



State by State List of Same-Sex Custody Cases

California:

Elisa B. v. Superior Court, 37 Cal.4th 108 (Cal. 2005)

- The Court held that “a woman who agreed to raise children with her lesbian partner, supported her partner's artificial insemination using an anonymous donor, and received the resulting . . . children into her home and held them out as her own, is the children’s parent under the Uniform Parentage Act.”

K.M. v. E.G., 37 Cal.4th 130 (Cal. 2005)

- The court held that “when partners in a lesbian relationship decide to produce children [through ovum sharing], both the woman who provides her ova and her partner who bears the children are the children's parents.”

Kristine H. v. Lisa R., 37 Cal.4th 156 (Cal. 2005)

- Prior to the birth of their child, Kristine H. and her same-sex partner Lisa R. sought and were granted a judgment declaring both of them to be the legal parents of the unborn child. After the couple ended their relation, the biological mother, Kristine, sought to invalidate the judgment. The California Supreme Court held that Kristine was estopped from attacking the validity of the judgment to which she stipulated.

Charisma A. v. Kristina S., --- Cal.Rptr.3d ---, 2006 WL 1563915 (Cal. Ct. App. 2006)

- The California Court of Appeal held that a non-biological mother may seek visitation with the child born to her former female partner through alternative insemination if she can demonstrate that she is a presumed parent, that is, if she can demonstrate that she received the child into her home and held the child out as her own child and that it is not an appropriate case in which to find that presumption rebutted.

Colorado:

In the Interest of E.L.M.C., 100 P.3d 546 (Colo. Ct. App.), *cert. denied*, 2004 WL 2377164 (Colo. 2004), *cert. denied sub nom, Clark v. McLeod*, 125 S.Ct. 2551, 162 L.Ed.2d 287 (2005)

- 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:

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

- The court held that the non-biological mother had standing under a Connecticut law which allows anyone to petition for visitation. The statute does not define the

relationship necessary to give standing. The court opined that the biological mother allowed, even encouraged, the plaintiff to assume a significant role in the life of the child such that she was entitled to seek visitation.

Delaware

Chambers v. Chambers, 2005 WL 645220 (Del. Fam. Ct. 2005)

- Holding that an adult who knowingly participates in the conception of a child by in vitro fertilization with the intent of raising the child as his or her own is a ‘parent,’ and is estopped from denying a child support obligation.

S.S. v. E.M.S., 2004 WL 3245935 (Del. Fam. Ct. 2004)

- Holding that same-sex partner of biological mother of triplets was a “de facto” parent of the child and that the biological mother was “estopped from unilaterally denying [the non-biological mother] a current and future relationship with [the children].”

Florida:

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

- The court held that a psychological parent is not entitled to the equivalent parental status as the biological parent. The court acknowledged that it had recognized the concept of “psychological parent” in the past, but opined that in light of the Florida Supreme Court’s holding in *Von Eiff v. Azicri*, 720 So. 2d 510 (Fla. 1998), which reaffirmed adoptive or biological parents’ rights to make decisions about their children’s welfare without interference by third parties, it could not construe previous “psychological parent” cases as giving equal parental status to non-biological or non-adoptive parents. The court further held that the concept of “in loco parentis” is only applicable to cases that arise within the context of a marital relationship.

Music v. Richford, 654 So. 2d 1234 (Fla. Ct. App. 1995)

- The court rejected the non-biological mother’s claim that she was a “de facto” parent and entitled to shared parental responsibilities and visitation. The court cited as binding authority the holding in *Meeks v. Garner*, 598 So. 2d 261 (Fla. Ct. App. 1992) that visitation rights are purely statutory and that the former partner of the biological mother did not have a statutory right to seek visitation.

Illinois:

In re C.B.L., 723 N.E.2d 316 (Ill. Ct. App. 1999)

- Non-biological mother argued that although she did not have standing to seek visitation under the Marriage Act, she had standing as a common law “de facto” parent or as an individual “in loco parentis” to the child that she helped raise with her former partner. However the court held that she did not have standing because the Marriage Act had been revised so many times that it supersedes and supplants the common law of visitation in Illinois.

Indiana

In re A.B., 818 N.E.2d 126 (Ind. Ct. App. 2004), *vacated on other grounds*, *King v. S.B.*, 837 N.E.2d 965 (Ind. 2005)

- Holding 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.

Maine:

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

- An undisputed finding that the non-biological mother was a de facto parent of a child that she helped raise with her former partner made her eligible to be considered for disbursement of parental rights and responsibilities.

