For same-sex couples, a new path to legal parenthood

By Alanna Durkin Richer, Associated Press
November 23, 2018

When Sara Watson's partner got pregnant with their son through in vitro fertilization, they were overjoyed. Then the fear came.

They weren't married, so Watson had no legal rights as Eli's parent even though her eggs were used to conceive him with donor sperm. If the worst happened, Watson wondered, would she even be able to bring their baby home from the hospital?

"There was this possibility that if something were to happen to Anna, my son could end up in foster care and I hadn't done anything wrong," Watson said from their home in Narragansett, Rhode Island.

Three years after the landmark U.S. Supreme Court case that gave same-sex couples the right to marry nationwide, a patchwork of outdated state laws governing who can be a legal parent presents obstacles for many LGBTQ couples who start a family, lawyers say.

But things are beginning to change. A simple hospital form that has long been off limits to same-sex couples because it only had room for the "mother" and "father" are now gender-neutral in some states. That means same-sex partners in Massachusetts, Vermont and Nevada - and soon in California and Washington state - can quickly and easily secure their parental rights with the form rather than having to spend thousands of dollars in court to get an adoption.

"Kids need to be secured to their parents and we're not getting the job done right now," said Patience Crozier, an attorney with GLBTQ Legal Advocates & Defenders. "Some states are and that's incredibly powerful and we need to keep moving in that direction," Crozier said.

Since the 2015 gay marriage ruling, same-sex couples have won some big legal victories in the arena of parental rights, like when the high court ordered Arkansas to list both same-sex spouses on their children’s birth certificates last year.
But differing state laws still means same-sex partners who didn't give birth can be a legal parent at home but a legal stranger to their child if they move or go on a trip, lawyers say. And the situation is even more complicated for unmarried LGBTQ couples who have children.

To guarantee their parental rights are protected across the country, many advocates encourage same-sex partners to go through with second-parent adoptions, even if they're married and both their names are on the birth certificate. Without an adoption, the partner who didn't give birth to the child can find themselves in a lengthy and costly custody dispute if the couple breaks up or something happens to the biological mother, lawyers say.

Adoptions, however, can cost thousands of dollars and take months. And many couples choose not to because they view it as invasive and offensive that they would have to adopt their own child, said Cathy Sakimura, deputy director and family law director for the National Center for Lesbian Rights.

"For a lot of couples that are less well-off, they just don't bother to do it and if there is a break up or a dispute or whatever, the non-biological partner can wind up completely out of luck," said Washington state Sen. Jamie Pedersen, a Democrat who pushed the bill to overhaul the state’s parenting laws.

Now advocates hope that will be a thing of the past for many same-sex couples, thanks to the hospital form that has long been used by unmarried heterosexual couples to establish who the legal father is. When an unmarried women gives birth, the man signs a "voluntary acknowledgement of paternity" form at the hospital and files it with the state to get on the child’s birth certificate and obtain the equivalent of a court order declaring him the dad.

Now that the form will be gender-neutral in several states, same-sex partners can also establish their parental rights in certain cases, like if were the intended parent of a child born through assisted reproductive technology, such as IVF. In Massachusetts, only unmarried couples can use the form, while married couples can in other states.

"Everybody who gives birth can sign it for free. It should have the force of a court order in every state. That is going to have a huge impact on the recognition of parents in the future," Sakimura said.

In Rhode Island, which hasn't updated its laws, Watson and her partner, Anna Borman, were told they couldn't sign the form when Borman gave birth in 2016 because Watson wasn't a man.

So until Watson's adoption of Eli was finalized eight months later, she had no legal link to him, creating logistical complications and fear, they said. Watson couldn't add him to her life insurance policy and needed written permission from Borman just to pick him up from day care, she said.

"It can't be emphasized how degrading this process has been," Borman said. "In Psych 101, they teach you how important it is for your kid to feel safe and secure and we were walking around feeling the opposite of that and yet trying to emanate this sense of security for our son," she said.