





Establishing Legal Parentage in ART Cases

Steven H. Snyder, Esq.
Steven H. Snyder & Associates
Maple Grove, Minnesota
steve@snyderlawfirm.com



Considerations


- The type of assisted reproduction that is used
- The genetic (and presumptive parental) relationship of the various parties involved
- The applicable statutes



Types of Assisted Reproduction

Key Definitions


- ***Assisted Reproduction.*** Any method by which a person or couple seek to conceive a child by means other than sexual intercourse.
- ***Assisted Reproductive Technology (abbrev. ART).*** Any technology that is employed to conceive a child by means other than sexual intercourse.
- ***Collaborative Reproduction.*** An attempt to produce a pregnancy by or for intended parents which involves the participation of another person or other persons who are not intended parents. Also known as *Third Party Reproduction.*



Types of Collaborative Reproduction

Key Definitions (cont'd)


- **Artificial Insemination (abbrev. AI).** Insertion of sperm into female reproductive organs by any means other than sexual intercourse with the intent to cause a pregnancy. More properly called **Intrauterine Insemination (abbrev. IUI).**
- **In Vitro Fertilization (abbrev. IVF).** Fertilization of an egg by sperm outside of the womb in a petri dish in order to produce an embryo that can be placed either in the potential birth mother=s reproductive organs or in cryopreservation for future use.
- **Surrogacy.** Arrangement in which a woman agrees to carry to term and deliver a child for another person or couple, whether she is a genetic mother of the child or not, and whether she does so for compensation or not.



Genetic and Presumptive Legal Relationships

Key Definitions (cont'd)

- **Intended Parent.** The person(s) who initiate the assisted reproduction process and who intend at the outset of the process to be the legal parents of any children so conceived.
- **Donor.** A person who provides sperm or eggs for use by others in an attempt to conceive a child through assisted reproduction, whether known or not and whether for compensation or not (unless intended for use by a spouse or partner). Also referred to as **Gamete Donor, Egg (or Ovum) Donor,** or **Sperm Donor.**
- **Surrogate.** A woman who agrees to carry to term and deliver a child for another person or couple, whether she is a genetic mother of the child or not, and whether she does so for compensation or not. Sometimes referred to as a **Gestational Carrier, Gestational Surrogate** or **Traditional Surrogate.**



Types of Collaborative Reproduction

- Sperm donation via artificial insemination (AI)
- Egg (or ovum) donation via *In vitro* fertilization (IVF)
- Surrogacy, whether traditional surrogacy (in which the surrogate uses her own egg via AI) or gestational carrier (in which the surrogate gestates the child but does not use her own egg via IVF of either the intended mother's or an egg donor's egg)

Genetic and Presumptive Legal Relationships			
Sperm	Egg	Uterus	ART Procedure
IF (Pat. Pres.)	IM (Mat. Pres.)	IM (Mat. Pres.)	AI, IVF
SD (IF Pat. Pres. \$257.56)	IM (Mat. Pres.)	IM (Mat. Pres.)	Sperm Donation AI (IVF?)
IF (Pat. Pres.)	ED (Mat. Pres.)	IM (Mat. Pres.)	Egg Donation IVF
SD (IF Pat. Pres. \$257.55)	ED (Mat. Pres.)	IM (Mat. Pres.)	Sperm/Egg Donation IVF
IF (Pat. Pres.)	IM (Mat. Pres.)	GC (Mat. Pres.; H. Pat. Pres.)	Gestational Carrier IVF
SD (Pat. Pres.; IF has no Pres.)	IM (Mat. Pres.)	GC (Mat. Pres.; H. Pat. Pres.)	Gestational Carrier Sp. Donation – IVF
IF (Pat. Pres.)	ED (Mat. Pres.; IP has no Pres.)	GC (Mat. Pres.; H. Pat. Pres.)	Gestational Carrier Egg Donation – IVF
SD (Pat. Pres.; IF has no Pres.)	ED (Mat. Pres.; IM has no Pres.)	GC (Mat. Pres.; H. Pat. Pres.)	Gestational Carrier Sp./Egg Donation AI (IVF?)
IF (Pat. Pres.)	TS (Mat. Pres.; IP has no Pres.)	TS (Mat. Pres.; H. Pat. Pres.)	Traditional Surrogacy Egg Donation AI (IVF?)
SD (Pat. Pres.; IF has no Pres.)	TS (Mat. Pres.; IM has no Pres.)	TS (Mat. Pres.; H. Pat. Pres.)	Traditional Surrogacy Sp./Egg Don. AI (IVF?)

