

The Legal Aspects of Parental Rights in Assisted Reproductive Technology

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This paper provides an overview of the different legal approaches that are used in various jurisdictions to determine parental rights and obligations of the parties involved in third party assisted reproduction. Additionally, the paper explores the differing legal models that are used depending on the method of surrogacy being utilized. The data demonstrates that a given method of surrogacy may well result in different procedures and outcomes regarding parental rights in different jurisdictions. This suggests the need for a uniform method to resolve parental rights where assisted reproductive technology is involved.

There are a plethora of legal and ethical conundrums that are presented as a result of third party assisted reproduction (Darr, 1999). The medical advances which have allowed infertile couples the opportunity to have children have greatly outpaced society's, and consequently the law's, ability to address the relationships and attendant rights and responsibilities which arise between the parties (Handel, Ciccarelli, & Hanafin, 1993).

In fact, there are new and novel legal issues that arise with surprising regularity. As examples, cases have been filed seeking to determine if frozen sperm could be left to one's girlfriend through a testamentary instrument such as a will (*Hecht v. Superior Court*, 1993); whether a surrogate can sue an agency for negligence when the child she carried is subsequently killed by the intended father (*Huddleston v. Infertility Center of America, Inc.*, 1992); who has the right to determine if

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cryo-preserved embryos will be used to create a baby where a couple has divorced after the embryos have been frozen but before they have been implanted (*Davis v. Davis*, 1992); can an intended parent escape liability for child support where a child has been conceived through third party assisted reproduction and the couple eventually divorces (*In re Marriage of Buzzanca*, 1998); and, can same sex partners legalize their parental rights to children born as a result of this new technology in a situation where an adoption by at least one putative parent will be required (*In re Adoption of RBF*, 2002).

These are but a few of the myriad and complex legal issues in assisted reproduction for which the law has no well-established method of resolution. It is certain that many additional questions will need to be addressed by the courts or legislatures before this area of law can be considered settled. While the foregoing issues are outside the scope of this paper, they are raised to give the reader a sense of how dramatically this new technology impacts on traditional concepts of parentage, family, the right to procreate, and other individual rights.

Before a resolution can be found to the more esoteric problems that arise, it is first necessary to address the most basic question; specifically, who is the legal mother and father of a child born through use of these new technologies. Unfortunately, the answer to this question is not always clear and the answer varies depending upon the state or country where the child is born. Anyone venturing into these muddy legal waters must exercise extreme cautions since most jurisdictions have not considered the issue. Of the jurisdictions that have dealt with these sticky matters, there has been no clear consensus as to what framework to apply to reach the ultimate decision (e.g., *Florida Statutes Annotated*, 2004; *In re Marriage of Moschetta*, 1994; *Johnson v. Calvert*, 1993; *Matter of Baby M*, 1988).

Before turning to the jurisdictional discrepancies, it is beneficial to define the terms that are commonly used to identify the various parties. Contractual parenting (commonly known as surrogacy) occurs when a couple, the intended parents, contracts with a woman to carry a child for them and to relinquish that child to them after birth (Ciccarelli, 1997; Ragone, 1996). There are two major types of surrogacy arrangements: traditional surrogacy and gestational surrogacy. In traditional surrogacy, the surrogate is impregnated with the sperm of the male partner of the intended parents through artificial insemination (AI). Therefore this is commonly referred to as AI surrogacy. In this case, the impregnated woman is both the genetic and birth (i.e., gestational) mother and the intended father is also the genetic father (Ciccarelli, 1997; Ragone, 1996). Gestational carrier surrogacy is used when the female partner of the intended couple has viable eggs but is unable to successfully carry a pregnancy to term. The intended mother's eggs are fertilized with her male partner's sperm in the laboratory using in vitro fertilization (IVF) and the embryo is then implanted in the "surrogate" mother's uterus. In gestational surrogacy, the woman who carries the child has no genetic connection to the child and the intended parents are also the genetic parents (Ciccarelli, 1997; Ragone,

1996). Based on the foregoing, this paper will use the term traditional surrogate for the woman who conceives via AI using the sperm of the father who intends to rear the child and the term gestational surrogate for the woman who carries an embryo that has been conceived via IVF using the intended couple's egg and sperm. The couple that contracts with the surrogate mother is referred to as the intended, social, commissioning, or contracting parents, depending on where they are in the surrogate parenting process.

