Special Section • Surrogate's Court Committee • Special Section

Parentage Proceedings Under The Child-Parent Security Act And Its Effect On Surrogate's Court Practice

After first being introduced in 2012, the Legislature passed the Child- Parent Security Act (CPSA), which, for the first time, legalizes gestational surrogacy agreements in New York in which the surrogate has not contributed genetic material. It further delineates procedures for establishing parentage for children conceived either as a result of such agreements or through assisted reproduction. The CPSA was signed into law on April 3, 2020 and took effect on February 15, 2021. Before passage of the CPSA, gestational surrogacy was illegal in New York. In addition, pre-CPSA, intended parents faced significant legal challenges from inconsistent court procedures and rulings in establishing legal parental rights for their children.

The statute is contained in the newly created Article 5-C of the Family Court Act. This statute contains a judicial procedure, governed by the Civil Practice Law and Rules and provides that parentage petitions can be brought in Supreme, Family or Surrogate's Court, which may then exercise "exclusive continuing jurisdiction" until the child reaches 180 days old.

The CPSA is clear, however, that it only applies to gestational surrogacy – where the surrogate's own egg is not used to conceive the child. Surrogacy arrangements where the surrogate is biologically related to the child, remain unenforceable in New York and are statutorily prohibited if the surrogate is being compensated. Disputes regarding parentage may be adjudicated in Family, Surrogate's or Supreme Court, however, other disputes regarding surrogacy agreements may be adjudicated only in Supreme Court.

Amendments to the EPTL as a result of the CPSA

EPTL § 4-1.2 and 4-1.3 were amended as a result of the enactment of the CPSA. EPTL § 4-1.2 now provides that a non-marital child is a legitimate child of, and may inherit from, a non-gestational intended parent, where: (1) the intended parent signed an acknowledgment of parentage; (2) parentage was adjudicated during the intended parent's lifetime; or (3) it is adjudicated by clear and con-

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(**Stephen R. Hellman**
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available in the underlying divorce action. His client was so afraid of her spouse that Stephen was able to keep her address confidential and she was allowed to relocate with her children.

Stephen has also been known to make house calls for clients that don't have transportation. He did this for one of our clients who was scarred on her face from a vase that her spouse threw at her and she had also sustained a broken nose from another one of her husband's assaults. Stephen's very caring and comprehensive approach to his pro bono representation makes him such an invaluable member of our pro bono team. He is someone who shows bottomless kindness and consistently goes above and beyond what is required. We cannot thank him enough for his superlative contributions.

In addition to managing his busy practice, Mr. Hellman is the father of four children, Ashley, Seaver, Matthew and Jared, and the doting grandfather of three, Alex, Alyvia and Cameron. He is also an avid sports fan and spends his free time traveling to various arenas to cheer for the Islanders.

The Suffolk Pro Bono Project is a joint effort of Nassau Suffolk Law Services, the Suffolk County Bar Association and the Suffolk County Pro Bono Foundation. This mission of the collaboration is to provide free legal assistance to Suffolk County residents who are dealing with economic hardship. The Pro Bono Project assists clients with divorce, bankruptcy, guardianship, and wills. There is extremely limited funding for the general provision of legal representation in these areas and therefore the demand for pro bono assistance is the great. If you have the time and would like to volunteer, please contact Carolyn McQuade, Esq. 631 232-2400 ext. 3325 or cmcquade@nsls.legal.

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vincing evidence based upon a genetic marker test or by the parent "openly and notoriously" acknowledging the child during his or her lifetime now covers inheritance after the death of an "intended parent."

To be considered a genetic child of an intended parent, express consent must be in a written instrument executed not more than seven years prior to the intended person's death and, if the assisted reproduction occurred after the intended parent's death, the child was in utero no later than 24 months after the death or was born no later than 33 months after the death.

If the child was conceived using genetic material of the intended parent, it must further be established that: (1) the intended parent authorized a person to make decisions regarding the genetic material after death not more than seven years before the death of the intended parent; (2) that the person so authorized gave written notice to the intended parent's fiduciary that the intended parent's genetic material was available for the purpose of conceiving the intended parent's child and such notice was given via certified mail, return receipt requested, or by personal delivery within seven months from the date of issuance of letters testamentary or administration, or if no letters have been issued within four months of the intended parent's death, such notice shall be given to a distributee of the intended parent within seven months of death; and (3) the person so authorized to make decisions about the use of the intended parent's genetic material must record such authorization in the Surrogate Court granting letters or if no letters have been granted, in the Surrogate Court having jurisdiction to grant letters within seven months of the intended person's death.

The Effect on Surrogate's Court Practice

Largely, the "child" in the amended post- CPSA statute has the same rights as the "genetic child" in the pre-CPSA statute.

If the formal requirements of EPTL§ 4-1.3 are met, the child may inherit in intestacy from his "intended parent"
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