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## **SELECTED BIBLIOGRAPHY OF RECENT CO-PARENT CASES**

### **CALIFORNIA**

***K.M. v. E.G., 37 Cal.4<sup>th</sup> 130 (Cal. 2005), time for grant or denial of rehearing extended to 11-10-05 (Sep 06, 2005).***

Woman who had donated her eggs so that her former lesbian partner, with whom she was registered in domestic partnership, could bear a child through in vitro fertilization filed petition to establish parental relationship with partner's twin children after the relationship ended. The Superior Court granted partner's motion to quash and dismiss petition. The Court of Appeal affirmed. The Supreme Court granted review, superseding the opinion of the Court of Appeal. The Supreme Court, held that: both lesbian partners were parents of these children, and statute providing that law treats sperm donor as if he was not natural father of child so conceived did not apply to this situation.

***Elisa B. v. Superior Court, 37 Cal.4<sup>th</sup> 108 (Cal. 2005).***

County filed action to establish that former lesbian partner was obliged to pay child support to mother, who was receiving public assistance, for children who were conceived intentionally while relationship was extant. The Superior Court ordered former partner to pay child support. Former partner petitioned for writ of mandate. The Court of Appeal issued writ. The Supreme Court granted review, superseding the opinion of the Court of Appeal. The Supreme Court, held that: under the Uniform Parentage Act (UPA), a child may have two parents, both of whom are women, and former partner was presumed parent under UPA, circumstances existed which made this an inappropriate action in which the presumption should be rebutted, and thus former partner was obliged to pay child support. Judgment of Court of Appeal reversed.

***In re Marriage of Buzzanca, 61 Cal.App.4<sup>th</sup> 1410 (Cal. 1998).***

Husband sought dissolution of marriage and wife filed a separate petition to establish herself as mother of child born because she and husband agreed to have embryo, genetically unrelated to either of them, implanted in a surrogate who, under surrogate contract, carried and gave birth to child. The Superior Court accepted stipulation that surrogate and her husband were not lawful parents of child, determined that the husband and wife who were the intended parents were not lawful parents, and terminated husband's obligation of support. Wife filed petition for writ of supersede as to stay judgment regarding child support and filed appeal. These actions were consolidated. The Court of Appeal held that: artificial insemination statute applied to both intended parents, and thus, intended parents were treated, in law, as natural parents; husband became

lawful father by causing conception of child, even though wife allegedly promised to assume all responsibility for child's care, and thus, husband was obligated to support child; and fact that written surrogacy contract had not been signed at time of conception and implantation did not abrogate husband's obligation to provide support to child. Reversed and remanded.

***Johnson v. Calvert, 5 Cal.4<sup>th</sup> 84 (Cal. 1993).***

A childless married couple and another woman entered into a contract providing that an embryo created by the gametes of the couple would be implanted in the other woman's uterus, that the child born would be the couple's child, and that the surrogate mother would relinquish all parental rights to the child, in return for which the couple would pay the surrogate a specified fee and buy her a life insurance policy. The surrogate became pregnant, but relations between her and the couple deteriorated. After the surrogate made a demand suggesting she might refuse to surrender the child, the couple sued for a declaration they were the legal parents of the unborn child, and the surrogate then filed her own action to be declared the mother. The cases were consolidated, the child was born, a blood test excluded the surrogate as the genetic mother, and the trial court ordered that the couple temporarily keep the child, whom the surrogate could visit. At trial, the court ruled that the couple were the child's genetic, biological, and natural father and mother, that the surrogate had no parental rights to the child, and that the contract was legal and enforceable against surrogate's claims. It also terminated the visitation order. The Court of Appeal affirmed. The Supreme Court affirmed, holding that although the Uniform Parentage Act recognizes both genetic consanguinity and giving birth as means of establishing a mother and child relationship, when the two means do not coincide in one woman, she who intended to procreate the child is the natural mother under California law. The court further held that the surrogacy agreement was not facially inconsistent with public policy, gestational surrogacy does not entail involuntary servitude, and termination of the surrogate's claims to the child was not otherwise unconstitutional.

**COLORADO**

***In the Interest of E.L.M.C., 100 P.3d 546 (Colo. Ct. App. 2004), cert. denied, 2004 WL 2377164 (Colo. 2004) (NO. 04SC528).***

A non-adoptive parent had standing to petition for equal parenting time because she had become the child's psychological parent and there was a risk of emotional harm to the child if visitation were to be terminated. The court upheld a Colorado statute that allows non-parents who have had a recent or continuing role as a caretaker to petition for parenting responsibilities.

## CONNECTICUT

***Davis v. Kania*, 836 A.2d 480 (Conn. Super. 2003).**

A ruling that a gay man who was recognized in California as the legal parent of a child born under a surrogacy arrangement, should be treated as a legal parent in Connecticut for purposes of a custody dispute with the child's biological father.

