

**STATE OF RHODE ISLAND AND PROVIDENCE
PLANTATIONS**

PROVIDENCE, SC.

FAMILY COURT

In re Adoption Petition of :

:

FC Case No. 2015-0877-1

██████████ & :

██████████ :

DECISION

Forte, C.J. This matter is before the court on two ex parte motions filed in a Petition for Adoption. Petitioner ██████████ (“██████████”) seeks a “Declaration of Parentage” and ██████████ along with petitioner ██████████ (“██████████”) move that this Court waive the notice requirement of R.I. Gen Laws §15-7-7. Additionally, ██████████ requests that her name be added to the birth certificate of the child who is the subject matter of the Adoption

Petition (“the child”). For the reasons set forth below, this Court grants the motion seeking a declaration of parentage and declares that [REDACTED] is a *de facto* parent of the child. Accordingly, this Court also orders that [REDACTED]’s name be added to the child’s birth certificate. This Court will not reach issues regarding the adoption petition or the Ex Parte Motion to Order Parentage Pursuant to R.I. Gen. Laws § 15-8-3 because the court is declaring [REDACTED] to be a *de facto* and psychological parent of the child pursuant to §15-8-26.

I. FACTS AND TRAVEL

[REDACTED] and [REDACTED] have been in a committed relationship for over ten years and became formally married in 2014 after Rhode Island recognized same-sex marriages. [REDACTED] and [REDACTED] have lived in Rhode Island since 2002, [REDACTED] is a mortgage preparer at an investment company and [REDACTED] operates her own business. Prior to their marriage, [REDACTED] and [REDACTED] decided to conceive their first child through in-vitro fertilization (“IVF”) using an anonymous sperm donor. The genetic material was obtained from Fairfax Cryobank in Fairfax, Virginia.

██████████ underwent IVF at the Center for Advanced Reproductive Services in Farmington, Connecticut. ██████████ carried and gave birth to their first daughter on ██████████. On ██████████, ██████████ formally adopted their first daughter.

Two years later, ██████████ and ██████████ consensually decided to conceive a second child through IVF. ██████████ and ██████████ chose to use the same genetic material from the same anonymous sperm donor as they had used for the first pregnancy. ██████████ carried and gave birth to their second daughter on ██████████. On ██████████ ██████████ and ██████████ jointly filed with this Court a petition seeking the adoption of the child by ██████████. ██████████ filed the instant motion to declare parentage over the child.

II. JURISDICTION

It has been well established that this Court has jurisdiction to determine a *de facto* parental relationship with a child under R.I.G.L. § 15-8-26. Rubano v. Dicenzo, 759 A.2d 959, 966 (R.I. 2000). Section 15-8-26 provides as follows.

Any interested party may bring an action to determine the existence or nonexistence of a mother a child relationship. The provisions of this chapter applicable to the father and child relationship shall apply as far as practicable.

(Emphasis added.)

In Rubano, the Supreme Court of Rhode Island held that “the plain language of [§ 15-8-26] vests the Family Court with jurisdiction to declare the existence *vel non* of a mother and child relationship. . . .” Id. at 967. Furthermore, the court in *Rubano* discussed § 15-8-26 in relation to a non-biological parent who agreed with her ex-partner to conceive a child using IVF. *Id.* In doing so, the court narrowly construed the “any interested party” language found in § 15-8-26 to require that a party have a parent-like relationship with a child before relief can be sought. Id. However, and most importantly, Rubano established that this Court does not require an interested party who seeks a declaration of parentage to establish that he or she is the biological parent of the child. *Id.*; see also Pettinato v. Pettinato, 582 A.2d 909, 913 (R.I. 1990) (Family Court determined the existence of a *de facto* parent-child relationship

regardless of the biological relationship between the parent and child). Therefore, “any interested party” under § 15-8-26 may include a person who has no biological connection with a child, but “has functioned as a parent in relation to that child and has been held out to the community as the child’s parent by the biological parent.” Rubano, *supra*, at 969.

