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In the Interest of R.C., Minor Child: The Colorado Artificial Insemination by Donor Statute and the Non-Traditional Family

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IN THE INTEREST OF R.C., MINOR CHILD: THE COLORADO ARTIFICIAL INSEMINATION BY DONOR STATUTE AND THE NON-TRADITIONAL FAMILY

I. INTRODUCTION

Artificial insemination[1] is modern reproductive technology's oldest[2] and most common technique.[3] It has long been used as an alternative to adoption, to treat infertility, to prevent the transmission of genetic defects or diseases, and to overcome physical limitations that make intercourse impossible.[4] Artificial insemination by donor ("AID")[5] has a confusing and inconsistent legal history.[6] Currently, only thirty-one states have passed legislation governing AID.[7] Typically this legislation addresses only the most traditional factual situation: where a woman (1) is inseminated by a physician; (2) with the sperm of an anonymous donor; (3) after first obtaining her husband's consent.[8]

There are many variations of this traditional scenario. For example, the AID recipient may be unmarried, and she may intend to remain a single parent. Or she may wish to self-inseminate in the privacy of her home. Additionally, the recipient may prefer to obtain the semen from a

1. Artificial insemination is a method of conception in which a woman is impregnated by an injection of semen into her vagina, cervical canal or uterus.

2. The earliest artificial insemination in a human was performed in 1790 by John Hunter, a Scottish surgeon. Kern & Ridolfi, *The Fourteenth Amendment's Protection of a Woman's Right To Be a Single Parent Through Artificial Insemination by Donor*, 7 Women's Rts. L. Rep. 251, 252 n.4 (1982). However, there are indications that the possibilities of artificial insemination were considered by the Hebrews as long ago as 220 A.D. Note, *Artificial Insemination: Donor Rights in Situations Involving Unmarried Recipients*, 26 J. FAM. L. 793, 794 (1987-88) (citing W. FINEGOLD, ARTIFICIAL INSEMINATION 5 (1964)).

3. It is difficult to provide completely accurate figures on the use of artificial insemination in the United States because doctors have not had to report this procedure, are reluctant to keep records of their work, or are unwilling to release this information in the interest of donor anonymity. *See* Note, *The Need for Statutes Regulating Artificial Insemination by Donors*, 46 OHIO ST. L.J. 1055, 1056 (1985). An estimate is that there are 20,000 artificially inseminated children born each year, of which 1,500 are born to unmarried women. Vetri, *Reproductive Technologies and United States Law*, 37 INT'L & COMP. L.Q. 505, 507 (1988); Note, *Reproductive Technology and the Procreation Rights of the Unmarried*, 98 HARV. L. REV. 669, 671 (1985). An estimated 250,000 people in the Unites States alone have been conceived by artificial insemination, and it has been projected that an additional 1.5 million children will be conceived through this procedure by the end of the century. Comment, *The Need for Regulation of Artificial Insemination by Donor*, 22 SAN DIEGO L. REV. 1193, 1194 (1985).

4. *See* Kritchevsky, *The Unmarried Woman's Right to Artificial Insemination: A Call for an Expanded Definition of Family*, 4 HARV. WOMEN'S L. J. 1, 2 (1981); Comment, *supra* note 3, at 1196.

5. Artificial insemination may be performed in three ways: AID, where the sperm from a donor is used; AIH, artificial insemination by husband, where the recipient's husband is the sperm donor; and AIC, where semen from the husband and an unrelated donor are combined. Comment, *Artificial Insemination and Surrogate Motherhood — A Nursery Full of Unresolved Questions*, 17 WILLAMETTE L. REV. 913, 916-18 (1981).

6. Note, *supra* note 2, at 793.

7. *See* Patt, *A Pathfinder on Artificial Insemination*, 8 LEGAL REFERENCE SERVS. Q., 117, 123-30 (1988).

8. Bishop, *The Brave New World of Baby Making*, 6 CAL. LAW. 37, 38 (Aug. 1986).

known donor. Finally, the donor, married or unmarried, may be the party seeking parental rights.

