

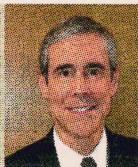
# A dog, a human life and the law

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SUGAR

BY RICHARD A.

**SUGAR:**

Serving tastings of money,  
taxes and the law



I am beginning to notice a pattern among my adult children. Before they have their first baby, they adopt a dog. I guess it was their way of learning about nesting, loving, and caring for a dependent. Sure enough, a year after my youngest son and daughter-in-law adopted a dog, I am about to be a grandfather to their child.

In thinking about the baby that is about to be born, I realized that how a baby is conceived and carried to term can create confusion. The law is still evolving on who has parental rights and obligations, and who inherits from whom, because of the advent of assisted reproductive technologies. With sperm banks, surrogates and frozen eggs and embryos, the DNA of one person can be combined with the DNA of another, unknown, person. It makes it difficult to identify the parent from whom the child inherits, and which persons have parental rights and obligations.

With new scientific advancements, baby birthing has been revolutionized. A sperm can be artificially inseminated. A sperm and egg can be fertilized in a medium that produces an embryo. Another woman can be used as a gestational carrier to carry the embryo of the mother and father to term. Or another woman can be used as a gestational surrogate, where the that woman's egg is used with the husband's sperm to produce the embryo, and she then carries the baby to term.

An example of the confusion caused by assisted reproductive technologies is illustrated in the 2011 Third Circuit U.S. Court of Appeals case, *Capato v. Commissioner of Social Security*. Approximately nine months after Mr. Capato's death from esophageal cancer, Mrs. Capato began in vitro fertilization using the sperm of her deceased husband, who had feared sterility arising from his chemotherapy and stored his sperm. She gave birth to twins 18 months after Mr. Caputo's death. The Social Security Administration (SSA) denied support benefits payable to the twins based on Mr. Caputo's earnings, because it did not recognize the status of Mr. Capato as the parent. SSA looked to Florida law for determining who were "parents" and "children." However, the Court of Appeals reversed the findings of the SSA and lower court and found Mr. Capato could be considered the father if the court later determined that the child was a "dependent" under SSA law.

The states today either have not addressed these issues, or if they have, take different positions. Similar problems arise with same sex couples who use surrogacy. Who is recognized as "parents"? It is therefore important, not just for parents who conceive the child, but for grandparents who are drawing up their estate plans and contemplating the inheritance they pass to their heirs, to address these complex and diverse situations.

As a soon-to be grandfather, I am proud and excited. But it sure was much simpler when our children simply adopted a dog. *Richard Sugar is a North Shore resident who practices law in Chicago. Submit your column questions to RAS.Sugar1898@gmail.com.*