

And baby makes three

the Second-Parent Adoption Law

By Matt Kailey

Just you, me – and baby makes three! The Second-Parent Adoption Law is now in effect in Colorado, and while it is not specifically directed at same-sex couples, it allows for a child to have two mommies or two daddies – legally. Attorney Seth Grob has dealt with adoption, child custody and child welfare cases for 17 years, has handled over 600 adoptions during that time, and is on the Board of Trustees of the American Academy of Adoption Attorneys. He has written and spoken extensively all over the country about these issues, and now he speaks to *Out Front Colorado* about the new law.

Matt Kailey: Could you please explain the new Second-Parent Adoption Law?

Seth Grob: When a child has one parent, it allows that sole parent to consent to an adoption by a second parent. So, for example, if a woman adopted from Guatemala and came back here and subsequently had a relationship with a partner, say, and she wants her partner to adopt – because a child has no second parent in that arrangement, the legal mother, the adoptive mother, could consent to the adoption by her partner. And under that circumstance, the partner

would have to undergo a home study by a licensed agency to determine her suitability to adopt, and assuming that she was recommended for adoption through that home study process, which would include background checks, then the parties could proceed and seek to have the court grant an adoption. And ultimately, a judge would have to approve that adoption based upon the adoption being in the child's best interest.

MK: What about a situation with a lesbian couple, where one member of the couple gets pregnant through artificial insemination and has a child – would the other partner then be able to adopt that child?

SG: Yes, let's walk that through. So basically you have a lesbian couple, you have a situation where there's been donor semen, I'm assuming, and the one partner carries the child to term and delivers, and her name is placed as the legal mother on the birth certificate, and no father is listed on the birth certificate. In that scenario exactly, she identifies a second parent – let's say her partner, or alternatively, it could be someone else, just so you know – and she

could consent to that person becoming the adoptive parent of that child. And again, the second parent would have to undergo a home study, be approved, and ultimately have a court approve that adoption based on the child's best interests. This law has numerous permutations. It applies in the context of assisted reproduction, it applies in the context of a single birth mother where there's no presumed birth father and it also applies where a single parent has adopted previously as a sole parent.

MK: Let's say you've got a gay male couple, and they have a surrogate mother who agrees to relinquish parental rights upon the birth of the child –

SG: We don't even do it that way. Let me talk about that. Let's say you have two gay men and they engage an anonymous egg

donor and they engage a gestational surrogate – someone who's not genetically linked to the child, but yet carries the child to term. Under that scenario, presently, what we do is we establish parentage pre-birth, so that the semen donor will be recognized as the legal father of the child once the child is born, with the right to name the child on the child's birth certificate. And then subsequently, that sole legal father can consent to his partner adopting the child. You don't even have to go

through an arrangement whereby the gestational surrogate relinquishes her rights, because what we establish pre-birth is that the semen donor is the sole legal parent of the child and that the gestational surrogate has no legal rights and responsibilities towards that child. And in the courts that I practice in a lot with regard to assisted reproduction, which is Boulder County District Court, that is the way we proceed.

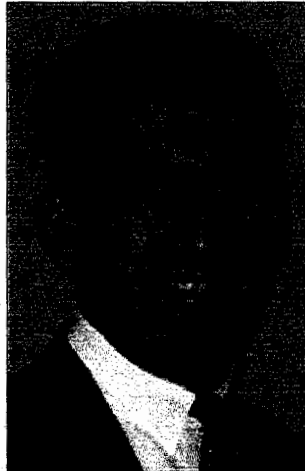
MK: Let's say you've got a same-sex couple who wants to adopt a child. At this point, can they both go in and adopt the child together?

SG: No, they can't.

MK: One would have to adopt the child and then the other would have to follow through with this procedure.

SG: That's the way the law is drafted. That is correct. So when you have a situation where you have a same-sex couple that wants to adopt, you're still going to be relegated to having one of the partners do the initial adoption as a single parent, and then subsequently consenting to the rights of the partner to adopt. So it does add another

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layer in terms of the proceedings that are necessary to establish both partners as a legal parent to the child.