The existing AID legislation does not provide clear guidelines for all parties involved in these non-traditional situations.[9] To a great extent, the legal rights and obligations of the parties involved in these non-traditional situations have not been judicially resolved.

This Comment explores the current legal status in Colorado of AID procedures involving known semen donors and unmarried recipients. Specifically, this Comment focuses on the recent Colorado Supreme Court decision, *In the Interest of R.C., Minor Child*,[10] and the court's interpretation of Colorado's AID statute.[11]

This Comment initially reviews the Colorado AID statute. It then reviews the facts of the instant case and the reasoning employed by the court. Next, it analyzes the holding in terms of its legal and practical effects on unmarried recipients and known donors. Finally, this Comment suggests a statutory solution to help resolve the present uncertainty regarding the legal ramifications of AID involving unmarried recipients and known donors.

II. COLORADO AID STATUTE

Colorado's AID statute is found in § 19-4-106, 8B C.R.S. (Supp. 1988) of the Colorado Uniform Parentage Act ("Colorado UPA"). Section 19-4-106 provides:

> 19-4-106. ARTIFICIAL INSEMINATION.
>
> (1) If, under the supervision of a licensed physician and with the consent of her husband, a wife is inseminated artificially with semen donated by a man not her husband, the husband is treated in law as if he were the natural father of a child thereby conceived. The husband's consent must be in writing and signed by him and his wife. The physician shall certify their signatures and the date of the insemination and shall file the husband's consent with the department of health, where it shall be kept confidential and in a sealed file; however, the physician's failure to do so does not affect the father and child relationship. All papers and records pertaining to the insemination, whether part of the permanent record of a court or of a file held by the supervising physician or elsewhere, are subject to inspection only upon an order of the court for good cause shown.
>
> (2) The donor of semen provided to a licensed physician for use in artificial insemination of a woman other than the donor's wife is treated in law as if he were not the natural father of a child thereby conceived.[12]

This statute is based on section 5 of the Model Uniform Parentage

9. Note, *supra* note 2, at 793.
10. 775 P.2d 27 (Colo. 1989).
11. COLO. REV. STAT. § 19-4-106 (Supp. 1988).
12. *Id.*

Act ("Model UPA")[13] as approved by the National Conference of Commissioners on Uniform State Laws in 1973. Colorado adopted its version of the Model UPA in July 1977 with the passage of House Bill No. 1584.[14] The stated purpose of the Colorado UPA was to codify most common law presumptions concerning paternity and to establish procedures for the bringing of an action to determine the existence of a father and child relationship.[15]

With the exception of the omission of the word "married" in subsection (2),[16] § 19-4-106 is a verbatim reproduction of section 5 of the Model UPA. There is nothing in the legislative tapes or files which indicates why the Colorado General Assembly omitted the word "married" from subsection (2) when the bill was originally introduced.

III. INSTANT CASE

A. *Facts*: In the Interest of R.C., Minor Child[17]

In 1985, J.R., an unmarried man, donated semen to E.C., an unmarried woman he had known since 1983. E.C. used a licensed physician to inseminate her, became pregnant and bore a child, R.C., in 1986.

Shortly after the child was born, E.C. told J.R. that § 19-4-106(2) extinguished his right to be treated as the father of R.C. Within a few months J.R. instituted a paternity action alleging that, at the time of his donation of semen, he and E.C. had agreed that J.R. would be treated as the father of any child so conceived.

In his petition, J.R. alleged that E.C. had solicited the donation of his semen; that he donated the semen only because E.C. promised that J.R. would be treated as the natural father of any child conceived by the artificial insemination; that there had been financial and emotional involvement by him before and after the birth of R.C.; that E.C. knew of and encouraged J.R.'s conduct; and that he intended to retain a parental relationship with R.C. at the time J.R. donated his semen.[18]

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13. The Model UPA was enacted in 1973 largely in response to United States Supreme Court decisions regarding the rights of unmarried parents and their offspring. Note, *supra* note 2, at 796. The Model UPA's aim is to equalize the rights of legitimate and illegitimate children, and its provisions are applicable regardless of the marital status of the parents. *See* UNIF. PARENTAGE ACT, Commissioners' Prefatory Note, 9B U.L.A. 287 (1987).

