



GESTATIONAL AGREEMENTS

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The law defines a “gestational agreement” as a written agreement for assisted reproduction between a woman who agrees to carry a child and the intended parent or parents. The woman carrying the child to birth must not have contributed genetic material to the child. The agreement must (1) name the parties to it and indicate their obligations under it; (2) be signed by the parties and their spouses, if any; (3) be witnessed by at least two disinterested adults; and (4) be acknowledged as prescribed by law (CGS § [7-36](#)).

QUESTION

Has the legal status of parties to gestational agreements in Connecticut changed since 1999?

SUMMARY

Since 2011, the law has defined gestational agreements and treats intended parents in a valid gestational agreement as the child’s legal parents.

By law, for births arising out of gestational agreements, the Department of Public Health (DPH) must seal the original birth certificate on which the birth mother’s name appears and registrars of vital statistics must provide a replacement copy to an eligible party who requests it. DPH must issue the replacement certificate naming the intended parents under the agreement as the child’s legal parents (1) immediately upon receiving a court order validating

the gestational agreement and issuing an order of parentage or (2) immediately upon filing the original birth certificate, if it receives the court order before the child’s birth.

The law defines an “intended parent” as a party to a gestational agreement who agrees under it to be the parent of a child born to a woman through assisted reproduction. This applies regardless of whether there is a genetic relationship between the intended parent and child (CGS § [7-36](#)).

Prior to 2011, the legal status of intended parents in gestational agreements was unclear due to statutory ambiguity and a lack of consensus among the courts. In 2011, the Connecticut Supreme Court held that the law permits a non-biological

intended parent who is not the child's adoptive parent to become a legal parent of that child through a valid gestational agreement (*Raftopol v. Ramey*, 299 Conn. 681 (2011)). The Court also noted ambiguities in the law, which led the legislature to revise it.

RAFTOPOL V. RAMEY

In *Raftopol*, the plaintiffs, domestic partners Anthony Raftopol and Shawn Hargon, had entered into a written gestational agreement with a gestational carrier, Karma Ramey. Prior to the birth of two children, the plaintiffs brought a declaratory judgment action requesting that the court order the Department of Public Health (DPH) to issue a replacement birth certificate listing them, and not Ramey, as the children's parents. After the trial court found the gestational agreement to be valid and ordered DPH to issue the replacement certificate, DPH appealed.

The Connecticut Supreme Court upheld the trial court's ruling and found that state law (CGS § [7-48a](#)) permits a non-biological intended parent who is not the child's adoptive parent to become the child's legal parent through a valid gestational agreement. The court ruled that a court order under this statute entitles the intended parents to be named as parents on the replacement birth certificate, regardless of their biological relationship to the children.

The Court also noted certain ambiguities in the statute, including the fact that it did not:

1. define a gestational agreement;
2. address the nature and scope of the court order requiring DPH to create a replacement certificate; and
3. specify who may qualify, and how, as a parent on a replacement certificate.

PA 11-153

Following the court's decision in *Raftopol*, the legislature passed PA [11-153](#), which eliminated the requirement that the birth mother's name appear on the replacement birth certificate and instead required DPH to name the intended parent or parents as the child's parent or parents on the certificate.

The act also (1) defined the terms "gestational agreement" and "intended parent" and (2) shortened the timeframe in which DPH must create replacement birth certificates for births subject to gestational agreements. Prior law required DPH to create a replacement certificate according to a court order within 45 days after receiving the order or the child's birth, whichever is later. Under the act, if before

the child's birth, DPH receives a certified copy of a court order that approves a gestational agreement and issues an order of parentage under it, the department must create the replacement certificate immediately upon the filing of the original certificate. If DPH receives a certified copy of such an order after the birth, it must create the replacement certificate immediately upon receiving the certified copy of the order. In either case, DPH must prepare the replacement certificate according to the court order.

FURTHER READING

OLR Report [2011-R-0094](#), *Summary of Raftopol v. Ramey*.

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