Maryland:

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

- A non-biological mom was allowed to seek visitation as a de facto parent; however, the trial court was within its discretion when it used the “best interest” standard to deny the petition. In determining that the non-biological mom had standing as a de facto parent, the court applied the Wisconsin test (discussed below in *In re H.S.H.-K.*).

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:

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

- The court held that it had equitable jurisdiction to award visitation to the biological mother’s former same-sex partner. The court determined that the non-biological mother was a de facto parent because she had participated in the child’s life as a member of the family, lived with the child, and, with the consent and encouragement of the legal parent, performed a share of the caretaking functions at least as great as the legal parent.

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:

Matter of T.L. 1996 WL 393521 (Mo. Cir. 1996)

- In a petition for custody, the court treated the non-biological mother as an "equitable parent" because she provided for the physical, emotional, and social needs of a child and demonstrated that (1) she had physical custody of the child for an extended period, (2) her motive in seeking parental status was her genuine care and concern for the child, and (3) her relationship with the child began with the consent of the child's legal parent. It held that as an equitable parent, the non-biological mother could be awarded visitation with the child, absent a finding of parental unfitness, since the minor child's growth and development would be detrimentally affected by elimination of contact with the equitable parent.

New Jersey:

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

- A non-biological mother was awarded visitation because she qualified as psychological parent and had forged a parent-like relationship with the consent of the biological parent. The court adopted the Wisconsin test (discussed below in *In re H.S.H.-K.*) for determining whether a parent-like relationship has been formed.

New Mexico:

A.C. v. C.B., 829 P.2d 660 (N.M. Ct. App. 1992)

- When a biological mother breached a settlement agreement regarding time-sharing and co-parenting, the court held that her former same-sex partner had standing to seek visitation. The court also held that sexual orientation, standing alone, is not a permissible basis for denial of custody or visitation rights

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

- A same-sex partner who is not a biological parent has standing to assert a legal right to a continuing relationship with a child.

New York:

Lee P.S. v. Lisa L., 301 A.D.2d 606 (N.Y. Ct. App. 2003)

- Holding that a nonbiological, nonadoptive lesbian co-parent lacks standing to seek visitation.

Janis C. v. Christine T., 294 A.D.2d 496 (N.Y. Ct. App. 2002)

- Holding that nonbiological, nonadoptive lesbian co-parent lacks standing to seek visitation, even where biological mother had actively encouraged the parental bond between same sex domestic partner and her children, had lived together as a family for several years, and allowed domestic partner to assume a full panoply of parental obligations did not preclude mother.

Speed v. Robins, 288 A.D.2d 479 (N.Y. Ct. App. 2001)

- Holding that a nonbiological, nonadoptive lesbian co-parent lacks standing to seek visitation.

Alison D. v. Virginia M., 569 N.Y.S.2d 586 (N.Y. 1991)

- Petitioner, the former same-sex partner of the biological mother, attempted to seek visitation as a “de facto” parent or a parent “by estoppel”. However, the court held that she did not meet the definition of a parent for the purposes of a New York statute that grants the right to seek visitation or change of custody to “either parent.” Therefore, she did not have standing to seek visitation over the objections of a fit legal parent.

Ohio:

In re Bonfield, 773 N.E.2d 507, 96 Ohio St.3d 218 (Ohio 2002)

- Holding that same-sex couple could petition a court for an allocation of shared parental rights and responsibilities, even where one partner was a nonbiological, nonadoptive parent.

In re Jones, 2002 WL 940195 (Ohio Ct. App. 2002), unreported

- Custody disputes between parents and non-parents are governed by *In re Perales*, 369 N.E. 2d 1047 (Ohio 1977), which requires a finding of parental unsuitability before a non-parent can be awarded custody. Under *Perales*, a parent who contracts custody rights to a non-parent can be considered to have forfeited custody rights, and can be found to be unsuitable for custody. However, the court in the present case held that the biological mother who allowed the non-biological mother to be a part of the child’s life had not relinquished custody and could terminate visitation between the child and the non-parent. The court explained that the doctrine of “in loco parentis” has been applied to non-parents such as teachers and babysitters to hold them criminally or civilly liable, but it declined to apply it to a custody proceeding.

Liston v. Pyles, 1997 WL 467327 (Ohio Ct. App. 1997), unreported

- A former same-sex partner of the biological mother did not have standing to seek visitation because she failed to prove that she was related to the child by blood or marriage. The court held that she was not related by affinity because same-sex marriage is not recognized by the Ohio. Furthermore, the doctrine of “in loco parentis” did not create a duty of support and/or a right to visitation under the facts of this case. Precedent cases applying the doctrine are distinguishable because they address the rights and

responsibilities of stepparents who formed new family units in a statutorily recognized manner by marrying a natural parent.

