

Nevada Continues Healthy Growth of Adoption Laws

BY KIMBERLY M. SURRETT, ESQ.

Over the years, Nevada has made many statutory changes to assure parentage to those who have the intent to be a parent, who set out to be a parent, and who are acting as a parent. The 2021 Nevada Legislative Session was no exception. Nevada Assembly Bill (AB) 115 became effective on June 8, 2021.

Before the passage of AB 115, Nevada law authorized any adult or married couple to petition a court for the adoption of a child. Inherent in the language was a prohibition on more than two adults adopting a child and on two unmarried individuals adopting a child. The new language in NRS 127.030 provides that one or more adults, without reference to marriage, may petition a court for the adoption of a child. Note, a petition for adoption now specifically requires that each prospective adopting adult and consenting legal parent who is seeking to retain their parental rights be a joint petitioner in the action. If the child does not have any existing legal parents, either due to termination of their parental rights or because the legal parent is deceased, then the child's guardian must consent.

The initial gut reaction to these changes commonly is: "Why would we ever allow more than two parents and create more family law legal battles?" The best way to answer that question is to give examples of families this bill could have or has already helped.



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Case Examples

Adoption by Extended Family Members

A young child loses both of his parents to a terrible accident. His maternal grandparents adopted him. Fast-forward to this young man's teenage years: he loses both of his grandparents before he turns the age of majority. His uncle wishes to adopt him to assist him with his final years of high school. The teen doesn't want his grandparents removed from his birth certificate, but it will assist him to have his uncle added to his birth certificate. Under the old statutes, this option was not possible. Under the new statutes, the court can order the addition of the uncle as a parent, without removing the grandparents from the child's birth certificate.

Retaining Ties to Deceased Parents

A genetic mother and genetic father end up divorced. The father enters a new relationship. The new stepparent is accepted and loved by the genetic mother. The genetic mother later develops terminal cancer. She would love to have the stepparent adopt before she passes away to know that her children are taken care of after her death. However, she does not desire termination of her parental rights, which was required under the old statutes. The genetic mother then succumbs to cancer, and the stepparent adoption takes place.

Under the old statutes, the children might opt not to change their birth certificates, because they do not want to remove their mother. However, this scenario prevents the stepparent from having the benefit of a birth certificate to demonstrate

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parental authority; instead, a certified copy of the Decree of Adoption must be used each time it is necessary. Under the new statutes, the court could have completed the adoption prior to the genetic mother's death, and the children could have had their stepparent added to the birth certificate without the removal of their mother.

Adoption by Current Stepparent

Two parents separate. The genetic mother ceases to be involved, and she does not actively parent. The genetic mother pays child support and sees the children occasionally. The custodial parent remarries, and the stepparent plays a critical role in the child's life for many years. The genetic mother doesn't want her parental rights to be terminated and will not consent to a termination to allow the stepparent to adopt; however, the genetic mother will consent if her own rights are not terminated. A termination action is expensive, something the custodial parent cannot afford. Under the old statutes, there wasn't a method for giving the stepparent any parental legal rights, even with consent, unless the genetic mother was terminated. Under the new statutes, the genetic mother can consent to the stepparent adoption while retaining her parental rights.

Unmarried Stepparents

Two parents, who adopted a child, are having relationship problems and they ultimately separate. They move on and develop new relationships, and those new partners are both involved in the child's growth. One of them marries their partner and the other does not. Both legal parents would like to consent to both stepparents receiving equal parental rights. Under the old statutes, the stepparents could not become legal parents without termination of an existing legal parent's rights. Under the new statutes, both stepparents can gain legal parental rights while maintaining the existing parental relationships. The fact that one of them married and the other did not is not relevant under the new statutes. Note, the reason this adoption can take place is because the existing legal parents (not genetic per se) gave consent. A stepparent does not have a right of action unless the existing legal parents are petitioners, if they are deceased, or if their parental rights

have been terminated. Then the existing legal custodian of the child must be added as a petitioner.

Adoption by Former Stepparent

Two parents are happily married. One of them becomes very sick and dies while the child is only 2 years old. The remaining parent goes on and gets remarried when the child is 4 years old. They then divorce when the child is 16 years old. They never completed a stepparent adoption during the marriage, and now they are divorced. The old statutes are vague on the ability of a former stepparent to adopt, because marriage appeared to be a requirement unless the existing legal parents' rights were terminated. Yet, the former stepparent raised the child for 13 years of the child's minority. Under the new

statutes, the "marriage" requirement no longer exists. It is possible to allow the former stepparent to adopt and to allow the deceased bioparent to remain on the birth certificate.

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Adoption by Unmarried Partners

Two adults who have been in a relationship for years want to adopt a child. They are not married. They do not believe in the institution of marriage and refuse to get married. However, they are committed to each other, own property together, and otherwise operate as a married couple, minus the official government document that that says they are married. Under the old laws, they had to be married for the two of them to adopt a child. Under the new statutes, marriage is no longer a requirement.

Other Scenarios

Three adults who have been in a polyamorous relationship for years want to adopt a child. The three of them are unable to get married, as the statutes do not permit such a marriage. Under the old laws, they could not adopt, but under the new statutes they can.

Two people desire to have a child with their male friend's sperm. The male friend is willing to allow them to use his sperm, but he wants to be known to the child as a



ADOPTION PLACEMENT

APPROVED

parent. The male friend will be held out as a parent. They all three intend to have a child, set out to bring a child into the world, and they all want parental rights. This was not possible prior to AB 115.

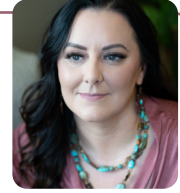
What about the birth certificates?

The Nevada Office of Vital records was consulted regarding AB 115. It guarantees that it will accommodate more than two parents on a birth certificate. It has already updated the Report of Adoption form. The Office of Vital Records will list parents with labels such as “Parent One,” “Parent Two,” “Parent Three,” etc. The Nevada Office of Vital Records was already using the “parent” language for same-sex parents.

What is in store for parentage in Nevada into the future?

Nevada still has some legislative work to do to make the Nevada Revised Statutes fully gender-neutral and fully applicable to same-sex and transgender parents, to protect unmarried functional parents who may not be genetic parents, to allow courts to recognize that a child may have more than two parents outside of an adoption where it is needed to protect the child from detriment, and to update genetic testing provisions to match current scientific practice. The 2017 version of the Uniform Parentage Act (UPA) addresses these concerns. While the 2017 UPA was submitted as a bill draft request during the 2021 legislative session, it was determined that there was insufficient time to properly vet the bill in an environment

consumed by COVID-19 and the legislative responses thereto. Thus, the 2023 Nevada Legislative Session will consider the needed sections from the 2017 UPA.



KIM SURRATT began her legal career in 2002 and opened her firm in 2007 with both a Nevada and a California license to practice law. She continues her role as principal of Surratt Law Practice, a full-service reproductive, family, and estate law firm. She began her ART law career in 2004 with her first surrogacy case. She is a Fellow with the Academy of Adoption and Assisted Reproductive Technology Attorneys (AAAA), sits on the Board of Trustees for AAAA, is a past president of the Family Law Section of the State Bar of Nevada, is a member of the National Family Law Advisory Council for the National Center of Lesbian Rights, and a past president of the Nevada Justice Association. She drafted and lobbied the passage of all the current reproductive family law statutes in Nevada. She has spoken in various countries in several media around the world on reproductive law. Her surrogacy and adoption case load over the years has netted thousands of babies and parents, and continues strong today.

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