Relevant Minnesota Statutes

Chapter 257
Children; Custody; Legitimacy Parentage Act

- 257.52 Parent and child relationship defined.** As used in sections 257.51 to 257.74, “parent and child relationship” means the legal relationship existing between a child and the child’s biological or adoptive parents incident to which the law confers or imposes rights, privileges, duties, and obligations. **It includes the mother and child relationship and the father and child relationship.**



Chapter 257 - Continued

Children; Custody; Legitimacy Parentage Act

■ **257.54 How parent and child relationship established.**

The parent and child relationship between a child and

(a) the biological mother may be established by proof of her having given birth to the child, or under sections 257.51 to 257.74 or 257.75;

(b) the biological father may be established under sections 257.51 to 257.74 or 257.75; or

(c) an adoptive parent may be established by proof of adoption.



Chapter 257 - Continued

Children; Custody; Legitimacy Parentage Act

■ **257.541 Custody and parenting time with children born outside of marriage.**

Subdivision 1. Mother's right to custody.

The biological mother of a child born to a mother who was not married to the child's father when the child was born and was not married to the child's father when the child was conceived has sole custody of the child until paternity has been established under sections 257.51 to 257.74, or until custody is determined in a separate proceeding under section 518.156.



Chapter 257 - Continued

Children; Custody; Legitimacy Parentage Act

■ **257.55 Presumption of paternity.**

Subdivision 1. Presumption.

A man is presumed to be the biological father of a child if:

(a) He and the child's biological mother are or have been married to each other and the child is born during the marriage, or within 280 days after the marriage is terminated by death, annulment, declaration of invalidity, dissolution, or divorce, or after a decree of legal separation is entered by a court. The presumption in this paragraph does not apply if the man has joined in a recognition of parentage recognizing another man as the biological father under section 257.75, subdivision 1a;

(g) He and the child's biological mother have executed a recognition of parentage in accordance with the section 257.75 and another man is presumed to be the father under this subdivision.



Chapter 257 - Continued
Children; Custody; Legitimacy Parentage Act

■ **257.62 Blood and genetic tests.**
Subdivision 5. Positive test results.

b) If the results of **blood or genetic tests** completed in a laboratory accredited by the American Association of Blood Banks indicate that likelihood of the alleged father's paternity, calculated with a prior probability of no more than 0.5 (50 percent), is **99 percent or greater**, there is an **evidentiary presumption that the alleged father is the biological father** and the party opposing the establishment of the alleged father's paternity has the burden of proving by clear and convincing evidence that the alleged father is not the father of the child.



Chapter 257 - Continued
Children; Custody; Legitimacy Parentage Act

■ **257.62 Blood and genetic tests.**
Subdivision 5. Positive test results.

■ (c) A determination under this subdivision that the alleged father is the biological father does not preclude the adjudication of another man as the legal father under **section 257.55, subdivision 2**, nor does it allow the donor of genetic material for assisted reproduction for the benefit of a recipient parent, whether sperm or ovum (egg), to claim to be the child's biological or legal parent.



Chapter 257 - Continued
Children; Custody; Legitimacy Parentage Act

■ **257.55 Presumption of paternity.**
Subdivision 2. Rebuttal.

