

Maine court says judges can decide maternity — if all parties agree

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PORTLAND, Maine — The Maine Supreme Judicial Court on Thursday unanimously ruled that District Court judges may determine the parentage of a child born to a surrogate mother when the parties agree on whom the legal parents should be.

It is the first time the court has ruled on the surrogacy issue, according to Judith Berry, whose Gorham firm appealed the case.

“It’s precedent-setting,” she said. “Maine had no surrogacy law prior to this case.”

Her clients, Robert and Celia Nolan of Massachusetts, appealed District Court Judge Jessie Gunther’s ruling that left the names of the gestational carrier — or surrogate mother — Kristen Labree, and her husband, Jeff, who live in Penobscot County, on the birth certificate of a baby born Dec. 9, 2010. There were no disputes over custody or parental rights, attorney Christopher Berry of Gorham, representing the Nolans, [told justices at oral arguments](#) April 12 in Portland.

Gunther determined that Robert Nolan is the father of the child but declined to declare Celia Nolan’s maternity, according the high court’s five-page order. The judge said there was no statutory authority under which she could make that determination.

The seven justices of the Maine Supreme Judicial Court disagreed.

“[State law] provides the District Court with clear statutory authority to declare legal paternity, and the court recognized that authority in granting Robert the relief that he requested,” Justice Ellen Gorman wrote for court. “[State law] provides a statutory basis for the District Court to declare ‘parentage,’ a term that includes both paternity and maternity. We must presume that the Legislature’s use of the gender-neutral word ‘parentage’ was intentional.”

The justices ordered that the names on the child’s birth certificate be changed from Kristen and Jeff Labree to Robert and Celia Nolan.

While the decision established law in cases where the biological parents and the surrogate agree that the surrogate’s parental right should be terminated, Gorman said in the opinion, it would not apply in a contested case.

Christopher Berry said that 36 or 37 other states have surrogacy law established either through statutes or case law. Out of the more than 200 surrogacy cases the Berrys’ firm has handled, the Nolans’ was the first in which a District Court judge questioned whether he or she had the authority to determine parentage.

Gunther did not explain her reasons for not recognizing Celia Nolan as the child’s mother, Judith Berry said.

“Our clients are ecstatic,” she said. “They are happy and relieved now that their parentage has been truly recognized. They don’t have to worry about enrolling their child in school because the birth certificate hasn’t been corrected.”

Judith Berry said her law firm was grateful to the organizations that filed “friend of the court” briefs on behalf of her clients.