2023 WL 2962787
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NON-PRECEDENTIAL DECISION -
SEE SUPERIOR COURT I.O.P. 65.37
Superior Court of Pennsylvania.

Chanel GLOVER, Appellant
v.
Nicole JUNIOR

No. 1369 EDA 2022
|
Filed April 17, 2023

ORDER

PER CURIAM

***1** Upon consideration of the application for reargument, IT IS HEREBY ORDERED:

THAT *en banc* reargument is GRANTED;

THAT the decisions of this COURT filed February 24, 2023, are withdrawn;

THAT the case be listed before the next available *en banc* panel;

THAT Appellant, Chanel Glover, shall file an original and nineteen (19) copies of either the brief previously filed, the brief previously filed together with a supplemental brief, or a substituted Brief for Appellant by May 1, 2023, along with an original and ten (10) copies of the reproduced record. Appellee, Nicole Junior, shall thereafter have fourteen (14) days after service to file an original and nineteen (19) copies of the brief previously filed, the brief previously filed together with a supplemental brief, or a substituted Brief for Appellee. Appellant shall thereafter have seven (7) days after service to file an original and nineteen (19) copies of a reply brief in accordance with Pa.R.A.P. 2113(a), if desired. No other briefs may be filed by the parties without leave of this Court; AND

THAT any substituted or supplemental brief shall clearly indicate on the cover page that it is a substituted or supplemental brief.

All Citations

Not Reported in Atl. Rptr., 2023 WL 2962787

Glover v. Junior

Decided Feb 24, 2023

1369 EDA 2022

02-24-2023

CHANEL GLOVER Appellant v. NICOLE JUNIOR

Joseph D. Seletyn, Esq.

PELLEGRINI, J.:

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

Appeal from the Order Entered May 4, 2022 In the Court of Common Pleas of Philadelphia County Domestic Relations at No(s): D22048480.

Joseph D. Seletyn, Esq.

BEFORE: BOWES, J., KING, J., and PELLEGRINI, J.[*]

MEMORANDUM

PELLEGRINI, J.:

Chanel Glover (Glover) appeals from the order entered in the Court of Common Pleas of Philadelphia County (trial court) granting the petitions filed by her former spouse Nicole Junior (Junior) seeking the pre-birth establishment of parentage of the child (Child) conceived through invitro fertilization (IVF) treatment during their marriage. Because we disagree with the trial court's conclusion that Junior's parentage was established by contract, we reverse its order in its entirety. *2

2

I.

A.

The relevant facts and procedural history of this case are as follows. Glover and Junior, a same-sex couple, were married in San Bernadino, California in January 2021. They decided to pursue IVF treatment and moved to Philadelphia shortly thereafter to be closer to family. The couple initiated the IVF process through RMA Fertility Clinic and Glover's eggs were retrieved in preparation for fertilization by a sperm donor.

In February 2021, Glover entered into an agreement with Fairfax Cryobank for donated sperm and she was the sole signatory to the contract. (*See* Fairfax Cryobank Agreement, 2/03/21, at 5). In the agreement, Glover is listed as the "Intended Parent" and she is referred to throughout the document as "the Client"; Junior is listed as the "Co-Intended Parent." (*Id.* at 1). The contract includes a provision addressing the "Legal Status of Donor-Conceived Children" which states as follows: "**Client will be the legal parent of the child[ren] born to Client** with the use of donated sperm **and will be responsible for their support and custody**. Client may wish to consult legal counsel regarding co-parent rights." (*Id.* at 3) (emphasis added). The parties jointly chose the sperm donor.

In July 2021, both Glover and Junior signed an agreement with RMA advising of the possibility that Glover could undergo multiple IVF cycles and of the company's refund policy. Glover signed the agreement as the "Patient" *3 and Junior signed as her "Partner." (RMA Care Share Agreement, 7/11/21, at 2).

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Glover became pregnant in August 2021, with a due date of May 18, 2022. The couple mutually decided on a name for Child and hired a doula to provide services during the pregnancy. In October 2021, Glover and Junior retained the Jerner Law Group, P.C. as counsel to provide adoption services in anticipation of Junior's adoption of Child. (*See* Engagement Letter, 10/13/21).