In jurisdictions where the matter of surrogacy has been addressed, the end result runs the gamut of possibilities from declaring the entire activity illegal and void as against public policy (e.g., *Arizona Revised Statutes Annotated*, 2003; *Matter of Baby M*, 1988), to vesting legal rights with the intended parents (*Johnson v. Calvert*, 1993), to applying an adoption model wherein the surrogate mother is recognized as the parent who must then relinquish her parental rights to the intended parents (*A. H. W. v. P. W.*, 2000). Adding an overlying level of confusion to this entire process is the manner in which these laws have been established. Some jurisdictions have enacted legislation (see pages 132 and 133 for specific code sections) while others have simply allowed the courts to consider the outcomes where the legislature has failed to act.

The initial inquiry is almost always directed at the type of surrogacy that is involved. Specifically, was the child conceived through AI or IVF? This distinction has several legal ramifications. If the child is born as a result of AI then the court is often able to render a decision that is in the best interests of the child (*Matter of Baby M*, 1988). Conversely, in the case of IVF it is likely (depending on the jurisdiction) that the court will examine the situation in a manner more closely aligned with contract principles. Under such an analysis the court does not inquire into the best interests of the child (*Johnson v. Calvert*, 1993).

Courts that have addressed the issue of conflicting claims of parental rights where the child was conceived through AI have universally applied adoption law to resolve the dispute (*In re Marriage of Moschetta*, 1994; *Matter of Baby M*, 1988). In such a situation, since the surrogate is both genetically connected to the child as well as actually carrying the pregnancy, the courts have had little trouble reaching the conclusion that she is the legal mother of the child. Therefore, the logical extension of this conclusion is that she is in an analogous position to a birth mother in a traditional adoption. This means that the surrogate must relinquish her parental rights in order for the intended parents, and specifically the intended mother, to finalize her parental rights (*In re Marriage of Moschetta*, 1994; *Matter of Baby M*, 1988).

Under the adoption law of almost any jurisdiction pre-birth agreements to relinquish parental rights are deemed to be nugatory (e.g., *California Family Code*, 2004; *Florida Statutes Annotated*, 2004). The rationale for this is that a birth mother cannot make an informed decision regarding termination of her parental rights until after the child is born. Moreover, even after a birth mother has

consented to relinquish her rights, she will have a period of time within which she can revoke her consent to an adoption (e.g., *California Family Code*, 2004). In practical terms, this means that any contract the intended parents enter into with an AI surrogate before the birth of the child will have no effect on her parental rights. This also means that the surrogate will have some amount of time, even after she has agreed to relinquish her rights, to change her mind. Not only does this place the couple at risk of not being able to finalize their parental rights through this process, but it also has more far reaching consequences as discussed below.

But what happens in the case where the surrogate abides by her agreement to relinquish her parental rights? The intended father is, essentially, in the same position as any man who impregnates a woman. He is entitled to a judgment of paternity, certainly after the birth of the baby and, in many jurisdictions, prior to the birth of the child. This then leaves finalization of the intended mother's parental rights. This is accomplished by undertaking and completing a step-parent adoption. A step-parent adoption is utilized since the intended mother is legally married to the intended and biological father (*In re Marriage of Moschetta*, 1994).

This fact is not without its own wrinkle. In such a situation the intended father is also a "natural" parent of the child who, in many jurisdictions, must consent to his wife's adoption of "his" child before the adoption can occur (see *California Family Code*, 2004). This fact can place the intended parents in an unequal bargaining position should conflict arise between them prior to completion of the adoption.

The outcome in a case where an AI surrogate refuses to adhere to the agreement is likely to engender litigation where a number of legal outcomes are possible. In the first instance, the surrogate may attempt to "cut off" any claim of parentage by the only person who could assert such a claim; namely, the intended, biological father. In order for such an assertion to prevail, it would be necessary to convince a judge that the intended father was nothing more than a sperm donor. As such he would have no parental rights with respect to any child born from the donation. To date, such an argument has been rejected by the courts regardless of whether the argument was made by the surrogate (to cut-off parental rights) or the intended father (often to circumvent child support obligations).

The more common result is for the court to find that the intended father and the surrogate are the "parents" of the child and treat the matter as a custody and visitation issue. Such a determination requires the court to consider the best interests of the child, particularly with regard to the custody arrangement (*In re Marriage of Moschetta*, 1994; *Matter of Baby M*, 1988). It is quite possible for this situation to result in a shared custody and visitation plan between the surrogate and the intended father with the attendant payment of child support. Needless to say, the intended mother would be without a method to finalize her parental rights absent the consent and cooperation of the surrogate.

