Making Connections

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Judith Daar, Multi-Party Parenting in Genetics and Law: A View from Succession, 49 **Fam. L.Q.** 71 (2015).

Some multi-parent families are created by law and others are created by science. California and a few other states have acknowledged that a child can have more than two legal parents. Professor Daar calls these multi-legal families or families in law. In their quest to serve their patients, physicians seek ways to enable infertile couples to have healthy children. Those doctors make their "treatment" decisions without considering the legal consequences of their actions. For example, in an attempt to lessen the possibility of a child inheriting a medical ailment from his or her mother, doctors may replace unhealthy mitochondrial with material obtained from the oocyte of a healthy female. The use of this mitochondrial manipulation technology (MMT) may result in a child being conceived using an oocyte containing mitochondrial DNA from two women. Professor Daar refers to this as a multi-genetic family or a family in genetics. Numerous articles and books have been written about multi-parent families. Most of the scholarly literature discusses the family law issues that arise because of the existence of these types of families. In her article, Professor Daar goes in a different direction. She focuses upon the impact that the recognition of multi-parent families may have on the intestacy system.

Professor Daar makes the distinction between legal parents and genetic parents. She explores the steps that can be taken in order for the intestacy system to accommodate multi-legal families. In multi-legal cases, more than two persons have been adjudicated as the child's legal parents. The article also discusses the intestacy system's treatment of multi-genetics families. In those situations, even though the parents and the children are related by genetics, their relationships may not be legally recognized. Professor Daar examines the manner in which the children and adults in these families may be treated under the intestacy system. Professor Daar analyzes the options of including multi-parent families under existing intestacy systems, creating new intestacy schemes to accommodate them, or excluding multi-parent families from the intestacy system. Professor Daar analyzes the treatment of multi-parent families under the existing intestacy system. As a part of that analysis, she compares multi-legal families to other nontraditional families. With regards to multi-genetic families, Professor Daar evaluates the treatment of families that are connected to the decedent by blood.

American succession law has changed to accommodate the needs of children who are part of nontraditional families. Professor Daar discusses the rules that apply to stepchildren and adopted children. In most states, stepchildren are not permitted to inherit from their stepparents. However, in a few states, stepchildren may be able to inherit if there are no genetically-related heirs in order to prevent the estate from going to the state. At least one state allows stepchildren to inherit if the stepchild-stepparent relationship started when the child was a minor and clear and convincing evidence indicates that the stepparent would have adopted the child if a legal barrier had not existed. When a child is adopted, the genetic parent-child relationship is severed and the adoptive parent-child relationship is created. Therefore, adopted children can typically only inherit from and through their adoptive parents. Nonetheless, if a child is adopted by his or her stepparent, that child may be permitted to inherit from both the adoptive and genetic parents. The Uniform Probate Code and some states also permit dual inheritance if a child is adopted after the death of both genetic parents. Professor Daar concludes that in states that permit more than two legal parents, the child would be allowed to inherit from and through all of the parents. Thus, these multi-parent children would be legally better off than stepchildren and adopted children. Unlike stepparents and parents who put their children up for adoption, parents in multi-legal families would benefit from being able to inherit from the children.

The law is not likely to treat multi-genetic parents like other non-traditional families. For instance, in cases involving

children conceived using assisted reproductive technology, the person donating gametes are not considered to be legal parents of the resulting children. The person donating the mitochondria in MMT will probably be treated like an egg or sperm donor. Hence, that person will probably not be given legal parent status. Since the parent-child relationship would be based on genetics and not law, Professor Daar looks at cases where the right to inherit under the intestacy system is strictly based on genetics. In the case of remote heirs, the law gives preference to distance relatives over close friends. However, non-marital children have to be acknowledged in order to obtain the right to inherit from their fathers. Genetics alone is not enough to create the father-child relationship. Professor Daar concludes that a multi-genetic parent would probably not be treated like other genetically-related persons because it would be difficult to trace the person's relationship to the decedent to a common ancestor.

Professor Daar examines the viability of an intestacy system that creates a special category for mitochondrial heirs. Under that proposed system, persons contributing genetic material would inherit to avoid having the property escheat to the state. The benefit of this approach would be to ensure that someone genetically-related to the decedent would take the property. This is in keeping with the intestacy system's preference for transferring property to genetically-related persons. Professor Daar identified three shortcomings of this proposed scheme. The first weakness she points out is that only persons of a female lineage would be able to inherit because the genetic link in MMT situations is based on mitochondrial DNA that only comes from females. Thus, this intestacy scheme would lead to gender discrimination and inequality among similarly situated descendants. Professor Daar's second concern is related to the integrity of the intestacy system. It may be difficult to identify particular heirs because the parents may not tell anyone that the child was conceived using MMT. Moreover, if someone claimed to be genetically-related to the decedent, proving that fact through testing may be complicated and expensive. Lastly, Professor Daar maintains that, giving mitochondrial families inheritance rights would directly conflict with the manner in which the law treats families created using gamete donations.

Professor Daar argues that, for intestacy purposes, a parent-child relationship should not exist between persons in multi-genetic families created using MMT. Professor Daar bases her argument on the fact that the law does not give other children conceived using assisted reproductive technology the right to inherit under the intestacy system. She also contends that giving intestacy rights to multi-genetic families does not make sense from a legal, practical or social sense. The ways in which families are formed will continue to evolve. Eventually, legislatures and courts will comprehend that the current law is not adequate to deal with the unique issues faced by those nontraditional families. Professor Daar's article makes a valuable contribution to a conversation that will continue to be necessary as long as there is not a strong connection between the needs of multi-parent families and the intestacy system.

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