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Matter of Sebastian, 38-08 Decided: April 9, 2009

Surrogate Kristin Booth Glen

NEW YORK COUNTY
Surrogate's Court

Surrogate Glen

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This case presents important questions about the ways in which a child's "parents" are defined and legally constituted, and how the parent/child relationship can be protected in a transient, cross-border society. Answers implicate assisted reproductive technologies (ARTs) and an out-dated statutory scheme which fails to anticipate the relations created by those technologies, New York's evolving jurisprudence of same sex relationships, equal protection, full faith and credit, and the effects of the federal Defense of Marriage Act ("DOMA") (Pub L No 104-199, 110 US Stat 2419 [1996], codified at 1 USC §7 [2000] and 28 USCS §1738C [2000]). This court concludes that although petitioner already has a legally protected parental relationship with Sebastian and, even in the absence of that legal relationship, could utilize several less intrusive, expensive and time-consuming methods of establishing one, the only remedy available here that will accord the parties full and unassailable protection is a second-parent adoption pursuant to New York Domestic Relations Law ("DRL") §111 et seq.

FACTS

Ingrid A. is a Dutch citizen who works at the United Nations. Mona A. is of Somali/Yemeni heritage, had an international upbringing and practices international law at a New York firm. Ingrid and Mona have been in a committed relationship for more than eleven years, and on December 24, 2004 they were legally married in the Netherlands.¹ Desirous of establishing a family, and one which would reflect their ethnic and racial diversity, Mona donated her ova which were fertilized in vitro² by an anonymous sperm donor chosen for his similarities to Ingrid's Dutch Italian ethnicity. The fertilized ovum was successfully implanted in Ingrid's uterus, and on January 27, 2008 she gave birth to Sebastian, with Mona at her side. A birth certificate was issued by New York City's Department of Health and Mental Hygiene naming Ingrid alone as Sebastian's parent. Since then Ingrid and Mona continue to live together and co-parent Sebastian, who they consider to be the child of each of them. Notwithstanding their