

NATIONAL POST

Top court will not consider issue of parenting responsibility; Jane And John Doe

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OTTAWA - The Supreme Court of Canada declined yesterday to consider the case of an Alberta mother seeking to absolve her common-law husband of legal parenting responsibilities of a child she conceived through an anonymous sperm donor because her partner did not want a baby.

A three-judge panel, by convention, did not give reasons for refusing to grant leave to appeal in the closely watched case of Jane Doe, which has raised questions about parental freedoms when stacked against the rights of the child.

Jane Doe, described in court documents as a Calgary professional with more than 10 years of experience, wanted to have a child with her common-law husband, John Doe, but he did not. So she sought a sperm donor and the child was born in August 2005.

The couple agreed to write a contract clearing John Doe of any legal responsibility but, before signing the deal, they decided to go to court to see if it was legally sound under Alberta law. They have lost every step of the way. John and Jane Doe fought the case together in the Alberta courts, but Jane Doe alone asked the Supreme Court to hear the appeal.

In a written application, she said the court should take on the case to clarify whether the decision to be a single mother by choice is protected by the Charter of Rights guarantee of life, liberty, and security of the person.

"Jane Doe's appeal raises the unanswered question of the role of private choice and contract in designating parental roles," wrote her lawyer, Ronald Robinson. "The issues raised by Jane Doe transcend the individual circumstances of her case and raise matters of inherent public importance."

The Supreme Court's decision to reject the case effectively upholds a ruling last winter in the Alberta Court of Appeal.

The Alberta court focused on the rights of the child by concluding that John Doe, by choosing to remain in a live-in relationship with the child's mother, could not dodge parental responsibilities toward a child living under the same roof.

"Can it seriously be contended that he will ignore the child when it cries? When it needs to be fed? When it stumbles? When the soother needs to be replaced? When the diaper needs to be changed?" wrote Justice Ronald Berger. "John Doe's subjective intent not to assume a parental role will inevitably yield to the needs (and not merely the physical needs) of the child in the same household. Were it otherwise, one can only imagine the emotional damage visited upon the child."

The appeal court based its decision on a leading 1998 Supreme Court of Canada ruling on parental responsibilities, which found that adults who serve as "stand-in parents" cannot dodge their legal responsibilities.

That decision centred on a stepfather who wanted to end his relationship with the daughter of his former wife.

The Doe case has spawned numerous opinion articles in newspapers, some of which condemn the Alberta court for failing to side with single mothers in their quest to be free of state interference in deciding whether to parent on their own.

But Andrea Mrozek, a spokeswoman for the Ottawa-based Institute of Marriage and Family Canada, said yesterday she rejects the premise that the case is about the right of couples to make parenting decisions.

"I see it as not actually being about single moms as it being about the rights of the child," Ms. Mrozek said. The overriding principle, she said, is that it is simply unfair for a child to grow up in a home where there is a man present who does not intend to be her father. "I don't see how anybody with any common sense can see how that would work," Ms. Mrozek said.

Under Alberta's Family Law Act, a man is considered a father of an artificially conceived child if he is in a relationship of some permanence with the mother and agreed to the conception, the appeal court noted.