***Laspina-Williams v. Laspina-Williams*, 742 A.2d 840 (Conn. Super. 1999).**

After the break-up of a 10 year lesbian relationship, in which the parties had planned for and raised a child together, the non-biological mother filed for visitation with the child. In this decision the Superior Court denied the biological mother's motion to dismiss. The biological mother argued that 1) the court lacked subject matter jurisdiction, and 2) the Superior Court should dismiss the claim, in accordance with judicial economy and efficiency, so that it could be resolved by the Probate Court to which the non-biological mother had already petitioned to terminate the coparent's co-guardianship.

The court denied the motion. The threshold requirement for a visitation petition is a disruption in a child's family life. ***Castagno v. Wholean***, 239 Conn. 336 (1996). The question to resolve was whether plaintiff was part of the family unit and whether break-up of the relationship was such a disruption. The court noted that under C.G.S. § 46b-59 "any person," not just biological relations, may petition the court for visitation of a child. It also noted that in ***Castagno***, the court explicitly chose not to list what events meet this threshold requirement. In ***Michaud v. Wawruck***, 209 Conn. 404 (1988), the court recognized that "traditional models of the nuclear family have come. . . to be replaced by various configurations. . . and we should not assume that the welfare of children is best served by a narrow definition of those who we permit to continue to manifest their deep concern for the child's growth and development."

The court ruled that the break-up did constitute a disruption to the child's family life and so the plaintiff did have standing. It also ruled that neither the Probate nor Superior Court had exclusive jurisdiction over visitation petitions and so the issue could remain before the Superior Court.

***Antonucci v. Cameron*, 25 Conn. L. Rptr. 509 (Super. Ct. 1999);  
*Order Denying Motion to Dismiss*, No. FA98-042047S (Super. Ct. March 3,1999) (slip op.).**

In this case, a lesbian couple had jointly made the decision to adopt a child. Only one woman was allowed to become the adoptive parent by Texas law, but both parents raised the child from the time the child move in with them (*i.e.*, for 3 1/2 years). The Superior Court first denied the adoptive parent's motion to dismiss for lack of subject matter jurisdiction. The law is discussed in the Laspina-Williams case, *supra*.

The decision on the merits observed that visitation encompasses different considerations from custody, guardianship or parenthood and that the Superior Court has statutory authority to grant visitation to anyone it deems in the best interest of the child. Taking

into consideration that all decisions about the adoption and care of the child were made jointly and that the plaintiff continued to maintain contact with the child to the extent possible after the separation, the court ordered that the plaintiff be allowed to have regular visitation with the child.

***Doe v. Doe, 244 Conn. 403 (1998).***

In 1998 custody dispute between a husband and wife over a child born to a surrogate mother through a traditional surrogacy agreement (in which the surrogate mother is the biological contributor of the egg), the Connecticut Supreme Court held that, based on a state statutory presumption that it is in the best interests of the child to be in the custody of a biological parent, even though the wife was not biologically related to the child, her role in raising the child was enough to overcome the presumption. However, the Court explicitly stated that it was not addressing “whether, or to what extent a surrogate contract, by which the surrogate obligates herself to surrender the child to the child’s father and his spouse, is enforceable.”

***Doe v. Roe, 246 Conn. 656 (1998).***

Surrogate mother filed application for writ of habeas corpus seeking custody of child and filed declaratory judgment action seeking sole guardianship of child and determination that surrogacy contract was void. The Superior Court rendered judgment in accordance with parties' agreement that included a promise by surrogate mother to consent to termination of her parental rights in Probate Court. Natural father and his wife filed a motion seeking to hold mother in contempt for failing to comply with the agreement. Mother moved to dismiss for lack of subject matter jurisdiction. The Superior Court vacated the prior judgment, and appeal was taken. The Supreme Court held that: Superior Court had subject matter jurisdiction to render judgment in accordance with parties' agreement, and judgment did not effect a termination of mother's parental rights. Reversed.

**DELAWARE**

***Chambers v. Chambers, 2002 WL 1940145, No. CN00-09493. (Del. Fam. Ct. Feb. 5, 2002).***

In this case, the Family Court denied summary judgment in a claim for child support brought by biological mother against non-biological mother, holding that the non-biological mother, who helped pay for her former partner's in vitro fertilization, should be considered a parent, as her actions led to the child's conception. The plaintiff, Karen Chambers, became pregnant in 1995 with sperm from an anonymous donor. Her former partner, Carol Chambers, funded a portion of the fertilization process and signed the embryo transfer form. When the couple split up in 1998, Carol petitioned the court for visitation rights, referring in her petition to “my son from [in vitro],” and alleging that the child “knows me as his other mother.” She was granted visitation every other weekend and for seven days during the summer. Karen subsequently sought mandatory child support. Carol argued that the state should not force her to pay because she has no biological or adoptive connection to the child, and because Delaware does not recognize same-sex couples. The Court ruled that although Carol did not contribute biologically to

the child's birth, her actions "constituted a symbolic act of procreation." "Had Karen and Carol not acted in tandem, David would never have been conceived."

