

Advanced Issues in Parentage: Everything you may not know

Massachusetts Juvenile Bar Association
Annual Conference
March 29, 2019



Introductions

Joshua Fishbein

Department of Revenue/Child Support Enforcement

&

Polly Crozier

GLBTQ Legal Advocates & Defenders

Objectives

- Introduce parentage, its importance, and the diversity of families in the Commonwealth
- Understand the legal principles and practical realities for establishing parentage
- Highlight key parentage cases that you may not know

What is parentage?

Parentage

- Parentage is legal parentage.
- A legal parent has many rights and responsibilities.
- Rights - custody, parenting time, decision making
- Responsibilities - duty to provide care and support

Why does parentage matter?

- Child's perspective
- Parent's perspective
- Court perspective
- Key statistics show a diversity of family structure and family creation in MA

Parentage Overview

What are the routes to legal parentage in Massachusetts?

- Birth
- Genetic connection
- Holding out presumption
- Marriage – presumption and assisted reproduction
- Adoption
- Surrogacy - pre-birth order of parentage

Birth

Chapter 209C:

- Sections 6 and 10 assume a birth mother is a legal parent; unmarried birth mothers have automatic custody

Chapter 46:

- Section 1 provides birth mother is listed on birth certificate automatically

Key cases:

- Smith v. McDonald (2012)

Genetic connection

Chapter 209C, § 17

- testing by motion and with “proper showing”

Key Case

In re Paternity of Cheryl, 434 Mass. 23 (2001)

Challenges to paternity judgments should not be permitted beyond a brief period of time. Father waited six years after a paternity adjudication to challenge and acted as the child's father including establishing and enforcing parenting time despite claiming he had reason to doubt his paternity two years after the child was born. The child's interests outweighed any interest of father's. The Court also gave direction that the father was not authorized to obtain paternity testing without a court order or mother's permission.

Holding Out

Chapter 209C, § 6(a)(4):

“while the child is under the age of majority, he, jointly with the mother, received the child into their home and openly held out the child as their child”

Holding out – key case:

Partanen v. Gallagher, 475 Mass. 632 (2016)

- The court held that a biological relationship is not required for a person to establish herself as a child's presumptive parent under G.L. c. 209C, § 6(a)(4) (the "holding out" provision), and ruled that the assertions in the plaintiff's complaint were sufficient to state a claim of parentage under G.L. c. 209C. The court set forth a two-prong test for asserting parentage under G.L. c. 209C, § 6(a)(4): first, the person must show that the child was "born to" her and the other parent; second, the person must show that the parents jointly "held out" the children as their own.

Marriage

Marital presumption: G. L. c. 209C, §6

Assisted Reproduction: G. L. c. 46, § 4B

Marriage – key parentage cases:

C.C. v. A.B., 406 Mass. 679 (1990)

The court held that a putative father can seek to establish his paternity not pursuant to Chapter 209C but in equity but that, in order to protect the marital family, he must first meet a standing requirement and prove, by clear and convincing evidence, that he has a substantial parent-child relationship.

Hunter v. Rose, 463 Mass. 488 (2012)

The SJC held that a child born into a legal spousal relationship was a child of both parents, applying the marital presumption and G. L. c. 46, § 4B to same-sex partners.

Adoption

Chapter 210

Key cases on adoption and parentage:

- Petition of Curran (1943)
- Adoption of Tammy (1993)
- Adoption of a Minor (2015)

Surrogacy

Gestational surrogacy - pre-birth order

- G. L. c. 215, §6
- Culliton v. BIDMC, 435 Mass. 285 (2001)

Genetic Surrogacy - adoption

- R.R. v. M.H., 426 Mass. 501 (1998)

Difficult issues

- Parentage with ART after death
 - Woodward v. Commissioner of Social Security, 435 Mass. 536 (2002)
- De facto parentage
 - E.N.O v. L.M.N., 429 Mass. 824 (1999)

“A de facto parent is one who has no biological relation to the child, but has participated in the child's life as a member of the child's family. The de facto parent resides with the child and, with the consent and encouragement of the legal parent, performs a share of caretaking functions at least as great as the legal parent. The de facto parent shapes the child's daily routine, addresses his developmental needs, disciplines the child, provides for his education and medical care, and serves as a moral guide.” (internal citations omitted)

Establishing Legal Parentage – the practical

1. DOR's role and services
2. Voluntary Acknowledgment, G.L. c.209C, §11(a)
3. Court Order, G.L. c.209C, §2, 8; G. L. c. 215, §6
4. Legal Presumptions and mandatory joinder, G.L. c.209C, §6

Federal Requirements

- Title IV, Part D of the Social Security Act
- Referred to as the IV-D program
- All states required to have a child support program
- In MA = DOR/CSE
- Federal law mandates various state laws, services provided, timeframes for case processing, etc.

