



Mitchell Hamline School of Law
Mitchell Hamline Open Access

Faculty Scholarship

2009

Foreword: Assisted Reproductive Technology and the Law

Mary P. Byrn

Mitchell Hamline School of Law, marypat.byrn@mitchellhamline.edu

Publication Information

35 William Mitchell Law Review 401 (2009)

Repository Citation

Byrn, Mary P., "Foreword: Assisted Reproductive Technology and the Law" (2009). *Faculty Scholarship*. Paper 162.
<http://open.mitchellhamline.edu/facsch/162>

This Article is brought to you for free and open access by Mitchell Hamline Open Access. It has been accepted for inclusion in Faculty Scholarship by an authorized administrator of Mitchell Hamline Open Access. For more information, please contact sean.felhofer@mitchellhamline.edu.



mitchellhamline.edu

Foreword: Assisted Reproductive Technology and the Law

Abstract

This foreword introduces Issue 2: Assisted Reproductive Technology and the Law of the 35th Volume of the William Mitchell Law Review. It begins by outlining the author's personal experience with ART, and contrasts her reasoning for using ART with the traditional need for ART. Finally, it lists some of the many legal questions yet to be conclusively answered.

Keywords

LGBT, gay, lesbian, bisexual, transgender, adoption, paternity rights, artificial insemination, single parent, anonymous sperm donor, reproductive services

Disciplines

Family Law | Sexuality and the Law

FOREWORD

Mary Patricia Byrn[†]

Ten years ago, when my partner and I decided to have a family, we were not aware of the legal ambiguities that surrounded our decision. We did not know, for example, that our state did not have a legal mechanism for terminating the paternity rights of anonymous sperm donors; nor did we know that there was no state statute that allowed lesbians to adopt their partner's children; and we certainly did not know that, under certain interpretations of federal law, doctors could deny us reproductive services based solely on our sexuality or because we were not legally married. All we knew at that time was that we, like almost all human beings, had a seemingly innate desire to reproduce and, like almost all of our friends, colleagues, peers, and family members, wanted to have a family.

Luckily, we lived in a metropolitan city and did not encounter opposition to our desire to have children. We readily found a local lab that provided us with frozen sperm and a doctor to perform the insemination and after five tries—significantly fewer than the average number of tries it takes to get pregnant the old fashioned way—we were on our way to having our first child. Our luck continued when, shortly after our daughter was born, a family court judge broadly interpreted state court precedent regarding second-parent adoption so that both my partner and I could be our daughter's legal parents.

It was not until years later, when I began teaching and writing in the area of assisted reproductive technology (ART), that I realized what an unwieldy area of law we had unwittingly entered and how unprotected and unregulated the use of ART was and continues to be.

Originally, ART was intended to help married couples conceive genetically related offspring. State legislatures responded accordingly by adopting statutes that protected the paternity rights

[†] Assistant Professor, William Mitchell College of Law.

of husbands who consented to the insemination of their wives. Over the last thirty years, however, ART has burgeoned into a multibillion dollar industry in which single people, unmarried couples, and married couples seek to form families via a plethora of methods and for a myriad of reasons.¹ Legislatures, however, have been slow to respond to the ever-expanding universe of ART leaving numerous legal questions unanswered. For example—who should be allowed access to ART; what methods of ART should be permitted; when should ART be used; how should the legal relationships between the adults who use ART and the children who are conceived be defined; and who should decide the answers to these questions.² These are all important questions that ART consumers, doctors, lawyers, legislators, and observers face every day.

Few decisions are as important to an individual or a couple as the decision to have a child. ART presents the opportunity for many people to have children who otherwise would be unable to do so. The legal ambiguities surrounding ART, however, also present the opportunity for individuals, doctors, legislatures, and courts to prevent people from using ART. Difficult questions exist as to the “who, what, when, and how” of ART. The articles in this symposium issue begin to answer some of these questions.

1. See, e.g., Charles P. Kindregan, Jr., *Dead Dads; Thawing an Heir from the Freezer*, 35 WM. MITCHELL L. REV. 433 (2009) (discussing the legal regulations and implications of posthumous reproduction).

2. See, e.g., Darra L. Hofman, “Mama’s Baby, Daddy’s Maybe:” *A State-by-State of Surrogacy Laws and Their Disparate Gender Impact*, 35 WM. MITCHELL L. REV. 449 (2009) (comparing and contrasting the inconsistent surrogacy laws across each state).