NON-BIOLOGICAL PARENTAGE

Marital Presumption
Parentage by Estoppel
Parentage by contract
Intent-based Parentage
In Loco Parentis
Statutory Definitions Pending in the Legislature

I. Marital Presumption

B.C. v. C.P. and D.B., 8 WAP 2023 Decided 1/29/24
Chief Justice Todd

Background:
Westmoreland County, PA
C.P. (mother) and D.B. (Husband) were married in 2016. In 2017, while in an addiction rehab facility, mother met B.C.
Mother and BC reconnected in 2018 and shortly thereafter, mother and husband separated, husband moved out.
During that separation of about 3-4 months, BC visited mother's home multiple times, unprotected sex ensued.
Shortly after that, husband then returned to the marital residence and husband and wife resumed their intimate relationship which also included unprotected sex.
Months later, mother realized she was pregnant and was unable to pinpoint conception.
Mother told husband the child was his.
Mother told B.C. the child was not his.
Husband attended prenatal appointments and behaved as an expectant father.
When the child was born, Husband was listed on the birth certificate.
After the birth, mother took the child to B.C. and told him that he was the biological father. B.C. began spending time with the child on a weekly basis and sometimes babysitting the child while mother was at work.
When the child was 9 months old, mother and husband separated again. Mother moved into B.C.'s home told friends and family that B.C. was the father, and coparented with B.C.
Mother still took the child to see husband on weekends, which was assented to by B.C.

B.C. assaulted mother and their relationship ended abruptly. Mother and child moved back into the marital home with husband and the spouses reconciled. Mother and child saw B.C. one last time when they visited him in rehab.

Mother and husband separated for the 3rd and final time for 5 weeks and husband filed for divorce and the parties entered into a shared physical and shared legal custody agreement. B.C. was in rehab this whole time.

Subsequently, mother and husband again reconciled, decided not to divorce, and mother moved back into the marital residence and remained together for all relevant time periods thereafter.

Lower court decisions:

B.C. got out of rehab and filed a complaint to establish paternity by genetic testing. Mother and husband jointly filed an answer and new matter seeking to dismiss the complaint with prejudice contending that the presumption of paternity applied to preserve their intact family unit.
The presumption that a child conceived or born during a marriage is a child of the marriage, may be rebutted by evidence establishing that either husband did not have access to his wife during the period of possible conception or that the husband was impotent or sterile; where the marriage is intact, the presumption is irrebuttable.

Mother and husband testified that their marriage was intact and that husband was the child's parent and caretaker and that they were bonded. They agreed that their marital problems were behind them and wished to avoid interference from outside the marriage.

The trial court denied the motion to dismiss and ordered paternity testing. Mother and husband appealed to the Superior Court. The trial court held that the presumption applies only where the underlying policy of the presumption i.e. to preserve marriages, would be advanced by its application. See Brinkley v. King 701 A.2d 176, 179(Pa. 1997). The Supreme Court in Brinkley had determined that The court considers 1. whether the presumption applies to the facts and, if it does the court determines whether the presumption has been rebutted and 2. if the presumption has been rebutted or is inapplicable, the court then examines whether estoppel applies, which may bar either a plaintiff from making the claim or bar a defendant from denying paternity.

The court considered past cases where the presumption was held not to apply either because 1. The marriage did not need protection because the marriage did not need protection since the couple had fully reconciled and any damage caused by the infidelity and extramarital child was "water under the bridge" and 2. where the mother and husband did not have an intact marriage when the child was conceived or born.

The court also pointed out that mother and husband testified that the court's determination would not affect their marriage so that the past relationship with B.C. was "water under the bridge." The trial court determined that the presumption was inapplicable for these reasons and held that it did not need to determine whether the presumption was rebuttable or irrebuttable. The trial court also held that there was not sufficient evidence that husband and mother "remained in an intact marriage," which would have rendered the presumption irrebuttable.

The Superior Court unanimously affirmed the trial court's decision, holding that the policy of preserving marriages would not be advanced by application here. The Superior Court pointed to Strauser v. Stahr 726 A.2d 1052 (Pa. 1999), where the parties never separated and therefore the presumption was applicable and distinguished that from this case where the parties separated three times. The Court found the instant case more akin to B.S. v. T.M. 782 A.2d. 1031, 1037 (Pa. Super 2001) where the presumption was held not to apply to a couple whose marriage was

intact at the time of the litigation because there was no real dispute as to the biological paternity of the third party and the couple had reconciled and endured so there was no risk of further harm to the marriage and a risk of a negative effect on the child if they later discovered their true paternity.

The Supreme Court's basis for hearing the appeal therefrom was to determine whether the lower courts erred in placing paramount importance on periods of separation in determining that the presumption was inapplicable, despite the marital couple's reconciliation which predated the third-party's paternity action.

Supreme Court's Analysis and Decision:

Spoiler alert: the Supreme Court reversed the decision and remanded.
The court's reasoning was that although the Supreme and Superior court decisions have followed the trend of narrowing the application of the presumption of paternity over the years to reflect more accurately the societal realities of the times, the Court's decisions have held steadfast that there is a single circumstance under which the presumption of paternity continues to apply and is irrebuttable – where there is an intact marriage to preserve.
The lower court had reasoned that the marriage was SO STRONG that it did not require the protection. The Supreme Court rejected this reasoning as irreconcilable with the decision in Strauser, which held that the presumption of paternity applies precisely in this situation – where evidence establishes that a marriage and resulting family unit have overcome the seemingly insurmountable odds and remained together after marital infidelity.
The presumption protects against the potential insertion of a third party into the functioning family unit upon resolution of the paternity action. This protection is warranted whenever the court finds, and the record supports the finding, that an intact marriage exists.
The Court disagreed with the lower courts' finding that the parties' prior periods of separation rendered their marriage not in need of protection.
Periods of separation are a factor to consider in determining whether the marriage is intact at the time of the paternity hearing but are not dispositive.
In conclusion, the courts shall continue to apply the presumption of paternity in the limited circumstance where its purpose to preserve marriage is advanced.

II. Parentage by Estoppel:

***Brinkley v. King*, 701 A.2d 176 (Pa. 1997)**

Facts: Mother was married and living with George Brinkley when her daughter was conceived. George Brinkley moved out 4 months before the child was born. Mother testified that she and George were not sleeping in the same bedroom and she was having sexual relations with King during the period when the daughter was conceived. King came to the hospital and saw the child on a weekly basis for two years and placed the child on his medical insurance. King cut off this relationship when Mother filed for Support. King denied paternity and refused blood testing based on presumption of paternity claiming that George was the father as he was married to Mother at

the time the child was born. The main issue in this case was whether presumption of paternity applied.

This case distinguishes the difference between presumption and estoppel and analyzes the cases as twofold. "The presumption of paternity and the doctrine of estoppel, therefore, embody the two great fictions of the law of paternity: the presumption of paternity embodies the fiction that regardless of biology, the married people to whom the child was born are the parents; and the doctrine of estoppel embodies the fiction that, regardless of biology, in the absence of marriage, the person who cared for the child is the parent." Citing *Trojak,* 634 A.2d.

Twofold: First, one considers whether presumption of paternity applies to a particular case. If it does, one then considers whether the presumption has been rebutted. Second, if the presumption has been rebutted or is inapplicable, one then questions whether estoppel applies. Estoppel may bar either a plaintiff from making the claim or a defendant from denying paternity.

Holding: In this case, at the time of the Complaint for Support, there was no marriage. Mother and Brinkley had separated before the birth of the child and were divorced by the time of the Complaint. The presumption of paternity, therefore, has no application in this case. Vacated and remanded to the trial court for a hearing on the issue of estoppel.

***Fish v. Behers*, 741 A.2d 721 (Pa. 1999)**

1999 case that establishes the public policy and details the definition and reasoning for estoppel.
Facts: When child was born, Mother was married to David Fish at the time but involved in an extramarital affair. Mother told Fish he was the father and she planned to have an abortion. Fish convinced her to keep the child. When child was born, Fish was listed on birth certificate and lived as an intact family for 3 years. Eventually it was determined via blood test that he was not the father and he filed for divorce. Mother filed for child support.

Holding: Child was listed on birth certificate, claimed as dependent, held out to public following separation as his son, continued to see the child (along with the two other siblings) after separation. This evidence amply shows that Mother and Fish accepted the husband as this child's father and does not indicate that the husband failed, during the marriage, to accept the child as his. Thus, the doctrine of estoppel applied.

Estoppel in paternity actions is merely the legal determination that because of a person's conduct, that person, regardless of his true biological status, will not be permitted to deny parentage, nor will the child's mother who has participated in this conduct be permitted to sue a third party for support, claiming that the third party is the true father.

Estoppel rests on the public policy that children should be secure in knowing who their parents are. If a certain person has acted as the parent and bonded with the child, the child should not be required to suffer the potentially damaging trauma that may come from being told that the father he has known all his life in not in fact his father.

***S.M.C. v. C.A.W.*, 221 A.3d 1214 (Pa. Super. 2019)**
(relies on Fish case)
Facts: Mother filed for child support against her former boyfriend who lived with Mother and child for 12 years. The boyfriend claimed Child as dependent on tax returns for several years and introduced her as his child. After separation, Child started seeing a psychologist who determined Child was experiencing adjustment disorder with mixed anxiety and depression. Trial court determined that it was in the Child's best interest to apply paternity by estoppel and require the boyfriend pay support.

Holding: Based on the fact that the boyfriend held out Child to be his own for well over a decade, together with Child's continued need for emotional and financial support, we conclude the trial court did not abuse its discretion in holding that it was in Child's best interests for the boyfriend to be liable for child support based on paternity by estoppel.

***K.E.M. v. P.C.S*, 38 A.3d 798 (Pa. 2012)**

Facts: Mother filed for support against alleged biological father. Alleged bio father filed motion to dismiss based on Mother being married to another man at the time. Mother has a DNA test done while pregnant which revealed her husband at the time was not the father. Even after finding out he was not the father, the husband continued to provide emotional and financial support for the child.

Holding: The validity of the paternity by estoppel doctrine rests "only where it can be shown, on a developed record, that it is in the best interests of the involved child.

III. Parentage by contract

Ferguson v. McKiernan, 940 A.2d 1236 (Pa. 2007)

The Supreme Court held that a sperm donor who contributed by clinical means could not be held liable for child support.

Joel McKiernan (Mr. McKiernan) and Ivonne Ferguson (Mother) were former paramours. They agreed Mr. McKiernan would use his sperm to impregnate Mother and use a clinical sperm bank for the donation. The parties verbally agreed that Mr. McKiernan's identity would remain confidential to the twins, that he would not seek visitation and Mother would not seek any support from Mr. McKiernan. Mr. McKiernan and Mother protected Mr. McKiernan's anonymity. Mother filed a Motion for Child Support against Mr. McKiernan when the twins turned five. The trial court entered a support order and the Superior Court affirmed.

The Superior Court and trial court found that the parties' verbal agreement was unenforceable because the agreement violated public policy. The Superior Court held that a parent cannot bind a child or bargain away that child's right to support.

The Supreme Court reversed the Superior Court, held that the parties entered a contract before the twins were conceived and upheld the terms of their verbal contract.

In re BABY S., 128 A. 3d 296 (Pa. Super. 2015)
The Montgomery County trial court held that S.S. and L.S. were the legal parents of Baby S. by contract, that they entered freely into a gestational carrier contract intending to be the parents of Baby S. and that J. B., the birth surrogate, had no custodial rights with respect to Baby S. The Superior Court affirmed the trial court's holdings.

S.S. and L.S. contacted Reproductive Possibilities and Tiny Treasures to begin a surrogacy process using an egg donor. The couple hired Attorney Melissa Brisman to represent them. Attorney Brisman explained to S.S., L.S. and J.B. the surrogate, that J.B. would not have any custodial rights.
J.B. was five months pregnant when S.S. and L.S. had marital differences. S.S. refused to sign any adoption paperwork. Attorney Brisman withdrew as their attorney.
J.B. gave birth to Baby S. and was listed as the mother on the birth certificate. No father was listed.
L.S. and Baby S. moved to California.

J.B. filed a Motion to Amend Petition for Assisted Conception Birth Registration and to Establish Parentage. The court granted J.B.'s Motion to Amend. S.S. filed a Response and New Matter. The Court entered an order to designate S.S. and L.S. as the legal parents of Baby S., to amend the birth certificate and held that S.S. breached the gestational carrier contract.

IV. Intent-based parentage

C.G. v. J.H., 93 A.3d 891 (Pa. 2018)

Former same-sex partner, who lived with the child for the first 5 years sued biological mother for custody as a parent and *in loco parentis* and advocated for intent-based path to establish parentage.

Trial Court found that at the time and place of the child's birth (FL 2006), same sex-marriage and second-parent adoptions were not recognized, and that the parties did not intend to conceive and raise the child together, rather CG, who had children of her own prior to this relationship, begrudgingly acquiesced to JH having a child during their relationship, and was not a parent to the child, so much as a babysitter when JH was not available. Trial Court considered post-separation conduct in making determination.

Supreme Court determined CG was not entitled to contract-based right to parentage as she was not a party to or named on any documents when JH undertook to become pregnant.
Supreme Court determined that in an *in loco parentis* analysis, post-separation conduct could be considered only insofar as it is demonstrative of pre-separation conduct, is not held against a party when the child is withheld, and a bond with the child is not dispositive. Court found CG

did not assume parental status or discharge parental duties as she was not held out as a parent, JH made all decisions regarding doctors, schooling, etc., and JH provided for child financially.

Majority Opinion did not foreclose the intent-based right to parentage but was constrained by the facts as determined by the trial court that the parties did not mutually intend for CG to be a parent.

Concurring Opinions: Opinion does not go far enough, intent-based parentage should be adopted, and is consistent with current avenues to establish parentage, however agreed that due to the trial court finding that there was no mutual intent, CG was not entitled to any rights via intent-based parentage.

***Glover v. Junior*, 2023 PA Super 261/10 EAL 2024 (*en banc* decisión 12/11/23)**

Married same-sex couple conceived child through IVF during the marriage. Non-biological party (Junior) is named on all contracts as partner or co-intended parent, and is a party to contract for payment and for the doula. Record replete with documentary evidence that the parties intended to conceive and coparent child. Biological mother (Glover) agrees parties intended to coparent, but that she changed her mind sometime during the pregnancy. Weeks before the child was due to be born, Glover filed for divorce and claimed that Junior was not the child's parent. Junior filed for a pre-birth establishment of parentage.

Junior argued the marital presumption, estoppel, contract, in loco, and intent entitled her to parentage of the child.

Trial Court found that the undisputed evidence showed that the parties had an oral agreement whereby they would conceive and raise a child as a child of them both, and that additional contracts naming both parties as intended parents were evidence of their oral agreement. Trial Court did not make a determination on any other grounds.

[Superior Court panel reversed, stating that the discontinued confirmatory second-parent adoption showed that the parties intended that only after that adoption would Junior have parental rights, despite Trial Court's factual findings. Dissenting opinion found a clear contract based right and urged High Court to adopt Intent-based parentage.]

Superior Court *en banc* unanimously affirmed. The Superior Court found a contract-based right to parentage, having established the necessary elements of a contract, [though also stated that they would affirm on equitable grounds as well in the absence of a contract] and clarified that marital presumption did not apply because the marriage was no longer intact. Superior Court majority opinion also stated that this case is the paradigm of intent-based parentage and additionally affirmed based on the application of the principles of intent-based parentage that the concurring justices highlighted in CG, as the parties evidenced their mutual intent to conceive and raise a child, and also jointly participated in the process of creating new life.

Three Judges on Superior Court joined a concurring opinion whereby they joined in the result but questioned the Superior Court's authority to adopt intent-based parentage.

The case is currently in briefing stage at Supreme Court for 3 questions (essentially):

1. Whether the Superior Court decision conflicts with CG
2. Should PA adopt intent-based parentage in context of ART
3. Did Junior have a legal right to parentage as a matter of equity

V. In loco parentis

Peters v. Costello, 586 Pa. 102

Court – Supreme Court of PA

Question Presented – Whether "non-biological grandparents" who stand *in loco parentis* to the parents of a minor child have standing to seek custody of that minor child.

Facts – Mother resided with 3rd party couple when she was a child and young adult. While residing with 3rd party couple, Mother had a child with Father (the parties were never married). That child resided with Mother and 3rd party couple for 4 years. Father then obtained primary physical custody and cut the 3rd party couple out of the child's life. The 3rd party couple filed seeking "visitation" alleging that their *in loco parentis* connection to Mother made then *de facto* grandparents to the child.

Procedural History
The Trial Court found that 3rd parties had standing. Father appealed
The Superior Court affirmed. Father appealed again.

Result
The Supreme Court affirmed. The fact that Mother was raised by 3rd party couple conferred in loco parentis status on them, which in turn gave them the right to allege standing as grandparents when seeking custody of the parties' minor child.

Important Notes related to In Loco Parentis
The term *in loco parentis* literally means "in the place of a parent." Black's Law Dictionary (7th Ed. 1991), 791

The phrase "*in loco parentis*" refers to a person who puts oneself [sic] in the situation of a lawful parent by assuming the obligations incident to the parental relationship without going through the formality of a legal adoption. The status of *in loco parentis* embodies two ideas; first, the assumption of a parental status, and, second, the discharge of parental duties. The rights and liabilities arising out of an *in loco parentis* relationship are, as the words imply, exactly the same as between parent and child. T.B. v. L.R.M., 567 Pa. 222, 786 A.2d 913, 916-17 (Pa. 2001)

The in loco parentis basis for standing recognizes that the need to guard the family from intrusions by third parties and to protect the rights of the natural parent must be tempered by the paramount need to protect the child's best interest. Thus, while it is presumed that a child's best interest is served by maintaining the family's privacy and autonomy, that presumption must give way where the child has established strong psychological bonds with a person who, although not a biological parent, has lived with the child and provided care, nurture, and affection, assuming in the child's eye a stature like that of a parent. Where such a relationship is shown, the courts recognize that the child's best interest requires that the third party be granted standing so as to have the opportunity to litigate fully the issue of whether that relationship should be maintained even over a natural parent's objections. J.A.L. v. E.P.H., 453 Pa. Super. 78, 682 A.2d 1314, 1319-20 (Pa. Super. 1996).

On the specific point at issue, however, we note that the statute does not define the term "grandparent." Notably, the term is not qualified by speaking of biological grandparents, or of biological and adoptive grandparents, or of biological and adoptive grandparents to the exclusion of others who may claim grandparental status, such as those with an *in loco parentis* relationship with one of the parents of the child. Instead, it simply speaks of grandparents (and great-grandparents).

K.W. v. S.L., 157 A.3d 498

Court – Superior Court of PA

Question Presented – Whether prospective adoptive parents can be granted in loco parentis status absent parental consent.

Facts – Mother and Father had one child together. Mother did not immediately inform Father about the child's existence. Mother placed the child up for adoption. The adoption agency placed the child and eventually located Father. Father informed the adoption agency that he did not want the child to be adopted. Both Father and the prospective adoptive family filed for custody. Father filed preliminary objections to the Complaint filed by the prospective adoptive family. The Trial Court denied Father's preliminary objections and conferred in loco parentis status on the prospective adoptive family.

Procedural History

Prospective adoptive parents filed a Complaint for Custody seeking in loco parentis status. Father filed preliminary objections. The Trial Court denied the preliminary objections. Father appealed.

Result

The Superior Court determined that Father's appeal was appropriate pursuant to the Collateral Order Doctrine. Father's claim would have been irreparably lost if the Court postponed review until the entry of a final order. The Superior Court then vacated the Trial Court Order granting prospective adoptive parents standing. Prospective adoptive parents could not be granted in loco

parentis status where Father did not consent to them attaining that status. Consent cannot be implied.

Important Notes related to In Loco Parentis

The Child Custody Act does not permit third parties to seek custody of a child contrary to the wishes of that child's parents. The Act provides several exceptions to this rule, which apply primarily to grandparents and great-grandparents. 23 Pa.C.S. § 5324(3), 23 Pa.C.S. § 5325. Unless a person seeking custody is a parent, grandparent, or great-grandparent of the child, the Act allows for standing only if that person is "in loco parentis." 23 Pa.C.S. § 5324(2).

"The term *in loco* [**15] *parentis* literally means 'in the place of a parent.'"*Peters v. Costello*, 586 Pa. 102, 891 A.2d 705, 710 [*505] (Pa. 2005) (citing Black's Law Dictionary, 791 (7th Ed. 1991)). A person stands *in loco parentis* with respect to a child when he or she "assum[es] the obligations incident to the parental relationship without going through the formality of a legal adoption. The status of *in loco parentis* embodies two ideas; first, the assumption of a parental status, and, second, the discharge of parental duties." *Id.* (quoting *T.B. v. L.R.M.*, 567 Pa. 222, 786 A.2d 913, 916-17 (Pa. 2001)). Critical to our discussion here, "*in loco parentis* status cannot be achieved without the consent and knowledge of, and in disregard of[,] the wishes of a parent." *E.W. v. T.S.*, 2007 PA Super 29, 916 A.2d 1197, 1205 (Pa. 2007) (citing *T.B.*, *supra*).

While the trial court concluded that Father gave his implied consent to Appellees' *in loco parentis* standing, our research does not reveal that this Court, or our Supreme Court, has held that consent to *in loco parentis* standing can be implied.

VI. **Statutory Definition of Parents Pending in Legislature**

- House Bill 1961
- House Bill 350

PRINTER'S NO. 2496

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1961 Session of 2024

INTRODUCED BY SANCHEZ, D. MILLER, HANBIDGE, MADDEN, PIELLI, RABB, WEBSTER, KINSEY, BURGOS, DONAHUE, HOWARD, DELLOSO AND MALAGARI, JANUARY 31, 2024

REFERRED TO COMMITTEE ON JUDICIARY, JANUARY 31, 2024

AN ACT

Amending Title 23 (Domestic Relations) of the Pennsylvania Consolidated Statutes, adding provisions relating to establishment of parent-child relationship for certain individuals; providing for voluntary acknowledgment of parentage, for registry of paternity, for genetic testing, for proceeding to adjudicate parentage, for assisted reproduction, for surrogacy agreements and for information about donors.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. Title 23 of the Pennsylvania Consolidated Statutes is amended by adding a part to read:

PART IX-A

UNIFORM PARENTAGE ACT

Chapter

91. General Provisions

92. Parent-child Relationship

93. Voluntary Acknowledgment of Parentage

94. Registry of Paternity

95. Genetic Testing

CHAPTER 91

GENERAL PROVISIONS

Sec.

§ 9101. Short title of part.

This part shall be known as the Uniform Parentage Act.

§ 9102. Definitions.

Subject to additional definitions contained in subsequent provisions of this part which are applicable to specific provisions of this part, the following words and phrases when used in this part shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"Acknowledged parent." An individual who has established a parent-child relationship under Chapter 93 (relating to voluntary acknowledgment of parentage).

"Adjudicated parent." An individual who has been adjudicated to be a parent of a child by a court with jurisdiction.

"Alleged genetic parent." An individual who is alleged to be, or alleges that the individual is, a genetic parent or

possible genetic parent of a child whose parentage has not been adjudicated. The term includes an alleged genetic father and alleged genetic mother. The term does not include:

(1) a presumed parent;

(2) an individual whose parental rights have been terminated or declared not to exist; or

(3) a donor.

"Assisted reproduction." A method of causing pregnancy other than sexual intercourse. The term includes:

(1) intrauterine or intracervical insemination;

(2) donation of gametes;

(3) donation of embryos;

(4) in vitro fertilization and transfer of embryos; and

(5) intracytoplasmic sperm injection.

"Birth." Includes stillbirth.

"Child." An individual of any age whose parentage may be determined under this part.

"Child-support agency." A government entity, public official or private agency authorized to provide parentage-establishment services under Part D of Title IV of the Social Security Act (49 Stat. 620, 42 U.S.C. § 651 et seq.).

"Determination of parentage." Establishment of a parent-child relationship by a judicial or administrative proceeding or signing of a valid acknowledgment of parentage under Chapter 93.

"Donor." An individual who provides gametes intended for use in assisted reproduction, whether or not for consideration. The term does not include:

(1) a woman who gives birth to a child conceived by assisted reproduction, except as otherwise provided in Chapter 98 (relating to surrogacy agreement); or

(2) a parent under Chapter 97 (relating to assisted reproduction) or an intended parent under Chapter 98.

"Gamete." A sperm, an egg or any part of a sperm or an egg.

"Genetic testing." An analysis of genetic markers to identify or exclude a genetic relationship.

"Individual." A natural person of any age.

"Intended parent." An individual, married or unmarried, who manifests an intent to be legally bound as a parent of a child conceived by assisted reproduction.

"Man." A male individual of any age.

"Parent." An individual who has established a parent-child relationship under section 9201 (relating to establishment of parent-child relationship).

"Parentage" or "parent-child relationship." The legal relationship between a child and a parent of the child.

"Presumed parent." An individual who, under section 9204 (relating to presumption of parentage), is presumed to be a parent of a child, unless the presumption is overcome in a judicial proceeding, a valid denial of parentage is made under Chapter 93 or a court adjudicates the individual to be a parent.

"Record." Information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

"Sign." With present intent to authenticate or adopt a record:

(1) to execute or adopt a tangible symbol; or

(2) to attach to or logically associate with the record an electronic symbol, sound or process.

"Signatory." An individual who signs a record.

"State." A state of the United States, the District of

Columbia, Puerto Rico, the United States Virgin Islands or any territory or insular possession under the jurisdiction of the United States. The term includes a federally recognized Indian tribe.

"Transfer." A procedure for assisted reproduction by which an embryo or sperm is placed in the body of a woman who will give birth to a child.

"Witnessed." At least one individual who is authorized to sign has signed a record to verify that the individual personally observed a signatory sign the record.

"Woman." A female individual of any age.

§ 9103. Scope of part.

(a) General rule.--This part applies to an adjudication or determination of parentage.

(b) Construction.--This part does not create, affect, enlarge or diminish parental rights or duties under the law of this State other than this part.

§ 9104. Authorized court.

The court may adjudicate parentage under this part.

§ 9105. Applicable law.

The court shall apply the law of this State to adjudicate parentage. The applicable law does not depend on:

(1) the place of birth of the child; or

(2) the past or present residence of the child.

§ 9106. Data privacy.

A proceeding under this part is subject to the law of this State other than this part which governs the health, safety, privacy and liberty of a child or other individual who could be affected by disclosure of information that could identify the child or other individual, including address, telephone number,

digital contact information, place of employment, Social Security number and the child's day-care facility or school.

§ 9107. Establishment of maternity and paternity.

To the extent practicable, a provision of this part applicable to a father-child relationship applies to a mother-child relationship and a provision of this part applicable to a mother-child relationship applies to a father-child relationship.

CHAPTER 92

PARENT-CHILD RELATIONSHIP

Sec.

§ 9201. Establishment of parent-child relationship.

A parent-child relationship is established between an individual and a child if:

(1) the individual gives birth to the child, except as otherwise provided in Chapter 98 (relating to surrogacy agreement);

(2) there is a presumption under section 9204 (relating to presumption of parentage) of the individual's parentage of the child, unless the presumption is overcome in a judicial proceeding or a valid denial of parentage is made under Chapter 93 (relating to voluntary acknowledgment of parentage);

(3) the individual is adjudicated a parent of the child under Chapter 96 (relating to proceeding to adjudicate parentage);

(4) the individual adopts the child;

(5) the individual acknowledges parentage of the child under Chapter 93, unless the acknowledgment is rescinded under section 9308 (relating to procedure for rescission) or successfully challenged under Chapter 93 or 96;

(6) the individual's parentage of the child is established under Chapter 97 (relating to assisted reproduction); or

(7) the individual's parentage of the child is established under Chapter 98.

§ 9202. No discrimination based on marital status of parent.

A parent-child relationship extends equally to every child and parent, regardless of the marital status of the parent.

§ 9203. Consequences of establishing parentage.

Unless parental rights are terminated, a parent-child relationship established under this part applies for all purposes, except as otherwise provided by the law of this State other than this part.

§ 9204. Presumption of parentage.

(a) General rule.--An individual is presumed to be a parent of a child if:

(1) except as otherwise provided under Chapter 98 (relating to surrogacy agreement) or the law of this State other than this part:

(i) the individual and the woman who gave birth to the child are married to each other and the child is born during the marriage, whether the marriage is or could be declared invalid;

(ii) the individual and the woman who gave birth to the child were married to each other and the child is

born not later than 300 days after the marriage is terminated by death, divorce, dissolution or annulment, whether the marriage is or could be declared invalid; or

(iii) the individual and the woman who gave birth to the child married each other after the birth of the child, whether the marriage is or could be declared invalid, the individual at any time asserted parentage of the child and:

(A) the assertion is in a record filed with the Bureau of Vital Statistics; or

(B) the individual agreed to be and is named as a parent of the child on the birth certificate of the child; or

(2) the individual resided in the same household with the child for the first two years of the life of the child, including any period of temporary absence, and openly held out the child as the individual's child.

(b) Effect of presumption of parentage.--A presumption of parentage under this section may be overcome and competing claims to parentage may be resolved only by an adjudication under Chapter 96 (relating to proceeding to adjudicate parentage) or a valid denial of parentage under Chapter 93 (relating to voluntary acknowledgment of parentage).

CHAPTER 93

VOLUNTARY ACKNOWLEDGMENT OF PARENTAGE

Sec.

9305. Effect of acknowledgment or denial of parentage.
9306. No filing fee.
9307. Ratification barred.
9308. Procedure for rescission.
9309. Challenge after expiration of period for rescission.
9310. Procedure for challenge by signatory.
9311. Full faith and credit.
9312. Forms for acknowledgment and denial of parentage.
9313. Release of information.
9314. Adoption of rules.

§ 9301. Acknowledgment of parentage.

A woman who gave birth to a child and an alleged genetic father of the child, intended parent under Chapter 97 (relating to assisted reproduction) or presumed parent may sign an acknowledgment of parentage to establish the parentage of the child.

§ 9302. Execution of acknowledgment of parentage.

(a) General rule.--An acknowledgment of parentage under section 9301 (relating to acknowledgment of parentage) must:

(1) be in a record signed by the woman who gave birth to the child and by the individual seeking to establish a parent-child relationship, and the signatures must be attested by a notarial officer or witnessed;

(2) state that the child whose parentage is being acknowledged:

(i) does not have a presumed parent other than the individual seeking to establish the parent-child relationship or has a presumed parent whose full name is stated; and

(ii) does not have another acknowledged parent,

adjudicated parent or individual who is a parent of the child under Chapter 97 (relating to assisted reproduction) or 98 (relating to surrogacy agreement) other than the woman who gave birth to the child; and

(3) state that the signatories understand that the acknowledgment is the equivalent of an adjudication of parentage of the child and that a challenge to the acknowledgment is permitted only under limited circumstances and is barred two years after the effective date of the acknowledgment.

(b) Void acknowledgment of parentage.--An acknowledgment of parentage is void if, at the time of signing:

(1) an individual other than the individual seeking to establish parentage is a presumed parent, unless a denial of parentage by the presumed parent in a signed record is filed with the Bureau of Vital Statistics; or

(2) an individual, other than the woman who gave birth to the child or the individual seeking to establish parentage, is an acknowledged or adjudicated parent or a parent under Chapter 97 or 98.

§ 9303. Denial of parentage.

A presumed parent or alleged genetic parent may sign a denial of parentage in a record. The denial of parentage is valid only if:

(1) an acknowledgment of parentage by another individual is filed under section 9305 (relating to effect of acknowledgment or denial of parentage);

(2) the signature of the presumed parent or alleged genetic parent is attested by a notarial officer or witnessed; and

(3) the presumed parent or alleged genetic parent has not previously:

(i) completed a valid acknowledgment of parentage, unless the previous acknowledgment was rescinded under section 9308 (relating to procedure for rescission) or challenged successfully under section 9309 (relating to challenge after expiration of period for rescission); or

(ii) been adjudicated to be a parent of the child.

§ 9304. Rules for acknowledgment or denial or parentage.

(a) General rule.--An acknowledgment of parentage and a denial of parentage may be contained in a single document or may be in counterparts and may be filed with the Bureau of Vital Statistics separately or simultaneously. If filing of the acknowledgment and denial both are required under this part, neither is effective until both are filed.

(b) Time period for signing.--An acknowledgment of parentage or denial of parentage may be signed before or after the birth of the child.

(c) Effective date.--Subject to subsection (a), an acknowledgment of parentage or denial of parentage takes effect on the birth of the child or filing of the document with the Bureau of Vital Statistics, whichever occurs later.

(d) Validity.--An acknowledgment of parentage or denial of parentage signed by a minor is valid if the acknowledgment complies with this part.

§ 9305. Effect of acknowledgment or denial of parentage.

(a) Acknowledgment of parentage.--Except as otherwise provided in sections 9308 (relating to procedure for rescission) and 9309 (relating to challenge after expiration of period for rescission), an acknowledgment of parentage that complies with

this chapter and is filed with the Bureau of Vital Statistics is equivalent to an adjudication of parentage of the child and confers on the acknowledged parent all rights and duties of a parent.

(b) Denial of parentage.--Except as otherwise provided in sections 9308 and 9309, a denial of parentage by a presumed parent or alleged genetic parent which complies with this chapter and is filed with the Bureau of Vital Statistics with an acknowledgment of parentage that complies with this chapter is equivalent to an adjudication of the nonparentage of the presumed parent or alleged genetic parent and discharges the presumed parent or alleged genetic parent from all rights and duties of a parent.

§ 9306. No filing fee.

The Bureau of Vital Statistics may not charge a fee for filing an acknowledgment of parentage or denial of parentage.

§ 9307. Ratification barred.

A court conducting a judicial proceeding or an administrative agency conducting an administrative proceeding is not required or permitted to ratify an unchallenged acknowledgment of parentage.

§ 9308. Procedure for rescission.

(a) General rule.--A signatory may rescind an acknowledgment of parentage or denial of parentage by filing with the Bureau of Vital Statistics a rescission in a signed record which is attested by a notarial officer or witnessed before the earlier of:

(1) sixty days after the effective date under section 9304 (relating to rules for acknowledgment or denial of parentage) of the acknowledgment or denial; or

(2) the date of the first hearing before a court in a proceeding, to which the signatory is a party, to adjudicate an issue relating to the child, including a proceeding that establishes support.

(b) Associated denial of parentage.--If an acknowledgment of parentage is rescinded under subsection (a), an associated denial of parentage is invalid, and the Bureau of Vital Statistics shall notify the woman who gave birth to the child and the individual who signed a denial of parentage of the child that the acknowledgment has been rescinded. Failure to give the notice required by this subsection does not affect the validity of the rescission.

§ 9309. Challenge after expiration of period for rescission.

(a) Signatories.--After the period for rescission under section 9308 (relating to procedure for rescission) expires, but not later than two years after the effective date under section 9304 (relating to rules for acknowledgment or denial of parentage) of an acknowledgment of parentage or denial of parentage, a signatory of the acknowledgment or denial may commence a proceeding to challenge the acknowledgment or denial, including a challenge brought under section 9614 (relating to precluding establishment of parentage by perpetrator of sexual assault), only on the basis of fraud, duress or material mistake of fact.

(b) Nonsignatories.--A challenge to an acknowledgment of parentage or denial of parentage by an individual who was not a signatory to the acknowledgment or denial is governed by section 9310 (relating to procedure for challenge by signatory).

§ 9310. Procedure for challenge by signatory.

(a) Parties.--Every signatory to an acknowledgment of

parentage and any related denial of parentage must be made a party to a proceeding to challenge the acknowledgment or denial.

(b) Personal jurisdiction.--By signing an acknowledgment of parentage or denial of parentage, a signatory submits to personal jurisdiction in this State in a proceeding to challenge the acknowledgment or denial, effective on the filing of the acknowledgment or denial with the Bureau of Vital Statistics.

(c) Suspension of legal responsibilities.--The court may not suspend the legal responsibilities arising from an acknowledgment of parentage, including the duty to pay child support, during the pendency of a proceeding to challenge the acknowledgment or a related denial of parentage, unless the party challenging the acknowledgment or denial shows good cause.

(d) Burden of proof.--A party challenging an acknowledgment of parentage or denial of parentage has the burden of proof.

(e) Order to amend birth record.--If the court determines that a party has satisfied the burden of proof under subsection (d), the court shall order the Bureau of Vital Statistics to amend the birth record of the child to reflect the legal parentage of the child.

(f) Conduct of proceedings.--A proceeding to challenge an acknowledgment of parentage or denial of parentage must be conducted under Chapter 96 (relating to proceeding to adjudicate parentage).

§ 9311. Full faith and credit.

The court shall give full faith and credit to an acknowledgment of parentage or denial of parentage effective in another state if the acknowledgment or denial is in a signed record and otherwise complies with the law of the other state.

§ 9312. Forms for acknowledgment and denial of parentage.

(a) Duty to prescribe forms.--The Bureau of Vital Statistics shall prescribe forms for an acknowledgment of parentage and denial of parentage.

(b) Effect of later modification.--A valid acknowledgment of parentage or denial of parentage is not affected by a later modification of the form under subsection (a).

§ 9313. Release of information.

The Bureau of Vital Statistics may release information relating to an acknowledgment of parentage or denial of parentage to a signatory of the acknowledgment or denial, court, Federal agency and child-support agency of this or another state.

§ 9314. Adoption of rules.

The Bureau of Vital Statistics may adopt rules to implement this chapter.

CHAPTER 94

REGISTRY OF PATERNITY

Subchapter

A. General Provisions

B. Operation of Registry

C. Search of Registry

SUBCHAPTER A

GENERAL PROVISIONS

Sec.

of age.

§ 9401. Establishment of registry.

A registry of paternity is established in the Department of Health.

§ 9402. Registration for notification.

(a) General rule.--Except as otherwise provided in subsection (b) or section 9405 (relating to termination of parental rights: child at least one year of age), a man who desires to be notified of a proceeding for adoption of or termination of parental rights regarding his genetic child must register in the registry of paternity established by section 9401 (relating to establishment of registry) before the birth of the child or not later than 30 days after the birth.

(b) Exemption from registry.--A man is not required to register under subsection (a) if:

(1) a parent-child relationship between the man and the child has been established under this part or the law of this State other than this part; or

(2) the man commences a proceeding to adjudicate his parentage before a court has terminated his parental rights.

(c) Duty to notify registry of changes.--A man who registers under subsection (a) shall notify the registry promptly in a record of any change in the information registered. The Department of Health shall incorporate new information received into its records but need not seek to obtain current information for incorporation in the registry.

§ 9403. Notice of proceeding.

An individual who seeks to adopt a child or terminate parental rights to the child shall give notice of the proceeding to a man who has registered timely under section 9402(a)

(relating to registration for notification) regarding the child. Notice must be given in a manner prescribed for service of process in a civil proceeding in this State.

§ 9404. Termination of parental rights: child under one year of age.

An individual who seeks to adopt or terminate parental rights to a child is not required to give notice of the proceeding to a man who may be the genetic father of the child if:

(1) the child is under one year of age at the time of the termination of parental rights;

(2) the man did not register timely under section 9402(a) (relating to registration for notification); and

(3) the man is not exempt from registration under section 9402(b).

§ 9405. Termination of parental rights: child at least one year of age.

If a child is at least one year of age, an individual seeking to adopt or terminate parental rights to the child shall give notice of the proceeding to each alleged genetic father of the child, whether or not he has registered under section 9402(a) (relating to registration for notification), unless his parental rights have already been terminated. Notice must be given in a manner prescribed for service of process in a civil proceeding in this State.

SUBCHAPTER B

OPERATION OF REGISTRY

Sec.

9409. Rescission of registration.
9410. Untimely registration.
9411. Fees for registry.
§ 9406. Required form.
(a) Contents.--The Department of Health shall prescribe a form for registering under section 9402(a) (relating to registration for notification). The form must state that:
(1) the man who registers signs the form under penalty of perjury;
(2) timely registration entitles the man who registers to notice of a proceeding for adoption of the child or termination of the parental rights of the man;
(3) timely registration does not commence a proceeding to establish parentage;
(4) the information disclosed on the form may be used against the man who registers to establish parentage;
(5) services to assist in establishing parentage are available to the man who registers through a domestic relations section of a court or the Department of Health;
(6) the man who registers also may register in a registry of paternity in another state if conception or birth of the child occurred in the other state;
(7) information on registries of paternity of other states is available from the Department of Health; and
(8) procedures exist to rescind the registration.
(b) Penalty.--A man who registers under section 9402(a) shall sign the form described in subsection (a) under penalty of perjury.
§ 9407. Furnishing information; confidentiality.
(a) Duty of Department of Health.--The Department of Health

is not required to seek to locate the woman who gave birth to the child who is the subject of a registration under section 9402(a) (relating to registration for notification), but the Department of Health shall give notice of the registration to the woman if the Department of Health has her address.

(b) Access to confidential information.--Information contained in the registry of paternity established by section 9401 (relating to establishment of registry) is confidential and may be released on request only to:

(1) a court or individual designated by the court;

(2) the woman who gave birth to the child who is the subject of the registration;

(3) an agency authorized by Federal law, the law of this State other than this part or the law of another state to receive the information;

(4) a licensed child-placing agency;

(5) a child-support agency;

(6) a party or the party's attorney of record in a proceeding under this part or in a proceeding to adopt or terminate parental rights to the child who is the subject of the registration; and

(7) a registry of paternity in another state.

§ 9408. Penalty for releasing information.

An individual who intentionally releases information from the registry of paternity established by section 9401 (relating to establishment of registry) to an individual or agency not authorized under section 9407(b) (relating to furnishing information; confidentiality) to receive the information commits a misdemeanor of the third degree.

§ 9409. Rescission of registration.

A man who registers under section 9402(a) (relating to registration for notification) may rescind his registration at any time by filing with the registry of paternity established by section 9401 (relating to establishment of registry) a rescission in a signed record that is attested by a notarial officer or witnessed.

§ 9410. Untimely registration.

If a man registers under section 9402(a) (relating to registration for notification) more than 30 days after the birth of the child, the Department of Health shall notify the man who registers that, based on a review of the registration, the registration was not filed timely.

§ 9411. Fees for registry.

(a) Registration fee prohibited.--The Department of Health may not charge a fee for filing a registration under section 9402(a) (relating to registration for notification) or rescission of registration under section 9409 (relating to rescission of registration).

(b) Search and certification fees permitted.--Except as otherwise provided in subsection (c), the Department of Health may charge a reasonable fee to search the registry of paternity established by section 9401 (relating to establishment of registry) and for furnishing a certificate of search under section 9414 (relating to certificate of search of registry).

(c) Exemption.--The domestic relations section of a court is not required to pay a fee authorized by subsection (b).

SUBCHAPTER C

SEARCH OF REGISTRY

Sec.

9412. Child born through assisted reproduction: search of

registry inapplicable.

9413. Search of appropriate registry.

9414. Certificate of search of registry.

9415. Admissibility of registered information.

§ 9412. Child born through assisted reproduction: search of registry inapplicable.

This subchapter does not apply to a child born through assisted reproduction.

§ 9413. Search of appropriate registry.

If a parent-child relationship has not been established under this part between a child who is under one year of age and an individual other than the woman who gave birth to the child:

(1) an individual seeking to adopt or terminate parental rights to the child shall obtain a certificate of search under section 9414 (relating to certificate of search of registry) to determine if a registration has been filed in the registry of paternity established by section 9401 (relating to establishment of registry) regarding the child; and

(2) if the individual has reason to believe that conception or birth of the child may have occurred in another state, the individual shall obtain a certificate of search from the registry of paternity, if any, in that state.

§ 9414. Certificate of search of registry.

(a) Duty to furnish.--The Department of Health shall furnish a certificate of search of the registry of paternity established by section 9401 (relating to establishment of registry) on request to an individual, court or agency identified in section 9407(b) (relating to furnishing information; confidentiality) or an individual required under section 9413(1) (relating to search

of appropriate registry) to obtain a certificate.

(b) Contents of certificate.--A certificate furnished under subsection (a):

(1) must be signed on behalf of the Department of Health and state that:

(i) a search has been made of the registry; and

(ii) a registration under section 9402(a) (relating to registration for notification) containing the information required to identify the man who registers:

(A) has been found; or

(B) has not been found; and

(2) if paragraph (1)(ii)(A) applies, must have a copy of the registration attached.

(c) Individuals required to file certificate.--An individual seeking to adopt or terminate parental rights to a child must file with the court the certificate of search furnished under subsection (a) and section 9413(2) (relating to search of appropriate registry), if applicable, before a proceeding to adopt or terminate parental rights to the child may be concluded.

§ 9415. Admissibility of registered information.

A certificate of search of a registry of paternity in this State or another state is admissible in a proceeding for adoption or termination of parental rights to a child and, if relevant, in other legal proceedings.

CHAPTER 95

GENETIC TESTING

Sec.

9503. Authority to order or deny genetic testing.
9504. Requirements for genetic testing.
9505. Report of genetic testing.
9506. Genetic testing results; challenge to results.
9507. Cost of genetic testing.
9508. Additional genetic testing.
9509. Genetic testing when specimen not available.
9510. Deceased individual.
9511. Identical siblings.
9512. Confidentiality of genetic testing.
§ 9501. Definitions.

The following words and phrases when used in this chapter shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"Combined relationship index." The product of all tested relationship indices.

"Ethnic or racial group." For the purpose of genetic testing, a recognized group that an individual identifies as the individual's ancestry or part of the ancestry or that is identified by other information.

"Hypothesized genetic relationship." An asserted genetic relationship between an individual and a child.

"Probability of parentage." For the ethnic or racial group to which an individual alleged to be a parent belongs, the probability that a hypothesized genetic relationship is supported, compared to the probability that a genetic relationship is supported between the child and a random individual of the ethnic or racial group used in the hypothesized genetic relationship, expressed as a percentage incorporating the combined relationship index and a prior

probability.

"Relationship index." A likelihood ratio that compares the probability of a genetic marker given a hypothesized genetic relationship and the probability of the genetic marker given a genetic relationship between the child and a random individual of the ethnic or racial group used in the hypothesized genetic relationship.

§ 9502. Scope of chapter; limitation on use of genetic testing.

(a) General rule.--This chapter governs genetic testing of an individual in a proceeding to adjudicate parentage, whether the individual:

(1) voluntarily submits to testing; or

(2) is tested under an order of the court or a child-support agency.

(b) Prohibited uses.--Genetic testing may not be used:

(1) to challenge the parentage of an individual who is a parent under Chapter 97 (relating to assisted reproduction) or 98 (relating to surrogacy agreement); or

(2) to establish the parentage of an individual who is a donor.

§ 9503. Authority to order or deny genetic testing.

(a) General rule.--Except as otherwise provided in this chapter or Chapter 96 (relating to proceeding to adjudicate parentage), in a proceeding under this part to determine parentage, the court shall order the child and any other individual to submit to genetic testing if a request for testing is supported by the sworn statement of a party:

(1) alleging a reasonable possibility that the individual is the child's genetic parent; or

(2) denying genetic parentage of the child and stating

facts establishing a reasonable possibility that the individual is not a genetic parent.

(b) When permitted.--The domestic relations section of a court may order genetic testing only if there is no presumed, acknowledged or adjudicated parent of a child other than the woman who gave birth to the child.

(c) In utero genetic testing prohibited.--The court or child-support agency may not order in utero genetic testing.

(d) Multiple individuals.--If two or more individuals are subject to court-ordered genetic testing, the court may order that testing be completed concurrently or sequentially.

(e) Women subject to genetic testing.--Genetic testing of a woman who gave birth to a child is not a condition precedent to testing of the child and an individual whose genetic parentage of the child is being determined. If the woman is unavailable or declines to submit to genetic testing, the court may order genetic testing of the child and each individual whose genetic parentage of the child is being adjudicated.

(f) Discretion to deny motion.--In a proceeding to adjudicate the parentage of a child having a presumed parent or an individual who claims to be a parent under section 9609 (relating to adjudicating claim of de facto parentage of child), or to challenge an acknowledgment of parentage, the court may deny a motion for genetic testing of the child and any other individual after considering the factors in section 9613(a) and (b) (relating to adjudicating competing claims of parentage).

(g) Conditions requiring denial of motion.--If an individual requesting genetic testing is barred under Chapter 96 from establishing the individual's parentage, the court shall deny the request for genetic testing.

(h) Enforcement.--An order under this section for genetic testing is enforceable by contempt.

§ 9504. Requirements for genetic testing.

(a) Types authorized.--Genetic testing must be of a type reasonably relied on by experts in the field of genetic testing and performed in a testing laboratory accredited by:

(1) the AABB, formerly known as the American Association of Blood Banks, or a successor to its functions; or

(2) an accrediting body designated by the Secretary of the United States Department of Health and Human Services.

(b) Specimens.--A specimen used in genetic testing may consist of a sample or a combination of samples of blood, buccal cells, bone, hair or other body tissue or fluid. The specimen used in the testing need not be of the same kind for each individual undergoing genetic testing.

(c) Calculation of relationship index.--Based on the ethnic or racial group of an individual undergoing genetic testing, a testing laboratory shall determine the databases from which to select frequencies for use in calculating a relationship index. If an individual or a child-support agency objects to the laboratory's choice, the following rules apply:

(1) Not later than 30 days after receipt of the report of the test, the objecting individual or child-support agency may request the court to require the laboratory to recalculate the relationship index using an ethnic or racial group different from that used by the laboratory.

(2) The individual or the child-support agency objecting to the laboratory's choice under this subsection shall:

(i) if the requested frequencies are not available to the laboratory for the ethnic or racial group

requested, provide the requested frequencies compiled in a manner recognized by accrediting bodies; or

(ii) engage another laboratory to perform the calculations.

(3) The laboratory may use its own statistical estimate if there is a question of which ethnic or racial group is appropriate. The laboratory shall calculate the frequencies using statistics, if available, for any other ethnic or racial group requested.

(d) Discretion to require additional genetic testing.--If, after recalculation of the relationship index under subsection (c) using a different ethnic or racial group, genetic testing under section 9506 (relating to genetic testing results; challenge to results) does not identify an individual as a genetic parent of a child, the court may require an individual who has been tested to submit to additional genetic testing to identify a genetic parent.

§ 9505. Report of genetic testing.

(a) Requirements.--A report of genetic testing must be in a record and signed under penalty of perjury by a designee of the testing laboratory. A report complying with the requirements of this chapter is self-authenticating.

(b) Admissibility of documentation.--Documentation from a testing laboratory of the following information is sufficient to establish a reliable chain of custody and allow the results of genetic testing to be admissible without testimony:

(1) the name and photograph of each individual whose specimen has been taken;

(2) the name of the individual who collected each specimen;

(3) the place and date each specimen was collected;

(4) the name of the individual who received each specimen in the testing laboratory; and

(5) the date each specimen was received.

§ 9506. Genetic testing results; challenge to results.

(a) General rule.--Subject to a challenge under subsection (b), an individual is identified under this part as a genetic parent of a child if genetic testing complies with this chapter and the results of the testing disclose:

(1) that the individual has at least a 99% probability of parentage, using a prior probability of 0.50, as calculated by using the combined relationship index obtained in the testing; and

(2) a combined relationship index of at least 100 to 1.

(b) When challenge permitted.--An individual identified under subsection (a) as a genetic parent of the child may challenge the genetic testing results only by other genetic testing satisfying the requirements of this chapter which:

(1) excludes the individual as a genetic parent of the child; or

(2) identifies another individual as a possible genetic parent of the child other than:

(i) the woman who gave birth to the child; or

(ii) the individual identified under subsection (a).

(c) Discretion to require further genetic testing.--Except as otherwise provided in section 9511 (relating to identical siblings), if more than one individual other than the woman who gave birth is identified by genetic testing as a possible genetic parent of the child, the court shall order each individual to submit to further genetic testing to identify a

genetic parent.

§ 9507. Cost of genetic testing.

(a) General rule.--Subject to assessment of fees under Chapter 96 (relating to proceeding to adjudicate parentage), payment of the cost of initial genetic testing must be made in advance:

(1) by a child-support agency in a proceeding in which the domestic relations section of a court provides services;

(2) by the individual who made the request for genetic testing;

(3) as agreed by the parties; or

(4) as ordered by the court.

(b) Reimbursement authorized.--If the cost of genetic testing is paid by the domestic relations section of a court, the domestic relations section may seek reimbursement from the genetic parent whose parent-child relationship is established.

§ 9508. Additional genetic testing.

The court or domestic relations section of a court shall order additional genetic testing on request of an individual who contests the result of the initial testing under section 9506 (relating to genetic testing results; challenge to results). If initial genetic testing under section 9506 identifies an individual as a genetic parent of the child, the court or agency may not order additional testing unless the contesting individual pays for the testing in advance.

§ 9509. Genetic testing when specimen not available.

(a) Individuals subject to.--Subject to subsection (b), if a genetic testing specimen is not available from an alleged genetic parent of a child, an individual seeking genetic testing demonstrates good cause and the court finds that the

circumstances are just, the court may order any of the following individuals to submit specimens for genetic testing:

(1) a parent of the alleged genetic parent;

(2) a sibling of the alleged genetic parent;

(3) another child of the alleged genetic parent and the woman who gave birth to the other child; and

(4) another relative of the alleged genetic parent necessary to complete genetic testing.

(b) Balancing test.--To issue an order under this section, the court must find that a need for genetic testing outweighs the legitimate interests of the individual sought to be tested.

§ 9510. Deceased individual.

If an individual seeking genetic testing demonstrates good cause, the court may order genetic testing of a deceased individual.

§ 9511. Identical siblings.

(a) General rule.--If the court finds there is reason to believe that an alleged genetic parent has an identical sibling and evidence that the sibling may be a genetic parent of the child, the court may order genetic testing of the sibling.

(b) Nongenetic evidence.--If more than one sibling is identified under section 9506 (relating to genetic testing results; challenge to results) as a genetic parent of the child, the court may rely on nongenetic evidence to adjudicate which sibling is a genetic parent of the child.

§ 9512. Confidentiality of genetic testing.

(a) General rule.--Release of a report of genetic testing for parentage is controlled by the law of this State other than this part.

(b) Penalty.--An individual who intentionally releases an

identifiable specimen of another individual collected for genetic testing under this chapter for a purpose not relevant to a proceeding regarding parentage, without a court order or written permission of the individual who furnished the specimen, commits a misdemeanor of the third degree.

CHAPTER 96

PROCEEDING TO ADJUDICATE PARENTAGE

Subchapter

SUBCHAPTER A

NATURE OF PROCEEDING

Sec.

§ 9601. Proceeding authorized.

(a) General rule.--A proceeding may be commenced to adjudicate the parentage of a child. Except as otherwise provided in this part, the proceeding is governed by the Pennsylvania Rules of Civil Procedure.

(b) Exception.--A proceeding to adjudicate the parentage of a child born under a surrogacy agreement is governed by Chapter 98 (relating to surrogacy agreement).

§ 9602. Standing to maintain proceeding.