In this case, the Court is satisfied that [REDACTED] qualifies as an interested party with respect to her motion for declaration of parentage because of her parental bond and relationship with the child. Like the parties in Rubano, [REDACTED] and [REDACTED] have been the sole caretakers of the child since her birth. The child has lived in the same household with [REDACTED] and has only been raised by [REDACTED] and [REDACTED]. Additionally, as in Rubano, the biological mother of the child, [REDACTED], has continuously held out to this Court and the community that [REDACTED] is a parent of the child. This Court finds it clear that there is a parent-child like relationship that has been established between [REDACTED] and the child. Therefore, [REDACTED] is an interested party who can seek relief under § 15-8-26. Accordingly, this Court is vested with the power to determine whether [REDACTED] is a *de facto* and psychological parent of the child.

III. DE FACTO AND PSYCHOLOGICAL PARENT

The next issue for the Court to determine is whether [REDACTED] is a *de facto* and psychological parent of the child.

In Rubano, the Supreme Court of Rhode Island discussed the importance of the recognition of a *de facto* and psychological parent.

Because of the importance of these bonds, we recognize that, ... a person who has no biological connection to a child but who has served as a psychological or *de facto* parent to that child may, ... establish his or her entitlement to parental rights *vis-à-vis* the child.

Rubano, *supra* at 975.

Other jurisdictions have also recognized the importance of the *de facto* parental relationship to a child. The New Jersey Supreme Court has stated as follows.

At the heart of the psychological parent cases is a recognition that children have a strong interest in maintaining ties that connect them to adults who love and provide for them. That interest...lies in the emotional bonds that develop between family members as a result of shared daily life.

V.C. v. M.J.B., 748 A.2d 539, 550-51 (N.J. 2000). Similarly, the

Supreme Court of Utah held that the fact that a person is not a child's

natural or legal parent does not mean that he or she must stand as a total stranger to the child where custody is concerned”. In the Matter of J.W.F., 799 P.2d 710, 714 (Utah 1990). Moreover, the Massachusetts highest court has defined a *de facto* parent as:

[O]ne 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 care taking functions at least as great as the legal parent. (*citations omitted*.) 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.

E.N.O. v. L.M.M., 711 N.E. 2d 886, 891 (Mass. 1999).

Just recently, the Supreme Judicial Court of Massachusetts, held that a non-biological mother was a presumed parent to the children that she raised with her ex-partner and the birth mother to her children.

Partanen v. Gallagher, 59 N.E. 3d 1133 (Mass. 2016). Similar in facts to this case, in Partanen, two women in a committed relationship agreed and consented to start a family through fertility treatments using sperm from an anonymous donor. Id. at 1134-36. The non-biological mother

did not formally adopt the children, but participated in raising them from their birth, was involved in the decision making in all matters related to the children, and provided continuous financial support. Id. In finding that a non-biological mother was a presumed parent, the court required a finding that: 1) the children were born to the non-biological parent and the birth mother; 2) The non-biological parent and the birth mother received the child into their home and 3) The non-biological mother and birth mother held out openly that the children were theirs. Id. at 1137.

Using similar principles, the Rhode Island Supreme Court in Rubano provided a four-part test to help determine whether a “psychological parenthood” existed between a third party and child. Rubano, supra, at 974 (following the New Jersey Supreme Court in V.C. v. M.J.B., supra, at 550-51). The four-part test is as follows: (1) The legal parent must consent to and foster the relationship between the third party and the child; (2) The third party must have lived with the child, (3) The third party must perform parental functions for the child to a significant degree; and, (4) A parent-child bond must be forged. This Court will now analyze ██████’s motion using this four-part test.

The legal parent must consent to and foster the relationship between the third party and the child.

For the following reasons, this Court is convinced that [REDACTED] has established that the legal parent, [REDACTED], consents to and fosters the relationship between [REDACTED] and the child. As in Rubano and Partanen, [REDACTED] and [REDACTED] mutually and consensually agreed to have a second child using the same fertility treatment and anonymous sperm donor they used to conceive their first child. Since the birth of their second child, [REDACTED] and [REDACTED] have remained devoted and committed to each other and their two daughters. Moreover, there is no indication that [REDACTED] has done anything to publicly reject or denounce [REDACTED] as the parent of their daughter.

