

The Modern Family Fiasco

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INTRODUCTION

For the majority of couples, conception is a process involving the woman's own eggs and the sperm of her male partner. This makes parental identity, for the most part, straightforward—the woman is the child's rightful mother and the biological father is the child's rightful father. However, assisted reproductive technology (ART) has brought new definitions to the term parenthood. The legal sanction of parenthood now extends beyond individuals who pass along their DNA or choose to adopt children—sperm donors, egg donors, and gestational carriers now vie for the title of parental ownership.

ANALYSIS

With the rapid rise in ART, the traditional framework of rightful parentage must be reevaluated, especially when considering sperm donors. The laws on this issue vary across states, and in some states, laws regarding donor sperm are still unclear. Traditionally, a donor of genetic material is not legally considered to be the parent of the child. Specifically in California, the family code does not consider a sperm donor to serve as the parent if he is not married to the woman conceiving. Only if a written agreement exists before the conception of the child can the donor be deemed the legal parent. However, the judicial system is beginning to reconsider who might be the “intended” parents of a child. Case by case, the courts often evaluate the adult who has served as a parent to the child and decide whether or not the individual can be considered the legal guardian.

The topic of sperm donation becomes most ethically entangled when discussing non-anonymous sperm donors. A recent case in California sheds light on the intricacies involved in using a non-anonymous donor and his legal rights to the conceived child. Achieving national publicity, this case helped to ignite the introduction of a new bill into California legislation, known as the Modern Family Act. The non-anonymous sperm donor has been struggling to obtain parental right to his biological child, while the mother continues to uphold a strict restraining order and denial of any paternal relationship. The former couple did not form an agreement before the child’s conception and broke up permanently shortly after the birth. Although the son shares a middle name with the father’s familial lineage, and spent a significant amount of time with his biological father during infancy, the mother’s lawyer insists on referring to the father as simply the sperm donor.

Anonymous donors make up the vast majority of the more than 30,000 estimated births annually resulting from donated sperm. The California Cryobank, which is the nation’s largest sperm bank, administers less than 10 non-anonymous samples a month out of 2,000 total.¹ Although this is not a large number, the frequency of issues that occur from such donations prove that states would greatly benefit from clear-cut regulations.

The aforementioned example, along with many other similar non-anonymous sperm donor cases, raises the question of original intention. Issues with same-sex couples create their own confusion; however, the situation can grow even more complicated when the biological parents were originally in a relationship together, could not conceive naturally, sought ART services, and then later permanently split apart. Situations like this beg the question: what type of relationship did the biological father originally intend to have with the future child when he offered his genetic material? Disagreements and legal battles could be more easily prevented if patients who used a fertility center were required to make these life-altering decisions about their future child before seeking physician assistance.

Another way to look at these circumstances would be to consider what it would have been like if the pair could have conceived naturally. If this were possible, then the father would have undoubtedly been both biologically and legally the parent. Is it fair that just because the child was conceived through in-vitro fertilization that the mother can use this condition as leverage to label her former partner as a mere sperm donor? Moreover, it is important to consider the well-being of the child. One would think that denying the child of a father-son relationship gravely affects their upbringing.

CONCLUSION

Fortunately, if California’s new law passes, it will require donors to enter into a formal, written agreement before donating semen for artificial insemination or in-vitro fertilization. Along with many other implementations, some more controversial than others, the Modern Family Act would demand that all parties sign a statement of parental intention before any medical procedure can take place. This would eliminate many of the ambiguities infiltrating the tangled web of assisted reproductive medicine and would prevent the hundreds of cases that have already

surfaced in courts across the country due to disagreements over child custody. As the modern world reveals, people create their families in different ways. This act would allow people the freedom to safely enter into agreements. California has recognized a need for clarity and regulation within the assisted reproductive realm, and one hopes that they will set a precedent for other states as well.

¹ "Does Sperm Donor Mean Dad?" by Brooks Barnes - *New York Times*.