Except as otherwise provided in Chapter 93 (relating to voluntary acknowledgment of parentage) and sections 9608

(relating to adjudicating parentage of child with presumed parent), 9609 (relating to adjudicating claim of de facto parentage of child), 9610 (relating to adjudicating parentage of child with acknowledged parent) and 9611 (relating to adjudicating parentage of child with adjudicated parent), a proceeding to adjudicate parentage may be maintained by:

(1) the child;

(2) the woman who gave birth to the child, unless a court has adjudicated that she is not a parent;

(3) an individual who is a parent under this part;

(4) an individual whose parentage of the child is to be adjudicated;

(5) the domestic relations section of a court;

(6) an adoption agency authorized by the law of this State other than this part or a licensed child-placement agency; or

(7) a representative authorized by the law of this State other than this part to act for an individual who otherwise would be entitled to maintain a proceeding but is deceased, incapacitated or a minor.

§ 9603. Notice of proceeding.

(a) Individuals entitled to notice.--The petitioner shall give notice of a proceeding to adjudicate parentage to the following individuals:

(1) the woman who gave birth to the child, unless a court has adjudicated that she is not a parent;

(2) an individual who is a parent of the child under this part;

(3) a presumed, acknowledged or adjudicated parent of the child; and

(4) an individual whose parentage of the child will be adjudicated.

(b) Right to intervene.--An individual entitled to notice under subsection (a) has a right to intervene in the proceeding.

(c) Effect of lack of notice.--Lack of notice required by subsection (a) does not render a judgment void. Lack of notice does not preclude an individual entitled to notice under subsection (a) from bringing a proceeding under section 9611(b) (relating to adjudicating parentage of child with adjudicated parent).

§ 9604. Personal jurisdiction.

(a) General rule.--The court may adjudicate an individual's parentage of a child only if the court has personal jurisdiction over the individual.

(b) Nonresidents, guardians and conservators.--A court of this State with jurisdiction to adjudicate parentage may exercise personal jurisdiction over a nonresident individual, or the guardian or conservator of the individual, if the conditions prescribed in section 7201 (relating to bases for jurisdiction over nonresident) are satisfied.

(c) Multiple individuals.--Lack of jurisdiction over one individual does not preclude the court from making an adjudication of parentage binding on another individual.

§ 9605. Venue.

Venue for a proceeding to adjudicate parentage is in the county of this State in which:

(1) the child resides or is located;

(2) if the child does not reside in this State, the respondent resides or is located; or

(3) a proceeding has been commenced for administration

of the estate of an individual who is or may be a parent under this part.

SUBCHAPTER B

SPECIAL RULES FOR PROCEEDING TO ADJUDICATE PARENTAGE

Sec.

§ 9606. Admissibility of results of genetic testing.

(a) General rule.--Except as otherwise provided in section 9502(b) (relating to scope of chapter; limitation on use of genetic testing), the court shall admit a report of genetic testing ordered by the court under section 9503 (relating to authority to order or deny genetic testing) as evidence of the truth of the facts asserted in the report.

(b) Objection.--A party may object to the admission of a report described in subsection (a) not later than 14 days after the party receives the report. The party shall cite specific grounds for exclusion.

(c) Expert testimony.--A party that objects to the results of genetic testing may call a genetic testing expert to testify in person or by another method approved by the court. Unless the

court orders otherwise, the party offering the testimony bears the expense for the expert testifying.

(d) Factors not affecting admissibility.--Admissibility of a report of genetic testing is not affected by whether the testing was performed:

(1) voluntarily or under an order of the court or the domestic relations section of a court; or

(2) before, on or after commencement of the proceeding.

§ 9607. Adjudicating parentage of child with alleged genetic parent.

(a) General rule.--A proceeding to determine whether an alleged genetic parent who is not a presumed parent is a parent of a child may be commenced:

(1) before the child becomes an adult; or

(2) after the child becomes an adult, but only if the child initiates the proceeding.

(b) Woman who gave birth with sole claim.--Except as otherwise provided in section 9614 (relating to precluding establishment of parentage by perpetrator of sexual assault), this subsection applies in a proceeding described in subsection (a) if the woman who gave birth to the child is the only other individual with a claim to parentage of the child. The court shall adjudicate an alleged genetic parent to be a parent of the child if the alleged genetic parent:

(1) is identified under section 9506 (relating to genetic testing results; challenge to results) as a genetic parent of the child and the identification is not successfully challenged under section 9506;

(2) admits parentage in a pleading, when making an appearance or during a hearing, the court accepts the

admission, and the court determines the alleged genetic parent to be a parent of the child;

(3) declines to submit to genetic testing ordered by the court or a child-support agency, in which case the court may adjudicate the alleged genetic parent to be a parent of the child even if the alleged genetic parent denies a genetic relationship with the child;

(4) is in default after service of process and the court determines the alleged genetic parent to be a parent of the child; or

(5) is neither identified nor excluded as a genetic parent by genetic testing and, based on other evidence, the court determines the alleged genetic parent to be a parent of the child.

(c) Multiple individuals with claims.--Except as otherwise provided in section 9614 and subject to other limitations in this chapter, if in a proceeding involving an alleged genetic parent at least one other individual in addition to the woman who gave birth to the child has a claim to parentage of the child, the court shall adjudicate parentage under section 9613 (relating to adjudicating competing claims of parentage).

§ 9608. Adjudicating parentage of child with presumed parent.

(a) Time period for commencing.--A proceeding to determine whether a presumed parent is a parent of a child may be commenced:

(1) before the child becomes an adult; or

(2) after the child becomes an adult, but only if the child initiates the proceeding.

(b) Effect of presumption of parentage.--A presumption of parentage under section 9204 (relating to presumption of

parentage) cannot be overcome after the child attains two years of age unless the court determines:

(1) that the presumed parent is not a genetic parent, never resided with the child and never held out the child as the presumed parent's child; or

(2) the child has more than one presumed parent.

(c) Woman who gave birth with sole claim.--Except as otherwise provided in section 9614 (relating to precluding establishment of parentage by perpetrator of sexual assault), the following rules apply in a proceeding to adjudicate a presumed parent's parentage of a child if the woman who gave birth to the child is the only other individual with a claim to parentage of the child:

(1) If no party to the proceeding challenges the presumed parent's parentage of the child, the court shall adjudicate the presumed parent to be a parent of the child.

(2) If the presumed parent is identified under section 9506 (relating to genetic testing results; challenge to results) as a genetic parent of the child and that identification is not successfully challenged under section 9506, the court shall adjudicate the presumed parent to be a parent of the child.

(3) If the presumed parent is not identified under section 9506 as a genetic parent of the child and the presumed parent or the woman who gave birth to the child challenges the presumed parent's parentage of the child, the court shall adjudicate the parentage of the child in the best interest of the child based on the factors under section 9613(a) and (b) (relating to adjudicating competing claims of parentage).

(d) Multiple individuals with claims.--Except as otherwise provided in section 9614 and subject to other limitations in this chapter, if in a proceeding to adjudicate a presumed parent's parentage of a child another individual in addition to the woman who gave birth to the child asserts a claim to parentage of the child, the court shall adjudicate parentage under section 9613.

§ 9609. Adjudicating claim of de facto parentage of child.

(a) Individuals entitled to commence proceeding.--A proceeding to establish parentage of a child under this section may be commenced only by an individual who:

(1) is alive when the proceeding is commenced; and

(2) claims to be a de facto parent of the child.

(b) Time period for commencing.--An individual who claims to be a de facto parent of a child must commence a proceeding to establish parentage of a child under this section:

(1) before the child attains 18 years of age; and

(2) while the child is alive.

(c) Standing.--The following rules govern standing of an individual who claims to be a de facto parent of a child to maintain a proceeding under this section:

(1) The individual must file an initial verified pleading alleging specific facts that support the claim to parentage of the child asserted under this section. The verified pleading must be served on all parents and legal guardians of the child and any other party to the proceeding.

(2) An adverse party, parent or legal guardian may file a pleading in response to the pleading filed under paragraph (1). A responsive pleading must be verified and must be served on parties to the proceeding.

(3) Unless the court finds a hearing is necessary to determine disputed facts material to the issue of standing, the court shall determine, based on the pleadings under paragraphs (1) and (2), whether the individual has alleged facts sufficient to satisfy by a preponderance of the evidence the requirements of subsection (d). If the court holds a hearing under this subsection, the hearing must be held on an expedited basis.

(d) Individual with sole claim.--In a proceeding to adjudicate parentage of an individual who claims to be a de facto parent of the child, if there is only one other individual who is a parent or has a claim to parentage of the child, the court shall adjudicate the individual who claims to be a de facto parent to be a parent of the child if the individual demonstrates by clear and convincing evidence that:

(1) the individual resided with the child as a regular member of the child's household for a significant period;

(2) the individual engaged in consistent caretaking of the child;

(3) the individual undertook full and permanent responsibilities of a parent of the child without expectation of financial compensation;

(4) the individual held out the child as the individual's child;

(5) the individual established a bonded and dependent relationship with the child which is parental in nature;

(6) another parent of the child fostered or supported the bonded and dependent relationship required under paragraph (5); and

(7) continuing the relationship between the individual

and the child is in the best interest of the child.

(e) Multiple individuals with claims.--Subject to other limitations in this chapter, if in a proceeding to adjudicate parentage of an individual who claims to be a de facto parent of the child there is more than one other individual who is a parent or has a claim to parentage of the child and the court determines that the requirements of subsection (d) are satisfied, the court shall adjudicate parentage under section 9613 (relating to adjudicating competing claims of parentage).

§ 9610. Adjudicating parentage of child with acknowledged parent.

(a) General rule.--If a child has an acknowledged parent, a proceeding to challenge the acknowledgment of parentage or a denial of parentage brought by a signatory to the acknowledgment or denial is governed by sections 9309 (relating to challenge after expiration of period for rescission) and 9310 (relating to procedure for challenge by signatory).

(b) Procedure.--If a child has an acknowledged parent, the following rules apply in a proceeding to challenge the acknowledgment of parentage or a denial of parentage brought by an individual, other than the child, who has standing under section 9602 (relating to standing to maintain proceeding) and was not a signatory to the acknowledgment or denial:

(1) The individual must commence the proceeding not later than two years after the effective date of the acknowledgment.

(2) The court may permit the proceeding only if the court finds that permitting the proceeding is in the best interest of the child.

(3) If the court permits the proceeding, the court shall

adjudicate parentage under section 9613 (relating to adjudicating competing claims of parentage).

§ 9611. Adjudicating parentage of child with adjudicated parent.

(a) General rule.--If a child has an adjudicated parent, a proceeding to challenge the adjudication, brought by an individual who was a party to the adjudication or received notice under section 9603 (relating to notice of proceeding), is governed by the rules governing a collateral attack on a judgment.

(b) Procedure.--If a child has an adjudicated parent, the following rules apply to a proceeding to challenge the adjudication of parentage brought by an individual other than the child who has standing under section 9602 (relating to standing to maintain proceeding) and was not a party to the adjudication and did not receive notice under section 9603:

(1) The individual must commence the proceeding not later than two years after the effective date of the adjudication.

(2) The court may permit the proceeding only if the court finds that permitting the proceeding is in the best interest of the child.

(3) If the court permits the proceeding, the court shall adjudicate parentage under section 9613 (relating to adjudicating competing claims of parentage).

§ 9612. Adjudicating parentage of child of assisted reproduction.

(a) General rule.--An individual who is a parent under Chapter 97 (relating to assisted reproduction) or the woman who gave birth to the child may bring a proceeding to adjudicate

parentage. If the court determines that the individual is a parent under Chapter 97, the court shall adjudicate the individual to be a parent of the child.

(b) Multiple individuals with claims.--In a proceeding to adjudicate an individual's parentage of a child, if another individual other than the woman who gave birth to the child is a parent under Chapter 97, the court shall adjudicate the individual's parentage of the child under section 9613 (relating to adjudicating competing claims of parentage).

§ 9613. Adjudicating competing claims of parentage.

(a) General rule.--Except as otherwise provided in section 9614 (relating to precluding establishment of parentage by perpetrator of sexual assault), in a proceeding to adjudicate competing claims of, or challenges under sections 9608(c) (relating to adjudicating parentage of child with presumed parent), 9610 (relating to adjudicating parentage of child with acknowledged parent) or 9611 (relating to adjudicating parentage of child with adjudicated parent) to parentage of a child by two or more individuals, the court shall adjudicate parentage in the best interest of the child, based on:

(1) the age of the child;

(2) the length of time during which each individual assumed the role of parent of the child;

(3) the nature of the relationship between the child and each individual;

(4) the harm to the child if the relationship between the child and each individual is not recognized;

(5) the basis for each individual's claim to parentage of the child; and

(6) other equitable factors arising from the disruption

of the relationship between the child and each individual or the likelihood of other harm to the child.

(b) Factors to be considered.--If an individual challenges parentage based on the results of genetic testing, in addition to the factors listed in subsection (a), the court shall consider:

(1) the facts surrounding the discovery that the individual might not be a genetic parent of the child; and

(2) the length of time between the time that the individual was placed on notice that the individual might not be a genetic parent and the commencement of the proceeding.

(c) Adjudication of more than two parents.--The court may adjudicate a child to have more than two parents under this part if the court finds that failure to recognize more than two parents would be detrimental to the child. A finding of detriment to the child does not require a finding of unfitness of any parent or individual seeking an adjudication of parentage. In determining detriment to the child, the court shall consider all relevant factors, including the harm if the child is removed from a stable placement with an individual who has fulfilled the child's physical needs and psychological needs for care and affection and has assumed the role for a substantial period.

§ 9614. Precluding establishment of parentage by perpetrator of sexual assault.

(a) Definition.--In this section, "sexual assault" means the offense under 18 Pa.C.S. § 3124.1 (relating to sexual assault).

(b) General rule.--In a proceeding in which a woman alleges that a man committed a sexual assault that resulted in the woman giving birth to a child, the woman may seek to preclude the man

from establishing that he is a parent of the child.

(c) Nonapplicability.--This section does not apply if:

(1) the man described in subsection (b) has previously been adjudicated to be a parent of the child; or

(2) after the birth of the child, the man established a bonded and dependent relationship with the child which is parental in nature.

(d) Limitation.--Unless section 9309 (relating to challenge after expiration of period for rescission) or 9607 (relating to adjudicating parentage of child with alleged genetic parent) applies, a woman must file a pleading making an allegation under subsection (b) not later than two years after the birth of the child. The woman may file the pleading only in a proceeding to establish parentage under this part.

(e) Evidentiary standard.--An allegation under subsection (b) may be proved by:

(1) evidence that the man was convicted of a sexual assault, or a comparable crime in another jurisdiction, against the woman and the child was born not later than 300 days after the sexual assault; or

(2) clear and convincing evidence that the man committed sexual assault against the woman, and the child was born not later than 300 days after the sexual assault.

(f) Duty of court.--Subject to subsections (a), (b), (c) and (d), if the court determines that an allegation has been proven under subsection (e), the court shall:

(1) adjudicate that the man described in subsection (b) is not a parent of the child;

(2) require the Bureau of Vital Statistics to amend the birth certificate if requested by the woman and the court

determines that the amendment is in the best interest of the child; and

(3) require the man pay to child support, birth-related costs or both, unless the woman requests otherwise and the court determines that granting the request is in the best interest of the child.

SUBCHAPTER C

HEARING AND ADJUDICATION

Sec.

§ 9615. Temporary order.

(a) General rule.--In a proceeding under this chapter, the court may issue a temporary order for child support if the order is consistent with the law of this State other than this part and the individual ordered to pay support is:

(1) a presumed parent of the child;

(2) petitioning to be adjudicated a parent;

(3) identified as a genetic parent through genetic testing under section 9506 (relating to genetic testing results; challenge to results);

(4) an alleged genetic parent who has declined to submit to genetic testing;

(5) shown by clear and convincing evidence to be a parent of the child; or

(6) a parent under this part.

(b) Custody and visitation provisions.--A temporary order may include a provision for custody and visitation under the law of this State other than this part.

§ 9616. Combining proceedings.

(a) General rule.--Except as otherwise provided in subsection (b), the court may combine a proceeding to adjudicate parentage under this part with a proceeding for adoption, termination of parental rights, child custody or visitation, child support, divorce, dissolution or annulment administration of an estate or another appropriate proceeding.

(b) Prohibition.--A respondent may not combine a proceeding described in subsection (a) with a proceeding to adjudicate parentage brought under Part VIII (relating to uniform interstate family support).

§ 9617. Proceeding before birth.

Except as otherwise provided in Chapter 98 (relating to surrogacy agreement), a proceeding to adjudicate parentage may be commenced before the birth of the child and an order or judgment may be entered before birth, but enforcement of the order or judgment must be stayed until the birth of the child.

§ 9618. Child as party; representation.

(a) Minor child as party.--A minor child is a proper party but not a necessary party to a proceeding under this chapter.

(b) Representation of child.--The court shall appoint an attorney, guardian ad litem or similar person to represent a child in a proceeding under this chapter if the court finds that the interests of the child are not adequately represented.

§ 9619. Court to adjudicate parentage.

The court shall adjudicate parentage of a child without a jury.

§ 9620. Hearing; inspection of records.

(a) Closure of proceeding.--On request of a party and for good cause, the court may close a proceeding under this chapter to the public.

(b) Final order and other documents.--A final order in a proceeding under this chapter is available for public inspection. Other papers and records are available for public inspection only with the consent of the parties or by court order.

§ 9621. Dismissal for want of prosecution.

The court may dismiss a proceeding under this part for want of prosecution only without prejudice. An order of dismissal for want of prosecution purportedly with prejudice is void and has only the effect of a dismissal without prejudice.

§ 9622. Order adjudicating parentage.

(a) Identification of child.--An order adjudicating parentage must identify the child in a manner provided by the law of this State other than this part.

(b) Fees, costs and expenses.--Except as otherwise provided in subsection (c), the court may assess filing fees, reasonable attorney fees, fees for genetic testing, other costs and necessary travel and other reasonable expenses incurred in a proceeding under this chapter. Attorney fees awarded under this subsection may be paid directly to the attorney and the attorney may enforce the order in the attorney's own name.

(c) Domestic relations sections.--The court may not assess fees, costs or expenses in a proceeding under this chapter

against the domestic relations section of a court of this State or another state, except as provided by the law of this State other than this part.

(d) Admissibility of genetic testing and health care bills.--In a proceeding under this chapter, a copy of a bill for genetic testing or prenatal or postnatal health care for the woman who gave birth to the child and the child provided to the adverse party not later than 10 days before a hearing is admissible to establish:

(1) the amount of the charge billed; and

(2) that the charge is reasonable and necessary.

(e) Child name changes.--On request of a party and for good cause, the court in a proceeding under this chapter may order the name of the child changed. If the court order changing the name varies from the name on the birth certificate of the child, the court shall order the Bureau of Vital Statistics to issue an amended birth certificate.

§ 9623. Binding effect of determination of parentage.

(a) General rule.--Except as otherwise provided in subsection (b):

(1) a signatory to an acknowledgment of parentage or denial of parentage is bound by the acknowledgment and denial as provided in Chapter 93 (relating to voluntary acknowledgment of parentage); and

(2) a party to an adjudication of parentage by a court acting under circumstances that satisfy the jurisdiction requirements of section 7201 (relating to bases for jurisdiction over nonresident) and any individual who received notice of the proceeding are bound by the adjudication.

(b) Children.--A child is not bound by a determination of parentage under this part unless:

(1) the determination was based on an unrescinded acknowledgment of parentage and the acknowledgment is consistent with the results of genetic testing;

(2) the determination was based on a finding consistent with the results of genetic testing and the consistency is declared in the determination or otherwise shown;

(3) the determination of parentage was made under Chapters 97 (relating to assisted reproduction) or 98 (relating to surrogacy agreement); or

(4) the child was a party or was represented by an attorney, guardian ad litem or similar person in the proceeding.

(c) Other proceedings.--In a proceeding for divorce, dissolution or annulment, the court is deemed to have made an adjudication of parentage of a child if the court acts under circumstances that satisfy the jurisdiction requirements of section 7201 and the final order:

(1) expressly identifies the child as a "child of the marriage" or "issue of the marriage" or includes similar words indicating that both spouses are parents of the child; or

(2) provides for support of the child by a spouse unless that spouse's parentage is disclaimed specifically in the order.

(d) Defense available to nonparties.--Except as otherwise provided in subsection (b) or section 9611 (relating to adjudicating parentage of child with adjudicated parent), a determination of parentage may be asserted as a defense in a

subsequent proceeding seeking to adjudicate parentage of an individual who was not a party to the earlier proceeding.

(e) Challenges to adjudication by parties.--A party to an adjudication of parentage may challenge the adjudication only under the law of this State other than this part relating to appeal, vacation of judgment or other judicial review.

CHAPTER 97

ASSISTED REPRODUCTION

Sec.

§ 9701. Scope of chapter.

This chapter does not apply to the birth of a child conceived by sexual intercourse or assisted reproduction under a surrogacy agreement under Chapter 98 (relating to surrogacy agreement).

§ 9702. Parental status of donor.

A donor is not a parent of a child conceived by assisted reproduction.

§ 9703. Parentage of child of assisted reproduction.

An individual who consents under section 9704 (relating to consent to assisted reproduction) to assisted reproduction by a woman with the intent to be a parent of a child conceived by the assisted reproduction is a parent of the child.

§ 9704. Consent to assisted reproduction.

(a) Record required.--Except as otherwise provided in subsection (b), the consent described in section 9703 (relating to parentage of child of assisted reproduction) must be in a record signed by a woman giving birth to a child conceived by assisted reproduction and an individual who intends to be a parent of the child.

(b) Exception.--Failure to consent in a record as required by subsection (a) before, on or after birth of the child does not preclude the court from finding consent to parentage if:

(1) the woman or the individual proves by clear and convincing evidence the existence of an express agreement entered into before conception that the individual and the woman intended they both would be parents of the child; or

(2) the woman and the individual for the first two years of the child's life, including any period of temporary absence, resided together in the same household with the child and both openly held out the child as the individual's child, unless the individual dies or becomes incapacitated before the child attains two years of age or the child dies before the child attains two years of age, in which case the court may find consent under this subsection to parentage if a party proves by clear and convincing evidence that the woman and the individual intended to reside together in the same household with the child and both intended the individual would openly hold out the child as the individual's child, but the individual was prevented from carrying out that intent by death or incapacity.

§ 9705. Limitation on spouse's dispute of parentage.

(a) General rule.--Except as otherwise provided in subsection (b), an individual who at the time of a child's birth

is the spouse of the woman who gave birth to the child by assisted reproduction, may not challenge the individual's parentage of the child unless:

(1) not later than two years after the birth of the child, the individual commences a proceeding to adjudicate the individual's parentage of the child; and

(2) the court finds the individual did not consent to the assisted reproduction before, on or after birth of the child or withdrew consent under section 9707 (relating to withdrawal of consent).

(b) Time period to commence proceeding.--A proceeding to adjudicate a spouse's parentage of a child born by assisted reproduction may be commenced at any time if the court determines:

(1) the spouse neither provided a gamete for, nor consented to, the assisted reproduction;

(2) the spouse and the woman who gave birth to the child have not cohabited since the probable time of assisted reproduction; and

(3) the spouse never openly held out the child as the spouse's child.

(c) Applicability.--This section applies to a spouse's dispute of parentage even if the spouse's marriage is declared invalid after assisted reproduction occurs.

§ 9706. Effect of certain legal proceedings regarding marriage.

If a marriage of a woman who gives birth to a child conceived by assisted reproduction is terminated through divorce or dissolution, or annulled before transfer of gametes or embryos to the woman, a former spouse of the woman is not a parent of the child unless the former spouse consented in a record that

the former spouse would be a parent of the child if assisted reproduction were to occur after a divorce, dissolution or annulment and the former spouse did not withdraw consent under section 9707 (relating to withdrawal of consent).

§ 9707. Withdrawal of consent.

(a) General rule.--An individual who consents under section 9704 (relating to consent to assisted reproduction) to assisted reproduction may withdraw consent any time before a transfer that results in a pregnancy by giving notice in a record of the withdrawal of consent to the woman who agreed to give birth to a child conceived by assisted reproduction and to any clinic or health care provider facilitating the assisted reproduction. Failure to give notice to the clinic or health care provider does not affect a determination of parentage under this part.

(b) Effect of withdrawal.--An individual who withdraws consent under subsection (a) is not a parent of the child under this chapter.

§ 9708. Parental status of deceased individual.

(a) Death after gamete or embryo transfer.--If an individual who intends to be a parent of a child conceived by assisted reproduction dies during the period between the transfer of a gamete or embryo and the birth of the child, the individual's death does not preclude the establishment of the individual's parentage of the child if the individual otherwise would be a parent of the child under this part.

(b) Death before gamete or embryo transfer.--If an individual who consented in a record to assisted reproduction by a woman who agreed to give birth to a child dies before a transfer of gametes or embryos, the deceased individual is a parent of a child conceived by the assisted reproduction only

if:

(1) either:

(i) the individual consented in a record that if assisted reproduction were to occur after the death of the individual, the individual would be a parent of the child; or

(ii) the individual's intent to be a parent of a child conceived by assisted reproduction after the individual's death is established by clear and convincing evidence; and

(2) either:

(i) the embryo is in utero not later than 36 months after the individual's death; or

(ii) the child is born not later than 45 months after the individual's death.

CHAPTER 98

SURROGACY AGREEMENT

Subchapter

SUBCHAPTER A

GENERAL REQUIREMENTS

Sec.

agreements: content.

9805. Surrogacy agreement: effect of subsequent change of marital status.

9806. Inspection of documents.

9807. Exclusive, continuing jurisdiction.

§ 9801. Definitions.

The following words and phrases when used in this chapter shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"Genetic surrogate." A woman who is not an intended parent and who agrees to become pregnant through assisted reproduction using her own gamete, under a genetic surrogacy agreement as provided in this chapter.

"Gestational surrogate." A woman who is not an intended parent and who agrees to become pregnant through assisted reproduction using gametes that are not her own, under a gestational surrogacy agreement as provided in this chapter.

"Surrogacy agreement." An agreement between one or more intended parents and a woman who is not an intended parent in which the woman agrees to become pregnant through assisted reproduction and which provides that each intended parent is a parent of a child conceived under the agreement. Unless otherwise specified, the term refers to both a gestational surrogacy agreement and a genetic surrogacy agreement.

§ 9802. Eligibility to enter gestational or genetic surrogacy agreement.

(a) Requirements for surrogates.--To execute an agreement to act as a gestational or genetic surrogate, a woman must:

(1) have attained 21 years of age;

(2) previously have given birth to at least one child;

(3) complete a medical evaluation related to the surrogacy arrangement by a licensed medical doctor;

(4) complete a mental health consultation by a licensed mental health professional; and

(5) have independent legal representation of her choice throughout the surrogacy arrangement regarding the terms of the surrogacy agreement and the potential legal consequences of the agreement.

(b) Requirements for intended parents.--To execute a surrogacy agreement, each intended parent, whether or not genetically related to the child, must:

(1) have attained 21 years of age;

(2) complete a medical evaluation related to the surrogacy arrangement by a licensed medical doctor;

(3) complete a mental health consultation by a licensed mental health professional; and

(4) have independent legal representation of the intended parent's choice throughout the surrogacy arrangement regarding the terms of the surrogacy agreement and the potential legal consequences of the agreement.

§ 9803. Requirements of gestational or genetic surrogacy agreement: process.

A surrogacy agreement must be executed in compliance with the following rules:

(1) At least one party must be a resident of this State or, if no party is a resident of this State, at least one medical evaluation or procedure or mental health consultation under the agreement must occur in this State.

(2) A surrogate and each intended parent must meet the requirements of section 9802 (relating to eligibility to

enter gestational or genetic surrogacy agreement).

(3) Each intended parent, the surrogate and the surrogate's spouse, if any, must be parties to the agreement.

(4) The agreement must be in a record signed by each party listed in paragraph (3).

(5) The surrogate and each intended parent must acknowledge in a record receipt of a copy of the agreement.

(6) The signature of each party to the agreement must be attested by a notarial officer or witnessed.

(7) The surrogate and the intended parent or parents must have independent legal representation throughout the surrogacy arrangement regarding the terms of the surrogacy agreement and the potential legal consequences of the agreement, and each counsel must be identified in the surrogacy agreement.

(8) The intended parent or parents must pay for independent legal representation for the surrogate.

(9) The agreement must be executed before a medical procedure occurs related to the surrogacy agreement, other than the medical evaluation and mental health consultation required by section 9802.

§ 9804. Requirements of gestational or genetic surrogacy agreements: content.

(a) General rule.--A surrogacy agreement must comply with the following requirements:

(1) A surrogate agrees to attempt to become pregnant by means of assisted reproduction.

(2) Except as otherwise provided in sections 9811 (relating to gestational surrogacy agreement: order of parentage), 9814 (relating to termination of genetic

surrogacy agreement) and 9815 (relating to parentage under validated genetic surrogacy agreement), the surrogate and the surrogate's spouse or former spouse, if any, have no claim to parentage of a child conceived by assisted reproduction under the agreement.

(3) The surrogate's spouse, if any, must acknowledge and agree to comply with the obligations imposed on the surrogate by the agreement.

(4) Except as otherwise provided in sections 9811, 9814 and 9815, the intended parent or, if there are two intended parents, each one jointly and severally, immediately on birth will be the exclusive parent or parents of the child, regardless of number of children born or gender or mental or physical condition of each child.

(5) Except as otherwise provided in sections 9811, 9814 and 9815, the intended parent or, if there are two intended parents, each parent jointly and severally, immediately on birth will assume responsibility for the financial support of the child, regardless of number of children born or gender or mental or physical condition of each child.

(6) The agreement must include information disclosing how each intended parent will cover the surrogacy-related expenses of the surrogate and the medical expenses of the child. If health care coverage is used to cover the medical expenses, the disclosure must include a summary of the health care policy provisions related to coverage for surrogate pregnancy, including any possible liability of the surrogate, third-party liability liens, other insurance coverage and any notice requirement that could affect coverage or liability of the surrogate. Unless the agreement expressly provides

otherwise, the review and disclosure do not constitute legal advice. If the extent of coverage is uncertain, a statement of that fact is sufficient to comply with this paragraph.

(7) The agreement must permit the surrogate to make all health and welfare decisions regarding herself and her pregnancy. This part does not enlarge or diminish the surrogate's right to terminate her pregnancy.

(8) The agreement must include information about each party's right under this chapter to terminate the surrogacy agreement.

(b) Additional provisions.--A surrogacy agreement may provide for:

(1) payment of consideration and reasonable expenses; and

(2) reimbursement of specific expenses if the agreement is terminated under this chapter.

(c) Assignment prohibited.--A right created under a surrogacy agreement is not assignable, and there is no third-party beneficiary of the agreement other than the child.

§ 9805. Surrogacy agreement: effect of subsequent change of marital status.

(a) Surrogates.--Unless a surrogacy agreement expressly provides otherwise:

(1) the marriage of a surrogate after the agreement is signed by all parties does not affect the validity of the agreement, her spouse's consent to the agreement is not required and her spouse is not a presumed parent of a child conceived by assisted reproduction under the agreement; and

(2) the divorce, dissolution or annulment of the surrogate after the agreement is signed by all parties does

not affect the validity of the agreement.

(b) Intended parents.--Unless a surrogacy agreement expressly provides otherwise:

(1) the marriage of an intended parent after the agreement is signed by all parties does not affect the validity of a surrogacy agreement, the consent of the spouse of the intended parent is not required and the spouse of the intended parent is not, based on the agreement, a parent of a child conceived by assisted reproduction under the agreement; and

(2) the divorce, dissolution or annulment of an intended parent after the agreement is signed by all parties does not affect the validity of the agreement, and, except as otherwise provided in section 9814 (relating to termination of genetic surrogacy agreement), the intended parents are the parents of the child.

§ 9806. Inspection of documents.

Unless the court orders otherwise, a petition and any other document related to a surrogacy agreement filed with the court under this subchapter are not open to inspection by any individual other than the parties to the proceeding, a child conceived by assisted reproduction under the agreement, their attorneys and the Department of Health. A court may not authorize an individual to inspect a document related to the agreement unless required by exigent circumstances. The individual seeking to inspect the document may be required to pay the expense of preparing a copy of the document to be inspected.

§ 9807. Exclusive, continuing jurisdiction.

During the period after the execution of a surrogacy

agreement until 90 days after the birth of a child conceived by assisted reproduction under the agreement, a court of this State conducting a proceeding under this part has exclusive, continuing jurisdiction over all matters arising out of the agreement. This section does not give the court jurisdiction over a child custody proceeding or child support proceeding if jurisdiction is not otherwise authorized by the law of this State other than this part.

SUBCHAPTER B

SPECIAL RULES FOR GESTATIONAL SURROGACY AGREEMENT

Sec.

§ 9808. Termination of gestational surrogacy agreement.

(a) General rule.--A party to a gestational surrogacy agreement may terminate the agreement at any time before an embryo transfer by giving notice of termination in a record to all other parties. If an embryo transfer does not result in a pregnancy, a party may terminate the agreement at any time before a subsequent embryo transfer.

(b) Limited release.--Unless a gestational surrogacy agreement provides otherwise, on termination of the agreement under subsection (a), the parties are released from the agreement, except that each intended parent remains responsible for expenses that are reimbursable under the agreement and incurred by the gestational surrogate through the date of

termination.

(c) Penalties and liquidated damages prohibited.--Except in a case involving fraud, neither a gestational surrogate nor the surrogate's spouse or former spouse, if any, is liable to the intended parent or parents for a penalty or liquidated damages for terminating a gestational surrogacy agreement under this section.

§ 9809. Parentage under gestational surrogacy agreement.

(a) Intended parents.--Except as otherwise provided in subsection (c) or section 9810(b) (relating to gestational surrogacy agreement: parentage of deceased intended parent) or 9812 (relating to effect of gestational surrogacy agreement), on the birth of a child conceived by assisted reproduction under a gestational surrogacy agreement, each intended parent is, by operation of law, a parent of the child.

(b) Surrogates.--Except as otherwise provided in subsection (c) or section 9812, neither a gestational surrogate nor the surrogate's spouse or former spouse, if any, is a parent of the child.

(c) When genetic testing required.--If a child is alleged to be a genetic child of the woman who agreed to be a gestational surrogate, the court shall order genetic testing of the child. If the child is a genetic child of the woman who agreed to be a gestational surrogate, parentage must be determined based on Chapters 91 (relating to general provisions), 92 (relating to parent-child relationship), 93 (relating to voluntary acknowledgment of parentage), 94 (relating to registry of paternity), 95 (relating to genetic testing) and 96 (relating to proceeding to adjudicate parentage).

(d) Clinical and laboratory errors.--Except as otherwise

provided in subsection (c) or section 9810(b) or 9812, if, due to a clinical or laboratory error, a child conceived by assisted reproduction under a gestational surrogacy agreement is not genetically related to an intended parent or a donor who donated to the intended parent or parents, each intended parent, and not the gestational surrogate and the surrogate's spouse or former spouse, if any, is a parent of the child, subject to any other claim of parentage.

§ 9810. Gestational surrogacy agreement: parentage of deceased intended parent.

(a) Death after gamete or embryo transfer.--Section 9809 (relating to parentage under gestational surrogacy agreement) applies to an intended parent even if the intended parent died during the period between the transfer of a gamete or embryo and the birth of the child.

(b) Death before gamete or embryo transfer.--Except as otherwise provided in section 9812 (relating to effect of gestational surrogacy agreement), an intended parent is not a parent of a child conceived by assisted reproduction under a gestational surrogacy agreement if the intended parent dies before the transfer of a gamete or embryo unless:

(1) the agreement provides otherwise; and

(2) the transfer of a gamete or embryo occurs not later than 36 months after the death of the intended parent or birth of the child occurs not later than 45 months after the death of the intended parent.

§ 9811. Gestational surrogacy agreement: order of parentage.

(a) Permissible relief.--Except as otherwise provided in sections 9809(c) (relating to parentage under gestational surrogacy agreement) or 9812 (relating to effect of gestational

surrogacy agreement), before, on or after the birth of a child conceived by assisted reproduction under a gestational surrogacy agreement, a party to the agreement may commence a proceeding in court for an order or judgment:

(1) declaring that each intended parent is a parent of the child and ordering that parental rights and duties vest immediately on the birth of the child exclusively in each intended parent;

(2) declaring that the gestational surrogate and the surrogate's spouse or former spouse, if any, are not the parents of the child;

(3) designating the content of the birth record in accordance with law and directing the Bureau of Vital Statistics to designate each intended parent as a parent of the child;

(4) to protect the privacy of the child and the parties, declaring that the court record is not open to inspection, except as authorized under section 9806 (relating to inspection of documents);

(5) if necessary, that the child be surrendered to the intended parent or parents; and

(6) for other relief the court determines necessary and proper.

(b) Order of judgment before birth.--The court may issue an order or judgment under subsection (a) before the birth of the child. The court shall stay enforcement of the order or judgment until the birth of the child.

(c) State not necessary party.--Neither this State nor the Bureau of Vital Statistics is a necessary party to a proceeding under subsection (a).

§ 9812. Effect of gestational surrogacy agreement.

(a) General rule.--A gestational surrogacy agreement that complies with sections 9802 (relating to eligibility to enter gestational or genetic surrogacy agreement), 9803 (relating to requirements of gestational or genetic surrogacy agreement: process) and 9804 (relating to requirements of gestational or genetic surrogacy agreement: content) is enforceable.

(b) Noncomplying gestational surrogacy agreements.--If a child was conceived by assisted reproduction under a gestational surrogacy agreement that does not comply with sections 9802, 9803 and 9804, the court shall determine the rights and duties of the parties to the agreement consistent with the intent of the parties at the time of execution of the agreement. Each party to the agreement and any individual who at the time of the execution of the agreement was a spouse of a party to the agreement has standing to maintain a proceeding to adjudicate an issue related to the enforcement of the agreement.

(c) Remedies for breach.--Except as expressly provided in a gestational surrogacy agreement or subsection (d) or (e), if the agreement is breached by the gestational surrogate or one or more intended parents, the nonbreaching party is entitled to the remedies available at law or in equity.

(d) When specific performance prohibited.--Specific performance is not a remedy available for breach by a gestational surrogate of a provision in the agreement that the gestational surrogate be impregnated, terminate or not terminate a pregnancy or submit to medical procedures.

(e) When specific performance permitted.--Except as otherwise provided in subsection (d), if an intended parent is determined to be a parent of the child, specific performance is

a remedy available for:

(1) breach of the agreement by a gestational surrogate which prevents the intended parent from exercising immediately on birth of the child the full rights of parentage; or

(2) breach by the intended parent which prevents the intended parent's acceptance, immediately on birth of the child conceived by assisted reproduction under the agreement, of the duties of parentage.

SUBCHAPTER C

SPECIAL RULES FOR GENETIC SURROGACY AGREEMENT

Sec.

§ 9813. Requirements to validate genetic surrogacy agreement.

(a) Prior court approval.--Except as otherwise provided in section 9816 (relating to effect of nonvalidated genetic surrogacy agreement), to be enforceable, a genetic surrogacy agreement must be validated by the court. A proceeding to validate the agreement must be commenced before assisted reproduction related to the surrogacy agreement.

(b) Conditions.--The court shall issue an order validating a genetic surrogacy agreement if the court finds that:

(1) sections 9802 (relating to eligibility to enter gestational or genetic surrogacy agreement), 9803 (relating

to requirements of gestational or genetic surrogacy agreement: process) and 9804 (relating to requirements of gestational or genetic surrogacy agreement: content) are satisfied; and

(2) all parties entered into the agreement voluntarily and understand its terms.

(c) Notice of termination.--An individual who terminates under section 9814 (relating to termination of genetic surrogacy agreement) a genetic surrogacy agreement shall file notice of the termination with the court. On receipt of the notice, the court shall vacate any order issued under subsection (b). An individual who does not notify the court of the termination of the agreement is subject to sanctions.

§ 9814. Termination of genetic surrogacy agreement.

(a) General rule.--A party to a genetic surrogacy agreement may terminate the agreement as follows:

(1) An intended parent who is a party to the agreement may terminate the agreement at any time before a gamete or embryo transfer by giving notice of termination in a record to all other parties. If a gamete or embryo transfer does not result in a pregnancy, a party may terminate the agreement at any time before a subsequent gamete or embryo transfer. The notice of termination must be attested by a notarial officer or witnessed.

(2) A genetic surrogate who is a party to the agreement may withdraw consent to the agreement any time before 72 hours after the birth of a child conceived by assisted reproduction under the agreement. To withdraw consent, the genetic surrogate must execute a notice of termination in a record stating the surrogate's intent to terminate the

agreement. The notice of termination must be attested by a notarial officer or be witnessed and be delivered to each intended parent at any time before 72 hours after the birth of the child.

(b) Limited release.--On termination of the genetic surrogacy agreement under subsection (a), the parties are released from all obligations under the agreement, except that each intended parent remains responsible for all expenses incurred by the surrogate through the date of termination, which are reimbursable under the agreement. Unless the agreement provides otherwise, the surrogate is not entitled to any nonexpense-related compensation paid for serving as a surrogate.

(c) Penalties and liquidated damages prohibited.--Except in a case involving fraud, neither a genetic surrogate nor the surrogate's spouse or former spouse, if any, is liable to the intended parent or parents for a penalty or liquidated damages for terminating a genetic surrogacy agreement under this section.

§ 9815. Parentage under validated genetic surrogacy agreement.

(a) Intended parents.--Unless a genetic surrogate exercises the right under section 9814 (relating to termination of genetic surrogacy agreement) to terminate a genetic surrogacy agreement, each intended parent is a parent of a child conceived by assisted reproduction under an agreement validated under section 9813 (relating to requirements to validate genetic surrogacy agreement).

(b) Court order.--Unless a genetic surrogate exercises the right under section 9814 to terminate the genetic surrogacy agreement, on proof of a court order issued under section 9813 validating the agreement, the court shall make an order:

(1) declaring that each intended parent is a parent of a child conceived by assisted reproduction under the agreement and ordering that parental rights and duties vest exclusively in each intended parent;

(2) declaring that the gestational surrogate and the surrogate's spouse or former spouse, if any, are not parents of the child;

(3) designating the contents of the birth certificate in accordance with the law of this State other than this part and directing the Bureau of Vital Statistics to designate each intended parent as a parent of the child;

(4) to protect the privacy of the child and the parties, declaring that the court record is not open to inspection, except as authorized under section 9806 (relating to inspection of documents);

(5) if necessary, that the child be surrendered to the intended parent or parents; and

(6) for other relief the court determines necessary and proper.

(c) Termination.--If a genetic surrogate terminates under section 9814(a)(2) a genetic surrogacy agreement, parentage of the child conceived by assisted reproduction under the agreement must be determined under Chapters 91 (relating to general provisions), 92 (relating to parent-child relationship), 93 (relating to voluntary acknowledgment of parentage), 94 (relating to registry of paternity), 95 (relating to genetic testing) and 96 (relating to proceeding to adjudicate parentage).

(d) When genetic testing required.--If a child born to a genetic surrogate is alleged not to have been conceived by

assisted reproduction, the court shall order genetic testing to determine the genetic parentage of the child. If the child was not conceived by assisted reproduction, parentage must be determined under Chapters 91, 92, 93, 94, 95 and 96. Unless the genetic surrogacy agreement provides otherwise, if the child was not conceived by assisted reproduction, the surrogate is not entitled to any nonexpense-related compensation paid for serving as a surrogate.

(e) Court order of intended parent.--Unless a genetic surrogate exercises the right under section 9814 (relating to termination of genetic surrogacy agreement) to terminate the genetic surrogacy agreement, if an intended parent fails to file notice required under section 9814(a), the genetic surrogate or the Department of Health may file with the court, not later than 60 days after the birth of a child conceived by assisted reproduction under the agreement, notice that the child has been born to the genetic surrogate. Unless the genetic surrogate has properly exercised the right under section 9814 to withdraw consent to the agreement, on proof of a court order issued under section 9813 (relating to requirements to validate genetic surrogacy agreement) validating the agreement, the court shall order that each intended parent is a parent of the child.

§ 9816. Effect of nonvalidated genetic surrogacy agreement.

(a) Enforceable.--A genetic surrogacy agreement, whether or not in a record, that is not validated under section 9813 (relating to requirements to validate genetic surrogacy agreement) is enforceable only to the extent provided in this section and section 9818 (relating to breach of genetic surrogacy agreement).

(b) Court validation with agreement of parties.--If all

parties agree, a court may validate a genetic surrogacy agreement after assisted reproduction has occurred but before the birth of a child conceived by assisted reproduction under the agreement.

(c) Timely withdrawal of consent.--If a child conceived by assisted reproduction under a genetic surrogacy agreement that is not validated under section 9813 is born and the genetic surrogate, consistent with section 9814(a)(2) (relating to termination of genetic surrogacy agreement), withdraws her consent to the agreement before 72 hours after the birth of the child, the court shall adjudicate the parentage of the child under Chapters 91 (relating to general provisions), 92 (relating to parent-child relationship), 93 (relating to voluntary acknowledgment of parentage), 94 (relating to registry of paternity), 95 (relating to genetic testing) and 96 (relating to proceeding to adjudicate parentage).

(d) No timely withdrawal of consent.--If a child conceived by assisted reproduction under a genetic surrogacy agreement that is not validated under section 9813 is born and a genetic surrogate does not withdraw her consent to the agreement, consistent with section 9814(a)(2), before 72 hours after the birth of the child, the genetic surrogate is not automatically a parent and the court shall adjudicate parentage of the child based on the best interest of the child, taking into account the factors in section 9613(a) (relating to adjudicating competing claims of parentage) and the intent of the parties at the time of the execution of the agreement.

(e) Standing.--The parties to a genetic surrogacy agreement have standing to maintain a proceeding to adjudicate parentage under this section.

§ 9817. Genetic surrogacy agreement: parentage of deceased intended parent.

(a) Death after gamete or embryo transfer.--Except as otherwise provided in section 9815 (relating to parentage under validated genetic surrogacy agreement) or 9816 (relating to effect of nonvalidated genetic surrogacy agreement), on birth of a child conceived by assisted reproduction under a genetic surrogacy agreement, each intended parent is, by operation of law, a parent of the child, notwithstanding the death of an intended parent during the period between the transfer of a gamete or embryo and the birth of the child.

(b) Death before gamete or embryo transfer.--Except as otherwise provided in section 9815 or 9816, an intended parent is not a parent of a child conceived by assisted reproduction under a genetic surrogacy agreement if the intended parent dies before the transfer of a gamete or embryo unless:

(1) the agreement provides otherwise; and

(2) the transfer of the gamete or embryo occurs not later than 36 months after the death of the intended parent or birth of the child occurs not later than 45 months after the death of the intended parent.

§ 9818. Breach of genetic surrogacy agreement.

(a) Remedies for breach.--Subject to section 9814(b) (relating to termination of genetic surrogacy agreement), if a genetic surrogacy agreement is breached by a genetic surrogate or one or more intended parents, the nonbreaching party is entitled to the remedies available at law or in equity.

(b) When specific performance prohibited.--Specific performance is not a remedy available for breach by a genetic surrogate of a requirement of a validated or nonvalidated

genetic surrogacy agreement that the surrogate be impregnated, terminate or not terminate a pregnancy or submit to medical procedures.

(c) When specific performance permitted.--Except as otherwise provided in subsection (b), specific performance is a remedy available for:

(1) breach of a validated genetic surrogacy agreement by a genetic surrogate of a requirement which prevents an intended parent from exercising the full rights of parentage 72 hours after the birth of the child; or

(2) breach by an intended parent which prevents the intended parent's acceptance of duties of parentage 72 hours after the birth of the child.

CHAPTER 99

INFORMATION ABOUT DONOR

Sec.

§ 9901. Definitions.

The following words and phrases when used in this chapter shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"Identifying information." All of the following:

(1) the full name of a donor;

(2) the date of birth of the donor; and

(3) the permanent and, if different, current address of the donor at the time of the donation.

"Medical history." Information regarding any:

(1) present illness of a donor;

(2) past illness of the donor; and

(3) social, genetic and family history pertaining to the health of the donor.

§ 9902. Applicability.

This chapter applies only to gametes collected on or after the effective date of this section.

§ 9903. Collection of information.

A gamete bank or fertility clinic authorized by law to operate in this State shall collect from a donor the donor's identifying information and medical history at the time of the donation. If the gamete bank or fertility clinic sends the gametes of a donor to another gamete bank or fertility clinic, the sending gamete bank or fertility clinic shall forward any identifying information and medical history of the donor, including the donor's signed declaration under section 9904 (relating to declaration regarding identity disclosure) regarding identity disclosure, to the receiving gamete bank or fertility clinic. A receiving gamete bank or fertility clinic authorized by law to operate in this State shall collect and retain the information about the donor and each sending gamete bank or fertility clinic.

§ 9904. Declaration regarding identity disclosure.

(a) Duties.--A gamete bank or fertility clinic authorized by law to operate in this State which collects gametes from a donor shall:

(1) provide the donor with information in a record about

the donor's choice regarding identity disclosure; and

(2) obtain a declaration from the donor regarding identity disclosure.

(b) Options for donors.--A gamete bank or fertility clinic authorized by law to operate in this State shall give a donor the choice to sign a declaration, attested by a notarial officer or witnessed, that either:

(1) states that the donor agrees to disclose the donor's identity to a child conceived by assisted reproduction with the donor's gametes on request once the child attains 18 years of age; or

(2) states that the donor does not agree presently to disclose the donor's identity to the child.

(c) Withdrawal of declarations.--A gamete bank or fertility clinic authorized by law to operate in this State shall permit a donor who has signed a declaration under subsection (b)(2) to withdraw the declaration at any time by signing a declaration under subsection (b)(1).

§ 9905. Disclosure of identifying information and medical history.

(a) Duty to provide identifying information.--On request of a child conceived by assisted reproduction who attains 18 years of age, a gamete bank or fertility clinic authorized by law to operate in this State which collected, stored or released for use the gametes used in the assisted reproduction shall make a good faith effort to provide the child with identifying information of the donor who provided the gametes, unless the donor signed and did not withdraw a declaration under section 9904(b)(2) (relating to declaration regarding identity disclosure). If the donor signed and did not withdraw the

declaration, the gamete bank or fertility clinic shall make a good faith effort to notify the donor, who may elect under section 9904(c) to withdraw the donor's declaration.

(b) Duty to provide nonidentifying medical history of donor.--Regardless of whether a donor signed a declaration under section 9904(b)(2), on request by a child conceived by assisted reproduction who attains 18 years of age, or, if the child is a minor, by a parent or guardian of the child, a gamete bank or fertility clinic authorized by law to operate in this State shall make a good faith effort to provide the child or, if the child is a minor, the parent or guardian of the child, access to nonidentifying medical history of the donor.

§ 9906. Recordkeeping.

A gamete bank or fertility clinic authorized by law to operate in this State which collects, stores or releases gametes for use in assisted reproduction shall collect and maintain identifying information and medical history about each gamete donor. The gamete bank or fertility clinic shall collect and maintain records of gamete screening and testing and comply with reporting requirements, in accordance with Federal law and applicable law of this State other than this part.

CHAPTER 99A

MISCELLANEOUS PROVISIONS

Sec.

§ 99A01. Uniformity of application and construction.

In applying and construing this uniform act, consideration

must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

§ 99A02. Relation to Electronic Signatures in Global and National Commerce Act.

This part modifies, limits or supersedes the Electronic Signatures in Global and National Commerce Act (Public Law 106-229, 15 U.S.C. § 7001 et seq.), but does not modify, limit or supersede section 101(c) of that act or authorize electronic delivery of any of the notices described in section 103(b) of that act.

§ 99A03. Transitional provision.

This part applies to a pending proceeding to adjudicate parentage commenced before the effective date of this section for an issue on which a judgment has not been entered.

Section 2. This act shall take effect in 60 days.

[J-61-2023]
IN THE SUPREME COURT OF PENNSYLVANIA
WESTERN DISTRICT

TODD, C.J., DONOHUE, DOUGHERTY, WECHT, MUNDY, BROBSON, McCAFFERY JJ.

B.C.,	:	No. 8 WAP 2023
	:	
Appellee	:	Appeal from the Order of the
	:	Superior Court entered January 6,
	:	2023, at No. 515 WDA 2022,
v.	:	affirming the Order of the Court of
	:	Common Pleas Westmoreland
	:	County entered April 18, 2022, at
C.P. AND D.B.,	:	No. 1494 of 2021-D.
	:	
Appellants	:	SUBMITTED: August 25, 2023

OPINION

CHIEF JUSTICE TODD **DECIDED: JANUARY 29, 2024**

There is a strong presumption in Pennsylvania jurisprudence that a child conceived or born in a marriage is a child of the marriage, and a party challenging the paternity of a child born during a marriage must overcome that presumption. Due to societal changes which have occurred since the presumption's adoption, this Court has limited its application to cases where its underlying policy — the preservation of marriages — is furthered. This Court granted allowance of appeal to determine whether the lower courts erred by relying primarily upon the marital couple's multiple periods of separation prior to the filing of the underlying paternity action in concluding that the presumption was inapplicable, notwithstanding that the couple had reconciled by the time the paternity action was filed. For the reasons set forth herein, we answer this inquiry in the affirmative, and hold that a marital couple's separation prior to the filing of the paternity action does

not, *per se*, preclude application of the presumption of paternity. Accordingly, we reverse the order of the Superior Court, and remand to the trial court with instructions.

At the outset, we observe that Appellee B.C., who filed the paternity action herein, has not participated in this appeal,[1] and has never challenged the continued viability of the presumption of paternity, which, although entrenched in our jurisprudence for centuries, has been the subject of considerable criticism in the modern age. Thus, we emphasize that we are deciding this appeal as it is presented to us, and are determining only whether the lower court's application of the unchallenged presumption violates the precedent of this Court. We conclude that it does. We do not address whether the presumption of paternity, which again, as a general doctrine is unchallenged here, should be reconsidered.

I. Background

The record establishes that Appellants C.P. ("Mother") and D.B. ("Husband") were married on September 30, 2016. Mother met Appellee B.C. the following year when they were both seeking treatment for addiction at the Greenbriar Treatment Center. Mother and B.C. reconnected and began communicating through social media in Spring 2018. In July of that year, Mother and Husband separated; Husband left the marital home and Mother remained. B.C. visited Mother's residence three times in October 2018, and during at least one of those occasions they had unprotected sexual intercourse. Shortly thereafter, at the end of October, Mother and Husband reconciled, and they also had unprotected sex. On November 4, 2018, Husband moved back into the marital home, and the couple continued their intimate relationship.

[1] B.C. also did not participate in the appeal before the Superior Court.

Mother did not experience signs of pregnancy until March 2019, and was unable to pinpoint when her child was conceived.[2] Upon discovering that she was pregnant, she told Husband that the child was his. After B.C. learned on social media that Mother was pregnant, the two corresponded, and Mother initially advised B.C. that he was not the father of her child. During Mother's pregnancy, Husband accompanied Mother to prenatal appointments and assumed the duties of an expectant father. While married to Husband, Mother then gave birth to a son ("Child") on June 18, 2019, and Husband was listed as the father on Child's birth certificate. However, after the birth, Mother brought Child to visit B.C., and in August 2019, told B.C. that he was Child's biological father.[3] Subsequently, B.C. began seeing Child on a weekly basis, babysitting him while Mother worked long shifts as a registered nurse.