A presumption under this section may be rebutted in an appropriate action only by clear and convincing evidence. **If two or more presumptions arise which conflict with each other, the presumption which on the facts is founded on the weightier considerations of policy and logic controls.** The presumption is rebutted by a court decree establishing paternity of the child by another man.



Chapter 257 - Continued

Children; Custody; Legitimacy Parentage Act

■ **257.56 Artificial Insemination**

Subdivision 1. If, under the supervision of a licensed physician and with the consent of her husband, a wife is inseminated artificially with semen donated by a man not her husband, the husband is treated in law as if he were the biological father of a child thereby conceived. The husband's consent must be in writing and signed by him and his wife.



Chapter 257 - Continued

Children; Custody; Legitimacy Parentage Act

■ **257.57 Determination of father and child relationship**; who may bring action; when action may be brought.

Subd. 1. A child, the child's biological mother, or a man presumed to be the child's father under 257.55, subd 1, paragraph (a), (b), or (c) may bring an action.

Subd. 5. If an action under this section is brought before the birth of the child, all proceedings shall be stayed until after the birth, except service of process and the taking of depositions to perpetuate testimony.



Chapter 257 - Continued

Children; Custody; Legitimacy Parentage Act

■ **257.75 Recognition of parentage.**

Subd. 1. Recognition by parents.

The mother and father of a child born to a mother who was not married to the child's father nor to any other man when the child was conceived nor when the child was born may, in a writing signed by both of them before a notary public and filed with the state registrar of vital statistics, state and acknowledge under oath that they are the biological parents of the child and wish to be recognized as the biological parents. The recognition must be in the form prepared by the commissioner of human services under subdivision 5, except that it may also include the joinder in recognition provisions under subdivision 1a. The requirement that the mother not be married when the child was conceived nor when the child was born does not apply if her husband or former husband joins in the recognition under subdivision 1a.



Chapter 257 - Continued

Children; Custody; Legitimacy Parentage Act

■ **257.75 Recognition of parentage.**

Subd. 5 (b) The form must include the following:

- (4) A notice that the recognition of parentage is a basis for:
- (iii) Ordering a contribution to by a parent under section 256.87;
- (iv) Ordering a contribution to the reasonable expenses of the mother's pregnancy and confinement, as provided under section 257.66, subdivision 3; and
- (v) Ordering reimbursement for the costs of blood or genetic testing, as provided under section 257.69, subdivision 2;



Chapter 257 - Continued

Children; Custody; Legitimacy Parentage Act

■ **257.75 Recognition of parentage.**

Subd. 2. Revocation of recognition.

A **recognition may be revoked** in a writing signed by the mother or father before a notary and filed with the state registrar within the earlier of **60 days after the recognition is executed** or the date of any administrative or judicial hearing relating to the child in which the revoking party is a party to the related action.

Once a recognition has been properly executed and filed with the state registrar, if there are no competing presumptions of paternity, a judicial or administrative court may not allow further action to determine parentage regarding the signator of the recognition. Until an order is entered granting custody to another, the mother has sole custody.



Chapter 257B

Standby Custodian; Designation; Guardian

■ **257B.04. Contents of designation.**

Subd. 1. Required information.

A designation of a standby or temporary custodian must **identify the designator** making the designation; the children; the other parent, if any; the standby or temporary custodian; and the **triggering event or events** upon which a standby or temporary custodian becomes a co-custodian or custodian. Different standby custodians may be designated for different triggering events. The designation must include the **signed consent of the standby or temporary custodian and the signed consent of the other parent** or a statement why the other parent's consent is not required.