On December 5, 2021, the parties contemporaneously executed separate affidavits wherein they acknowledged that Glover is the biological mother of Child. The affidavits essentially mirror one another and Glover's affidavit provides in pertinent part:

> * * *
>
> 2. **I am married** to Nicole Shawan Junior and **we intend to remain a committed couple**.
>
> 3.I am seeking to have **my spouse**, Nicole Shawan Junior **adopt this child** in order to provide this child with the legal stability of two parents.
>
> 4. I understand that this means that Nicole Shawan Junior will become a legal parent, with rights equal to my rights as a biological parent.
>
> 5. I understand that this means Nicole Shawan Junior will have custody rights and child support obligations to this child [if] we ever separate in the future.
>
> * * *
>
> 4 *4
>
> 7. **I understand that an adoption decree is intended to be a permanent court order**, which cannot be changed or undone in the future.
>
> * * *
>
> 10. I want Nicole Shawan Junior to become a legal parent to this child because I believe it is in the best interests of the child.

(Affidavit of Glover, 12/05/21) (emphasis added). Additionally, both Glover and Junior averred that they "have been advised of [the] right to seek separate legal counsel on the issue of this adoption and I have chosen not to seek outside counsel beyond Jerner Law Group, P.C." (Affidavits of Glover and Junior, at ¶ 8).

B.

The couple experienced marital issues and in January 2022, Junior moved from their shared bedroom into their basement. Junior traveled to Portland and advised Glover that she intended to move out of their residence when the lease expired in July 2022. Glover stopped advising Junior of her obstetrics appointments and cancelled all other joint plans concerning the pregnancy, including a baby shower. Glover also informed Junior that she no longer intended to go forward with adoption proceedings.

Glover filed a complaint in divorce on April 18, 2022. Junior filed a petition seeking the pre-birth establishment of parentage, along with an emergency petition to establish the same. After a hearing on May 3, 2022, the trial court entered an order granting Junior's petitions holding that she is the legal parent of Child. The order directed
5 Glover to inform Junior of when *5 she goes into labor and provided that Junior be allowed access to Child. The trial court ordered Glover to list Junior as Child's second parent on the birth certificate and on the birthing parent's worksheet provided by the state. (*See* Order 5/04/22). The court advised that its order could not be construed as a custody order, and that the parties may file a custody complaint when appropriate.[1] Glover timely appealed and she and the trial court complied with Rule 1925. *See* Pa.R.A.P. 1925(a)-(b).

[1] Child was born on May 25, 2022, and Junior initiated custody proceedings shortly thereafter.

In its Rule 1925(a) opinion, the trial court held that Junior is the legal parent of Child pursuant to the law of contracts because the parties "formed a binding agreement for Junior, as a non-biologically related intended parent, to assume the status of legal parent to Child through the use of assistive reproductive technology." (Trial Court Opinion, 8/01/22, at 9-10; *see id*. at 7). The court reached this conclusion because the then-married parties, "jointly consulted with and executed contracts with a fertility clinic (RMA), a sperm bank (Fairfax Cryobank) and later a doula in preparation for childbirth . . . [and] both Glover and Junior signed affidavits which memorialized their joint intent to have Junior adopt the Child[.]" (*Id.* at 9). The court also made clear that it based its decision solely on the law of contracts as
6 interpreted by *6 established Pennsylvania caselaw and not on any other legal doctrine. (*See id.* at 13).

II.

On appeal, Glover contends the trial court erred in determining that Junior is Child's legal parent because it summarily concluded, without factual or legal support, that Junior is Child's legal parent without identifying a supporting contract theory or providing the terms of an enforceable contract that would give legal rights to Junior. (*See* Glover's Brief, at 24).[2] Glover also maintains that the trial court improperly found waiver of her challenge to its subject matter jurisdiction to rule on Junior's petitions and contends the issue of parentage was not ripe for review. (*See id.* at 4). Glover argues that absent successfully pursuing parentage through the adoption process, Junior has no legal status regarding Child. (*See id.* at 21-38).