In support of the legal parent consenting to and fostering the relationship between [REDACTED] and the child, this Court received three letters of recommendation to advocate for and in support of [REDACTED]'s motion for a declaration of parentage. The first letter of recommendation is from [REDACTED]'s sister, [REDACTED]. [REDACTED] stated that her sister

has, “already been the most amazing mom to both their children from the beginning.” The second letter is from [REDACTED] and [REDACTED] who assured this Court that [REDACTED] is a loving, caring, and nurturing parent. Lastly, the third letter from [REDACTED], the children’s preschool teacher, who stated, “[H]ow lucky the girls are to have two caring and wonderful mothers.” Therefore, this Court finds that [REDACTED] as legal parent of the child, has held out to the community her consent to and support of [REDACTED] being an equal partner and parent to the child.

The third party must have lived with the child.

This Court is convinced that [REDACTED] has met the second element of the test as she has lived with the child since the child’s birth. Rhode Island’s Department of Children, Youth and Families (“DCYF”) social caseworker, [REDACTED], has provided detailed information in her “home study evaluation” regarding [REDACTED] and [REDACTED]’s household. Specifically, [REDACTED] confirmed that [REDACTED] and [REDACTED] have lived in their home since July 2013. Together [REDACTED] and [REDACTED] have lived in their single family home with their two children. This Court is satisfied

that [REDACTED] has lived with the child since her birth and finds the second element of the test has been met.

The third party must perform parental functions for the child to a significant degree.

This Court is satisfied that [REDACTED] has performed the required parental functions for the child over the length of the child's life. As in Rubano and Partanen, [REDACTED] has evidenced that she has actively participated in the child's care from the time of her birth. DCYF's social caseworker assessed in the home study that "[this] is a solid loving family" and "[REDACTED] has a lot to give her children and provides them with a lovely home." In [REDACTED] and [REDACTED]'s letter of recommendation, they expressed that [REDACTED] is an appropriate disciplinarian and, "[a]s a result, the children are polite, well groomed, schooled, respectful and happy children... [REDACTED] and [REDACTED] provide a stable environment, have the financial resources and have a very strong relationship." Additionally, the children's pre-school teacher, [REDACTED], stated in her letter of recommendation that "[i]t is always a true treat to see both [REDACTED] and [REDACTED] during pick up and drop off times at

school...they are both very involved with [their daughter's] schooling, always making it to parent evenings and school gatherings.”

This Court is convinced that [REDACTED] has the parenting skills and functions necessary to raise a happy, healthy, and successful child.

[REDACTED] has evidenced that she is actively involved in the child's day-to-day caretaking and participates in all decision making matters regarding the child. [REDACTED] is also involved in the child's education by taking the child to and from school and participating in extra-curricular activities with the school. [REDACTED] also equally contributes to the family and household finances. For these reasons, the Court is convinced that [REDACTED] has proved she performs the necessary parental functions for the child to a significant degree and that she has met her burden of proof as to the third element.

A parent-child bond must be forged.

Most importantly, this Court is satisfied that a parent-child bond has been formed between [REDACTED] and the child. [REDACTED] has proved that she has been a devoted parent to the child since the child's birth. [REDACTED]

equally with [REDACTED], has lived with, cared for, and raised the child since birth. [REDACTED] has demonstrated a strong and healthy parental relationship between her and the child. Additionally, it is clear that [REDACTED] plays a vital and pivotal role in the child's life and development. Therefore, this Court is convinced that [REDACTED] and the child have forged the required parent-child bond to establish the existence of a *de facto* and psychological parenthood.

IV. CONCLUSION

For the reasons set forth above, this Court is satisfied that [REDACTED] has established by clear and convincing evidence that she is a *de facto* and psychological parent to the child. Accordingly, this Court hereby:

- 1) grants [REDACTED]'s Ex Parte Motion to Order Parentage of Child's Mother;
- 2) Declares joint parentage to [REDACTED] over the child pursuant to § 15-8-26;

- 3) orders that the birth certificate of the child be amended to include the name of [REDACTED] as a parent;
- 4) passes the Ex Parte Motion to Waive Notice to an Anonymous Sperm Donor;
- 5) passes the Ex Parte Motion to Order Parentage Pursuant to R.I. Gen. Laws §15-8-3; and
- 6) dismisses the petition for adoption.

Counsel for the Petitioners are instructed to prepare an order consistent with this decision.

_____ Dated: _____

Michael B. Forte

Chief Judge

Rhode Island Family Court