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What's a father? Ky. Supreme Court has its say

By Andrew Wolfson

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A man who fathers a child during an affair with a married woman has no legal rights to fatherhood, the Kentucky Supreme Court ruled yesterday in an important decision on the legal status of marriage.

In a 4-3 vote, a deeply divided court upheld the presumption that a child born to a married woman living with her husband is a child of the marriage.

"While the legal status of marriage in this early 21st century appears to be on life support, it is not dead," Justice Bill Cunningham wrote in a concurring opinion. He wrote that married couples have a right "to be left alone" from the claims of "interloper adulterers."

The court ruled in favor of a Louisville couple, Julia and Jonathan Ricketts, who had sought to block James Rhoades Jr. from trying to establish paternity of a child he allegedly fathered during an affair with Julia.

Rhoades, of Tallahassee, Fla., who had said he hoped to raise the child jointly with his mother, said in a phone interview that he was "heartbroken" by the ruling.

"I want to be a part of my son's life, and now he will never know who his father is," said Rhoades, who hasn't seen the child for about a year.

"I understand that his mother is married and that her husband is his stepfather," Rhoades said. "But I am his family too and it seems to me that the rights of the biological father should be as important as those of the biological mother."

Julia and Jonathan Ricketts referred questions to their lawyer, Louis Waterman, who said his clients were "very, very relieved."

"As we have said from the beginning, our sole interest was to protect the child," Waterman said. "Family law is designed to do that, and I am grateful the Supreme Court did that today."

According to one of the dissenting opinions, 33 states allow a man to challenge the presumption that a child born to a married couple is the husband's.

The case fractured the Kentucky court -- five of its seven justices wrote their own opinions.

The two justices who signed the majority opinion, John D. Minton Jr. and Chief Justice Joseph Lambert, ruled on narrow jurisdictional grounds. But Cunningham, concurring with the majority, called for a more emphatic defense of marriage.

"We are in need of a bold declaration that the marriage circle, even with an errant partner, will be

invaded at one's own legal risks," he said. "The severely wounded institution of marriage surely protects the parties from unwanted interlopers claiming parenthood of a child conceived and born" during the marriage.

In dissent, Justice Lisabeth Hughes Abramson said the majority had erred "grievously" in deciding that the father of a child "is the man married to the mother" rather than the man who "who provided half the child's genetic makeup."

"Our world is full of inconvenient truths," Abramson wrote. "We accomplish nothing for families, the broader community and our justice system when we deny those truths."

She said there could be both medical and psychological consequences for the child if he didn't know the truth about his genetic background. She also wrote that giving men a legal right to claim a place in the child's life would strengthen marriage by discouraging women from straying.

Rhoades' co-counsel, John Helmers, said his client would ask the court to reconsider its ruling or try to appeal in the federal courts.

"The law is supposed to be a search for the truth, and here, the Supreme Court put its head in the sand," he said.

The ruling identified the parties by initials only, but they were previously named in pleadings filed by Rhoades.

In court papers and interviews, he said he was a graduate student in 2005 when he met Julia Ricketts in Florida, where she was living with Jonathan Ricketts, a Navy officer stationed in Pensacola.

Rhoades said in pleadings that after Julia Ricketts gave birth to a son in June 2006, a DNA test showed that Rhoades was the father.

For three months, Julia Ricketts allowed Rhoades to visit the infant at least a dozen times in Louisville, and Rhoades provided diapers, formula and clothing for the child, Rhoades and Helmers have said. The visits were kept secret from Jonathan Ricketts, Helmers said.

In August 2006, when the relationship between Rhoades and Ricketts ended and she refused to let him see the baby anymore, Rhoades went to court and demanded custody.

The Rickettses asked Family Court Judge Joseph O'Reilly to dismiss the case, citing the marital presumption.

In an interview last year, Julia Ricketts said she and her husband cut off communication with Rhoades in part so they could try to repair their marriage.

O'Reilly ordered a paternity test, and the state Court of Appeals rejected the Rickettses' petition to dismiss the case. The Supreme Court reversed yesterday.

Diana Skaggs, a Louisville lawyer who is president of the Kentucky chapter of the American Academy of Trial Attorneys, said the majority opinion defies common sense.

"If a child carries the DNA of a man other than the husband, it is common sense that the child is not born of the marriage," she said.

She noted that Cunningham "fumes about the morality of it all" and calls the man an "interloper" yet "declines to judge the wife's infidelity."

She said Kentucky could address the issue raised in the case by adopting what is known as the Uniform Parentage Act, a model set of laws, which has been endorsed by both the American Academy of Matrimonial Lawyers and the American Bar Association.

Minton and Lambert held that paternity can be decided only for children born out of wedlock, and in Kentucky, that includes only children born to unmarried parents or where "the marital relationship ceased 10 months before the child's birth." The law dates back to before DNA testing, when it was difficult to determine paternity, they said.

Justices Cunningham and Will T. Scott concurred in the result, but in dissenting opinions said the court should have specifically held that only parties to the marriage can challenge the presumption that the child is legitimate.

Justice Wil Schroder joined in Abramson's dissent, and Justice Mary Noble wrote her own, saying Rhoades should have been able to present his case in court, even if he might not have been able to prevail.

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