***In the Interest of Hart, 806 A.2d 1179 (Del. Fam. Ct. Sept. 28, 2001).***

Although technically a second-parent adoption case, this case is included because of the court's invocation of the doctrine of de facto parenthood. In this case, the Family Court held that the gay partner of the adoptive father of two children maintained "such a strong parental relationship with the child similar to that of a natural parent that [he] should be considered a 'de facto parent'" and thus should be allowed to adopt children under provisions allowing stepparent adoption. Quoting *In re Custody of H.S.H.-K* (see below), the court set forth that a de facto parent is one who, with the support and consent of the natural parent, has formed a parent-like relationship with the child by assuming significant responsibility for the child's care, education and development, has acted in this role for a sufficient period of time for a bonded and dependent relationship to have developed, has shaped the child's daily routine, and has fulfilled the child's day-to-day psychological and emotional needs.

**FLORIDA**

***Kazmierazak v. Query, 736 So.2d 106 (Fla. Ct. App. 1999).***

In this custody dispute between lesbian coparents over the child they raised together, the court found that the non-biological mother lacked standing because she was not seeking relief under any statutory scheme, but was merely asserting that as a psychological parent her status was equivalent to that of the biological parent. The court determined that the cases cited granting custody to psychological parents were effectively overruled by *VonEiff v. Azeiri, 720 So.2d 510 (Fla. 1998)* (holding grandparent visitation statute an unconstitutional infringement on parental liberty). The court also found that the in loco parentis doctrine has only been used in the context of a marital relationship and so was not applicable here.

**ILLINOIS**

***In re Adoption of A.W., J.W., and M.R., Minors, 796 N.E.2d 729 (Ill.App. 2 Dist. 2003).***

Illinois court of appeal rejected a lesbian mother's theory that she had standing, either in loco parentis or as a de facto parent, to seek visitation with the biological children of her former domestic partner. (However, the court did vacate the dismissal, obtained ex parte by the biological mother, of a co-parent adoption petition as violating procedural due process).

***In re the Matter of Visitation with C.B.L., 723 N.E.2d 316 (Ill. App. Ct. 1999).***

The Appeals Court affirmed the circuit court's dismissal of the petition for visitation of a woman who, along with her ex-partner, had planned for and raised the biological child of the ex-partner for 1 1/2 years. Acknowledging that she lacked standing under §607 of the Marriage Act (which describes the visitation rights of parents, grandparents, great-grandparents, and siblings), the petitioner contended that she had standing as a common

law de facto parent or an individual in loco parentis. The court determined that §607 now specifically categorized who may petition for visitation and what requirements they must meet and thus superseded the common law. While affirming the dismissal based on lack of standing, the court stated that this issue demands a comprehensive legislative solution.

## **INDIANA**

### ***In re Parentage of A.B., 818 N.E.2d 126 (Ind.App. 2004).***

Former domestic partner brought a declaratory judgment action against biological mother of child to establish domestic partner's co-parentage of child, who was conceived by artificial insemination during the parties' intimate relationship. The Circuit Court dismissed the complaint. Domestic partner appealed. The Court of Appeals held that: domestic partner of biological mother was entitled to be recognized as the legal co-parent of child, and order that established mother's former domestic partner as legal co-parent of child did not violate mother's constitutional right to make decisions regarding the custody and care of child. The Court contended that, as a matter of law, "when two women involved in a domestic relationship agree to bear and raise a child together by artificial insemination of one of the partners with semen from a donor, both women are the legal parents of the resulting child," without the need for an adoption. Reversed and remanded.

## **MAINE**

### ***C.E.W. v. D.E.W., 845 A.2d 1146 (Me. 2004).***

After mother and lesbian partner terminated their romantic relationship lesbian partner sought a declaration of parental rights and responsibilities for child and sought to prevent mother of child from denying lesbian partner status and obligations as parent of child. The Superior Court determined that lesbian partner was a de facto parent to mother's child and was entitled to be considered for an award of parental rights and responsibilities. Mother appealed. The Supreme Judicial Court held that lesbian former partner of biological mother was entitled to be considered for an award of parental rights and responsibilities. Affirmed; remanded.