14. Ch. 245, §§ 1-3, §§ 19-6-101 to -129, 1977 Colo. Sess. Laws 1010, 1011-12 (now codified at §§ 19-4-101 to -129, 8B C.R.S. (Supp. 1988)). The portion of House Bill No. 1584 dealing with AID was introduced and passed without change using language identical to the present § 19-4-106. When adopted, the Colorado AID statute was numbered § 19-6-106. The general assembly repealed and reenacted § 19-6-106 in 1978 and 1987. It was renumbered in 1987 and can be found in the 1988 Supp. as § 19-4-106. *See* 775 P.2d at 31.

15. *Uniform Parentage Act: Hearing on H.B. 1584 Before the House Judiciary Committee*, 51st G.A., 1st Sess. (1977) (statement of Rep. Eckelberry).

16. Model UPA § 5(2) provides: "The donor of semen provided to a licensed physician for use in artificial insemination of a *married* woman other than the donor's wife is treated in law as if he were not the natural father of a child thereby conceived." (emphasis added).

17. 775 P.2d 27 (Colo. 1989).

18. J.R. additionally alleged that he had always wanted to be a father; that when he

E.C. denied all of J.R.'s allegations and filed a motion for summary judgement, contending that § 19-4-106(2) extinguished whatever rights J.R. might have claimed as the biological father. E.C. argued that because the statutory prerequisites were met,[19] J.R. must be treated in law as if he were not the natural father of R.C. She claimed that evidence surrounding any agreement of the parties at the time he donated the semen was legally irrelevant because § 19-4-106 did not provide for consideration of such evidence.[20]

In his response, J.R. claimed that § 19-4-106(2) does not apply to known semen donors and unmarried recipients who mutually agree that the donor would retain his status as legal father of any child conceived through AID. He argued that evidence surrounding the agreement between J.R. and E.C. at the time of AID was relevant under the common law theory of promissory estoppel. He further argued that if § 19-4-106(2) renders evidence surrounding the agreement of the parties irrelevant, then the statute as applied would violate the equal protection and due process clauses of the state and federal constitutions.[21]

The Juvenile Court, City and County of Denver, expressly found the statute constitutional and concluded that, regardless of any agreement, the statute extinguished any right J.R. may have had to be treated as the father of R.C.[22] The court did not address J.R.'s promissory estoppel claim.[23]

J.R. appealed to the Colorado Court of Appeals. Because of the public importance of the issues presented, the appeal was transferred from the court of appeals to the supreme court pursuant to Colorado Appellate Rule 50(a)(3).[24]

The Colorado Supreme Court, in a majority opinion authored by Justice Vollack, held that an agreement between a known semen donor and an unmarried recipient at the time of artificial insemination is relevant in determining the donor's parental rights with respect to a child so conceived, despite the existence of a statute which normally cuts off the parental rights of semen donors.[25] Accordingly, the case was remanded for a hearing on the evidence surrounding the issue of an agreement.[26]

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learned E.C. was pregnant, he bought clothing, toys and books for R.C.; that he opened a college trust fund for R.C. and furnished a room in his house as a nursery; that he provided for R.C. in the event of his (J.R.'s) death; that he attended birthing classes with E.C.; that he was a guest of honor at E.C.'s baby showers; that he assisted in the delivery of R.C.; that he occasionally handled night feedings of R.C.; and that he took care of E.C. and R.C. on a daily basis during the first week of R.C.'s life. *Id.* at 28.

19. J.R. had conceded in his pleadings that he was a donor of semen, that E.C.'s gynecologist was a licensed physician, that he was not married to E.C., and that he provided semen for use in E.C.'s artificial insemination. *Id.*

20. *Id.*

21. *Id.* at 28-29.

22. *Id.* at 29.

23. *Id.*

24. C.A.R. 50(a)(3) (1984).

25. 775 P.2d at 35.