The analysis undertaken by the courts is best illustrated in the two most well known cases involving an AI surrogate who changed her mind. These cases are *Matter of Baby M* (1988) and *In re Marriage of Moschetta* (1994). The *Baby M* decision was the first case to wrestle with the issue of parental rights in the context of a traditional surrogacy agreement. This case came about as a result of an agreement that was entered into on February 6, 1985 between the intended parents, William and Elizabeth Stern, and the surrogate, Mary Beth Whitehead. Baby M was born on March 27, 1986.

Although Mrs. Whitehead testified to developing a bond with the baby during the pregnancy, she became most vociferous immediately after birth. While exhibiting signs of an emotional crisis, Mrs. Whitehead, nonetheless, turned Baby M over to the Sterns on March 30, 1986. The next day she went to the Sterns home and told them how much she was suffering and that she could not live without the baby. The Sterns, fearful that she would commit suicide, gave the child to Mrs. Whitehead. The Sterns did not see the baby again until four months later when the baby was forcibly taken by the police from a home in Florida where the Whiteheads were hiding with her.

Mr. Stern filed a complaint seeking possession and custody of the child in addition to enforcement of the terms of the surrogacy contract. The trial court found that the surrogacy contract was valid, ordered Mrs. Whitehead's parental rights terminated, granted sole custody to Mr. Stern and entered an order allowing for Mrs. Stern to adopt the child without delay. An immediate appeal was taken and the ultimate result was diametrically opposite to the holding in the trial court.

The appellate court equated the surrogacy contract with baby selling and found it to be void and unenforceable as against public policy. The court found that payment to a surrogate was illegal, perhaps criminal and potentially degrading to women (*Matter of Baby M*, 1988). The court found, also, that the surrogate was the mother of the child, voided the trial court's termination of the surrogate's parental rights and the adoption of the baby by the intended mother. After undertaking an analysis of the circumstances that were in the best interests of the child, the Court granted custody to the natural father, Mr. Stern, and remanded the case to the lower court for a determination of the nature and extent of Mrs. Whitehead's visitation rights. Mrs. Stern was without any method for establishing parental rights absent the termination of Mrs. Whitehead's rights.

The central issue of the enforceability of a traditional surrogacy agreement was again taken up, this time by a California court, in the case entitled *In re Marriage of Moschetta*. In *Moschetta*, Robert and Cynthia Moschetta entered into an AI surrogacy agreement with Elvira Jordan in June or July of 1989. Ms. Jordan became pregnant in November of 1989. Unbeknownst to Ms. Jordan, the Moschettas began experiencing marital difficulties in January of 1990 and in April of that year Robert told Cynthia he wanted a divorce. Ms. Jordan became aware of these domestic issues while she was in labor on May 27, 1990. As a result of the

couple's domestic difficulties, Ms. Jordan began to reconsider her agreement, but ultimately relented and allowed the Moschettas to take the baby from the hospital after they told her they were reconciled.

The marriage continued to deteriorate and on November 30, 1990 Robert moved from the home and took the baby with him. Cynthia filed for legal separation on December 21, 1990 and on January 11, 1992 she filed a petition to establish her parental rights vis-à-vis the baby contending that she was the *de facto* mother of the baby. In February, Ms. Jordan petitioned the court to be allowed to assert her rights by becoming a party in the dissolution action and her petition was granted in March.

The action was to be heard in three phases. The first was to determine the parental rights of Cynthia Moschetta and Elvira Jordan; the second was to determine custody and visitation; and the third was to conclude the marital dissolution. The Court found that Elvira Jordan was the "natural" mother of the baby because she not only gestated the child, but she was genetically connected to the baby. The Court also held that traditional surrogacy contract was unenforceable because, amongst other things, it contravened the state's adoption statutes by circumventing the formal consent to a child's adoption by the birth mother. Since the court adjudicated Mr. Moschetta and Ms. Jordan to be the parents of the baby, the only remaining question was the extent of legal and physical custody and visitation between these parties.

As these cases readily demonstrate, couples exploring the option of AI surrogacy cannot escape the legal risk associated with the procedure. They are in the same proverbial boat as those who elect to pursue a private adoption and are at risk for a period of time during which the birth mother can either refuse to relinquish her parental rights or change her mind after she has consented to the adoption.

