

Single-Parent Birth Certificates Challenged by Former Partners

By: Samantha Joseph

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A lesbian couple's divorce is laying the groundwork for a constitutional challenge to Florida's birth certificate law.

Under state law, a married woman's husband is listed as the father on her child's birth certificate unless a court establishes other paternity.

The divorce of Deborah Lake and Karen Lynskey questions why the state makes no provision for listing lesbian couples as parents on birth certificates.

The divorce spawned two related cases in Broward and Palm Beach counties, pitting Karen Lynskey against her wife and the birth mother, Deborah Lake, in separate bids for spousal support and parental rights to their three children.

It raises constitutional child custody issues over recognition of nonbirth mothers as legal parents on birth certificates and the rights of each same-sex parent in cases of couples who use in vitro fertilization and other assisted reproductive treatments.

"Husbands don't have to adopt their own children," Karen Lynskey's attorney, Nancy Brodzki of Brodzki Jacobs & Associates in Coral Springs, told the Daily Business Review. "Wives should not have to adopt their own children either."

The couple had a two-decade relationship. They met in Florida in 1994, began dating in 1995 and lived together for three years before separating in 1998. They reconciled the following year and later jointly commissioned in vitro fertilization.

Their son, David, was born in 2003 after Deborah Lake was artificially inseminated using sperm from an anonymous donor. In 2004, Karen Lynskey adopted their son and was placed on his birth certificate. In 2005, they married in Massachusetts, where they lived at that time.

The adoption would be recognized under Florida law after a Third District Court of Appeal ruling in 2010 deemed the state's ban on gay adoption unconstitutional.

Before that, in 2007, the couple had twins. Deborah Lake, a registered nurse, again carried the children, conceived by in vitro fertilization. It was a difficult pregnancy, and doctors ordered bed rest, leaving Karen Lynskey, a social worker, to assume full financial responsibility for the family, according to court documents.

The financial strain led them to return to Florida to reduce expenses and be closer to relatives before the twins were born in 2007. The family moved to Weston.

Lake couldn't legally adopt the twins and was not placed on their birth certificates, even though all three children have the hyphenated surname Lynskey-Lake.

Brodzki will argue both women were the legal parents as a commissioning couple, a term used in Florida law to describe parents of children born through assisted reproductive technology.

"When you fill out the right papers, you walk out with legal rights when the child is born," Brodzki said. Karen Lynskey "is not just the legal parent because the children were born during the marriage but also as part of the commissioning couple under Florida and Massachusetts law."

'Paving The Way'

In 2011, Deborah Lake successfully filed suit in family court to obtain sole parental responsibility for David. The suit did not mention the twins. Broward Circuit Judge Marina Garcia-Wood granted her sole custody, allowing Karen Lynskey to have supervised contact and visitation only at her ex-wife's

discretion. The judge also ordered Karen Lynskey out of the couple's jointly owned home and required her to pay \$500 a month in child support.

Karen Lynskey's court filings indicate she was "unable to participate in making major decisions for the minor child" at the time of Garcia-Wood's order but did not elaborate.

Her motion to modify the order notes a subsequent "substantial, material, unforeseen and permanent change of circumstances" warranting a reversal.

Adoption "just didn't come up. By the time they knew the ban had been lifted their relationship was already on the skids. They just never went down that road," Brodzki said. "Our whole argument is she does not need to adopt in the same way a husband is allowed—not only allowed, but required—to have his name on the birth certificate."

In September, Deborah Lake filed a petition in Palm Beach Circuit Court to establish time sharing, parental responsibility and child support unconnected with dissolution of marriage.

This time, she argued shared parental responsibility best serves the children's interest. She also requested a parenting plan that establishes her home in Jupiter as the children's primary residence.

Lake's attorney, Troy Klein of West Palm Beach, declined comment.

"It is a fascinating case, especially with the recent changes in the law," said Young Berman Karpf & Gonzalez managing shareholder Mitchell Karpf, who's not involved in the litigation. "It's probably going to be paving the way for a lot of similar cases."

The litigation follows landmark cases and court rulings on the rights of same-sex couples.

Florida legalized same-sex marriage in January. In June, the U.S. Supreme Court ruled the Constitution guarantees gay couples a right to marry.

Florida and other states made bureaucratic changes to replace "husband" and "wife" on marriage certificates with "spouse."

Karpf expects a similar change on Florida birth certificates. The state was sued in August in Tallahassee federal court and asked for a legal clarification to determine what to do.

"There are so many different statutes that have to be changed. This is just one of them," he said. "It clearly conflicts with the recent Supreme Court decision. I think this is just part of the cleanup process in terms of what's going to develop and how all of our statutes have to come into conformity."

Lynskey's case was assigned to Broward Circuit Judge Merrilee Ehrlich. No judge had been assigned to Lake's case by deadline.

The two suits will likely be consolidated in Broward County, where the pair last lived together as a married couple.