[2] "In considering this pure question of law, our standard of review is *de novo* and the scope of our review is plenary." *Ferguson v. McKiernan*, 940 A.2d 1236, 1242 (Pa. 2007) (citation omitted). We are also mindful that in considering the language of a contract, we must construe it only as written and may not modify the plain meaning under the guise of interpretation. *See Sw. Energy Prod. Co. v. Forest Res., LLC*, 83 A.3d 177, 187 (Pa. Super. 2013).

A.

Parentage of a child is typically established "through a formal adoption pursuant to the Adoption Act[3], or when two persons contribute
7 sperm and *7 egg, respectively, either through a sexual encounter or clinical setting[.]" *C.G. v. J.H.*, 193 A.3d 891, 803 (Pa. 2018). However, because of the "increased availability of reproductive technologies to assist in the conception and birth of children, the courts are recognizing that arrangements in this latter context may differ and thus should be treated differently than a situation where a child is the result of a sexual encounter." *Id.* Because the willingness of persons to act as reproductive donors and gestational carriers is dependent at least in part on extinguishment of their parental claim to any resulting child and of any obligation to provide the child with financial support, "contracts regarding the parental status of the biological contributors . . . [must be] honored in order to prohibit restricting a person's reproductive options." *Id.* at 903-04 (citation omitted). Moreover, after a child is conceived through the use of a surrogate and an egg donor, both of whom contracted away any parental rights to the child, the non-biologically related intended parent's contract to assume the role of legal parent is enforceable. *See In re Baby S.*, 128 A.3d 296, 298 (Pa. Super. 2015). This issue has been considered in several different contexts.

[3] 23 Pa.C.S. §§ 2101-2938.

In *Ferguson*, our Supreme Court considered the enforceability of an oral agreement pertaining to parentage between the two biological parents — the sperm donor and the prospective mother. The

parties agreed that the donor would provide sperm for mother's IVF treatment and relinquish any rights arising from his biological paternity of the
8 resultant child(ren). In *8 exchange, mother agreed not to seek child support from him. *See id.* at 1241. Mother gave birth to twins and the parties acted consistently with their agreement for approximately five years, when mother filed for child support. Our Supreme Court held that the parties' agreement was binding and enforceable against the biological father and that mother was barred from seeking child support. *See id.* at 1248.

In *In re Baby S.*, we considered the establishment of parentage by contract in the context of a surrogacy arrangement. In that case, husband and wife entered into a service agreement for IVF treatment with a company that coordinates with gestational carriers. The agreement identified husband and wife as the "Intended Parents" and they were matched with a gestational carrier. The couple hired counsel to represent them through the surrogacy process and wife made clear that she wanted to be named the mother on the child's birth certificate without having to adopt the child.

Husband and wife also executed an agreement with an anonymous egg donor providing that, "the Intended Mother shall enter her name as the mother and Intended Father shall enter his name as the father **on the birth certificate of any Child born from such Donated Ova** . . . Donor understands that the Intended Parents shall be **conclusively presumed to be the legal parents** of any Child conceived pursuant to this Agreement." *Id.* at 299-300 (record citation omitted) (emphasis
9 added). *9

The husband and wife additionally entered a contract with a gestational carrier identifying them as the intended parents, obligating them to "accept custody and legal parentage of any Child born pursuant to this Agreement" and averring that the intended mother wished to be the mother of a child who was biologically related to her husband. *Id.* at 300. The agreement made plain that the gestational carrier would have no parental rights or obligations with respect to any child conceived pursuant to the contract.

The surrogate became pregnant with an embryo created from father's sperm and the egg donor's egg. Although wife primarily financed the procedure, she refused to sign the necessary documentation to record her name on child's birth certificate because of marital difficulties. While pregnant, the gestational carrier sought a court order declaring husband and wife to be the legal parents of the child. *See id.* at 301. When child was born, the gestational carrier was named as the mother and during the ensuing court proceedings, wife argued that the gestational carrier contract and related agreements were unenforceable. The trial court disagreed, and entered an order confirming wife as the legal mother of Child, a non-biological related person. *See id*. at 298. We affirmed the trial court's order confirming her parentage on appeal.

