



Iowa General Assembly

2013 Legal Updates

Legislative Services Agency – Legal Services Division

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LESBIAN MARRIED COUPLES AND BIRTH CERTIFICATES

Filed by the Iowa Supreme Court

May 3, 2013

Gartner v. Iowa Department of Public Health

No. 12-0243, 830 N.W.2d 335 (2013)

http://www.iowacourts.gov/Supreme_Court/Recent_Opinions/20130503/12-0243.pdf

Background Facts. Melissa and Heather Gartner were in a relationship since December 2003, and participated in a commitment ceremony on March 18, 2006. The couple wanted to be parents and agreed that Heather would act as the biological mother, and both would be equal parents to the child. Heather conceived their first child born in 2007, through insemination by an anonymous donor, selected by the couple. Because the couple was not legally married, they went through an adoption procedure to ensure that Melissa was listed on the child's birth certificate. Following the adoption procedure, the Department of Public Health (DPH) listed both Heather and Melissa as parents on the child's birth certificate.

Following the *Varnum v. Brien*, 763 N.W.2d 862 (Iowa 2009) decision, in which Iowa's defense of marriage Act was held unconstitutional, Melissa and Heather married on June 13, 2009. At the time of the marriage, Heather was approximately six months pregnant with the couple's second child, using the same anonymous donor as for their first child. Mackenzie Jean Gartner was born on September 19, 2009. The day after the birth, Heather and Melissa completed a form at the hospital to obtain a birth certificate, indicating that they were both the parents of the child and were legally married. DPH issued the birth certificate naming only Heather as a parent, leaving the second parent space blank. The Gartners responded by sending a letter to DPH requesting that both parties be named parents on the child's birth certificate. The department denied the request, indicating that because the system for registration of births in Iowa recognizes the biological and gendered roles of "mother" and "father" based on the biological fact that a child has only one biological mother and one biological father, in order to place the name of the nonbirthing spouse in a lesbian marriage on the birth certificate, that spouse would have to first adopt the child.

The Gartners filed an initial mandamus action, and subsequent motions, amendments, and refilings, with the district court, which dismissed the mandamus action without prejudice for lack of jurisdiction. The district court indicated that the Iowa Administrative Procedures Act (IAPA) provided the exclusive means for the Gartners to obtain review of the department's decision.

The Gartners then brought an action for judicial review under the IAPA, resulting in the district court ordering DPH to issue the birth certificate naming Melissa as the legal parent. The district court focused on the department's interpretation of Iowa Code §144.13(2), the presumption of parentage statute, and found that DPH had erroneously interpreted the statute and erred in not naming Melissa on the birth certificate. DPH filed a notice of appeal and a motion to stay the district court's ruling. The district court denied the stay as it related to the Gartners' birth certificate, but granted the stay for other birth certificates that DPH may issue for other married lesbian couples during the pendency of the appeal.

Issues. Whether the Iowa Supreme Court (Court) can interpret Iowa Code §144.13(2), the presumption of parentage statute, to require DPH to list as a parent on a child's birth certificate the nonbirthing spouse in a lesbian marriage, when the other spouse conceived the child during the marriage using an anonymous sperm donor. If the Court cannot so interpret the statute, the Court must then determine whether the department's refusal to list the nonbirthing spouse violates the Equal Protection clauses in Article I, sections 1 and 6 of the Iowa Constitution or the Due Process Clause in Article I, section 9 of the Iowa Constitution.

Analysis. The Court determined that relief from administrative agency action could be addressed through both judicial

review of the intent of the statute and based upon a determination of the constitutionality of the agency action.

Statutory Interpretation Analysis. An individual adversely affected by administrative agency action is entitled to judicial review. The agency action at issue in this case is DPH's interpretation of the presumption of parentage statute. DPH interpreted the terms "husband," "father," and "paternity" to apply only to a male spouse in an opposite-sex marriage, not to a female spouse in a lesbian marriage.

The deference given to an agency to interpret a statute is based on the legislative grant of authority to the agency. If the grant of authority is clearly vested with the agency, the Court may reverse the department's decision only if its interpretation is irrational, illogical, or wholly unjustifiable. If there is not such a clear vesting of authority, the Court may reverse based on an erroneous interpretation of the law.

The Court examined the language the agency was interpreting as well as the specific duties and authority given to the agency to determine the breadth of the agency's vested authority. The fact that the agency has been given rulemaking authority does not give the agency the authority to interpret all statutory language. The Court utilized the standards for determining the scope of the agency's interpretive authority specified in Iowa Code §17A.19(10), and concluded that the Legislature had not expressly vested DPH with the authority to interpret Iowa Code §144.13(2). The department's primary responsibility is to record vital events. Finding that the department had the authority to interpret the statutory terms, "paternity," "father," and "husband," would be overreaching because the terms appear throughout the Code and are not exclusively within the expertise of DPH. Because the department had not been vested by law with the discretion to interpret the statute, the Court should not give deference to the interpretation by DPH of the presumption of paternity statute. Instead, the Court's determination is based on whether the department's interpretation of the law was erroneous.