Chapters 259 (*Adoption*), 260C (*TPR*), and 144 (*Dept. of Health, Vit. Stats.*)

- 259.22: Petition/Residency
- 259.24: Consents
- 259.52: Fathers' adoption registry
- 259.55: Payment of birth parent expenses; penalty
- 260C.301: Termination of parental rights
- 144.218: Replacement certificates of birth



Chapter 144. Department of Health Vital Statistics

- **144.218 Replacement certificates of birth.** Subd. 1. Adoption. Upon receipt of a certified copy of an order, decree, or certificate of adoption, the state registrar shall register a replacement certificate in the new name of the adopted person.
Subd. 4. Incomplete, incorrect, and modified certificates. If a court finds that a birth certificate is incomplete, inaccurate, or false, or if it is being issued pursuant to section 259.10, subd. 2, it may order the registration of a replacement certificate, and, if necessary, set forth the correct information in the order.



Establishing Parentage

- Sperm and Egg Donation (various combinations)
 - Administrative under §257.56
 - No proceeding (accept risk)
 - Step-parent adoption



Establishing Parentage (cont'd)

- Surrogacy
 - Both IPs' genetic components
 - Paternity/Maternity proceeding – Chpt. 257
 - One IP's genetic component
 - Paternity/Maternity proceeding – Chpt. 257
 - Step-parent adoption – Chpt. 259
 - No IP's genetic component
 - Adoption – Chpt. 259



Establishing Parentage (cont'd)

- Surrogacy
 - Both IPs' genetic components
 - Paternity/Maternity proceeding – Chpt. 257
 - Temporary designation of guardianship
 - Acknowledgement of right to and waiver of counsel form
 - Petition
 - Findings of fact
 - Notice of entry of judgment



Additional Considerations

- The parties' expressed intent (Buzzanca)
- The location and practical needs of the parties
- The background and creativity of the representing lawyer
- The willingness of the presiding judge to exercise thoughtful and appropriate discretion once the lawyer has laid the proper legal foundation to do so



Additional Considerations

- In re the Parentage of a Child by T.J.S. and A.L.S. (New Jersey)
- William Marotta (Kansas)
- Reber v. Reiss (Pennsylvania)
- Minn. Stat. Ch. 555 (Declaratory Judgments Act)



Additional Considerations

555.02. May have instruments construed

Any person interested under a deed, will, written contract, or other writings constituting a contract, or whose rights, status, or other legal relations are affected by a statute, municipal ordinance, contract, or franchise may have determined any question of construction or validity arising under the instrument, statute, ordinance, contract, or franchise and obtain a declaration of rights, status, or other legal relations thereunder.



Additional Considerations

555.05. Enumeration not exclusive

The enumeration in [sections 555.02 to 555.04](#) does not limit or restrict the exercise of the general powers conferred in [section 555.01](#), in any proceeding where declaratory relief is sought, in which judgment or decree will terminate the controversy or remove an uncertainty.



Additional Considerations

555.08. Supplemental relief

Further relief based on a declaratory judgment or decree may be granted whenever necessary or proper. The application therefor shall be by petition to a court having jurisdiction to grant the relief. If the application be deemed sufficient, the court shall, on reasonable notice, require any adverse party whose rights have been adjudicated by the declaratory judgment or decree, to show cause why further relief should not be granted forthwith.



Additional Considerations

Uniform Declaratory Judgment Act, Reasons for Its Adoption:

"The Declaratory Judgment allows parties who are uncertain as to their rights and duties, to ask a final ruling from the court as to the legal effect of an act before they have progressed with it to the point where any one has been injured."



Additional Considerations

Uniform Declaratory Judgment Act, Reasons for Its Adoption:

"The purpose of this Act is really to prevent litigation. Under the Act any party to a contract, for instance, may have a judicial construction of the same even before a breach thereof, without undue expense and at a time when the effect of an adverse decision is not likely to prove disastrous. In truth, the Declaratory Judgments Act is nothing more than a bill to make it possible for a citizen to ascertain what are his rights and what are the rights of others before taking steps which might involve him in costly litigation. The purpose of the Act and its effect is to enable the citizen to procure from a court guidance which will keep him out of trouble and to procure that guidance with materially less expense than he would have to incur if he should wait until the trouble came before having recourse to the court."
