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The Rights of Fathers in Prospective Infant Adoptions

by Jon Ryan

In 1993, the highly publicized "Baby Jessica" case brought to national attention the issue of the rights of single ("unmarried" or "unwed") "biological fathers" during the infant adoption process. Currently many state legislatures are considering laws to more clearly define the rights of single fathers when the mother wants to place their newborn baby for adoption. There is a great deal of pressure by pro adoption organizations to limit the rights of fathers so that there will be more babies available for adoption.

Legally, what are the rights of single fathers in the infant adoption process? At this time, one could accurately claim that there are 50 different ways to define the rights of single fathers one for each state and each of those "rights" is subject to vigorous modification based on the circumstances of the situation. If other states are involved in an inter state adoption, the situation becomes even more complex because the question of jurisdiction between the states must also be resolved.

Adoptions are controlled by state statutory law. Each state has its own adoption laws and an array of case law for deciding disputes or conflicts in prospective infant adoptions. How can the rights of the child, the rights of the mother, the rights of the father, and, lastly, the rights of a prospective adoptive couple be protected? The answer will be found when the United Stated Supreme Court finally decides the rights of single fathers on a constitutional basis.

In 1972, the Supreme Court took the first step in clarifying the rights of single fathers when it ruled in Stanley v. Illinois. The Court said that there is constitutional protection for a single father who has an established relationship with his children. This means that a single father (like a single mother) who has acted like a parent to his children, who has cared for them, who has provided for them, and has financially supported them has a constitutionally protected parent child relationship. Unless he has proven to be unfit through abuse, neglect, or abandonment, the state may not interfere and break up the family.

In 1978, the Supreme Court decided in Quillion v. Walcott that a single father's right to have input into the adoption decision is contingent upon the extent to which he has assumed parental responsibility. In short, if a father has had the opportunity to be a parent to this child and has done nothing to act as a parent to his child for an extended period of time, he cannot expect that his biological relationship alone can be a basis for claiming legal rights when the child is older. Only one year after the Quillion decision, in 1979, the Supreme Court again addressed the issue of fathers and adoption. In Caban v. Mohammed, the Court ruled that an adoption law that made a gender based distinction between unwed mothers and unwed fathers was in violation of the equal protection clause. In Caban, the mother and the father had lived together and raised their children together. This was not a case involving an unplanned pregnancy in which their baby was surrendered for adoption at birth.

In 1983, the Supreme Court decided in Lehr v. Robertson that a single father has a significant "biological connection that offers the natural father an opportunity that no other male possesses to develop a relationship with his offspring." Further, if the father "grasps that opportunity and accepts some measure of responsibility for the child's future, he may enjoy the blessings of the parent child relationship..." Stated otherwise, the father's relationship with his child is unique, and he must act as a father to have a protected parent child relationship.

These four Supreme Court decisions have not addressed the issue that is of paramount importance. Does a single father, by virtue of his biological bond a relationship that exists only between that child and no other man on earth have a constitutionally protected right to establish a protected parent child relationship? If the father is not married to the mother, does he have a constitutional right to be with his child, to act as a parent to his child, to care for his child, to provide for his child, and to support his child so that he may thus establish a parent child relationship that is constitutionally protected under Stanley?

This should mean that the mother may not unilaterally place their child for adoption without first giving the father an opportunity to be with his child and act as a parent. The father must be notified of the pregnancy, notified of the birth, or, at a minimum, after his baby is born, he must be allowed to physically be with his newborn son or daughter and take care of him or her to "grasp the opportunity of parenthood." If the father grasps that opportunity, then he has fully established a parent child relationship and the baby is not legally free for adoption unless the father voluntarily terminates his parental rights or a court of law finds, after due process, that he is an unfit parent and terminates his parental rights. If the father does not grasp the opportunity to establish a parent child relationship, then he may lose his parental rights and the child

may be available for adoption.

It is axiomatic that the father must, upon learning of the pregnancy or birth, begin, in some way, to take the responsibility of being a parent. He must be supportive, financially and otherwise, of the mother and of their baby. He must also make reasonable plans for providing for their child and how he will be a parent to their child.

If the mother conceals her pregnancy, the father's parental right to develop a parent child relationship with his son or daughter should be fully protected and preserved. If the mother thwarts the father from being supportive while she is pregnant or obstructs him from acting as a parent after their child is born, the father's parental right to develop a parent child relationship with his son or daughter should be fully protected and preserved. If the mother places their baby with a prospective adoptive couple to prevent the father from establishing a parent child relationship or to prevent him from obtaining custody, the father's parental right should be fully protected and preserved.

In 1987, in the case of McNamara v. San Diego County Social Services, the Supreme Court had the opportunity to decide the issue of a father's right to establish a constitutionally protected parent child relationship. However, the Court dismissed the case. In the opinion of this author, when the Court accepted the case for review, it did not fully understand the magnitude of the question before it and how such a ruling would impact on infant adoptions nationwide. During oral arguments, the Court became aware of what they were being asked to decide and managed to find a technicality to side step ruling on this issue.

Independent of the United States Supreme Court, some states have found that fathers do have a constitutionally protected right to establish a parent child relationship. For example, in 1987, In re Baby Girl Eason, The Georgia Supreme Court ruled that "a natural father who seeks to establish a relationship with his child must be provided the same rights as the mother." In 1992, the California Supreme Court found in Adoption of Kelsey S., that "a biological father has a constitutionally cognizable opportunity interest in developing a relationship with his child." Further, in 1993, that Indiana Supreme Court explicitly rule In re The Adoption of Infant M.D. that "A father's interest here in forming a relationship with his daughter is an interest in liberty entitled to constitutional protection."

Other states, such as New York, have found just the opposite: a father's biological bond to his child means nothing. With conflicting ruling in more than two states, the stage is set for the United States Supreme Court to finally, again, accept a case and rule on this important issue.

A Supreme Court ruling that single fathers have a constitutionally protected right to establish a parent child relationship will go a long way to enhancing the integrity of the adoption process and to giving direction to states on this issue. If the father wants to be a parent to his child and is willing to act as a father, the child is simply not free for adoption and there will be no adoption. If the father does not want to accept his parental role and responsibilities, then his rights can be terminated by due process and the adoption can go forward. Such a clearly defined process will protect the rights of everyone involved.

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