Finally, in *C.G.*, our Supreme Court considered the issue of parentage by contract where a former same-sex partner asserted standing to seek custody as the parent of a child conceived through use of a
10 sperm donor during *10 her long-term non-marital relationship with the biological mother. In holding that she did not, the Court opined that the former partner was not a "parent" because she had no biological connection to the child, had not officially adopted the Child, and had not entered into the type of contract that our Courts have recognized as affording legal parentage through contract. *See id.* at 442-43. The Court denied standing to C.G. despite the fact that she had resided with the biological mother and the child for five years. In doing so, the Court observed that "the case law of this Commonwealth permits assumption or relinquishment of legal parental status, under the **narrow circumstances** of using assistive reproductive technology, **and forming a binding agreement** with respect thereto." *Id.* at 904 (emphasis added).

What those cases teach us is that "there appears to be little doubt that the case law of this Commonwealth permits assumption or relinquishment of legal parental status, under the narrow circumstances of using assistive reproductive technology, and forming a binding agreement with respect thereto." *C.G.* at 904. However, absent an enforceable contract, a same-sex partner does not have custody rights to a child even though she lived with child and former partner for five years. The question in this case then is whether there was an enforceable contract in place that conferred parental rights on Junior. We can find none.

None of documents involved in this case identify Junior as the legal parent to Child. Junior was not a party to the Fairfax Cryobank sperm donation
11 *11 agreement that referred to Glover as the legal parent. Though both Glover and Junior signed an agreement with RMA regarding IVF, Glover signed the agreement as the "Patient" and Junior signed as her "Partner." It was not an agreement intended to confer any parental rights on Junior, but to explain the procedure and the obligation for payment of fees.

In the affidavits and retainer agreement each signed with the Jerner Law Group, there was no requirement that Junior be listed on Child's birth certificate and no waiver of the adoption process. To the contrary, those affidavits and retainer agreement demonstrate that the parties intended that a formal adoption process was necessary before any legal parentage rights could be conferred on Junior.[4] Because Junior has no legal
12 rights concerning *12

[4] The dissent posits that this is the perfect opportunity for our Supreme Court to adopt "intent-based parentage" to determine whether the parties had entered into a contract affording legal parentage. Even though it acknowledges that our Supreme Court has not adopted an "intent-based parentage," the dissent apparently adopts that approach by focusing on the purported emotional roles played by the parties during their relationship, as represented by Junior, rather than on the meaning of the words contained in the documents to see if there was an agreement regarding parentage. Although they could have easily chosen to include in the affidavits or other document a requirement that Junior be listed on Child's birth certificate without the need for an adoption process (as Mother and Father did in *In re Baby S.*), the parties contemplated that conferring legal parentage to Junior would be through adoption only.

Child in the absence of adoption as contemplated by the parties, we reverse the order of the trial court in its entirety.[5]

[5] Based on our disposition, we need not reach Glover's remaining two claims pertaining to subject matter jurisdiction and ripeness. We briefly note with regard to jurisdiction, our agreement with the trial court that given the unique circumstances of Child's conception and birth, coupled with the significance of the issue of parentage to all involved, the trial court acted within the broad scope of its authority pursuant to the Divorce Code to rule on Junior's petition to protect her potential interests. *See* 23 Pa.C.S. § 3104(a)(5) (providing trial court in divorce action with broad jurisdiction to rule on "any other matters pertaining to the marriage and divorce . . . and which fairly and expeditiously may be determined and disposed of in such action."); *see also* 23 Pa.C.S. § 3323(f) (catch-all provision granting trial court in matrimonial cases full equity and jurisdiction to issue orders necessary to protect interests of parties). We also agree with the trial court that the issue of parentage was ripe for review just three weeks prior to Child's birth, and that this Court in *In re Baby S.*, recognized a pre-birth cause of action in contract law. (*See* Trial Ct. Op., at 11-12); *see also Del Ciotto v. Pennsylvania Hosp. of the Univ.*

> *of Penn Health Sys.*, 177 A.3d 335, 358 (Pa. Super. 2017) (explaining that the ripeness doctrine is premised on policy that courts should avoid premature adjudication of issues so as not to not give answers to academic questions, render advisory opinions or make decisions based on assertions as to hypothetical events).

