

SUMMARY STATEMENT

Doe v. Doe, Docket No. 43796

In a case arising out of Ada County, the Idaho Supreme Court affirmed a district court ruling that declaratory judgment is not an available legal avenue for the termination of the parental rights of a gestational surrogate and subsequent adoption of the child by the intended parents. The Idaho Supreme Court held that although, as a procedural matter, Idaho Code section 10–1201, *et. seq.* does allow courts to declare legal relations, that power is inherently limited to the interpretation of previously established substantive law. Idaho Code section 10–1201, *et. seq.* does not give an Idaho court the power to create law; that power is reserved to the legislature and the legislature only. Accordingly, unless and until the legislature chooses to enact legislation providing otherwise, parents wishing to obtain a child through gestational surrogacy must proceed within the legal avenues available to them to establish legal parenthood—specifically termination proceedings under Idaho Code, Title 16, Chapter 20, and adoption proceedings under Idaho Code, Title 16, Chapter 15.