



January 23, 2018

Via Mail and Electronic Mail

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Dear Attorney Ballin:

I write on behalf of P. and K. whom I represent. They are the parents of M.

I write to enclose the Voluntary Acknowledgment of Parentage form for M. executed by K. and P. Pursuant to G. L. c. 46, §13, I am filing this VAP form with you, a representative of the state registrar, and anticipate that M's birth certificate will be amended to reflect K as her second parent. See G. L. c. 46, §13(d) ("if a person is born to parents not married to each other . . . such person's birth record shall be amended to include the putative father's information required by section 1 provided that: the mother and the putative father have signed and filed an acknowledgement of paternity with . . . the state registrar. . ."); see also G. L. c. 4, § 6 ("words of one gender may be construed to include the other gender and the neuter").

Although additional background information is not legally required, I am happy to provide you with further background about this family. P. and K. are a committed couple who have never married. They have been in a committed relationship for four years and live together as a family. They long planned together to have children together. Jointly, they worked to conceive M. through assisted reproductive technology. They chose and purchased donor sperm together from X Sperm Bank. They worked with the Y Fertility Clinic, and they both attended appointments there. At the Clinic, M. was conceived through artificial insemination (specifically, intrauterine insemination) using donor sperm. M. was born at Mount Auburn Hospital in Cambridge, Massachusetts, on _____. P. gave birth, but M. was born to both K. and P. Since M.'s birth, they have jointly parented her, sharing care of her and making decisions for her together. At the time of her birth, K. and P. attempted to complete a birth certificate worksheet reflecting their joint parentage. However, although extremely gracious, Mount Auburn told them that they were unable to complete a birth certificate worksheet and a Voluntary Acknowledgment of Parentage form because K. is a woman.

As you know from the unanimous Supreme Judicial Court ruling in Partanen v. Gallagher, 475 Mass. 632 (2016), never-married parents such as K. and P. must be accorded the same rights

and responsibilities of parentage as different-sex, never-married parents. Partanen issued on October 4, 2016, prior to M.'s birth, and the case clarified that Chapter 209C must be read in a gender-neutral manner and also that Chapter 209C does not require a genetic tie to establish parentage.

In Partanen, a copy of which is enclosed, the SJC held that presumed parentage under G. L. c. 209C, §6(a)(4) does not require a biological connection between parent and child and that Ms. Partanen's allegations satisfied the statute's requirements. In the course of its analysis, the Court observed that Ms. Partanen could have executed a Voluntary Acknowledgment of Parentage ("VAP"), the administrative route to legal parentage for nonmarital children. The SJC reasoned "it is apparent that a biological connection is not a sine qua non to the establishment of parentage under G. L. c. 209C. Indeed, Gallagher [the birth parent,] concedes that a voluntary acknowledgement of parentage may be executed by a same-sex couple, even if one member of the couple is not biologically related to the children, and that, had an acknowledgment been executed here, it would have established Partanen as the children's legal parent." Partanen, 475 Mass. at 639.

K and P. fall squarely within the contours of the Partanen case and Chapter 209C, and they should have been able to execute a VAP form at the hospital.

We are now submitting the enclosed VAP form and requesting that M.'s birth certificate be amended to reflect K.'s parentage.

Not only is this result required affirmatively by Massachusetts law, but there exist no legal barriers to this VAP. Under Massachusetts law, parentage of nonmarital children is established pursuant to Chapter 209C. The paternity statutes, like all Massachusetts' statutes, must be construed in a gender-neutral manner. See G. L. c. 209C, § 21 (laws about establishing paternity also apply to establish maternity); G.L. c. 4, § 6 ("words of one gender may be construed to include the other gender and the neuter"). Massachusetts law does not require genetic testing prior to signing an acknowledgment of parentage. See G. L. c. 209C, § 11. A mother and a putative parent may execute a voluntary acknowledgement of parentage, and, if so, their signatures must be notarized. G. L. c. 209C, §5. Voluntary acknowledgments shall also include the residential address and social security number of both parents and the child, if a social security number is available. G. L. c. 209C, § 11. All of these requirements have been met by K. and P. Furthermore, Federal law regarding Voluntary Acknowledgments of Parentage contains no requirement of genetic testing prior to execution of a VAP and does not require a genetic connection to establish parentage. 42 U.S.C. §666(a)(5).

As further insight into the interplay between VAPs and Federal law, the Uniform Law Commission recently promulgated the 2017 UPA, and its Article 3 recommends a VAP process that is both gender neutral and genetic status neutral. The Comment to Article 3 explains as follows:

"UPA (2017) makes Article 3 gender neutral and refers to the establishment of parentage through the acknowledgment process for an alleged genetic father, an intended parent, and a presumed parent, allowing Article 3 to apply to both men and

women. The gender-neutral language and addition of the term ‘intended parent’ is consistent with one of the goals of this revision process, which is to ensure that UPA (2017) applies equally to same-sex couples.

“Revised Article 3 of UPA (2017) was drafted in close consultation with the federal Office of Child Support Enforcement (OCSE) to be consistent with Title IV-D requirements. State law determines what support rights exist and are legally enforceable. These changes ensure that all children can have parentage established regardless of a parent’s gender and facilitate the establishment and enforcement of child support under state law.” Unif. Parentage Act § 3 (2017).

Simply put, there are no barriers under Massachusetts or Federal law to this family executing and submitting a Massachusetts VAP, and they must be able to access this simple, affordable, efficient and administrative route to parentage. Although it would be ideal for the registry to have updated their VAP form already to be gender and genetic status neutral in compliance with Massachusetts law, the fact that the form is outdated should be no barrier to securing this child’s parentage.

Thank you for accepting this filing and for amending M.’s birth certificate to reflect that K is her second legal parent. We look forward to hearing from you, and if you have any questions or if you would like to schedule a meeting with me to discuss this letter, please do not hesitate to contact me. Thank you.

Sincerely yours,



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