Order reversed.

Jurisdiction relinquished.

Judge King joins the memorandum.

13 Judge Bowes files a dissenting memorandum. *13

Judgment Entered.

DISSENTING MEMORANDUM

BOWES, J.:

I believe that Ms. Junior established a contract-based right to parentage, as evidenced by the couple's collective intent and shared cost in conceiving a child with her wife, Ms. Glover, via assisted reproductive technology. Alternatively, I believe Ms. Junior established her parentage as a matter of equity. Accordingly, I respectfully dissent.

The learned majority succinctly summarized the relevant facts and procedural history. Accordingly, I do not reiterate them herein. Similarly, the majority explained that while parentage is typically established biologically or through formal adoption, our High Court has recognized that in cases involving assistive reproductive technology, "contracts regarding the parental status of the biological contributors must be
2 honored in order to prohibit restricting a *2 person's reproductive options." Majority Memorandum at 7 (quoting *C.G. v. J.H.*, 193 A.3d 891, 903-04 (Pa. 2018) (cleaned up). As acknowledged by the High Court, "[t]here is nothing to suggest in our case law that two partners in a same-sex couple could not similarly identify themselves each as intended parents, notwithstanding the fact that only one party would be biologically related to the child." *Id.* at 904, n.11.

While my esteemed colleagues delineate the relative contractual obligations outlined between the parties in the Fairfax Cryobank Agreement that identified Junior as the "co-intended Parent" and the couple's in vitro fertilization ("IVF") agreement with RMA Fertility, that Junior executed as the "Partner," it did not address the contract between Mss. Junior and Glover concerning parentage-as cogently outlined in the trial court's comprehensive discussion of the party's mutual intent to establish Ms. Junior's parentage. *See* Trial Court Opinion, 8/1/22 at 9-10 ("Based upon the undisputed evidence presented, the [c]ourt determined that it conclusively established that the parties, a married couple, formed a binding agreement for Junior, as a non-biologically[-]related intended parent, to assume the status of legal parent to the [c]hild [conceived] through the use of assistive reproductive technology.").

As this Court recognized in *Reformed Church of the Ascension v. Hooven & Sons, Inc.*, 764 A.2d 1106, 1109 (Pa.Super. 2000), "[t]he policy behind contract law is to protect the parties' expectation interests by putting the aggrieved party in as good
3 a position as he would have been had the *3 contract been performed." (citing Restatement (Second) of Contracts § 344(a) (1979) (approved in *Trosky v. Civil Service Commission*, 652 A.2d 813, 817 (Pa. 1995)). Whether oral or written, a contract requires three essential elements: (1) mutual assent; (2) consideration; and (3) sufficiently definite terms. *Helpin v. Trustees of Univ. of Pennsylvania*, 969 A.2d 601, 610 (Pa.Super. 2009). Furthermore,

> [a]n agreement is expressed with sufficient clarity if the parties intended to make a contract and there is a reasonably certain basis upon which a court can provide an appropriate remedy. Accordingly, not every term of a contract must always be stated in complete detail. If the parties have agreed on the essential terms, the contract is enforcible even though recorded only in an informal memorandum that requires future approval or negotiation of incidental terms. In the event that an essential term is not clearly expressed in their writing but the parties' intent concerning that term is otherwise apparent, the court may infer the parties' intent from other evidence and impose a term consistent with it.

Id. (cleaned up) (quotations and citations omitted).

Instantly, as highlighted by the trial court, the certified record is replete with evidence of the parties' mutual assent to conceive a child of their marriage using assisted reproductive technology, bestow upon Ms. Junior legal parent status, and to raise the child together as co-parents. *See* Trial Court Opinion, 8/1/22, at 9-10. Moreover, unlike the facts that the Supreme Court confronted in *C.G. supra*, where "[t]here was no dispute that [the former same-sex partner] was not party to a contract or identified as an intended-parent[,]" Ms. Junior satisfied both these components. In my mind, the only *4 question is whether the oral agreement was supported by consideration or some other form of validation. For the reasons that follow, I would find that it was.

