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Miami-Dade circuit judge OK's plan for gay man, lesbian couple to be on daughter's birth certificate



Father Massimo Gerina, parent 1 Maria Italiano, Miami-Dade Circuit Judge Antonio Marin and parent 2 Cher Filippazzo. Via Facebook.

BY STEVE ROTHAUS, SROTHAUS@MIAMIHERALD.COM

A Miami-Dade circuit judge has approved a private adoption allowing three people — a gay man and a married lesbian couple — to be listed on the birth certificate of their 23-month-old daughter.

"We're creating entirely new concepts of families. If you have two women seeking to be listed as Parent One and Parent Two, that does not exclude listing a man as father," said Miami family lawyer Karyn J. Begin, who represented dad Massimiliano "Massimo" Gerina in a two-year paternity case involving lesbian friends who had his baby.

Maria Italiano and Cher Filippazzo, who married in Connecticut, asked that their attorney, Kenneth Kaplan, speak on their behalf.

"There are three parties involved. I agree that makes the case unique," Kaplan said Thursday.

"People have to understand, the case is really a second-parent adoption, meaning that there are not three equal parents. There are three involved but there are two people who have sole parental responsibility," Kaplan said. "Under Florida law, they make all the decisions for the child. This is an adoption by two women, with him receiving certain rights."

The women, according to Begin, are longtime partners who unsuccessfully attempted to become pregnant through professional fertility clinics.

Instead of giving up, they decided to try again at home and approached Gerina about fathering a child.

"They asked me," Gerina said. "I was flattered by it. I thought what a great opportunity for me to have a baby."

A single Bay Harbor Islands hair stylist, Gerina explained why he desires children: "It's nature — the same reason a woman wants to be a mother."

Gerina grew up Cagliari, Italy, where he never thought he could become a father. Eight years ago, though, he moved to South Florida



Attorney Karyn J. Begin and her client, Massimiliano 'Massimo' Gerina, Emma's father. Via Facebook.

and encountered many gay parents raising children.

"It's not unusual here. Where I am from it's unusual. I grew up with the mentality that it would never happen," he said. "When I moved here, I saw gay couples, lesbian couples having families."

On only a verbal agreement, Gerina gave the women his sperm and Italiano conceived. The lesbians planned for Filippazzo to later adopt the baby and they would both raise the child.

Florida law specifies that sperm donors have no legal rights in artificial inseminations. Thus the hitch: Gerina says he considered himself a parent, not simply a donor. The women, he claimed, "wanted a father for the baby, not just the sperm."

Two weeks after insemination, Italiano learned she was pregnant. About seven months later, the women called Gerina and asked him to sign a contract.

"When they gave me the paper to sign that I had to give up all my rights to the baby, I didn't," he said.

Gerina began to ponder the legal consequences of siring a child. He hired Begin and presented the women with papers of his own.

"My papers said I would have parental rights, a visitation schedule," he said. "They hated it. They said this wasn't what they wanted. I said, 'Now that you're already pregnant, you should have thought about that before.' "

Kaplan said the mothers always intended for Emma to know her dad.

"As the child gets older, the child will want to know who her father is," Kaplan said. "They want to be an honest family and they're not going to keep secrets from the child. He loves the child. That's a beautiful thing. The more people who can love your child, the better it is."

Emma was born March 10, 2011. "The paternity lawsuit was filed right after the birth of the child." Begin said.

The three parents feuded in court for nearly two years. A trial was set for Jan. 31, 2013.

A week before trial, Gerina, Italiano, Filippazzo and their attorneys settled the case privately.

Before posing for photos with the three parents and Emma, Miami-Dade Circuit Court Judge Antonio Marin approved the settlement and the court adoption clerk submitted paperwork for Emma's new birth certificate:

- Birth mother Italiano, a retail saleswoman, received "sole parental responsibility," Begin said.
- Filippazzo, a financial services professional, legally adopted Emma.
- The state recognized Gerina as Emma's father and he was granted time with her. For the next two years, he can visit Emma twice a week; after she turns 4, overnight visitations will be discussed. All visits must be pre-arranged and at the mothers' discretion.

"The mothers are in charge. I'm just going to spend time with her. They are the parents." Gerina said.

Along with having all decision-making responsibilities, the mothers will support Emma.

Begin won't say exactly how much the three parents spent on legal fees. "All of the parties involved in this could have funded this little girl's college tuition, and paid their attorneys instead," she said. "One-tenth of that would have been what it cost to handle this properly."

Miami Beach attorney Elizabeth Schwartz, who specializes in alternative families, said all this expense and family drama could have been avoided if the prospective parents had hired lawyers from the very start.

"This messy situation is too common, these undefined relationships where you're leaving it up to a judge to decide whether he's a donor or a father," Schwartz said. "Ideally, you would have created a legal document that would define everyone's parental rights and clearly articulate the nature of everyone's relationship to the child. They can have all the conversations they want, but once that little child is born, all bets are off."

Begin agrees. "All parties should go to an attorney versed in this area of law, because it is a unique area of law. Make sure it's reduced to a written agreement with all the formalities," she said. "Please don't pull things off the Internet and play your own attorney. And just because a document is legally produced in one state, doesn't mean that it's legally valid in Florida."

Gerina said he and the other parents have learned their lesson. Good thing. They already are talking about giving Emma a baby brother or gistor.

Next time, Begin warned the three, work out the details before anyone gets pregnant.

"God forbid you don't put together a written agreement," she told them, "I'll knock on your door and slap you all."

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