## **MARYLAND**

### ***S.F. v. M.D., 751 A.2d 9 (Md. 2000).***

In this case of first impression in Maryland, the state's highest court found that the state's statutes did not limit the court's equity powers and neither did they limit to whom the courts could award custody or visitation. They found the co-parent had standing where the two women had jointly participated in becoming pregnant, both cared for the child for the three years before their separation, and visitation continued for several months before it was unilaterally terminated by the birth mother. To establish de facto parenthood, the individual must show that the legal parent consented to and fostered the individual's relationship with the child, that she lived with the child, that she performed parenting functions to a significant degree, and that she forged a parent-child bond with the child. In such cases, the de facto parent is not required to show unfitness of the legal mother or

exceptional circumstances in order to obtain visitation with the child; instead, the determination is made on a best interest analysis.

***Gestl v. Frederick, 754 A.2d 1087 (Md. Ct. App. 2000).***

This case focused on whether Maryland could dismiss an action brought by a non-biological mother for custody of a child that she helped raise with her former partner. The trial court dismissed the case because the biological mother had taken the child to Tennessee and it believed that Tennessee was the more convenient forum for the case. However, the non-biological mother was successful, on appeal, in arguing that Maryland should not have dismissed the case because Tennessee does not offer an alternative forum for her to bring her claim. Under Maryland law, the non-biological mother could seek custody or visitation by showing that "exceptional circumstances" exist; whereas, in Tennessee, the non-biological mother, as a third party, would not have standing to seek custody or visitation absent a showing of parental unfitness.

**MASSACHUSETTS**

***T.F. v. B.L., 442 Mass. 522 (2004).***

Biological mother of child filed complaint seeking child support from her former domestic partner. The Probate and Family Court Department found that there had been agreement "to create a child," which domestic partner had breached, but did not issue child support order, instead reporting matter to Appeals Court for determination of whether "parenthood by contract" was law of the state. Biological mother petitioned for direct appellate review. Upon grant of petition, the Supreme Judicial Court, held that: evidence supported conclusion that implied contract existed between mother and her former domestic partner such that there had been agreement by former domestic partner to undertake responsibilities of parent in consideration of mother's conceiving and bearing child; implied contract that existed between parties was unenforceable; any implied promise that former domestic partner made to mother with respect to child support was inextricably linked to former domestic partner's unenforceable promise to co-parent child, and thus any promise as to child support was similarly unenforceable; and Supreme Judicial Court would not invoke its equitable powers to create a duty requiring former domestic partner to pay child support. Remanded.

***E.N.O. v. L.M.M., 429 Mass. 824, 711 N.E.2d 886, cert. denied, 528 U.S. 1005 (1999).***

A non-biological mother sued for custody and visitation rights following the end of her thirteen-year relationship with the mother of the child. After a lower court granted temporary visitation while proceedings were pending, the biological mother appealed. The court held that the non-biological parent was a defacto parent and that it was in the best interest of the child to continue visitation with her. While the Court did not reach the issue of custody because of the procedural posture of the case, in logic, the ruling should apply to custody as well.

Although Massachusetts has no statute expressly permitting ordering visitation privileges to a nonparent who stands in a parent-like position, the court determined that M.G.L. c. 215 § 6 confers on the Probate Court broad equity jurisdiction. Equity jurisdiction

encompasses “the persons and estates of infants,” and so includes authorizing visitation with a child when such visitation is in the child’s best interest.

The court set forth a test to determine if someone is a defacto parent:

The de facto parent resides with the child and, with the consent and encouragement of the legal parent, performs a share of the care taking functions at least as great as the legal parent. The de facto parent shapes the child’s daily routine, addresses his developmental needs, disciplines the child, provides for his education and medical care, and serves as a moral guide.

The court referenced the standards set forth by American Law Institute Principles of the Law of Family Dissolution: Analysis and Recommendation (Tent. Draft No. 3 Part I 1998) to determine who is a defacto parent and stated that a court might also consider the factors assessed in other Massachusetts decisions. See, C.C. v. A.B., 550 N.E.2d 365, 406 Mass. 679. In demonstrating the biological mother’s support and encouragement, the Court noted the parties’ co-parenting agreement, but did not specifically enforce the agreement.

Addressing the biological mother’s constitutional defenses, I ruled that intrusion into the biological parent’s constitutional interests were minimal in this context and that the child was entitled to be protected from the trauma of further disruption to his family.

## **MICHIGAN**

***McGuffin v. Overton*, 542 N.W. 2d 288 (Mich. Ct. App. 1995).**

When biological mom died, her lesbian partner asked the court to name her guardian of the children in accordance with the wishes expressed in the deceased mother's will. However, when the biological father assumed physical custody of the children, the non-biological mother petitioned for custody of the children. The court held that she lacked standing to file for custody because she did not meet the statutory requirement of being related to the children "within the fifth degree by marriage, blood, or adoption." However, the court was careful to point out that their holding in the custody case would not have any effect on her standing if she were to be successful in her attempts to be appointed the children's guardian

## **MINNESOTA**

***LaChappelle v. Mitten*, 607 N.W. 2d 151 (Minn. Ct. App. 2000), cert. denied, 531 U.S. 1011 (2000).**

The court permitted a non-biological mom to seek custody under a statute that allows people other than parents to seek custody under certain circumstances. The court reasoned that by agreeing to share custody of the child with the non-biological mother, the biological mother had functionally abandoned her right to sole legal custody and that that joint legal custody was in the child's best interest.

