate presumptive parenthood under the UPA."

In cases similar to Williams' case, where the known donor asserted his parentage in conflict with Williams' parentage, courts "should determine which presumption should control based upon "the weightier considerations of policy and logic," taking into consideration all pertinent factors, including, but not limited to, those factors enumerated in the statute."

Alternatively, non-biological parents may establish standing as a child's "psychological parent." The statute holds that an individual other than a parent may commence a

proceeding concerning the allocation of parental responsibilities if they had "the physical care of a child for a period of one hundred eighty-two days or more, if such action is commenced within one hundred eighty-two days after the termination of such physical care."

In either case, once a parent has been determined to be the child's presumptive parent or the child's psychological parent, the court then considers the allocation of parental responsibilities pursuant to the best interests of the child.

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