26. *Id.*

B. *Reasoning*

1. Majority Opinion

According to the majority, the issue as presented was whether an agreement between a known donor and unmarried recipient that the donor would be the natural father of the child conceived through artificial insemination is a relevant consideration in determining parental rights under § 19-4-106.[27] The court resolved the case on the basis of statutory interpretation[28] and therefore declined to address the common law and constitutional issues.[29] In reaching its decision, the court looked to the AID statute of the Model UPA, the legislative history of Colorado's AID statute, legal commentaries analyzing the rights of parties in AID, and cases concerning AID involving known donors and unmarried recipients.

The court first considered the role of an agreement as contemplated by the Model UPA. In reviewing the AID section of the Model UPA, the court noted that section 5 of the Model UPA was never intended to answer all questions concerning the rights of participants in artificial insemination.[30] The commentary to section 5 states:

> This Act does not deal with many complex and serious legal problems raised by the practice of artificial insemination. It was though [sic] useful, however, to single out and cover in this Act at least one fact situation that occurs frequently. Further consideration of other legal aspects of artificial insemination has been urged on the National Conference of Commissioners on Uniform State Laws and is recommended to state legislators.[31]

The court determined that section 5 of the Model UPA resolves the specific legal conflict between a semen donor and the recipient's husband.[32] Consistent with the core premises of the Model UPA,[33] the court stated that the drafters of the Model UPA plainly envisioned that an agreement between the donor and a married recipient regarding the donor's parental rights would be irrelevant because the married recipient's husband is treated in law as if he were the natural father.[34] The court also recognized that, as a practical matter, an agreement would not be a relevant consideration when the semen donor is anonymous.[35]

The court decided, however, that both section 5 of the Model UPA and § 19-4-106 fail to provide statutory definition of the rights and du-

27. *Id.* at 33.
28. *Id.* at 35.
29. *Id.*
30. *Id.* at 30.
31. UNIF. PARENTAGE ACT § 5, Commissioners' Comment, 9B U.L.A. 302 (1987).
32. 775 P.2d at 30.
33. *See* Donovan, *The Uniform Parentage Act and Nonmarital Motherhood-By-Choice*, 11 N.Y.U. REV. L. & SOC. CHANGE 193, 217 (1982-83).
34. 775 P.2d at 33.
35. *Id.*

ties of the parties outside of the married recipient context.[36] It therefore concluded that § 19-4-106 is ambiguous in this respect.[37]

The court acknowledged the debate over the issue of whether section 5 of the Model UPA was intended to extinguish parental rights of semen donors known to the recipient. It observed that a number of legal commentaries have suggested that the intent of the known donor and unmarried recipient should be relevant to a determination of parental rights under the Model UPA.[38]

The court next considered decisions from other jurisdictions to gain insight into the role of an agreement in determining parental rights of known semen donors and unmarried recipients involved in artificial insemination. Prior to the instant case, only two jurisdictions had determined the rights of known donors and unmarried recipients concerning children conceived through AID.[39] The court noted that in both cases the intent of the parties was a relevant consideration in determining whether the known donor's parental rights were extinguished.[40]

The first case, *C.M. v. C.C.*,[41] was decided in 1977, before the state of New Jersey enacted an AID statute. That case involved a known donor giving semen to an unmarried recipient who artificially inseminated herself without the aid of a licensed physician. The court determined that the donor had intended to act as a parent and that when the child was conceived there was no other party in a position to take on the responsibility of fatherhood.[42] Relying on public policy that it was in "the child's best interest to have two parents whenever possible,"[43] the court concluded that the donor was entitled to visitation rights with respect to the resulting child.[44]

The more recent case, *Jhordan C. v. Mary K.*,[45] involved the interpretation in 1986 by the California Court of Appeal of an AID statute[46] identical to § 19-4-106. There the court determined that, unlike the Model UPA, the California AID statute applies to unmarried recipients.[47] However, it concluded that because the recipient did not obtain the semen directly from a licensed physician as required by statute, the statute did not apply and therefore the donor was not precluded from

36. *Id.* at 34.