In March or April 2020, when Child was approximately nine months old, Mother and Husband separated for the second time. Mother then moved into B.C.'s home with Child, and Mother and B.C. shared parental and financial duties relating to Child. During this time, Mother told B.C.'s friends and family that B.C. was Child's father. Nevertheless, Mother took Child to see Husband on the weekends. B.C. did not object to Mother allowing Husband to see Child, as he felt sympathy towards Husband. The relationship between Mother and B.C. ended abruptly on August 13, 2020, when B.C. assaulted Mother,[4] after which Mother and Child returned to live in the marital home, and Mother and Husband reconciled. The last time that B.C. had contact with Child was in November

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[2] Initially, Mother had not considered that she was pregnant, as she suffered from polycystic ovarian syndrome, and believed that conception would have been difficult.

[3] As described *infra*, the trial court conducted a paternity hearing, during which Mother testified that she did not recall telling B.C., or any other third party, that B.C. was Child's father. The trial court expressly discredited this portion of Mother's testimony.

[4] On December 8, 2021, B.C. pled guilty to a charge of simple assault arising from the incident with Mother. N.T., 4/11/2022, at 12.

2020, when Mother and Child visited B.C. in the rehabilitation center where he was residing at the time.

Husband and Mother separated for a third and final time for a period of approximately five weeks in December 2020 and January 2021, after Husband filed for divorce and his counsel suggested that Mother move out of the marital home while a custody order was crafted. Consequently, the trial court entered a custody order awarding shared legal and physical custody of Child to Mother and Husband. B.C. remained in the rehabilitation facility during the litigation of the custody matter and did not seek to intervene. Husband and Mother once again reconciled, and chose not to proceed with the divorce. Mother moved back into the marital home on January 13, 2021, and the couple have remained together since that time.

On August 27, 2021, B.C. filed a complaint to establish paternity and for genetic testing of Child. In response, Appellants jointly filed an answer and new matter, which contained a motion to dismiss B.C.'s complaint with prejudice, contending that the presumption of paternity applied to preserve their intact family unit. As explained *infra*, the presumption that a child conceived or born during a marriage is a child of the marriage may be rebutted by evidence establishing that either the husband did not have access to his wife during the period of possible conception or that the husband was impotent or sterile; where the marriage is intact, the presumption is irrebuttable. The trial court held a hearing on April 11, 2022, at which B.C., Mother, and Husband testified to the aforementioned events.

Additionally, Mother testified that she and Husband have been together since January 2021, prior to the filing of the paternity action, and that she did not contemplate any future separations because the marriage was working. N.T., 4/11/2022, at 42. Viewing the circumstances retrospectively, Mother believed that the marital issues

resulted from depression and anxiety that she was experiencing at the times of the separations. Mother further explained that Child has special needs and was diagnosed with autism spectrum disorder level 3 and global delay disorder. Describing Husband as a "wonderful parent" and "truly a great father," Mother asserted that Child is Husband's number one priority, that Husband tends to Child in the middle of the night, and that Husband takes Child to his doctor appointments and therapy sessions. *Id.* at 39. Mother elaborated that Husband is Child's "person," as demonstrated by the fact that when Child is inconsolable, he turns to Husband, who has "endless patience and kindness" for Child, "loves [Child] so much," and "is unbelievably bonded" to Child. *Id.* at 41-42. Mother concluded that she and Husband are doing very well raising their son. *Id.* at 42.

Husband corroborated Mother's testimony and detailed his extensive parental duties. *Id.* at 56. Husband further asserted that he never believed that B.C. was Child's father, and never acquiesced to having B.C. act in a parental capacity. *Id.* at 57-58. When asked about his relationship with Mother and their family unit, Husband acknowledged the tumultuous periods, but expressed love for Mother and Child, confirming that he had no concerns of a future separation with Mother, as he found that the trials and tribulations they experienced together made their marriage stronger. *Id.* at 59-60. When questioned whether the injection of a third party as an additional parental figure to Child would impact his family unit, Husband responded, "[d]efinitely," finding the proposition "utterly preposterous." *Id.* at 59.

Finally, B.C., appearing *pro se* at the hearing, testified that the time of Child's conception corresponded with the time of his sexual relationship with Mother. He maintained that, after Mother informed him that he was Child's father, he saw Child regularly and shared parental duties, until Mother ended the relationship. B.C. asserted that he did not seek to intervene in Child's custody action because he was seeking

inpatient care at a rehabilitation facility when the matter was litigated. B.C. did not attempt to refute Appellants' contention that their marriage was, at that time, intact. Lastly, B.C. argued that the court should grant his request for genetic testing because he believes he is Child's father, he wants to take responsibility for his son, and he wants to save Child from suffering trauma later in life if he discovers that his true parentage is different from what he had been led to believe.

II. Lower Court Decisions

By order dated April 14, 2022, the trial court denied Appellants' motion to dismiss the paternity action, and directed all parties and Child to appear at the domestic relations office for paternity testing on May 3, 2022. Appellants filed an appeal to the Superior Court, and the trial court filed its Pa.R.A.P. 1925(a) opinion on May 27, 2022.[5] Initially, the trial court observed that, when examining paternity, the court considers whether the presumption of paternity applies to the particular case and, if so, whether the presumption has been rebutted; if the presumption has been rebutted or is inapplicable, the court then queries whether estoppel applies.

Recognizing that the presumption applies "only where the underlying policy of the presumption, *i.e.*, to preserve marriages, would be advanced by its application," Trial Court Opinion, 5/27/2022, at 5 (unpaginated) (quoting *Brinkley v. King*, 701 A.2d 176, 179 (Pa. 1997) (plurality)),[6] the trial court examined Superior Court case law holding that the presumption is inapplicable where the marriage in question does not require protection. *Id.* at 6-7 (discussing *B.S. v. T.M.*, 782 A.2d 1031, 1037 (Pa. Super. 2001) (presumption

[5] Due to this Court's concern for the best interests of the child, court orders directing blood tests to determine paternity are immediately appealable, even though they are interlocutory. *Jones v. Trojak*, 634 A.2d 201, 204 (Pa. 1993).

[6] As explained *infra*, although *Brinkley* was a plurality decision, four Justices agreed with the primary holding.

of paternity is inapplicable where the marriage does not need protection from the effects of disputed paternity because the marital couple had fully reconciled and any damage to the marriage was "water under the bridge"); *J.L. v. A.L.*, 205 A.3d 347 (Pa. Super. 2019) (presumption of paternity is inapplicable where the mother and husband did not have an intact marriage when the child was conceived or born, and the husband's testimony established that the marriage did not require the protection that the presumption affords)).

The trial court emphasized that Husband is aware that Mother had been intimate with both Husband and B.C. in October 2018, the period during which Child was purportedly conceived, and that she resided with B.C. for at least four months in 2020 after Child was born, yet Husband desires to remain in the marriage, regardless of the outcome of the genetic testing. Relying upon Appellants' statements that their marital strife has made their union stronger, and that the couple has no plans of ever separating, the trial court reasoned that, as in *B.S.* and *J.L.*, Mother's relationship with B.C. is "water under the bridge" and Mother and Husband have moved on from their past marital difficulties. *Id.* at 7 (citing *B.S.*, 782 A.2d at 1037). Reasoning that the marriage does not require the protection that the paternity presumption affords, the trial court found that genetic testing "would merely confirm or disprove what the parties have likely considered to be a very real possibility," and that the purpose underlying the presumption will not be furthered by applying the presumption because Appellants "testified that the court's determination will not affect the marriage." *Id.* at 8.

Thus, the court concluded that the presumption was inapplicable, and so reasoned that it need not determine whether the presumption was rebuttable or irrebuttable. Nevertheless, employing similar reasoning as espoused in *B.S.* and *J.L.*, the trial court alternatively found that the evidence failed to demonstrate Appellants "remained in an intact marriage" – a finding which would have rendered the presumption irrebuttable –

due to the marital couple's three prior separations, once during the period that child was purportedly conceived, and again after Child was born, when Mother moved in with B.C. for at least four months and held him out to be Child's father, while simultaneously claiming that Child belonged to Husband. *Id.* at 9-10.

Finally, the trial court held that B.C. was not estopped from asserting paternity, as the policies underlying estoppel were not implicated, considering that B.C. was asserting parentage and not denying it; B.C. never accepted that Husband was Child's father; and B.C. explained that he would have filed the paternity action sooner had he not been in a rehabilitation facility. Thus, the court denied Appellants' motion to dismiss and ordered paternity testing.

In a unanimous, unpublished memorandum opinion, the Superior Court affirmed. *B.C. v. C.P.*, 515 WDA 2022 (Pa. Super. filed Jan. 6, 2023). Like the trial court, the Superior Court began by observing that, when examining paternity, the court considers whether the presumption of paternity applies to the facts presented and, if so, whether the presumption has been rebutted; if the presumption has been rebutted or is inapplicable, the court examines whether estoppel applies.

Addressing Appellants' contention that the trial court erred in failing to apply the presumption of paternity to their intact marriage, the court looked to the purpose of the presumption, which it found to be the preservation of marriages, and recognized that the presumption only applies where that policy would be advanced by the application. The court further acknowledged that, while "the presumption may be rebutted by clear and convincing evidence of a husband's non-access, impotency, or sterility, the presumption is irrebuttable where the mother, the child, and the husband live together as an intact family and husband assumes parental responsibility for the child." *B.C.*, slip op. at 7 (quoting *B.S.*, 728 A.2d at 1034).

The Superior Court reasoned that, when determining whether the policy of preserving marriages is advanced by application of the paternity presumption, courts have looked to whether the marital couple stayed together or separated. It observed that, in *Strauser v. Stahr*, 726 A.2d 1052 (Pa. 1999), upon which Appellants relied, there were factual similarities with the instant case, such as the mother therein had sexual relations with both prospective fathers around the time of conception, the mother had held out the non-spouse as the father of the child, and the husband displayed varying levels of acquiescence relating to the relationship the non-spouse shared with the mother and the child. Nevertheless, the court found one critical difference between the cases — the marital couple in *Strauser* never separated; thus, the marriage remained intact and warranted the presumption of paternity to protect the "basic and foundational unit of the family." *B.C.*, slip op. at 8 (citing *Strauser*, 726 A.2d at 1055). This case is distinguishable, the court held, because Appellants separated on three occasions, including during the period when Child was conceived, albeit, like the couple in *Strauser*, Appellants reconciled and were together at the time of the paternity litigation and thereafter.

The court found the instant case more akin to *B.S.*, *supra*, where the presumption was held not to apply to a couple whose marriage was intact at the time of the litigation because there was no real dispute that the third party was the biological father; the third party's custody petition would not harm the marriage because the couple had reconciled and endured; and application of the presumption could have a "deleterious effect" on the family if the child later discovered that her true parentage was not what she was led to believe. *Id.* at 10 (citing *B.S.*, 782 A.2d at 1036-37). Appreciating that paternity cases each involve unique facts, the court relied upon *B.S.*'s holding that the presumption was inapplicable there because the marital couple, while separated, "voluntarily gave up the

benefit of the presumption for approximately one year after which they claimed the benefits of its existence for the first time." *Id.* (citing *B.S.*, 782 A.2d at 1037).

Similar to the ruling in *B.S.*, the court noted its prior holding in *J.L.*, *supra*, wherein the marital couple separated, with the mother moving into her own apartment, but had purportedly reconciled by the time the paternity action was litigated, and the court held that the presumption did not apply because the mother sought to invoke the presumption only to defeat the third party's paternity action. The court explained that, as in *B.S.*, the court in *J.L.* held that the couple had voluntarily given up the presumption during the separation. By contrast, the court opined that, in *E.W. v. T.S.*, 916 A.2d 1197 (Pa. Super. 2007), the presumption of paternity was applied because, like in *Strauser*, the parties never separated, nor was a divorce complaint filed. Recognizing that this Court has not spoken on the weight to be given marital separations in paternity actions, the court below emphasized that our decisions have recognized a somewhat narrowing trend in applying the presumption of paternity. *B.C.*, slip op. at 12-13 (citing *Brinkley*, *supra*; *K.E.M. v. P.C.S.*, 38 A.3d 798, 809 (Pa. 2012)).

Ultimately, the Superior Court reiterated the trial court's position that the presumption of paternity was inapplicable where Appellants' marriage did not require the protection that the presumption affords. The court relied on the fact that Appellants maintained that their marital difficulties only made their marriage stronger and demonstrated their intent to stay together regardless of the outcome of the genetic testing. The court further emphasized Husband's desire to stay in the marriage, notwithstanding that Mother was intimate with both him and B.C. during the time when Child was conceived, Mother and B.C. lived together for at least four months after Child's birth, and Mother held Child out as the son of B.C. during that time.

Determining that the common factor in the aforementioned cases was that the presumption applied only where the parties never separated, the Superior Court concluded that Mother and Husband "gave up the benefit of the presumption" when they separated three times, particularly considering that, during one of those separations, Mother lived with B.C. and they raised Child together. *Id.* at 14 (citing *B.S.*, 782 A.2d at 1037). Thus, the court held that the trial court did not abuse its discretion by holding that the presumption of paternity was inapplicable.

Additionally, the court held that the trial court did not abuse its discretion by rejecting Appellants' contention that B.C. was estopped from seeking a paternity test, a claim not at issue in this appeal. The court observed that estoppel is merely the legal determination that, because of a person's conduct, such as holding a child out as his own, the person will not be permitted to deny parentage. Observing that the underlying policy concerns regarding the doctrine of estoppel did not arise in this case, the Superior Court held that it was within the trial court's discretion to deem the doctrine of estoppel inapplicable.

This Court subsequently granted Appellants' petition for allowance of appeal to address "[w]hether the lower courts erred in placing paramount importance on periods of separation in determining that the presumption of paternity was inapplicable, despite the marital couple's reconciliation which predated the third-party's paternity action." *B.C. v. C.P.*, 300 A.3d 321 (Pa. 2023) (order).[7]

III. Parties' Arguments

[7] An appellate court reviews a lower court's paternity determination for an abuse of discretion. *H.Z. v. M.B.*, 204 A.3d 419, 425 (Pa. Super. 2019). This Court's determination of whether the lower courts properly interpreted our case law regarding family intactness is a question of law, over which our standard of review is *de novo* and our scope of review is plenary. *K.E.M.*, 38 A.3d at 803.

Appellants contend that the lower courts erred as a matter of law by holding that separation by the marital couple prior to the filing of a paternity action constitutes a *per se* basis upon which to conclude that the family unit is not intact for purposes of applying the presumption of paternity. After canvassing myriad decisions of this Court, which considered the intactness of the family for purposes of applying the presumption, Appellants conclude that this Court has never expressly held that a temporary marital separation, which occurs prior to the paternity challenge, may serve as the basis to hold that the family unit is not intact. They contend that the lower court decisions suggesting that a prior marital separation is a dispositive factor misinterpret this Court's rulings.[8] Appellants submit that a careful reading of this Court's case law demonstrates that a marital separation prior to the litigation of the paternity action, if not mere *dicta*, is, at best, only one factor in the Court's overall consideration of the parties' marital history when conducting a family intactness inquiry.

Appellants rely, as they did in the lower courts, on this Court's decision in *Strauser*, and argue that the Superior Court erred in distinguishing that case on grounds that the marital couple there never separated. In *Strauser*, Appellants point out, the mother of the child had acknowledged paternity by a third party, a blood test had confirmed that paternity, and the mother held the child out as the son of the third party. Nevertheless, they contend, the Court recognized the serious difficulties that the marriage had overcome, and applied the presumption, finding that its application "serves its purpose by allowing husband and wife, despite past mistakes, to strengthen and protect their family." *Strauser*, 726 A.2d at 1056. Appellants argue that the crux of the *Strauser* decision was not that the couple remained married and never separated, but that the marriage survived

[8] Appellants do not specifically address the Superior Court rulings in *B.S.* and *J.L.*, *supra*, upon which the lower courts' decisions were based.

due to the couple's choice to preserve it and raise their family together, which conduct fell under the limited set of circumstances under which the presumption not only applies, but is irrebuttable. They assert that the same is true here, as they decided to stay together and have been successfully raising their family, notwithstanding their temporary separations prior to the filing of the paternity action. In direct contradiction to *Strauser*, Appellants maintain that the lower courts used the strength of their marriage against them by reasoning that, because they overcame their marital difficulties and cultivated a strong marriage, the presumption was inapplicable.

Emphasizing that the presumption of paternity remains one of the strongest presumptions known to Pennsylvania law, and that its underlying public policy furthers the preservation of marriages, Appellants submit that the trial court should examine whether a marriage is intact as of the time that paternity is challenged by a third part*y*, *despite* the difficult circumstances which gave rise to a paternity action. *See* Appellants' Brief at 21 (citing *Brinkley*, 701 A.2d at 181 (conducting the family intactness inquiry as of the "time of the complaint for support")).

Conceding that more recent case law has limited the application of the presumption in light of changing cultural norms, Appellants conclude that the presumption retains its vitality, and is irrebuttable where, as here, the trial court makes a factual finding, supported by the record, that the marriage is strong, as the marital couple overcame the significant obstacles which led to the paternity action. Accordingly, Appellants request that we reverse the judgment of the Superior Court and remand the case to the trial court with instructions to grant their motion to dismiss B.C.'s paternity action based upon the presumption of paternity.

As indicated above, B.C. has not filed an appellate brief in this Court, or in any way participated in this appeal.

IV. Analysis

The presumption that a child born to a married woman is the child of the woman's husband has been a part of our common law for centuries, and has been characterized as "one of the strongest [presumptions] known to the law." *Cairgle v. American Radiator & Standard Sanitary Corp.*, 77 A.2d 439, 442 (Pa. 1951). This legal doctrine was originally referred to as the "presumption of legitimacy" because it was intended to shield a child from the stigma attached in the past to illegitimacy, which subjected the child to significant legal and social discrimination. *John M. v. Paula T.*, 571 A.2d 1380, 1383 n.2 (Pa. 1990). After the General Assembly eliminated this concern by enacting legislation in 1971 which abolished the legal distinction between "legitimate" and "illegitimate" children, the Court referred to the presumption as the "presumption of paternity." *Id.*

The presumption of paternity has a second policy justification, which remains today and is at issue in this appeal, relating to the preservation of the marriage and the family unit. *See O'Brien v. O'Brien*, 136 A.2d 451, 453 (Pa. 1957) (holding that the presumption of paternity "is essential in any society in which the family is the fundamental unit"); *John M.*, 571 A.2d at 1386 (emphasizing in a paternity case that "[t]here is, in short, a family involved here," and recognizing that a married couple living together and raising their children "have obvious interests in protecting their family from the unwanted intrusions of outsiders (even ones who have had serious relationships with the mother, father, or children)"); *Jones v. Trojak*, 634 A.2d 201, 206-07 (Pa. 1993) (conversely finding that the presumption of paternity was overcome where "no intact family considerations were present," and the marital couple "repudiated their marriage vows long ago");[9] *Fish v.*

[9] This Court in *Jones* recognized that the phrase "intact family" had been described in lower court decisions as "a situation where the presumptive father and natural mother live together as husband and wife and accept the responsibility of parenthood." 634 A.2d at 206 n.8.

Behers, 741 A.2d 721, 723 (Pa. 1999) (reiterating that the policy underlying the presumption of paternity is the preservation of marriages).

Traditionally, the presumption of paternity could only be overcome by clear and convincing evidence establishing that the husband did not have access to his wife during the period of possible conception, or that the husband was impotent or sterile. *John M.*, 571 A.2d at 1384. Indeed, the presumption has been held to be otherwise irrebuttable when a third party seeks to assert his own paternity as against the husband in an intact marriage. *Id.* at 1388-89. However, under certain circumstances, the distinct doctrine of paternity by estoppel may apply, and involves a legal determination that, because of a person's conduct, such as holding a child out as his own, the person, regardless of his biological relationship with a child, will not be permitted to deny parentage, nor will a child's mother be permitted to sue a third party for support, claiming that the third party is the biological father. *Freedman v. McCandless*, 654 A.2d 529, 532-33 (Pa. 1995).

The landscape of the common law governing the presumption of paternity significantly shifted, however, in 1997, when this Court decided *Brinkley*, *supra*. There, Lisa and George Brinkley were married when their daughter was conceived, although Lisa testified that she was not having sexual relations with her husband at that time, and, instead, was having sexual relations with Richard King. When George learned that Lisa was pregnant with King's child, George filed for divorce. King visited Lisa and the child each week for nearly two years, until Lisa filed a complaint for support against King. In defending against Lisa's paternity claim, King argued that the presumption of paternity applied because the child was born during the marriage of Lisa and George, and Lisa had failed to rebut the presumption that her husband was the child's father. The trial court agreed with King that the presumption applied, and that Lisa was precluded from seeking support from King. The Superior Court affirmed.

This Court granted allowance of appeal to review the way in which the presumption functions. Ultimately, in a divided opinion, we vacated and remanded. The Opinion Announcing the Judgment of the Court ("OAJC"), authored by Chief Justice Flaherty, initially opined that the presumption of paternity and the doctrine of paternity by estoppel embody the two great fictions of paternity law: "the presumption of paternity embodies the fiction that regardless of biology, the married people to whom the child was born are the parents; and the doctrine of estoppel embodies the fiction that, regardless of biology, in the absence of a marriage, the person who has cared for the child is the parent." 701 A.2d at 180. Thus, the OAJC explained the pertinent legal analysis in paternity cases was twofold: (1) the court considers whether the presumption applies to the facts presented; if it does, the court determines whether the presumption has been rebutted; and (2) if the presumption has been rebutted or is inapplicable, the court then examines whether estoppel applies, which may bar either a plaintiff from making the claim or bar a defendant from denying paternity. *Id.*

Questioning the wisdom of the presumption's application due to dramatic societal changes that had arisen since the presumption was created, concerning not only the nature of the relationship between men and women, but also the commonality of separation, divorce, and children born out of wedlock, the OAJC broke with precedent and limited the use of the presumption to cases where the policy underlying the presumption is furthered, rendering the presumption otherwise inapplicable. *Id.* at 180- 81.[10] The OAJC expressly defined the public policy supporting the presumption of paternity as "the concern that marriages which function as family units should not be

[10] Four members of the Court agreed that the presumption's application is limited to cases where its underlying policies are furthered, as Justice Cappy joined the OAJC, and Justice Newman's concurring and dissenting opinion, in which Justice Castille joined, expressly agreed with this portion of the OAJC.

destroyed by disputes over the parentage of children conceived or born during the marriage." *Id.* at 180.

Concluding that there was no marriage to protect under the facts presented in *Brinkley*, as the parties had separated before the child's birth and were divorced at the time the support complaint was filed, Chief Justice Flaherty opined that the "presumption of paternity, therefore, has no application to this case, for the purpose of the presumption, to protect the institution of marriage, cannot be fulfilled." *Id.* at 181. Having concluded that the presumption of paternity was not applicable, the OAJC remanded for a hearing on the issue of estoppel.[11]

[11] Several responsive opinions were filed in *Brinkley*, proffering distinct ways by which to remediate the harsh results of the presumption's application in the modern age. Justice Zappala concurred in the result, opining that, instead of limiting the presumption's application, he would have expanded the means of rebutting the presumption by defining "non-access" to the wife more broadly to include testimony establishing that no sexual relations occurred during the period of conception.

In his concurring and dissenting opinion, Justice Nigro agreed with the Court's remand, but would have adopted an approach permitting trial courts to decide paternity issues on a case-by-case basis, unburdened by the application of a presumption or estoppel theory, where the court would be permitted to weigh the relevant evidence, including blood test results and concerns of an existing family unit, to reach an equitable result.

Finally, Justice Newman filed a concurring and dissenting opinion, joined by Justice Castille, in which she asserted that the presumption of paternity "has lost its place in modern society, especially considering the scientific testing available both to prove and disprove paternity." 701 A.2d at 185. (Newman, J., concurring and dissenting). In Justice Newman's view, the presumption conflicts with the Uniform Act on Blood Tests to Determine Paternity, 23 Pa.C.S. § 5104. Justice Newman interpreted Section 5104 as expressly permitting the use of blood tests in any case where paternity is a relevant issue, and allowing the presumption to be rebutted by such blood testing. (The application of Section 5104 was never raised in the instant case in the lower courts or before us.) Lastly, Justice Newman disputed the OAJC's narrow definition of "non-access" to the wife, and would hold that lack of sexual intercourse is sufficient to overcome the presumption. 701 A.2d at 186.

This historical background of the presumption brings us to the cases relied upon by Appellants and the lower courts in this appeal. In *Strauser*, *supra*, Timothy Strauser filed a custody complaint, asserting that he was the father of the youngest of the three children born to April and Steven Stahr, as demonstrated by blood tests voluntarily submitted by April, the child, and Strauser. April and Steven invoked the presumption of paternity to defeat Strauser's claim. The trial court found that: April and Strauser had sex on at least one occasion during the time of the child's conception; April was also having sex with Steven during that time; April and Steven were married when the child was conceived and born, and remained married without ever separating; April had held the child out to the community as Strauser's child, and promoted his relationship with the child; and Steven exhibited an attitude of indifference toward April and the child.

The trial court held that April, having held out her child to be Strauser's and having voluntarily submitted to blood testing, was equitably estopped from contesting the child's paternity. The court also admitted the blood tests into evidence, and concluded that the presumption of paternity was overcome. The Superior Court reversed, holding that the presumption of paternity applied and was irrebuttable because the family had remained intact. This Court affirmed.

Acknowledging that the presumption of paternity had been criticized in *Brinkley,* the Court found the facts in *Strauser* to be distinct, as "the marriage into which [the child] was born continues." *Strauser*, 726 A.2d at 1055. The Court emphasized that, "despite the marital difficulties that they have encountered, [April and Steven] have never separated," and, "[i]nstead, they have chosen to preserve their marriage and to raise as a family the three children born to them," including the child at issue. *Id.* Accordingly, we held that the case fell within the limited circumstances under which, according to the

Brinkley plurality, the presumption of paternity continued to apply, and was, in fact, irrebuttable.

Notably, in rejecting Strauser's claims that April and Steven Stahr did not enjoy a traditional marriage and family unit because, *inter alia*, the couple had experienced conflict caused by adultery, and April represented to others that Strauser was the child's father, the Court found that such assertions were "not unique," as they indicated that the Stahrs' marriage, like many, "encountered serious difficulties." *Id.* at 1056. The Court declared that it "is in precisely this situation, as was suggested in *John M*., that the presumption of paternity serves its purpose by allowing husband and wife, despite past mistakes, to strengthen and protect their family." *Id.* Thus, finding that the presumption was applicable and irrebuttable, the Court deemed unavailing any reliance upon an estoppel theory.[12] [13]

This Court has not before entertained a case like the instant appeal, where the marital couple had separated prior to the filing of the paternity action, but reconciled by the time the action was litigated. In *B.S. v. T.M., supra,* upon which the lower courts relied, the Superior Court examined a somewhat similar factual scenario, and concluded that the presumption of paternity did not apply. As in this appeal, the marriage at issue

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[12] As in *Brinkley*, Justice Nigro filed a dissenting opinion setting forth his position in favor of a case-by-case approach to paternity cases unburdened by the application of the presumption of paternity. Similarly, Justice Newman filed a dissenting opinion in which Justice Castille joined, opining that, while the presumption applied because the marriage had been intact at all relevant times, she would find that the presumption was rebutted by the blood test results, which indicated the identity of the biological father.

[13] The Superior Court applied our holding in *Strauser* in *E.W. v. T.S.*, *supra*, and held that the presumption of paternity applied because the marriage was intact, as the couple never separated, no divorce complaint was filed, and the mother's husband fulfilled the duties of a father in connection with the child's birth and religious rites. *E.W.*, 916 A.2d at 1204. The court reached this conclusion, notwithstanding that the wife had represented to the friends and family of her paramour that the child belonged to him.

in *B.S.* was purportedly intact at the time of the third party's paternity filing, and the husband testified to his willingness to continue to live as an intact family unit, despite his wife's infidelity. Nevertheless, the Superior Court declined to apply the presumption, and rejected the marital couple's reliance upon *Strauser* on grounds that the parties there never separated and were an intact family at all times. Conversely, in *B.S.,* the couple had separated for approximately one year from the time of the child's conception until after her birth, during which time the mother acted as though the separation was permanent, and T.M., her paramour, undertook parental responsibilities.

In finding that application of the presumption would not further its underlying policy of protecting marriages from the effects of disputed paternity, the *B.S.* court first reasoned that there was no real dispute as to the identity of the child's father, considering that the mother left the marital home after learning she was pregnant; she filed for divorce; she and T.M. looked to purchase a home together; T.M. was present for the child's birth and was listed as the child's father on a paternity acknowledgement form; and T.M. participated in the child's baptism ceremony and added the child to his health insurance.[14]

Second, the court held that the marriage would not be harmed if the court declined to apply the presumption because the "hellish marital situation" had already occurred, as the parties had acknowledged the extramarital affair, the subsequent birth of the child, the marital separation, and the mother holding out T.M. as the father of child. *B.S.*, 782 A.2d at 1037. Third, the court held that application of the presumption could actually have a deleterious effect on the family, particularly the child, who could suffer greater trauma if she later finds out, due to the public nature of the separation, that the truth of her parentage is different from what she had been led to believe. Concluding that the mother

[14] Paternity testing was performed and the results of the test were known only to the parties. *B.S.*, 782 A.2d at 1031-32.

and her husband "voluntarily gave up the benefit of the presumption for approximately one year after which they claimed the benefits of its existence," the court found that any damage to the marriage was "water under the bridge," as the couple had reconciled with complete awareness of the events that occurred. *Id.* Accordingly, finding that application of the presumption would not further the policy of protecting the marriage, the court held that the presumption did not apply.

The Superior Court relied upon *B.S.* in its subsequent decision in *J.L. v. A.L.*, *supra*, to conclude that the presumption of paternity was inapplicable. In *J.L.*, the marital couple was experiencing difficulties and the mother ultimately moved into a separate apartment, although the couple did not file for divorce, and continued to have sexual relations. The mother engaged in an extra-marital affair with J.L., and became pregnant, after which J.L. assumed the responsibilities of an expectant father, and mother and J.L. presented themselves to others as a couple preparing for the birth of their child. The mother gave birth while still married, and listed her husband as the father on the child's birth certificate. While all parties later became aware that a prenatal paternity test indicated that J.L. was the biological father of the child, the mother held out both J.L. and her husband as the child's father, depending upon the company she was keeping at the time, and both men assumed parental duties. After the relationship between the mother and J.L. ceased, the mother no longer permitted J.L. to see the child.

After J.L. filed a paternity action, the marital couple invoked the presumption of paternity, asserting that they had never separated or filed for divorce, and that their marriage had remained intact. At the hearing, both the mother and her husband testified to that effect, with the husband expressing his desire to stay with his wife, despite her lies and deception regarding the paternity of the child. Unlike the instant case and *B.S.*, however, the trial court expressly discredited the mother's testimony regarding the status

of the marriage, concluding, instead, that the marriage was a façade, created by the marital couple to keep J.L. out of the child's life. Accordingly, the trial court held there was no need to apply the presumption to preserve the marriage. The Superior Court affirmed, declining to disturb the trial court's credibility determinations and holding that the record supported the trial court's conclusion that the presumption of paternity did not apply because the marriage did not require protection. Further, emphasizing that the child has been publicly held out as the child of J.L., the court opined that, as in *B.S.*, there is the potential for a negative impact on the family if the presumption were applied and the child were to later discover her true paternity.

Our review of the relevant case law instructs that both this Court and the Superior Court have followed the trend of narrowing the application of the presumption of paternity over the years to reflect more accurately the societal realities of the times. This Court's decisions, however, have held steadfast that there is a single circumstance under which the presumption of paternity continues to apply, and, indeed, is irrebuttable – where there is an intact marriage to preserve. In this appeal, the trial court found that Appellants are living together with Child as a family, and their marriage is strong, notwithstanding the multiple contentious periods of separation that the couple endured.[15]

The record supports this finding, as Mother testified that she and Husband had reconciled prior to B.C.'s filing of the paternity action,[16] and, by the time the paternity hearing was conducted on April 11, 2022, the couple had remained together for 15

[15] Admittedly, it may well be a rare case where a marital couple, such as Appellants, have temporarily separated multiple times prior to the filing of the paternity action, and yet demonstrated to the trial court that they have overcome their marital difficulties to such an extent that rendered their marriage stronger than before the infidelity occurred.

[16] The record establishes that Mother and Husband reconciled and lived together since January 13, 2021, and B.C. filed his action more than seven months later, on August 27, 2021.

months. During that time, Mother explained, she and Husband were doing very well raising their son, Husband was "truly a great father," and she did not contemplate any future separations because the marriage was working. N.T., 4/11/2022 at 39, 42. Husband corroborated Mother's testimony, expressed his love for Mother and Child, and confirmed that the trials and tribulations of the marital conflict, which resulted in the parties' prior separations, ultimately made their marriage stronger. *Id.* at 59-60. When questioned whether the injection of a third party as an additional parental figure to Child would impact his family unit, Husband responded, "[d]efinitely," finding the proposition "utterly preposterous." *Id.* at 59.[17]

Rather than finding that the presumption of paternity applied to protect Appellants' existing strong marriage from the adverse effects of the paternity dispute, the lower courts reasoned that the marriage was *so strong* that it did not require the protection the presumption affords. We reject this legal theory, originally espoused in the Superior Court's decision in *B.S.*, and later referenced in that court's decision in *J.L.*, as it cannot be reconciled with this Court's decision in *Strauser*, which held that the presumption of paternity applies precisely in this situation – where the evidence establishes that a marriage and resulting family unit have overcome the seemingly insurmountable odds and remained together after marital infidelity. Logic dictates that the presumption offers little protection against the heart-wrenching revelations and resulting personal devastation, many times public in nature, that may arise prior to and during the litigation of a paternity dispute, as some, if not all, of these damning events may have already occurred by the time the court is examining whether the presumption applies. The

[17] This testimony undermines the trial court's specific finding that "the parties testified that the court's determination will not affect the marriage." Trial Court Opinion, 5/27/2022, at 8. A review of both Husband's and Mother's testimony fails to reveal any other testimony in support of the trial court's specific conclusion in that regard.

presumption, however, additionally protects against the potential insertion of a third party into the functioning family unit upon resolution of the paternity action. This protection is warranted whenever the court finds, and the record supports the finding, that an intact marriage exists.

Thus, the "water under the bridge" construct, employed to preclude application of the presumption where the marital couple already acknowledged the effects of the paternity litigation, is simply inapt, as it views the protection afforded by the presumption too narrowly. *See K.E.M.*, 38 A.3d at 809 ("The legal fictions perpetuated through the years (including the proposition that genetic testing is irrelevant in certain paternity-related matters) retain their greatest force where there is truly an intact family attempting to defend itself against third-party intervention."). Accordingly, the lower courts erred to the extent they relied upon this reasoning in determining that the presumption of paternity was inapplicable in the case at bar.

The lower courts, however, additionally found that the presumption of paternity did not apply because of Appellants' multiple separations prior to the filing of the paternity action. To be precise, the trial court found that the marriage was strong at the time of the paternity hearing, but was not "intact" for purposes of applying the irrebuttable presumption due to Appellants' separations, which occurred prior to the filing of the paternity action. Neither the trial court nor the Superior Court substantively relied upon the strength of Appellants' marriage at the time of the paternity hearing when conducting the family intactness inquiry; instead, as explained *supra*, the courts utilized their current marital strength to find the presumption's application unnecessary.

Distinguishing *Strauser* on grounds that the marital couple there never separated, the Superior Court in *B.S.* declined to apply that decision, holding instead that the marital couple "voluntarily gave up the benefit of the presumption for approximately one year

[when they separated] after which they claimed the benefits of its existence for the first time." *B.S.*, 782 A.2d at 1037. The Superior Court below followed *B.S.'s* reasoning and concluded that Appellants likewise gave up the benefit of the presumption by separating multiple times. Again, we respectfully disagree. In *Strauser*, as detailed above, the mother of the child had acknowledged paternity by a third party, and held the child out as the son of the third party – actions which directly conflict with the presumption that a child born in a marriage is a child of the marriage. Nevertheless, we did not hold that the mother's conduct constituted a voluntary relinquishment of the presumption; rather, in *Strauser*, we focused upon the fact that there was a family involved, and that the marital couple chose to preserve their marriage and to raise as a family the children born during the marriage. *Strauser*, 726 A.2d at 1055. Regardless of the mother's conduct, we held in *Strauser* that the application of the presumption of paternity "serves its purpose by allowing husband and wife, despite past mistakes, to strengthen and protect their family," emphasizing that protection of an intact marriage falls under the limited set of circumstances under which the presumption not only applies, but is irrebuttable. *Id.* at 1056.[18]

In short, while not phrased as such, the Superior Court has interpreted *Strauser* as effectively precluding application of the presumption of paternity in any case where the marital couple has temporarily separated. Respectfully, while we agree that a marital couple's prior temporary separation is a factor to consider in determining whether the

[18] A similar fact pattern arose in *E.W.*, *supra*, where the Superior Court, pursuant to *Strauser*, applied the presumption of paternity where the couple had never separated or filed for divorce, but where the mother publicly held the child out as the child of a third party to the third party's friends and family.

marriage is intact at the time of the paternity hearing, we hold that such factor is not dispositive.[19]

In summary, we hold that the lower courts erred in concluding that the presumption of paternity was inapplicable on grounds that Appellants' marriage did not require the protection the presumption affords. We further hold that the lower courts, in conducting their inquiry regarding whether Appellants' marriage was intact for purposes of applying the presumption, erred by giving primary importance to their marital separations, which occurred prior to the filing of the paternity action, while giving no substantive consideration to the intact status of their marriage. While such separations and their attendant circumstances are, indeed, relevant to a determination of whether the marriage is intact, they are not dispositive. Accordingly, we reverse the order of the Superior Court, and remand to the trial court with instructions to grant Appellants' motion to dismiss B.C.'s paternity action.

In closing, we reiterate that this appeal does not present the issue of whether the presumption of paternity has outlived its usefulness in light of contemporary standards. Unless or until this Court abrogates the presumption of paternity in a case where that issue is preserved and fully developed, courts in this Commonwealth shall apply the presumption of paternity in the limited circumstance where its purpose to preserve marriage is advanced. *See K.E.M.*, 38 A.3d at 806 n.4 (finding that "[o]ur common-law

[19] Of course, the circumstances of each particular paternity case must be reviewed independently and in its entirety, with due regard given to the trial court's findings which are supported by the record. The trial court is free to reject evidence suggesting that a particular marriage is intact, as the factfinder is entitled to weigh the evidence presented and assess the credibility of witnesses. *See J.L.*, 205 A.3d at 356 (trial court expressly discredited the mother's testimony that the marriage was intact and entitled to the protection of the presumption of paternity, concluding, instead, that the marriage was a façade, intended to keep the third party out of the child's life).

decisions are grounded in records of individual cases and the advocacy by the parties shaped by those records").

Order reversed, and case remanded with instructions.

Justices Donohue, Dougherty, Mundy and Brobson join the opinion.

Justice Wecht files a concurring opinion.

Justice McCaffery did not participate in the consideration or decision of this matter.

sis. In each case, the court held that once the plaintiff knew what was happening to him or her and who was doing it, the plaintiff had a duty to investigate the matter and institute suit.

Here, however, Appellant asserts a contemporaneous dissociation from the molestation. Thus, although all of the elements in a typical battery action are *ordinarily* present and known to the plaintiff at the time of the touching itself, *Baily,* here, it was the offensiveness of the contact that allegedly caused her to repress all conscious awareness and memory of the touching. Accordingly, the battery was not immediately discernable to her. Therefore, it is the nature of the actual injury that prevented her from ascertaining its existence.

In factually similar cases, *Seto* and *Pearce,* the Superior Court has, however, erroneously relied on *Baily* to hold that repressed memory categorically constitutes an individual incapacity of the plaintiff. The *Seto* court affirmed the grant of summary judgment against a plaintiff who allegedly suffered a personality split in the course of sexual assault that caused her to mentally block out the acts committed upon her. Relying on *Seto,* the court in *Pearce* affirmed the grant of preliminary objections against a plaintiff who alleged she repressed her recollection of traumatic assaults inflicted upon her as a child. Nonetheless, the court stated:

> A question arises, however, as to whether it is appropriate to utilize this standard when a mental incapacity is averred as the reason for delayed discovery of an injury. It is not for this court to decide whether a plaintiff who alleges repression or other mental disability had the ability to know of the injury and its cause. As the *Seto* court stated, "if there is to be any departure from the clear and certain pronouncement of prior case law and statute, it must be taken by our legislature or Supreme Court."

Pearce, 449 Pa.Super. at 660, 674 A.2d at 1125. Here, we should take the opportunity to announce that where a plaintiff alleges a contemporaneous dissociation and repression of all memory of childhood sexual abuse, it is for the jury to decide whether to apply the discovery rule to toll the statute of limitations.

Lisa A. BRINKLEY, Appellant,

v.

Richard E. KING, Appellee.

Supreme Court of Pennsylvania.

Argued Sept. 19, 1996.

Decided Sept. 17, 1997.

Mother brought paternity action against alleged father concerning child born during mother's marriage to former husband. The Court of Common Pleas, Lawrence County, Civil Division, No. 939 of 1993 D.R., Ralph D. Pratt, J., denied motion for blood tests. Mother appealed. The Superior Court, No. 0594PGH95, affirmed. Mother appealed. The Supreme Court, No. 15 W.D. Appeal Docket 1996, Flaherty, C.J., held that: (1) presumption that child conceived or born during marriage is child of marriage applies only where policy upon which presumption is based would be advanced, that policy being preservation of marriage, and (2) presumption did not apply.

Order of Superior Court vacated and case remanded.

Zappala, J., concurred with opinion.

Nigro, J., concurred and dissented with opinion.

Newman, J., concurred and dissented and filed opinion in which Castille, J., joined.

1. Children Out-of-Wedlock ⇐3

Generally, child conceived or born during marriage is presumed to be child of marriage.

2. Children Out-of-Wedlock ⇐3

Presumption that child conceived or born during marriage is child of marriage may be overcome by clear and convincing evidence that presumptive father had no access to mother or that presumptive father was physically incapable of procreation at time of conception.

3. Children Out-of-Wedlock ⇐3

Presumption that child conceived or born during marriage is child of marriage is irrebuttable when third party seeks to assert his own paternity as against husband in intact marriage.

4. Children Out-of-Wedlock ⇐3

Public policy in support of presumption of paternity of child born during marriage is concern that marriages which function as family units should not be destroyed by disputes over parentage of children conceived or born during marriage.

5. Children Out-of-Wedlock ⇐1

Paternity by estoppel is based on public policy that children should be secure in knowing who their parents are; if certain person has acted as parent and bonded with child, child should not be required to suffer potentially damaging trauma that may come from being told that father he has known all his life is not in fact his father.

6. Children Out-of-Wedlock ⇐1, 3

In paternity action concerning child conceived or born during marriage, legal analysis consists of determination of whether presumption of paternity applies, determination of whether presumption has been rebutted, and, if presumption does not apply or has been rebutted, consideration of doctrine of estoppel; if presumption has been rebutted or does not apply, and if facts of case include estoppel evidence, such evidence must be considered, and if trier of fact finds that one or both parties are estopped, no blood tests will be ordered.

7. Children Out-of-Wedlock ⇐3

Presumption that child conceived or born during marriage is child of marriage applies only where policy upon which presumption is based would be advanced, that policy being preservation of marriage.

8. Children Out-of-Wedlock ⇐3

Presumption that child conceived or born during marriage is child of marriage did not apply, in paternity case in which mother and husband separated before birth of child and were divorced at time that mother filed support complaint against alleged father.

Robert D. Clark, Wilmington, for Lisa A. Brinkley.

Phillip L. Clark, Jr., Ellwood City, for Richard E. King.

Before FLAHERTY, C.J., and ZAPPALA, CAPPY, CASTILLE, NIGRO and NEWMAN, JJ.

OPINION ANNOUNCING THE JUDGMENT OF THE COURT

FLAHERTY, Chief Justice.

One of the strongest presumptions in Pennsylvania law is that a child conceived or born in a marriage is a child of the marriage. In order to rebut the presumption it must be proved by clear and convincing evidence that at the time of conception, the husband either was not physically capable of procreation or had no access to the wife. The issue in this case is whether the presumption applies to the facts of this case.

Lisa Brinkley was married to and was living with George Brinkley in February 1991, when Lisa's daughter, Audrianna, was conceived. George moved out in July, 1991, four months before the child was born. Lisa stated that at the time Audrianna was conceived the former husband slept on the couch and she slept in a bedroom. Further, although her former husband was not physically incapable of procreation at the time Audrianna was conceived and although he was free to enter her bedroom, she and her husband did not have sexual relations. Lisa also testified that she was having sexual relations with Richard King during the period when Audrianna was conceived [1] and that her husband

1. Although the trial court stated: "Conspicuous by its absence from the testimony is any indica-

filed for divorce because he learned that she was pregnant by King.

Lisa testified that King came to the hospital when Audrianna was born and he visited the child on a weekly basis thereafter for approximately two years until Lisa filed a complaint for support. Although King and his wife also paid Lisa a monthly stipend for Audrianna's support, Lisa filed a complaint for support because the amount was insufficient. Finally, Lisa testified that King placed Audrianna on his medical insurance.

Concerning her former husband, Lisa testified that after they were separated, the former husband came to visit her other child, whom the former husband acknowledged as his own, but he did not visit Audrianna.[2]

On October 29, 1993, Lisa filed a complaint for support against Richard King, alleging that Audrianna was the child of King. King denied paternity and refused blood testing. Lisa then filed a motion for adjudication of paternity and King answered that Lisa was precluded from claiming that he was the father of Audrianna because she had failed to rebut the presumption that her former husband was the father. The trial court treated the motion for adjudication of paternity as a motion for blood tests and directed the parties to submit memoranda of law on their positions. The court thereafter concluded that Lisa had failed to rebut the presumption that her former husband was Audrianna's father, for she was unable to establish that the former husband had no access during the period of conception, and denied the motion for blood tests. Lisa then appealed to Superior Court.

Superior Court affirmed, holding that Lisa had not presented clear and convincing evidence that her former husband had no access to her during the period of conception. Nonetheless, two of three judges on the Superior Court panel, in a memorandum opinion, expressed reservations that considerations of impotence or lack of access should be the exclusive considerations sufficient to rebut the presumption of paternity. They suggested that this court consider whether additional factors, such as the identity of the father named on the child's birth certificate, whether the putative father has established a relationship with the child, whether the putative father provided support for the child, and whether the putative father provided medical insurance for the child should be also considered in rebuttal of the presumption.

We granted allocatur in order to review the way in which the presumption of paternity functions in Pennsylvania law.[3]

In *John M. v. Paula T.*, 524 Pa. 306, 571 A.2d 1380 (1990), a third party sued to establish his own paternity as against that of the presumptive father. The child was conceived before the mother married, but was born while the mother was married to and living with her husband. Husband and wife cared for the child and remained together at the time the lawsuit was filed. The third party sought to compel the presumptive father to submit to blood tests. Former Chief Justice Nix, concurring in *John M.*, wrote:

> [I]t should remain clear that a child born to a married couple will be presumed to be the issue of the husband. That presumption can be overcome only by proof of facts establishing non-access or impotency. *Cairgle v. American Radiator and Stan-*

tion that Mr. and Mrs. Brinkley had stopped having sexual relations at or about the time that Audrianna was conceived," the trial court was mistaken:

> Q. In February, in January, February and March of 1991 were you having sexual relations with your husband George Brinkley?
> A. No, I was not.
> Q. Were you having a sexual relationship with anyone at that time?
> A. Richard King.

N.T. at 15.

2. In describing her former husband's visits, Lisa stated:

> Q. When he comes to see the children, he spends time with both of them, correct?
> A. The first two years, he did not spend any time with her whatsoever. It is just sympathy against—he just takes her every now and then because she wants to go with him, but she knows who her dad is.

N.T. at 26.

3. Because of our disposition of the case, we do not address Lisa's additional claim that it was error for the trial court to fail to consider an order entered in a separate proceeding which excluded Lisa's former husband as the father of Audrianna.

dard Sanitary Corp., 366 Pa. 249, 77 A.2d 439 (1951). It continues to be one of the strongest presumptions within our law. *Commonwealth ex rel. Leider v. Leider*, 434 Pa. 293, 254 A.2d 306 (1969); *Cairgle, supra; Commonwealth, ex rel. O'Brien v. O'Brien*, 390 Pa. 551, 136 A.2d 451 (1958 [1957]).

* * *

[The Uniform Act on Blood Tests to Determine Paternity] cannot be used by a third party, seeking to rebut the presumption, to compel a *presumed* father to submit to a blood test. Whatever interests the putative father may claim, they pale in comparison to the overriding interests of the presumed father, the marital institution and the interests of this Commonwealth in the family unit. These interests are the cornerstone of the age-old presumption and remain protected by the Commonwealth today.

> Thus a third party who stands outside the marital relationship should not be allowed, for any purpose, to challenge the husband's claim of parentage. I believe the presumption in this situation is irrebuttable....

524 Pa. at 322–23, 571 A.2d at 1388–89 (concurring opinion joined by four other members of the court).

In *John M.* a third party was attempting to defeat the paternity of the presumed father, but three years later, in *Jones v. Trojak*, 535 Pa. 95, 634 A.2d 201 (1993), we addressed a different fact situation. In *Trojak* the mother sued the third party for child support, claiming that he, rather than her husband, was the father. The child was born while she was married to and living with her husband. Trojak denied paternity and objected to the trial court's order for blood tests on the grounds that the mother had not rebutted the presumption that the child was the child of the marriage. We stated:

> A court may order blood tests to determine paternity only when the presumption of paternity has been overcome. *John M. v. Paula T.*, 524 Pa. 306, 571 A.2d 1380, *cert. denied*, 498 U.S. 850, 111 S.Ct. 140, 112 L.Ed.2d 107 (1990). This Court has held that the presumption can be overcome by proof of facts establishing non-access or impotency. *Cairgle v. American Radiator and Standard Sanitary Corp.*, 366 Pa. 249, 77 A.2d 439 (1951). However, under certain circumstances, a person might be estopped from challenging paternity where that person has by his or her conduct accepted a given person as the father of the child.

535 Pa. at 105, 634 A.2d at 206. In *Trojak* the mother established that she and her husband did not live together as an intact family; her husband had not accepted the child; the husband and wife had repudiated their marriage vows long ago; the husband never supported the child; and when the child was conceived, the husband was physically incapable of procreation.

[1–3] These cases set forth the fundamentals of the law of presumptive paternity: generally, a child conceived or born during the marriage is presumed to be the child of the marriage; this presumption is one of the strongest presumptions of the law of Pennsylvania; and the presumption may be overcome by clear and convincing evidence either that the presumptive father had no access[4] to the mother or the presumptive father was physically incapable of procreation at the time of conception. However, the presumption is irrebuttable when a third party seeks to assert his own paternity as against the husband in an intact marriage. *John M.*, 524 Pa. at 323, 571 A.2d at 1388–89.

The legal identification of a father, however, even in a case involving the presumption of paternity, may also involve the question of estoppel. One or both of the parties may be prevented from making a claim based on biological paternity because they have held themselves out or acquiesced in the holding

4. "No access" means simply that it was physically impossible for the presumptive father and the mother to have had sexual relations. For example, the parties lived in locations that are distant from each other and had no physical contact. Of course, it is possible that people living in New York and Australia may meet and have sexual contact, and it is for the trial court to decide whether sexual contact was physically possible in a given case.

out of a particular person as the father.[5] In *Trojak* this court stated that:

> under certain circumstances, a person might be estopped from challenging paternity where that person has by his or her conduct accepted a given person as the father of the child.... [T]he doctrine of estoppel will not apply when evidence establishes that the father failed to accept the child as his own by holding it out and/or supporting the child.... Only when the doctrine of estoppel does not apply will the mother be permitted to proceed with a paternity claim against a putative father with the aid of a blood test.

Trojak, 535 Pa. at 105–06, 634 A.2d at 206.[6]

The presumption of paternity and the doctrine of estoppel, therefore, embody the two great fictions of the law of paternity: the presumption of paternity embodies the fiction that regardless of biology, the married people to whom the child was born are the parents; and the doctrine of estoppel embodies the fiction that, regardless of biology, in the absence of a marriage, the person who has cared for the child is the parent.

[4, 5] The public policy in support of the presumption of paternity is the concern that marriages which function as family units should not be destroyed by disputes over the parentage of children conceived or born during the marriage. Third parties should not be allowed to attack the integrity of a functioning marital unit, and members of that unit should not be allowed to deny their identities as parents.[7] Estoppel is based on the public policy that children should be secure in knowing who their parents are. If a certain person has acted as the parent and bonded with the child, the child should not be required to suffer the potentially damaging trauma that may come from being told that the father he has known all his life is not in fact his father.

[6] Thus, the essential legal analysis in these cases is twofold: first, one considers whether the presumption of paternity applies to a particular case. If it does, one then considers whether the presumption has been rebutted. Second, if the presumption has been rebutted or is inapplicable, one then questions whether estoppel applies. Estoppel may bar either a plaintiff from making the claim or a defendant from denying paternity. If the presumption has been rebutted or does not apply, and if the facts of the case include estoppel evidence, such evidence must be considered. If the trier of fact finds that one or both of the parties are estopped, no blood tests will be ordered.

[7] It remains to consider how one knows whether the presumption applies in any given case. Traditionally, the answer to this question has been that the presumption applies if the child was conceived or born during the marriage. We now question the wisdom of this application of the presumption

5. In *Freedman v. McCandless* we defined estoppel as follows:

> Estoppel in paternity actions is merely the legal determination that because of a person's conduct (e.g., holding out the child as his own, or supporting the child) that person, regardless of his true biological status, will not be permitted to deny parentage, nor will the child's mother who has participated in this conduct be permitted to sue a third party for support, claiming that the third party is the true father. As Superior Court has observed, the doctrine of estoppel in paternity actions is aimed at "achieving fairness as between the parents by holding them, *both* mother and father, to their prior conduct regarding the paternity of the child."

539 Pa. 584, 591–92, 654 A.2d 529, 532–33 (1995)(emphasis in original).

6. Accord, *John M. v. Paula T.*:

> [I]t is recognized that, under certain circumstances, a person might be estopped from challenging paternity where that person has by his or her conduct accepted a given person as father of the child.... [W]here the principle [of estoppel] is operative, blood tests may well be irrelevant, for the law will not permit a person in these situations to challenge the status which he or she has previously accepted.

524 Pa. at 318, 571 A.2d at 1388, cited in *Freedman v. McCandless*, 539 Pa. at 591–92 n. 5, 654 A.2d at 533 n. 5 (1995).

7. The presumption of paternity "is essential in any society in which the family is the fundamental unit." *O'Brien v. O'Brien*, 390 Pa. 551, 555–56, 136 A.2d 451 (1957). In *John M. v. Paula T.*, 524 Pa. at 322–23, 571 A.2d at 1380, the court stated that the "interests of the presumed father, the marital institution and the interests of this Commonwealth in the family unit," are paramount.

because the nature of male-female relationships appears to have changed dramatically since the presumption was created. There was a time when divorce was relatively uncommon and marriages tended to remain intact. Applying the presumption whenever the child was conceived or born during the marriage, therefore, tended to promote the policy behind the presumption: the preservation of marriages. Today, however, separation, divorce, and children born during marriage to third party fathers is relatively common, and it is considerably less apparent that application of the presumption to all cases in which the child was conceived or born during the marriage is fair. Accordingly, consistent with the ever-present guiding principle of our law, *cessante ratione legis cessat et ipsa lex,* we hold that the presumption of paternity applies in any case where the policies which underlie the presumption, stated above, would be advanced by its application, and in other cases, it does not apply.[8]

[8] In the case at bar, at the time of the complaint for support, there was no marriage. Lisa and George Brinkley had separated before the birth of the child and were divorced at the time of the complaint. The presumption of paternity, therefore, has no application to this case, for the purpose of the presumption, to protect the institution of marriage, cannot be fulfilled. It was error, therefore, to fail to consider the estoppel evidence, for estoppel evidence may be presented where the presumption does not apply.