Pennsylvania:

Jones v. Boring, --A.2d--, 2005 WL 2403818 (Pa. Ct. App. 2005)

- The court awarded primary physical custody to a non-biological mother who demonstrated that it was in the best interests of her children for them to live with her, rather than with her ex-partner, the children's biological mother. The court affirmed the trial court's decision that it was not necessary in Pennsylvania for a party *in loco parentis* to establish that the biological parent was unfit before she could obtain primary custody.

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

- A non-biological mother who assumed parental status and discharged parental duties with the consent of the biological parent had standing to seek visitation under the doctrine of *in loco parentis*.

Rhode Island:

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

- The Family Court had jurisdiction to determine the existence of a *de facto* parental relationship between a same-sex parent and a child with whom she had no biological relationship and to enforce the biological mother's settlement agreement allowing the non-biological parent to visit with the child

Tennessee:

In re Thompson, 11 S.W.3d 913 (Tenn. Ct. App. 1999)

- In a consolidated case, two non-biological parents sought visitation as "de facto" parents of children that they each helped raise with their former same-sex partners. The court held that the Tennessee legislature has not given a right of custody or visitation to a nonparent who is not and has not been married to either of the children's parents, but who previously maintained an intimate relationship with such a parent and who previously provided care and support to the children. The court also held that the biological mothers were not equitably estopped from denying visitation because precedent estoppel cases dealt specifically with step-parents who were previously in marital relationships with biological parents. Furthermore, the court opined that the term "de facto" parent, having its genesis in the juvenile dependency system, is generally applied to foster parents caring for dependent children and that there was no case law using *de facto* parenthood and/or *in loco parentis* to extend constitutional parental rights, including the right to visitation, to unmarried/unrelated persons in the position of the plaintiffs.

Texas:

Coons-Anderson v. Anderson, 104 S.W.3d 630 (Tex. App. Ct. 2003)

- When the biological mother moved from Florida to Texas, she cut off all visitation between the child and the non-biological mother. The non-biological mother sought visitation under a Texas statute that allows a person other than a foster parent to ask for visitation if she or he has had "actual care, custody, and possession of the child for not less than six months and ending not more than 90 days preceding the filing of the

petition.” Though the court agreed that a person standing “in loco parentis” has a right to ask for visitation, it explained that such a status is temporary and it held that the petitioner was not “in loco parentis” at the relevant time. In other words, she filed the petition more than 90 days after her separation from the biological mother; therefore, she did not meet the requirements of the relevant statute.

Vermont:

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

- The court held that the state’s *parens patriae* power does not give the superior court jurisdiction to hear disputes regarding parent-child relationships outside statutory proceedings. The plaintiff failed to show a statutory, common law, or constitutional basis for applying equitable jurisdiction in order to extend a right to parent-child contact to an “equitable” or “de facto” parent. The court was also not convinced by the plaintiff’s public policy argument because she could have protected her rights by adopting her partner’s child.

Washington:

In re the Parentage of L.B., 122 P.3d 161 (Wash. 2005), *cert. denied sub nom, Britain v. Carvin*, 126 S.Ct. 2021 (2006)

- The court held that a woman had standing to seek custody of the child born to her former same-sex partner under the doctrine of *de facto* parentage and that, if found to be a *de facto* parent, that she would “stand[] in legal parity with an otherwise legal parent, whether biological, adoptive, or otherwise.”

West Virginia:

In re Clifford K., 619 S.E.2d 138 (W.V. 2005)

- The court held that it was in the best interest of a child for his non-biological mother to have permanent custody of him after his biological mother died in automobile accident. The court held that the non-biological mother was the child’s psychological parent, defined as “a person who, on a continuing day-to-day basis, through interaction, companionship, interplay, and mutuality, fulfills a child’s psychological and physical needs for a parent and provides for the child’s emotional and financial support.”

Wisconsin:

In re H.S.H.-K., 533 N.W.2d 419 (Wis. 1995), *cert. denied*, 516 U.S. 975 (1995)

- Court used its equitable jurisdiction to allow a non-biological parent to seek visitation where petitioner could prove that the legal parent consented to and fostered the formation of a parent-like relationship with the child, that she lived with the child, that she performed parental functions for the child to a significant degree, and that a parent-child bond was forged.