As our Supreme Court explained in *Pennsylvania Envtl. Def. Found. v. Commonwealth*, 255 A.3d 289, 305 (Pa. 2021), "Consideration is defined as a benefit to the party promising, or a loss or detriment to the party to whom the promise is made." (citations omitted).

During the evidentiary hearing on Ms. Junior's petition, Ms. Junior testified that she paid for one-half of all the expenses, including fees associated with the preliminary medical tests, in vitro fertilization, and hiring a doula to assist Ms. Glover during the birth. N.T., 5/3/22, at 17, 44. When asked about the extent of the equally shared costs, Ms. Junior declared, "**Everything**: the IVF, the doula, the second parent adoption, everything. Everything." *Id*. at 44.

Ms. Junior also described her shared emotional role, noting how, for three months, she was required to administer daily fertility injections into Ms. Glover's abdomen in anticipation of having her eggs removed for fertilization. *Id*. at 18-19. After the pregnancy was confirmed, Ms. Junior administered daily dosages of progesterone to help prevent miscarriages. *Id*. at 19. Additionally, she regularly accompanied Ms. Glover to the obstetrician. *Id*. at 20. In sum, she described their collective preparations as follows:

> But every week, we would have to go to RMA for more bloodwork just to make sure the progesterone levels were correct,
>
> *5
>
> that everything was coming along [as planned], and also doing sonograms.
>
> And then, finally, we had completed [the assisted reproductive technology]. Like I said, I gave the injections for over three months, but now we were able to go to directly to Thomas Jefferson, who we decided together would be our OB. That's where we would give birth.
>
> . . . .
>
> So, for a year, this was a constant -- for the entire year of 2021, us bringing our child into the world was a constant in our lives.

> Although he - we weren't pregnant before July, he was still part of our family because we were doing everything we could every week to make sure that we had him. And then once we conceived, we were doing everything we could every day for the . . . remainder of the year to make sure that he stayed with us through these injections, through going to the hospital, making sure he was okay, monitoring his heart, hearing his heartbeat, so forth and so on.
>
> I'm sorry I was long-winded, but really, it was a very long process, and I was there for every step of it.

Id. at 21-20.

Ms. Glover not only agreed to the shared financial and emotional burdens, she continued to assent to the arrangement even after doubting whether she was still committed to co-parenting with Ms. Junior. *Id*. at 59. Ms. Glover addressed this apparent dichotomy during the evidentiary hearing in explaining why, despite her apprehensions about continuing her romantic relationship with Ms. Junior, she nevertheless executed the fertility contracts identifying Ms. Junior as a co-parent rather than proceeding alone or forgoing the IVF program entirely: "I could've moved forward
6 without having to do the *6 [IVF] program. . . . "Financially-it was the best decision." *Id*. at 65. Hence, the certified record bears out that, in exchange for the consideration of the shared emotional burden and equally divided financial cost of the assistive reproductive procedure and birth, Ms. Glover agreed that her spouse, Ms. Junior, would possess parental rights to the child conceived through their combined efforts.

In my view, the foregoing exchange of promises is not so vague or ambiguous to preclude a legal contract because one of the parties did not expect legal consequences to flow from their agreement. Indeed, in rejecting Ms. Glover's protestation that she, in fact, did not intend to bestow any legal rights upon Ms. Junior, the trial court was incredulous. It proclaimed, "[t]o the extent that Glover alleges she[, an attorney,] was unable to legally consent to a contract or understand the terms of the contracts that she signed, these allegations are either unproven, not credible [or] waived as she has not raised the same on appeal." Trial Court Opinion, 8/1/22, at 10.