37. *Id.*

38. *See* Andrews, *Legal Aspects of New Reproductive Technologies*, 29 CLINICAL OBSTETRICS & GYNECOLOGY 190, 200 (1986); Kern & Ridolfi, *supra* note 2, at 256; Vetri, *supra* note 3, at 514; Note, *supra* note 2, at 806; *see also* In Re Marriage of Adams, 174 Ill. App. 3d 595, 610-11, 528 N.E.2d 1075, 1084 (1988); Andrews, *Legal Aspects of Assisted Reproduction*, 54 ANNALS N.Y. ACAD. SCI. 668, 674 (1988).

39. 775 P.2d at 31-32.

40. *Id.* at 34.

41. 152 N.J. Super. 160, 377 A.2d 821 (1977).

42. *Id.* at —, 377 A.2d at 824.

43. *Id.* at —, 377 A.2d at 825.

44. *Id.* at —, 377 A.2d at 825.

45. 179 Cal. App. 3d 386, 224 Cal. Rptr. 530 (1986).

46. CAL. CIV. CODE § 7005(b) (West 1983).

47. 179 Cal. App. at 392, 224 Cal. Rptr. at 534.

establishing paternity.[48]

Based upon these cases and its review of legislative history and legal commentaries, the Colorado Supreme Court stated that:

> The primary purpose of § 19-4-106 is to provide a legal mechanism for married and unmarried recipients to obtain a supply of semen for use in artificial insemination and, in the case of married recipients, to make clear that the legal rights and duties of fatherhood are borne by the recipient's husband rather than the donor.[49]

The court agreed with the *Jhordan C.* court that an unmarried woman does not lose the protection of the AID statute merely because she knows the donor,[50] and that the AID statute protects semen donors from unanticipated child support obligations.[51] However, the court concluded that the general assembly neither considered nor intended to affect the rights of known donors who gave their semen to unmarried recipients for use in AID with an agreement that the donor would be the father of any child so conceived. The court thus held the AID statute inapplicable in this circumstance.[52]

Because the court concluded that § 19-4-106 does not apply when the known semen donor and the unmarried recipient agree that the known donor will have parental rights and expressly agree at the time of insemination that he will be treated as the natural father of any child so conceived, it held that an agreement is relevant to whether J.R.'s parental rights were extinguished through the artificial insemination process.[53] The court held that if no such agreement was present at the time of insemination, then § 19-4-106(2) would operate to extinguish J.R.'s parental rights and duties concerning R.C. Conversely, if such an agreement was present, then § 19-4-106(2) would not operate to extinguish J.R.'s parental rights and duties concerning R.C., and the juvenile court must determine parental rights based on the terms of the agreement.[54]

2. Concurring Opinion

Justice Kirshbaum filed a special concurrence.[55] He disagreed with the majority's suggestion that the issue was whether the general assembly intended § 19-4-106(2) to apply to a donor who had an agreement with the donee that, contrary to the statute's provisions, the donor should be treated as the child's father. He stated that such an interpretation could suggest that the meaning of statutory terms can vary depending on private agreements and that legislative intent could therefore vary from case to case depending on the frame of mind of

48. *Id.* at 398, 224 Cal. Rptr. at 537-38.
49. 775 P.2d at 30.
50. *Id.* at 35.
51. *Id.*
52. *Id.*
53. *Id.*
54. *Id.*
55. *Id.* (Kirshbaum J., concurring).

persons governed by that intent.[56] He phrased the issue as whether parties whose rights are governed by statute may waive those rights by agreement.[57]

Justice Kirshbaum also did not accept the majority's suggestion that the drafters of the Model UPA envisioned that the only time an agreement by the parties would not be a relevant consideration in ascertaining the meaning of the statute is when the donee is married and her husband consents in writing to the artificial insemination.[58] He reasoned that if the meaning of a statute in some but not all of its applications must be determined by reference to the intent of persons governed thereunder, the statute may not meet equal protection or due process standards.[59]