## MISSOURI

*In re Matter of T.L., No. 953-2340, 1996 WL 393521 (Mo. Cir. Ct. May 7, 1996).*

After the separation of the lesbian couple (unclear from opinion about duration of relationship), the court heard testimony and determined that the non-birth mother had proven by “clear and convincing evidence” a parent-child relationship. The court balanced the parent’s right to control the child with the state’s *parens patriae* interest in the child’s welfare. On this basis, it awarded the non-birth mother significant visitation and the right to participate in major life decisions of the child in light of “needs of the minor child for a continuing relationship with each parent.”

## NEW HAMPSHIRE

*Comeau v. Grondin, No. 94-M-1161, Order on Defendant's Motion to Dismiss (N.H. Super. Ct., (Strafford) Apr. 11, 1995).*

(See below, *P.B. v. P.D.R.*)

*P.B. v. P.D.R., No. 94-M-615, Order (N.H. Super. Ct. (Merrimack) Sept. 21, 1994).*

The court permitted the lesbian co-parent to pursue a visitation claim under court's parens patriae equity jurisdiction.

## NEW JERSEY

*V.C. v. M.J.B., 163 N.J. 200, 748 A.2d 539, cert. denied, 531 U.S. 926 (2000).*

In this case, the New Jersey Supreme Court -- without dissent -- ruled that a lesbian coparent had a standing to seek both visitation and custody of the twins her former partner bore while they were a couple, although on the facts of the case, the court denied joint custody.

After the end of their four-year relationship, the non-biological mother sought joint custody and visitation rights of her ex-partner’s twin biological children. The biological mother was planning to have a child through artificial insemination when she met the plaintiff, but her partner fully participated in the care of the children. Experts for both women stated that the plaintiff was a maternal figure to the children and that the children would be hurt by losing her but would probably recover from the loss.

Rejecting the biological mother’s claim that the court lacked subject matter jurisdiction, it found that existing statutes addressing the court’s powers when “parents” live apart encompassed this situation. Although fit parents have a right to control the upbringing of their children, New Jersey cases recognize “exceptional circumstances” which allow standing to other persons. In addition, relying in part on the test established in *In re Custody of H.S.H.-K.*, 533 N.W.2d 419 (Wis.1995) (see below), the Court found M.J.B. was a “psychological parent” entitled to pursue claims of custody and visitation. (The factors considered where: (1) whether the biological mother consented to and fostered plaintiff’s relationship with the children; (2) whether plaintiff lived with the children; (3)

whether she assumed the obligations of parenthood; and (4) whether she was in a parental role for sufficient time to establish a parent-like bond to the children.)

Analyzing these factors, the court affirmed the award of visitation, but denied joint custody because of the animosity between the parties and the long separation of the children and M.J.B.

## **NEW MEXICO**

***Barnae v. Barnae, 943 P.2d 1036 (N.M. Ct. App. 1997).***

In this case involving a non-biological mother's petition for custody and visitation, a unanimous panel of N.M. Court of Appeals reaffirmed "that a person in a similar situation to Petitioner's [can make] a colorable claim of standing to assert a legal right to some type of continuing relationship with a child." See *A.C. v. C.B.*, 829 P.2d 660, 665 (Ct. App. 1992). The parties became a couple shortly after the birth of the first child. They had a second child together, with petitioner serving as primary caretaker, but separated after ten years. The birth mother relocated to New Mexico, but then returned to California after the petitioner filed her petition in New Mexico. After the New Mexico and California courts conferred, and acknowledged petitioner would have no standing to pursue her claim in California, the court held the birth mother and children had sufficient contacts with New Mexico to make its courts an appropriate place for the litigation under the New Mexico Child Custody Jurisdiction Act.

***A.C. v. C.B., 113 N.M. 581, 829 P.2d 660, cert. denied, 113 N.M. 449, 827 P.2d 837 (1992).***

The non-biological mother petitioned for joint legal custody after termination of the lesbian relationship. The trial court dismissed the action with prejudice after the parties settled. The non-biological mother petitioned again because the former partner failed to comply with the settlement agreement. The trial court dismissed the non-biological mother's claim on grounds that such agreements are unenforceable. The Court of Appeals reversed, holding that: the non-biological mother stated a prima facie case for relief; the determination of whether visitation between a child and non-biological parent would be in the best interest of the child must be made on the evidence; and such agreements are not per se unenforceable.

