

Same-Sex Couples and Assisted Reproductive Technology

November 08, 2013

On November 7, 2013, the Florida Supreme Court decided *D.M.T. v. T.M.H.*, SC12-261, a case involving an issue of first impression in Florida—namely, whether Florida will apply the same principles to determine the parentage of a child born through assisted reproduction to a same-sex female couple as it applies to children born through assisted reproduction to opposite-sex couples. The parents in this case are two women, D.M.T. and T.M.H., who were involved in a long-term committed relationship when they agreed to jointly conceive and raise a child together as equal parental partners. Their child was conceived through the couple's use of assisted reproductive technology, with T.M.H. providing the egg and D.M.T. giving birth to the child. The trial court determined that by donating her egg T.M.H. relinquished her parental rights based on section 742.14, Florida Statutes. Section 742.14 provides that, except in the case of a "commissioning couple"—defined in section 742.13 as the intended mother and father of a child who will be conceived through assisted reproductive technology using the biological material of at least one of the intended parents—and fathers who have executed a preplanned adoption agreement, an egg or sperm donor must relinquish any claim to parental rights or obligations to the donation or the resulting child. See §§ 742.13(2), 742.14, Fla. Stat. The Florida Supreme Court affirmed the Fifth District's decision that section 742.14, Florida Statutes, is unconstitutional (1) as a violation of the Due Process Clause of the United States Constitution and separately as a violation of the Due Process Clause and privacy provision of the Florida Constitution; and (2) as a violation of the federal Equal Protection Clause and separately as a violation of the Florida Equal Protection Clause. The dissent disagreed with the majority's constitutional analysis and stated that T.M.H. contractually waived all of her rights to the child at the time she donated her egg. Carlton Fields shareholder Cristina Alonso and Christopher Corts filed an amicus brief, together with the National Center for Lesbian Rights, on behalf of the American Academy of Assisted Reproductive Technology Attorneys in support of T.M.H.'s parental rights. In reaching its decision, the court relied upon and quoted from that amicus curiae brief.

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