

Biological dads score win at Florida Supreme Court on antiquated rule

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Christopher Farrell holds his infant son in October 2015.

Updated: 12:07 p.m. Friday, June 29, 2018 | Posted: 11:32 p.m. Thursday, June 28, 2018

WEST PALM BEACH —

A Loxahatchee man and scores of other despondent dads throughout the state on Thursday won the chance to help raise their children when the Florida Supreme Court struck down decades-old rules that put the antiquated notion of a child’s “legitimacy” ahead of a biological father’s rights.

In a decision hailed by family law attorneys as a giant step into the modern world, the state’s high court unanimously agreed that biological fathers should no longer be automatically blocked from having contact with children who are born to women who are married to someone else.

Writing for the majority, Justice Alan Lawson noted that the prohibition dates back years before paternity tests could reliably identify a child’s father and when so-called “illegitimate children” were shunned. In those days, it was considered in the children’s best interest for

husbands of married women to unequivocally be declared the legal fathers.

However, times have changed and relationships have become more complex.

A biological dad who has “manifested a substantial and continuing concern for the welfare of the child” should not be automatically barred from his child’s life just because their mother is married to someone else, Lawson wrote. The biological dad should be given the opportunity to show that his involvement would be in “the child’s best interests,” he said.

“It’s a really big deal,” said Fort Lauderdale family law attorney Nancy Hass, who used the case of a Broward County man to convince the court it was time to recognize biological fathers’ rights.

West Palm Beach family law attorney Abigail Beebee agreed. “This has been a long time coming,” she said. “This allows the door to open for the biological dad.”

But, both Hass and Beebee noted, there are still limitations.

The Broward man who convinced the high court to overturn years of case law was the ideal biological dad, Hass said of her client. He was in a three-year relationship with the child’s mother. He initially didn’t even know she was married. When he found out, she assured him it was only for “immigration purposes,” Lawson wrote.

He was at the hospital when his daughter was born. His name is on her birth certificate. He took her to day care and doctor’s appointments and paid child support.

But when he asked a judge to declare him the child’s father and give him visitation, his girlfriend and her husband balked. Based on the age-old rules, a Broward judge declared that the woman’s husband was the legal father because she was in an “intact marriage” — and cut the biological father off from his child.

Based on the man’s long-standing relationship with the child, the 4th District Court of Appeal ordered that his paternity petition be reconsidered. “Under these circumstances, it is not in the child’s best interest to apply the presumption of legitimacy at the cost of the child’s established relationship with her father,” the West Palm Beach-based court wrote.

On Thursday, the high court agreed.

Whether the decision helps 32-year-old Christopher Farrell remains to be seen, said Hass, who also represents the Loxahatchee man who has been thwarted in his efforts to see his son who was born in August 2015.

The boy was conceived when his mother was separated from her husband. When she reunited with her husband, she allowed Farrell to see the infant once but then refused to let him have any contact with his son.

Farrell's attempt to establish paternity was rejected in 2016 by Palm Beach County Circuit Judge Karen Miller and later by the 4th District Court of Appeal. In light of the Florida Supreme Court's ruling, Hass said she will ask the court to reconsider its ruling.

The new standard established by the high court will change the way attorneys approach similar cases, Hass said.

Biological dads will be told to move quickly to make sure their rights are protected. They should send child support checks, even if the money is returned, she said. They should try to send emails, expressing their interest in being involved in their child's life.

In the meantime, it is likely the Florida Bar will try to persuade state lawmakers to change the law to reflect the high court's decision, said Beebee, who is head of the Family Law Section of the Florida Bar.

Hass said the decision reflects society's changing attitude toward marriage and fatherhood. "When you have a man who wants to step up and take care of his child, isn't that what you want to happen?" she said.