## **NEW YORK**

***J.C. v C.T., 711 N.Y.S 2d 295 (N.Y. Fam. Ct. 2000).***

In this case, a Family Court in New York State ruled that the lack of a biological relationship between a former lesbian partner and the children she and the natural mother had raised together was no bar to the former partner's petition for visitation. The natural mother's argument that she had the right to determine with whom her children associate (on the authority of *In the Matter of Alison D. v. Virginia M.*, 77 N.Y. 2d 651) was rejected on the grounds that the equitable estoppel theory advanced by the petitioner had not been addressed in *Alison D.*

Citing other case law in New York, the court noted that a biological parent may be equitably estopped where she has not merely acquiesced to, but created, nurtured and encouraged a parent-child relationship. The court then concluded that the motion to dismiss the petition must be denied and an inquiry conducted into the existence of a parent-child relationship in order to establish standing. This requires a finding that the biological or adoptive parent's own actions led to the creation of the parental bond between the non-biological or non-adoptive party and the child. Also required is evidence of the petitioning party's assumption of the full range of parental obligations as well as a demonstration that the child is actually psychologically bonded or dependent upon that person as a parent. Once a parent-child relationship has been established, the court would then decide if visitation were in the child's best interests. However, in the present case, the evidence available was insufficient on which to base a decision on standing, and accordingly, a hearing was scheduled to determine whether the requisite relationship existed.

***Lynda A.H. v. Diane T.O., 673 N.Y.S.2d 989 (N.Y. App. Div.) (slip op.), appeal denied, 680 N.Y.S.2d 457 (1998) (Table).***

A couple together for 17 years had a child through artificial insemination. When the child was 3 1/2 years old, the parties jointly filed for adoption to enable the non-biological mother to adopt. The couple split up 8 months later and the biological mother revoked her consent to the adoption. The non-biological mother petitioned the family court seeking custody or visitation. On appeal, the court held that the petitioner had no standing to obtain either custody or visitation absent extraordinary circumstances which the court found did not exist under the facts of the case. Proof by the non-biological parent that the child had bonded psychologically with her was insufficient. The court's language suggests that only evidence that the parent abandoned, surrendered or otherwise forfeited parental rights would rise to the requisite level of extraordinary circumstances. This court rejected petitioner's efforts to distinguish her case from ***Matter of Alison D.*** The petitioner argued that ***Alison D.*** commenced under Domestic Relations Law §70 while her case commenced under Family Court Act §651. The court held that the Family Court Act provides no greater rights to custody and visitation for the non-biological parent than does the Domestic Relations Law.

***In the Matter of Alison D. v. Virginia M., 77 N.Y.2d 651 (Ct. App. 1991).***

The lesbian co-parent was not a "parent" within meaning of New York law and thus had no standing to pursue custody or visitation claim of child she co-parented. The court specifically rejected the co-parent's arguments of de facto parenthood and parenthood by estoppel. There was a lengthy dissenting opinion by Justice Kaye.

## **PENNSYLVANIA**

***L.S.K. v. H.A.N., 2002 WL 31819231 (Super.Ct.Pa., 2002).***

Superior Court of Pennsylvania unanimously found that the responsibility to pay child support goes along with the right to custody and visitation regarding a lesbian co-parent

who lives in Pa and must regular child support payments to her former partner who now lives in California.

***T.B. v L.R.M., 786 A.2d 913 (Pa. 2001).***

In this case involving the break up of a lesbian relationship, the Pennsylvania Supreme Court held that the former partner stood in loco parentis to the child and therefore had standing to bring an action against the biological mother for visitation.

The parties had jointly agreed to have a child through insemination of L.R.M. with sperm the donor of which would be chosen by T.B. T.B. cared for L.R.M. throughout her pregnancy and was designated the co-parent for purposes of being present in the delivery room. When A.M. was born, the parties lived together with her, and shared day-to-day child rearing responsibilities and decision-making. The parties did not enter into a formal parenting agreement, but L.R.M. named T.B. as guardian of the child in her will. The parties separated, and after one visit between T.B. and the child, L.R.M. refused all visitation requests, phone calls and gifts for the child. T.B. filed a complaint for shared legal and partial custody and visitation. L.R.M. objected, arguing that T.B. lacked standing. A hearing officer determined that T.B. had standing pursuant to the doctrine of in loco parentis, relying on *J.A.L. v. E.P.H.* (see below), and that visitation was in A.M.'s best interests. The hearing officer's recommendation was adopted by the common pleas court, which granted visitation. L.R.M. appealed to the Superior Court, and filed an application for a stay pending appeal, which was granted. On the merits, the *en banc* Superior Court agreed that T.B. stood in loco parentis and thus had standing to seek visitation, but concluded that the record was not sufficient to review the best interests determination, so they vacated the visitation order and remanded for a full hearing on best interests. L.R.M. appealed.