Review of Iowa's Presumption of Parentage Statute. The requirements for preparing and filing a certificate of birth under the statute include a presumption of parentage that "if the mother was married at the time of conception, birth, or at any time during the period between conception and birth, the name of the husband shall be entered on the certificate as the father of the child unless paternity has been determined otherwise by a court of competent jurisdiction, in which case the name of the father as determined by the court shall be entered by the department." (Iowa Code §144.13(2)).

The presumption of parentage concept originated in common law, derived from two events: a child's birth to its "mother," and the mother's marriage to a man. Legislatures adopted presumption of parentage statutes in order to address social policies including the legitimacy of children which entitled them to financial support, inheritance rights, and filiation obligations of their parents; to promote family stability; and to foster judicial efficiency. State statutes codifying the presumption of parentage fall into three categories: those that use traditional, gendered terms to refer to parents without referencing the parent as natural or biological; those that apply the presumption only when the parent shares a genetic connection to the child and refer to the parent as natural or biological; and those that apply or could apply in a gender-neutral manner or to same-sex spouses. Ten states and the District of Columbia had extended or were in the process of extending the marital parentage presumption to same-sex couples in formalized marriages, civil unions, or domestic partnerships. In Iowa, the presumption applies to counteract the stigma of illegitimacy, to keep the family relationship sacred and preserve peace and harmony in the family, to protect the child even if the marriage later terminates, and to ensure a child's right to financial support, applying the presumption to both marriages formally solemnized and those that meet the requirements for common law marriage.

Interpretation of the Statute. The Court did not agree with the district court's interpretation of the statute requiring the department to list the second parent on the birth certificate. Based on the rules of statutory construction, although Iowa Code §4.1(17) provides that "words of one gender include the other genders," this is only applicable when the statute refers to only one gender and that gender is masculine. When, instead, the statute refers to only one gender and the gender reference is feminine, the scope of the statute does not include males. Finally, when the statute refers to both masculine and feminine words, Iowa Code §4.1(17) does not apply because it changes the plain and unambiguous language and nullifies the intent of the Legislature. In this case, the parentage statute expressly uses both masculine and feminine words by referring to mother, father, and husband. Therefore, Iowa Code §4.1(17) does not apply, or it would change the plain meaning of the statute and nullify the intent of the Legislature.

Additionally, the Court did not agree with the district court's reliance on *Varnum* to change the plain meaning of the statute. In enacting Iowa Code §144.13(2) in 1970, the Legislature chose to use the word "husband." The Court suggested that the Legislature did not consider same-sex marriages at that time and "husband" was an unambiguous term.

Therefore, a statutory construction analysis does not result in a finding that the department erroneously interpreted the statute.

Constitutional Issues Analysis. Because the Court did not find that DPH erroneously interpreted the statute utilizing a statutory analysis basis, the Court next considered a constitutional analysis due to the Court's authority to grant relief from an administrative proceeding if the agency action was unconstitutional. This determination of agency action involving constitutional questions is *de novo*. In the district court, the Gartners challenged the constitutionality of the presumption of parentage statute as a violation of their Equal Protection and Due Process rights under the Iowa Constitution. The district

court did not decide the case on constitutional grounds, but this basis was preserved for the Court on appeal since the constitutional issues were raised, fully briefed, and argued at the district court level.

Equal Protection. Article I, section 1, of the Iowa Constitution states that “All men and women are, by nature, free and equal.” Article I, section 6, provides that “All laws of a general nature shall have a uniform operation; the general assembly shall not grant to any citizen, or class of citizens, privileges or immunities, which, upon the same terms shall not equally belong to all citizens.”

Similarly Situated. Under its equal protection analysis, the Court began with an analysis of whether the law treats all those who are similarly situated with respect to the purposes of the law alike. The purposes for the issuance of birth certificates include to establish the fact of a birth and to verify a person’s identity. The threshold question is whether the Gartners are similarly situated to married, opposite-sex couples for the purpose of applying the presumption of parentage statute. If they are, the second step is to determine the level of constitutional scrutiny to apply.