Child Support Enforcement Division

- Approximately 540 staff
- Headquarters at Saltonstall
- 5 Regional offices
 - Metro: Saltonstall
 - North: Woburn
 - Central: Worcester
 - West: Springfield & Pittsfield
 - South: Taunton & Hyannis
- Customer Service Center in Chelsea



Services Provided

- Full service **IV-D** cases:
 - Location of parent
 - Establishment of parentage
 - Establishment of child support and medical support orders
 - Enforcement and collection of orders
 - Modification of orders
 - G.L. c. 119A



Case Demographics

- Department of Transitional Assistance
- Custodial parents on TANF
- Mass Health
- Department of Children and Families
- Interstate IV-D agencies
- International agencies
- Applications from parents not on assistance



Genetic ≠ Legal Parentage

GENETIC

- Genetically related
- Does not *automatically* create legal rights or responsibilities for child unless also marital parent
- Genetic parent may not be legal parent

LEGAL

- Recognized by law
- Establishes rights and obligations including: custody, parenting time, support, inheritance
- Does not depend on genetic connection

Voluntary Acknowledgement

- For unmarried parents, parentage may be established by completing a Voluntary Acknowledgment of Parentage
- Occurs at time of birth in hospital (or post birth)
- New form as of 2018
- Equivalent of a court decree

Voluntary Acknowledgement

- Requires 2 step verification if there is a different presumed parent:
 - Affidavit of non-parentage confirming spouse is not parent
 - Birth parent and genetic/holding out parent must complete voluntary acknowledgment of parentage
 - D.H. v. R.R., 461 Mass.756 (2012). Acknowledgment invalid as a matter of law where mother and husband did not complete the affidavit of non-parentage

Voluntary Acknowledgment

Birth parent and other parent
must:

1. Complete RVRS Voluntary Acknowledgment of Parentage form, G.L. c.209C, §11
2. File forms with City or Town Clerk or Registry of Vital Records and Statistics

CAVEATS:

- *May establish legal parentage for a child only once*
- *If legal parentage has been established by a prior voluntary acknowledgment or court adjudication, then voluntary acknowledgment is not available*
- *If birth parent is married to a person who is not other parent, then birth parent and spouse must complete Affidavit of Non-Parentage*

Court Adjudication Process

- Complaint filing
- Genetic marker testing requests
- Temporary Orders and Judgments/Partial Judgments of Parentage
- Stipulations of Parentage
- Change of child's name and birth certificate

Genetic Marker Testing (GMT)

- Uses DNA markers to determine probability person is genetic parent
- Parentage is presumed if probability >97%, G.L. c.209C, §17
- Genetic testing offered only when legal parentage has not been established and **NOT** to undo established legal parentage



PATERNITY TEST
DNA TEST RESULT

Report - Legal Test
Probability of Paternity - 99.74%

Locus	Alleged Father	Child
D2S1338	12, 13	10, 12
D2S1358	8, 11	11, 14

Genetic Marker Testing (GMT)

- Must include an application for services
- If positive, parents can execute a voluntary acknowledgment to establish legal parentage or ask court for adjudication of parentage
- If only one parent agrees to genetic testing and there is an application for services on file, an administrative order for testing can be ordered and served with the complaint

Genetic Marker Testing (GMT)

How to facilitate genetic testing:

- DCF/attorney/party completes application for services completed with copies of pleadings and DCF case number
- Parties should appear with state issued ID
- Pictures and fingerprints of alleged genetic parent, birth parent, and child are taken at time of sample
- DNA is collected with cotton swab from alleged genetic, birth parent, and child
- DOR can arrange testing if individual is incarcerated or other parent/child lives in another state
- “Motherless draw” testing performed from alleged genetic parent and child if mother cannot be tested

Contact Information

Joshua Fishbein

DOR/CSE

100 Cambridge Street, 5th floor

Boston, MA 02114

(617) 626-2688

fishbeinj@dor.state.ma.us

Patience Crozier

GLBTQ Legal Advocates & Defenders

18 Tremont Street, Suite 950

Boston, MA 02108

(617) 426-1350

pcrozier@glad.org