The order of Superior Court is vacated and the case is remanded to the trial court for a hearing on the issue of estoppel.[9]

ZAPPALA, J., files a concurring opinion.

NIGRO, J., files a concurring and dissenting opinion.

NEWMAN, J., files a concurring and dissenting opinion in which CASTILLE, J., joins.

ZAPPALA, Justice, concurring.

In *John M. v. Paula T.*, 524 Pa. 306, 571 A.2d 1380 (1990), we held that a child born to a married couple will be presumed to be the issue of the husband unless there is proof of facts establishing non-access or impotency. Non-access is defined by the majority in this case to mean "that it was physically impossible for the presumptive father and mother to have had sexual relations." I find the major-

8. In holding that the presumption applies only where the policy upon which it is based would be advanced, we are suggesting a simplified way of regarding presumption cases. In *Cairgle v. American R. and S.S. Corp.*, 366 Pa. 249, 77 A.2d 439 (1951), for example, the husband and wife were separated in 1932, but were never divorced. The wife moved in with another man in 1945 and the husband lived with another woman beginning in 1942, and both parties lived with these persons continuously until 1948, when Cairgle died. The wife gave birth to three minor children, one in 1939, one in 1942 and one in 1943. The children were given the name Owens; they lived with Owens and never with Cairgle; and Owens, not Cairgle, supported them. After the husband, Cairgle, died of silicosis in 1948, the wife sought to collect benefits under the Workmen's Compensation Act for her children. In order to be entitled to these benefits, she was required to prove that her children were "legitimate." 366 Pa. at 254–55, 77 A.2d at 442. The *Cairgle* court agreed that the presumption of paternity applied even to these facts:

> If, as claimant testified, she had sexual intercourse with her husband during her pregnancy for her minor children when she was living in adultery with another man, the children would be considered, in law, the children of her husband and the presumption of legitimacy would be irrefutable.

Id. at 257, 77 A.2d at 443, citing *Dennison v. Page,* 29 Pa. 420 (1857). The court upheld the denial of benefits because it did not believe the wife's claim that she continued to have sexual intercourse with Cairgle after she was separated or that Cairgle sent support payments. In other words, the wife's lack of credibility and her life with Owens rebutted the presumption. Our view, as expressed today, would be that when the parties separated, the presumption of paternity was inapplicable, and the mother would be estopped from claiming that Cairgle was the children's father based on her life with Owens.

9. We decline to accept Superior Court's suggestion that we expand the ways in which one can rebut the presumption of paternity. Superior Court's proposed additional factors to rebut the presumption, such as whether the putative father established a relationship with the child, are appropriate in an estoppel context, but not in a presumption of paternity context. The presumption of paternity continues to be rebutted, if at all, by evidence related to biology: there was no access or the presumptive father was incapable of procreation.

ity's definition of non-access unnecessarily restrictive for the reasons articulated by Madame Justice Newman in footnote eight of her concurring and dissenting opinion. The testimony of Lisa Brinkley that she and her former husband did not have sexual relations during the period of conception was sufficient to establish non-access and to overcome the presumption. As this analysis is consistent with our holding in *John M. v. Paula T.*, I do not believe it is necessary to re-examine the policy considerations that underlie our decision in that case. I would reverse the order of the Superior Court and remand the matter to the common pleas court for further proceedings.

NIGRO, Justice, concurring and dissenting.

I agree with the Majority that this case should be remanded, but, for the reasons presented below, I am unable to completely join in the Majority's decision.

The Majority recognizes that "separation, divorce, and children born during marriage to third party fathers is [now] relatively common, and it is considerably less apparent that application of the presumption [of paternity] to all cases in which the child was conceived or born during the marriage is fair." Op. at 181. I agree with this assertion.

However, despite the Majority's recognition of this disparity between practical reality and legal rule, they have chosen nonetheless to preserve the "two great fictions of the law of paternity"—the presumption of paternity and paternity by estoppel. Op. at 180. The Court does hold that the presumption will no longer apply in cases where the policy it embodies would not be forwarded but, with regard to estoppel, today's decision represents no break with prior case law.

I am unable to join in this approach because I believe that both the presumption of paternity and paternity by estoppel should no longer be strictly applied, as they have been in the past. In light of the changed, and increasingly fluid, nature of the family, and the increased rates of divorce and separation, these legal fictions have become less reflective of social reality. They are now more problematic than useful, and more likely to lead to unfair results. Thus, I agree with the Majority that when the reason for a law ceases, the law should also cease, but I do not join in today's decision because, unlike the Majority, I believe that the time has come to take this principle to its logical conclusion in the law of paternity.

I believe that the better course of action in these cases is to allow the trial court to determine paternity on a case-by-case basis, unburdened by the obligatory application of a presumption or an estoppel theory. These doctrines have acted as an obstacle to the discretion of the trial court to order blood testing of the parties, the single most valuable technique available to a court in determining parentage. Abandoning their strict application would remove this obstacle and allow the trial court to order blood testing of both the alleged father and the presumed father. The benefit of this approach is of course that the trial court is not precluded from considering test results representing, in essence, conclusive evidence of paternity,[1] but is free to acknowledge this evidence, along with such concerns as the maintenance of an existing family unit, if any, and the promotion of the interests of the child, in the course of arriving at an equitable result.

Moreover, I do not believe that abandoning the obligatory application of these two doctrines in favor of the judicious use of blood testing will necessarily result in any more strain on a marriage unit than would, for example, forcing a cuckolded husband, because of the presumption, to care for a child he knows is not his—a situation which would strain both the marriage *and* the husband's relationship with the child. Blood testing would also work to eliminate situations where a man is deceived into believing he is the father and is then made to bear legal responsibility, by reason of estoppel, for a child that is not his.

1. Blood tests have been held to be less than 100% certain. *See John M. v. Paula T.*, 524 Pa. 306, 316, 571 A.2d 1380, 1385, *cert. denied*, 498 U.S. 850, 111 S.Ct. 140, 112 L.Ed.2d 107 (1990); *Smith v. Shaffer*, 511 Pa. 421, 515 A.2d 527 (1986). Despite this, I would suggest that they are extremely probative.

It cannot be ignored, however, that blood testing impacts on an individual's right to privacy and therefore may not be compelled without a balancing of the privacy interests of the one whose blood sample is sought as against the needs and interests of those seeking the test. *See John M. v. Paula T.*, 524 Pa. 306, 316–17, 571 A.2d 1380, 1385, *cert. denied*, 498 U.S. 850, 111 S. Ct. 140, 112 L.Ed.2d 107 (1990); *see also Commonwealth v. Sell*, 504 Pa. 46, 470 A.2d 457 (1983). The "good cause" requirement found in Pa. R.C.P. 4010(a) embodies this type of balancing.[2] Rule 4010(a) states:

> When the mental or physical condition (including blood group) of a party, or of a person in the custody or under the legal control of a party, is in controversy, the court in which the action is pending may order the party to submit to a physical or mental examination by a physician or to produce for examination the person in his custody or legal control. The order may be made only on motion for good cause shown and upon notice to the person to be examined....

Pa. R.C.P. 4010(a).

I believe this "good cause" requirement provides a workable standard to guide a court's determination whether to compel blood testing.[3] "[T]he requirement ... is not met by mere conclusory allegations of the pleadings or by mere relevance of the physical or mental condition to the case, but rather, requires an affirmative showing by the moving party that good cause exists for ordering the examination." Goodrich Amram 2d § 4010(a):10, *quoted in Uhl v. C.H. Shoemaker & Son, Inc.*, 432 Pa.Super. 230, 239 n. 1, 637 A.2d 1358, 1363 n. 1 (1994) (Beck, J., dissenting); *see also Schlagenhauf v. Holder*, 379 U.S. 104, 85 S.Ct. 234, 13 L.Ed.2d 152 (1964) (discussing the "good cause" requirement of Fed.R.Civ.P. 35, from which Pa. R.C.P. 4010 is drawn). If good cause is shown for the testing of either the alleged or the presumed father, I believe that he should be tested, despite the presumption of paternity or the presence of facts suggesting a finding of paternity by estoppel.[4]

Abandoning the strict use of these doctrines would allow our courts to examine the situation presented, to compel blood testing if the appropriate showing is made, and to weigh the competing factors in order to reach a just result in each case. Given the realities of marriage, separation, and divorce today, I believe a flexible, case-by-case approach to paternity issues, acknowledging and benefitting from the relative certainty of blood testing, is simply more preferable than a system characterized by the strict application of overarching and outdated legal fictions that can lead, as the Majority admits, to unfair results.

Thus, I would also remand this case to the trial court, but for blood testing, not a hearing on estoppel. Since Audrianna was conceived while the Brinkleys were married, and because good cause exists, it would seem reasonable to test George Brinkley first. If

2. "Good cause and notice are intended to protect parties against undue invasion of their rights to privacy." Pa. R.C.P. 4010, Explanatory Note (2); *see McGratton v. Burke*, 449 Pa.Super. 597, 601–02, 674 A.2d 1095, 1097 (1996).

3. Authority to compel blood testing is also found in section 5104(c) of the Uniform Act on Blood Tests to Determine Paternity, 23 Pa. Cons.Stat. § 5104 (1991). Section 5104(c) states in relevant part:

> [i]n any matter ... in which paternity ... of a child is a relevant fact, the court, upon its own initiative or upon suggestion made by or on behalf of any person whose blood is involved, may or, upon motion of any party to the action ..., shall order the mother, child and alleged father to submit to blood tests.

This section authorizes the testing of an alleged father, but has been interpreted as affording no right to the alleged father to compel the testing of the mother's husband—the presumed father. *See John M. v. Paula T.*, 524 Pa. 306, 315, 571 A.2d 1380, 1385, *cert. denied*, 498 U.S. 850, 111 S.Ct. 140, 112 L.Ed.2d 107 (1990). Because I believe that such presumptions should no longer be applied in strict fashion in the law of paternity, I believe Rule 4010(a) provides the better standard for determining whether blood tests should be ordered. The Rule can be applied uniformly, and its requirements recognize and protect individual privacy interests.

4. I would allow testing not only to identify a man as the biological father, but also to show that a man could not be the father. In other words, blood testing is as probative of a lack of biological connection as it is of paternity, and I believe it should be employed to establish either status.

he is Audrianna's father, the case would end. If he is not, Richard King should then be tested. If Mr. King is shown to be Audrianna's biological father, I believe, given the facts of this case, that he should then be made her legal father.

It is true that in some cases the answers provided by blood testing will perhaps not be easy for all parties to accept. Despite this, it is my belief that the clarity and finality provided by a case-by-case approach involving blood testing outweigh this concern and make such an approach more desirable than the current system. Accordingly, I am unable to join in the language of the Majority's decision, but I do join the Court's remand.

NEWMAN, Justice, concurring and dissenting.

I concur in the Majority's conclusion that the presumption of paternity does not apply to this case, but I write separately to express my view that we must expand the factors available to rebut the presumption, particularly because of the accuracy and reliability of blood testing to determine paternity.

I also respectfully dissent from the Majority's decision to remand this case for a determination of the estoppel issue. The evidence clearly indicates that neither the mother nor the husband is estopped from challenging the husband's paternity because neither held Audrianna out as a child of the marriage.

FACTS

Paternity is a fact-sensitive area of the law. Therefore, emphasizing the relevant facts of this case is important to demonstrate that (1) the presumption of paternity does not apply, (2) estoppel is not a relevant issue in this case, and (3) the next logical step is to perform blood testing to decide whether Richard King (King), the putative father, is Audrianna's biological father.

Both Lisa Brinkley (Lisa) and her now ex-husband, George Brinkley (George) testified that during the time of Audrianna's conception, presumably February of 1991, they did not engage in sexual intercourse. Although they continued to live in the same house, George slept on the couch while Lisa slept in the bedroom. Furthermore, Lisa testified, and King did not deny, that she and King were sexually involved prior to November of 1990 until about June of 1991.

George never held Audrianna out as his child, and King accepted full responsibility for Audrianna as his daughter during the first two years of her life. King was by Lisa's side at the hospital when she gave birth to Audrianna; he paid child support for approximately two years;[1] he visited Audrianna and Lisa regularly; and he included Audrianna on his medical insurance policy. Once Lisa sought a court order securing the child support payments from King, he denied paternity and refused to support Audrianna.[2]

PRESUMPTION OF PATERNITY

It has long been the law in Pennsylvania that a child born to a married woman is presumed to be a child of the marriage. *Freedman v. McCandless*, 539 Pa. 584, 654 A.2d 529 (1995). *See also*, 23 Pa.C.S.A. § 5102(b). This presumption arose (a) to protect marital integrity and (b) to prevent a child from being labeled a "bastard" child, a classification that carried both a social and a legal stigma.[3] Modern laws, however, have

1. Lisa testified that King's wife knew that he was giving Lisa money for child support and that Mrs. King was the person writing the check for the support. King had been giving Lisa $100 per month but when she told him she needed more money to support Audrianna, he refused. Lisa then threatened to take him to court to compel him to give her more money. It appears that Mrs. King then agreed to begin giving Lisa $150 per month, however the payments ceased once Lisa filed the Complaint for Support.

2. In a collateral matter involving George's obligation to support Audrianna, a Mercer County Court entered an Order on June 20, 1994 (Mercer County order), which concluded, based on DNA and blood tests of Lisa, George, and Audrianna, that George is EXCLUDED as Audrianna's father. Although King was named in that suit, he claims he never received notice of the Complaint or the hearing. The trial court in the case *sub judice* refused to take judicial notice of the Mercer County adjudication.

3. As the Honorable Berle Schiller explained in a recent dissenting opinion:

> A child protected by legitimacy could inherit from his father, had a legal right of support enforceable against his father and could pur-

erased the legal stigma of children born out of wedlock, hence depriving the presumption of one of its original purposes. 23 Pa.C.S.A. § 5102.[4]

The goal of protecting marital integrity is also futile in a society where legal marital status does not always translate into a loving, intimate, monogamous relationship.[5] The presumption that a child born to a married woman is a child of the marriage is dubious at best and in many cases, such as here, is absurd. We are living a fable, both morally and legally, if we think that a family is typified by "Father Knows Best," where parents and children love and respect each other and where husband and wife are faithful to each other and adultery is merely a figment of one's imagination.[6] Thus, the presumption that a child born during coverture is a child of the marriage has lost its place in modern society, especially considering the scientific testing available both to prove and to disprove paternity.

The Majority takes the first step today in updating this ancient concept to conform with modern-day realities. Accordingly, I concur with the Majority's holding that the presumption of paternity does not apply where its purpose is not served.[7] However, the time has come to take the next logical step in the evolution of paternity law and expand the means of rebutting the presumption.

Knowledge of biological parentage is of paramount importance for a variety of reasons, including: discovery of genetic medical conditions, especially those conditions that medical science can prevent or successfully treat when discovered at an early stage; satisfaction of a child's innate desire to know his or her biological parents, as we often observe with adopted children; placement of moral and economic responsibility; and preservation of the rights of biological parents. Because of the significance of this determination, a party should not be unnecessarily restricted in his or her attempt to establish paternity. Therefore, I disagree with the Majority's statement that the presumption, when it does apply, may only be overcome

> sue certain tort actions, such as wrongful death suits. (Fathers benefitted as well, for example, through curtesy, which vested only when a child was born, and through entitlement to children's earnings.) No such rights were available to illegitimate children. They could not inherit from their fathers, were limited to a right to support from their mothers and, in the absence of such support, became wards of the state or church. A child of marriage was also freed from the social stigma of bastardy.
>
> *Ruth F. v. Robert B.*, 456 Pa.Super. 398, 424–26, 690 A.2d 1171, 1184 (1997) (Schiller, J., dissenting).

4. In 1971, the General Assembly eliminated the legal distinction between a child born to a married woman, and a child born to an unwed mother by declaring all children legitimate regardless of their parents' marital status. They likewise accorded all children rights and privileges "as if they had been born during the wedlock of such parents." 23 Pa.C.S.A. § 5102. The "presumption of legitimacy" is now referred to as the "presumption of paternity." *John M. v. Paula T.*, 524 Pa. 306, 312–12 n. 2, 571 A.2d 1380, 1383–84 n. 2 (1990).

5. Divorce, which was once regarded as unthinkable, is now a socially acceptable option for couples with broken marital relationships, as evidenced by the current 51.1% divorce rate. STATISTICAL ABSTRACT OF THE UNITED STATES 1995.

6. The conflict between the moral ideals of our society is often demonstrated through the media. For example, in 1992, a controversy arose surrounding the lead character of the popular television show "Murphy Brown." Murphy Brown, a successful, single newswoman, became pregnant, chose not to have an abortion, and decided to have the baby out of wedlock. Despite the television show's presentation of a common situation in our society, some were nevertheless unwilling to acknowledge the frequency with which women are faced with this choice. While some applauded Murphy's decision not to have an abortion, then Vice President, Dan Quayle, criticized the television situation comedy for depicting a scenario that, to him, typified the collapse of the family values in our country. Clearly, we continue to battle the preconception of the typical "traditional" family with the reality of the make-up of the modern family.

7. The Superior Court has recently characterized the purpose of the presumption to include protecting an established parent/child relationship, even when the marriage has dissolved. *Dettinger v. McCleary*, 438 Pa.Super. 300, 652 A.2d 383 (1994). I disagree with the Superior Court's expansion of the purpose of the presumption beyond the preservation of the marriage. The nature of the parent/child relationship is addressed and taken into consideration within the realm of estoppel.

with proof of the husband's non-access to the mother,[8] or his inability to procreate. Technology has advanced to a level where blood tests can exclude a man as the father with a 98% degree of reliability.[9] Therefore, when the presumption does apply, blood tests should also be available to parties to rebut the presumption of paternity.

The Uniform Act on Blood Tests to Determine Paternity (the Act) expressly permits the use of blood tests in any case where paternity is a relevant issue. 23 Pa.C.S. § 5104. The Legislature adopted the Act because reliable scientific evidence excluding a man as the father of a child is imperative in any suit where paternity is an issue, particularly where the child was born during wedlock. *Tyler v. King*, 344 Pa.Super. 78, 86, 496 A.2d 16, 20 (1985). Section 5104(c) of the Act confers upon the courts the authority to compel interested parties to submit to blood testing as follows:

> § 5104. Blood tests to determine paternity
>
> (c) Authority for test.—In any matter subject to this section in which paternity, parentage or identity of a child is a relevant fact, the court, upon its own initiative or upon suggestion made by or on behalf of any person whose blood is involved, may or, upon motion of any party to the action made at a time so as not to delay the proceedings unduly, shall order the mother, child and alleged father to submit to blood tests. If any party refuses to submit to the tests, the court may resolve the question of paternity, parentage or identity of a child against the party or enforce its order if the rights of others and the interests of justice so require.

The effect of the test results on the presumption is found in subsection (g), which provides:

> (g) Effect on presumption of legitimacy.—The presumption of legitimacy of a child born during wedlock is overcome if the court finds that the conclusions of all the experts as disclosed by the evidence based upon the tests show that the husband is not the father of the child.

23 Pa.C.S. § 5104. The rules of statutory construction, 1 Pa.C.S. § 1501 et seq., dictate that we should give words and phrases in a statute their plain meaning unless they are terms of art. 1 Pa.C.S.A. § 1903. Section 5104(g) clearly and expressly provides that the presumption of paternity is *overcome* if the tests show that the husband is not the

8. I dispute the Majority's use of a very narrow definition of "non-access" that would essentially require proof that it would have been physically impossible for the mother and her husband to have engaged in sexual relations during the period of conception. This Court has described "non-access" as simply the lack of sexual intercourse. *Cairgle v. American Radiator & Standard Sanitary Corp.*, 366 Pa. 249, 77 A.2d 439 (1951). Furthermore, the Superior Court has stated that "[i]t is not necessary that the possibility of access be completely excluded." *Nixon v. Nixon*, 354 Pa.Super. 232, 237, 511 A.2d 847, 849 (1986). By requiring evidence of physical impossibility of sexual relations, the Superior Court and the Majority seem to have reverted to the ancient standard of proof that the husband was "beyond the seas during the period of gestation." *Cairgle* (citing *Commonwealth v. Shepherd*, 6 Binnney 283 (1814)). I disagree with this strict definition of "non-access" and would hold that evidence of lack of sexual intercourse is sufficient to overcome the presumption.

9. Deborah A. Ellingboe, Note, *Sex, Lies, and Genetic Tests: Challenging the Marital Presumption of Paternity Under the Minnesota Parentage Act*, 78 MINN. L. REV. 1013, 1015 n.12 (April 1994). HLA tests, or human leucocyte antigen tests, compare the blood types of the relevant parties and calculate the statistical probability that a given person is the child's parent as opposed to someone in the general population with the same characteristics. This probability has been referred to as the "parental index." *Reed v. Boozer*, — Pa.Super. —, 693 A.2d 233 (1997).

The HLA blood grouping tests provide circumstantial evidence of paternity whereas DNA test results provide direct evidence of biological parentage, because DNA matches establish affirmative identification of biological parentage. *Reed. See also* Charles Nelson Le Ray, Note, *Implications of DNA Technology on Posthumous Paternity Determination: Deciding the Facts When Daddy Can't Give His Opinion*, 35 B.C. L. REV. 747, 748 (May 1994). Washington County was the first county in Pennsylvania to require buccal swab DNA testing instead of blood testing to determine paternity. The buccal swab is a procedure where a cotton-tipped stick is rubbed between the teeth and inner cheek lining to obtain buccal epithelial cells. These cells are used to conduct DNA testing, which can *affirmatively prove* paternity. *Cable v. Anthou*, — Pa. —, 699 A.2d 722 (1997).

father of the child.[10] Yet, Pennsylvania courts have strenuously avoided employing the statute to compel blood tests absent a showing first that the presumption is overcome with evidence of the husband's nonaccess to the mother during the period of conception or his sterility or impotency.

For instance, the Superior Court has held that where a husband attempts to deny paternity of a child born during wedlock, he may not compel blood testing of himself, the mother and the child without first overcoming the presumption of paternity with common law evidence. *McCue v. McCue*, 413 Pa.Super. 71, 604 A.2d 738, *allocatur denied*, 531 Pa. 655, 613 A.2d 560 (1992). Similarly, in *Scott v. Mershon*, 394 Pa.Super. 411, 576 A.2d 67 (1990), the Superior Court prohibited a mother from compelling blood tests of a third party because she had not first rebutted the presumption of paternity with evidence of her husband's nonaccess or inability to procreate. *See also Paulshock v. Bonomo*, 443 Pa.Super. 409, 661 A.2d 1386 (1995), *allocatur denied*, 544 Pa. 669, 677 A.2d 840 (1996) (prohibiting the mother from utilizing blood tests that exclude the husband as the father to overcome the presumption of paternity, which also prevented her from presenting evidence of the putative father's probability of fatherhood). The courts' threshold requirement of common law proof to rebut the presumption is clearly erroneous pursuant to the Act, which explicitly provides that blood tests are an alternative method of rebutting the presumption. 23 Pa.C.S. § 5104(g).

Furthermore, Section 5104(c) permits "any party" to request blood tests, which would include the mother, the child, the husband or a putative father. Accordingly, a third party who stands outside the marriage and claims paternity of a child born during wedlock is authorized to request blood tests of himself, the child, the mother and the husband to overcome the presumption. In *John M. v. Paula T.*, 524 Pa. 306, 571 A.2d 1380 (1990), this Court, however, denied a third party the ability to compel the husband to submit to blood tests to disprove the husband's paternity. This decision was based on public policy, including the Commonwealth's interest in protecting intact marriages. We stated the following:

> It is true that the Act relaxes the presumption "to some extent" for it explicitly provides that the presumption "is overcome if the court finds that the conclusions of all the experts as disclosed by the evidence based upon the tests show that the husband is not the father of the child." [23 Pa.C.S. § 5104(g)]. However, the Act does not relax the presumption to the extent that a "putative father," a third party who stands outside the marital relationship and attempts to establish paternity over a child born to the marriage, may compel the "presumptive father," the husband, to submit to blood tests on the strength of such evidence as has been presented herein.

Id. at 316, 571 A.2d at 1384–85 (citations omitted). This interpretation is in direct conflict with the plain language of the Act. *See* 23 Pa.C.S. § 5104(c). Moreover, denying a putative father the opportunity to challenge the husband's paternity and establish his own biological parentage, effectively terminates his parental rights without due course of law. *Accord, In re J.W.T.*, 872 S.W.2d 189 (Tex. 1994).[11] Because I find that a parent or child's interests in determining paternity outweigh the Commonwealth's unavailing inter-

10. We note that this provision permits blood tests to be admitted to *disprove* or exclude the presumed father. After the presumption of paternity is overcome by excluding the husband as the father, then the blood tests can be weighed as part of the evidence to *prove* the paternity of another. *Nixon v. Nixon*, 354 Pa.Super. 232, 511 A.2d 847 (1986); *Turek v. Hardy*, 312 Pa.Super. 158, 458 A.2d 562 (1983).

11. In *Michael H. v. Gerald D.*, 491 U.S. 110, 109 S.Ct. 2333, 105 L.Ed.2d 91 (1989), the United States Supreme Court upheld a California statute that deprived standing to a putative father to challenge a husband's paternity of a child born to the marriage. Notwithstanding, the Texas Supreme Court recently declared that a statute that prevented a putative father from challenging a husband's paternity was unconstitutional because it deprived him of due course of law pursuant to the Texas Constitution. *In re J.W.T.*, 872 S.W.2d 189 (Tex.1994). Other states are following this trend and expanding the rights of putative fathers to challenge a husband's paternity by establishing their own parentage. *See, e.g.*, Cal. Fam.Code § 7541.

est in preserving intact marriages, I would hold that, in accordance with the Act, any party to an action in which paternity is a relevant fact may request the court to order all parties to submit to blood tests. These results would then serve to rebut the presumption, irrespective of common law evidence. 23 Pa.C.S. § 5104(c). We would be both naive and remiss to perpetuate the strength of this presumption and ignore the results of reliable scientific tests; especially where, as here, the putative father has admitted to having engaged in sexual conduct with the mother during the period of conception, has accepted the child as his own, and has supported the child for the first two years of her life.

Pennsylvania is fast becoming one of only a minority of states that does not accept the results of blood tests that disprove the husband's paternity to rebut the presumption. Approximately two-thirds of the states currently have statutes permitting blood tests to be considered in the determination of paternity.[12] HOMER H. CLARK, JR., 1 THE LAW OF DOMESTIC RELATIONS IN THE UNITED STATES 340 (2d ed.1987). The United States Supreme Court has accepted the evidentiary value of blood grouping tests to disprove paternity as follows:

> As far as the accuracy, reliability, dependability—even infallibility—of the test are concerned, there is no longer any controversy. The result of the test is universally accepted by distinguished scientific and medical authority. There is, in fact, no living authority of repute, medical or legal, who may be cited adversely.... [T]here is now ... practically universal and unanimous judicial willingness to give decisive and controlling evidentiary weight to a blood test exclusion of paternity. S. Schatkin, Disputed Paternity Proceedings § 9.13 (1975).

Little v. Streater, 452 U.S. 1, 7, 101 S.Ct. 2202, 2206, 68 L.Ed.2d 627 (1981). We should join the majority of states and accept these reliable scientific tests to rebut the presumption that a child born to a married woman is her husband's child.[13]

For example, in *S.E.B. v. J.H.B.*, 605 So.2d 1230 (Ala.Civ.App.1992), the Alabama Supreme Court granted a mother's request to compel her husband and the putative father to submit to blood testing to determine the paternity of a child born during wedlock. In Alabama, the "presumption may be overcome only by clear and convincing evidence that tends to show that it is naturally, physically, or scientifically impossible for the husband to be the father." *Id.* at 1232. Similarly, in Hawaii, a presumptive father may request blood tests to disprove his paternity. *Doe v. Roe*, 9 Haw.App. 623, 859 P.2d 922 (1993). New Hampshire employs a more relaxed presumption of paternity, which "may be rebutted under [ ] common law by satisfactory

12. Of those, at least seven states, including Pennsylvania, have adopted statutes similar to the Uniform Act on Blood Tests to Determine Paternity: California, CAL. FAM.CODE § 7555 (West 1994); Louisiana, LA.R.S. 9:396–398 (1972); New Hampshire, N.H. STAT. § 522:1 (1994); Oklahoma, 10 OK. STAT. ANN. § 501–508 (1981); Oregon, ORE. STAT. § 109.258 (1993); and Utah, U.C.A. § 78–25–18, et seq.

13. Massachusetts has taken one of the more extreme positions in paternity law by eliminating the presumption of paternity in favor of a balancing test. In *C.C. v. A.B.*, 406 Mass. 679, 550 N.E.2d 365 (1990), a putative father alleged that he was the father of a child born to an intact marriage. The Supreme Judicial Court of Massachusetts recognized the conflict between the interests of the putative father and the interest in preserving the legitimacy of the child, and held as follows:

> We continue to adhere to the common law principle that motivated the presumption of legitimacy—that there is a strong interest in not bastardizing children. We are no longer convinced, however, that that interest can be protected only by requiring the rebuttal of a presumption by proof beyond a reasonable doubt. In view of the gradual betterment of the illegitimate child's legal position, which weakens the purpose behind the presumption, coupled with the corresponding recognition of the interests of unwed putative fathers, we think that there is no longer any need for a presumption of legitimacy. The interests can be adequately protected by requiring that a putative father in the plaintiff's position be required to prove paternity by clear and convincing evidence.

C.C., at 370. The court further held that, if the putative father could demonstrate a substantial parent/child relationship between himself and the child, he need not disprove the husband's paternity before proving his own. *Id.*

proof that the husband is not the father," including blood tests, testimony by experts or others, medical or scientific evidence, statistical probability evidence, physical resemblance between the child and the putative father, or acquiescence by the mother and her husband. *Bodwell v. Brooks*, 141 N.H. 508, 686 A.2d 1179 (1996). In Illinois, once blood tests exclude a husband as the father, the court may presume that an alleged father is the biological parent if (1) the blood tests of the alleged father do not exclude him as the father and (2) there is a probability of at least 500 to 1 that he is the father. *People ex rel. Stockwill v. Keller*, 251 Ill.App.3d 796, 191 Ill.Dec. 226, 623 N.E.2d 816 (1993). Utah requires blood tests in any case where paternity is an issue, and the results may conclusively rebut the presumption of paternity. *In re Schoolcraft*, 799 P.2d 710 (Utah 1990). *But see* Colorado—*M.R.D. v. F.M.*, 805 P.2d 1200 (Colo.Ct.App.1991) (party to the marriage not permitted to challenge husband's paternity beyond the five-year statute of limitations even where a competing presumption arose from blood tests that resulted in a 99.86% probability that the alleged father was the biological parent of the child); and Iowa—*Dye v. Geiger*, 554 N.W.2d 538 (Iowa 1996) (prohibiting an ex-husband from overcoming his presumptive paternity with genetic tests positively establishing another man's paternity when such rebuttal is not in the child's best interest).

California has a more liberal approach and permits the presumed father, the husband, or the child to rebut the presumption with blood test evidence. Cal. Fam.Code § 7541. Interestingly, a man may be a "presumed father" if he satisfies at least one of the following criteria: he and the mother are married at the time of the child's birth; the child is born within 300 days of the termination of the marriage; the couple has attempted to marry before or after the child's birth; or the man receives the child into his home and openly holds out the child as his own. Cal. Fam.Code § 7611.

Pennsylvania's approach to establishing paternity is clearly outdated. The unwavering interests in definitively determining biological parentage mandate that we permit the use of blood tests to rebut the "limited" presumption.

ESTOPPEL

Regardless of whether a party successfully rebuts the presumption of paternity, or the presumption does not apply, a party may nevertheless be estopped from denying the paternity of the husband if either the mother or the husband holds the child out to be a child of the marriage. *John M.* The theory supporting this concept is that once the husband forms a parent/child relationship with the child, neither he nor the mother should be permitted later to destroy that relationship because of marital discord. *Ruth F.*, at 406–08, 690 A.2d at 1175.

The Majority, however, seems to misunderstand the concept of paternity by estoppel by holding that this case should be remanded to determine whether Lisa is "estopped" from denying her ex-husband George's paternity. Here, neither Lisa nor George ever held Audrianna out to be a child of the marriage. The evidence clearly demonstrates that Lisa never misled George to believe that he was Audrianna's father, nor did she lead anyone else to believe that George was the father. Likewise, George denied his paternity before the child was born, never supported the child financially or emotionally, and never formed a parent/child relationship with the child. Moreover, King, the putative father, accepted the child as his own, paid child support, provided medical insurance, and offered emotional support and parental guidance to Audrianna. It was not until Lisa sought court-ordered support that King denied his paternity. It is clear, therefore, that neither George nor Lisa is estopped from denying George's paternity.

ESTABLISHING PATERNITY

Therefore, the next step is to establish who is the father. Logic dictates that once a party overcomes the presumption, or the presumption does not apply, the case should be treated as if the child were born out of wedlock. The paternity of a child born out of wedlock is addressed by 23 Pa.C.S. § 4343, which permits a court to compel genetic test-

ing [14] of any relevant party. Section 4343 states that genetic test results indicating a 99% or greater probability that the alleged father is the biological parent creates an affirmative presumption of paternity that may only be rebutted with clear and convincing evidence that the test results are unreliable.[15] 23 Pa.C.S. § 4343(c). This approach should apply equally to a determination of the paternity of a child born during wedlock where either (a) the presumption does not apply, or (b) the presumption was overcome.

CONCLUSION

Therefore, I concur with the Majority's decision to the extent that it holds the presumption of paternity does not apply in cases where there is no marital relationship to preserve. However, I dissent from that portion of the Opinion remanding for a determination of estoppel, because I believe that there is no such question in this case. Instead, I would remand this case for blood testing of King, Lisa and Audrianna to finally resolve the issue of Audrianna's biological father.

CASTILLE, J., joins in this concurring and dissenting opinion.

14. The Legislature recently amended the definition of "genetic tests" as used in 23 Pa.C.S. § 4343 to include blood tests that confirm or exclude parentage. 23 Pa.C.S. § 4302, *amended*, July 2, 1993, P.L. 431, No. 62, § 1. The Superior Court applied this amendment as follows:

> From [the case law], we must accept the higher validity and evidentiary value of DNA testing as a genetic test, and as such, it may be conclusive of paternity. As to HLA and the other blood grouping and typing tests based on genetic markers, these will be considered evidence of paternity which creates a presumption of paternity when the paternity index reaches a level of 99% and is not rebutted by the defendant.

Reed, at —, 693 A.2d at 240.

COMMONWEALTH of Pennsylvania, Appellee,

v.

Darrick HALL, Appellant.

Supreme Court of Pennsylvania.

Argued Oct. 15, 1996.
Decided Sept. 17, 1997.

Defendant was convicted in the Court of Common Pleas, Chester County, Criminal Division, at No. 29–94, Paula Francisco Ott, J., 23 Pa. D. & C.4th 261, of first-degree murder, carrying firearm without license, robbery, conspiracy to commit robbery, and recklessly endangering another person, and he was sentenced to death. Defendant appealed. The Supreme Court, No. 79 Capital Appeal Docket, Castille, J., held that: (1) evidence was sufficient to support murder conviction; (2) defendant was not improperly induced into waiving his *Miranda* rights; (3) prosecutor's comments in closing argument did not amount to prosecutorial misconduct; (4) defendant was not denied effective assistance of counsel; and (5) death sentence was not product of passion, prejudice or any other arbitrary factor, and was not excessive or disproportionate.

Affirmed.

1. Criminal Law ⇐1144.13(3, 5), 1159.2(7)

When reviewing sufficiency of evidence claim, appellate court must view all evi-

15. Currently, to prove a putative father's paternity of a child born during wedlock, the challenging party must first rebut the husband's paternity with evidence of non-access, impotency, sterility or blood tests excluding him as the father. Scientific tests then establish the putative father's paternity. To promote efficiency and reduce the costs, time and effort involved in this determination, I would invite the Legislature to enact a provision that would permit a party to disprove the husband's paternity with evidence that indicates a 99% or greater probability that the putative father is the biological father. Thus, one round of testing of the mother, the child and the putative father could both disprove the husband's paternity, and prove the putative father's parentage.

User Name: Jacqueline DiColo
Date and Time: Wednesday, May 8, 2024 1:30:00PM EDT
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1. *C.G. v. J. H., 648 Pa. 418*
   Client/Matter: 360896.384237
   Search Terms: C.G. v. J.H.
   Search Type: Natural Language
   Narrowed by:

Content Type	Narrowed by
Cases	-None-

C.G. v. J. H.

Supreme Court of Pennsylvania

May 15, 2018, Argued; September 21, 2018, Decided

No. 2 MAP 2018

Reporter
648 Pa. 418 *; 193 A.3d 891 **; 2018 Pa. LEXIS 4952 ***; 2018 WL 4537278

C.G., Appellant v. J. H., Appellee

Prior History: [*1]** Appeal from the Order of the Superior Court at No. 1733 MDA 2016 dated October 11, 2017 Affirming the Order of the Centre County Court of Common Pleas, Civil Division, at No. 2015-4710 dated September 22, 2016.

C.G. v. J.H., 2017 PA Super 320, 172 A.3d 43, 2017 Pa. Super. LEXIS 786 (Pa. Super. Ct., Oct. 11, 2017)

Core Terms

loco parentis, trial court, post-separation, parentage, partner, custody, donor, parties, couple, biological, third party, birth, gestational, parental duty, conceived, carrier, same-sex, parental status, sperm donor, cases, reproductive technology, surrogacy, courts, natural parent, public policy, principles, contracts, attended, Baby, ex-wife

Case Summary

Overview

HOLDINGS: [1]-A former same-sex, unmarried partner (UP) of a biological mother (BM) did not have standing to pursue custody as a parent under *23 Pa.C.S. § 5324(1)*, as the child was conceived via assistive reproductive means, that contract was not signed by the UP, she did not adopt the child, and she did not intend to conceive and raise the child; [2]-The UP also lacked standing as a person who stood in loco parentis under *§ 5324(2)*, as prior to the couple's separation, the UP did not assume a parental status or discharge parental duties; [3]-For purposes of in loco parentis standing, although post-separation conduct was not determinative of standing, the conduct by either parent or partner could shed light on whether the person was ever viewed as a parent-like figure.

Outcome
Order affirmed.

LexisNexis® Headnotes

Civil Procedure > Preliminary Considerations > Justiciability > Standing

Family Law > Child Custody > Child Custody Procedures

HN1[] **Justiciability, Standing**

In Pennsylvania, standing requirements limit who may seek physical or legal custody of a child to the following individuals: (1) a parent; (2) a person who stands in loco parentis to the child; or (3) under certain conditions, a grandparent of the child who does not stand in loco parentis. *23 Pa.C.S. § 5324*.

Civil Procedure > Preliminary Considerations > Justiciability > Standing

Family Law > Child Custody > Child Custody Procedures

HN2[] **Justiciability, Standing**

The fundamental concept of standing ensures that a party seeking to litigate a matter has a substantial, direct, and immediate interest in the subject-matter of the litigation. In the area of child custody, principles of standing have been applied with particular scrupulousness. This stringent application of standing

principles serves to protect both the interest of the court system by ensuring that actions are litigated by appropriate parties and the interest in keeping a family unit free from intrusion by those that are merely strangers, however well-meaning. The United States Supreme Court has recognized the significant interest at stake in the context of persons seeking judicial intervention to gain visitation or custody of children. The liberty interest of parents in the care, custody and control of their children-is perhaps the oldest fundamental liberty interest recognized by the Court.

Civil Procedure > Appeals > Standards of Review > De Novo Review

Family Law > Child Custody > Child Custody Procedures

Civil Procedure > Preliminary Considerations > Justiciability > Standing

HN3 **Standards of Review, De Novo Review**

In Pennsylvania, § 5324 of the Domestic Relations Code limits the classes of persons deemed to have a substantial, direct, and immediate interest in the custody of children by conferring standing only upon: (1) a parent of the child; (2) a person who stands in loco parentis to the child; and (3) a grandparent of the child who is not in loco parentis to the child, under certain circumstances. 23 Pa.C.S. § 5324. Determining standing in custody disputes is a threshold issue that must be resolved before proceeding to the merits of the underlying custody action. It is a conceptually distinct legal question which has no bearing on the central issue within the custody action-who is entitled to physical and legal custody of a child in light of his or her best interests. Issues of standing are questions of law; thus, the standard of review is de novo and the scope of review is plenary.

Civil Procedure > Preliminary Considerations > Justiciability > Standing

Family Law > Child Custody > Child Custody Procedures

Governments > Legislation > Interpretation

HN4 **Justiciability, Standing**

Section 5324 of the Domestic Relations Code, 23 Pa.C.S. § 5324, does not define the term parent. Absent a definition in the statute, statutes are presumed to employ words in their popular and plain everyday sense, and the popular meaning of such words must prevail. The popular and everyday meaning of the term parent plainly encompasses a biological mother and a biological father and persons who attain custody through adoption, and Pennsylvania case law supports those applications. Well-settled Pennsylvania law provides that persons other than a child's biological or natural parents are "third parties" for purposes of custody disputes.

Family Law > Paternity & Surrogacy > Surrogacy > Assisted Reproduction Parentage

Family Law > Parental Duties & Rights

HN5 **Surrogacy, Assisted Reproduction Parentage**

Case law from the past decade reflects a growing acceptance of alternative reproductive arrangements in the Commonwealth.

Family Law > Paternity & Surrogacy > Surrogacy > Assisted Reproduction Parentage

Family Law > Child Custody > Child Custody Procedures

Family Law > Parental Duties & Rights

HN6 **Surrogacy, Assisted Reproduction Parentage**

It is beyond cavil that parentage is established either through a formal adoption pursuant to the Adoption Act, 23 Pa.C.S. § 2101 et seq., or when two persons contribute sperm and egg, respectively, either through a sexual encounter or clinical setting, and an embryo is formed that is carried to term and results in a child. However, cognizant of the increased availability of reproductive technologies to assist in the conception and birth of children, the courts are recognizing that arrangements in this latter context may differ and thus should be treated differently than a situation where a

child is the result of a sexual encounter. Specifically, the willingness of persons to act as sperm donors, egg donors, and gestational carriers, is at least somewhat dependent on the extinguishment of the donor or carrier's parental claim to any resulting child and the intended parent's release of any obligation to support the child. Given this, and especially in the absence of legislative guidance surrounding this intimate and sensitive undertaking, it seems obvious that contracts regarding the parental status of the biological contributors-whether one is an anonymous contributor or known to the intended parent to the child be honored in order to prohibit restricting a person's reproductive options.

Family Law > Paternity & Surrogacy > Surrogacy > Agreements

Family Law > Paternity & Surrogacy > Surrogacy > Assisted Reproduction Parentage

Family Law > Parental Duties & Rights

HN7 **Surrogacy, Agreements**

The Superior Court recognized that after a child is conceived through the use of a surrogate and an egg donor, both of whom contracted away any parental rights to the child, the non-biologically related intended parent's contract to assume the role of legal parent is enforceable. Consequently, there appears to be little doubt that the case law of the Commonwealth of Pennsylvania permits assumption or relinquishment of legal parental status, under the narrow circumstances of using assistive reproductive technology, and forming a binding agreement with respect thereto. The courts of the Commonwealth, when faced with the issue and without legislative guidance, have expressly declined to void such contracts as against public policy.

Family Law > Paternity & Surrogacy > Surrogacy > Assisted Reproduction Parentage

Family Law > Parental Duties & Rights

HN8 **Surrogacy, Assisted Reproduction Parentage**

Other jurisdictions have legislatively addressed the issue of parentage where assistive reproductive technology is employed.

Evidence > Burdens of Proof > Allocation

Family Law > Parental Duties & Rights > In Loco Parentis

HN9 **Burdens of Proof, Allocation**

In loco parentis is a legal status and proof of essential facts is required to support a conclusion that such a relationship exists. The phrase "in loco parentis" refers to a person who puts oneself in the situation of a lawful parent by assuming the obligations incident to the parental relationship without going through the formality of a legal adoption. The status of in loco parentis embodies two ideas; first, the assumption of a parental status, and second, the discharge of parental duties. The rights and liabilities arising out of an in loco parentis relationship are, as the words imply, exactly the same as between parent and child. The third party in this type of relationship, however, can not place himself in loco parentis in defiance of the parents' wishes and the parent/child relationship.

Evidence > Burdens of Proof > Allocation

Family Law > Child Custody > Child Custody Procedures

Family Law > Parental Duties & Rights > In Loco Parentis

HN10 **Burdens of Proof, Allocation**

23 Pa.C.S. § 5324(2) permits a person who stands in loco parentis to a child to petition the court for custody of a child. Gaining in loco parentis status requires the petitioning individual to demonstrate two elements: the assumption of parental status and the discharge of parental duties. The ability to marry the biological parent and the ability to adopt the subject child have never been and are not now factors in determining whether the third party assumed a parental status and discharged parental duties.

Civil Procedure > Preliminary

Considerations > Justiciability > Standing

Evidence > Inferences & Presumptions > Presumptions > Rebuttal of Presumptions

Family Law > Child Custody > Child Custody Procedures

Family Law > Parental Duties & Rights > In Loco Parentis

HN11 **Justiciability, Standing**

The in loco parentis basis for standing recognizes that the need to guard the family from intrusions by third parties and to protect the rights of the natural parent must be tempered by the paramount need to protect the child's best interest. Thus, while it is presumed that a child's best interest is served by maintaining the family's privacy and autonomy, that presumption must give way where the child has established strong psychological bonds with a person who, although not a biological parent, has lived with the child and provided care, nurture, and affection, assuming in the child's eye a stature like that of a parent. Where such a relationship is shown, Pennsylvania courts recognize that the child's best interest requires that the third party be granted standing so as to have the opportunity to litigate fully the issue of whether that relationship should be maintained even over a natural parent's objection.

Civil Procedure > Preliminary Considerations > Justiciability > Standing

Family Law > ... > Custody Awards > Standards > Best Interests of Child

Family Law > Child Custody > Child Custody Procedures

Family Law > Parental Duties & Rights > In Loco Parentis

HN12 **Justiciability, Standing**

The paramount concern in child custody cases is the best interests of the child. The important screening functions of standing requirements protect the child and the family from unnecessary intrusion by third parties. The appellate courts of the Commonwealth of Pennsylvania have consistently described the prerequisites to in loco parentis standing as assumption of parental status and discharge of parental duties. Of course, it is a concern to the courts whether a child has developed strong psychological bonds, however, such bonds must necessarily be based on the assumption of parental status and discharge of parental duties in order to achieve this legal status. Indeed, if the determining factor were the child's development of a bond with the person seeking standing, it would be of no moment to the court if the bond was forged contrary to the natural parent's wishes. Acceptance of such a rule would undermine well-established principles of in loco parentis analyses. The in loco parentis test has been applied in the same fashion regardless of whether the person seeking in loco parentis is a former step-parent or a former same-sex partner who had not married the child's biological parent.

Civil Procedure > ... > Justiciability > Standing > Third Party Standing

Family Law > Parental Duties & Rights > In Loco Parentis

HN13 **Standing, Third Party Standing**

The relevant time frame to determine whether a party stands in loco parentis is when the party developed the relationship with the child with the acquiescence or encouragement of the natural parent. Indeed, it is fundamental that a party must have discharged parental duties and assumed parental status in order to gain standing as a third party. The question is of what relevance, if any, is the conduct of the party after there has been some separation between the party and the child. The rights and liabilities arising out of in loco parentis are the same as that between child and parent and its status is conferred upon a person who puts him or herself in the situation of a lawful parent.

Civil Procedure > Preliminary Considerations > Justiciability > Standing

Family Law > Parental Duties & Rights > In Loco Parentis

HN14 **Justiciability, Standing**

The post-separation conduct of a non-biological partner

should not be determinative of the issue of standing; however, the conduct by either parent or partner may shed light on the analysis of whether the person seeking standing was ever viewed as a parent-like figure. Courts recognize that in some situations a natural parent may seek to withhold a child from a person who has assumed parental status (or another natural parent). However, this potential for misconduct does not render the actions of the person seeking in loco parentis status immune from review following a separation.

Civil
Procedure > ... > Justiciability > Standing > Third Party Standing

Family Law > Parental Duties & Rights > In Loco Parentis

Evidence > Relevance > Relevant Evidence

HN15[] **Standing, Third Party Standing**

It would be incongruous to ignore all post-separation conduct between a third-party and a child for the purpose of assessing whether the party stood in loco parentis, when the Adoption Act provides that a petition seeking involuntary termination of a natural or adoptive parent's rights may be filed if the parent has evidenced a settled purpose of relinquishing parental claim to a child and has refused or failed to perform parental duties for a period of at least six months preceding the filing of the petition. *23 Pa.C.S. § 2511*. To render all post-separation conduct irrelevant would be to afford a person seeking in loco parentis standing, at any time, a greater advantage to a natural or adoptive parent even in the event the third party had demonstrated his or her relinquishment of parental claims to a child.

Judges: SAYLOR, C.J., BAER, TODD, DONOHUE, DOUGHERTY, WECHT, MUNDY, JJ. JUSTICE MUNDY. Chief Justice Saylor and Justices Baer and Todd join the opinion. Justice Dougherty files a concurring opinion. Justice Wecht files a concurring opinion in which Justice Donohue joins.

Opinion by: MUNDY

Opinion

[*422] [892] JUSTICE MUNDY**

HN1[] In Pennsylvania, standing requirements limit who may seek physical or legal custody **[**893]** of a child to the following individuals: (1) a parent; (2) a person who stands in loco parentis to the child; or (3) under certain conditions, a grandparent of the child who does not stand in loco parentis. *23 Pa.C.S. § 5324*. We granted allowance of appeal to explore whether a former same-sex, unmarried partner of a biological parent may have standing to pursue custody either as a parent or as a person who stood in loco parentis to the Child, and to what extent post-separation conduct is relevant in an in loco parentis analysis.

I.

Appellant C.G. and Appellee J.H. were a same-sex couple living together in Florida. In October 2006, J.H. gave **[***2]** birth to Child. Child was conceived via intrauterine insemination using an anonymous sperm donor. J.H. is the biological mother of Child. C.G. shares no genetic connection with Child, and did not adopt Child.[1] Following Child's birth, the couple continued to live together for approximately five years before separating. J.H. and Child moved to a separate residence in Florida in February 2012, and they relocated to Pennsylvania in July 2012.

On December 8, 2015, C.G. filed a custody complaint seeking shared legal and partial physical custody of Child alleging she "acted (and acts) as a mother to the minor child as well, as the minor child was conceived by mutual consent of the parties, with the intent that both parties would co-parent and act as mothers to the minor child." Custody Compl., 12/8/15, at ¶ 3. She averred further that "[i]t is in child's best interests **[*423]** and permanent welfare to have a relationship with both parents." *Id.* at ¶ 7. C.G. continued that she "mutually agree[d] to have a child with [J.H.], and both participated in selecting a sperm donor in order for [J.H.] to conceive their minor child." *Id.* C.G. claimed she served daily as Child's mother from the time **[***3]** of conception and birth until 2011 by, for example, appearing at pre-natal appointments, participating in the birth of Child, and cutting his umbilical cord. *See id.* With respect to her relationship with Child following the dissolution of her

[1] The parties agree that at the time of Child's birth in 2006, same-sex second-parent adoption was not legal in Florida, and although it became legal in 2010, the parties did not discuss pursuing adoption. *See* N.T., 2/5/16, at 8 (C.G. testified the parties did not talk about adoption following its legalization in Florida); *id.* at 57(J.H testified the issue of adoption "was never raised."); *see also* N.T., 4/12/16, at 310.

relationship with J.H., C.G. claimed that J.H. began withholding Child from C.G. in February 2012,[2] allowing only once a week contact, despite C.G.'s requests for more; J.H. moved Child to Pennsylvania without notifying or consulting C.G.; C.G. has had minimal and inconsistent contact with Child, via telephone and one physical contact since J.H. and Child relocated to Pennsylvania; J.H. represented to C.G. she could have more regular contact with Child following the parties' settling financial matters attendant to their separation, but following the parties' resolution of those matters, J.H. did not permit C.G. to see or have contact with Child. *See id.*

On January 6, 2016, J.H. filed preliminary objections to the complaint asserting that C.G. lacked standing to bring an action **[**894]** for any form of custody under *23 Pa.C.S. § 5324* because C.G. is not a parent, does not and did not ever stand in loco parentis to Child, and is not a grandparent. *See* Prelim. Objections, **[***4]** 1/6/16, at ¶¶ 7-11. J.H. disputed that Child was conceived by mutual consent with the intent to co-parent. Rather, she contended that "the decision to have a child was solely that of [J.H.] . . . [C.G.] made it clear to [J.H.] that [C.G.] did not want another child (having two children of her own from a prior relationship) and that [J.H.] would bear responsibility for the child she conceived[.]" *Id.* at ¶ 12. J.H. continued that she bore all costs of Child with the exception of **[*424]** limited situations in which C.G. contributed "minimally," and "since the child's birth [J.H.] has acted as the sole parent for the child. [C.G.'s] involvement was solely that of [J.H.'s] girlfriend from the child's birth until November 2011[.]" *Id.* Additionally, she asserted that pursuant to C.G.'s desire not to be a parent to Child, J.H. "made all decisions regarding the child's education, medical care, growth and development, and attended to all of his daily, educational and medical needs with the exception of limited times during which [C.G.] babysat for [J.H.]" *Id.* J.H. claimed that, in December 2011, C.G. asked J.H. to move out of the shared residence by February 2012 because C.G. wanted to continue a romantic **[***5]** relationship with a woman with whom she was having an affair. *See id.* J.H. agreed that she and Child moved out of the house in February 2012, and moved to Pennsylvania in July of that year. *See id.* She additionally agreed that C.G. "has spoken with the child only minimally and seen him only one time, which was in March 2014." *Id.* She continued that since the move, C.G. has not provided financial support to Child except for one week of camp and one month of before and after school care, and has occasionally sent nominal gifts. *See id.* She sought dismissal of the complaint based on legal insufficiency and lack of capacity to sue. *See Pa.R.C.P. 1028(a)(4)* and *(5)*.

C.G. filed a response to the preliminary objections on January 25, 2016, in which she claimed standing as a parent under *Section 5324(1)* or "at the very least" as a person in loco parentis to Child under *Section 5324(2)*. *See* Response to Prelim. Objections, 1/25/16, at ¶¶ 7-11. She generally disputed the factual representations in J.H.'s preliminary objections in support of her own account of the decision to conceive and parent Child. *See id.* at 12.