If one is laboring under the assumption that the analysis is any more consistent in the case of IVF surrogacy a hefty dose of reality awaits them. The advantage to gestational surrogacy is that, in many cases, it allows the intended parents to obtain a pre-birth order declaring them the legal parents of the child (*Johnson v. Calvert*, 1993; *Belsito v. Clark*, 1994). While this offers a modicum of legal protection for those considering gestational surrogacy, once again, the outcome is based on the specific jurisdiction where the birth of the baby takes place (cf. *A. H. W. v. P. W.*, 2000).

As noted above, the majority of jurisdictions have not addressed the issue of surrogacy and the ones that have analyzed the issues have reached different results. California, Massachusetts and New Jersey have examined the issue through case law (*A. H. W. v. P. W.*, 2000; *In re Marriage of Buzzanca*, 1998; *In re Marriage of Moschetta*, 1994; *Matter of Baby M*, 1988; *Jaycee B. v. Superior Court*, 1996; *Johnson v. Calvert*, 1993; *R. R. v. M. H.*, 1998; *Smith v. Brown*, 1999;). Florida has enacted a statutory scheme to address surrogacy; the statute prohibits surrogates from being paid anything other than reasonable legal, living, and medical

expenses (*Florida Statutes Annotated*, 2004). Washington, Louisiana, Nebraska and Kentucky statutorily prohibit surrogacy contracts that include any compensation to the surrogate (*Kentucky Revised Statutes Annotated*, 2002; *Louisiana Revised Statutes Annotated*, 2004; *Nebraska Revised Statutes*, 2003; *Washington Revised Codes Annotated*, 2004). New York, Utah, Michigan and Arizona ban surrogacy contracts as against public policy (*Arizona Revised Statutes Annotated*, 2003; *Michigan Comp. Laws Annotated*, 2003; *New York Domestic Relations Law*, 2004; *Utah Code Annotated*; 2004).

In Florida, the intended parents (commissioning couple) must file a petition with the court within three days after the birth of the child for an expedited affirmation of parental status. The surrogate, the doctor from the reproductive facility, and anyone claiming paternity are made aware of the hearing. At the hearing, the court determines the validity of the gestational surrogacy agreement and whether at least one of the commissioning parents is genetically connected to the child. Once these two matters are determined, the court issues an order directing the original birth certificate to be sealed and a new birth certificate to be prepared listing the commissioning parents as the legal parents (*Florida Statutes Annotated*, 2004).

Where the manner of establishing parental rights is left to the courts differing results have occurred. This is best demonstrated by examining the states of California and New Jersey. California allows the intended parents in an IVF surrogacy arrangement to apply for an order, prior to the birth of the baby, directing that they be recognized as the legal parents of the child carried by the surrogate and that their names to be placed on the birth certificate. In order to understand this result one must consider the California Supreme Court's holding in *Johnson v. Calvert* (1993).

In *Johnson*, the court dealt with the situation where an IVF surrogate, Anna Johnson, purportedly changed her mind and attempted to obtain custody of the child. The case started when Mark and Crispina Calvert contracted with Anna Johnson on January 15, 1990 to carry the embryo created with Mr. Calvert's sperm and Mrs. Calvert's egg. The relationship deteriorated between the parties for a number of reasons, but by July 1990, Ms. Johnson sent the Calverts a letter demanding payment or she would refuse to relinquish custody of the child. The Calverts responded by seeking court intervention.

A trial was held in October 1990 in which the parties stipulated to the fact that the Calverts were the genetic parents of the baby. The trial ended with a ruling that the Calverts were the "genetic, biological, and natural" father and mother and that Ms. Johnson had no parental rights or rights to visitation. Ms. Johnson appealed (*Johnson v. Calvert*, p. 88).

The California Supreme Court affirmed the trial court's decision in practical, but not legal terms. Specifically, the Court never addressed the issue of the enforceability of the surrogacy contract. Rather, the court analyzed the facts in light of the Uniform Parentage Act. Under this analysis they determined that Mr. Calvert

was in, essentially, the same position as any father; namely, he had contributed his genetics to create a child. As to Ms. Johnson and Ms. Calvert, there was a tie with respect to maternity.