It was Justice Kirshbaum's opinion that subsection (2) of the statute must be read in conjunction with subsection (1), which requires that the artificial insemination statute be committed to the supervision of a licensed physician.[60] Noting that the general assembly did not define the scope of supervision required of the licensed physician in the AID process, he reasoned that a common law standard of reasonable professional care is implied.[61] He stated that if the artificial insemination of E.C. was not properly supervised by a licensed physician as contemplated by subsection (2), the statute would not apply to bar J.R. from establishing the existence of an agreement. Because the trial court did not consider the question of adequate physician supervision, he would have remanded the case for such a determination.[62]

IV. Analysis

Section 19-4-106(2) provides that the (1) donor of semen, (2) provided to a licensed physician, (3) for use in artificial insemination, (4) of a woman other than the donor's wife, (5) is treated in law as if he were not the natural father of any child so conceived.[63]

The plain language of the statute seems to contemplate the situation involving a known donor and unmarried woman. Nonetheless, the supreme court concluded that the legislature never intended to address this situation and found subsection (2) ambiguous in the context of a known donor and unmarried woman.[64] The court went on to conclude that unmarried as well as married women share in the protection provided by subsection (2) and that known donors are protected under subsection (2) from unanticipated child support obligations.[65] However,

56. *Id.* at 35-36 (Kirshbaum J., concurring).
57. *Id.* at 36 (Kirshbaum J., concurring).
58. *Id.* (Kirshbaum J., concurring).
59. *Id.* (Kirshbaum J., concurring).
60. *Id.* (Kirshbaum J., concurring).
61. *Id.* at 37 (Kirshbaum J., concurring).
62. *Id.* (Kirshbaum J., concurring).
63. *See supra* text accompanying note 12.
64. *See supra* text accompanying notes 36-37.
65. *See supra* text accompanying notes 50-51.

the court ruled that subsection (2) was never intended to affect the rights of known donors when there is an agreement covering the donor's parental rights regarding a child so conceived.[66]

There is nothing evident in the plain language of the statute to support the court's conclusion that the general assembly intended to distinguish between known and unknown donors. Moreover, there is nothing in subsection (2) that refers to the effect an agreement would have on the application of the statute. To rationalize looking beyond the plain language of the statute, the court recites one legal commentary's statement of the core policy considerations of the Model UPA: guaranteeing substantive legal equality for all children as well as identifying the father and enforcing the child's rights against him.[67] The court appears to have focused on the latter part of these stated policy considerations: identifying the father and enforcing the child's rights against him.

Perhaps the court was troubled that neither the statutory language nor legislative history specifically address the rights of known donors, and that if the word "donor" is construed as known or unknown, application of the plain language of the statute would result in the elimination of any possibility of a man acquiring parental rights outside of wedlock. Such a result would run contrary to caselaw existing prior to the Model UPA[68] and could be unconstitutional.[69]

The decision of the court, however, does not clarify the rights and duties of an unmarried recipient and a known donor. Under the court's holding, by asserting that there was a pre-insemination agreement, a known donor can always bring a custody suit against a mother, and an unmarried mother can always bring a child support action against a known donor. As a practical consequence of the court's ruling, in every action brought by either a known donor or an unmarried mother, the party seeking to avoid application of the statute will be able to preclude summary judgment by asserting the existence of a pre-insemination agreement. Therefore, such cases will invariably go to trial, unnecessarily involving the court's time and increasing the costs to the parties. The court's statement that unmarried women are protected under the statute[70] falters under the practical application of its holding.

The Colorado Supreme Court stated that the purpose of § 19-4-106 is to provide a mechanism for all women to obtain a supply of semen for use in artificial insemination.[71] However, the court's holding has a questionable impact on the artificial insemination process in regard to both unmarried women and known donors. Because of the possibility of litigation, unmarried women may be reluctant to be artificially insemi-

66. *See supra* text accompanying notes 52-54.

67. 775 P.2d at 33; *see* Donovan, *supra* note 33, at 217.

68. *See* UNIF. PARENTAGE ACT, Commissioners' Prefatory Note, 9B U.L.A. 287-90 (1987).

69. *Id.*

70. *See supra* text accompanying note 50.

71. *See supra* text accompanying note 49.

nated and men may be reluctant to be known donors. This chilling effect would undermine many of the purposes of Colorado's AID statute.

