



New York Redefines the Term “Parent” to Include Unrelated Third Parties

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How can a third party be a “parent”?

The court sees that families have changed, while the legal definitions stay the same. On August 30, 2016, New York’s highest court ruled that individuals who are not tied to a minor child by biology or adoption may still be treated as “parents” under the law, even though New York’s custody statute provides that only “parents” may seek custody rights with respect to minor children. Specifically, the Court ruled: “where a partner shows by clear and convincing evidence that the parties agreed to conceive a child and to raise the child together, the non-biological, non-adoptive partner has standing to seek visitation and custody under [the statute].”

Is this ruling limited to gay couples?

Not at all. While this ruling is being hailed by gay rights activists, it is not limited to same sex couples. Presumably, any two adults who start a family together, reside with the child as a family, and then break up will be treated as “parents” under this ruling.

What is “standing”?

It’s a legal term for “let’s keep the people who have no real stake in the outcome from messing things up for this child.” For a litigant to have “standing” to seek custody or visitation, he or she must have a relationship with the child that is expressly recognized by the law in the jurisdiction in which the child resides. But for this doctrine, a custody case would be a jumble of well-meaning and not so well-meaning friends, cousins, aunts, uncles, teachers, and so on, all vying for time with one child.

I have “standing.” Does that mean I win?

Not so fast. When we say that a person has standing, we do not mean that the inquiry ends and the other party loses. Rather, we allow both parties into the courtroom to present their cases on the merits. In this ruling, New York has expressly conferred standing on adults who fit within this expanded definition of parenthood, but they must still try their cases. At the end of the day, it’s about what’s best for the child.

Good for New York, but I live in Pennsylvania. What is our law?

Pennsylvania is way ahead of New York and many other states on this important legal issue: our custody statute already creates rights for many kinds of people who play important roles in the lives of minor children.

In addition to biological and adoptive parents, these categories include individuals who stand in loco parentis to the child, such as romantic partners and blood or adoptive relatives, and certain grandparents and great-grandparents who are raising the child.

When a parent is faced with litigation against a third party, Pennsylvania law presumes that custody should be awarded to the parent, absent very strong evidence that such a result is not in the child's best interests.

About the Author: Ms. De Shong is one of Pennsylvania's leading family law attorneys. She has counseled hundreds of men and women on all aspects of divorce, child custody, distribution of assets, support, and alimony, as well as property settlement agreements, prenuptial agreements, cohabitation and partnership agreements, family business agreements, protection from abuse matters, and more. She is a Fellow of the American Academy of Matrimonial Lawyers, a national organization of approximately 1600 highly skilled litigators and negotiators who represent individuals in all areas of family law. If you would like further information concerning family law or if you have a family law matter that you would like to discuss with our lawyers, please email Ms. De Shong at adeshong@wispearl.com.

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