

New York Court Expands Definition Of ‘Parent’ To Recognize Same-Sex Couples

Children do indeed have “parents” that are non-biological, non-married, and non-adoptive.

[ZACK FORD](#) AUG 30, 2016, 8:50 PM

BROOKE B., THE PLAINTIFF IN THIS CASE, STANDS TO THE RIGHT OF LAMBDA LEGAL NATIONAL DIRECTOR OF CONSTITUTIONAL LITIGATION SUSAN SOMMER. CREDIT: LAMBDA LEGAL

The New York State Court of Appeals, the state’s highest court, ruled Tuesday that the same-sex partner of a child’s biological parent should also be legally recognized as a parent, even if the couple was not married and the partner did not adopt the child, as was previously the rule. The decision overturns a 25-year precedent that left same-sex couples who had separated out to dry when they sought visitation or custody of their children.

The case of [Brooke B. v Elizabeth C.](#) involved a same-sex couple that had a child together using artificial insemination from an anonymous donor. They raised their son together, but separated about a year later in 2010—a year before New York’s legislature approved marriage equality. In 2013, Elizabeth, the biological parent, cut off contact between Brooke and their son, so she filed for custody and visitation rights. Lower courts denied Brooke’s request based on a 1991 precedent from a nearly identical case called *Alison D.*

In the opinion, the judges recount the standard they set for “parent” in *Alison D.* and the many decisions that have navigated its narrow limitations:

- *Alison D.* (1991)—The Court established that “a biological stranger to a child who is properly in the custody of his biological mother” has no “standing to seek visitation with the child under Domestic Relations Law § 70.”

- *Matter of Jacob* (1995)—The Court held that, in both same-sex and different-sex couples, a non-married partner could adopt the other partner’s biological child. This conclusion was derived from the logic that single people can adopt, so there was no reason to block the adoption of a child that would give it two parents instead of one, but this decision didn’t change the standard for visitation and custody.
- *Matter of Shondel J. v. Mark D.* (2006)—In a case about a different-sex couple, the Court held that a man who mistakenly claims to be a child’s father can still be required to pay child support even if he later denies paternity, because it’s in the best interest of the child. Though child support would seemingly be directly related to the concern of custody and visitation, this also didn’t change the standard for the latter.
- *Debra H.* (2010)—In a case nearly identical to *Alison D.* and the current case, the Court recognized the non-biological parent in a same-sex couple after their separation on the sole basis that a Vermont civil union established her parental rights.

But in the new decision, the Court acknowledged that its precedent in *Alison D.* has foreclosed attempts by lower courts to consider what was in a child’s best interest, in many cases forcing them to permanently sever “strongly formed bonds” between the children and “adults with whom they have parental relationships.” There’s no exception in *Brooke B.* that sets it apart from *Alison D.*, leaving the Court with no option but to overturn the old precedent, particularly in the wake of the Supreme Court’s marriage equality decision last year:

Under the current legal framework, which emphasizes biology, it is impossible—without marriage or adoption—for both former partners of a same-sex couple to have standing, as only one can be biologically related to the child. By contrast, where both partners in a heterosexual couple are biologically related to the child, both former partners will have standing regardless of marriage or adoption. It is this context that informs the Court’s determination of a proper test for standing that ensures equality for same-sex parents and provides the opportunity for their children to have the love and support of two committed parents.

The Court also acknowledged that social science has increasingly found that children suffer when separated from a parental figure, regardless of how that parent was legally or biologically connected to the child in the first place. Prescribed definitions for parentage, as the Court previously followed, are not necessarily in the best interest of the child.

What’s interesting about the Court’s decision, however, is that the judges chose not to establish a “proper test” for defining parentage in future cases. They simply suggest that so long as there’s evidence that the couple agreed to raise the child together before conception, that’s sufficient for consideration of visitation and custody.

This is a marked departure from the trends set by other state courts. In July, the Maryland Court of Appeals issued [a very similar ruling](#) in a nearly identical case, but that Court followed several other states' example of adopting a multi-prong test for establishing non-biological, non-adoptive parentage. The Wisconsin Supreme Court established the test way back in 1995, requiring the *de facto* parent to meet the following four conditions:

- that the biological or adoptive parent consented to, and fostered, the petitioner's formation and establishment of a parent-like relationship with the child;
- that the petitioner and the child lived together in the same household;
- 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;
- 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.

Essentially, New York's Court only dictated the first prong of that test, leaving more room for lower courts to make decisions in the future that best serve the well-being of children.

Lambda Legal, an LGBT legal organization that helped represent Brooke B., praised the ruling. "We are extremely gratified that Brooke will finally have her day in court to establish that she is the parent of the son she cherishes," said Susan Sommer, National Director of Constitutional Litigation. "We are eager for them to be reunited as soon as possible. The attorney for the child in the case has led the charge in the courts to have the boy reunited with his second parent."