The trial court held hearings over three days at which a number of witnesses testified and conflicting evidence was presented. Consistent with **[***6]** the assertions in the complaint and responses, the gravamen of the parties' respective presentations was C.G.'s participation in the conception, birth, and raising of Child, the intent of the parties with respect thereto, and the perception others held of the household or family **[*425]** dynamic. For example, C.G. testified she and J.H. "planned to have a child together[;]" that J.H. did not begin the process of trying to become pregnant until C.G. consented; the couple would look for donors together on a donor site; and she considered Child her son from the time he was born. N.T., 4/12/16, at 38-55. Following his birth, C.G. described her relationship with Child as a parent/child relationship. *See id.* at 103. J.H., by contrast, testified the decision to have a child was hers alone, she did not consider C.G. to be a parent to Child, or hold her out to others as such. *See* N.T., 2/5/16, at 28-29 ("[C.G. did not want a child[,]" but "tolerated the idea" of J.H. having one.); *see also* N.T.,4/12/16, at 207-08 ("I wanted to have a child. [C.G.] did not want that, and I let her know I made an appointment with a fertility doctor, and I was moving forward with that **[**895]** for myself."); *id.* at 222 ("I am [Child's] mom, and [C.G.] **[***7]** is not.").

In all, the trial court heard from 16 witnesses, offering differing testimony on issues bearing on the parties' relationship between and among J.H., Child, C.G., and

[2] C.G. lists the dates of J.H. and Child's move from the shared residence and their move to Pennsylvania as occurring in February and July of 2011, respectively. *See* Custody Compl., 12/8/15, at ¶ 12. However, the record indicates that the relevant time of separation began in 2012. *See, e.g.* N.T., 2/5/16, at 5-6 (C.G. testified that she and J.H. separated in February 2012 and that J.H. moved to Pennsylvania in July 2012, and acknowledged the error in the custody complaint.).

her daughters (who were, at the relevant time, college age), the intent of the parties prior to and after Child's conception and birth, and parental duties performed for Child. C.G. offered a number of witnesses supporting her position that she acted as a mother to Child and that she and J.H. undertook jointly to conceive and raise child. *See, e.g.*, N.T., 2/5/16, 85-91 (C.G.'s daughter, Christine Comerford, testifying she understood J.H. and C.G. were having a baby together, she was told the Child was her brother, C.G. performed day-to-day activities for Child including picking him up from school, bathing him, and preparing meals); *id.* at 118-130 (C.G.'s daughter, Lauren Comerford, testifying she understood her mother and J.H. were having a baby together, her mother tended to Child and attended his activities as he grew older, and they took vacations together as a family); N.T., 6/20/16, at 123-28 (Terri Michaels, friend and work colleague of C.G., former colleague of J.H., testifying she understood J.H. and C.G. were having **[***8]** a baby together, C.G. would arrange for Terri and her daughter to babysit Child, and she observed C.G. perform parental duties such as preparing **[*426]** Child's meals, playing with him, or correcting him). J.H., by contrast, offered a number of witnesses who testified that J.H. decided unilaterally to have a child and was Child's primary caregiver. *See, e.g.*, N.T., 4/12/16, at 7-11 (Katina Gray, one of Child's babysitters in Florida, testifying J.H. hired her and would discuss Child's needs with her and perceiving C.G.'s involvement with Child akin to "a babysitter"); N.T., 6/20/16, at 17-22 (Dr. Alicia Chambers, J.H.'s friend, testifying to her discussions with J.H. about her commitment to becoming a mother despite the fact that C.G. "didn't want that," "wanted to be free[,] and had her own children" and her understanding that C.G. did not want to have a child. She explained that C.G. and J.H. had an arrangement "that this was [J.H.'s] child, and therefore, [J.H.] was going to do the work that was involved..."); N.T., 6/20/16, at 48 (J.H.'s brother testifying "it was clear" C.G. did not desire to have a baby, J.H. performed the parental caretaking of Child, and J.H. asked him and his wife **[***9]** to be Child's godparents and "take care of [Child] if anything would happen to [J.H.]").

A number of exhibits, including handwritten notes, e-mails, Child's medical records, and Christmas cards were also admitted into evidence by the parties attempting to evidence or refute C.G.'s status as a parental figure to Child.

On September 22, 2016, the trial court issued an opinion and order sustaining J.H.'s preliminary objection as to C.G.'s standing to pursue custody.[3] The trial court concluded that C.G. was not a parent pursuant to *Section 5324(1)* because both parties agreed that at the time and place of Child's birth, same-sex marriage and second-parent adoptions were not recognized. Thus, it proceeded to determine whether C.G. stood in loco parentis to Child.

In its analysis, the trial court outlined certain undisputed facts, i.e, that Child was conceived while the parties were in a relationship, Child referred to C.G. as "Mama C[.]," the parties **[*427]** had a commitment ceremony, and C.G. was present for **[**896]** the birth and christening of Child. *See* Trial Ct. Op. at 5. It then made a number of findings of fact regarding the disputed evidence and testimony of the parties which are supported by the record. First, the **[***10]** trial court looked to whether any documentation existed evidencing the parties' intent that C.G. be viewed as a co-parent to Child. The court noted that C.G. is not listed on Child's birth certificate nor does he bear her name, and notwithstanding the fact that Florida did not allow second-parent adoption at the time Child was born, neither party suggested adoption following its legalization in 2010 nor executed or memorialized a co-parenting agreement. *See id.* at 6. The trial court considered a note written by J.H. to C.G. that referenced the hope of "having a child together" and one expressing J.H.'s happiness following her baby shower, as well as the fact that Child was a beneficiary on C.G.'s life insurance policy and was carried on her medical and dental insurance plans, prior to separation. *Id.* at 6. However, in weighing the evidence, it concluded "[t]wo letters and one policy" did not overcome J.H.'s testimony that C.G. did not agree to have a child, but merely acquiesced to J.H. having one. *Id.* Moreover, it credited J.H.'s testimony that following the couple's separation, C.G. removed J.H. and Child from her medical and dental policies and would not continue to provide coverage for Child. **[***11]** The trial court found other documentation similarly demonstrated that C.G. was not a parent, and that J.H. did not hold her out to be a parent to others. Specifically, on school and medical forms, C.G. was listed as an emergency contact or as "partner" to J.H., rather than as a parent or mother, and on certain paperwork for activities, she was omitted entirely. *See id.* at 7.

Focusing on the pre-separation period of time, the court

[3] Because the trial court sustained the preliminary objection regarding standing, it did not rule on J.H.'s preliminary objection in the nature of a demurrer.

evaluated the various and conflicting testimony on C.G.'s discharge of parental duties toward Child. The trial court found it significant that J.H. did not consult C.G. when choosing Child's doctor, preschool, and extra-curricular activities, and J.H. was responsible for the scheduling of Child's appointments, events, and made the childcare arrangements. The **[*428]** court found C.G. occasionally attended activities, appointments, and provided care; however, it further found that such contributions did not amount to the discharge of parental duties, and that J.H. did not encourage C.G. to assume the status of a parent. *See id.* at 8. Turning to the couple's finances, the trial court highlighted that J.H. testified that she solely purchased the items necessary for Child's care, and **[***12]** the couple split household expenses. The court found C.G. financially contributed to the household overall which created a tangential benefit to Child. *Id.*

With respect to C.G.'s family and testimony offered by her daughters and father reflecting familial titles, such as, in the case of C.G.'s parents, "Grandma A[.]" and "Grandpa J[.]," the court found the interactions were incidental to J.H. and C.G.'s relationships and titles were created for convenience rather than demonstrating an actual familial bond or connection. *See id.* at 8.

The court briefly touched on whether a parent/child bond existed between C.G. and Child. It acknowledged that because the hearings were pursuant to preliminary objections and not a custody determination, evidence was not offered directly on the subject of a bond. It found, nevertheless, that testimony elicited at the hearing demonstrated that Child is well-adjusted and does not request to see C.G. *See id.* at 9.

Finally, the court reviewed evidence regarding the post-separation conduct of C.G. It noted that C.G. did not request to be involved in the educational, medical, or **[**897]** day-to-day decisions concerning Child, C.G. sent nominal care packages, but has only seen Child once **[***13]** since July 2012, in March 2014, when he and J.H. visited Florida. *See id.* The court found that the level of contact for a period of approximately four years is not consistent with a person who has discharged parental duties or assumed parental status. *Id.* at 10. It did not credit C.G.'s assertion that J.H. withheld Child; rather it found J.H. permitted occasional phone contact, provided updates via text messages and email, and accepted gifts for Child. *See id.* It noted J.H.'s account that such interactions were consistent with C.G.'s overall involvement in Child's life and the same as **[*429]** the type of involvement she permitted other friends to have. *Id.* The court concluded that "the parties' post-separation conduct is consistent with the finding that [C.G.] was not a parent to the child." *Id.*

C.G. filed a direct appeal arguing, inter alia, the trial court erred in ruling she was not a parent under Section 5324(1) because she and J.H. jointly conceived and raised Child. The Superior Court concluded the trial court did not err because Pennsylvania "case law has consistently treated same-sex life partners who have not adopted a child as third parties for purposes of custody matters" and C.G. has failed to cite to **[***14]** a statute or case law establishing a non-biological, non-adoptive former partner can be a parent. ***C.G. v. J.H.***, *2017 PA Super 320, 172 A.3d 43, 51-52. (Pa. Super. 2017)*. C.G alternatively argued the trial court erred in finding that she did not stand in loco parentis to Child. The Superior Court concluded that the trial court's holding was based "on the unique facts of this case" and it's opinion "reflect[ed] a careful, thorough, and proper consideration of the evidence presented by ***both*** parties, and did not, as C.G. alleges, simply disregard the evidence in her favor." *Id. at 58-59*. Because the decision of the trial court rested on credibility determinations made within the trial court's discretion, the Superior Court affirmed the ruling that C.G. did not stand in loco parentis to Child. *See id. at 59*. Finally, the Superior Court addressed and dismissed C.G.'s argument that the trial court erred by affording too much weight to the post-separation conduct of the parties in its analysis. It observed that the trial court did not find that C.G. was denied standing based on her post-separation conduct; rather, the trial court viewed all of the evidence, including pre-and post-separation conduct, when it evaluated whether C.G. ever stood in loco parentis to Child. *Id. at 60*.

In a concurring **[***15]** opinion, Judge Musmanno questioned whether C.G. should be treated as a third-party for the purpose of custody and suggested "it may be time to re-visit the issue of the appropriate standard and presumptions to be applied in determining standing where a child is born during a same-sex relationship." *Id. at 60* (Musmanno, J., concurring). **[*430]** He further notes that same-sex marriage was not allowed in Florida at the time, and suggests that if C.G. were a male, she would have standing as a parent, seemingly assuming that J.H. and C.G. would have formally married had it been legal or had they been in a heterosexual relationship. *See id.* n. 1.

We granted C.G.'s petition for allowance of appeal to consider the following question.

> Whether the Superior Court erred in affirming the decision of the trial court that a former same-sex partner lacked standing both 1) as a parent and 2) as a party who stood in loco parentis to seek custody of the child born during her relationship with the birth mother where the child was conceived via assisted reproduction with an anonymous sperm donor and the parties lived together as a **[**898]** family unit for the first five years of the child's life.

***C.G.** **v.** **J.H.**, 179 A.3d 440 (Pa. 2018)* (per curiam).

II.

Before addressing **[***16]** the arguments of the parties, we outline some general principles regarding standing in custody matters. ***HN2***[⬆] The fundamental concept of standing ensures that a party seeking to litigate a matter has a substantial, direct, and immediate interest in the subject-matter of the litigation. *Ken R. on Behalf of C.R. v. Arthur Z., 546 Pa. 49, 682 A.2d 1267, 1270 (Pa. 1996)*; *see* *D.G. v. D.B., 2014 PA Super 93, 91 A.3d 706, 708 (2014)*. "In the area of child custody, principles of standing have been applied with particular scrupulousness[.]" *D.G., 91 A.3d at 708*. This stringent application of standing principles serves to protect both the interest of the court system by ensuring that actions are litigated by appropriate parties and the interest in keeping a family unit free from intrusion "by those that are merely strangers, however well-meaning." *Id.* (citation omitted). Indeed, in evaluating whether a Washington state statute conferring standing to "any person" to seek visitation of children, the United States Supreme Court has recognized the significant interest at stake in the context of persons seeking judicial intervention to gain visitation or custody of children. "The liberty interest . . . of parents in the **[*431]** care, custody and control of their children-is perhaps the oldest fundamental liberty interest recognized by this Court." *Troxel v. Granville, 530 U.S. 57, 65, 120 S. Ct. 2054, 147 L. Ed. 2d 49 (2000)*. ***HN3***[⬆] In Pennsylvania, **[***17]** *Section 5324* of the Domestic Relations Code limits the classes of persons deemed to have a substantial, direct, and immediate interest in the custody of children by conferring standing only upon "(1) a parent of the child[;] (2) a person who stands in loco parentis to the child[; and] (3) a grandparent of the child who is not in loco parentis to the child[,]" under certain circumstances. *23 Pa.C.S. § 5324*. Determining standing in custody disputes is a threshold issue that must be resolved before proceeding to the merits of the underlying custody action. *K.C. v. L.A., 633 Pa. 722, 128 A.3d 774, 779 (Pa. 2015)*. It "is a conceptually distinct legal question which has no bearing on the central issue within the custody action-who is entitled to physical and legal custody" of a child in light of his or her best interests. *Id.* Issues of standing are questions of law; thus, the standard of review is de novo and the scope of review is plenary. *K.W. v. S.L., 2017 PA Super 56, 157 A.3d 498, 504 (Pa. Super. 2017)*. With that in mind, we turn to the question of C.G.'s standing in the instant case.

III.

A. *Standing as a parent*

C.G. argues that she is a "parent" to Child under *23 Pa.C.S. § 5324(1)* because Child was conceived via assistive reproductive means using an anonymous sperm donor; Child was born to C.G.'s partner, J.H., during their relationship; C.G. participated **[***18]** in parenting Child; and C.G., J.H., and Child lived together as a family unit for the first five years of Child's life. C.G.'s Brief at 19, 24. She contends the Superior Court erred when it held the term "parent" is limited to the biological or adopted parents of a child. She urges this Court to hold that legal parentage under *Section 5324(1)* should include those who intend to bring a child into the world with the use of assistive reproductive technology and then co-parent the child subsequently born through that process, in addition to the traditional concepts of parentage by biology and adoption. **[*432]** *See id.* at 21. She highlights that **[**899]** medical options to conceive are varied and open to a variety of intended parents.[4] Moreover, same-sex couples, in particular, necessarily feature non-biological parent/child relationships because the couple "must turn to donor gametes to conceive." *Id.* at 25. C.G. reasons that reading this Court's decision in *Ferguson v. McKiernan, 596 Pa. 78, 940 A.2d 1236 (Pa. 2007)* with the Superior Court's decisions in *In re Baby S., 2015 PA Super 244, 128 A.3d 296 (2015)*; *J.F. v. D.B., 2006 PA Super 90, 897 A.2d 1261 (Pa. Super. 2006)*; and *L.S.K. v. H.A.N., 2002 PA Super 390, 813 A.2d 872 (Pa. Super. 2002)*, illustrates that a genetic connection to a child is not determinative of legal parentage in cases involving assistive reproductive technologies. *See id.* at 27-35.

Consequently, C.G. advocates for an intent-based

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[4] C.G. notes that in 2014, for example, there were 60,000 live births that were the result of in vitro fertilization and the number of children born as a result of donor gametes and gestational carriers has increased. *See* C.G.'s Brief at 25.

approach to determining legal **[***19]** parentage when a child is born through the use of assistive reproductive technology. *See id.* at 27-35. C.G. also posits that this intent-based approach is consistent with how other jurisdictions and the *Uniform Parentage Act* (2017) have addressed related issues.[5] C.G.'s Brief at 35-38.[6]

[*433] J.H. emphasizes the stringent test applied in determining who has standing in child custody matters is essential to preventing unnecessary intrusion into a family. *See* J.H.'s Brief at 38-42. She continues that the cases C.G. relies on for the proposition that parentage may be determined by intent do not support that reading of the case law because those cases do not relate to parentage by intent, but parentage by mutual assent of the parties. *Id.* at 49. She continues that "it would be wrong to allow [C.G] to be deemed a legal parent **[**900]** in the absence of [J.H.'s] assent, especially when [C.G.] outwardly voiced objections to the pregnancy and thereafter failed to discharge parental duties." *Id.* J.H. notes that although C.G. accuses the trial court of relying on discriminatory laws in concluding she was not a parent, the court undertook an examination of the evidence to evaluate the intent of the parties in the conception **[***20]** of Child and C.G.'s discharge of parental duties, in its in loco parentis analysis, which is the same standard C.G. advocates for in determining parentage when a child is born via assistive reproductive technology. *Id.* at 50. She emphasizes the factual findings made by the trial court regarding C.G.'s participation in Child's life and asks this Court to disregard C.G.'s factual assertions that were not credited by the trial court.[7] *See id.* at 50-57. She maintains **[*434]** that C.G. is not a parent based on the credible evidence accepted as fact by the trial court. *See id.* at 60.

HN4[↑] *Section 5324* does not define the term parent. "Absent a definition in the statute, statutes are presumed to employ words in their popular and plain everyday sense, and the popular meaning of such words must prevail." *Centolanza v. Lehigh Valley Dairies, Inc., 540 Pa. 398, 658 A.2d 336, 340 (Pa. 1995)* (citing *Harris-Walsh, Inc. v. Borough of Dickson City, 420 Pa. 259, 216 A.2d 329 (Pa. 1966))*. The popular and everyday meaning of the term parent plainly encompasses a biological mother and a biological father and persons who attain custody through adoption, and our case law supports those applications. *See J.F., 897 A.2d at 1273* ("Well-settled Pennsylvania law provides that persons other than a child's biological or natural parents are 'third parties' for purposes of custody disputes." (citation omitted)); *Faust v. Messinger, 345 Pa. Super. 155, 497 A.2d 1351, 1353 (Pa. 1985)* (Recognizing, "[t]he entire body of law **[***21]** pertaining to adoption harmonizes in order to place an adopted

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[5] C.G. devotes a portion of her argument to the state of law in Florida at the time of her relationship with and separation from J.H., in particular its restrictions on same-sex marriage and adoption around the time of Child's birth. *See* C.G.'s Brief at 39-47. She argues the trial court's analysis and Superior Court's affirmance did not give due consideration to these legal barriers and instead "the courts below considered the state of law in Florida as a legal conclusion that C.G. is not a parent." *Id.* at 46. She posits to allow these legal impediments to serve as evidence that she lacked intent is unfair to C.G., and others similarly situated "as it allows the discriminatory treatment of LGBT parents-even where the treatment has been held to be unconstitutional-to continue to injure litigants in perpetuity." *Id.*

C.G. seems to suggest she is entitled to a presumption of parentage based on, inter alia, the uncontested fact that she and J.H. participated in a commitment ceremony in Florida prior to Florida's recognition of same-sex marriage. *See, e.g. Brinkley v. King, 549 Pa. 241, 701 A.2d 176, 177 (Pa. 1997)* (OAJC) ("One of the strongest presumptions in Pennsylvania law is that a child conceived or born in marriage is a child of the marriage."). However, addressing whether a commitment ceremony in another state should be considered a marriage for purposes of applying presumptions of parentage is beyond the scope of the legal issue presented and the facts of this case. The trial court explained in its *Pa.R.A.P. 1925(a)* opinion that it wished to clarify that the focus of its analysis was on C.G.'s "actions and/or lack of actions. This finding in no way unconstitutionally restricts persons in a same-sex relationship from being able to reproduce and share legal parentage." Trial Ct. Op., 10/31/16. Moreover, it is not disputed that the parties declined to register with their county as domestic partners or pursue adoption once it became legal.

[6] Academy of Adoption and Assisted Reproduction Attorneys has submitted an amicus curiae brief in support of C.G. Amicus argues the trial court erred by concluding that biology and adoption are the only means to achieve legal parentage in Pennsylvania, the word "parent" is not sufficiently defined, and Pennsylvania should broaden the concept of parentage to determine who a parent is through the eyes of the child.

[7] J.H. further contends that presumptions of parentage are not implicated in this case, despite Judge Musmanno's suggestion in his concurring opinion. *See* J.H.'s Brief at 57-60. Specifically, she acknowledges the unavailability of marriage, but highlights the parties did not formalize their union by registering as domestic partners in their county, an option available to them, and further that Child was born because of the unilateral decision of J.H. *Id.* at 58-59.

child in the shoes of a natural child in all legal respects[.]" However, the reality of the evolving concept of what comprises a family cannot be overlooked. *See* Troxel, 530 U.S. at 63 ("The composition of families varies greatly from household to household."); J.A.L. v. E.P.H., 453 Pa. Super. 78, 682 A.2d 1314, 1320 (Pa. Super. 1996) (Observing, "increased mobility, changes in social mores and increased individual freedom have created a wide spectrum of arrangements, filling the role of the traditional nuclear family[.]"). Thus, C.G. directs our attention to cases that specifically involve the use of alternative means of conceiving and or reproducing through assistive reproductive technologies, and asks this Court to revisit and expand the definition of parent to include persons involved in the process but bearing no biological connection to the resulting child.[8]

[*435] **[**901]** *J.F. v. D.B.*, involved the relative rights of parties to a surrogacy agreement vis-à-vis the resulting triplets. In that case, an unmarried couple used the services of a surrogate, an egg donor, and the father's sperm to reproduce. The gestational carrier, who bore no genetic relation to the triplets she delivered, began misinforming **[***22]** Father and his partner, the intended-mother of the children, about the pregnancy and ultimately took them home and assumed them as her own. The trial court voided the surrogacy contract, and concluded the gestational carrier stood in loco parentis and was the children's legal mother. On appeal, the Superior Court held that the gestational carrier was a third party and had not established in loco parentis as she "took custody of the children in flagrant defiance of Father's wishes," it further held the trial court erred in voiding the surrogacy contract and concluding the gestational carrier was the legal mother. Id. at 1280. The surrogacy contract at issue identified Father as "Biological Father or Adoptive Father" and his partner as "Biological Mother or Adoptive Mother." J.F., 897 A.2d at 1265. Although Father's partner was not named in the action, the Superior Court concluded the trial court erred in voiding the surrogacy contract. The court declined to rule on the propriety of surrogacy contracts in general, leaving that task for the General Assembly to address. J.F., 897 A.2d at 1280. It is undisputed that C.G. was not a party to a contract in connection **[*436]** with Child's birth, and her reliance on *J.F.* to support the intent-based approach **[***23]** to parentage is misplaced.

This Court addressed a situation involving contracting for release of parental rights in the context of assistive reproductive conception in *Ferguson v. McKiernan*. Mother in that case sought the assistance of a former paramour (Donor) in conceiving a child. Although reluctant initially, Donor agreed to provide his sperm for purposes of in vitro fertilization after Mother agreed to release him from any rights and or obligations attendant to paternity. *See* Ferguson, 940 A.2d at 1239. His identity was intended to remain confidential, and following the birth of the twins, Mother acted in accordance with the agreement for approximately five years at which time she filed a support action against Donor. The trial court specifically found that Mother and Donor had formed a binding oral contract to release Donor from parental obligations in exchange for his participation in conception; however, it voided the contract reasoning a parent cannot bargain away children's right to support, as allowing such agreement would violate public policy. *See* id. at 1241. This Court disagreed that enforcing such an agreement violated public policy, particularly "in the face of the evolving role played by alternative reproductive **[***24]** technologies in contemporary American society." Id. at 1245. The focus of our analysis was the enforceability of what was determined to be a binding oral contract. Our reasoning, in part, follows.

> **[**902]** [W]e cannot agree with the lower courts that the agreement here at issue is contrary to the sort of manifest, widespread public policy that generally animates the court's determination that a

[8] C.G. argues *L.S.K* stands for the proposition that Pennsylvania courts have recognized that "a person who intends to create children through assistive reproductive technology ought to be held legally responsible" for the children on the same basis as a parent. C.G.'s Brief at 29. In that case, Mother, L.S.K., and H.A.N. were in a same-sex relationship and Mother eventually bore five children conceived through artificial insemination. L.S.K., 813 A.2d at 874. The couple separated after approximately seven years of living as a family, and H.A.N. filed a complaint for custody. The trial court granted H.A.N. shared legal and partial physical custody, ruling that she stood in loco parentis to the children, *see* 23 Pa.C.S. § 5324(2), not that she was a parent to the children under Section 5324(1). H.A.N. attempted to avoid paying child support for the children, which the trial court denied. The Superior Court affirmed the trial court's determination based on equitable principles: "equity mandates that H.A.N. cannot maintain the status of *in loco parentis* to pursue an action as to the children, alleging she has acquired rights in relation to them, and at the same time deny any obligation for support merely because there was no agreement to do so." Id. at 878. However, it did not conclude that H.A.N. was a parent for the purpose of standing requirements. Rather, she was a third party who stood in loco parentis to the children.

> contract is unenforceable. The absence of a legislative mandate coupled to the constantly evolving science of reproductive technology and the other considerations highlighted above illustrates the very opposite of unanimity with regard to the legal relationships arising from sperm donation, whether anonymous or otherwise. This undermines any suggestion that the agreement at issue violates a "dominant public policy" or "obvious ethical standards" **[*437]** sufficient to warrant the invalidation of an otherwise binding agreement.

Id. at 1248 (internal citations omitted). We found it noteworthy that but for the agreement between Donor and Mother, the children at the center of the issue would not have come into being. *Id.* Thus, we concluded that the agreement obviating Donor of his legal parental rights and obligations was indeed enforceable. **[***25]** *Id.*

More recently, the Superior Court addressed establishing parentage by contract in the context of a surrogacy arrangement where the intended mother was not biologically related to the resulting child in *In re Baby S*. In that case, S.S. and her Husband decided to become parents, and S.S. underwent fertility treatments to achieve that end. Eventually, the couple entered into a service agreement with a company that coordinates gestational carrier arrangements, identifying S.S. and Husband as the intended parents. The agreement provided that the intended parents could terminate the agreement provided gestational carrier had not undergone the necessary procedure to produce pregnancy; in the event she had, the intended parents could still terminate the agreement, but only after confirmation the gestational carrier was not pregnant. *See In re Baby S., 128 A.3d at 298*. S.S. and Husband were matched with a gestational carrier in Pennsylvania. They next entered into a service agreement with an egg donation agency, and entered into an ovum donation agreement with an anonymous egg donor providing, in part, "that the Intended Mother shall enter her name as the mother and the Intended Father shall enter his name as the father **[***26]** on the birth certificate of any Child born from such Donated Ova. . . . Donor understands that the Intended Parents shall be conclusively presumed to be the legal parents of any Child conceived pursuant to this Agreement." *Id. at 299-300* (citations omitted). Following the selection of the egg donor, the couple entered into a gestational contract with gestational carrier providing the intended parents were to assume legal responsibility for any child born pursuant to the agreement and that intended mother wished to be the mother of a child who was biologically **[*438]** related to intended father. *See id.* The gestational carrier became pregnant with an embryo created from Husband's sperm and the anonymous egg donor's egg. S.S. expressed gratitude and largely financed the procedure, and she and Husband attended the twenty-week ultrasound. *Id.* However, prior to the child's birth, S.S. refused to sign the necessary paperwork to have her named on the child's birth certificate because she and Husband were experiencing marital problems. While pregnant, the gestational carrier sought a court order declaring S.S. and Husband to be the legal parents of the child. In the meantime, Baby S. was born, and gestational carrier **[***27]** was named as the mother, and no name was listed for the father. Husband took custody of Baby S. S.S. filed a response and new matter arguing the gestational carrier contract was unenforceable. Following hearings, the trial **[**903]** court entered an order declaring S.S. and Husband as the legal parents, and resolving other ancillary matters. *Id. at 301*. S.S. appealed to the Superior Court arguing inter alia, the legislature has evidenced its reluctance to sanction surrogacy contracts in the Commonwealth by declining to enact laws recognizing their validity; Pennsylvania provides only two mechanisms to parentage, biology and adoption, and neither situation applies to surrogacy agreements; the Court cannot authorize a new means by which legal parentage is established, and the contract violates public policy by creating a parent/child relationship without an adoption or judicial oversight. *See id. at 303*. Drawing largely from our decision in *Ferguson*, the court concluded that S.S. failed to demonstrate the surrogacy contract was against public policy. *See id. at 306*. The court disagreed with the position of S.S. that the lack of legislative direction regarding surrogacy agreements implies disapproval. Rather, the court reasoned, **[***28]** "the absence of a legislative mandate one way or the other 'undermines any suggestion that the agreement at issue violates dominant public policy...'" *Id.* The court acknowledged, as this Court did in *Ferguson*, that ***HN5***[⬆] "case law from the past decade reflects a growing acceptance of alternative reproductive arrangements in the Commonwealth." *Id.* Finally, the court expressly disagreed with S.S.'s assertion that a biological relationship or **[*439]** formal adoption are the only ways to attain the status of a legal parent in Pennsylvania:

> Further, the Adoption Act is not the exclusive means by which an individual with no genetic connection to a child can become the legal parent; and nothing in the *Adoption Act* evinces a

> "dominant public policy" against the enforcement of gestational contracts. The legislature has taken no action against surrogacy agreements despite the increase in common use along with a [Department of Health] policy to ensure the intended parents acquire the status of legal parents in gestational carrier arrangements. Absent an established public policy to void the gestational carrier contract at issue, the contract remains binding and enforceable against [S.S.].

Id. at 306 (citation omitted). **[***29]**

HN6[↑] It is beyond cavil that parentage is established either through a formal adoption pursuant to the Adoption Act[9] or when two persons contribute sperm and egg, respectively, either through a sexual encounter or clinical setting, and an embryo is formed that is carried to term and results in a child. However, cognizant of the increased availability of reproductive technologies to assist in the conception and birth of children, the courts are recognizing that arrangements in this latter context may differ and thus should be treated differently than a situation where a child is the result of a sexual encounter. Specifically, the willingness of persons to act as sperm donors, egg donors, and gestational carriers, is at least somewhat dependent on the extinguishment of the donor or carrier's parental claim to any resulting child and the intended parent's release of any obligation to support the child. *See, e.g., In re Baby S., 128 A.3d at 298-300* (Egg Donor and Gestational Carrier's respective contracts outlining intended parents were to be deemed legal parents). Given this, and especially in the absence of legislative guidance surrounding this intimate and sensitive undertaking, it seems obvious that contracts regarding the **[***30]** parental status of the biological contributors-whether one is an anonymous contributor or known **[*440]** to the intended parent to the **[**904]** child be honored in order to prohibit restricting a person's reproductive options. *See Ferguson, 940 A.2d at 1247-48* (opining, "where a would-be donor cannot trust that he is safe from a future support action, he will be considerably less likely to provide his sperm to a friend or acquaintance who asks, significantly limiting a would-be mother's reproductive prerogatives." (footnote omitted)).

Likewise, ***HN7***[↑] the Superior Court recognized that after a child is conceived through the use of a surrogate and an egg donor, both of whom contracted away any parental rights to the child, the non-biologically related intended parent's contract to assume the role of legal parent is enforceable. *In re Baby S., 128 A.3d at 298*. Consequently, there appears to be little doubt that the case law of this Commonwealth permits assumption or relinquishment of legal parental status, under the narrow circumstances of using assistive reproductive technology, and forming a binding agreement with respect thereto.[10] The courts of this Commonwealth, when faced with the issue and without legislative guidance, have expressly declined to void such contracts **[***31]** as against public policy.

However, this narrow judicial recognition of legal parentage by contract-where a child is born with the assistance of a donor who relinquishes parental rights and/or a non-biologically related person assumes legal parentage-does not afford C.G. the relief she seeks. There was no dispute that C.G. was not party to a contract or identified as an intended-parent when J.H. undertook to become pregnant through intrauterine insemination. Therefore, she is clearly not a parent under any bases that have been recognized by our jurisprudence.[11]

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[9] *23 Pa.C.S. § 2101 et seq.*

[10] We do not wish to imply that a biological parent may bargain away his or her child's right to support. *See Kesler v. Weniger, 2000 PA Super 2, 744 A.2d 794, 796 (Pa. Super. 2000)* (rejecting Father's argument that he had a sexual relationship with Mother in order to help her conceive, under the impression she would not hold him responsible for child support).

[11] Notwithstanding the fact that Pennsylvania has not recognized a definition of parent that is based on the mere intentions of two people to be viewed as parents, Justice Dougherty expresses his concern that the failure to now recognize a broader definition results in "a cramped interpretation of 'parent'" that will inevitably inflict continued hardship on non-traditional families, particularly same-sex couples undertaking to start a family. *See* Concurring Opinion, Dougherty, J., *slip op*. at 4. In that regard, Justice Dougherty contends under today's decision "it remains impossible" for both partners in a same-sex couple to have standing as legal parents in the absence of marriage or adoption, "as only one can be biologically related to the child or contract to assume legal parentage." Id. at 1-2. Similarly, Justice Wecht acknowledges that the case law in this area has focused on a contractual relationship among intended parents (or persons who wish to renounce parental claims) but concludes the decision today "does not go far enough" and should draw from earlier decisions an intent-based recognition of parentage. *See* Concurring Opinion, Wecht., J., *slip op*. at 2-5. Justice

[*442] **[**905]** C.G. contends our case law stands for the broad proposition that parentage can be established by intent in situations where a child is born with the aid of assistive reproductive technology. It does not. The jurisprudence in this Commonwealth has declined to void contracts involving surrogacy and/or the donation of sperm or ova recognizing a separate mechanism by which legal parentage may be obtained (or relinquished). The facts of C.G.'s case do not place her into this narrow class of cases where legal parent rights and responsibilities have been relinquished or assumed via contract.[12]

C.G. also **[***32]** points to recent decisions in Vermont and Massachusetts to support her intent-based approach. In *Sinnott v. Peck, 180 A.3d 560 (Vt. 2017)*, the Vermont Supreme Court addressed whether a person who is not biologically related to a child, has not adopted a child, and is not married to the child's parent may be the legal parent of the child. In that case, Mother had a one-year-old child, whom she had adopted, when she began her relationship with Partner. When Mother's child was two years old, Mother and Partner jointly decided to adopt another child from Guatemala, where Mother's first child was born. The couple sought to adopt using the same agency Mother had used to facilitate her first adoption; however the agency did not permit same-sex parent adoption. Mother presented herself as the adoptive parent, and ultimately, the **[**906]** second child, M.P., was brought home to Vermont **[*443]** in February 2006 and lived as a family unit together with the couple until 2010. *See Sinnott, 180 A.3d at 561-63*. Following the couple's separation, the family division dismissed Partner's petition to establish parentage based on her assertion that she was the intended mother of both children. *Id. at 563*. The Vermont Supreme Court affirmed the decision with respect to the older child, but concluded **[***33]** the family division erred with respect to the child the parties mutually agreed to adopt. It reasoned that its past case

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Wecht further imagines a scenario wherein a same-sex partner may be foreclosed from seeking standing as a parent. *See id.* at 5. Respectfully, we disagree, and clarify that nothing in today's decision is intended to absolutely foreclose the possibility of attaining recognition as a legal parent through other means. However, under the facts before this Court, this case does not present an opportunity for such recognition, as the trial court found as fact that the parties did not mutually intend to conceive and raise a child, and the parties did not jointly participate in the process. Indeed, despite the disapproval expressed by the concurring opinions over the development of case law thus far on the evolving definition of the term parent for purposes of standing, Justice Dougherty views it "unnecessary at this juncture to endorse any particular new test for establishing standing as a parent." Concurring Opinion, Dougherty, J., *slip op*. at 4. We agree that "we must await another case with different facts before we may properly consider the invitation to expand the definition of 'parent.'" *See id.* at 4-5.

Justice Dougherty hypothesizes that it is impossible for both partners in a same-sex marriage to attain legal parentage absent marriage or adoption. With respect for this perspective, we must disagree. We do not view today's decision or the case law as developed to compel such a result. For example, in *J.F.*, Biological Father's unmarried partner was the intended mother of the children they sought to have via use of a surrogate. Although the issue in that case was not Partner's standing, but rather the non-biologically related surrogate's standing to the children she bore, the Superior Court expressly declined to void the surrogacy contract. *J.F., 897 A.2d at 1280*. Likewise, in *In re Baby S.*, the Superior Court concluded that S.S., identified as the Intended Mother, in the surrogacy agreement was to be deemed the legal mother. *In re Baby S., 128 A.3d at 298*. Although S.S. was married to biological Father, the court grounded its reasoning in the principles espoused in the case law involving surrogacy agreements, not the presumption of parentage married persons enjoy. *Id.* There is nothing to suggest in our case law that two partners in a same-sex couple could not similarly identify themselves each as intended parents, notwithstanding the fact that only one party would be biologically related to the child. However, this issue is not before the Court, and we are not tasked with defining the precise parameters of contracts regarding assistive reproductive technology. Likewise, the doctrine of parentage by estoppel, which Justice Wecht contends heterosexual-sex couples may avail themselves of to seek standing but which same-sex couples may not, is not implicated by the facts before this Court.

[12] We recognize that C.G. was unable to adopt Child at the time of his birth under Florida law. However, her argument is that adoption should not be the sole means by which a non-biologically related person may obtain legal parentage of a child, and that the intent of the parties should be determinative of the issue of parentage. We note C.G. acknowledged in her complaint for custody that Child was born out of wedlock. Custody Compl., 12/8/15, at ¶ 3. Although she now suggests a presumption should apply, she does not focus her argument on why an informal commitment ceremony, without registering her relationship in her municipality as domestic partners, should compel application of the presumption of parentage that married persons enjoy. We decline to speculate on what actions the parties may have taken had Florida law been different at the time of Child's birth; however, as we have noted, the parties declined to seek recognition of their union by registering as domestic partners and likewise declined to pursue adoption when it became available, while the relationship was still intact.

law has "created a legal framework in which parental status is viewed in the absence of marriage, civil union, or biological or adoptive relationship with the child in a narrow class of cases in which the parents intended to bring a child into their family and raise the child together, and did in fact do." *Id. at 563* (footnote omitted). As we have expressed, our case law has acknowledged a much narrower framework for establishing parentage in the absence of adoption, biology, or a presumption attendant to marriage, and the facts of C.G.'s case do not fit into such a paradigm.[13]

Similarly, C.G.'s reliance on Massachusetts's case law is inapposite to her claim. By statute, Massachusetts, unlike Pennsylvania, provides a presumption that a man is the father of a child born out of wedlock "if he jointly, with the mother received the child into their home and openly held out the child as their child." *Partanen v. Gallagher, 475 Mass. 632, 59 N.E.3d 1133, 1135 (Mass. 2016)*. In *Partanen*, the undisputed facts were that two women were in a committed relationship and jointly undertook to conceive and have children via in vitro fertilization. The **[***34]** couple welcomed two children. Ultimately, the parties separated and the non-biologically related party sought to be declared the presumptive parent. The Supreme **[*444]** Judicial Court of Massachusetts concluded that the statute may be applied in a gender-neutral manner despite the gendered terms it employed and "may be construed to apply to children born to same-sex couples, even though at least one member of the couple may well lack biological ties to the children." *Id. at 1138* (footnote omitted).

The instant case is not one where a statutory presumption would be bestowed on a similarly-situated male based on cohabitation in the absence of marriage, and as highlighted throughout, the factual findings of the trial court determined that C.G. did not jointly participate in Child's conception and hold him out as her own. Accordingly, this case does not provide this Court with a factual basis on which to further expand the definition of the term parent under *Section 5324(1)*.[14]

[907]** III.

B. *Standing as in loco parentis*

Before outlining the arguments of the parties, this Court has explained in loco parentis as follows:

> ***HN9***[↑] *In loco parentis* is a legal status and proof of essential facts is required to support a conclusion that such **[***35]** a relationship exists. . . .
>
> The phrase "*in loco parentis*" refers to a person who puts oneself in the situation of a lawful parent by assuming the **[*445]** obligations incident to the parental relationship without going through the formality of a legal adoption. The status of *in loco parentis* embodies two ideas; first, the assumption of a parental status, and second, the discharge of parental duties. The rights and liabilities arising out of an *in loco parentis* relationship are, as the words imply, exactly the same as between parent and child. The third party in this type of relationship, however, can not place himself *in loco parentis* in defiance of the parents' wishes and the parent/child relationship.

T.B., 786 A.2d at 916-17 (citations omitted).

C.G. argues the trial court erred in its in loco parentis analysis in two respects. First, C.G. contends the Superior Court failed to take into account the presence

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[13] We recognize the view of the concurring Justices favoring a definition of parent that would focus on the intent of the parties as the operative fact in determining who is a parent under *Section 5324(1)*; however the concurrences likewise recognize that this case does not fall into such a framework. *See* Concurring Opinion, Dougherty, J., *slip op*. at 3; Concurring Opinion, Wecht, J., *slip op*. at 7. Accordingly, as expressed *supra*, we agree with Justice Dougherty that it is unnecessary at this time to expand the definition of parent or endorse a new standard under the facts before this Court. *See* Concurring Opinion, Dougherty, J., *slip op*. at 4-5.

[14] We note ***HN8***[↑] other jurisdictions have legislatively addressed the issue of parentage where assistive reproductive technology is employed. *See, e.g.*, *13 Del.C. § 8-201*(Delaware statute explaining that a mother-child relationship is established between a woman and a child under a number of circumstances, including, the "woman having consented to assisted reproduction by another woman ... which resulted in the birth of a child" and also outlining the scenarios by which one is deemed a de facto parent); *DC Code § 16-407* (Washington, D.C. statute establishing parentage in "collaborative reproduction" in different contexts including gestational surrogacy arrangements and defining parent as the intended parent regardless of a genetic connection to the child). As we have observed, however, in this case C.G. was not a party to an agreement to conceive Child and did not intend to be a parent. Thus, even if this Court or the General Assembly expanded the definition of parent, she would not be entitled to the relief she seeks.

or absence of a parent-like bond between C.G. and Child. C.G.'s Brief at 50-52, 55. She continues that the primary determinant in establishing in loco parentis standing is whether the third-party lived with the child and the natural parent in a family-setting and developed a bond with the child as a result of **[***36]** the natural parent's participation and acquiescence. *Id.* at 52. She highlights cases where in loco parentis has been conferred on a former-partner based on the parties' decision to have a child together and subsequently living together as a family unit and cases where courts declined to confer in loco parentis status where the petitioning party was more akin to a babysitter, or the parties never lived as a family unit, or where the party assumed a parental status in defiance of the parent's wishes. *Id.* at 54-56. C.G. posits that the trial court failed to focus on the existence of a bond and instead created a new test in its analysis by its categorization of the evidence, i.e., it looked to documents, the parties' finances, and who took primary responsibility for Child. *See id.* at 57.

Next, C.G. contends the trial court erroneously held that the post-separation conduct of the parties was determinative of whether she stood in loco parentis. She continues that concluding that the post-separation conduct of a party disaffirms an in loco parentis relationship runs contrary to appellate case law on the matter. *See* C.G.'s Brief at 61-63. Specifically, she **[*446]** claims the trial court's analysis regarding the post-separation **[***37]** period of time violated three principles of the in loco parentis doctrine, that once attained, the status cannot be lost; post-separation conduct cannot be used to deny a person in loco parentis status; and post-separation conduct may be used to support a finding that a person stood in loco parentis. *See id.*at 63-74. She asks this Court to "hold that the relevant time period in which to examine bonding between the party and the child is the time during which the natural **[**908]** parent fostered or acquiesced to the relationship between the child and the third party."[15] *Id.* at 62.

J.H. counters that C.G.'s position emphasizing the existence of a bond as the determinant factor is misplaced. Rather, to gain in loco parentis status a person must first demonstrate that he or she assumed parental status and discharged parental duties, a fundamental requirement which C.G. failed to establish. *See* J.H.'s Brief at 61-63. She continues that notwithstanding C.G.'s claim, the trial court examined the nature of C.G.'s relationship with Child. J.H. highlights that C.G.'s current view is the trial court erred by failing to conduct a bonding evaluation, appoint a guardian ad litem, or interview Child, despite not making any of these **[***38]** requests before the trial court. *Id.* at 65.

Responding to C.G.'s argument that the trial court placed too much weight on her post-separation conduct, J.H. notes that the trial court and Superior Court recognized that C.G. did not lose her status based on post-separation conduct; rather, her post-separation conduct was consistent with her pre-separation conduct, i.e., she did not act or hold herself out as a parent to Child. *See id.* at 66-67. Finally, J.H. argues that a rule preventing courts from evaluating post-separation conduct would elevate the rights of former partners over the rights of natural parents because under *23 Pa.C.S. § 2511(a)(1)*, **[*447]** parental rights are subject to termination when a parent fails to perform parental duties for a period of at least six months. *See id.* at 68-69. Thus, she maintains post-separation conduct is a relevant factor in looking to whether a party stands in loco parentis.

HN10[↑] *Section 5324(2)* permits a person who stands in loco parentis to a child to petition the court for custody of a child. As noted, gaining in loco parentis status requires the petitioning individual to demonstrate two elements: the assumption of parental status and the discharge of parental duties. *See T.B., 786 A.2d at 916-17*.

In *T.B.*, on which C.G. relies, a former same-sex partner **[***39]** sought custody rights to a child born during her relationship with the child's Mother. This Court agreed with the conferral of in loco parentis standing on the former partner. Factually, Partner and Mother agreed to have a child together with Mother carrying the child and the Partner choosing the sperm donor. They shared day-to-day parental duties such as taking the child to appointments, the Partner was designated as guardian of child in Mother's will, and she had exclusive responsibility for child when Mother was not present. *See id. at 914-15*. We concluded that the facts demonstrated Partner assumed a parental status and discharged parental duties with the consent of

[15] The American Academy of Matrimonial Lawyers (AAML), Pennsylvania Chapter has submitted an amicus curiae brief in support of C.G. AAML argues that C.G. has standing as a person in loco parentis to the Child, and the consideration of post-separation conduct is irrelevant and may encourage bad behavior on the part of the parent with custody to withhold the child.

Mother. *Id. at 920*. We also rejected Mother's argument at the time that the legal impossibility of Mother and Partner marrying prohibited the court from conferring on Partner standing based on in loco parentis. "The ability to marry the biological parent and the ability to adopt the subject child have never been and are not now factors in determining whether the third party assumed a parental status and discharged parental duties." *Id. at 918*.

In *J.A.L*, the Superior Court reversed the trial court's denial of in loco parentis standing to a former same-sex **[***40]** partner. In that case, Mother and Partner agreed to **[**909]** raise a child together and together selected the sperm donor. Mother and Partner executed a nomination of guardian document, which included a statement reflecting the parties' intent to **[*448]** raise the child together, and an authorization for consent to medical treatment, allowing Partner to consent to treatment for the child. Following the parties' separation, the trial court concluded Partner lacked standing. The Superior Court disagreed and noted the following.

> ***HN11***[↑] The in loco parentis basis for standing recognizes that the need to guard the family from intrusions by third parties and to protect the rights of the natural parent must be tempered by the paramount need to protect the child's best interest. Thus, while it is presumed that a child's best interest is served by maintaining the family's privacy and autonomy, that presumption must give way where the child has established strong psychological bonds with a person who, although not a biological parent, has lived with the child and provided care, nurture, and affection, assuming in the child's eye a stature like that of a parent. Where such a relationship is shown, our courts recognize **[***41]** that the child's best interest requires that the third party be granted standing so as to have the opportunity to litigate fully the issue of whether that relationship should be maintained even over a natural parent's objection.

Id. at 1319-20.

The court applied the principles of in loco parentis to the facts and concluded that "[t]he inescapable conclusion to be drawn from this evidence is that in both [Mother's and Partner's] minds, the child was to be a member of their nontraditional family, the child of both of them and not merely the offspring of [Mother] as a single parent. The intention is born out by the documents executed by the parties before the child's birth and by [Mother] giving the child [Partner's] surname as a middle name on the birth certificate." *Id. at 1321*. The Superior Court closely examined the record and concluded that the parties' conduct after the child's birth and pre-separation, established the Mother and Partner's intent to create a parent-like relationship with the Partner. It then turned to post-separation conduct, finding that the "contact was reinforced after the parties' separation, visits which occurred with a frequency and regularity similar to that of post- **[*449]** separation visits **[***42]** by many noncustodial natural parents and thus must be considered adequate to maintain any bond previously created." *Id. at 1322*. Thus, the Superior Court concluded Partner had standing to challenge custody.

HN12[↑] The paramount concern in child custody cases is the best interests of the child. *K.C. v. L.A., 128 A.3d at 775*. The important screening functions of standing requirements protect the child and the family from unnecessary intrusion by third parties. *See D.G., 91 A.3d at 708*; *K.W., 157 A.3d at 503-04*. C.G. seeks to have this Court adopt a rule that the decisive factor in this assessment is the existence of a bond between the third party and the child. Our case law does not support such a loose application of standing principles. The appellate courts of this Commonwealth have consistently described the prerequisites to in loco parentis standing as assumption of parental status and discharge of parental duties.[16] *See Peters v. **[**910]** Costello, 586 Pa. 102, 891 A.2d 705, 710 (Pa. 2005)*; *K.W., 157 A.3d at 505*. Here, the trial court found C.G.'s evidence lacking in these important regards based on its credibility determinations, faced with conflicting testimony. Of course, it is a concern to the courts whether a child has developed strong psychological bonds, however, such bonds must necessarily be based on the assumption of parental status and discharge of **[***43]** parental duties in order to achieve this legal status. *See J.A.L., 682 A.2d at 1319-20*. Indeed, if the determining factor were the child's development of a bond with the person seeking standing, it would be of no moment to the court if the bond was forged contrary to the natural parent's wishes. Acceptance of such a rule would undermine well-established principles of in loco parentis analyses. *See T.B., 786 A.2d at 917* (explaining

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[16] The in loco parentis test has been applied in the same fashion regardless of whether the person seeking in loco parentis is a former step-parent or a former same-sex partner who had not married the child's biological parent. *See, e.g. Bupp v. Bupp, 718 A.2d 1278, 1281-82 (Pa. Super. 1998)*; *J.A.L., 682 A.2d at 1318-19*.

that a third party "can not place himself *in loco parentis* in defiance of the parent's wishes and the parent/child relationship").

[*450] Finally, we turn to the question of the court's treatment of C.G.'s post-separation conduct and its bearing on an in loco parentis analysis. As an initial point, we do not disagree with C.G.'s position that ***HN13***[↑] the relevant time frame to determine whether a party stands in loco parentis is when the party developed the relationship with the child with the acquiescence or encouragement of the natural parent. Indeed, it is fundamental that a party must have discharged parental duties and assumed parental status in order to gain standing as a third party. The question is of what relevance, if any, is the conduct of the party after there has been some separation between the **[***44]** party and the child. The Superior Court dismissed a mother's argument that her former paramour lost his in loco parentis standing after the parties separated and she remarried in *Liebner v. Simcox, 2003 PA Super 377, 834 A.2d 606, 611 (Pa. Super. 2003)* (explaining mother had cited no case law to support the proposition that once attained, in loco parentis status could be lost due to change in circumstances). In *J.A.L.*, the Superior Court acknowledged the post-separation conduct of partners to buttress its conclusion that the former-partner of the mother stood in loco parentis. *See J.A.L., 682 A.2d at 1322* ("This early contact was reinforced by visits after the parties' separation, visits which occurred with a frequency and regularity to that of post-separation visits by many noncustodial natural parents and thus must be considered adequate to maintain any bond previously created."). We reiterate, the rights and liabilities arising out of in loco parentis are the same as that between child and parent and its status is conferred upon a person who puts him or herself in the situation of a lawful parent. *See T.B., 786 A.2d at 916-17*. In *J.A.L.*, the court found the post-separation conduct of both parties supported the in loco parentis determination because it was akin to post-separation conduct of many natural **[***45]** parents.

In the instant matter, we agree with C.G. that ***HN14***[↑] the post-separation conduct should not be determinative of the issue of standing; however, the conduct by either parent or partner may shed light on the analysis of whether the person seeking standing was ever viewed as a parent-like figure. We **[*451]** recognize that in some situations a natural parent may seek to withhold a child from a person who has assumed parental status (or another natural parent). *See, e.g., Jones v. Jones, 2005 PA Super 337, 884 A.2d 915, 919 (Pa. Super. 2005)* (awarding primary physical custody to former-partner of natural mother who gained in loco parentis status and disapproving of mother's continued attempts to exclude her former-partner following the couple's separation). However, this potential for misconduct **[**911]** does not render the actions of the person seeking in loco parentis status immune from review following a separation. We note in the instant case, despite characterizing the court's analysis of the post-separation contact determinative of whether or not C.G. stood in loco parentis to Child, it was not. The trial court found, and the record supports, that prior to the couple's separation, C.G. did not assume a parental status or discharge parental duties. The trial court **[***46]** simply concluded that the post-separation conduct of C.G. was consistent with its initial determination, as the Superior Court did in *J.A.L.* In loco parentis analyses are necessarily fact-intensive and case-specific inquiries, and we decline to foreclose a trial court from reviewing all relevant evidence in making this important determination that so greatly will impact the family unit.[17]

IV.

In sum, we conclude that C.G. is not a parent under *Section 5324(1)* for the purpose of seeking custody of Child. We further conclude that the trial court did not commit error by failing to consider the existence of a bond between C.G. and **[*452]** Child as the decisive factor of whether C.G. stood in loco parentis to Child. Indeed, the trial court undertook to examine all of the evidence of record to determine whether C.G. assumed parental status and discharged parental duties, and we discern no legal error in its analysis. The order of the Superior Court is affirmed.

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[17] Indeed, we find persuasive J.H.'s position that ***HN15***[↑] it would be incongruous to ignore all post-separation conduct between a third-party and a child for the purpose of assessing whether the party stood in loco parentis, when the Adoption Act provides that a petition seeking involuntary termination of a natural or adoptive parent's rights may be filed if the parent has "evidenced a settled purpose of relinquishing parental claim to a child and has refused or failed to perform parental duties" for a period of at least six months preceding the filing of the petition. *23 Pa.C.S. § 2511*. To render all post-separation conduct irrelevant would be to afford a person seeking in loco parentis standing, at any time, a greater advantage to a natural or adoptive parent even in the event the third party had demonstrated his or her relinquishment of parental claims to a child.

Chief Justice Saylor and Justices Baer and Todd join the opinion.

Justice Dougherty files a concurring opinion.

Justice Wecht files a concurring opinion in which Justice Donohue joins.

Concur by: DOUGHERTY; WECHT

Concur

CONCURRING OPINION

JUSTICE DOUGHERTY

The trial court's credibility **[***47]** findings in this case compel the conclusion C.G. lacks standing to seek custody of Child. But in my respectful view, nothing warrants, much less necessitates, the majority's cramped interpretation of "parent" under 23 Pa.C.S. §5324(1), the inevitable result of which will be the continued infliction of disproportionate hardship on the growing number of nontraditional families — particularly those of same-sex couples — across the Commonwealth. I therefore concur in the result only.

According to the majority, our precedent supports a conclusion parentage for standing purposes may be proven in only four ways: biology, adoption, a presumption attendant to marriage, or "legal parentage by contract — where a child is born with the assistance of a donor who relinquishes parental rights and/or a non-biologically related person assumes legal parentage[.]" Majority Opinion, slip op. at 21. Unfortunately, even under this paradigm of parentage, it remains impossible — absent marriage or adoption — for both partners of a same-sex couple to have standing as a parent, as only one can be biologically related to the **[**912]** child or contract to assume legal parentage. I see no good reason why the Court should continue to impose such an overly-restrictive formulation, **[***48]** which fails to take into account equitable principles and may ultimately **[*453]** frustrate the paramount concern of protecting a child's best interests. *See* Douglas NeJaime, *The Nature of Parenthood*, 126 Yale L.J. 2260, 2289 (2017) ("[E]ven as principles of gender and sexual-orientation equality have animated shifts in parental recognition, parentage law continues to draw distinctions that carry forward legacies of inequality embedded in frameworks forged in earlier eras.").