In situations where AID involves an unmarried recipient and known donor, the increased occurrence of litigation seems unavoidable. To remedy this situation, a legislative amendment to Colorado's AID statute must be made to clarify the rights and duties of all parties involved. The statute should state that the donor has no rights or duties to the child unless the parties agree otherwise in writing. The written agreement could be filed with the physician performing the AID, similar to the present subsection (1) requirement regarding filing and maintaining of records pertaining to the insemination of a married woman and her husband.[72] This would protect the unmarried mother from defending an unanticipated paternity action and the known donor from defending an unanticipated child support action.

A similar approach has been adopted in the states of New Jersey[73] and Washington.[74] For example, New Jersey's AID statute, § 9:17-44(b) provides that "unless the donor of semen and the woman have entered into a written contract to the contrary, the donor of semen provided to a licensed physician for use in artificial insemination of a woman other than the donor's wife is treated in law as if he were not the father of a child thereby conceived . . . ."[75] While this language severs the legal relationship between the unmarried recipient and known donor when there is no written agreement, it also allows an unmarried woman and known donor to agree that the donor will have a role as a father, and provides for rights and responsibilities of the parties.[76]

Modifying subsection (2) of Colorado's AID statute to include the requirement of a written contract would serve to ensure that both the recipient and donor, when the provisions of the statute are met, would be protected against future intervention by a party desiring to redefine his or her rights and obligations.[77] Parties who enter into a pre-insemination contract would be held to the terms of that contract.

This contract approach is not without inherent uncertainty. Both the California Court of Appeal in *Jhordan C.*[78] and Justice Kirshbaum in his concurrence in the instant case[79] recognized the questionable enforceability of such an agreement between the parties. However, the enforceability of a contract in an AID situation is analogous to the enforceability of a contract in an adoption situation. Just as the biological parents are not permitted to change their minds after they have exe-

72. *See supra* text accompanying note 12.

73. N.J. STAT. ANN. § 9:17-44(b) (West Supp. 1989).

74. WASH. REV. CODE § 26.26.050(2) (1986).

75. *Supra* note 73. It is noteworthy that this AID statute was passed by the New Jersey General Assembly subsequent to the decision by the New Jersey Superior Court in the case of C.M. v. C.C., *supra* note 41.

76. *See* Vetri, *supra* note 3, at 515.

77. *See* Kritchevsky, *supra* note 4, at 40-41; Note, *supra* note 2, at 808.

78. 179 Cal. App. at 396, 224 Cal. Rptr. at 536.

79. 775 P.2d at 37 (Kirshbaum J., concurring).

cuted a waiver of their rights at the time of adoption,[80] neither should the parties in AID be permitted to change their minds after insemination. A post-insemination repudiation of the contract would be to the detriment of all parties involved. Subsequent controversies over custody, visitation, support and such matters as the child's education and religion might disrupt the lives of the child and all members of the planned family.

A modification to Colorado's AID statute would clarify the legal rights and duties of all parties in the AID situation. Furthermore, it would be a tacit recognition by the legislature that it is not always in the best interest of a child to have two parents. Moreover, it would serve the core policy considerations of the UPA.

V. CONCLUSION

For Colorado's AID law to remain relevant to today's society, it must progress as society progresses. By adding the element of an agreement, the Colorado Supreme Court has limited the application of Colorado's AID statute. This change leaves § 19-4-106 with the narrow application recognized by the Model UPA drafters as an inherent limitation of section 5 of the Model UPA.[81] It leaves uncertain the legal status of unmarried recipients, known donors and their offspring.

There are many variations to the traditional family scenario. The laws of Colorado must recognize these alternate lifestyles and keep pace with the demands of modern reproductive technology. It is undeniable that numerous unmarried recipients and known donors participate in the AID procedure, most likely unaware of the potential legal ramifications associated with it. To avoid confusion over the rights and duties of these parties and to serve the core policy considerations of the Model UPA, the Colorado General Assembly must act. The rights and duties of unmarried recipients and known donors involved in the AID process must be delineated.

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80. *See* Note, *supra* note 2, at 805.
81. *See supra* text accompanying notes 31-36.