This tie came about because there is more than one way to establish maternity. One method is to contribute the genetic material that creates the child, and another is to carry the pregnancy. When these two methods do not coincide in the same woman, a tie is created. In order to break the tie, the Court examined the issue of intent. In other words, the salient inquiry became, who initiated the action that brought the child into existence. In making this determination the Court looked to the fact that there was a contract between the parties and, but for, the Calverts' intent there would have been no child.

The end result of this analysis is that the intended parents are the legal parents from the moment of pregnancy and as such are entitled to a pre birth order establishing this fact. California has extended the intent analysis even further and has prevented intended parents who were not genetically connected to the child (because the child was conceived from donated gametes) from renouncing parentage. (e.g., *Jaycee B. v. Superior Court*, 1996; *In re Marriage of Buzzanca*, 1998.)

The issue that has not been judicially resolved is whose rights prevail where a couple creates an embryo using donated sperm and egg, contracts with a surrogate to carry the embryo, and the surrogate subsequently changes her mind. Under the intent analysis of *Johnson* as extended in *Jaycee B* and *Buzzanca* an argument can be advanced that the intended parents are the legal parents because, but for their efforts, the child would not have come into being. Conversely, and specifically in the case of the intended mother, the argument could be made that there is no "tie" to break since the intended mother is not genetically connected to the child and the surrogate is gestating the baby. Accordingly, only the surrogate can establish maternity under this scenario. Needless to say, one may anticipate future litigation over this point.

The New Jersey Court reached a different result from California in *A. H. W. v. P. W.* (2000). In *A. H. W.* a couple contracted with the intended mother's sister to carry an IVF pregnancy for them. There was absolutely no dispute between the parties as to who were the legal parents of the child to be born. Rather, when the intended parents sought a declaration of maternity and paternity the Attorney General of the State of New Jersey opposed the order on the grounds that the requested relief was contrary to the law prohibiting surrender of a birth mother's rights until seventy-two hours after birth.

The Court first reviewed New Jersey's legal history in the law of surrogacy as set forth in *Matter of Baby M* and the public policy arguments regarding surrogacy. The court was mindful of the fact that the surrogate had no genetic ties to the child in this case, unlike Baby M. Nonetheless, in rejecting the intended parents' argument that the surrogate was analogous to an "incubator" the court responded as follows:

While [the intended parents] are correct that [the surrogate] will have no biological ties to the baby, their simplistic comparison to an incubator disregards the fact that there are human emotions and biological changes involved in pregnancy.

A bond is created between a gestational mother and the baby she carries in her womb for nine months. During the pregnancy, the fetus relies on the gestational mother for a myriad of contributions. A gestational mother's endocrine system determines the timing, amount and components of hormones that affect the fetus. The absence of any component at its appropriate time will irreversibly alter the life, mental capacity, appearance, susceptibility to disease and structure of the fetus forever. The gestational mother contributes an endocrine cascade that determines how the child will grow, when its cells will divide and differentiate in the womb, and how the child will appear and function for the rest of its life. (*A. H. W. v. P. W.*, 2000)

Not surprisingly, after the foregoing soliloquy, the court found that the gestational surrogate had seventy-two hours after the birth of the child before she could surrender her parental rights. During this time period she was legally vested with the right to make medical decisions on behalf of the child. The court did not address what other parental rights, if any, a gestational surrogate would have regarding a child born in such a situation. As the court observed, "That decision will have to be made if and when a gestational mother attempts to keep the infant after birth in violation of the prior agreement" (*A. H. W. v. P. W.*, 2000).

This leads to some very interesting and unanswered questions in New Jersey. For example, since the court recognized that the surrogate must wait seventy-two hours to surrender her rights, *a priori*, she must have rights to surrender. Conversely, the genetic parents, but for whose efforts the child would not have been created must have some rights. Is it then possible for the child to have three parents? In a situation where the surrogate changes her mind, whose rights does she cut-off, the intended mother or both intended parents? If the surrogate refuses to surrender her rights and has her name listed on the birth certificate, what happens in the event she later changes her mind. Is the intended mother forced to then complete an adoption? If so, how does one logically adopt one's own genetic offspring?

On a final note, there is another legal risk associated with surrogacy for the intended parents. Even if the surrogacy contract is executed in a jurisdiction that is favorable for surrogacy, there is nothing to prevent the surrogate from relocating to an unfavorable jurisdiction before the birth of the child. While there are no reported cases addressing such an event, it is quite probable that the law of the state where the birth of the child took place would govern the determination of parental rights (e.g., Weintraub, 1986).