The Supreme Court held that the doctrine of in loco parentis granted T.B. standing to seek visitation. The Court quoted *J.A.L. v. E.P.H.* (see below), recognizing that while a presumption exists that maintaining the autonomy and privacy of her family is in a child's best interests, when the child has established strong psychological bonds with a person who, although not a biological parent, has assumed the stature of a parent in the child's eyes by living with the child and providing care, nurture and affection, the child's best interests are served by granting standing to such a third party in order to flesh out whether that relationship should be maintained.

The Court made clear that the fact that T.B. cannot legally adopt A.M. has no bearing on whether she stands in loco parentis. The ability to marry the biological parent and the ability to adopt the subject child have never been factors in determining whether the third party assumed a parental status and discharged parental duties. What matters is how the third party gained the authority to do so, and in this case, the record is clear that L.R.M. consented to and encouraged T.B.'s performance of parental duties.

***J.A.L. v. E.P.H., 682 A.2d 1314 (Pa. Super. Ct. 1996).***

In a conflict between former lesbian partners in twelve-year relationship who separated when child was between one and two years old, court determined that non-birth mother

stood in loco parentis to child and had standing to pursue custody. The women had executed three legal documents providing the non-birth mother with custody of the child in the event of the biological mother's death or disability: a guardianship nomination, an "Authorization for Consent to Medical Treatment of Minor," and a will appointing the non-birth mother as guardian. All of the documents were revoked by the biological mother after the couple separated, but the court used them as evidence that the mother had intended for the non-birth mother to have a "parent-like relationship" with the child. Finding that the non-birth mother and the child "were co-members of a nontraditional family," the court held that the non-birth mother stood in loco parentis for standing purposes.

### **RHODE ISLAND**

#### ***Rubano v. DiCenzo, 759 A. 2d 959 (R.I. 2000).***

In this case, the Supreme Court of Rhode Island ruled that the Family Court had not acted outside its jurisdiction in granting a petition for visitation in favor of the former partner of a lesbian mother, and in addition, that she was entitled to enforce the written visitation agreement that existed between the two.

The child had been conceived by DiCenzo through donor insemination, a process for which Rubano had borne the financial cost. The plaintiff had also contributed significantly to the raising and nurturing of the child, who bore the compounded name of both parties. After the couple separated, Rubano and DiCenzo agreed upon informal visitation arrangements upon which DiCenzo then reneged. Rubano subsequently sought to establish her de facto maternal status and following the appointment of a guardian ad litem the couple reached a compromise agreement regarding visitation which was affirmed by the RI Family Court. When DiCenzo refused Rubano access to the child, Rubano sought to enforce the order. The natural mother contended that the court had erred in granting the order, as it did not have jurisdiction over the child's relationship with a biologically unrelated third party. The Family Court then reported questions to the State Supreme Court about its own jurisdiction.

While the Supreme Court decided that the Family Court had no jurisdiction under its general jurisdictional statute (G.L. S8-10-3) to entertain the petition, as the combination of child, biological mother and same-sex partner did not constitute the required "family relationship," it concluded that other remedies were available. The court had jurisdiction in relation to "interested parties" in determining the existence or non-existence of a mother and child relationship (under S15-8-26 of the Uniform Law on Paternity). To qualify as an interested party one must allege a parent-like relationship with the child, and Rubano's close involvement with the conception and upbringing of the child, as well as the alleged visitation agreement, sufficed to give her standing under this section. The Family Court also had jurisdiction with regard to "those matters relating to adults who shall be involved with paternity of children born out of wedlock," with female co-parents able to fulfill the paternity requirement. Alternatively, the Superior Court had an equitable jurisdiction to enforce the visitation agreement.

## **TENNESSEE**

***In re Thompson, 11 S.W.3d 913 (Tenn. Ct. App. 1999), appeal denied (Jan. 24, 2000).***

The issue in this consolidated appeal of two coparent visitation cases was whether a petition for visitation could be brought by a woman who participated in the decision to have a child with her partner and acted as a parent to the child until the biological mother terminated further contact. The Court of Appeals held that the Trial Court lacked jurisdiction because neither of the non-biological parents was a “parent” as contemplated by statute.

In addition, the court’s inherent equity jurisdiction over the property and interests of minors was not applicable because it had been superseded by statutes granting parents the right to custody and control of their children. These women could not be granted equitable estoppel because the cases they cited addressed stepfather visitation and relied upon the legal rights and obligations of the marital union which did not exist here.

The coparenting agreement present in one of the relationships was found to be irrelevant because the father of the child had not signed it.

