

May 22, 2017; Birth Certificates and the Law

Last week, I discussed the Office of Vital Statistics' discriminatory practices toward a female same-sex couple that had a child conceived through in vitro fertilization. Vital Statistics refused to list the non-biological spouse as a parent on the birth certificate. Instead, registrar Carolyn Garrido insisted that the non-biological spouse had to adopt the child to be placed on the birth certificate.

Let's review the laws that highlight the discriminatory nature of Vital Statistics' position. A key statute is 19 G.C.A. §§ 4101-4103, which states: "All children born in wedlock are presumed to be legitimate. All children of a woman who has been married, born within ten (10) months after the dissolution of the marriage, are presumed to be the legitimate children of that marriage. The presumption of legitimacy can be disputed only by the husband or wife, or the descendant of one or both of them."

This means that a child born during a marriage is presumed to be a child of the marriage and only the married couple can challenge this presumption. A case decided a few years ago in the Superior Court demonstrates how this law is applied.

Very early in a heterosexual marriage, the wife gave birth. The husband was listed as the child's father on the birth certificate. The couple ultimately divorced. A former boyfriend of the wife filed a paternity petition claiming that he, not her ex-husband, was the child's father. The ex-husband remained adamant that he wished to remain the child's legal father and argued that 19 G.C.A. §§ 4101-4103 prevented the boyfriend from attempting to prove paternity. The ex-wife supported her ex-husband's position.

The judge agreed with the ex-husband's argument and denied the boyfriend's paternity petition. In his decision, the judge stressed that under the law it doesn't matter whether the boyfriend is the child's biological father. The purpose of the law is to preserve the integrity and stability of the family unit and to promote the child's welfare. Paternity takes a backseat to family stability.

The same principle is at play when a same-sex couple gives birth to a child during marriage. Because the child is born during the marriage, the married spouses are presumed to be the child's legal parents.

Despite this legal presumption of parentage and the judge's ruling, Vital Statistics apparently depended upon 10 G.C.A. §3210 to support its refusal to put the non-biological mother on the birth certificate. Under this law, Vital Statistics is required to identify both the "mother" and the "father." Because the spouse is a female, she can't be identified as the child's "father."

This argument fails because shortly after the U.S. Supreme Court's ruling that marriage is a constitutional right regardless of gender, the Guam Legislature passed

Public Law 33-65, the Marriage Equality Act. In part, the law provides “[w]hen necessary to implement the rights, benefits, protections, and responsibilities of spouses under the laws of Guam, all gender-specific terminology, such as “husband,” or “wife,” “widower,” or similar terms, *shall* be construed in a gender-neutral manner.”

Consequently, Vital Statistics’ position is both illegal and discriminatory. The office must follow the law, change its birth certificates forms, eliminate the designations of “mother” and “father,” and simply list the names of the parents, regardless of gender.