There is no doubt that the emerging methods of reproduction are forcing us to re-examine traditional concepts regarding what constitutes family and parents. Absent of a national ban on surrogacy, it seems that this method of reproduction is here to stay. If this is so, and as the social and legal furor associated with cases of third party assisted reproduction clearly demonstrate, there is an immediate need for legislation in this area. This legislation should clearly define the parental

rights and obligations of the parties involved in such an arrangement as well as the standards by which such a relationship could be initiated in the first place. The latter aspects should most certainly address the differences between AI and gestational surrogacy in addition to instituting safeguards to prevent the negative aspects of surrogacy, such as any economic coercion to the surrogate. In fact, no matter what one's perspective is on the ethics of surrogacy, it seems evident that any legislation must include a mechanism to examine the economic aspects in order to prevent the disenfranchisement of those of a lower socioeconomic status.

Moreover, this legislation should be drafted in a fashion analogous to the Uniform Parentage Act with a concerted campaign to convince each state legislature to adopt the model statute. (e.g., *California Family Code*, 2004.) Alternatively, the results as to parental rights will continue to vary from jurisdiction to jurisdiction. This will leave all involved parties in a precarious position because even if the agreement is made in a jurisdiction that is favorable to surrogacy, there is nothing that prevents one of the parties to the arrangement from relocating to an unfriendly jurisdiction.

References

- A. H. W. v. P. W., 772 A.2d 948 (N.J. 2000).
Arizona Revised Statutes Annotated, § 25–218 (West 2003).
Belsito v. Clark, 644 N.E.2d 760 (Ohio 1994).
California Family Code, §§ 7600, *et. seq.*, §§ 8800, *et. seq.*, § 8801.3 and § 8814.5 (West 2004).
 Ciccarelli, J. C. (1997). *The surrogate mother: A post-birth follow-up study*. Unpublished Doctoral Dissertation, California School of Professional Psychology, Los Angeles.
 Darr, J. (1999). Assisted reproductive technologies and the pregnancy process: Developing an equality model to protect reproductive liberties. *American Journal of Law & Medicine*, 25, 455–476.
Davis v. Davis, 842 S.W.2d 588 (Tenn. 1992).
Florida Statutes Annotated, §§ 742.15, *et. seq.* and § 63.212 (West 2004).
 Handel, W., Ciccarelli, J., & Hanafin, H. (1993). Legal and legislative aspects of gestational surrogacy. In R. H. Asch & J. W. W. Studd (Ed.), *Annual Progress in Reproductive Medicine* (pp.181–203). New York: The Parthenon Publishing Group.
Hecht v. Superior Court, 16 Cal.App.4th 836 (1993).
Huddleston v. Infertility Center of America, Inc., 700 A.2d 453 (Pa. 1997).
In re Adoption of RBF, 803 A.2d 1195 (Pa. 2002).
In re Marriage of Buzzanca, 61 Cal.App.4th 1410 (1998).
In re Marriage of Moschetta, 25 Cal.App.4th 1218 (1994).
Johnson v. Calvert, 5 Cal.4th 84 (1993).
Jaycee B. v. Superior Court, 42 Cal.App. 4th 718 (1996).
Kentucky Revised Statute Annotated, §199.590 (West 2002).
Louisiana Revised Statute Annotated, § 9:2713 (West 2004).
Matter of Baby M, 537 A.2d 1227 (N.J. 1988).
Michigan Comp. Laws Annotated, § 722.855 (West 2003).
Nebraska Revised Statutes, § 25–21, 200 (Michie 2003).
New York Domestic Relations Law, § 123 (LexisNexis 2004).
 Ragone, H. (1996). Chasing the blood ties: Surrogate mothers, adoptive mothers and fathers. *American Ethnologist*, 23, 352–365.
R. R. v. M. H., 689 N.E. 2d 790 (Mass. 1998).

Smith v. Brown, 718 N.E. 2d 844 (Mass. 1999).

Utah Code Annotated, § 76-7-204 (LexisNexis 2004).

Washington Revised Code Annotated, §§ 26.26.210, *et. seq.* (LexisNexis 2004).

Weintraub, R. (1986). *Commentary on the conflicts of law* (4th ed.). St. Paul, MN: Thomson-West.

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