## **TEXAS**

***Coons-Andersen v. Andersen, 104 S.W.3d 630 (Tex.App.-Dallas, 2003).***

Former same-sex partner brought action under Family Code and for breach of contract, based on mother's denial of visitation of child. The 254th Judicial District Court granted mother's motion to abate Family Code claim and granted mother's summary judgment motion on breach of contract. Former partner appealed. The Court of Appeals held that: Family Code provision, setting out requirements for standing to sue including 90-day limitations provision, did not arbitrarily restrict partner's common law right to sue for visitation, on theory that she stood in loco parentis to child, and thus provision as applied did not violate state constitution's open courts provision, and mother did not breach co-parenting contract with former partner by moving out of household with child, changing former partner's visitation schedule, and denying her contact with child, and thus partner was not entitled to remuneration for her expenditures. Affirmed

***Fowler v. Jones, 969 S.W.2d 429 (Tex. 1998).***

In a conflict between former lesbian partners in nine-year relationship over visitation rights of non-biological mother, the Supreme Court of Texas reversed the court of appeals’ ruling and held that the non-biological mother had no standing to bring a visitation claim. Fowler sought visitation asserting standing to file a suit affecting the parent-child relationship under section 102.003(9) of the Texas Family Code which provides a suit may be filed by a person who has had custody of the child for “not less than six months preceding the filing of the petition.” The Supreme Court held that the legislature did not intend a substantive change in deleting the word “immediately” before the word “preceding” from the family code statute. As a result, because the non-biological mother’s care and control of the child had not been within the 6 month period preceding the petition for visitation, she had no standing to seek visitation.

## **UTAH**

***A.I v. C.D., No. 940902124, Court's Ruling on Standing (Utah Dist. Ct. (Salt Lake) Nov. 18, 1994).***

The court permitted lesbian co-parent to pursue visitation claim where she stood in loco parentis to the child and it was in the best interests of child to permit the claim.

## **VERMONT**

***Titchenal v. Dexter, 693 A.2d 682 (Vt. 1997).***

In a conflict between former lesbian partners over visitation rights of lesbian parent who had not adopted the child, court held that superior court had no equity jurisdiction to entertain a visitation claim. The court reasoned there was no legal basis for the plaintiff's asserted right to visitation as an equitable or de facto parent. The court stressed that equitable principles did not apply because Ms. Titchenal had an adequate remedy at law (the second parent adoption statute) but had failed to take advantage of it. *Id.* at 687 n. 5. The court refused to apply equitable adoption to this case because there was no agreement to adopt. *Id.* at 688-89. The court also cautioned "our opinion should not be read as impeding same-sex partners from child-rearing or as minimizing the importance of maintaining relationships between children and third parties with whom the children have formed significant bonds." *Id.* at 690. Two of the five justices dissented arguing for application of equitable adoption principles.

## **WASHINGTON**

***In re the Parentage of L.B., 89 P.3d 271 (Wash. Ct. App. 2004).***

Although the non-biological mother did not have statutory standing she did have a common law claim that would allow her to petition for shared parentage or visitation as a de facto or psychological parent. The court held that a petition for shared parentage or visitation will only be entertained if the petitioner can prove that a parent-like relationship developed with the consent and encouragement of the biological parent and that there was some triggering incident, such as the legal parent's denial of visitation with the child.

***State of Washington on behalf of D.R.M. v. Wood, 34 P.3d 887 (Wash. Ct. App., Div. 1, 2001).***

State petitioned to establish parentage and to impose child support obligation on former same-sex partner of child's mother, and mother cross-claimed for enforcement of separation agreement. The court held that mother's former partner was not child's "parent" under Uniform Parentage Act (UPA), no law required child to have more than one legal parent, application of UPA did not violate equal protection rights of child, or of any other party, and child support was inappropriate without parent-child relationship, regardless of contractual claims of estoppel and promise.

## WISCONSIN

***Holtzman v. Knott (In re Custody of H.S.H.-K.), 193 Wis. 2d 649, 533 N.W.2d 419, cert. denied, 116 S.Ct. 475 (1995).***

In case involving lesbian parents in a 10+ year relationship battling over child custody, the Wisconsin Supreme Court permitted a non-biological mother's claim for visitation upon demonstration of "parent-like relationship" with the child and a "significant triggering event" justifying state intervention into the parent child relationship.

The "parent-like relationship" consists of 4 elements:

1. that the biological or adoptive parent consented to, and fostered, the petitioner's formation and establishment of a parent-like relationship with the child;
2. that the petitioner and the child lived together in the same household;
3. that the petitioner assumed obligations of parenthood by taking significant responsibility for the child's care, education and development, including contributing towards the child's support, without expectation of financial compensation; and
4. that the petitioner has been in a parental role for a length of time sufficient to have established with the child a bonded, dependent relationship parental in nature.

The Court defined a "significant triggering event" as requiring proof that the other parent "has interfered" substantially with the petitioner's parent-like relationship with the child, and that the petitioner sought the court ordered visitation within a reasonable time after the parent's interference.

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