MK: Would that be the same thing that a straight couple who is not married would have to go through adopting a child.

SG: Yes.

MK: But a straight couple who is married is able to adopt a child together.

SG: That's what they do currently. They've always done that. That's correct. Our law doesn't delineate between the sexual preferences of the couple. We do have a case from the court of appeals from the late 1990s that said only couples that are married can adopt jointly. And it wasn't limited to only heterosexual or homosexual couples. It just said that all couples who want to adopt and adopt jointly, they have to be married. ... It clearly prevented same-sex couples from ultimately both adopting because they can never be married. ... The fallout was that ultimately, up until just a few days ago, a same-sex partner could never adopt a partner's child because they would never be married, unlike a heterosexual couple, which could at least have the option of marrying to then proceed with adopting jointly.

MK: So what rights and responsibilities does the second-parent adoptive parent have toward the child?

SG: The second-parent adoptive parent has all the rights and responsibilities of a parent whose child was born in wedlock – that is, the right to make legal decisions for that child, including healthcare-related decisions, educational decisions, medical decisions, determining the child's upbringing and the responsibility of financially supporting that child. Similarly, the child has the right to inherit through that parent, has the right to access benefits that any legal child would have as to a parent. So you don't distinguish between a second adoptive parent and a biological parent. Both have the same rights and responsibilities.

MK: So in a case where there's a split, that parent continues to be responsible for that child until adulthood.

SG: Absolutely. And you would just basically go through a custody action and allocate parental rights and responsibilities, including decision-making and child support obligations.

MK: If a couple is considering this, what do they need to talk about? What do they need to get on the table before they go through with this?

SG: Well, I think they want to make sure that, number one, their relationship is very secure, they're very committed, they don't foresee themselves breaking up in the future. And the parent who is consenting to a second-parent adoption (the parent who currently has sole parental rights) has to fully understand that if that relationship dissolves, that he or she will be involved, perhaps, in a contested custody case in

which they could lose custody and control over a particular child. On the flip side, I think the second parent and the legal parent need to evaluate also what benefits might be available if they were to proceed with a second-parent adoption. Those benefits could include health-insurance benefits, Social Security death benefits, inheritance benefits, and similarly, having two parents that are legally responsible for the support of a child. And there may be other employer-dependent policies that may be in place through the second parent that the child could access. So obviously those are considerations that everyone involved needs to consider. And you need to consider the psychological benefits to the child – is the child going to benefit by knowing that he or she is going to have two parents who are responsible for him or her. And obviously for couples that have been in a long-term relationship and the child's grown up with either two moms or two dads, there might be a psychological benefit by the law recognizing that the de facto parent historically is now going to be recognized as the legal parent.

MK: How do same-sex couples, who have traditionally been discriminated against in many areas, guarantee that they're not going to contract with someone to do this home study or get a judge who is maybe anti-gay? How do they know who to go to?

SG: They clearly want to choose an evaluator that is open to the notion of having a second-parent adopt and is obviously receptive to having same-sex couples be recognized as the legal parents to the child. So when they're interviewing prospective agencies for the purpose of doing the home study, they clearly want to inquire about whether the agency is open and willing to make a recommendation to support that adoption. So that's very important from the outset. And I know some folks who are just not comfortable. You obviously would not use those agencies for purposes of doing the study. In terms of filing in court for the adoption, you're correct in saying that a judge has to ... make a finding that the adoption is in the child's best interest. And you might not know in terms of how a judge perceives these particular cases. But you do have some options on where you can file the adoption. That is, venue – and venue refers to where an action can be filed – it can be filed for purposes of adoption where the petitioners reside or the licensed child placement agency (the agency that did the home study) is located. So you might have a scenario where the adoptive parents reside in County A and the licensed child placement agency resides in County B. You then could evaluate which of those two particular counties would be more favorable to file the adoption proceeding. ... With same-sex adoptive parents, they're going to do the same evaluation and be advised by their legal counsel as where best to file.

For more information, contact Seth Grob at 303-679-8266 or go to www.sethgrob.com.