The certified record sustains the trial court's credibility assessment. Indeed, approximately five months after Ms. Glover initiated the IVF program with Ms. Junior's financial contributions and emotional support, Ms. Glover ratified the couple's arrangement by executing a December 2021 affidavit, which noted the then-anticipated adoption and further endorsed Ms. Glover's desire for Ms. Junior to "become a legal parent, with rights equal to [Ms. Glover's] rights as a biological
7 parent." Glover Affidavit, 12/2/21, at 1 ¶ 4. *7 The affidavit continued, "I want Nicole Shawan Junior to become a legal parent to this child because I believe it is in the best interest of the child." *Id*. at ¶10. In light of Ms. Glover's recurring statements of assent, I share the trial court's skepticism that Ms. Glover did not comprehend the extent of the agreement.

Thus, as outlined *supra*, I believe Ms. Junior has an enforceable right to parentage under principles of contract. The certified record demonstrates the parties' mutual assent, actions in furtherance of the agreement, and consideration. Accordingly, I respectfully disagree with the majority's determination that no enforceable contract conferred parental rights on Ms. Junior.

Furthermore, even if Ms. Junior did not have a contractual right to parentage, I believe that she warranted relief under the court's equitable power. Phrased differently, I would find that Ms. Glover's actions and representations regarding the child's anticipated parentage were grounds under the doctrine of equitable estoppel to preclude her from challenging Ms. Junior's parentage. My reasoning follows.

Equitable estoppel binds a party to the implications created by their words, deeds or representations. In *L.S.K. v. H.A.N.*, 813 A.2d 872, 877 (Pa.Super. 2002), we explained,

> Equitable estoppel applies to prevent a party from assuming a position or asserting a right to another's disadvantage inconsistent with a position previously taken. Equitable estoppel, reduced to its essence, is a doctrine of fundamental fairness designed to

8 *8

> preclude a party from depriving another of a reasonable expectation when the party inducing the expectation albeit gratuitously knew or should have known that the other would rely upon that conduct to his detriment.

Id. (cleaned up).

With this principle in mind, I detail the following evidence regarding estoppel. Herein, Ms. Glover represented over a thirteen-month period that she intended to share parentage of the couple's child conceived through assisted reproductive technology. As previously discussed, Ms. Glover contracted with Fairfax Cryobank and RMA Fertility and she assented to identifying Ms. Junior as the "co-intended Parent" and "Partner," respectively. Even after doubting her romantic commitment to Ms. Junior, Ms. Glover continued to pursue the pregnancy with Ms. Junior's financial assistance and shared emotional burden.

Ms. Glover further led her spouse to believe that they would share parentage. Ms. Junior participated in the decision to conceive their son with the shared intent to raise him together. Likewise, she consistently held herself out as an intended parent, and with Ms. Glover's express consent and endorsement, Ms. Junior performed the role of an expectant parent, including participating in the selection of the sperm donor and naming their child after conception. During the evidentiary hearing, Ms. Junior testified that, in her role as the "co-intended Parent" under Fairfax Cryobank contract, the couple collectively selected a sperm donor from Fairfax Cryobank based specifically on the donor's physical appearance, interests, and genetic pedigree. *Id*. at

9 25. *9 She explained, "We were looking for sperm donors who . . . resembled me as much as possible, because we . . . were us[ing] [Ms. Glover's] egg, and we wanted our child to look as much like both of us as possible." *Id*. Thus, in identifying a photograph of the sperm donor, Ms. Junior observed, "he's dark-skinned, like I am. He has almond shaped eyes like I do. He has a huge . . . wide smile like I do. He has high cheekbones like I do. In addition to that when we looked more deeply into the details, he's a Sagittarius like I am." *Id*. at 26. In addition, both the donor and Ms. Junior traced their indigenous history to Benin, Africa. *Id*. Overall, she stated, "primarily, it was because . . . we shared so much in common-the donor and I-and [Ms. Glover] and I both kept remarking on how [it was] kismet. . . [.]" *Id*.

From my perspective, Ms. Glover's actions and representations throughout the technologically-assisted pregnancy demonstrated her assent to Ms. Junior's parentage. Ms. Junior relied upon these actions and representations to her detriment and would be severely prejudiced if Ms. Glover were permitted to deny parentage at this juncture. Thus, in addition to affirming the trial court's analysis of the parties' respective contractual rights, I would find the alternative grounds to affirm the trial

10 court's order as a matter of equity.[1] *10

> [1] It is axiomatic that this Court can affirm the trial court order for any reason supported by the certified record. *D.M. v. V.B.*, 87 A.3d 323, 330 n.1 (Pa.Super. 2014).

