



RABBI GIDEON WEITZMAN

Machon Puah for Fertility and
Gynecology in Accordance with Halacha

Weak Proofs

Last time we saw a proof that birth is the halachic definition of motherhood is birth and not genetics. The source was the Talmudic passage that discusses a woman who converts during pregnancy with twin boys. The boys are born and have a filial connection through their mother. This strongly suggests that birth is the definition of motherhood.

However, this is far from a definitive proof, since the Talmud is concerned with whether the unborn fetus is included in the mother's conversion or not. Does the child require a separate conversion when they are born, as they are considered a separate entity from the mother? Or, is the fetus part of the mother's body, a limb of the mother, in the words of the Gemara, and, is included in the conversion process and would need no other conversion?

While this Gemara does suggest that the mother is the woman who gives birth, this

cannot be used as a proof.

Therefore, all of the sources that we have recently quoted that point to the mother being defined as the woman who gives birth, are all flawed. Either they are not halachic proofs, or they do not exactly prove the definition of motherhood. This may be the basis for the oft-quoted words of Rabbi Shlomo Zalman Auerbach, that for all the numerous halachic questions that he was asked he was always able to find a reliable source. But he was not able to find a source for the question as to whether motherhood is defined by birth or genetics. Maybe he meant that there are sources, but they cannot be relied on to give a definitive answer.

All this brings us back to the court case surrounding the birth and family of Sofia, the unfortunate girl who was born after the tragic mix-up during an in-vitro fertilization and an embryo transfer to the wrong couple.

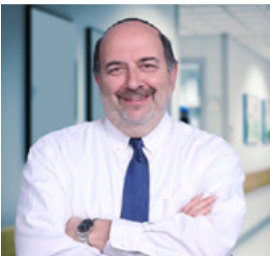
The birth parents are willing to raise her, and it was them who gave her the name, Sofia, but the genetic parents also claim total custody.

A judge recently wrote that it is clear and indisputable that genetics is the definition of motherhood, and therefore it is obvious that the genetic parents claim is the only valid one.

The judge completely ignored the other opinion and neglected to quote any of the Jewish precedents that we presented. While it is not clear that the birth mother is definitely the mother, the judge is amiss to ignore her legitimate claim to parenthood.

More on this next time. ■

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