

Why Registered Oregon Same-Sex Couples Should Consider Adopting Anyway

Introduction

On February 4, 2008, the Oregon Family Fairness Act [HB 2007] became the law in Oregon. The new law allows Oregon gay and lesbian couples to register as domestic partners. The law provides that registered same-sex couples are entitled to many of the same rights and obligations that apply to married heterosexual couples. Under some circumstances a married person is legally presumed to be the parent of his or her spouse's child. The Oregon Family Fairness Act has been interpreted to extend those presumptions of parentage to registered same-sex couples.

The question for same-sex couples who wish to ensure their legal parentage of each other's children, is whether the Oregon Family Fairness Act is enough. In general, cautious attorneys think not. As explained below, prudence dictates that same-sex couples obtain some kind of court judgment to establish parentage, rather than rely on any presumptions granted by the Oregon Family Fairness Act.

Limitations of the Oregon Family Fairness Act

The new Oregon law is not binding on other states. Non-Oregon states are not required to recognize domestic partnerships registered under Oregon law or to respect any of the rights and privileges that accompany an Oregon domestic partnership. There are a number of states (including, at present, California) whose laws are distinctly unfriendly to same-sex legal unions. Further, the Oregon law is not binding on the federal government. In fact, the federal Defense of Marriage Act prohibits the federal government from recognizing same-sex marriages for any purpose.

Thus, persons who rely on the Oregon Family Fairness Act to establish their legal parentage of a child or children might find themselves in trouble under the following circumstances:

- **They or their child move to another state.** For instance, the non-biological parent of a child might have no rights with regard to the child if the same-sex couple moves to another state (such as Florida or Texas) and the couple separates.
- **They or their child travel outside of Oregon.** A same-sex couple traveling in California with their child might have difficulty authorizing medical care for the child if the biological parent is unable to provide the authorization.
- **They seek federal benefits for the child based on parentage.** The child would not be entitled to social security benefits based on the death or disability of the non-biological same-sex parent.

How Adoption Can Help

Other states and the federal government are not required to recognize parent/child relationships created as a result of the Oregon Family Fairness Act. But other states are required to give full faith and credit to the judicial proceedings of other states. And federal law specifically provides that the children of adoptive parents are eligible for social security benefits in the same manner as the children of biological parents. Thus, a valid Oregon judgment of adoption (or, in the case of a child conceived through assisted reproduction technology, a declaratory judgment of parentage) is likely to be recognized and accepted by other states and the federal government. Such a judgment will more conclusively establish a legal parent-child relationship than would the mere presumption of parentage created as a result of an Oregon registered domestic partnership.

Good News in Oregon

Fortunately, same-sex adoptions are common and accepted in Oregon. While not specifically recognized by state law, Oregon has instituted rules and procedures that acknowledge and allow same-sex adoptions. Oregon Courts and agencies are generally familiar and comfortable with same-sex adoptions, and the procedure is relatively speedy and inexpensive.

Available Tax Credit

The federal adoption tax credit does not apply to step-parent adoptions when a person adopts his or her spouse's child. But the IRS has allowed the adoption tax credit when a person adopts his or her same-sex domestic partner's biological child. In other words, if an unmarried same-sex partner adopts the other partner's child, the substantial adoption tax credit should apply.

Conclusion

Same-sex couples should not rely on registration as an Oregon domestic partnership in order to establish a legal parent-child relationship. If legal parentage is important, the non-biological parent in a same-sex couple should consider adoption (or, in surrogacy cases, declaratory judgment).

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