



## Administrative Office of the Courts

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Supreme Court issues a decision on parentage in a same-gender marriage

SANTA FE – The state Supreme Court ruled today that a legal presumption of parentage of children born during a marriage applies under New Mexico law regardless if one partner admits under oath to not being genetically or biologically related to the children. The best interest of a child is the key consideration in a parentage determination, the Court emphasized in its decision.

The Court’s unanimous opinion provided the legal reasoning for an order that Jeannine Kammann is a legal parent to twin children born during her same-gender marriage to Maile Soon. The Court issued the order last year after hearing oral arguments in a legal dispute over parental rights and child custody.

The New Mexico Uniform Parentage Act (UPA) law provides a presumption of parentage when a child is born during a marriage, but that can be rebutted or disapproved through genetic testing ordered by a district court or when the testing is performed with the consent of both the mother and the presumed parent.

Soon underwent artificial insemination and gave birth to the children in 2017, while still married to Kammann but nearly two months after she had filed for divorce. Soon later contested Kammann’s child custody claim, and a district court in Bernalillo County ruled that Kammann was not legally a parent. Kammann challenged the ruling and the state Court of Appeals reversed the district court. Soon took the case to the Supreme Court, which affirmed the Court of Appeals.

The justices rejected Soon’s arguments that Kammann’s presumed parentage through marriage was rebutted by her admission during a district court proceeding that she was not genetically or biologically related to the twins. The Court noted that “given the uncontroverted facts of the twins’ conception, genetic parenthood seems impossible” for Kammann.

“In this case, there was no mutual consent to genetic testing and no district court order to conduct genetic tests, and neither party offered genetic test results,” the Court wrote in an opinion by Justice Michael E. Vigil.

The Court explained that the UPA “provides that even if the presumed parent is not a genetic parent of the child, the marriage presumption can lead to an adjudication of parenthood. Under

the UPA, parentage is viewed through the lens of the best interest of the child, not merely the genetics of the individuals involved in the dispute.”

The law outlines a procedure for courts to follow in determining whether it is in the best interest of children to order genetic testing to determine parentage. The district court did not follow that procedure and “impermissibly failed to consider the best interest of the child,” the justices stated.

“When a child is born during a marriage, as here, the UPA provides a ‘presumption of paternity’ of the spouse if ‘he and the mother of the child are married to each other and the child is born during the marriage.’ Despite this problematically gendered statutory language, Kammann’s gender is irrelevant and is not disqualifying,” the Court wrote. “For several reasons, we construe these statutes expansively to mean that a presumption of parentage, rather than a presumption of paternity, arises when a child is born during a marriage.”

The Court explained that one of its previous decisions established a precedent for construing the UPA neutrally and broadly with respect to gender.

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To read the decision in *Soon v. Kammann*, No. S-1-SC-39544, please visit the New Mexico Compilation Commission's website using the following link:

<https://nmonesource.com/nmos/nmsc/en/item/530396/index.do>