With respect to the registration of birth certificates, the purposes at the state level include to establish the fact that a birth occurred, identify the child for immunization purposes, and verify a person’s identity and date of birth. At the federal level, the purposes include to maintain population statistics, confirm a child’s identity, and ensure access to federal benefits and programs. With respect to the purpose of Iowa’s marriage laws, the Gartners are similarly situated to married, opposite-sex couples, and are in a legally recognized marriage just like opposite-sex couples. Married, lesbian couples, like married, same-sex couples, require official recognition of the identity and verification of the birth of their child. Married, lesbian couples, like married, same-sex couples, require accurate records of their child’s birth. Therefore, with respect to the government’s purpose of identifying a child as part of their family and providing a basis for verifying the birth of a child, married, lesbian couples are similarly situated to spouses and parents in an opposite-sex marriage.

Classification—Level of Scrutiny. The Gartners argued that the refusal to place both of the spouses’ names on the birth certificate classified them based on sex and sexual orientation under the Iowa constitution. DPH argued that the classification was based only on sex. The Court agreed that, as in *Varnum*, the classification was based on sexual orientation rather than sex which requires a heightened level of scrutiny. The heightened level requires a showing that the statutory classification is substantially related to an important government purpose.

Basis for Differing Treatment. The Court found that the statute treats married, lesbian couples who conceive through an anonymous sperm donor differently than married, opposite-sex couples who conceive in the same manner. DPH asserted that the three objectives and interests supporting the statute’s differing treatment of married, lesbian and opposite-sex couples include all of the following: the accuracy of birth certificates; the efficiency and effectiveness of government administration; and the determination of paternity.

Accuracy of Birth Certificates. While accuracy in birth records to identify biological parents is laudable, the accuracy of the birth certificate in identifying the biological parents is not always accurate in situations in which the parents are an opposite-sex couple. If the couple is married and uses an anonymous sperm donor, the birth certificate still identifies the male spouse as the biological father. If the parents are a married, lesbian couple who must instead go through the adoption process to list both names on the birth certificate, the birth certificate will still not accurately identify the biological father. Thus, the classification is not substantially related to the governmental purposes of accuracy.

Administrative Efficiency and Effectiveness. DPH argued that it takes valuable resources to reissue a birth certificate when a challenger rebuts the presumption of parentage. The Court found that when an anonymous sperm donor is involved, there will not be a rebuttal of paternity, and even when an anonymous sperm donor is not involved, the presumption of paternity is not rebutted in opposite-sex marriages in a significant number of births. The Court also determined that it is more efficient for the department to presumptively list the nonbirthing spouse on a birth certificate when a child is born to a married, lesbian couple, rather than only list one parent and then reissue the birth certificate after an adoption is complete. The disparate treatment is therefore less effective and efficient, and another reason such as stereotype or prejudice must explain the objective of the state.

Establishing Paternity. With regard to establishing paternity as a means of ensuring financial support of the child and the fundamental legal rights of the father, the Court found that it is equally important for laws to recognize that married, lesbian couples who have children enjoy the same benefits and burdens as married, opposite-sex couples who have children. Official recognition of their status provides the same institutional basis for defining fundamental relational rights and responsibilities as for same-sex-couples. The only explanation for not listing the nonbirthing lesbian spouse on the birth certificate is stereotype or prejudice. The exclusion of the nonbirthing spouse on the birth certificate of a child born to a married, lesbian couple is not substantially related to the objective of establishing parentage.

Due Process. Because the Court could dispose of the appeal on equal protection grounds, the Court did not address the due process claim.

Holding. The presumption of parentage statute, with its limited application allowing for only “the name of the husband” to appear on the birth certificate, fails to comport with the guarantees of equal protection under Article I, sections 1 and 6 of the Iowa Constitution as applied to married, lesbian couples who have a child born to them during the marriage.

Remedy and Disposition. While the presumption of parentage statute violates equal protection under the Iowa Constitution as applied to married, lesbian couples, the Court did not strike down the statute. Instead, the Court preserved the statute as applied to married, opposite-sex couples and required the department to apply the statute to married, lesbian couples. The Court, with all justices concurring except Justices Mansfield and Waterman, who specially concurred, and Justice Zager, who took no part, affirmed the judgment of the district court ordering the department to issue a birth certificate naming both spouses as parents. The Court remanded the case to the district court to lift the stay regarding birth certificates issued by the department as to other married, lesbian couples pending the appeal, and ordered the district court to remand the case to DPH to issue the birth certificate to the Gartners.

Special Concurrence. Justice Mansfield, with Justice Waterman joining, concurred in the judgment of the case, stating that since the department accepted the decision in *Varnum* and if *Varnum* is the law, the presumption of paternity statute cannot be constitutionally applied to deny the request of Melissa Gartner to be listed as a parent on the birth certificate of the child delivered to her same-sex spouse.

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