Finally, while I believe that we should affirm the trial court order for the above-stated reasons, I also note that this case presents a perfect opportunity for the High Court to delineate the proper application of "intent-based parentage" as

the High Court outlined the principle in *C.G.*, *supra*. The *C.G.* Court was asked to confront whether an unmarried former same-sex partner had standing as a "parent" pursuant to § 5324(1) of the Child Custody Act. In rejecting the former partner's standing claim, the Court held that Pennsylvania jurisprudence limits recognition of legal parentage to biology, adoption, judicial presumptions associated with intact marriages, and "contract-where a child is born with the assistance of a donor who relinquishes parental rights and/or a non-biologically related person assumes legal parentage[.]" *Id*. at 904. As the former partner had no biological connection to the child, had not officially adopted the child, and did not have contract rights that have been recognized as affording legal parentage by way of contract, the High Court concluded that she was not a parent.

Significantly, however, the Court continued:

> [N]othing in today's decision is intended to absolutely foreclose the possibility of attaining recognition as a legal parent through other means. However, under the facts before this Court, this case does not present an opportunity for such recognition, **as the trial court found as fact that the parties did not mutually intend to conceive and raise a child, and the parties did not jointly participate in the process.**

12

11 *Id*. at 904 n.11 (emphasis added). *11

In their respective concurring opinions, Justices Dougherty and Wecht outlined their perspectives of intent-based parentage, but nonetheless agreed that the factual record did not warrant its application in that case. In this vein, Justice Dougherty reasoned that it was not necessary "to endorse any particular new test" because the Court was bound by the factual findings that there was no mutual intent to conceive and raise a child, or evidence of shared participation in the reproductive process. As stated by the esteemed Justice Dougherty, those findings "preclude a holding that C.G. has standing as a parent under any of the proffered definitions of intent-based parentage." *Id*. at 913.

Justice Wecht argued that "[r]eliance solely upon biology, adoption and contracts is insufficient" in some situations and articulated his comprehensive perspective that, "in cases involving assisted reproductive technologies ("ART"), courts must probe the intent of the parties." *Id*. at 913-14 (footnote omitted). However, he too was constrained to concur with the Majority's decision based upon the trial court's findings of fact. The learned justice explained,

> While I would embrace an intent-based test for parentage for persons pursuing parentage through ART, I nonetheless concur with the Majority's determination that C.G. was not a parent under the facts of this case as found by the trial court. As the Majority notes, the **trial court found that J.H. was credible when she testified that C.G. never intended to be a parent to Child and that C.G. did not act as a parent**. Further, the trial court credited testimony that **C.G. and J.H. reached no mutual decision to become parents.** Given that there was no documentary evidence of C.G.'s intent to parent, and given that

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> the trial court found, consistent with the record, that C.G.'s actions were not those of a parent, I join the Majority's conclusion that C.G. did not have standing as a parent pursuant to 23 Pa.C.S. § 5324.

Id. at 917 (emphases added, footnotes omitted). Overall, Justice Wecht concluded, "I think that today's case is a missed opportunity for this Court to address the role of intent in analyzing parental standing in ART cases." *Id*. at 918.

Thus, although I would affirm the trial court order establishing Ms. Junior's parentage, insofar as my position failed to garner the support of a majority of my colleagues on this panel, I highlight the opportunity for the Supreme Court to consider the issue of intent-based parentage within the factual framework that was missing in *C.G.* Stated plainly, the case at bar presents the necessary facts to serve as the paradigm for the High Court to affirm the viability of intent-based parentage in cases involving assisted reproductive technology where the couple not only evidenced their mutual intent to conceive and raise the child, but they also participated jointly in the process.

[*] Retired Senior Judge assigned to the Superior Court.


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Chanel GLOVER, Appellant

v.

Nicole JUNIOR

No. 1369 EDA 2022
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