The majority correctly observes the reality that what comprises a family is an evolving concept. *See* Majority Opinion, slip op. at 15, *citing* Troxel v. Granville, 530 U.S. 57, 63, 120 S. Ct. 2054, 147 L. Ed. 2d 49 (2000) ("The demographic changes of the past century make it difficult to speak of an average American family. The composition of families varies greatly from household to household."); J.A.L. v. E.P.H., 453 Pa. Super. 78, 682 A.2d 1314, 1320 (Pa. Super. 1996) ("In today's society, where increased mobility, changes in social mores and increased individual freedom have created a wide spectrum of arrangements filling the role of the traditional nuclear family, flexibility in the application of standing principles is required in order to adapt those principles to the interests of each particular child."). Yet despite recognizing the diverse range of parental configurations that now exist, the majority interprets our case law **[***49]** in a manner that continues to primarily tether parentage to traditional notions of biology and adoption. There is a very real and grave risk to this approach, to children and putative parents alike. *See* Matter of Brooke S.B. v. Elizabeth A.C.C., 28 N.Y.3d 1, 39 N.Y.S.3d 89, 61 N.E.3d 488, 499 (N.Y. 2016) ("A growing body of social science reveals the trauma children suffer as a result of separation from a primary attachment figure — such as a de facto parent — regardless of that figure's biological or adoptive ties to the children[.]") (collecting sources); NeJaime, 126 Yale L.J. at 2322 ("The harms of nonrecognition are not only practical but expressive. Courts routinely term those who serve as parents but lack biological ties "nonparents" — casting them as third parties who are otherwise strangers to the family.").[1]

[*454] Cognizant of these potential harms, I would not interpret our case law so narrowly. Instead, I believe there is room in our precedent — particularly in the absence of any guidance from the legislature — to conclude an individual who lacks biological, adoptive, or

[1] I do not intend to minimize the significant and fundamental right of biological or adoptive parents to control the upbringing of their children. As the majority properly appreciates, the interest of parents in the care, custody, and control of their children "is perhaps the oldest [of the] fundamental liberty interest[s.]" Majority Opinion, slip op. at 11, *quoting* Troxel, 530 U.S. at 65. This fundamental right necessarily militates caution in expanding the category of those who may be identified as a "parent." However, in my respectful view, the law need not deny the salience of biological or adoptive bonds to recognize the validity of additional indicia of parenthood.

marital ties may nevertheless establish standing as a parent to seek custody under 23 Pa.C.S. §5324(1). *See* Sinnott v. Peck, 180 A.3d 560, 573 (Vt. 2017) ("[T]he Legislature's inaction to date is not an impediment to our own obligation to resolve the specific cases before us by developing **[***50]** a consistent and coherent approach to defining parenthood within the construct that the Legislature has given us and our prior case law; in fact, it creates a more urgent need for us to act."). Such is certainly the trend in other states. *See* id. at 569-72 **[**913]** (detailing cases that "reinforce the modern trend" of analyzing non-biological, non-adoptive, and non-marital parenthood by "focusing on the parties' agreement and intentions at the time they brought a child into their home"); NeJaime, 126 Yale L.J. at 2260 (explaining "the law increasingly . . . recognizes parents on not only biological but also social grounds" and offering comprehensive analysis of legal trends).

In line with this trend in other jurisdictions, C.G. asks this Court "to clarify that parentage may not only be determined by biology or adoption, but also by the intent of parties who create a child together using assisted reproductive technology, and then co-parent that child together." C.G.'s Brief at 21. In her view, parentage "turns on whether the party in question had agreed to the conception of the child and whether that party had intended to parent the child following the child's birth." *Id.* at 34. Justice Wecht would similarly "embrace an intent-based test **[***51]** for parentage for persons pursuing parentage **[*455]** through" assisted reproductive technology. Concurring Opinion, slip op. at 7 (Wecht, J.).

In my view, it is unnecessary at this juncture to endorse any particular new test for establishing standing as a parent. As noted, the nature of the family in the modern era continues to evolve, and the various alternative tests proffered above, as well as the tests adopted by other jurisdictions, strongly suggest there may not be a one-size-fits-all approach to adequately address each unique familial situation. *See* Brooke S.B., 61 N.E.3d at 500-01 (rejecting premise it must "declare that one test would be appropriate for all situations" and thus declining to decide whether, in a case where a biological or adoptive parent consented to the creation of a parent-like-relationship between his or her partner and child after conception, the partner would have standing).

In any event, I am constrained to agree with the majority that "the trial court found as fact that the parties did not mutually intend to conceive and raise a child, and the parties did not jointly participate in the process." Majority Opinion, slip op. at 21 n.11. Those findings — which this Court is bound to accept, no matter how seemingly harsh their effect — preclude a holding that C.G. has standing **[***52]** as a parent under any of the proffered definitions of intent-based parentage. Accordingly, I agree that C.G. is not entitled to the relief she seeks, and we must await another case with different facts before we may properly consider the invitation to expand the definition of "parent" under 23 Pa.C.S. §5324(1).[2]

[*456] JUSTICE WECHT

Governed by our well-settled standard of review, I join in today's result. Along the way to this conclusion, my analytical journey diverges twice from the path that the learned Majority takes. First, for purposes of adjudicating standing to sue as a parent in cases involving assisted reproductive **[**914]** technologies ("ART"),[1] courts must probe the intent of the parties. Reliance solely upon biology, adoption and contracts is insufficient. Second, for purposes of deciding *in loco parentis* standing, courts should consider post-separation conduct only when they first are able to determine that the custodial parent has not withheld the child from the other party. Otherwise, custodial parents effectively can preclude most *in loco parentis* claims by non-custodial parties. My thinking on these two points

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[2] Parenthetically, I note my agreement with the majority that the bond between a third party and a child is not dispositive of *in loco parentis* standing. Furthermore, with regard to the issue of post-separation conduct, I agree "the relevant time frame to determine whether a party stands in loco parentis is when the party developed the relationship with the child with the acquiescence or encouragement of the natural parent." Majority Opinion, slip op. at 31. I depart from the majority, however, to the extent it implies post-separation conduct can be used **against** a party seeking *in loco parentis* status. *See, e.g.,* Liebner v. Simcox, 2003 PA Super 377, 834 A.2d 606, 611 (Pa. Super. 2003) (rejecting argument "that once *in loco parentis* status has been obtained, it can be lost" due to post-separation conduct); J.A.L., 682 A.2d at 1322 (considering post-separation conduct only to "reinforce" finding third party stood *in loco parentis*).

[1] For purposes of the discussion at hand, I include within the ART rubric the full variety of medical interventions designed to allow for reproduction through means other than sexual intercourse, including *in **[***53]** vitro* fertilization, sperm and egg donation, gestational surrogacy, and artificial insemination. *See generally*, Jillian Casey, Courtney Lee, & Sartaz Singh, *Assisted Reproductive Technologies*, 17 GEO. J. GENDER & LAW 83, 83-85 (2016).

follows.

Parentage and Intent

In affirming the Superior Court, the Majority correctly notes that the appellate panel's cramped definition of parentage as including only biological and adoptive parents overlooked the recognition of parentage by contract expounded in *Ferguson v. McKiernan, 596 Pa. 78, 940 A.2d 1236 (Pa. 2007)* and *In re Baby S., 2015 PA Super 244, 128 A.3d 296 (2015)*.[2] This is fine as far as it goes. But it does not go far enough. The Majority draws too narrowly upon *Ferguson* and *Baby S.*, validating **[*457]** solely their contractual jurisprudence but declining to proceed further.[3] While a measured approach to standing is always appropriate,[4] the Majority's analysis , while reasonable in the main, nonetheless fails to imagine and embrace the intent-based paradigm that ART-related child custody disputes require.

Consider *Ferguson*. There, the trial court found, and this Court accepted, that the mother approached her former intimate partner with a request for sperm donation so that she could conceive a child via *in vitro* fertilization. *Ferguson, 940 A.2d at 1239*. Only after the mother convinced the sperm donor that he would bear no legal or financial responsibility for the prospective child did the donor agree to **[***54]** the arrangement. *Id.* The donor did not pay for the *in vitro* fertilization, did not complete most of the paperwork, and did not attend prenatal appointments. *Id. at 1240*. After mother went into premature labor, she requested the sperm donor to **[**915]** join her at the hospital, where she delivered twins. Afterward, with the mother's agreement, the sperm donor maintained anonymity, assumed no financial responsibility, and was not listed on the birth certificates. *Id.* Indeed, the donor had little contact with the mother or twins following the birth, provided no financial support, and assumed no paternal duties. *Id.* Rejecting the mother's public policy arguments, this Court decided that the oral contract between the mother and the sperm donor was enforceable and held that the mother was foreclosed from seeking child support from the donor. *Id. at 1247-48*.

[*458] Viewing *Ferguson* from the perspective of the parties' intent, the same adjudication would result. The sperm donor's actions bore all the hallmarks of a clinical donation of gametes calculated and designed to result in no parental role for the donor. The mother acted in accordance with that intention for approximately the first five years following the twins' births. She **[***55]** did not seek financial support, and she did not attempt to involve the sperm donor in the lives of her children. Neither the mother nor the sperm donor ever manifested any intent for the latter to be a parent to the twins at any time before or after the birth; in fact, both the mother and the donor expressed and acted upon the opposite intention. And then, some five years on, the mother sued the sperm donor for child support. It was this volte-face that our Court declined to approve. By intention, as well as by contract, the mother's case for support was a non-starter.

Now, consider *Baby S.*. There, in determining that the ex-wife was the legal parent of the child born through ART, the Superior Court focused upon the existence of a contract. But the appellate panel just as easily could have ruled based upon the parties' intent. The father and ex-wife signed a contract to enter into a surrogacy with a gestational carrier and evidenced their intent to be the legal parents of the resulting child. *Baby S., 128 A.3d at 298*. The ex-wife's communications with the gestational carrier demonstrated the ex-wife's intent to be a parent to the child. *Id. at 299*. The father and the

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[2] *See* Maj. Op. at 21. To this list, I would add that one can be found to be a parent, regardless of biology or adoption, through the presumption of paternity, *see Brinkley v. King, 549 Pa. 241, 701 A.2d 176, 178-79 (Pa. 1997)* (stating that a child conceived or born during a marriage is presumed to be the husband's child), and paternity by estoppel. *See Freedman v. McCandless, 539 Pa. 584, 654 A.2d 529, 532-33 (Pa. 1995)* ("Estoppel in paternity actions is merely the legal determination that because of a person's conduct (*e.g.*, holding out the child as his own, or supporting the child) that person, regardless of his true biological status, will not be permitted to deny parentage.").

[3] *See* Maj. Op. at 21 & n.11.

[4] At the time that C.G. filed for custody, the applicable statute provided standing to pursue custody to a parent, a person who stands *in loco parentis*, or a grandparent in certain specified circumstances. *23 Pa.C.S. § 5324* (2011). In response to J.H.'s preliminary objections, C.G. asserted standing as a parent or, alternatively, as someone who stood *in loco parentis* to Child. As the Majority notes, standing in custody cases is governed by statute. *See T.B. v. L.R.M., 567 Pa. 222, 786 A.2d 913, 916 (Pa. 2001)* (stating that standing exists in custody cases when authorized by statute). Standing for custody purposes implicates the fundamental liberty issue of a parent's ability to direct the care and custody of his or her child. *See generally Troxel v. Granville, 530 U.S. 57, 66, 120 S. Ct. 2054, 147 L. Ed. 2d 49 (2000)*.

ex-wife chose a gestational carrier in Pennsylvania **[***56]** because the ex-wife could be listed on the birth certificate without having to go through the adoption process. *Id. at 298*. When the pregnancy was confirmed, the ex-wife and the father moved to a new home in order to accommodate a larger family. They attended the twentieth-week ultrasound and acted in a way that suggested that they intended to parent the child. *Id. at 300*. Only when the father and ex-wife began to experience marital difficulties did the ex-wife begin to act in a manner contrary to that joint intention. *Id. at 301*. Because the ex-wife gave every indication that she was the parent of the child conceived through ART, the Superior Court could have relied upon her **[*459]** expressed and manifest intentions in order to find that she was the child's legal parent. That the Superior Court relied instead upon the existence of a contract is no contradiction of this principle.

Viewed through the lens of the parties' intentions, the *Ferguson* and *Baby S*. cases arrive at the same destination reached *via* a contract-based analysis. This is unsurprising, inasmuch as the contract evidences the intent. But the point of this exercise is that ART requires us to hypothesize other scenarios, cases in which an intent analysis would **[***57]** not foreclose a valid claim to parentage while a contract-based approach would. Under the Majority's formulation of parentage by contract, one becomes a parent through use of ART and the formation of a binding contract regarding ART. Maj. Op. at 21. Fair enough. But suppose that the members of **[**916]** a same-sex couple decide that one partner will become pregnant *via* ART and sperm donation; it is entirely foreseeable that only the partner being impregnated would contract with the ART facility. The second partner, who would have no biological connection to the child, would have no contract establishing a claim to parentage. Suppose further that no adoption is formalized, and that the couple separates after years in which both parties diligently raise and lovingly support the resulting child. Under the Majority's approach, the second partner has no claim to parent status and no standing to pursue any custody rights. Such a result is by no means dictated by the terms or spirit of our custody standing statute, which speaks in this regard only of "[a] parent of the child", thus begging the question now at hand. *See 23 Pa C.S. §5324 (1)*. As well, such a result supplants the best interests analysis, eliminates the focus **[***58]** on the child's needs, and fails entirely to comport with contemporary family realities and especially the circumstances of Pennsylvanians who are parenting in same-sex relationships.

But, wait, you say. The second partner in the scenario imagined above almost certainly would enjoy standing in custody under an *in loco parentis* theory. *See 23 Pa C.S. § 5324(2)*. The problem is not so simple. First, if the couple **[*460]** separates shortly after (or before) the child's birth, the second partner -- who fully intended to be a parent (and this with the first partner's knowledge and consent) -- will have no claim to *in loco parentis* standing, there having been insufficient time for assumption of parental status and discharge of parental duties. *See T.B., 786 A.2d at 916-17*. Second, and more significantly, resort to an *in loco parentis* approach concedes the parentage claim, which is the very issue that is at bar here. The point is that the second partner in these scenarios should be considered a parent for purposes of standing in custody. *In loco parentis* generally is considered a species of standing sought by *third* parties.[5]

In the past, Pennsylvania courts have found that same-sex partners have standing under **[***59]** the *in loco parentis* rubric. This paradigm has evolved with time and with the forward march of humanity. As a matter of law, a same-sex partner who participated in the decision to bring a child into the world, to raise, to educate, to support and to nurture that child, is no longer a third party. He or she is a parent. *See* Douglas NeJaime, *The Nature of Parenthood*, *126 Yale L.J. 2260, 2317-23 (June 2017)* (discussing the practical and expressive harms attending non-recognition of parentage); Jillian Casey, Courtney Lee, & Sartaz Singh, *Assisted Reproductive Technologies*, 17 GEO. J. GENDER & LAW 83, 117 (2016) (identifying "judicial parentage tests that consider factors beyond intent" as a primary source of disparate treatment of same-sex couples seeking parentage). At this late date, there is no defensible reason that partners in scenarios like the one sketched above should not be recognized as parents under the standing statute. It bears emphasis that nothing in the custody statute promulgated by our General Assembly bars such an intent-based approach. Only the judiciary stands in the way.

[*461] Observe that members of an opposite-sex

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[5] *See T.B., 786 A.2d at 916* ("A third party has been permitted to maintain an action for custody . . . where that party stands *in loco parentis* to the child "); *Morgan v. Weiser, 2007 PA Super 128, 923 A.2d 1183, 1186 (Pa. Super. 2007)* ("As a general rule, third parties, other than grandparents, usually do not have standing to participate as parties in child custody actions. An exception to this general rule exists when the third party stands *in loco parentis* to the child.").

couple availing themselves of ART in a **[**917]** situation identical to the one described above would not be consigned to such limbo. If the **[***60]** female partner contracts for ART with a sperm donor and the male partner is not a party to that contract and does not adopt the child, the male partner nonetheless can find shelter (and, more importantly, standing) in the paternity by estoppel doctrine in the event of a separation.[6] The male partner would need only to show that he held the child out as his own. He would not have to attempt intervention as a third party who seeks to stand in the shoes of a parent. I perceive no need or reason for treating these hypothetical parties differently when both intended fully to be parents and when both acted in accordance with those intentions.

While I would embrace an intent-based test for parentage for persons pursuing parentage through ART, I nonetheless concur with the Majority's determination that C.G. was not a parent under the facts of this case as found by the trial court.[7] As the Majority notes, the trial court found that J.H. was credible when she testified that C.G. never intended to be a parent to Child and that C.G. did not act as a parent. Further, the trial court credited testimony that C.G. and J.H. reached no mutual decision to become parents. Given that there was no **[***61]** documentary evidence of C.G.'s intent to parent, and given that the trial court found, consistent with the record, that C.G.'s actions were not those of a parent, I join the Majority's conclusion that C.G. did not have standing as a parent pursuant to *23 Pa.C.S. § 5324*.[8]

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[6] *See supra* n.2.

[7] "We must accept findings of the trial court that are supported by competent evidence of record, as our role does not include making independent factual determinations. In addition, with regard to issues of credibility and weight of the evidence, we must defer to the presiding trial judge who viewed and assessed the witnesses first-hand." *D.K. v. S.P.K., 2014 PA Super 218, 102 A.3d 467, 478 (Pa. Super. 2014)*.

[8] With respect both to this issue and to the *in loco parentis* analysis, as the trial court noted, the testimony of the parties and the witnesses was "in direct conflict." T.C.O. at 5. The record provides testimony that, if found credible, would support C.G.'s claims that she intended to be a parent and that she assumed a parental role and discharged parental duties. Similarly, there is testimony that supports J.H.'s claims to the opposite effect. Because we are bound as a reviewing court by the trial court's credibility findings, we must accept the testimony of J.H. and her witnesses.

[*462] In Loco Parentis

Turning to the issue of *in loco parentis* standing, I agree with the Majority that the bond between a child and a third party is not dispositive. Maj. Op. at 30. I further agree that "post-separation conduct [of the third party] should not be determinative of the issue of [*in loco parentis*] standing." *Id.* at 32. Nonetheless, the Majority would (and in fact does) permit the consideration of post-separation conduct as "shed[ding] light on . . . whether the person seeking standing was ever viewed as a parent-like figure." *Id.* I differ with the Majority as to how post-separation conduct should be considered and as to the manner in which such conduct plays a role in this case.

The Majority recognizes that there is "potential for misconduct" inasmuch as a parent can withhold the child from the third party in an attempt to destroy an *in loco parentis* relationship. *Id.* Though it acknowledges this concern, the Majority deems **[***62]** it no bar to consideration of C.G.'s post-separation conduct, and "decline[s] to foreclose a trial court from reviewing all relevant evidence. . . ." *Id.* The elasticity of this standard gives me pause. If there is evidence that the third party has assumed parental status and discharged parental duties during the relationship, and if there is evidence that the custodial parent purposefully **[**918]** withheld the child, then post-separation conduct should not be considered for purposes of denying standing to the third party. This Court should not countenance even the suggestion that a parent unilaterally can erase from a child's life a third party who, in all material respects, acted as a parent.

The Majority maintains that the trial court in this case did not premise C.G.'s lack of standing upon her post-separation conduct. *Id.* Instead, the Majority opines, the trial court "simply concluded" that the post-separation conduct was "consistent" with the trial court's conclusion that C.G. did not act **[*463]** as a parent. *Id.* In ruling that C.G. did not act *in loco parentis*, the trial court considered that C.G. removed J.H. and Child from C.G.'s health insurance after separation and reasoned that doing so was **[***63]** consistent with C.G.'s post-separation conduct of ending any financial support and arranging for J.H. and Child to leave the shared residence. Trial Court Opinion at 6-7. The trial court also emphasized the fact that C.G.'s extended family did not maintain a relationship with Child following separation. *Id.* at 8. Finally, the trial court devoted one of the six categories it considered in determining *in loco parentis*

standing to post-separation conduct. *Id.* at 9-10. In fact, the trial court began that portion of its analysis with: "Perhaps most telling that [C.G.] did not assume the role of a parent is her conduct post-separation." *Id.* at 9. Given that this case hinged upon credibility findings — in that the parties and their witnesses agreed upon very few facts — it appears that C.G.'s post-separation conduct weighed heavily in the trial court's finding that C.G. lacked standing to pursue custody.

The standard that Pennsylvania courts should follow is to foreswear consideration of any post-separation conduct until after they determine whether the custodial parent withheld the child from the third party. Only if the trial court decides that the parent did not withhold the child should the court consider post-separation **[***64]** conduct. This will prevent post-separation conduct from being deployed as a thumb upon the scale unless and until the trial court determines that it was the third party, rather than the custodial parent, who decided to limit post-separation contact. Unlike the Majority, I do not view the trial court's consideration of post-separation conduct here as merely confirming its decision on standing. Instead, it appears that this consideration figured significantly as a distinct and influential factor in the trial court's analysis.

That said, I recognize and respect the reality that the trial court made a finding that J.H. did not withhold the child from C.G. *Id.* at 10. Accordingly, even under the test that I advance here, the trial court would have been free to consider the post-separation conduct.

[*464] * * * *

In sum, I think that today's case is a missed opportunity for this Court to address the role of intent in analyzing parental standing in ART cases. I differ as well with the Majority's assessment of the manner in which post-separation conduct can be considered in weighing *in loco parentis* claims. These differences notwithstanding, we are bound on appellate review by the trial court's fact-finding and **[***65]** credibility determinations. Under that familiar standard, regardless of my divergences from the Majority's rationale, C.G. lacked standing to pursue custody here. Accordingly, I concur in the result.

Justice Donohue joins the concurring opinion.

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Ruth FISH, Appellant,

v.

Robert BEHERS, Jr., Appellee.

Supreme Court of Pennsylvania.

Submitted Sept. 22, 1998.
Decided Dec. 3, 1999.

Mother brought child support action against putative father. The Court of Common Pleas, Allegheny County, Family Division, No. FD-94-04408, Lawrence W. Kaplan, J., ordered blood tests, and putative father appealed. The Superior Court, No. 957 Pittsburgh 1995, 456 Pa.Super. 398, 690 A.2d 1171, reversed and relinquished jurisdiction. Mother appealed. The Supreme Court, No. 27 W.D. Appeal Docket 1998, Castille, J., held that: (1) presumption of paternity of man who was mother's husband at time of birth was inapplicable, and (2) mother was estopped from asserting putative father's paternity.

Affirmed.

Nigro, J., filed dissenting opinion, in which Newman, J., joined.

Newman, J., filed dissenting opinion.

1. Divorce ⚿297

Agreement between former wife and her former husband, which provided that husband would support only couple's two older children and not third child that allegedly was not father's biological child, was a nullity, since mother could not bargain away child's rights.

2. Children Out-of-Wedlock ⚿3

Policy underlying the presumption of husband's paternity of child conceived or born during marriage is the preservation of marriages.

3. Children Out-of-Wedlock ⚿3

Presumption of husband's paternity of child conceived or born during marriage only applies in cases where policy of preserving marriages would be advanced by the application; otherwise, it does not apply.

4. Children Out-of-Wedlock ⚿23

Presumption of husband's paternity of child conceived or born during marriage was not applicable, and thus presumption would not bar mother from bringing child support action against man other than husband, where mother and husband had divorced.

5. Children Out-of-Wedlock ⚿12

Party may be estopped from denying the husband's paternity of a child born during a marriage if either the husband or the wife holds the child out to be the child of the marriage.

6. Children Out-of-Wedlock ⚿12

Evidence amply showed that mother and her husband accepted husband as child's father and did not indicate that husband failed, during marriage, to accept child as his, and thus doctrine of estoppel applied to bar mother's child support action against putative father; mother continually assured husband that he was child's father, she named husband as father on child's birth certificate, child had husband's last name, child was listed as dependent on couple's income tax returns, marriage remained intact until three years after birth of child, at which point mother informed husband that he did not father child, child continued to believe that husband was father, and mother and husband continued to hold child out to community as child of marriage.

7. Children Out-of-Wedlock ⚿23

Forcing child into relationship with putative father, a man whom he did not know, was not in best interests of child, for purpose of determining whether mother should be estopped from bringing support action against putative father, where father-son relationship that child had with man who was mother's husband at time of

his birth was only such relationship that child had known.

Carol L. Hanna, Bethel Park, Scott W. Spadafore, Monongahela, for Ruth Fish.

Richard F. Welch, Michael E. Fiffik, Pittsburgh, for Robert Behers.

Before FLAHERTY, C.J., and ZAPPALA, CAPPY, CASTILLE, NIGRO and NEWMAN, JJ.

OPINION OF THE COURT

CASTILLE, Justice.

The presumption of paternity and the theory of estoppel and their application are the issues before this Court in this appeal. In accordance with our decision in *Brinkley v. King,* 549 Pa. 241, 701 A.2d 176 (1997), we hold that the presumption of paternity is inapplicable under the facts of this case. However, because we agree with the Superior Court that appellant is estopped from asserting that appellee is the father of her child, we affirm the decision of the Superior Court.

Appellant's son was born on June 2, 1989, at which time appellant was married to David Fish. At the time of the child's conception, appellant was involved in an extramarital affair with appellee and had ceased having sexual relations with her husband. Early in the pregnancy, appellant told appellee that he was the father of her child and that she planned to have an abortion, and he persuaded her not to abort.

When appellant's son was born, appellant and her husband were still married, and she did not inform him that he was not the child's father. Appellant listed her husband as the father on the child's birth certificate. Appellant, her husband, the child, and the couple's two older children continued to live as an intact family for the next three years, during which time the husband treated the child as his son. He supported the child emotionally and financially and claimed the child as a dependent on the couple's joint income tax returns. At times, he expressed doubt whether he was the child's father, but appellant assured him that he was the father. In June of 1992, when the boy was three years old, appellant finally revealed to her husband that he had not fathered the child. He requested blood tests which revealed that he was not the child's biological father. Two months later, in August of 1992, he left the marital residence and filed a divorce action. Appellant and her husband were divorced in December of 1993, at which time they entered into an agreement whereby the husband would support the couple's two older children but not the son.[1]

[1] On April 29, 1994, appellant filed the instant child support action against appellee. Appellee filed preliminary objections, arguing that appellant must overcome the presumption that her husband was the child's father before blood testing could be ordered and that appellant was estopped from asserting that he was the child's father because she held her husband out as the father for the first three years of the child's life. On June 30, 1994, the trial court ordered the matter to a hearing before a hearing officer on the issue of estoppel. On September 7, 1994, the hearing officer found that appellant was not estopped from proceeding with a support action against appellee. On May 9, 1995, the trial court affirmed. On appeal, the Superior Court reversed and held that appellant was estopped from asserting that appellee was the child's father.[2]

1. In October of 1992, the husband filed a support action against appellee alleging that appellee was the child's father. The trial court dismissed the action, finding that the husband was estopped from claiming that appellee was the father's child because, despite suspicions that he did not father the child, he continued to raise and treat the child as his own. The husband did not appeal.

2. The Superior Court also declared the agreement between appellant and her husband pro-

In *Brinkley v. King,* 549 Pa. 241, 250, 701 A.2d 176, 180 (1997), this Court set forth the analysis required to determine the paternity of a child conceived or born during a marriage:

> [T]he essential legal analysis in these cases is twofold: first one considers whether the presumption of paternity applies to a particular case. If it does, one then considers whether the presumption has been rebutted. Second, if the presumption has been rebutted or is inapplicable, one then questions whether estoppel applies. Estoppel may bar either a plaintiff from making the claim or a defendant from denying paternity. If the presumption has been rebutted or does not apply, and if the facts of the case include estoppel evidence, such evidence must be considered.

[2–4] Hence, we must first determine if the presumption of paternity applies to the instant case. The policy underlying the presumption of paternity is the preservation of marriages. The presumption only applies in cases where that policy would be advanced by the application; otherwise, it does not apply. *Id.* at 250–51, 701 A.2d at 181. In this case, there is no longer an intact family or a marriage to preserve. Appellant and her husband have been divorced since December of 1993. Accordingly, the presumption of paternity is not applicable.

[5] Having concluded that the presumption is inapplicable, we must turn to a determination of whether appellant is estopped from asserting appellee's paternity. A party may be estopped from denying the husband's paternity of a child born during a marriage if either the husband or the wife holds the child out to be the child of the marriage. *See, e.g., John M. v. Paula T.,* 524 Pa. 306, 319–20, 571 A.2d 1380, 1387 (1990). In *Freedman v. McCandless,* 539 Pa. 584, 591–92, 654 A.2d 529, 532–33 (1995), we stated:

> Estoppel in paternity actions is merely the legal determination that because of a person's conduct (e.g., holding out the child as his own, or supporting the child) that person, regardless of his true biological status, will not be permitted to deny parentage, nor will the child's mother who has participated in this conduct be permitted to sue a third party for support, claiming that the third party is the true father. As the Superior Court has observed, the doctrine of estoppel in paternity actions is aimed at "achieving fairness as between the parents by holding them, both mother and father, to their prior conduct regarding the paternity of the child."

In *Jones v. Trojak,* 535 Pa. 95, 105–06, 634 A.2d 201, 206 (1993), this Court discussed the issue of estoppel where the mother of a child sought support from a third party, not her husband, whom she claimed was the father of the child:

> [U]nder certain circumstances, a person might be estopped from challenging paternity where that person has by his or her conduct accepted a given person as the father of the child. *John M. [v. Paula T.],* 524 Pa. at 318, 571 A.2d at 1386. These estoppel cases indicate that where the principle is operative, blood tests may be irrelevant, for the law will not permit a person in these situations to challenge the status which he or she has previously accepted. *Id.* However, the doctrine of estoppel will not apply when evidence establishes that the father failed to accept the child as his own by holding it out and/or supporting the child.

[6] Here, appellant continually assured her husband that he was the child's father, she named him as the father on the child's birth certificate, the child bears the hus-

viding that the husband would support only the couple's two older children and not this child to be a nullity because parents may not bargain away the rights of their children. *See Nicholson v. Combs,* 550 Pa. 23, 34, 703 A.2d 407, 412 (1997). We agree with this conclusion.

band's last name, the child was listed as a dependent on the couple's income tax returns, and the child was otherwise treated as a child of the marriage which remained intact until three years after the birth of the child when appellant informed her husband that he did not father the boy. The child continues to believe that the husband is his father, and the husband, during the child's first three years of life, formed a father-son relationship with the child. Following appellant's separation from her husband and continuing at least until the September 1994 hearing on the issue of estoppel (at which time the child was five years old), he continued to treat all three of her children equally, and appellant and her husband continued to hold the child out to the community as the child of their marriage. This evidence amply shows that appellant and her husband accepted the husband as this child's father and does not indicate that the husband failed, during the marriage, to accept the child as his. Thus, the doctrine of estoppel applies.

[7] The father-son relationship with appellant's husband is the only such relationship this child has known. The alternative – forcing the child into a relationship with appellee, a man whom he does not know – is not in the best interests of this child. As this Court stated in *Brinkley,* 549 Pa. at 249–50, 701 A.2d at 180:

> Estoppel is based on the public policy that children should be secure in knowing who their parents are. If a certain person has acted as the parent and bonded with the child, the child should not be required to suffer the potentially damaging trauma that may come from being told that the father he has known all his life is not in fact his father.

Accordingly, appellant, due to her conduct, is estopped from asserting that appellee is the child's father.

The decision of the Superior Court is affirmed.

Justice SAYLOR did not participate in the consideration or decision of this matter.

Justice NIGRO files a dissenting opinion which is joined by Justice NEWMAN.

Justice NEWMAN files a dissenting opinion.

NIGRO, Justice, dissenting.

Since I disagree with the majority's conclusion that Appellant Ruth Fish (Mother) is estopped from asserting that Appellee Robert Behers is her son Z.F.'s father, I respectfully dissent. Instead, I believe the trial court properly ordered Mr. Behers to submit to blood tests for purposes of determining Z.F.'s paternity.

As I explained in my concurring and dissenting opinion in *Brinkley v. King,* 549 Pa. 241, 701 A.2d 176 (1997), I believe that strictly applying the doctrine of paternity by estoppel, as the majority does here, leads to illogical and inequitable results. The majority concludes that Mother is estopped from challenging her former husband's paternity and pursuing a paternity and child support action against Mr. Behers essentially because 1) Mother continually assured her former husband, David Fish, that he was Z.F.'s father; 2) Mother named Mr. Fish as the father on Z.F.'s birth certificate; 3) Z.F. bears Mr. Fish's last name; 4) Z.F. was listed as a dependent on Mother and Mr. Fish's tax returns; 5) Z.F. was otherwise treated as a child of the marriage between Mother and Mr. Fish while it was intact and 6) Z.F. continues to believe that Mr. Fish is his father. Most of these circumstances occurred, however, during a time in which Mr. Fish was being led to believe, falsely, that he was Z.F.'s father. When Mother ultimately revealed the truth of Z.F.'s paternity to Mr. Fish, Mr. Fish obtained blood tests, which confirmed that he was not Z.F.'s father.

By invoking the estoppel doctrine, the majority allows itself to completely disregard these blood test results and find that

Mother is estopped from claiming that Mr. Fish is not the father of a child who can not, according to the blood test results, be his. At the same time, by applying the estoppel doctrine, the majority effectively prohibits compelling Mr. Behers to submit to blood tests, as the trial court ordered, despite the fact that all indications from the record suggest that Mr. Behers is Z.F.'s father and was aware of Mother's misrepresentations to Mr. Fish about Z.F.'s paternity. This situation is a perfect example of why I believe that our courts should abandon the strict application of the estoppel doctrine and grant trial courts the discretion to order paternity blood tests and then consider such evidence along with other factors relevant to the best interests of the child involved.[1] Such an approach would not only prevent biological fathers from using the estoppel doctrine as a vehicle for insulating themselves from parental responsibilities but would also, as I stated in *Brinkley:*

> work to eliminate situations where a man is deceived into believing he is the father and is then made to bear legal responsibility, by reason of estoppel, for a child that is not his.

Brinkley, 549 Pa. at 254, 701 A.2d at 182.

Since this is the exact effect of the result reached by the majority in this case, I must respectfully dissent.

NEWMAN, Justice, dissenting.

I join Justice Nigro's Dissenting Opinion. I write separately only to emphasize my view that the presumption of paternity is rebuttable and does not prohibit the court from ordering Mr. Behers to submit to paternity tests.[1] Equally, the doctrine of estoppel should not bar these tests.

1. The majority finds that Mr. Fish continues to treat all three of his children equally (Mother and Mr. Fish had two children together before Z.F. was born) and concludes that forcing Z.F. into a relationship with Mr. Behers, when the only father he has known is Mr. Fish, would not be in Z.F.'s best interests. I note that the trial court explicitly found that Mr. Fish, since learning that Z.F. is not his child and leaving the marriage, has "had little contact with [Z.F.] and does not support him financially or emotionally." Trial Court Opinion at 3. Moreover, the trial court specifically found that estoppel would not be in Z.F.'s best interests, as Mother testified that she plans to tell Z.F. the truth of his paternity on the advice of a psychologist that it is in the best interests of Z.F. to do so.

1. As we set forth in *Brinkley,* the presumption does not attach because the marriage is not intact, and there is no marriage to preserve. *Brinkley v. King,* 549 Pa. 241, 250, 701 A.2d 176, 180 (1997).

In re CONDEMNATION BY the COMMONWEALTH of Pennsylvania, DEPARTMENT OF TRANSPORTATION, OF RIGHT OF WAY FOR STATE ROUTE 0079, SECTION W10, a Limited Access Highway, in the Township of Cecil, Petitioner,

v.

Dennis SLUCIAK, Respondent.

Supreme Court of Pennsylvania.

Dec. 16, 1999.

Petition No. 282 W.D. Allocatur Docket 1999 for Allowance of Appeal from the Commonwealth Court.

Walter F. Cameron, Pittsburgh, for petitioner.

ORDER

PER CURIAM:

AND NOW, this 16th day of December, 1999, the Petition for Allowance of Appeal is hereby GRANTED, limited to the following issues as framed by PennDOT:

a. Is a condemnee precluded from asserting damages for the taking of his

User Name: Jacqueline DiColo
Date and Time: Wednesday, May 8, 2024 1:32:00PM EDT
Job Number: 223815727

Document (1)

1. *Glover v. Junior, 306 A.3d 899*
   Client/Matter: 360896.384237
   Search Terms: glover v. junior
   Search Type: Natural Language
   Narrowed by:

Content Type	Narrowed by
Cases	-None-

Glover v. Junior

Superior Court of Pennsylvania

December 11, 2023, Decided; December 11, 2023, Filed

No. 1369 EDA 2022

Reporter
306 A.3d 899 *; 2023 Pa. Super. LEXIS 598 **; 2023 PA Super 261

CHANEL GLOVER, Appellant v. NICOLE JUNIOR

Prior History: [1]** Appeal from the Order Entered May 4, 2022. In the Court of Common Pleas of Philadelphia County Domestic Relations at No(s): D22048480.

Glover v. Junior, 2023 Pa. Super. Unpub. LEXIS 445, 2023 WL 2213417 (Feb. 24, 2023)

Core Terms

parentage, trial court, couple, parties, conceived, marriage, divorce, intent-based, cases, marital, intact, custody, birth, sperm donor, Fertility, rights, obligations, mutual, spouse, court of common pleas, certified record, proceedings, biological, contracts, married, evidentiary hearing, concurring opinion, parental rights, oral contract, contract-based

Case Summary

Overview
HOLDINGS: [1]-The domestic relations court properly granted a spouse's petition for pre-birth establishment of parentage of the child that she and a mother conceived through in vitro fertilization treatment during their marriage because the spouse had an enforceable right to parentage under principles of contract law. The record showed the parties' mutual assent, actions in furtherance of the sufficiently definite terms of the agreement, and consideration; [2]- In light of the express contractual obligations outlined between the parties in the cryobank contract that identified the spouse as the "co-intended Parent" and the couple's IVF agreement, which the spouse executed as the "Partner," as well as all of the joint steps taken by the parties to prepare for the birth of the child, the superior court recognized the oral contract between the spouse and mother concerning parentage.

Outcome
Order affirmed.

LexisNexis® Headnotes

Governments > Courts > Authority to Adjudicate

HN1[] **Courts, Authority to Adjudicate**

Jurisdiction and power are not interchangeable although judges and lawyers often confuse them. Jurisdiction relates solely to the competency of the particular court or administrative body to determine controversies of the general class to which the case then presented for its consideration belongs. Power, on the other hand, means the ability of a decision-making body to order or effect a certain result.

Civil Procedure > ... > Jurisdiction > Subject Matter Jurisdiction > Jurisdiction Over Actions

Governments > Courts > Authority to Adjudicate

HN2[] **Subject Matter Jurisdiction, Jurisdiction Over Actions**

Subject matter jurisdiction concerns the court's authority to consider cases of a given nature and grant the type of relief requested. It is defined as the power of the court to hear cases of the class to which the case before the court belongs, that is, to enter into inquiry, whether or not the court may ultimately grant the relief requested.

Civil Procedure > Appeals > Standards of Review > De Novo Review

Civil Procedure > Appeals > Standards of Review > Questions of Fact & Law

HN3 **Standards of Review, De Novo Review**

A challenge to a court's subject matter jurisdiction raises a question of law, which an appellate court reviews de novo. The appellate court's scope of review is plenary.

Civil Procedure > ... > Subject Matter Jurisdiction > Jurisdiction Over Actions > General Jurisdiction

Family Law > ... > Proof of Paternity > Types of Evidence > Blood Tests

Family Law > ... > Proof of Paternity > Types of Evidence > Genetic Tests

HN4 **Jurisdiction Over Actions, General Jurisdiction**

The various divisions of Pennsylvania's Courts of Common Pleas have unlimited original jurisdiction over all proceedings in the Commonwealth, unless otherwise provided by law. 42 Pa.C.S. § 931(a) provides: Except where exclusive original jurisdiction of an action or proceeding is by statute vested in another court of this Commonwealth, the courts of common pleas shall have unlimited original jurisdiction of all actions and proceedings, including all actions and proceedings heretofore cognizable by law or usage in the courts of common pleas. It is beyond cavil that the Courts of Common Pleas are competent to entertain parentage claims. 23 Pa.C.S. § 4343 provides procedures for the court of common pleas to determine parentage of a child born out of wedlock) and 23 Pa.C.S. §§ 5102-5104 concerns a determination of parentage, acknowledgment and a claim of parentage, and blood tests to determine parentage.

Civil Procedure > Judgments > Relief From Judgments > Altering & Amending Judgments

HN5 **Relief From Judgments, Altering & Amending Judgments**

Even if an issue was included in a subsequently filed motion for reconsideration, issues raised in motions for reconsideration are beyond the jurisdiction of the superior court and thus may not be considered by the superior court on appeal.

Civil Procedure > Appeals > Standards of Review > Abuse of Discretion

Family Law > Paternity & Surrogacy > Establishing Paternity

HN6 **Standards of Review, Abuse of Discretion**

The superior court reviews orders relating to parentage for an abuse of discretion or an error of law.

Evidence > Inferences & Presumptions > Presumptions > Creation

Family Law > ... > Proof of Paternity > Inferences & Presumptions > Factors

Family Law > ... > Proof of Paternity > Inferences & Presumptions > Rebuttals

HN7 **Presumptions, Creation**

Pursuant to the marital presumption doctrine, generally, a child conceived or born during the marriage is presumed to be the child of the marriage. This presumption is one of the strongest presumptions of the law of Pennsylvania. No amount of evidence can overcome the presumption: where the family (mother, child, and spouse) remains intact at the time that the spouse's parentage is challenged, the presumption is irrebuttable.

Civil Procedure > Appeals > Record on Appeal

HN8 **Appeals, Record on Appeal**

The superior court can affirm the trial court order for any reason supported by the certified record.

Constitutional Law > Equal Protection > Gender & Sex

Family Law > ... > Proof of Paternity > Inferences & Presumptions > Factors

Family Law > Marriage > Types of Marriages > Same Sex Marriages

Family Law > Marriage > Nature of Marriage

HN9 **Equal Protection, Gender & Sex**

The presumption of parentage married persons enjoy is equally applicable to same-sex and opposite-sex spouses. However, for both types of spouses, since the purpose of the marital presumption is to preserve the inviolability of the intact marriage, when there is no longer an intact family or a marriage to preserve, then the presumption is not applicable. As to the marital presumption, it has been relegated to a substantially more limited role, by narrowing its application to situations in which the underlying policies will be advanced Centrally, where there is an intact marriage to be protected.

Family Law > Marital Termination & Spousal Support > Dissolution & Divorce > Procedures

Torts > Vicarious Liability > Family Members > Family Purpose Doctrine

Family Law > ... > Proof of Paternity > Inferences & Presumptions > Rebuttals

HN10 **Dissolution & Divorce, Procedures**

As it relates to the determination of what constitutes an intact family for the purposes of the doctrine's applicability, the presumption of parentage married persons enjoy does not apply where the parties had finalized the divorce prior to the parentage dispute.

Family Law > ... > Proof of Paternity > Inferences & Presumptions > Factors

HN11 **Inferences & Presumptions, Factors**

Under case law, the existence of troubles in a marriage, even one as serious and disturbing as domestic violence, does not mean that such a marriage is not intact for purposes of determining the applicability of the presumption of parentage married persons enjoy.

Civil Procedure > Appeals > Standards of Review > De Novo Review

Family Law > Paternity & Surrogacy > Surrogacy > Assisted Reproduction Parentage

Civil Procedure > Appeals > Standards of Review > Questions of Fact & Law

HN12 **Standards of Review, De Novo Review**

Whether individuals can enter into an enforceable agreement to determine parentage and parental rights involves a legal question that an appellate court reviews de novo. Appellate courts employ de novo review of pure question of law concerning whether a would-be mother and willing sperm donor can enter into an enforceable agreement to delineate parental rights and obligations. Their scope of review is plenary.

Business & Corporate Compliance > ... > Contract Formation > Offers > Definite Terms
Contracts Law > Contract Formation > Offers > Definite Terms

Contracts Law > Types of Contracts > Oral Agreements
Business & Corporate Compliance > Contracts > Types of Contracts > Oral Agreements

Business & Corporate Compliance > Contracts > Contract Formation > Meeting of Minds
Contracts Law > Contract Formation > Acceptance > Meeting of Minds

HN13 **Offers, Definite Terms**

The policy behind contract law is to protect the parties' expectation interests by putting the aggrieved party in as good a position as he would have been had the contract been performed. Whether oral or written, a contract requires three essential elements: (1) mutual assent, (2) consideration, and (3) sufficiently definite terms.

Business & Corporate Compliance > ... > Contract Formation > Offers > Definite Terms
Contracts Law > Contract Formation > Offers > Definite Terms

HN14 **Offers, Definite Terms**

An agreement is expressed with sufficient clarity if the parties intended to make a contract and there is a reasonably certain basis upon which a court can provide an appropriate remedy. Accordingly, not every term of a contract must always be stated in complete detail. If the parties have agreed on the essential terms, the contract is enforceable even though recorded only in an informal memorandum that requires future approval or negotiation of incidental terms. In the event that an essential term is not clearly expressed in their writing but the parties' intent concerning that term is otherwise apparent, the court may infer the parties' intent from other evidence and impose a term consistent with it.

Contracts Law > Contract Interpretation > Intent

HN15 **Contract Interpretation, Intent**

As to a court's consideration of contract terms when a written agreement is involved, the court must construe the contract only as written and may not modify the plain meaning under the guise of interpretation. Likewise, where several instruments are made as part of one transaction they will be read together, and each will be construed with reference to the other, and this is so although the instruments may have been executed at different times and do not in terms refer to each other.

Family Law > Paternity & Surrogacy > Establishing Paternity

Family Law > Parental Duties & Rights > Termination of Rights > Voluntary Termination

Family Law > ... > Proof of Paternity > Inferences & Presumptions > Factors

HN16 **Paternity & Surrogacy, Establishing Paternity**

Pennsylvania jurisprudence limits recognition of legal parentage to biology, adoption, judicial presumptions associated with intact marriages, and contract, where a child is born with the assistance of a donor who relinquishes parental rights and/or a non-biologically related person assumes legal parentage.

Family Law > Paternity & Surrogacy > Surrogacy > Assisted Reproduction Parentage

Family Law > Marriage > Types of Marriages > Same Sex Marriages

HN17 **Surrogacy, Assisted Reproduction Parentage**

While parentage is typically established biologically or through formal adoption, in cases involving ART, contracts regarding the parental status of the biological contributors must be honored in order to prohibit restricting a person's reproductive options. There is nothing to suggest in the case law that two partners in a same-sex couple could not similarly identify themselves each as intended parents, notwithstanding the fact that only one party would be biologically related to the child.

Contracts Law > Third Parties > Beneficiaries > Claims & Enforcement

Contracts Law > ... > Beneficiaries > Types of Third Party Beneficiaries > Intended Beneficiaries

HN18 **Beneficiaries, Claims & Enforcement**

The following considerations are relevant to a court's determination concerning whether an individual is a third party beneficiary to a contract: (1) the recognition of the beneficiary's right must be appropriate to effectuate the intention of the parties, and(2) the performance must satisfy an obligation of the promisee to pay money to the beneficiary or the circumstances indicate that the promisee intends to give the beneficiary the benefit of the promised performance.

Business & Corporate Compliance > ... > Contract Formation > Offers > Definite Terms
Contracts Law > Contract Formation > Offers > Definite Terms

Business & Corporate

Compliance > Contracts > Contract Formation > Meeting of Minds
Contracts Law > Contract Formation > Acceptance > Meeting of Minds

HN19 **Offers, Definite Terms**

There are three elements of a contract: (1) mutual assent, (2) consideration, and (3) sufficiently definite terms.

Contracts Law > ... > Consideration > Enforcement of Promises > Detriment to Promisee

HN20 **Enforcement of Promises, Detriment to Promisee**

Consideration is defined as a benefit to the party promising, or a loss or detriment to the party to whom the promise is made.

Evidence > Types of Evidence > Documentary Evidence > Affidavits

Family Law > Paternity & Surrogacy > Birth Certificates > Named Father

HN21 **Documentary Evidence, Affidavits**

Pursuant to Pennsylvania guidelines, the biological parent's spouse is automatically listed as the other parent on the birth. ""If you were married at the time of your child's birth, then the birthing parent's spouse is the child's legal parent unless a specialized registration process has been used to list a biological parent on your child's birth record." This guideline is the modern application of the antiquated regulation, entitled Registration as other than the child of the mother's husband, which requires, inter alia, the submission of an affidavit in order to avoid naming the spouse as a parent or to register a different individual as parent. *28 Pa. Code § 1.5*.

Civil Procedure > ... > Defenses, Demurrers & Objections > Affirmative Defenses > Estoppel

Contracts Law > ... > Estoppel > Equitable Estoppel > Elements of Equitable Estoppel

Governments > Legislation > Statute of Limitations > Equitable Estoppel

HN22 **Affirmative Defenses, Estoppel**

In simplistic terms, the doctrine of equitable estoppel upon which paternity by estoppel is based is one of fundamental fairness such that it prevents a party from taking a position that is inconsistent to a position previously taken and thus disadvantageous to the other party. Equitable estoppel binds a party to the implications created by their words, deeds or representations. Equitable estoppel applies to prevent a party from assuming a position or asserting a right to another's disadvantage inconsistent with a position previously taken. Equitable estoppel, reduced to its essence, is a doctrine of fundamental fairness designed to preclude a party from depriving another of a reasonable expectation when the party inducing the expectation albeit gratuitously knew or should have known that the other would rely upon that conduct to his detriment.

Family Law > ... > Proof of Paternity > Inferences & Presumptions > Rebuttals

HN23 **Inferences & Presumptions, Rebuttals**

Principles of estoppel are peculiarly suited to cases where no presumptions of paternity apply.

Governments > Courts > Judicial Precedent

HN24 **Courts, Judicial Precedent**

When the superior court is addressing a matter of first impression, which, by definition, means there is an absence of clear precedent, its role as an intermediate appellate court is to resolve the issue as it predict its supreme court would address it. When presented with an issue for which there is no clear precedent, the superior court's role as an intermediate appellate court is to resolve the issue as it predicts the supreme court would do.

Counsel: For Chanel Glover, Appellant: Barbara Schneider, Philadelphia, PA.

For Nicole Junior, Appellee: Megan E. Watson, Jacqueline DiColo, BKW FAMILY LAW LLC, Philadelphia, PA.

Judges: BEFORE: PANELLA, P.J., BOWES, J., OLSON, J., DUBOW, J., KUNSELMAN, J., MURRAY, J., McLAUGHLIN, J., KING, J., and McCAFFERY, J. OPINION BY BOWES, J. Judges Olson, Dubow, Kunselman, McLaughlin, and McCaffery join this Opinion. P.J. Panella and Judge Murray concur in the result. Judge King files a Concurring Opinion in which P.J. Panella and Judge Murray join.

Opinion by: BOWES

Opinion

[*903] OPINION BY BOWES, J.:

Chanel Glover appeals from the domestic relations court order granting Nicole Junior's petition for pre-birth establishment of parentage of the child that the married couple conceived through *in vitro* fertilization ("IVF") treatment during their marriage.[1] Glover challenges the trial court's finding that her spouse had a contract-based right to parentage. For the following reasons, we affirm.

Junior and Glover met during 2019 and married in January 2021 while living in California. Even prior to the marriage, the **[**2]** couple discussed starting a family through **[*904]** IVF. In February 2021, the couple entered into an agreement with Fairfax Cryobank for donated sperm. Glover is listed as the "Intended Parent" and Junior the "co-intended Parent." ***See*** Fairfax Cryobank Contract, 2/3/21, at 1, 5. In accordance with the Fairfax Cryobank contract, the couple collectively selected a sperm donor from Fairfax Cryobank based specifically on the donor's physical appearance, interests, and area of origin.

The couple moved to Pennsylvania in April of 2021, and in July 2021, Junior and Glover signed an IVF agreement with Reproductive Medicine Associates ("RMA"). Glover signed the agreement as the "Patient" and Junior executed it as the "Partner." ***See*** RMA Agreement, 7/11/21, at 9. Using Glover's eggs and the sperm from Fairfax Cryobank, the couple conceived a son in August 2021, with a due date of May 18, 2022. The couple mutually decided on a name for the child, hired a doula, and retained the Jerner Law Group, P.C., in anticipation of Junior's "Confirmatory Step-Parent Adoption" of their son. ***See*** Engagement Letter, 10/13/21 at 1; N.T., 5/3/22, at Exhibits J, M, and V. The doula contract identified both parties as "Client." **[**3]** N.T., 5/3/22, Exhibit M at unnumbered 6. Likewise, both women signed the attorney's engagement letter agreeing to the joint representation and the terms of payment. ***See*** Engagement Letter, 10/13/21; N.T., 5/3/22, Exhibit J at unnumbered 7-9. Thereafter, on December 5, 2021, the parties each signed affidavits memorializing their intent to have Junior adopt their son, co-parent with equal rights to Glover, and assume financial obligations if the couple should separate. ***See*** N.T., 5/3/22, at Exhibit K.

Over the ensuing four months, the couple's relationship deteriorated. Junior announced an intent to move from the marital residence when the lease expired. Glover stopped communicating with Junior about the obstetrics appointments and canceled mutually-scheduled events such as the baby shower. In March 2022, Glover informed her spouse that she no longer intended to proceed with the adoption, and on April 18, 2022, Glover filed a divorce complaint.

Two weeks later, Junior filed at the domestic relations docket assigned to the divorce proceedings the petitions for pre-birth establishment of parentage that are the genesis of the matter at issue in this appeal.[2] Following Glover's responses and **[**4]** an evidentiary hearing, the trial court found that Junior had a contractual right to parentage and granted the petitions as follows:

> It is hereby ordered and decreed that: (1) Nicole S. Junior is confirmed as the legal parent of the child conceived during her marriage to Chanel E. Glover via [IVF] and due to be born in May of 2022; (2) Glover shall advise Junior when she goes into labor; (3) Both Glover and Junior shall have access to the child after birth consistent with Glover's medical privacy rights and the hospital's policies regarding newborn children. However, this paragraph shall not in any way be construed as a custody order; ([4]) Glover shall execute the

[1] Considering the reality that the non-delivering parent is not always male, as evidenced by this appeal, we refer to the determination of parentage, as opposed to paternity, throughout this opinion.

[2] Specifically, Junior simultaneously filed a petition for pre-birth establishment of parentage and an emergency petition for pre-birth establishment of parentage. The petitions are nearly identical, and as noted on the face of the May 4, 2022 order, the trial court disposed of both petitions therein. ***See*** Trial Court Order, 5/4/22, at 2 ("[T]he petition for special relief, each filed on April 27, 2022 seek the same relief. This order resolves both petitions and no further hearing on either petition is necessary.").

