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Biological dad cut out of life of child produced during affair

By Jane Musgrave - Palm Beach Post Staff Writer



Christopher Farrell holds his infant son in October 2015.

'A man who may have contributed his DNA to a child has no statutory or constitutional right ...' — Judge

When Christopher Farrell learned his girlfriend was pregnant, he was ecstatic. He painted the walls of a bedroom in his Loxahatchee house blue and filled them with lovable characters from the Disney classic, "The Lion King."

Weeks before his son's August 2015 birth, he summoned his family to a baby shower to have them celebrate his good fortune. His girlfriend, who was at the top of the guest list, never showed up. Inexplicably, she didn't return his phone calls or texts.

While Farrell didn't know it at the time, it marked the end of his hopes of experiencing the joys of fatherhood.

Even though there is no question that Farrell is the child's biological father, he has no right to see him, talk to him, support him or help raise him. Because Farrell's girlfriend was married to another man when the boy was born and the couple wants to raise the child together, by law Farrell has no claim to him.

"If the child is born in an intact marriage and if the husband and mother want to remain married the (biological) father has zero rights," said Orlando family law attorney Susan Savard.

It's well-settled law, said Elisha Roy, a West Palm Beach family law attorney. It might seem quaint to quibble about out-of-wedlock births in 2017, when divorce is common, 40 percent of children are born to single mothers and the country has embraced various non-traditional families, including those headed by unmarried, transgender and gay couples. But, antiquated or not, Florida law is steeped in the notion that no child should suffer the stigma of illegitimacy, she said.

"The big issue, the underlying theme in Florida, is about a child's right to legitimacy so no one should be able to come in and disrupt the sanctity of the marriage," Roy said. "It's not the dad's right to be a dad. It's the child's right to have legitimacy."

No magic formula

Recognizing the steep hurdles she faced, Fort Lauderdale attorney Rebekah Brown-Wiseman agreed to help Farrell, 31, challenge the law that many other family law attorneys and even some judges agree should be tweaked. It's a decision that could end up costing her dearly.

In court hearings in 2016, she tried to persuade Palm Beach County Circuit Judge Karen Miller that times have changed since the Florida Supreme Court in 1993 established rules that prevent biological dads from having any relationship with their children if the mother and her husband don't want it.

Calling a psychologist to testify, Brown-Wiseman argued that studies have shown that being raised in a two-parent, two-gender household isn't a magic formula for producing a happy, well-adjusted child.

"The more people you have that will love and help take care for a child, the better it is for the child," Jan Faust, a clinical psychologist and a professor at Nova Southeastern University, testified. "It's the relationship that's most important. I mean, children, young children don't even know what marriage means for many years and they just know that they're loved by multiple people."

Further, Brown-Wiseman argued, the relationship between Farrell and his girlfriend was a close one. They worked together at an auto parts store and lived together for roughly six months after she became disillusioned with her marriage. The Post isn't identifying the girlfriend or her husband to protect the identity of the child.

Even after the girlfriend returned to her husband, Farrell said they remained friends. He said he went with her to her obstetrician appointments, where genetic testing proved he was the baby's father. He said he paid some of the doctor's bills and offered to help her outfit a nursery. He even reached out to her husband.

"I offered to take him out golfing or out fishing because we were going to be raising a son together," Farrell said. "He didn't want anything to do with me."

He said he isn't trying to break up the marriage. He just wants to see his child.

That happened once.

30 amazing minutes

After the girlfriend cut ties with him, he put his name on the state's putative father registry so he would be notified of the birth. After the notice arrived on state letterhead, he repeatedly texted her, begging to see the child. She finally agreed.

Roughly six weeks after the boy was born, the girlfriend, who also lives in Loxahatchee, told him to meet her on a street near their homes. For roughly 30 amazing minutes,

Farrell said, he stood on a sidewalk and cradled his son. Tears ran down his face. Hope burned. But that was it.

“The way she was leading me on, I thought I was going to be a father,” Farrell said. “I thought if I went before a judge, she would give me 40 -50 percent (visitation rights). Then, I thought I wasn’t going to get anything and that’s where I am now.”

That harsh truth came in June when the judge rejected his petition for paternity and threw out the case.

“Where the paternity of a child born to an existing marriage has been so acknowledged and where the husband and wife have decided to raise the child of their marriage and to accept all the rights and responsibilities of parenthood, a man who may have contributed his DNA to a child has no statutory or constitutional right to intrude into the private decision,” Judge Miller wrote.

Brown-Wiseman said she expected Miller’s decision. Her point was to challenge the law and hope that an appellate court will accept her arguments, setting the stage for the Florida Supreme Court to reverse the long-established rules that she believes are cruel to biological fathers.

Double whammy

But her legal maneuver could come at a great cost. Because the law has existed for more than 23 years, attorney Christopher Jette, who represents the girlfriend and her husband, claims it was a frivolous lawsuit. On Monday, he asked Miller to order Brown-Wiseman to pay thousands of dollars he is owed for fighting litigation that he claims never should have been filed in the first place. While Miller is still deciding what to do, Brown-Wiseman said she could be socked with a \$40,000 bill.

It would be a double whammy. While family members have helped Farrell with legal bills, working as an air conditioning repairman he has been unable to pay many of the expenses Brown-Wiseman has incurred. He has launched a gofundme.com account in hopes of raising money for his legal fees.

Roy, the West Palm Beach family law attorney, said there is a likelihood Miller will order Brown-Wiseman to pay Jette’s bills because the law is so entrenched. When she was chair of The Florida Bar Family Law Section from three years ago, research was done to find ways to change it. But, she said, there are no easy answers.

In 1999, a Florida judge wrote a law review article, hoping to draw attention to the inequities in the law. He even authored proposed legislation that would give biological fathers up to two years to file a petition, asking for permission to pay to support a child that was born to a woman who was already married. The petition could allow him to be awarded visitation. His proposal went nowhere.

Roy said she hopes that a solution can be found. In the meantime, she said she tries to get couples to negotiate. Sometimes it works. Sometimes it doesn't.

Brown-Wiseman remains hopeful that the 4th District Court of Appeal — and eventually the Florida Supreme Court — will recognize that the law is unfair. But, she acknowledged, time is working against Farrell. His son is now 16 months old. The longer the legal battle takes, the harder it will be to build a relationship with his son.

For Farrell, the pain is ever-present. "I was driving behind her on the way to work the other day, knowing that my son is in that vehicle and that I don't get to see him," he said.