

Family Services

Hedgepeth & Heredia is a full service family law practice. Hannibal Heredia and Kimberly Reagin are the firm's in-house surrogacy experts. They work as a team to assist families throughout the entire process -- from preparing surrogacy contracts to representing couples in the legal process that follows.

Advances in reproductive medicine have brought several options to infertile couples who desire to start a family. These advances include gestational and donor surrogacies; invitro fertilization (IVF) and artificial insemination; egg and embryo donation. These reproductive technologies present specific legal issues with hardly any legislation to address these issues. Hedgepeth & Heredia has the experience to address these issues through the Georgia courts.

The following is a brief outline of the different types of Assisted Reproductive Technologies and the role of the attorney in each scenario.

Types of Assisted Reproductive Technology

Gestational Surrogacy

Gestational surrogacy is often used where a woman may have physiological issues that adversely effect her ability to carry a pregnancy to term. In a gestational surrogacy the surrogate does not contribute her genetic material to the creation of the embryo; the egg and sperm originate from the intended parents. The pregnancy is achieved through in vitro fertilization (IVF) and embryo transfer. A number of the embryos are implanted in the uterus of the gestational surrogate. The gestational surrogate then carries and delivers the baby, but does not have a direct genetic link to the baby.

As the baby is genetically related to the intended parents, the child is presumed to be the child of the intended parents even as it develops in the surrogate. Upon birth, it is the surrogate surrenders the child or children to the intended parents. At this point the intended parents will release the surrogate and her husband (if any) from all parental responsibility.

Artificial Insemination and surrogacy

In this type of assisted reproductive technology, the surrogate contributes her own egg which is usually fertilized by artificial inseminations. Hence, the resulting embryo contains the genetic material of the surrogate.

Egg and Embryo Donation

In the case where it has been medically determined that the intended mother's eggs are not suitable for reproduction, advances in reproductive technology provide egg and embryo donation as option.

Egg donors can often be relatives or another female who is well known by the parents. Some parents bring their own, designated donors, while other patients rely on the services of often anonymous donors typically recruited by egg donor agencies or, sometimes, IVF

programs. Once the egg donor is recruited, she undergoes the IVF therapy, followed by the egg retrieval procedure. After retrieval, the ova are handed over to the recipient couple, fertilized by the sperm of the male partner in the laboratory, and after several days, the resulting embryo(s) is placed in the uterus of the recipient. Here half of the genetic material (the egg) has been donated.

The process of embryo donation begins with IVF of donated eggs. The IVF often results in a number of frozen, unused embryos after the woman for whom they were originally created has successfully carried one or more pregnancies to term. In embryo donation, these extra embryos are given to other couples or women for transfer with the goal of producing a successful pregnancy. Often in these cases 100% of the genetic material has been donated.

The Legal Process

While each of the method of ART result in different legal issues, the role of the attorney advocate generally is as follows:

Contracts

A contract between the prospective parents and the surrogate or donors is necessary to define the responsibilities throughout the entire process. Hannibal and Kim can prepare the necessary contract and represent the couple through this process. In fact most fertility clinics will require that a contract be executed before the appropriate use of ART is employed.

Opinion Letter

Often the fertility clinic requires an attorney's opinion letter sanctioning the execution of the contract. Hannibal and Kim also prepare this letter.

Medical affidavit

Prepared by the reproductive assistance clinic, it is needed to outline to the Court the genetic parentage of the child.

Going to Court

Why does one have to even go to court? Each form of ART presents a different legal issue depending on either the genetic material involved or whether a third party is to give birth to the child. Certain documents will be filed with the Court and these are sealed. This is a friendly process. The hearings are held outside of a public forum, sometimes in the Judge's chambers.

In gestational surrogacy, the "law suit" and the resulting hearing are necessary to rebut the usual presumption that the pregnant woman (surrogate) is the mother of the child she is to give birth to. In addition if the surrogate is married, the legal presumption that her husband is the father of the child needs to be rebutted as well. In addition the resulting order sets out intended parents are the genetic and legal parents of the child to be born, that the surrogate and her husband will have no parental rights nor obligations to raise the child and that the intended parents will make elective medical decisions on the behalf of

the child at its birth. The order is sealed with the Court and so is the file. The court orders that the birth certificates will issue with the intended father as declared father of the child and the intended mother as declared mother of the child. Since the genetic material is 100% of the intended parents no adoption is necessary after the above described process is completed.

When the surrogate is artificially inseminated, then the court process is to establish the fatherhood of the child as well as overcoming the legal presumption that if the surrogate was married either at the time of conception or the time of delivery, that her husband is the father of the child. This process allows the child to leave the hospital upon its birth, with the child's declared father. The resulting order will designate the proper rights and obligations as in the gestational surrogacy order described above. Because only the sperm is that of the intended parents, a "step parent" adoption will follow after the birth of the child. The wife of the sperm donor replaces the surrogate as the mother of the child, and a replacement birth certificate issues.