



LGBT INDY LAW \*BLOG\*

from the desk of BARBARA J. BAIRD, Attorney at Law

## WHY DOES MY WIFE NEED TO ADOPT MY BABY?

After the swift and certain victories in the fight for marriage equality for gay and lesbian couples culminating in the Supreme Court's Obergefell decision in 2015, many hope and presume that same-sex married couples now stand on equal footing with opposite-sex married couples. However, just as the 1964 Civil Rights Act and Supreme Court decisions on racial discrimination did not eliminate racially discriminatory practices overnight (or even 50 years later), so, too, will those who oppose full recognition of LGBT couples and families find ways to avoid equal treatment and respect for our families. The 2016 election and the resulting appointment of conservative Supreme Court and Federal Court judges and elimination of pro-LGBTQ federal policies signal a backward direction for LGBT protections.

The legal relationship between a child and his or her same-sex married parents is one area in which current laws fail to safeguard the security of gay and lesbian families. It is especially important for lesbian couples who decide to have children to understand that they still need to protect their families through every legal means possible, including second parent or stepparent adoption.

For lesbian couples, ever-improving assisted reproductive technology (ART) allows one partner to bear the couple's child using donated sperm, either anonymously from a sperm bank, or through a known donor who is a friend or relative. Before same-sex marriage was recognized, the non-birth mother secured her legal parental rights through a "second parent" adoption. This allowed the names of both parents to be on the birth certificate, and more importantly, resulted in a court order securing parental rights. This adoption decree was required to be honored by every state, even if that state did not recognize same-sex marriage or even permit second parent or gay adoption.

Now that same-sex marriage must be recognized in all states, I have heard from many lesbian couples who mistakenly believe that second parent adoption is no longer necessary if the couple is married. While same sex marriage in Indiana now allows the non-birth parent's name to be on the birth certificate of a child born to her wife, the parental status of the non-birth mother remains at risk because a birth certificate can be challenged and is not required to be honored by another state's courts.

For an opposite-sex married couple, the husband's name is on the birth certificate of a child born to his wife because marriage allows the presumption that he is the biological father. Unfortunately, in Indiana and many other states, this presumption of paternity during marriage is biologically based and can be rebutted by showing that the husband is not the biological parent. In the case of two married lesbians, this means that the parental status of a non-birth mother to her spouse's child is subject to

challenge because she does not have a biological connection. Further, Indiana does not have any laws on the books addressing parentage of children conceived through ART, so that even a lesbian who donates her eggs to her spouse who bears the child is not automatically recognized as a parent here even though she is a genetic parent!

Only a court decree of parentage, namely, a second parent or stepparent adoption, can secure irrefutable parental rights for the non-birth mother. What's more, this adoption decree must be honored by other states, even those still hostile to gay families. As our community continues to create families that do not neatly fit current legal definitions, it remains critical that couples assure respect and recognition for their families through all available legal protections.

While it may seem unfair to be required to clear these additional hurdles to assure that your family is protected, it is the price that must be paid for peace of mind as our courts and legislative leaders ever so slowly acknowledge that same sex parents and families must be accorded full equality.

If you have any questions about your rights as same sex parents, feel free to contact the Law Office of Barbara J. Baird for an evaluation of your needs.