> Commonwealth of Pennsylvania's Birthing Parent's worksheet indicating that Nicole S. Junior **[*905]** is the child's other parent; and ([5]) the name of Nicole S. Junior shall appear on the child's birth certificate as a second parent.
>
> When appropriate, a custody complaint may be filed under a custody case number.

Order, 5/4/22, at 1 (cleaned up).

Glover filed a timely appeal and both she and the trial court complied with *Pa.R.A.P. 1925*.[3] She presents three questions, which we re-order for ease of review:

> 1. Did the trial court err as a matter of **[**5]** law when it found that [Glover] waived any challenges to the [c]ourt's exercise of its jurisdiction and to its being a proper forum for a decision regarding [Junior's] rights as a legal parent[?]
>
> 2. Did the trial court err when it found that the issue of parentage was ripe for determination[?]
>
> 3. Did the trial court act within its discretion and err as a matter of law when it confirmed pre-birth legal parentage of [Junior?]

Glover's brief at 5.

Glover first challenges the trial court's jurisdiction to address the petition for pre-birth establishment of parentage. The crux of this contention is that, while the trial court had original jurisdiction over the divorce proceedings and any ancillary claims for relief, the court lacked subject matter jurisdiction over Junior's petition because Glover did not plead custody or parentage in the divorce complaint. ***See*** Glover's brief at 43 ("[The] trial court did not have the authority, in the divorce forum, or any forum, to entertain an action for pre-birth establishment of parentage, especially as an emergency matter.").

Junior counters that the trial court had the authority to consider Junior's petition pursuant to the Pennsylvania Divorce **[**6]** Code ("the Code"), which Junior contends "confers full equity powers to the family court[.]" Junior's brief at 46. Relying on the Code's preliminary provisions in *§§ 3102*, *3104*, and *3105*, concerning the legislative findings and intent, bases of jurisdiction, and effect of agreements between parties, respectively, Junior maintains that the trial court acted within its statutory authority over matters ancillary to the divorce in exercising jurisdiction over the petition to determine parentage. Junior continues that *§ 3323(f)*, governing "[e]quity powers and jurisdiction of the court," is effectively a catch-all provision that provides the court authority to grant equitable relief over matters that arise under the Code. Junior's brief at 46.

In rejecting Glover's challenge to its exercise of authority over the petition to determine parentage, the trial court first concluded that the jurisdictional issue was waived pursuant to *P.A.R.A.P. 302(a)* because Glover neglected to challenge it during the hearing. However, potentially recognizing that challenges to subject matter jurisdiction are non-waivable, the court provided an alternative statutory basis for its authority under *§ 3323(f)* of the Code. For the reasons that follow, we find that **[**7]** the trial court acted within its broad authority imbued under *§§ 3104* and *3323(f)* of the Code.

[*906] At the outset, we observe that Glover's arguments conflate the principles of jurisdiction and authority. ***HN1***[⬆] Quoting ***Riedel v. Human Relations Comm'n***, *559 Pa. 34, 739 A.2d 121, 124 (Pa. 1999)*, our Supreme Court has reiterated the relevant distinction as follows:

> Jurisdiction and power are not interchangeable although judges and lawyers often confuse them[.] Jurisdiction relates solely to the competency of the particular court or administrative body to determine controversies of the general class to which the case then presented for its consideration belongs. Power, on the other hand, means the ability of a decision-making body to order or effect a certain result.

Domus, Inc. v. Signature Bldg. Sys. of PA, LLC, *252 A.3d 628, 636 (Pa. 2021)* (holding procedural failure divested the trial court of "authority to order relief in the particular case before it" but did not divest the court of subject matter jurisdiction "to consider the general class of" the type of action at issue).

HN2[⬆] Phrased differently, subject matter jurisdiction concerns the court's authority to consider cases of a given nature and grant the type of relief requested.

---

[3] Glover filed an emergency application for a stay and attached documentation demonstrating that following the May 25, 2022 birth of the child, Junior initiated custody proceedings. On June 14, 2022, this Court temporarily stayed all aspects of the May 4, 2022 order until July 18, 2022, when it entered a subsequent order staying only the portion of the May 4, 2022 order that directed, "the name of Nichole S. Junior shall appear on the child's birth certificate as a second parent." Superior Court Order, 7/18/22. The status of the custody litigation is unknown, but during the oral argument before this Court *en banc*, counsel represented that Junior has not had any contact with the child.

Harley v. HealthSpark Foundation, *2021 PA Super 205, 265 A.3d 674 (Pa.Super. 2021)*. It "is defined as the power of the court to hear cases of the class to which the case before the court belongs, that is, to enter **[**8]** into inquiry, whether or not the court may ultimately grant the relief requested." ***Id.*** *at 687*.

HN3[] A challenge to a court's subject matter jurisdiction raises a question of law, which we review *de novo*. ***Id.*** Our scope of review is plenary. ***Id.***

HN4[] The various divisions of Pennsylvania's "Courts of Common Pleas have unlimited original jurisdiction over all proceedings in this Commonwealth, unless otherwise provided by law." ***Beneficial Consumer Discount Co. v. Vukman***, *621 Pa. 192, 77 A.3d 547, 552 (Pa. 2013)*; ***see also*** *42 Pa.C.S. § 931(a)*("Except where exclusive original jurisdiction of an action or proceeding is by statute . . . vested in another court of this Commonwealth, the courts of common pleas shall have unlimited original jurisdiction of all actions and proceedings, including all actions and proceedings heretofore cognizable by law or usage in the courts of common pleas."). It is beyond cavil that the Courts of Common Pleas are competent to entertain parentage claims. ***See e.g., S.M.C. v. C.A.W.***, *2019 PA Super 318, 221 A.3d 1214 (Pa.Super. 2019)* (affirming parentage determination by the court of common pleas based upon application of the doctrine of paternity by estoppel); ***DeRosa v. Gordon***, *2022 PA Super 198, 286 A.3d 321, 331 (Pa.Super. 2022)* (affirming court of common plea's parentage orders granting DNA testing); ***V.L.-P. v. S.R.D.***, *2023 PA Super 2, 288 A.3d 502 (Pa.Super. 2023)* (vacating portion of court of common pleas order denying genetic testing and remanding for further proceedings concerning **[**9]** genetic testing and claims of fraud); ***see also*** *23 Pa.C.S. §§ 4343* (providing procedures for court of common pleas to determine parentage of child born out of wedlock) and *5102-5104* (concerning determination of parentage, acknowledgment and claim of parentage, and blood tests to determine parentage). Accordingly, Glover's jurisdictional challenge fails.

Moreover, to the extent that Glover contests the trial court's statutory **authority** to grant the pre-birth establishment of parentage under the purview of the Code, this non-jurisdictional challenge is, in fact, waived pursuant to *Pa.R.A.P. 302(a)* because Glover failed to raise it during the evidentiary hearing. ***See Stange v. Janssen Pharms., Inc.***, *2018 PA Super 4, 179 A.3d 45, 63 (Pa.Super. 2018)* (explaining, ***HN5***[] "Even if an issue was included in a subsequently filed motion for reconsideration, issues raised in **[*907]** motions for reconsideration are beyond the jurisdiction of this Court and thus may not be considered by this Court on appeal.") (cleaned up). Furthermore, as discussed *infra*, even if Glover had raised and preserved a challenge to the trial court's statutory authority, that claim would find no purchase here.

In pertinent part, the Code outlines the court's jurisdiction as such:

> **(a) Jurisdiction.--**The courts shall have original jurisdiction in cases of divorce **[**10]** and for the annulment of void or voidable marriages and shall determine, in conjunction with any decree granting a divorce or annulment, the following matters, if raised in the pleadings, and issue appropriate decrees or orders with reference thereto, and may retain continuing jurisdiction thereof:
> . . . .
> (5) Any other matters pertaining to the marriage and divorce or annulment authorized by law and which fairly and expeditiously may be determined and disposed of in such action.

23 Pa.C.S. § 3104.

Similarly, the Code grants the court the following equitable powers:

> **(f) Equity power and jurisdiction of the court.--**In all matrimonial causes, the court shall have full equity power and jurisdiction and may issue injunctions or other orders which are necessary to protect the interests of the parties or to effectuate the purposes of this part and may grant such other relief or remedy as equity and justice require against either party or against any third person over whom the court has jurisdiction and who is involved in or concerned with the disposition of the cause.

23 Pa.C.S. § 3323.[4]

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[4] Our legislature outlined the purpose of the Code as follows:

> (a) **Policy**.--The family is the basic unit in society and the protection and preservation of the family is of paramount public concern. Therefore, **[**11]** it is the policy of the Commonwealth to:
>
> (1) Make the law for legal dissolution of marriage effective for dealing with the realities of matrimonial experience.
>
> (2) Encourage and effect reconciliation and

Instantly, it is indisputable that, with all matters filed pursuant to the Code, the court of common **[**12]** pleas had authority according to 23 Pa.C.S. § 3104 to confront Junior's petitions, rule on the merits of the matters at hand, and grant the requested relief. In addition, to the extent that Glover's challenge is founded upon the fact that her divorce complaint did not specifically plead custody or parentage, as she argues is required to trigger § 3104(a), generally, her argument is unavailing. Regardless of the putative prerequisites Glover seeks to invoke to **[*908]** preclude the court from exercising its authority under § 3104, in light of the circumstances of this case and the significance of the parentage issue to both parties, the trial court acted squarely within the equitable powers conferred by the § 3323(f) catchall provision granting courts in matrimonial cases full equity and jurisdiction to protect the interests of the parties.[5] Thus, this authority-based challenge also fails.

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settlement of differences between spouses, especially where children are involved.

(3) Give primary consideration to the welfare of the family rather than the vindication of private rights or the punishment of matrimonial wrongs.

(4) Mitigate the harm to the spouses and their children caused by the legal dissolution of the marriage.

(5) Seek causes rather than symptoms of family disintegration and cooperate with and utilize the resources available to deal with family problems.

(6) Effectuate economic justice between parties who are divorced or separated and grant or withhold alimony according to the actual need and ability to pay of the parties and insure a fair and just determination and settlement of their property rights.

(b) Construction of part.--The objectives set forth in subsection (a) shall be considered in construing provisions of this part and shall be regarded as expressing the legislative intent.

23 Pa.C.S. § 3102.

[5] Similarly, we reject Glover's justiciability challenge based on the ripeness doctrine. Framing the matter as implicating custody and/or parentage of a then-unborn child, as opposed to contractual rights, she contends that the issues were not ripe when the trial court addressed Junior's petition for relief. We disagree. As the trial court accurately observed in rejecting this contention below, this Court "recognized a pre-birth cause of action [for parentage based] in contract law in ***In Re Baby S.**, 2015 PA Super 244, 128 A.3d 296 (Pa.Super 2015)*[.]" Trial Court Opinion, 8/1/22, at 12.

HN6[] Accordingly, we turn to the substance of this appeal, observing at the outset that we review orders relating to parentage for an abuse of discretion or an error of law. ***See, e.g., J.L. v. A.L.**, 2019 PA Super 60, 205 A.3d 347, 353 (Pa.Super. 2019)*. The crux of Glover's argument is that the trial court erred in applying contract principles to determine parentage. Essentially, she claims that Pennsylvania jurisprudence **[**13]** "established a narrow framework for establishing parentage in the absence of adoption or biology[,]" and the trial court summarily concluded, "without legal or factual support, that [Junior] is a legal parent . . . under contract principles." ***See*** Glover's brief at 23-24.

Mindful of our authority to affirm a trial court on any basis supported by the record, we first examine whether the order establishing Junior's parentage is sustainable through "application of the presumption of parentage married persons enjoy," which we refer to herein as the marital presumption.[6] ***C.G. v. J.H.**, 648 Pa. 418, 193 A.3d 891, 905 n.12 (Pa. 2018)*. HN7[] Pursuant to that doctrine, "generally, a child conceived or born during the marriage is presumed to be the child of the marriage; this presumption is one of the strongest presumptions of the law of Pennsylvania[.]" ***Brinkley v. King**, 549 Pa. 241, 701 A.2d 176 (Pa. 1997)* (plurality). Indeed, as our Supreme Court explained, "in one particular situation, no amount of evidence can overcome the presumption: where the family (mother, child, and [spouse]) remains intact at the time that the [spouse's parentage] is challenged, the presumption is irrebuttable." ***Strauser v. Stahr**, 556 Pa. 83, 726 A.2d 1052, 1054 (Pa. 1999)*.

HN9[] The presumption is equally applicable to same-sex and opposite-sex spouses. ***See** Interest of A.M., 2019 PA Super 344, 223 A.3d 691, 695 (Pa.Super. 2019)*. However, for both types **[**14]** of spouses, since the purpose of the marital presumption is to preserve

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[6] The trial court specifically declined to apply the doctrine in this case. ***See*** Trial Court Opinion, 8/1/22 at 13 ("Here, the [c]ourt did not apply [the presumption] in reaching its determination that Junior is the legal parent of Child. Rather, the Court appropriately applied the law of contracts and established Pennsylvania case law to determine that the parties' actions evidenced the intent and the accomplishment of securing Junior's status as a legal parent."). HN8[] Nevertheless, it is axiomatic that this Court can affirm the trial court order for any reason supported by the certified record. ***See** D.M. v. V.B., 2014 PA Super 40, 87 A.3d 323, 330 n.1 (Pa.Super. 2014)*. Therefore, because Junior and the *amicus curiae* both advocate this well-settled doctrine as a basis for affirmance, we consider it at the outset.

the inviolability of the intact marriage, "[w]hen there is no longer an intact family or a marriage to preserve, then the presumption . . . is not applicable." ***Vargo v. Schwartz***, *2007 PA Super 402, 940 A.2d 459, 463 (Pa.Super. 2007)*; ***K.E.M. v. P.C.S.***, *614 Pa. 508, 38 **[*909]** A.3d 798, 806-07 (Pa. 2012)* ("As to the [marital presumption], we note only that recent Pennsylvania decisions have relegated it to a substantially more limited role, by narrowing its application to situations in which the underlying policies will be advanced (centrally, where there is an intact marriage to be protected).")

HN10[⬆] As it relates to the determination of what constitutes an intact family for the purposes of the doctrine's applicability, our High Court has held that the presumption does not apply where the parties had finalized the divorce prior to the parentage dispute. ***See Fish v. Behers***, *559 Pa. 523, 741 A.2d 721, 723 (Pa. 1999)* (adopting the plurality's reasoning in ***Brinkley, supra***; "In this case, there is no longer an intact family or a marriage to preserve. Appellant and her husband have been divorced since December of 1993."). Likewise, this Court found that a long-term separation without a finalized divorce would foreclose the doctrine's application. ***See e.g., J.L., supra*** *at 357* (finding that the record supports trial court's conclusion that marital presumption **[**15]** did not apply where couple represented that they were separated, rented a separate apartment, and considered divorce); ***Vargo, supra*** *at 463* (collecting cases where appellate courts concluded presumption did not apply because marriages were not intact despite the lack of final divorce decree); ***T.L.F. v. D.W.T.***, *2002 PA Super 92, 796 A.2d 358, 362 at n.5 (Pa.Super. 2002)* ("We specifically note that the fact Appellee and D.F. are not divorced is not determinative in this case. We have also held that the presumption is inapplicable where the parties were separated but not divorced.").

Conversely, in ***Interest of A.M., supra*** *at 695*, we concluded that the trial court did not err in applying the presumption to a marriage that had been beset by domestic violence because, although the parties previously contemplated separation, they intended to remain married when the issue of parentage was raised. We explained,

> It is readily apparent from the record that the marriage between P.M.-T. and Mother is riddled with challenges and difficulties. ***HN11***[⬆] Under our case law, though, the existence of troubles in a marriage — even one as serious and disturbing as domestic violence - does not mean that such a marriage is not intact for purposes of determining the applicability of the [marital] presumption[.]

Id. *at 695-96*. The High Court reached a similar **[**16]** conclusion in ***Strauser, supra*** *at 1055-56*, holding that the presumption applied where the couple remained committed to the marriage despite infidelity. ***See also E.W. v. T.S.***, *2007 PA Super 29, 916 A.2d 1197, 1204 (Pa.Super. 2007)* (same); ***B.C. v. C.P.***, *300 A.3d 321 (Pa. 2023)* (granting allowance of appeal to determine "whether the lower courts erred in placing paramount importance on periods of separation in determining that the presumption of paternity was inapplicable, despite the marital couple's reconciliation which predated the third-party's paternity action.").

In this case, Glover and Junior had been married for approximately seven months when the child was conceived, but they separated prior to birth. The trial court observed that the couple "experienced marital difficulties and sought counseling." Trial Court Opinion, 8/1/22, at 3. It also noted that Glover "described Junior as having 'immense emotional needs,' 'a lot of triggers' and as 'volatile,' 'toxic, 'controlling,' and manipulative." ***Id.*** (citing N.T., 5/3/22, at 59, 65)) (cleaned up). Junior "intended to move out of the residence when the. . . lease expired on July 31, 2022." ***Id.*** at 4 (citing N.T. 5/3/22, at 38-39). Glover initiated divorce proceedings before Junior filed the petitions to determine pre-birth parentage that underlie this appeal, and **[**17]** the divorce remained pending when **[*910]** the trial court determined that Junior had a contract-based right to parentage. The certified record does not reveal the present status of the marriage.

Applying these facts to the above-stated paradigm, it is apparent that employing the marital presumption would not serve the purpose of the doctrine, *i.e.*, to preserve an intact marriage. We recognize that the onset of the divorce proceedings is not determinative of this issue where, as here, the marriage had not yet been dissolved when parentage was placed at issue. Nevertheless, the filing of a divorce complaint is particularly relevant considering the trial court's factual findings concerning the parties' marital strife and intra-residence separation, and Junior's aim to move out of the residence two months after the child's anticipated due date.

While this Court determined in ***Interest of A.M.*** that elevated marital discord did not require *ipso facto* a finding that the marriage was not intact for the purposes of determining the marital presumption's applicability,

overall, the facts of the case at bar align with the cases finding that the various marriages were no longer intact. ***See e.g.,*** ***J.L., supra*** *at 357-58* (affirming trial court decision **[**18]** to forgo marital presumption); ***Barr v. Bartolo****, 2007 PA Super 183, 927 A.2d 635, 643 (Pa.Super. 2007)* ("[W]hile the parties remain married, there concededly is no intact family to preserve; hence, the [marital] presumption . . . is not applicable."); ***Doran v. Doran****, 2003 PA Super 129, 820 A.2d 1279, 1283 (Pa.Super. 2003)* ("Because a divorce action was pending . . ., there was no longer an intact family or marriage to preserve, and, therefore, the [marital] presumption . . . is inapplicable to the present case.").

Stated plainly, unlike the facts underlying the cases upholding the doctrine's application based upon the spouses' commitment to their nuptials notwithstanding marriage-related turmoil, the instant case lacks this galvanizing element. As recounted by the trial court's factual findings, the certified record demonstrates that the marriage was over at the time parentage was placed at issue. Hence, we find that the trial court did not abuse its discretion in failing to apply the marital presumption in this case.

Turning to the legal basis for the trial court's decision to confirm Junior's status as the child's legal parent, the trial court determined that the parties formed a binding agreement that imbued Junior with parental rights. ***See*** Trial Court Opinion, 8/1/22 at 9-10 ("Based upon the undisputed evidence presented, **[**19]** the [c]ourt determined that it conclusively established that the parties, a married couple, formed a binding agreement for Junior, as a non-biologically[-]related intended parent, to assume the status of legal parent to the [c]hild [conceived] through the use of assistive reproductive technology [('ART')]."). We next address Glover's arguments assailing that conclusion.

HN12[] Whether individuals can enter into an enforceable agreement to determine parentage and parental rights involves a legal question that we review *de novo*. ***Ferguson v. McKiernan****, 596 Pa. 78, 940 A.2d 1236 1242 (Pa. 2007)* (holding that appellate courts employ *de novo* review of pure question of law concerning whether would-be mother and willing sperm donor can enter into an enforceable agreement to delineate parental rights and obligations). Our scope of review is plenary. ***Id.***

HN13[] As this Court recognized in ***Reformed Church of the Ascension v. Hooven & Sons, Inc.****, 2000 PA Super 406, 764 A.2d 1106, 1109 (Pa.Super. 2000)*, "[t]he policy behind contract law is to protect the parties' expectation interests by putting the aggrieved party in as good a position as he would have been had the contract been performed." **[*911]** (citing *Restatement (Second) of Contracts § 344(a)* (1979) (approved in ***Trosky v. Civil Service Commission****, 539 Pa. 356, 652 A.2d 813, 817 (Pa. 1995)*). Whether oral or written, a contract requires three essential elements: (1) mutual assent; (2) consideration; and (3) sufficiently definite terms. **[**20]** ***See e.g.,*** ***Helpin v. Trustees of Univ. of Pennsylvania****, 2009 PA Super 58, 969 A.2d 601, 610 (Pa.Super. 2009)*.

HN14[] Furthermore,

> [a]n agreement is expressed with sufficient clarity if the parties intended to make a contract and there is a reasonably certain basis upon which a court can provide an appropriate remedy. Accordingly, not every term of a contract must always be stated in complete detail. If the parties have agreed on the essential terms, the contract is enforc[ea]ble even though recorded only in an informal memorandum that requires future approval or negotiation of incidental terms. In the event that an essential term is not clearly expressed in their writing but the parties' intent concerning that term is otherwise apparent, the court may infer the parties' intent from other evidence and impose a term consistent with it.

Id. *at 610-11* (cleaned up) (quotations and citations omitted).

HN15[] As to our consideration of contract terms when a written agreement is involved, "[t]his Court must construe the contract only as written and may not modify the plain meaning under the guise of interpretation. ***Humberston v. Chevron U.S.A., Inc.****, 2013 PA Super 238, 75 A.3d 504, 509-10 (Pa.Super. 2013)* (internal quotation marks and citations omitted). Likewise, "[w]here several instruments are made as part of one transaction they will be read together, and each will be construed with reference to the other; **[**21]** and this is so although the instruments may have been executed at different times and do not in terms refer to each other." ***Sw. Energy Prod. Co. v. Forest Res., LLC****, 2013 PA Super 307, 83 A.3d 177, 187 (Pa.Super. 2013)* (quoting ***Huegel v. Mifflin Constr. Co., Inc.****, 2002 PA Super 94, 796 A.2d 350, 354-355 (Pa.Super. 2002)*).

Herein, the trial court concluded that Junior was a legal parent based upon principles of contract law. Glover

urges us to reach the opposite position by attempting to distinguish the facts of the instant case from the circumstances involved in the three cases that the trial court relied upon in fashioning Junior's contractual rights to parentage: ***C.G. v. J.H., supra; Ferguson, supra***; and ***In Re Baby S.**, 2015 PA Super 244, 128 A.3d 296 (Pa.Super 2015)*.

We address the relevant precedential authority chronologically. In ***Ferguson***, a prospective mother and a sperm donor entered into an oral agreement pertaining to parentage. Specifically, the parties agreed that the sperm donor would be released from parental obligations of the children produced from the mother's IVF treatment. In exchange, the mother agreed not to seek child support. However, she subsequently changed her mind and sued the biological father for child support of the twins born of the accord and IVF treatment. The trial court denied relief, holding that the agreement was unenforceable as against public policy because a parent cannot bargain away a child's right to support. **[**22]** We affirmed, but our Supreme Court upheld the oral contract observing that "constantly evolving science of reproductive technology . . . undermines any suggestion that the agreement at issue violates [public policy]." ***Ferguson, supra** at 1248*. Hence the High Court held that the agreement was binding and enforceable against both biological parents. ***Id.*** ("[I]n considering as we must the broader implications of issuing a precedent of tremendous consequence to untold numbers **[*912]** of Pennsylvanians, we can discern no tenable basis to uphold the trial court's support order.").

Subsequently, in ***In re Baby S.***, this Court reviewed the enforceability of a surrogacy agreement between a married couple and a gestational surrogate. The couple entered into a service agreement for IVF treatment that identified them as "Intended Parents" and matched them with a gestational carrier. The couple entered a second contract with a gestational carrier, also identifying them as the intended parents, that obligated them "to accept custody and legal parentage of any Child born pursuant to this Agreement." ***In re Baby S., supra**, at 300*. In turn, the second contract specified that "[t]he Gestational Carrier shall have no parental or custodial rights or obligations of **[**23]** any Child conceived pursuant to the terms of this Agreement." ***Id.***

After the child was born, the couple experienced marital difficulties and the wife sought to rescind the agreement, arguing that the gestational carrier contract was unenforceable. Relying upon ***Ferguson***, the trial court declared the couple as the legal parents of Baby S. ***Id.** at 301*. The wife appealed, and we upheld the trial court's order confirming parentage, reasoning as follows:

> The ***Ferguson*** Court expressly recognized the enforceability of a contract that addressed parental rights and obligations in the context of [ART], which in that case involved sperm donation. The Court acknowledged "the evolving role played by alternative reproductive technologies in contemporary American society." The Court acknowledged "non-sexual clinical options for conception ... are increasingly common in the modern reproductive environment" and noted that the legislature had not prohibited donor arrangements despite their "growing pervasiveness." The Court's language and focus on the parties' intent is at odds with Appellant's position that gestational carrier contracts, a common non-sexual clinical option for conceiving a child, violate a dominant public policy **[**24]** based on a "virtual unanimity of opinion."

***Id.** at 306* (cleaned up).

Finally, in ***C.G.***, our Supreme Court confronted whether an unmarried, former same-sex partner had standing as a "parent" pursuant to *§ 5324(1) of the Child Custody Act*, to seek custody of a child who was conceived via intrauterine insemination using an anonymous sperm donor. C.G., who shared no genetic connection with the child and never pursued adoption, argued that she had standing because she acted as a mother to the then nine-year-old child, whom she argued was conceived with the mutual intent of both parties to co-parent. C.G. also asserted that her continued involvement served the child's best interests.

J.H., the biological mother, filed preliminary objections to the custody complaint wherein she argued that C.G. lacked standing because she was not the child's parent or grandparent and did not stand in *loco parentis* to the child. Moreover, J.H. disputed that she conceived the child with the intent to co-parent with C.G. and highlighted that she satisfied nearly all of the child's financial needs, served as the sole parent since birth, and "made all decisions regarding the child's education, medical care, growth and development[.]" ***C.G., supra**, at 894* (quoting Prelim. Objections, **[**25]** 1/6/16, at ¶¶ 7-11.).

Following a three-day evidentiary hearing addressing

"C.G.'s participation in the conception, birth, and raising of [the c]hild, [and] the intent of the parties with respect thereto," the trial court sustained the preliminary objections. ***Id.*** *at 894-95*. Specifically, **[*913]** as to the parties' intent to co-parent, the trial court found no shared intent to conceive and raise the child collectively. Hence, the court was persuaded that C.G. was not a parent and J.H. did not hold her out as one to others. ***Id.*** *at 896*.

C.G. appealed the order dismissing the custody complaint, and we affirmed. The Supreme Court granted allowance of appeal to consider, *inter alia*, whether the former same-sex partner had standing "to seek custody of a child born during her relationship with the birth mother where the child was conceived via assisted reproduction and the parties lived together as a family unit for the first five years of the child's life." ***Id.*** *at 897-98*.

HN16[↑] In affirming the court's rejection of C.G.'s standing claim, the High Court held that Pennsylvania jurisprudence limits recognition of legal parentage to biology, adoption, judicial presumptions associated with intact marriages, and "contract—where a child is born with **[**26]** the assistance of a donor who relinquishes parental rights and/or a non-biologically related person assumes legal parentage[.]" ***Id.*** *at 904*. As C.G. had no biological connection to the child, had not officially adopted the child, and did not have rights that have been recognized as affording legal parentage, the High Court concluded that she was not a parent.[7]

Significantly, however, the Court continued:

> [N]othing in today's decision is intended to absolutely foreclose the possibility of attaining recognition as a legal parent through other means. However, under the facts before this Court, this case does not present an opportunity for such recognition, **as the trial court found as fact that the parties did not mutually intend to conceive and raise a child, and the parties did not jointly participate in the process**.

Id. *at 904 n.11* (emphasis added).

Cognizant of the foregoing framework, we address Glover's contention that the trial court erred in concluding that Junior had a contract-based right to parentage. For the following reasons, we affirm the court's finding that Junior established a contract-based right to parentage, as evidenced by the couple's collective intent and shared cost in conceiving a child via **[**27]** ART.

HN17[↑] As previously noted, while parentage is typically established biologically or through formal adoption, in cases involving ART, "contracts regarding the parental status of the biological contributors must be honored in order to prohibit restricting a person's reproductive options." ***C.G. supra*** *at, 903-04* (cleaned up). Our High Court further instructed, "[t]here is nothing to suggest in our case law that two partners in a same-sex couple could not similarly identify themselves each as intended parents, notwithstanding the fact that only one party would be biologically related to the child." ***Id.*** *at 904, n.11*.

An examination of the documents and testimony presented during the evidentiary hearing reveals a sufficient basis, as evidenced by the agreements and the conduct of the parties, to confer parentage on Junior. First, insofar as Junior was required to, and did, in fact, initial or sign as "partner" the substantive pages of the couple's IVF agreement with RMA Fertility, **[*914]** Junior was a party to that contract. Indeed, the written accord expressly required Junior to execute the contract and noted that "if during the term of this Agreement there occurs a change in legal or other status (*i.e.*, divorce, legal separation or annulment) **[**28]** . . . you will be deemed to have self-withdrawn from the Program, and you will not be entitled to a refund." RMA Fertility Agreement, 7/11/21, at 6. Concomitantly, the joint agreement also directed that by executing the contract, Junior assumed the financial obligation of participating in the fertility program, a cost that the couple split equally. Thus, rather than being the mere signatory that Glover suggests, Junior was an essential party to the contract and subject to the obligations, constraints, and liabilities outlined therein.

Similarly, although not a signatory to the agreement, Junior was a beneficiary of the couple's agreement with Fairfax Cryobank that identified Junior as a "co-intended parent," relinquished the rights of the sperm donor, and conveyed parental rights to the child born of the donated sperm. This agreement evinced the couple's express

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[7] As the parties were unmarried and "declined to seek recognition of their union by registering as domestic partners [or] . . . pursue adoption . . . while the relationship was still intact[,]" the High Court did not speculate about whether their informal commitment ceremony "should compel the application of the presumption of parentage married persons enjoy." ***C.G. v. J.H.***, *648 Pa. 418, 193 A.3d 891, 905 n.12 (Pa. 2018)*.

intent that Junior would be bound by the terms and conditions embodied therein.[8]

In addition to the two assistive fertilization agreements that demonstrated the couples' shared agreement, Glover and Junior retained legal counsel in anticipation of Junior's "Confirmatory Step-Parent Adoption" of their son. Engagement Letter, 10/13/21 at 1. Again, they shared the cost of representation and the engagement letter contained an addendum regarding joint representation that disclosed the risk inherent to collective representation. ***Id.*** at Addendum—Consent Regarding Joint Representation. Likewise, the couple jointly hired a doula, again splitting the fee, pursuant to an agreement that identified both parties as "Client." N.T., 5/3/22, Exhibit M at unnumbered 6.

Overall, the foregoing contracts, all of which either referenced Junior as a party or made her a beneficiary, served as evidence that Junior and Glover intended to collectively assume legal parentage of the child born via artificial reproductive technology. Phrased differently, the various agreements bear out the reality that Junior would be the child's second parent.

In addition to the parties' mutual intent, **[**30]** which permeated the ART agreements, the conduct of Glover and Junior further evinces the existence of an oral contract between them. ***HN19***[⬆] As noted *supra*, there are three elements of a contract: (1) mutual assent; (2) consideration; and (3) sufficiently definite terms. ***Helpin, supra*** *at 610*. Presently, the certified record is replete with evidence of the parties' mutual assent to conceive a child of their marriage using ART, bestow upon Junior legal parent status, **[*915]** and raise the child together as co-parents. ***See*** Trial Court Opinion, 8/1/22, at 9-10. Additionally, as discussed above, unlike the facts that the Supreme Court confronted in ***C.G. supra***, where "[t]here was no dispute that [the former same-sex partner] was not party to a contract or identified as an intended-parent[,]" Junior satisfied both these components. ***Id.*** *at 904*. The only remaining question is whether the oral agreement was supported by consideration or some other form of validation. For the reasons that follow, we find that it was.

HN20[⬆] In ***Pennsylvania Envtl. Def. Found. v. Commonwealth***, *255 A.3d 289, 305 (Pa. 2021)*, our Supreme Court explained that "[c]onsideration is defined as a benefit to the party promising, or a loss or detriment to the party to whom the promise is made." (citations omitted).

During the evidentiary hearing on Junior's **[**31]** petition, Junior confirmed paying for one-half of all the expenses, including fees associated with the preliminary medical tests, IVF, and hiring a doula to assist Glover during the birth. ***See*** N.T., 5/3/22, at 17, 44. When asked about the extent of the equally shared costs, Junior declared, "**Everything**: the IVF, the doula, the second parent adoption, everything. Everything." ***Id.*** at 44 (emphasis in original).

Junior also described the shared emotional role, noting how, for three months, Junior was required to administer daily fertility injections into Glover's abdomen in anticipation of having her eggs removed for fertilization. ***Id.*** at 18-19. After the pregnancy was confirmed, Junior administered daily dosages of progesterone to help prevent miscarriages. ***Id.*** at 19. Additionally, Junior regularly accompanied Glover to the obstetrician. ***Id.*** at 20. Junior summarized their collective preparations as follows:

> But every week, we would have to go to RMA for more bloodwork just to make sure the progesterone levels were correct, that everything was coming along [as planned], and also doing sonograms.
>
> And then, finally, we had completed [ART]. Like I said, I gave the injections for over three months, **[**32]** but now we were able to go directly to Thomas Jefferson [University Hospital], who we decided together would be our OB. That's where we would give birth.

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[8] ***HN18***[⬆] The following considerations are relevant to our determination concerning whether an individual is a third party beneficiary to a contract:

> (1) the recognition of the beneficiary's right must be appropriate to effectuate the intention of the parties, and
>
> (2) the performance must satisfy an obligation of the promisee to pay money to the beneficiary or the circumstances indicate that the **[**29]** promisee intends to give the beneficiary the benefit of the promised performance.

Porter v. Toll Bros., Inc., *2019 PA Super 257, 217 A.3d 337, 349 (Pa. Super. Ct. 2019)* (*quoting* ***Burks v. Fed. Ins. Co.***, *2005 PA Super 297, 883 A.2d 1086, 1088 (Pa.Super. 2005)*. Instantly, at the time of contract formation, the Fairfax Cryobank Contract designated Junior a co-intended parent and the circumstances of the couple's mutual effort to procure sperm from a specifically-selected donor in anticipation of the IVF procedure manifested Glover's intent to bestow upon Junior the terms and conditions of the agreement with Fairfax Cryobank.

> . . . .
> So, for a year, this was a constant -- for the entire year of 2021, us bringing our child into the world was a constant in our lives.
> Although . . . we weren't pregnant before July, he was still part of our family because we were doing everything we could every week to make sure that we had him. And then once we conceived, we were doing everything we could every day for the . . . remainder of the year to make sure that he stayed with us through these injections, through going to the hospital, making sure he was okay, monitoring his heart, hearing his heartbeat, so forth and so on.
> I'm sorry I was long-winded, but really, it was a very long process, and I was there for every step of it.

Id. at 21-20.

Glover not only agreed to the shared financial and emotional burdens, she continued to assent to the arrangement even after doubting whether she was still committed to co-parenting with Junior. ***Id.*** at 59. Glover addressed this apparent dichotomy during the evidentiary hearing. She offered the following explanation for why, despite her **[**33]** apprehensions about continuing her romantic relationship with Junior, she nevertheless executed the fertility contracts identifying Junior as a co-parent rather than proceeding alone or forgoing **[*916]** the IVF program entirely: "I could've moved forward without having to do the [IVF] program. . . . Financially—it was the best decision." ***Id.*** at 65. Hence, the certified record bears out that, in exchange for the consideration of the shared emotional burden and equally-divided financial cost of the assistive reproductive procedure and birth, Glover agreed that her spouse, Junior, would possess parental rights to the child conceived through their combined efforts.

In light of the express contractual obligations outlined between the parties in the Fairfax Cryobank Contract that identified Junior as the "co-intended Parent" and the couple's IVF agreement with RMA Fertility, which Junior executed as the "Partner," as well as all of the joint steps taken by the parties to prepare for the birth of the child, we hereby recognize the oral contract between Junior and Glover concerning parentage. The foregoing exchange of promises is not so vague or ambiguous as to preclude a legal contract because one **[**34]** of the parties did not expect legal consequences to flow from their agreement.[9] Indeed, in rejecting Glover's protestation that she, in fact, did not intend to bestow any legal rights upon Junior, the trial court was incredulous. It proclaimed, "[t]o the extent that Glover alleges she[, an attorney,] was unable to legally consent to a contract or understand the terms of the contracts that she signed, these allegations are either unproven, not credible [or] waived as she has not raised the same on appeal." Trial Court Opinion, 8/1/22, at 10.

The certified record sustains the trial court's credibility assessment. In fact, approximately five months after Glover initiated the IVF program with Junior's financial contributions and emotional support, Glover ratified the couple's arrangement by executing a December 2021 affidavit, which noted the then-anticipated adoption and further endorsed Glover's desire for Junior to "become a legal parent, with rights equal to [Glover's] rights as a biological parent." Glover Affidavit, 12/2/21, at 1 ¶4. The affidavit continued, "I want Nicole Shawan Junior to become a legal parent to this child because I believe it is in the best **[**35]** interest of the child." ***Id.*** at ¶10. In light of Glover's recurring statements of assent, the certified record supports the trial court's finding that Glover fully understood the extent of the agreement.

Thus, as outlined *supra*, we find that Junior has an enforceable right to parentage under principles of contract law. The certified record demonstrates the parties' mutual assent, actions in furtherance of the sufficiently definite terms of the agreement, and consideration.[10]

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[9] While nothing in the oral agreement specifically provided that Junior was to be listed on the child's birth certificate, that proviso was unnecessary as, pursuant to current Pennsylvania guidelines, the biological parent's spouse is automatically listed as the other parent on the birth certificate. ***See*** https://www.health.pa.gov/topics/certificates/Pages/New-Parent.aspx ("If you were married at the time of your child's birth, then the birthing parent's spouse is the child's legal parent unless a specialized registration process has been used to list a biological parent on your child's birth record."). ***HN21***[↑] This guideline is the modern application of the antiquated regulation, entitled "Registration as other than the child of the mother's husband," which requires, *inter alia*, the submission of an affidavit in order to avoid naming the spouse as a parent or to register a different individual as parent. ***See*** *28 Pa.Code § 1.5*.; ***see also*** BUREAU OF HEALTH STATISTICS AND REGISTRIES, PENNSYLVANIA'S BIRTH REGISTRATION POLICY MANUAL, August 2021, at 21 (affidavit required "under the Vital Statistics Law when a married birthing parent decides to not name a legal spouse as the other parent of the child.").

[10] Assuming *arguendo*, that Junior did not have a contractual right to parentage, relief is also warranted under the court's equitable power. Phrased differently, Glover's actions and

[*917] Alternatively, even if the record did not establish the three elements of contract, we would affirm the trial court order pursuant to the application of "intent-based parentage" that the High Court recognized but was unable to adopt **[**36]** under the facts extant in ***C.G., supra*** *at 904 n.11*. Specifically, the Court observed, "this case does not present an opportunity for [finding an alternative approach to parentage], as the trial court found as fact that the parties did not mutually intend to conceive and raise a child, and the parties did not jointly participate in the process." ***Id.*** The respective concurring opinions of Justices Dougherty and Wecht outlined their perspectives of intent-based parentage, but nonetheless agreed that the factual record did not warrant its application in that case. In this vein, Justice Dougherty reasoned that it was not necessary "to endorse any particular new test" because the Court was bound by the factual findings that there was no mutual intent to conceive and raise a child, or evidence of shared participation in the reproductive process. He further noted that those findings "preclude a holding that C.G. has standing as a parent under any of the proffered definitions of intent-based parentage." ***Id.*** *at 913*.

Justice Wecht, joined by Justice Donohue, observed that "[r]eliance solely upon biology, adoption and contracts is insufficient" in some situations and articulated his comprehensive perspective that, "in cases involving **[**37]** [ART], courts must probe the intent of the parties." ***Id.*** *at 913-14* (footnote omitted). However, he too was constrained to concur with the majority's decision based upon the trial court's findings of fact. Justice Wecht explained,

> While I would embrace an intent-based test for parentage for persons pursuing parentage through ART, I nonetheless concur with the Majority's determination that C.G. was not a parent under the facts of this case as found by the trial court. As the Majority notes, the **trial court found that J.H. was credible when she testified that C.G. never intended to be a parent to Child and that C.G. did not act as a parent**. **[*918]** Further, the trial court credited testimony that **C.G. and J.H. reached no mutual decision to become parents**. Given that there was no documentary evidence of C.G.'s intent to parent, and given that the trial court found, consistent with the record, that C.G.'s actions were not those of a parent, I join the Majority's conclusion that C.G. did not have standing as a parent pursuant to *23 Pa.C.S. § 5324*.

Id. *at 917* (emphases added, footnotes omitted). Overall, Justice Wecht concluded, "I think that today's case is a missed opportunity for this Court to address the role of intent in analyzing parental **[**38]** standing in ART cases." ***Id.*** *at 918*.

The facts of this case, however, provide another opportunity.[11] Here, our review of the certified record in

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representations regarding the child's anticipated parentage were grounds under the doctrine of equitable estoppel to preclude her from challenging Junior's parentage. This is not an entirely novel application of the doctrine. ***HN22***[⬆] As we observed in explaining the roots of the related doctrine of paternity by estoppel, "In simplistic terms, the doctrine of equitable estoppel upon which paternity by estoppel is based is one of fundamental fairness such that it prevents a party from taking a position that is inconsistent to a position previously taken and thus disadvantageous to the other party." ***See*** ***C.T.D. v. N.E.E****, 62, 439 Pa. Super. 58, 653 A.2d 28, 31 (Pa.Super. 1995)* (cleaned up).

Equitable estoppel binds a party to the implications created by their words, deeds or representations. In ***L.S.K. v. H.A.N.****, 2002 PA Super 390, 813 A.2d 872, 877 (Pa.Super. 2002)*, we explained,

> Equitable estoppel applies to prevent a party from assuming a position or asserting a right to another's disadvantage inconsistent with a position previously taken. Equitable estoppel, reduced to its essence, is a doctrine of fundamental fairness designed to preclude a party from depriving another of a reasonable expectation when the party inducing the expectation albeit gratuitously knew or should have known that the other would rely upon that conduct to his detriment.

Id. (cleaned up).

Instantly, Glover's actions and representations throughout the technologically-assisted pregnancy demonstrated her assent to Junior's parentage. The record bears out Junior's detrimental reliance and endurance of severe prejudice if Glover were permitted to deny parentage at this juncture. Thus, in addition to affirming the trial court's analysis of the parties' respective contractual rights, we find the alternative grounds to affirm the trial court's order as a matter of equity. ***See*** ***C.T.D., supra*** *at 31* (***HN23***[⬆] "Principles of estoppel are peculiarly suited to cases where . . . no presumptions of paternity apply.")(cleaned up).

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[11] Notwithstanding the apprehension expressed in the Concurring Opinion about exceeding our authority as an intermediate appellate court by applying an intent-based approach in this case, it is beyond cavil that this Court regularly confronts matters of first impression. ***See e.g.,*** ***Reber***

this appeal easily supports a finding of parentage by intent. Indeed, Glover consistently represented over a thirteen-month period that she intended to share with Junior parentage of the couple's child conceived through ART. As previously discussed, Glover contracted with Fairfax Cryobank and RMA Fertility and she assented to identifying Junior as the "co-intended Parent" and "Partner," respectively. Even after doubting her romantic commitment to Junior, Glover continued to pursue the pregnancy with Junior's financial assistance and shared emotional burden.

Glover further led her spouse to believe that they would share parentage. Junior participated in the decision to conceive their son with the shared intent to raise him together. Likewise, Junior consistently identified as an intended parent, and with Glover's express consent and endorsement, Junior performed the role of an expectant parent, including participating in the selection of the sperm donor and naming their child after conception. During **[**39]** the evidentiary hearing, Junior testified that, in the role as the "co-intended Parent" under the Fairfax Cryobank contract, the couple collectively selected a sperm donor from Fairfax Cryobank based specifically on the donor's physical appearance, interests, and genetic lineage. ***Id.*** at 25. Junior explained, "We were looking for sperm donors who . . . resembled me as much as possible, because we . . . were us[ing] [Glover's] egg, and we wanted our child to look as much like both of us as possible." ***Id.*** Thus, in identifying a photograph of the sperm donor, Junior observed, "he's dark-skinned, like I am. He has almond shaped **[*919]** eyes like I do. He has a huge . . . wide smile like I do. He has high cheekbones like I do. In addition to that when we looked more deeply into the details, he's a Sagittarius like I am." ***Id.*** at 26. In addition, both the donor and Junior traced their indigenous history to Benin, Africa. ***Id.*** In all, Junior stated, "primarily, it was because . . . we shared so much in common—the donor and I—and [Glover] and I both kept remarking on how [it was] kismet . . . [.]" ***Id.***

Thus, in addition to affirming the trial court order establishing Junior's parentage based on contract **[**40]** principles, we affirm it upon our application of the principles of intent-based parentage that the concurring justices highlighted in ***C.G.*** Stated plainly, this appeal is the paradigm of intent-based parentage in cases involving ART, where the couple not only evidenced their mutual intent to conceive and raise the child, but they also participated jointly in the process of creating a new life.

Order affirmed.

Judges Olson, Dubow, Kunselman, McLaughlin, and McCaffery join this Opinion.

P.J. Panella and Judge Murray concurs in result.

Judge King filed Concurring Opinion in which P.J. Panella and Judge Murray joined.

Judgment Entered.

Date: 12/11/2023

Concur by: KING

Concur

CONCURRING OPINION BY KING, J.:

I agree with the Majority's holding that Junior[1] has a contract-based right to parentage based on the oral contract between Glover and Junior.[2] I write separately

v Reiss**, 2012 PA Super 86, 42 A.3d 1131, 1134 (Pa.Super. 2012)* (addressing issue of first impression that arose as a result of advances in reproductive technology, *i.e.*, "the contested disposition of frozen pre-embryos in the event of divorce"). ***HN24[↑] Thus, while the Concurring Opinion accurately outlines the limitations of our authority as an error-correcting court, when we are addressing a matter of first impression, which, by definition, means there is an absence of clear precedent, "our role as an intermediate appellate court is to resolve the issue as we predict our Supreme Court would" address it. ***Ridgeway ex rel. Estate of Ridgeway v. U.S. Life Credit Life Ins. Co.**, 2002 PA Super 54, 793 A.2d 972, 975 (Pa.Super. 2002)*; ***see also** **Vosk v. Encompass Ins. Co.**, 2004 PA Super 168, 851 A.2d 162, 165 (Pa.Super. 2004)* (*quoting* ***Ridgeway, supra** at 975*); ***eToll, Inc. v. Elias/Savion Adver. Inc.**, 2002 PA Super 347, 811 A.2d 10, 15 (Pa.Super. 2002)* ("when presented with an issue for which there is no clear precedent, our role as an intermediate appellate court is to resolve the issue as we predict our Supreme Court would do."). Consistent with the foregoing authority, we resolve the novel issue presented in this appeal by applying the principles of parentage by intent that Justices Dougherty and Wecht discussed in ***C.G.**, supra*.

[1] Junior's preferred pronouns are "they/them." (***See*** Junior's Brief at 3). Thus, I will utilize Junior's preferred pronouns throughout this writing, in accordance with their gender identification.

[2] I also agree with the Majority's initial determinations that the

to emphasize my view that the facts of this case fit squarely within an "intent-based" parentage approach as contemplated by the concurring opinions in ***C.G. v. J.H.***, *648 Pa. 418, 193 A.3d 891 (2018)*. Nevertheless, our Supreme Court has declined to expressly adopt such an approach when considering the parentage of children conceived through Assisted Reproductive Technology ("ART"). As I believe adoption **[**41]** of an intent-based approach is a task better left for our legislature or Supreme Court, I depart from the Majority's reliance on this doctrine as a basis for Junior's relief.

To me, the only contract establishing Junior's legal parentage in this case is the oral contract between the parties. The Majority convincingly describes how the elements of an oral contract were satisfied. (***See*** Maj. Op. at 26-30). Nevertheless, I share the concern of Justice Wecht's concurring opinion in ***C.G.*** that "ART requires us to hypothesize other scenarios, cases in which an intent analysis would not foreclose a valid claim to parentage while a contract-based approach would." ***C.G., supra*** *at 459, 193 A.3d at 915*. While one could argue that any successful claim to parentage under an intent-based approach would necessarily evidence an oral contract to same, that may not always be the case. The Supreme Court noted in ***C.G.*** that it was "not tasked with defining the precise parameters of contracts regarding **[*920]** [ART]." ***Id.*** *at 441 n.11, 193 A.3d at 904 n.11*.

Rather than having to define or evaluate such parameters under a contract-based theory for relief, I believe that an intent-based approach is the proper lens from which courts can and should evaluate claims of legal parentage in the **[**42]** ART context. Our High Court declined to adopt such a standard in ***C.G.***, however, because that "case [did] not present an opportunity for such recognition, as the trial court found as fact that the parties did not mutually intend to conceive and raise a child, and the parties did not jointly participate in the process." ***Id.*** *at 441 n.11, 193 A.3d at 904 n.11*.

In this case, the Majority holds that the record supports a finding of "intent-based parentage." (Maj. Op. at 31). The Majority decides that such an approach offers Junior an avenue for relief, even if contract principles do not afford them relief. (***Id.***) I am inclined to agree with the Majority that this record contains ample evidence supporting parentage under an intent-based approach. But I reach a different conclusion because it is not this Court's function to create new law. As we have explained:

> We are bound by decisional and statutory legal authority, even when equitable considerations may compel a contrary result. We underscore our role as an intermediate appellate court, recognizing that the Superior Court is an error correcting court and we are obliged to apply the decisional law as determined by the Supreme Court of Pennsylvania. It is not the prerogative of **[**43]** an intermediate appellate court to enunciate new precepts of law or to expand existing legal doctrines. Such is a province reserved to the Supreme Court.

Matter of M.P., *2019 PA Super 55, 204 A.3d 976, 986 (Pa.Super. 2019)* (internal citations and quotation marks omitted).

In my view, the Majority's adoption of the intent-based approach as an alternative ground for relief exceeds our authority as an intermediate appellate court. ***See id.*** The Majority insists that this Court can review the "intent-based" approach to parentage as an issue of "first impression." (Maj. Op. at 33 n.11). The issue in this case is whether a non-biologically related intended parent can claim legal parentage to a child conceived through ART. This issue is not one of first impression, as evidenced by ***C.G.*** and the other cases discussed in the Majority Opinion which make clear that parentage can be bestowed in this context under contract principles. To endorse the theory of intent-based parentage, we would essentially be expanding the already existing legal doctrines applied in this context. Although the Majority cites ***Reber v. Reiss***, *2012 PA Super 86, 42 A.3d 1131 (Pa.Super. 2012)*, *appeal denied*, *619 Pa. 680, 62 A.3d 380 (2012)*, I find that case to be distinguishable. There, this Court considered "the contested disposition of frozen pre-embryos in the event of divorce [as] **[**44]** an issue of first impression in Pennsylvania." ***Id.*** *at 1134*. While there were **no** cases in Pennsylvania providing any precedent for deciding that issue (such that this Court found guidance in the case law from our sister states), here, there is precedent in this Commonwealth for establishing parentage under the facts of this case—just not under an intent-based approach.

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trial court had jurisdiction to adjudicate Junior's petition for pre-birth establishment of parentage, and that the matter was ripe for review before Glover gave birth to Child. I further agree with the Majority that the marital presumption of parentage did not apply to the facts of this case where there is no longer an intact marriage to preserve.

Further, our High Court confronted the possibility of an intent-based approach in ***C.G.*** but chose not to adopt such an approach in light of the facts of that case. Of course, the Court could have endorsed an intent-based analysis as an alternative avenue for relief to applying contract principles in these types of cases, even if the Court decided such an approach would not have afforded C.G. relief in that case. The Court declined to do so. Rather, the Court **[*921]** indicated that it "must await another case with different facts before **we may properly consider the invitation to expand the definition of 'parent.'"** ***C.G., supra*** *at 441 n.11, 193 A.3d at 904 n.11* (emphasis added). The Court later reiterated that it was "unnecessary at this time to **expand the definition** of parent or **endorse a new standard** under the facts before this Court." ***Id.*** *at 443 n.13, 193 A.3d at 906 n.13* (emphasis added). Thus, I do not consider **[**45]** this issue one of "first impression" but an invitation to expand the already existing doctrines applicable in cases involving parentage where a child is conceived through ART. I repeat that "[s]uch is a province reserved to the Supreme Court." ***Matter of M.P., supra***.

Instead, I would urge the Supreme Court to take a close look at this case and decide whether our Commonwealth should employ an intent-based approach to determining parentage in cases involving ART. As the Majority observes, "this appeal is the paradigm of intent-based parentage in cases involving ART where the couple not only evidenced their mutual intent to conceive and raise the child, but they also participated jointly in the process of creating a new life." (Maj. Op. at 35). In his concurring opinion, Justice Wecht described ***C.G.*** as "a missed opportunity for this Court to address the role of intent in analyzing parental standing in ART cases." ***C.G., supra*** *at 464, 193 A.3d at 918*. The case before us should not serve as a similar "missed opportunity" for the Supreme Court to address the intent-based approach.

Accordingly, I concur in the result.

President Judge Panella and Judge Murray joined this Concurring Opinion.

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K.W. v. S.L.

Superior Court of Pennsylvania

January 24, 2017, Argued.; March 6, 2017, Decided; March 6, 2017, Filed

No. 1372 MDA 2016

Reporter
157 A.3d 498 *; 2017 Pa. Super. LEXIS 154 **; 2017 PA Super 56; 2017 WL 878700

K.W., Appellant v. S.L. & M.L. v. G.G.

Prior History: [**1] Appeal from the Order of the Court of Common Pleas, York County, Civil Division, No: 2015-FC-002204-03. Before PLATTS, J.

Weaver v. Little, 2016 Pa. Dist. & Cnty. Dec. LEXIS 22238 (Aug. 5, 2016)

Case Summary

Overview

HOLDINGS: [1]-A father's appeal of an order denying his preliminary objections and granting prospective adoptive parents in loco parentis standing under the Child Custody Act, *23 Pa.C.S. § 5324(2)*, was properly before the superior court because the order satisfied all three prongs of the collateral order doctrine, *Pa.R.A.P. 313*; [2]-The father's claim would be irreparably lost if review was postponed until the entry of a final order, and he had a fundamental constitutional right to parent the child, which included the right to be free of custody litigation involving third parties; [3]-The trial court erred by denying the father's preliminary objections because he did not consent to the adoptive parents attaining in loco parentis status; [4]-The father acted in a manner inconsistent with consent by promptly informing an adoption agency that he did not want the child to be adopted.

Outcome
Order vacated.

Counsel: William J. Yates, Williamsport, for appellant.

Amber A. Kraft, York, for G.G., appellee.

Kathryn I. Nonas-Hunter, York, for S.L., appellee.

Judges: BEFORE: LAZARUS, STABILE, and DUBOW, JJ. OPINION BY STABILE, J.

Opinion by: STABILE

Opinion

[*499] OPINION BY STABILE, J.:

K.W. ("Father") appeals from the order entered August 8, 2016, in the Court of Common Pleas of York County, which denied his preliminary objections and granted S.L. and M.L. ("Appellees") *in loco parentis* standing to pursue custody of Father's minor daughter, M.L. ("Child"). After careful review, we vacate and remand for further proceedings consistent with this opinion.[1]

Child was born in August 2015 to Father and G.G. ("Mother"). Father and Mother dated briefly from October 2014 until approximately December 12, 2014. N.T., 8/1/16, at 7. While the details are not entirely clear from the record, it appears that Mother discovered that she was pregnant with Child shortly after her separation from Father. ***Id.*** at 38. However, Mother did not directly inform Father of her pregnancy. ***Id.*** at 37-40. In March [*500] 2015, Mother contacted Bethany Christian Services ("BCS") in order to place Child for adoption. ***Id.*** at 43. BCS placed Child in the care of Appellees two days after her birth. ***Id.*** at 71.

Meanwhile, BCS attempted [**2] to locate Father. While Mother provided BCS Father's name, she could not

[1] In his brief, Father indicates that he also is challenging the interim custody order entered November 17, 2015, in Centre County. Father's brief at 13, 16. Assuming that we have jurisdiction to address the November 17, 2015 order, our review of the record reveals that it is no longer in effect, as it was replaced by an interim custody order entered April 12, 2016. Thus, any challenge to that order is now moot.

initially provide any other contact information. ***Id.*** at 43. Mother later assisted BCS in identifying Father's Facebook profile. ***Id.*** at 44. BCS first attempted to contact Father on July 29, 2015, by sending him a Facebook message. ***Id.*** at 43. BCS also sent friend requests to Father on July 30, 2015, and August 14, 2015. ***Id.*** at 46. Father did not respond to the message sent by BCS, nor did he accept the friend requests.[2] ***Id.*** at 46-47. BCS made several other attempts at contacting Father, including calling the employer listed on Father's Facebook profile, without success. ***Id.*** at 48-49. Finally, with Mother's assistance, BCS located several of Father's last known addresses. ***Id.*** at 49, 64. BCS sent letters to Father on September 16, 2015. ***Id.*** at 64. Father received these letters on September 19, 2015, and contacted BCS to set up a meeting. ***Id.*** at 11-12. On approximately October 14, 2015, Father informed BCS that he did not want Child to be adopted. ***Id.*** at 58.

The subsequent procedural history of this matter is convoluted. On October 30, 2015, Father filed a custody complaint in Centre County, naming Mother as the only defendant.[3] Father also filed an emergency petition on November 6, 2015, in which he requested that BCS [**3] be ordered to provide him with the current whereabouts of Child, among other things. The Centre County trial court issued an order granting Father's petition that same day. On November 17, 2015, the Centre County court entered an order transferring Father's case to Lycoming County, as well as an interim custody order awarding primary physical custody of Child to Appellees, and awarding partial physical custody to Father as agreed upon by the parties.

On November 25, 2015, Appellees filed a custody complaint in York County. That same day, Appellees filed a notice of appeal from the Centre County trial court's order transferring Father's case to Lycoming County. In their concise statement of errors complained of on appeal, Appellees alleged that the Centre County court erred by failing to join them as necessary parties to the custody action, and by failing to transfer the case to York County, on the basis that York County is Child's "home county" pursuant to the Pennsylvania Rules of Civil Procedure. By order entered December 17, 2015, the Centre County court rescinded its prior order transferring the case to Lycoming County, and transferred the case to York County instead. Appellees [**4] then discontinued their appeal.

On February 26, 2016, Father filed preliminary objections to Appellees' custody complaint.[4] In his preliminary objections, Father argued that Appellees do not have standing to pursue custody of Child. Specifically, Father argued that Appellees do not stand *in loco parentis* to Child, because he did not consent to Child being [*501] placed with Appellees. Appellees filed an answer to Father's preliminary objections on March 16, 2016. On March 18, 2016, the York County trial court entered an order dismissing Appellees' complaint "without prejudice to either party to refile and request another conciliation conference," on the basis that the parties' conciliation conference was continued and then not rescheduled within the time required by local practice and procedure. Order, 3/18/16, at 2. On March 21, 2016, Father filed a praecipe to schedule a new conciliation conference, which the court granted.

On April 4, 2016, Father filed an additional custody complaint in York County.[5] The trial court entered an

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[2] Father testified that BCS sent him messages, but that he did not notice them because his Facebook account treated them as "spam." N.T., 8/1/16, at 13-14. BCS employee, Jessica Crawford, could not confirm or deny whether Father actually viewed any messages. ***Id.*** at 46.

[3] Father resides in Lycoming County, Mother resides in Northumberland County, and Appellees reside in York County. It appears that Father filed his complaint in Centre County because BCS has its place of business there.

[4] Father attached a copy of a paternity test, dated January 25, 2016, confirming that he is Child's biological father.

[5] On May 25, 2016, the trial court entered an order consolidating all three custody complaints. In its opinion, the court provided the following explanation concerning the procedural posture of this case.

> Overall, before this Court are three (3) Custody Complaints consolidated by agreement of the parties and an Order dated May 25, 2016. Father filed Preliminary Objections to the second Custody Complaint which was filed by [Appellees]. [The Honorable Andrea] Marceca Strong dismissed the second Custody Complaint filed by [Appellees] approximately thirty-nine (39) minutes after an Application for Continuance was filed by the parties for the conciliation conference relating to the second Custody Complaint. . . . [T]his Court finds that the dismissal on March 18, 2016[,] of the Custody Complaint filed by [Appellees], which had been consolidated with Father's Custody Complaint upon transfer of Father's complaint to York County, was in error and superseded by the Order signed by [York County President Judge, the Honorable Joseph C.] Adams on March 21, 2016[,] which rescheduled [**6] the conciliation conference

interim custody order on April 12, 2016, maintaining primary physical custody with Appellees, awarding Father partial physical custody during certain weekends, and [**5] awarding shared legal custody to all parties. On May 23, 2016, Father filed a praecipe to list his preliminary objections for one-judge disposition. On August 1, 2016, Appellees filed a motion to strike Father's praecipe for one-judge disposition, or, in the alternative, preliminary objections to Father's preliminary objections.

The trial court held a hearing to address Father's preliminary objections on August 1, 2016. Following the hearing, on August 8, 2016, the court issued an order and opinion denying Father's preliminary objections, and granting Appellees *in loco parentis* standing.[6] Father timely filed a notice of appeal on August 19, 2016, along with a concise statement of errors complained of on appeal. On September 2, 2016, the court issued a supplemental opinion, in which it indicated that the reasons for its decision could be found in the opinion accompanying the August 8, 2016 order, and that no additional explanation [**7] would be necessary.

Before reaching the merits of Father's appeal, we must first consider whether the August 8, 2016 order was properly appealable. "'[S]ince we lack jurisdiction over an unappealable order it is incumbent on us to determine, *sua sponte* when necessary, whether the appeal is taken from an appealable order.'" ***Gunn v. Automobile Ins. Co. of Hartford, Connecticut***, *2009 PA Super 70, 971 A.2d 505, 508 (Pa. Super. [*502] 2009)* (quoting ***Kulp v. Hrivnak***, *2000 PA Super 407, 765 A.2d 796, 798 (Pa. Super. 2000))*. It is well-settled that, "[a]n appeal lies only from a final order, unless permitted by rule or statute." ***Stewart v. Foxworth***, *2013 PA Super 91, 65 A.3d 468, 471 (Pa. Super. 2013)*. Generally, a final order is one that disposes of all claims and all parties. ***See*** *Pa.R.A.P. 341(b)*.

relating to [Appellees'] and Father's Custody Complaints. Subsequent to the third Custody Complaint being filed by Father on April 4, 2016, this matter was assigned to the undersigned Judge[,] [the Honorable Todd R. Platts]. This Court conducted a pre-trial conference with the parties at which time counsel for all three parties agreed that the three (3) custody actions should be consolidated under one caption with Father as the moving party and that Father's Preliminary Objections were still pending as to whether or not [Appellees] had standing in the matter.

Trial Court Opinion, 8/8/16, at 5-6.

[6] The order also denied the motion to strike and preliminary objections filed by Appellees.

Father concedes that the August 8, 2016 order is not a final order pursuant to *Pa.R.A.P. 341(b)*. Father's Brief at 21. Instead, Father insists that the order is appealable pursuant to the collateral order doctrine. ***See*** *Pa.R.A.P. 313(a)* (providing that an appeal may be taken as of right from a collateral order of a lower court). "A collateral order is an order separable from and collateral to the main cause of action where the right involved is too important to be denied review and the question presented is such that if review is postponed until final judgment in the case, the claim will be irreparably lost." *Pa.R.A.P. 313(b)*.

Father argues that the August 8, 2016 order meets the requirements of the collateral order doctrine [**8] because it "is collateral to the main issue of child custody and . . . because it impacts the number of parties who will participate in the action, and it cannot be delayed until a final order is issued without being lost." Father's Brief at 22. In support of this position, Father directs our attention to ***K.C. v. L.A.***, *633 Pa. 722, 128 A.3d 774 (Pa. 2015)*. ***Id.*** Father contends "there is no meaningful difference" between ***K.C.*** and this case.[7] ***Id.*** at 23.

In ***K.C.***, our Supreme Court held that an order denying intervention in a child custody case due to a lack of standing meets both the first and second prongs of the collateral order doctrine, as standing is an issue separable from, and collateral to, the main cause of action in a child custody case, and because the right to intervene in custody cases implicates Pennsylvania's "paramount interest in the welfare of children and, as a result, in identifying the parties who may participate in child custody proceedings[.]" ***K.C.***, *128 A.3d at 779-80*. We agree with Father that the reasoning employed in ***K.C.*** applies with equal force here.

However, we find that ***K.C.*** is distinguishable with respect to the third prong of the collateral order doctrine. In that case, the appellants argued that their claim would be irreparably lost pursuant [**9] to ***In Re Barnes Foundation***, *582 Pa. 370, 871 A.2d 792 (Pa. 2005)*, in which our Supreme Court held that an order denying intervention must be appealed within thirty days. ***Id.*** *at 778*. Our Supreme Court agreed, reasoning that the appellants would be unable to appeal the order denying their petition to intervene if they waited until the completion of the underlying custody proceedings. ***Id.*** *at*

[7] The trial court did not address the issue of appealability in its opinion accompanying the August 8, 2016 order, or in its supplemental opinion.

780. If the appellants attempted to appeal from the order denying intervention after the entry of a final custody order, their appeal would be untimely pursuant to ***Barnes.*** ***Id.*** Further, the appellants would not be permitted to appeal from the final custody order itself, as the fact that they were denied intervention meant that they were not parties to the custody action. ***Id.*** Here, in contrast, Father has not been denied intervenor status. ***Barnes*** does not apply, and Father remains a party to the underlying custody action.

Nonetheless, we conclude that Father's claim will be irreparably lost if we postpone review until the entry of a final order. Standing in child custody cases is a matter of constitutional significance. As our Supreme Court has emphasized, "the [*503] right to make decisions concerning the care, custody, and control of one's children is one of the oldest fundamental [**10] rights protected by the Due Process Clause" of the Fourteenth Amendment. ***Hiller v. Fausey***, 588 Pa. 342, 904 A.2d 875, 885 (Pa. 2006) (citing ***Troxel v. Granville***, 530 U.S. 57, 120 S.Ct. 2054, 147 L. Ed. 2d 49 (2000)). Mindful of this fundamental right, our law presumes that parents are fit and make decisions in their children's best interest, "absent factors such as abuse, neglect, or abandonment." ***D.P. v. G.J.P.***, 146 A.3d 204, 214 (Pa. 2016).

Allowing third parties to seek custody of a child burdens the constitutional rights of parents. ***Id.*** at 210, 213. In ***D.P.***, our Supreme Court emphasized the importance of permitting parents to challenge standing in child custody cases, in order to protect those rights. The Court reasoned as follows.

> Therefore, as illustrated presently, whenever there are contested issues relating to standing, [the Child Custody Act] gives parents the ability to bifurcate the proceedings by seeking dismissal for lack of standing, thereby requiring that any such preliminary questions be resolved before the complaint's merits are reached.
>
> The potential for such bifurcation serves an important screening function in terms of protecting parental rights. As suggested, it facilitates early dismissal of complaints, thereby relieving families of the burden of litigating their merits where a sufficient basis for standing is absent. ***Accord*** ***Rideout v. Riendeau***, 2000 ME 198, 761 A.2d 291, 302-03 (Me. 2000) (plurality) (indicating that, in a bifurcated procedure, grandparent-standing [**11] requirements "provide[ ] protection against the expense, stress, and pain of litigation, unless and until the grandparents have convinced the court that they are among those grandparents who may pursue visits"). Indeed, a majority of Justices in ***Troxel*** recognized that such litigation can itself impinge upon parental rights, especially if it becomes protracted through the appellate process. ***See*** ***Troxel***, 530 U.S. at 75, 120 S.Ct. at 2065; ***id.*** at 101, 120 S.Ct. at 2079 (Kennedy, J., dissenting); ***accord*** ***Blixt v. Blixt***, 437 Mass. 649, 774 N.E.2d 1052, 1065-66 (2002).[15] . . . .
>
> [15] ***Hiller*** also took notice of the costs associated with custodial litigation, indicating that grandchildren are not benefitted when "grandparents force their way into [their] lives through the courts, contrary to the decision of a fit parent," and adding that such consideration was "especially resonant given the strain that custody litigation places on the children as well as parents and grandparents[.]" ***Hiller***, 588 Pa. at 359 & n.20, 904 A.2d at 886 & n.20 (citing ***Troxel***, 530 U.S. at 101, 120 S.Ct. at 2079 (Kennedy, J., dissenting) (describing that custody litigation tends to be disruptive of family life and that, for a parent struggling financially, the monetary costs can undermine the parent's plans for the child's future)). Other courts have made similar observations. ***See, e.g.,*** ***Conlogue v. Conlogue***, 2006 ME 12, 890 A.2d 691, 699 (Me. 2006) (proffering that the strains of litigation [**12] "include various forms of pressures and stress that can pose a real threat to family well-being" (internal quotation marks and citations omitted)); ***Hawk v. Hawk***, 855 S.W.2d 573, 577 n.2 (Tenn. 1993) (noting that such stresses include those that arise from the public disclosure of the details of private, inter-generational disputes); ***cf.*** ***id.*** at 576 n.1 (suggesting that court-ordered grandparent visitation in a family where there is animosity between the parents and grandparents can intensify [*504] the animosity and, as such, can be contrary to the child's best interests).

Id. at 213; ***see also*** ***id.*** at 218 (Baer, J., concurring and dissenting) ("I agree with the majority that Subsection 5325(2) implicates parents' fundamental right to be free from litigation regarding their children, especially in light of the nature of child custody litigation and the negative effects it can have on children.").

Thus, Father has a fundamental constitutional right to parent Child. This includes the right to be free of custody litigation involving third parties. If we quash this

appeal and remand to the trial court, Father will be subjected to extensive litigation involving Appellees, including a custody hearing and a second appeal on the exact issue he now seeks to raise. Not only would Father [**13] incur a substantial financial burden as a result of this litigation, but he also could lose months of time caring for and bonding with Child as the custody hearing and appeals process drags on. Under the unique circumstances of this case, where Father was deprived of Child by a private adoption agency without the benefit of a hearing or other due process protections, this Court could not hope to fully vindicate or restore Father's rights by the time of his second appeal. We therefore conclude that the August 8, 2016 order satisfies all three prongs of the collateral order doctrine, and that Father's appeal is properly before us.

We may now turn our attention to the merits of Father's appeal. Father raises the following issues for our review.

> 1. Whether the trial court erred or abused its discretion when it overruled [Father's] preliminary objection pursuant *Pa.R.C.P. No. 1028(a)(5)* averring that [Appellees] lack standing for any form of custody and its conclusion that [Appellees] stand *in loco parentis* to [Child] despite lacking consent of the natural father, [Father?]
>
> 2. Whether the trial court erred or abused its discretion when it held that [Father] involuntarily or impliedly consented to *in loco parentis [**14]* status granted [Appellees] by the trial court of Centre County and failing to recognize that the consent of either parent may be withdrawn, terminating *in loco parentis* status[?]
>
> 3. The trial court erred or abused its discretion by concluding that *in loco parentis* status can be validly conferred by judicial error.

Father's Brief at 8-9. While Father asks us to consider three separate issues, his arguments with respect to each issue are essentially the same. Father argues that the trial court erred by denying his preliminary objections and granting Appellees *in loco parentis* standing to seek custody of Child.

"Threshold issues of standing are questions of law; thus, our standard of review is *de novo* and our scope of review is plenary." ***Rellick-Smith v. Rellick***, *2016 PA Super 184, 147 A.3d 897, 901 (Pa. Super. 2016)* (quoting ***Johnson v. American Standard***, *607 Pa. 492, 8 A.3d 318, 326 (Pa. 2010)*).

Generally, the *Child Custody Act* does not permit third parties to seek custody of a child contrary to the wishes of that child's parents. The Act provides several exceptions to this rule, which apply primarily to grandparents and great-grandparents. ***See*** *23 Pa.C.S.A. § 5324(3)*; *23 Pa.C.S.A. § 5325*. In fact, unless a person seeking custody is a parent, grandparent, or great-grandparent of the child, the Act allows for standing only if that person is "*in loco parentis*." *23 Pa.C.S.A. § 5324(2)*.

"The term *in loco [**15] parentis* literally means 'in the place of a parent.'" ***Peters v. Costello***, *586 Pa. 102, 891 A.2d 705, 710 [*505] (Pa. 2005)* (citing Black's Law Dictionary, 791 (7th Ed. 1991)). A person stands *in loco parentis* with respect to a child when he or she "assum[es] the obligations incident to the parental relationship without going through the formality of a legal adoption. The status of *in loco parentis* embodies two ideas; first, the assumption of a parental status, and, second, the discharge of parental duties." ***Id.*** (quoting ***T.B. v. L.R.M.***, *567 Pa. 222, 786 A.2d 913, 916-17 (Pa. 2001)*). Critical to our discussion here, "*in loco parentis* status cannot be achieved without the consent and knowledge of, and in disregard of[,] the wishes of a parent." ***E.W. v. T.S.***, *2007 PA Super 29, 916 A.2d 1197, 1205 (Pa. 2007)* (citing ***T.B., supra***).

Instantly, the trial court found that Appellees stand *in loco parentis* with respect to Child, because they have assumed parental status and discharged parental duties on Child's behalf since shortly after her birth. Trial Court Opinion, 8/8/16, 6-8. The court reasoned that Father gave his implied consent to Appellees' *in loco parentis* standing because he did not express interest in parenting Child until almost a month after being informed that she was residing with a prospective adoptive family. ***Id.*** at 8.

Father contends that the trial court erred because he did not expressly consent [**16] to Appellees' *in loco parentis* standing, and because implied consent is not permissible under Pennsylvania law. Father relies on ***B.A. v. E.E. ex rel. C.E.***, *559 Pa. 545, 741 A.2d 1227 (Pa. 1999)*. In that case, the subject child, M., was born on January 4, 1996, to two teenage parents. ***Id.*** *at 1228*. The day after M.'s birth, her mother, E., gave custody of M. to Genesis of Pittsburgh, an adoption agency. ***Id.*** Genesis placed M. with prospective adoptive parents and E. signed a consent to adoption form. ***Id.*** Genesis forwarded a similar consent to adoption form to M.'s father, A., but he refused to sign. ***Id.*** Subsequently, on February 26, 1996, A. and his mother filed a complaint

for primary physical custody of M. ***Id.*** M.'s prospective adoptive parents then filed a motion to intervene in the custody proceedings, which the trial court granted on the basis of their *in loco parentis* standing. ***Id.*** Following a custody hearing, the court awarded primary physical custody of M. to her prospective adoptive parents. ***Id.*** Father appealed the court's determination and this Court affirmed. ***Id.*** Our Supreme Court then reversed this Court, vacated the order granting primary physical custody to M.'s prospective adoptive parents, and remanded the matter for a new custody hearing. ***Id.*** *at 1229*. The [**17] Court reasoned as follows.

> Normally, a third party may challenge custody only through dependency proceedings. The *Juvenile Act*, which governs dependency proceedings, defines a dependent child, *inter alia*, as "A child who is without proper parental care or control, subsistence, education as required by law, or other care or control necessary for his physical, mental or emotional health, or morals." *42 Pa.C.S. § 6302*. In other words, in order for a third party to interfere in a natural parent's custody of his child, the third party would have to show in a dependency proceeding that the child is not properly cared for. If the third party were able to prevail on that issue, then the third party could intervene in a custody proceeding. As Superior Court stated in ***Cardamone v. Elshoff***, *442 Pa.Super. 263, 659 A.2d 575 (1995)*: "[U]nless the natural parents' prima facie right to custody is successfully overcome via the dependency proceedings, this court cannot confer standing upon third parties to interfere with the parent child relationship." *659 A.2d at 581*.
>
> An exception to this rule is that where the third parties stand *in loco parentis*, [*506] i.e., where the third parties "assumed obligations incident to the parental relationship," ***id.***, the third party may intervene in a custody proceeding. However, [**18] "a third party cannot place himself *in loco parentis* in defiance of the parents' wishes and the parent/child relationship." ***Gradwell v. Strausser***, *416 Pa.Super. 118, 610 A.2d 999, 1003 (1992)*. The record in this case establishes that A attempted to gain custody of his child from shortly after the child was born until the present. He opposes the adoption and he seeks custody of the child himself. It is plain that [the prospective adoptive parents] retain custody of his child in defiance of his wishes. The lower courts were in error, therefore, in conferring standing upon the prospective adoptive parents.

Id. *at 1228-29* (footnote omitted).

Appellees attempt to distinguish ***B.A.*** by citing ***In re C.M.S.***, *2005 PA Super 340, 884 A.2d 1284 (Pa. Super. 2005)*, *appeal denied*, *587 Pa. 705, 897 A.2d 1183 (Pa. 2006)*. In that case, the father, D.E.H., Jr., visited C.M.S. in the hospital on one occasion shortly after her birth, but otherwise made no effort to be involved in her life. ***Id.*** *at 1285*. Meanwhile, C.M.S.'s mother arranged for her adoption without D.E.H., Jr.'s, consent. ***Id.*** About a year later, C.M.S.'s prospective adoptive parents filed a petition to involuntary terminate D.E.H., Jr.'s, parental rights, which the trial court denied. ***Id.*** *at 1285*. The prospective adoptive parents appealed, and this Court reversed, concluding that the trial court abused its discretion by failing to terminate D.E.H., [**19] Jr.'s, parental rights pursuant to *23 Pa.C.S.A. § 2511(a)(1)* and *(6)*. ***Id.*** We then remanded the case for consideration of *23 Pa.C.S.A. § 2511(b)*. ***Id.*** *at 1286*. After remand, the court terminated D.E.H., Jr.'s, parental rights, and he appealed. ***Id.*** D.E.H., Jr., challenged the prospective adoptive parents' *in loco parentis* standing on the basis that he did not consent to their adoption of C.M.S. ***Id.*** *at 1288-89*. This Court concluded that D.E.H., Jr., could no longer challenge standing, because we "implicitly determined" that the prospective adoptive parents had standing during the first appeal, and the prospective adoptive parents' standing was now the law of the case.[8] ***Id.*** *at 1288*. In the alternative, this Court concluded that C.M.S.'s prospective adoptive parents had proper *in loco parentis* standing, because they assumed and discharged parental duties on behalf of C.M.S. for a year while D.E.H., Jr., did nothing. ***Id.*** *at 1289-90*. We explained that denying *in loco parentis* standing to the prospective adoptive parents "would require us to ignore not only the reality of this child's life, but also [D.E.H., Jr.'s,] failure to establish any sort of bond with his newborn child or to provide in any way for her care."[9] ***Id.*** *at 1289*.

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[8] This rationale was later called into question in ***In re Adoption of Z.S.H.G.***, *2011 PA Super 278, 34 A.3d 1283, 1288 n.4 (Pa. Super. 2011)*, *reargument denied* (Feb. 21, 2012).

[9] We relied on ***McDonel v. Sohn***, *2000 PA Super 342, 762 A.2d 1101 (Pa. Super. 2000)*, *appeal denied*, *566 Pa. 665, 782 A.2d 547 (Pa. 2001)*. In ***McDonel***, the appellant, Spangler, denied paternity and made little effort to be involved in the life of his daughter, C.S., for three and a half years. ***Id.*** *at 1103*. During that time, C.S. and her mother, Sohn, stayed frequently

[*507] After review, we agree with Father that the facts of ***B.A.*** are essentially identical to the facts of this case, and we see no reasonable basis upon which to distinguish them. While the trial court concluded that Father gave his implied consent to Appellees' *in loco parentis* standing, our research does not reveal that this Court, or our Supreme Court, has held that consent to *in loco parentis* standing can be implied. In ***C.M.S.***, this Court explained that D.E.H., Jr., demonstrated his consent by failing to be involved in C.M.S.'s life for a year. D.E.H., Jr.'s, consent was not implied; he acted in a manner consistent with consent. In contrast, the father in ***B.A.***, A., acted in a manner inconsistent with consent by filing for custody of M. less than two months after her birth. Here, Father also acted in a manner inconsistent with consent, by promptly informing BCS that he did not want Child to be adopted less than a month after being notified that she was residing with prospective adoptive parents, and by filing a custody complaint shortly thereafter. We therefore conclude that Father did not consent to Appellees attaining *in loco parentis* status with respect [**21] to Child, and that the trial court erred by denying Father's preliminary objections.

In reaching this conclusion, we stress once again that Father has a fundamental constitutional right to care for Child, and that he is presumed to be a fit parent. ***Hiller***, *904 A.2d at 885*; ***D.P.***, *146 A.3d at 214*. If a parent is unfit, this Commonwealth has a well-established system for adjudicating children dependent, terminating parental rights, and placing children in pre-adoptive homes. However, these remedies are available only if a parent is provided essential due process protections, including notice, a hearing, and proof by clear and convincing evidence. Here, we note with disapproval, Father has been deprived of Child without any evidence in the record that he is an unfit parent, and without the benefit of due process protections.

BCS's decision to place Child for adoption without Father's consent is particularly troubling. Mother first contacted BCS in March 2015. BCS then made no effort at all to contact Father for approximately four months, until July 29, 2015. By the time BCS sent letters to Father on September 16, 2015, Child was already residing with Appellees. Because of BCS's inaction, Father has now spent well over a year fighting [**22] for custody of Child. In addition, Appellees have spent over a year and a half hoping to adopt Child, only to have their hopes dashed by this decision. While we are sympathetic to Appellees, who have no doubt expended immense time and effort caring for Child and ensuring her well-being during this difficult process, our sympathies must give way to Father's fundamental constitutional rights.

Based on the foregoing, we conclude that the trial court erred by denying Father's preliminary objections and granting Appellees *in loco parentis* standing on an implied basis with respect to Child. We therefore vacate the August 8, 2016 order, and we remand this matter to the court to enter an order granting Father's preliminary objections, and to conduct further custody proceedings consistent with this [*508] opinion.[10]

Order vacated. Case remanded for further proceedings consistent with this Opinion. Jurisdiction relinquished.

Judgment Entered.

Date: 3/6/2017

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with C.S.'s aunt and uncle, the McDonels. ***Id.*** Sohn also executed a power of attorney, granting "*in loco parentis* powers" to the McDonels. ***Id.*** *at 1105*. Spangler eventually filed for partial physical custody of C.S., and visited with her one weekend per month. ***Id.*** *at 1103*. About a year and half later, Sohn committed suicide. ***Id.*** While Sohn was in the hospital on life support, the McDonels filed for custody. ***Id.*** At the conclusion of the custody proceedings, the trial court awarded primary physical custody and shared legal custody of C.S. to the McDonels. ***Id.*** *at 1104*. Spangler argued on appeal that the McDonels lacked *in loco parentis [**20]* standing, because he did not consent to their role in C.S.'s life. ***Id.*** *at 1106*. This Court rejected Spangler's argument, reasoning that a parent cannot claim that a party is acting in *loco parentis* in defiance of his or her wishes unless that parent's actions "necessarily would conflict with a finding that a third party achieved *in loco parentis* status. Here, Spangler initially denied paternity, had little contact with C.S., and no contact with the McDonels and so could not have been an obstruction to the McDonels' developing relationship with C.S." ***Id.*** (footnote omitted).

[10] The remaining parties in this matter are Father and Mother. Mother did not file a separate brief in connection with this appeal, but joined the brief filed by Appellees. It is not clear what her position is in terms of sharing custody of Child with Father. When addressing custody on remand, the trial court should be sure to consider Mother's rights.

K.E.M., Appellant

v.

P.C.S., Appellee.

Supreme Court of Pennsylvania.

Submitted Sept. 2, 2011.
Decided Feb. 21, 2012.

Background: Mother filed complaint against alleged biological father for child support. The Court of Common Pleas, York County, Domestic Relations Division, No. 1174 SA 2010, Maria Musti Cook, J., dismissed support action upon a determination that mother's husband should be regarded as child's father via paternity by estoppel. Mother appealed. The Superior Court, No. 1566 MDA 2010, affirmed. Mother appealed.

Holdings: The Supreme Court, No. 67 MAP 2011, Saylor, J., held that:

(1) upon claim of paternity by estoppel, trial court was required to determine child's best interests, considering the harm that would befall child if mother's husband's parental status were to be disestablished, and

(2) paternity by estoppel applies only where it is in the best interests of the child.

Reversed and remanded.

Orie Melvin, J., concurred and filed opinion.

Baer, J., dissented and filed opinion, in which McCaffery, J., joined.

1. Children Out-of-Wedlock ⚿33

Upon claim of paternity by estoppel raised in defense to married mother's action for child support against a purported biological father who was not mother's husband, trial court was required to determine child's best interests, considering the harm that would befall child if mother's husband's parental status were to be disestablished.

2. Children Out-of-Wedlock ⚿3

Presumption of paternity is limited in application to situations in which the underlying policies will be advanced, centrally, where there is an intact marriage to be protected.

3. Children Out-of-Wedlock ⚿14

Absent any overriding equities, the law cannot permit a party to renounce even an assumed duty of parentage when by doing so the innocent child would be victimized; while the law cannot prohibit the putative father from informing the child of their true nonbiological relationship, it can prohibit him from employing the sanctions of the law to avoid the obligations which their assumed relationship would otherwise impose.

4. Children Out-of-Wedlock ⚿14

Generally, the best interests of the child remains the proper, overarching litmus in cases involving claims of paternity by estoppel.

5. Children Out-of-Wedlock ⚿14

The determination of paternity by estoppel should be better informed according to the actual best interests of the child, rather than by rote pronouncements grounded merely on the longevity of abstractly portrayed, and perhaps largely ostensible, parental relationships.

6. Children Out-of-Wedlock ⚿33

Absent undue hardship or impossibility, a court should not dismiss a child support claim against a purported biological father based on an estoppel theory vesting legal parenthood in another man without the latter being brought before the court at least as a witness.

7. Infants ⚿1238(9)

The common pleas court has the authority to appoint a guardian ad litem to advocate the child's best interests in concrete terms in an action for child support involving a claim of paternity by estoppel.

8. Children Out-of-Wedlock ⚿58

The legal fictions perpetuated through the years, including the proposition that genetic testing is irrelevant in certain paternity-related matters, retain their greatest force where there is truly an intact family attempting to defend itself against third-party intervention; however, in cases involving separation and divorce, the Uniform Act on Blood Tests to Determine Paternity is to be applied on its terms insofar as it authorizes testing. 23 Pa. C.S.A. § 5104.

9. Infants ⚿1244

Notwithstanding claim of paternity by estoppel raised in defense to married mother's action for child support against a purported biological father who was not mother's husband, identification of child's biological father was a relevant fact for purposes of determining who should pay for the services of a guardian ad litem to vindicate child's best interests. 23 Pa. C.S.A. § 5104.

10. Children Out-of-Wedlock ⚿1, 33

In actions for child support involving children of broken marriages who may never enjoy a supportive relationship with either mother's husband or their biological father, the responsibility for fatherhood should lie with the biological father; to the degree the equities come into play upon a claim of paternity by estoppel, after consideration of the child's best interests, continuing deception potentially relevant to a husband's continuance in a marriage may be a relevant factor.

11. Children Out-of-Wedlock ⚿33

Paternity by estoppel continues to pertain in actions for child support in Pennsylvania, but it will apply only where it can be shown, on a developed record, that it is in the best interests of the involved child.

Jeffrey Charles Marshall, York County Domestic Relations Office, York, for K.E.M.

Kathleen Jo Prendergast, for P.C.S.

BEFORE: CASTILLE, C.J., SAYLOR, EAKIN, BAER, TODD, McCAFFERY, ORIE MELVIN, JJ.

OPINION

Justice SAYLOR.

In this appeal arising in the child support setting, we consider the application of paternity by estoppel.

Appellant, the mother of G.L.M., filed a complaint seeking support from Appellee, whom she believes to be G.L.M.'s biological father. Appellee responded with a motion to dismiss, relying upon Mother's intact marriage to H.M.M. at the time of G.L.M.'s birth as establishing a presumption of paternity, *see Brinkley v. King,* 549 Pa. 241, 248–50, 701 A.2d 176, 179–80 (1997) (plurality) (explaining that, "generally, a child conceived or born during the marriage is presumed to be the child of the marriage"), and on H.M.M.'s assumption of parental responsibilities as implicating paternity by estoppel, *see Fish v. Behers,* 559 Pa. 523, 528, 741 A.2d 721, 723 (1999) ("A party may be estopped from denying the husband's paternity of a child born during a marriage if either the husband or the wife holds the child out to be the child of the marriage."). *See generally*

Brinkley, 549 Pa. at 249, 701 A.2d at 180 ("The presumption of paternity and the doctrine of estoppel ... embody the two great fictions of the law of paternity: the presumption of paternity embodies the fiction that regardless of biology, the married people to whom the child was born are the parents; and the doctrine of estoppel embodies the fiction that, regardless of biology, in the absence of a marriage, the person who has cared for the child is the parent.").

The common pleas court conducted a hearing on the motion. Appellee offered evidence that, although H.M.M. is not identified as the father on G.L.M.'s birth certificate, baptismal records so indicate. *See* N.T., Aug. 5, 2010, at 6–7. Furthermore, Appellee's counsel adduced brief testimony from Appellant to the effect that, while she and H.M.M. were separated as of the time of the hearing, neither had commenced divorce proceedings; their last tax returns were filed jointly, with G.L.M. claimed as a dependent; and both contributed to G.L.M.'s upbringing. *See id.* at 9–10.

On her own attorney's examination, Appellant testified that she married H.M.M. in 1997, and the couple had two daughters. *See id.* at 11. Appellant discussed her intimate, extramarital affair with Appellee during her marriage and at the point in time at which G.L.M. was conceived. *See id.* at 12–14. Appellant stated that she eventually advised H.M.M. of her conduct, and H.M.M. did not wish to be identified as the father on the birth certificate. *See id.* at 15, 19–20. According to Appellant's evidence, genetic testing was performed, which excluded H.M.M. as the biological father. *See id.* at 16–17 & Ex. R–1. After she received the results, Appellant testified, she also asked Appellee to submit to testing, but he refused, although he acknowledged G.L.M. as his son. *See id.* at 18, 29. Appellant explained that, throughout the four years of G.L.M.'s life, Appellee had periodically undertaken some degree of involvement in his life, giving Appellant money to buy Christmas presents; providing unsigned cards and some gifts of his own; visiting parks and playgrounds; and supplying a cell phone to assure Appellant's and G.L.M.'s safety. *See id.* at 20–24, 28. She also testified that G.L.M. referred to both H.M.M. and Appellee as "Daddy," although Appellee discouraged the latter from doing so. *See id.* at 30, 34. She and Appellee, Appellant related, discussed plans to establish a household together, but eventually Appellee ended the relationship. *See id.* at 25–27. In roughly the same time period, H.M.M. separated himself from Appellant. *See id.* at 9–10, 24.

On redirect examination, Appellee's attorney elicited additional testimony concerning H.M.M.'s pre-separation involvement in G.L.M.'s life, including his performance of a fatherly role and residence with the family until June of 2010. *See id.* at 33–34.

After taking the matter under advisement, the common pleas court granted Appellee's motion to dismiss the support action against Appellee, finding that the presumption of paternity was controlling and, alternatively, that H.M.M. should be regarded as G.L.M.'s father via paternity by estoppel. *See K.E.M. v. P.C.S.,* No. 01174SA2010, *slip op.* at 6, 9 (C.P.York, Aug. 25, 2010). As to the former theory, the court observed that the presumption of paternity is considered to be "one of the strongest presumptions within our law." *Brinkley,* 549 Pa. at 246, 701 A.2d at 179 (quoting *John M. v. Paula T.,* 524 Pa. 306, 322, 571 A.2d 1380, 1388 (1990) (Nix, C.J., concurring)). The court elaborated that, under the presumption, a party who de-

nies paternity of a child born during an intact marriage has the burden to show by clear and convincing evidence that the presumptive father lacked access to the mother or was incapable of procreation. *See id.* at 248, 701 A.2d at 179. Additionally, the court explained that the policy rationale supporting the presumption is the concern that intact marriages should not be undermined by disputes over parentage. *See id.* at 249, 701 A.2d at 180.

The common pleas court recognized that such policy justification does not pertain where there is no intact marriage. *See K.E.M.,* No. 01174SA2010, *slip op.* at 4–5 ("Where the family unit no longer exists, it defies both logic and fairness to apply equitable principles to perpetuate a pretense.") (citing, *inter alia, Doran v. Doran,* 820 A.2d 1279, 1283 (Pa.Super.2003)). Nevertheless, the court highlighted, this determination is one of fact, *see Vargo v. Schwartz,* 940 A.2d 459, 467 (Pa.Super.2007), and, in the circumstances, it considered Appellant's and H.M.M.'s marriage to be an intact one. Its rationale, in this respect, was as follows:

> Over the course of the extensive testimony by [Appellant], we observed that she possesses a great deal of indecision regarding her marriage. We are not convinced that the marriage between [Appellant] and [H.M.M.] is irretrievably broken. We believe reconciliation is possible, particularly in light of the fact there is no divorce proceeding pending. Because the couple is merely separated, the family remains somewhat intact and equitable principles are applicable.
>
> While still applicable, the presumption of paternity has been destroyed in the minds of the parties by the knowledge of the true biological father. There is no dispute that [H.M.M.] did not father the child. [Appellant] testified at hearing that during the pregnancy, she suspected the child was not her husband's, as she was intimate with [Appellee] around the time of conception. Subsequently, she had a DNA test done. The DNA test showed unequivocally, that husband was not the child's father. While presumption of paternity is applicable, we also determine that [Appellant] is equitably estopped from pursuing support/paternity against [Appellee], the biological father.

K.E.M., No. 01174SA2010, *slip op.* at 5–6.

As to paternity by estoppel, the common pleas court explained that the doctrine embodies a legal determination that one may be deemed a parent based on his holding himself out as such. *See Jones v. Trojak,* 535 Pa. 95, 105, 634 A.2d 201, 206 (1993) (indicating that "the law will not permit a person in these situations to challenge the status which he or she has previously accepted"); *see also Fish,* 559 Pa. at 530, 741 A.2d at 724 (stating that "children should be secure in knowing who their parents are[;] if a certain person has acted as the parent and bonded with the child, the child should not be required to suffer the potentially damaging trauma that may come from being told that the father he has known all his life is not in fact his father." (quoting *Brinkley,* 549 Pa. at 249–50, 701 A.2d at 180)). The court also sought to give effect to the decisions of this Court setting up the presumption of paternity and paternity by estoppel as thresholds to a court directive for genetic testing. *See Jones,* 535 Pa. at 104–05, 634 A.2d at 206 ("We adopt the approach taken by the Superior Court in *Christianson v. Ely,* [390 Pa.Super. 398, 568 A.2d 961 (1990)] which mandates that before an order for a blood test is appropriate to determine paternity the actual relationship of the presumptive father and natural mother must be determined."); *id.* at 105, 634 A.2d at 206 ("These estoppel cases indicate that

where the principle is operative, blood tests may well be irrelevant[.]").[1]

Based on the hearing record, the common pleas court determined that H.M.M. had held himself out as G.L.M.'s father. It continued:

> Even after learning that he was not the biological father, [H.M.M.] continued to provide emotional and financial support for the child as well as perform all familial duties as a father would. [H.M.M.] also claimed the child as a dependent every year for tax purposes and was presented at the child's baptism as the child's father. Although the two older daughters from the marriage were well aware that he had not fathered the child, [H.M.M.] declared the child to be his own to the general public.

K.E.M., No. 01174SA2010, *slip op.* at 9.

Appellant filed a notice of appeal, and the Superior Court affirmed in a divided, memorandum opinion. Initially, the majority differed with the common pleas court's conclusion that the presumption of paternity applied, reasoning that it is inapplicable in circumstances in which it would not protect a marriage "from the effects of disputed paternity." *K.E.M. v. P.C.S.,* No. 1566 MDA 2010, *slip op.* at 5 (Pa.Super. Apr. 21, 2011) (quoting *B.S. v. T.M.,* 782 A.2d 1031, 1036 (Pa.Super.2001) (determining that the presumption did not apply where a married couple had reconciled "with full knowledge of all the facts")); *accord Lynn v. Powell,* 809 A.2d 927, 930 (Pa.Super.2002) (holding that the presumption did not apply where the husband knew the child had been conceived as a result of his wife's extramarital affair but remained married to her). Based on these decisions, the majority concluded that "the presumption is not applicable because it would not serve to protect the marriage where [H.M.M.] has full knowledge that he is not the child's biological father. Therefore, should the marriage survive, it will do so in spite of the parentage issue." *K.E.M.,* No. 1566 MDA 2010, *slip op.* at 6 (footnote omitted). The majority, however, deemed the error it found in the common pleas court's application of the presumption of paternity to be harmless, since it agreed with that court that paternity by estoppel applied. Quoting from *Lynn,* the majority explained:

> We do not allow a person to deny "parentage" of a child, regardless of biological status, if that person holds the child out as his own and provides support. When such circumstances exist, we will also not allow a child's mother to sue a third party for support based on biological status. Plainly, the law does not allow a person to challenge his role as a parent once he has accepted it, even with contrary DNA and blood tests.

Id. at 7 (quoting *Lynn,* 809 A.2d at 929–30 (citations omitted)). In barring Appellant from pursuing support against Appellee, the Superior Court majority relied on the factual circumstances reflected above.

President Judge Emeritus McEwen dissented, taking the position that the matter was controlled by *Vargo,* 940 A.2d at 470–71 (upholding a trial court determination that paternity by estoppel did not apply). The dissent also echoed the sentiments of the *Vargo* panel, as reflected in the majority opinion authored by Judge (now-Justice) McCaffery, to the effect that the common law legal fictions being applied in this sensitive area of the law should be modified to allow for fully informed judicial

1. Thus, in certain paternity-related matters, these decisions marginalized the application of the statutory scheme for genetic testing reposited in the Uniform Act on Blood Tests to Determine Paternity, Act of Dec. 19, 1990, P.L. 1240, No. 206 § 2 (codified at 23 Pa.C.S. § 5104).

decision making grounded in the best interests of the child. *See K.E.M.,* No. 1566 MDA 2010, *slip op.* at 1–2 (McEwen, P.J.E., dissenting) ("A caring and just society should not be seen to condone or even permit the fathering of a child without the presumptive responsibility to contribute to the care of that child, and where the application of the doctrine of paternity by estoppel interferes with that responsibility, it would wisely be abrogated."); *cf. Vargo,* 940 A.2d at 467–68 n. 6 ("The difficulty in determining the status of the Vargo marriage—and the enormous ramifications of that factual determination for the parties as well as for the young children involved in this case—prompt us to add our voice to earlier calls for modification of Pennsylvania law to permit DNA testing as an alternative avenue for rebutting the presumption of paternity.") (citing, *inter alia, Brinkley,* 549 Pa. at 258–67, 701 A.2d at 185–89 (Newman, J., dissenting)).

[1] We allowed appeal to consider the application of the doctrine of paternity by estoppel in this case, and, more broadly, its continuing application as a common law principle. In terms of the narrower (former) question, our review focuses on whether the common pleas court abused its discretion. *See Maher v. Maher,* 575 Pa. 181, 184, 835 A.2d 1281, 1283 (2003) (quoting *Humphreys v. DeRoss,* 567 Pa. 614, 617, 790 A.2d 281, 283 (2002)). The broader (latter) question is one of law, as to which our review is plenary.

Appellant argues that paternity by estoppel should not have been applied to defeat her child support claim, because G.L.M. already knows Appellee as his father and, therefore, there is no concern over deleterious impact from a judicial determination to such effect. *Accord Wieland v. Wieland,* 948 A.2d 863, 870 (Pa.Super.2008) ("Because evidence has proven that [a man] is [a child's] biological father, but, most important, because [the child] has been informed of this fact, this Court must bear in mind that the best interests of the child is the overriding policy."). Appellant directly questions the application of a legal fiction in a circumstance in which all parties involved fully apprehend the true state of affairs, a circumstance which is becoming increasingly common. *See* Brief for Appellant at 27 ("Mothers and putative fathers in today's society are free to conduct genetic testing outside of any judicial proceeding and are doing so based on increased availability and decrease in cost.").

It is also her position that Appellee acted as G.L.M.'s parent based upon the evidence of periodic visits, gifts, and cards. Furthermore, Appellant asserts, Appellee does not have clean hands, since he encouraged and participated in the relationship as the father of G.L.M. and Appellant's paramour. In this regard, she references *Kohler v. Bleem,* 439 Pa.Super. 385, 399–400, 654 A.2d 569, 577 (1995) (holding that a biological father was "precluded from utilizing equitable principles," *inter alia,* in light of his participation in a subterfuge). Appellant distinguishes *Fish,* in which paternity by estoppel applied to the advantage of a biological father defending against a support claim, *see Fish,* 559 Pa. at 529–30, 741 A.2d at 723–24, on the basis that she felt she had no choice in continuing to reside with her husband. Brief for Appellant at 17 (stating that "[Appellee] refused to commit to a relationship with [Appellant] and the child and she had no means of supporting herself and the child, independently"). According to Appellant, application of paternity by estoppel in the present case would result in the child being left fatherless and no father being responsible for the support of

the child.[2]

Further, Appellant specifically asks that Pennsylvania law be modified to consider genetic testing, along with other factors, in determining paternity on a case-by-case basis. She explains that an inflexible rule perpetuating a non-factual portrayal of paternity will not always best serve the best interests of children. *See, e.g., id.* at 10 ("In today's society, there is no assurance that past conduct as a parental figure to a child will continue into the future based upon a judicial finding that is know[n] to be a fiction by the parties and eventually the child."). Additionally, Appellant expresses concern that a husband should not be punished for acting responsibly in relation to his wife's children, *see id.* at 16 (citing *Vargo,* 940 A.2d at 470) ("We do not read our law to require acts that place children at risk or in need of life's basic necessities in order to reinforce the legal point that one is not financially responsible for those children."), and contends that estoppel should not serve as a shield for biological fathers to insulate themselves from the responsibility to support their children, financially at the very least, *see id.* at 18 (citing *Fish,* 559 Pa. at 531, 741 A.2d at 725 (Nigro, J., dissenting)); *accord DiPaolo v. Cugini,* 811 A.2d 1053, 1057 (Pa.Super.2002) (Hudock, J., dissenting). According to Appellant, placing the responsibility for financial support upon biological fathers would provide a consistent, readily identifiable source of sustenance, regardless of the relationship a child may enjoy with others.

Appellant also observes that important medical information accompanies knowledge of one's biological origins. More generally, she urges that legal theories which have arisen in very different temporal and social contexts should not perpetually impede the law's adaptation to modern conditions, relying on the able expressions of former Justices Nigro and Newman to the effect that the Court should move to the more flexible, case specific approach to paternity issues. *See* Brief for Appellant at 22–24 (citing *Fish,* 559 Pa. at 530–32, 741 A.2d at 724–25) (Nigro, J., and Newman, J., dissenting separately), *Strauser v. Stahr,* 556 Pa. 83, 93–97, 726 A.2d 1052, 1056–58 (1999) (Nigro, J., and Newman, J., dissenting separately), and *Brinkley,* 549 Pa. at 252–69, 701 A.2d at 182–90 (Nigro, J., and Newman, J., dissenting separately). Appellant concludes with the expression that this Court should, at a minimum, modify paternity by estoppel to permit the admission and consideration of genetic testing in disputed paternity proceedings, along with other relevant factors. She also suggests that any finding of paternity for purposes of support should be limited to such context and should not impact one's ability to seek custody or visitation. *Cf. Wieland,* 948 A.2d at 870.

Appellee, on the other hand, focuses on H.M.M.'s continued participation in the marriage and fatherly relationship with G.L.M. for the first four years of his life. He regards his own involvement as insignificant, both standing on its own and, particularly, by way of comparison to H.M.M.'s. *See, e.g.,* Brief for Appellee at 10–11 ("While [Appellant] seems to wish for greater contact than there was, the truth is that teenage babysitters typically discharge more parental duties than [Appellee] did over the course of the last four years relative to this child.").

In discussing policy concerns, Appellee touches on the historical perspective, in which courts maintained substantial concern over the stigma associated with legiti-

2. Appellant's argument, in this respect, does not account for the possibility of her asserting paternity by estoppel in a support action against H.M.M.

macy; there was a prevailing desire to counterbalance the possibilities for legal and social discrimination; and reliable genetic testing was unavailable. *See id.* at 12 ("The advent of paternity testing challenged the underpinnings of paternity law, which maintained a strong presumption in favor of a mother's husband."). *See generally John M.*, 524 Pa. at 312 n. 2, 571 A.2d at 1383 n. 2 (offering a historical perspective). Appellee points to a "flurry of paternity cases in Pennsylvania in the late 1900s and early 2000s," in which the courts attempted to reconcile long-established precedents in the face of scientific and social changes. Brief for Appellee at 12. In this regard, he relates that "[r]easonable minds have disagreed as to the weight that should be given to precedent in the face of this changing technology, resulting in frequent dissenting opinions urging more reliance on paternity testing." *Id.* at 12–13. He also acknowledges legislative forays into the arena, such as the Uniform Act On Blood Tests To Determine Paternity, *see supra* note 1, but couches these statutes as "sparse and outdated." Brief for Appellee at 12 (explaining that, "[w]hile early cases such as *Brinkley* and the relevant statute refer to paternity testing as a 'blood test,' the tests are now usually given as a mouth swab test and are essentially painless." (citation omitted)).

Appellee believes the present approach to paternity by estoppel, as exemplified by *Brinkley* and *Fish*, remains appropriate, because it recognizes the importance, in a child's life, of a "psychological father" who has provided nurturing and life's necessities. *Id.* at 21. He also suggests that the estoppel doctrine establishes a salutary incentive that, if genetic testing is to occur, it should occur early in a child's life in circumstances in which paternity may be unclear. While recognizing the best interests of the child as the "overriding principle" in the support arena, Appellee believes the estoppel principle is best suited to advance such interests. *See id.* at 10; *see also id.* at 22 (arguing that "paternity by estoppel should survive because it is in the best interests of children to hold adults accountable when, through their action or inaction, they allow or encourage them to bond with a psychological father"). Along these lines, Appellee quotes this Court's observation from *Fish* relative to the husband and child involved in the case:

> The father-son relationship with appellant's husband is the only such relationship this child has known. The alternative—forcing the child into a relationship with appellee, a man whom he does not know—is not in the best interests of this child.

Brief for Appellee at 10 (quoting *Fish*, 559 Pa. at 529, 741 A.2d at 724).

Appellee observes a trend in the decisional law to narrow the concept of an "intact marriage" and, correspondingly, the application of the presumption of paternity. *See, e.g., Fish*, 559 Pa. at 528, 741 A.2d at 723 (explaining that the presumption of paternity no longer applies in the context of non-intact marriages). He explains that the weakening of the presumption has the effect of heightening the importance of the paternity by estoppel, which is the remaining vehicle by which a "psychological father" may be recognized as a legal parent in paternity matters.

Furthermore, Appellee advances a sort of an equal-protection overlay relative to the rights and interests of husbands and third-party biological fathers. *See, e.g.*, Brief for Appellee at 16 ("The court should not block fathers from asserting their rights through the fiction of an 'intact marriage' while expanding the rights of mothers to assert rights against fathers any time they please by crumbling the underpinnings of paternity by estoppel."). Fundamentally, he believes the historical

underpinnings of paternity by estoppel remain sound. *See, e.g., id.* at 18 ("[W]hen the parties allow or encourage a bond creating a psychological father, particularly in the mother's husband, by their actions or inactions, then all parties should be estopped from disturbing that bond."). Finally, Appellee offers a detailed proposal to overhaul the presumption of legitimacy and the doctrine of paternity by estoppel.[3]

[2] At the outset, we clarify what is, and is not, before the Court. The allocatur grant order squarely concerns paternity by estoppel, not the presumption of paternity. *See K.E.M. v. P.C.S.*, —— Pa. ——, 23 A.3d 1050 (2011) (*per curiam*). While it would be ideal if a comprehensive scheme for paternity determinations and attendant support obligations were set out in one place, this simply is not the nature of common law judicial decision making.[4] As to the presumption of paternity, we note only that recent Pennsylvania decisions have relegated it to a substantially

3. Specifically, Appellee posits:

> The husband of the mother is presumed to be the father of the child. However, if there is some question of paternity, then the mother must inform at least her husband so that she is not engaging in fraud or misrepresentation if her husband is put on the birth certificate. Paternity testing should then be requested at the hospital at the time of the birth of the child. The technology has advanced to the point that those types of tests should become routine and timely. If the mother's husband makes an informed decision to be named as the father on the birth certificate, then he has, in essence, adopted the child as his own regardless of DNA, and that decision cannot be disturbed by any putative fathers outside the marriage. An informed decision to list the husband as the father on the birth certificate gives the couple a definitive way to promote the rationale currently supported by the current ''intact marriage'' doctrine while discouraging mothers from engaging in fraud. If however, the husband chooses not to be listed as the father on the birth certificate, then mother and her husband should have a limited period of time, perhaps a year from the birth of the child, to initiate any action against a third party putative father. Similarly, a putative father would have the same period of time from when he knew or should have known that he was a putative father in order to assert his rights in any case where the mother's husband is not listed as the father on the child's birth certificate. If no party takes legal action in the specified time frame, then, in essence, a de facto adoption has occurred by Mother's husband, and paternity by estoppel applies.
>
> Brief for Appellee at 18–19; *id.* at 22 (''[P]aternity by estoppel should survive because it is in the best interests of children to hold adults accountable when, through their actions or inaction, they allow or encourage them to bond with a psychological father, regardless of biology.'').

4. Our common-law decisions are grounded in records of individual cases and the advocacy by the parties shaped by those records. Unlike the legislative process, the adjudicatory process is structured to cast a narrow focus on matters framed by litigants before the Court in a highly directed fashion. The broader tools available to the legislative branch in making social policy judgments, including the availability of comprehensive investigations, are discussed in *Pegram v. Herdrich*, 530 U.S. 211, 221–22, 120 S.Ct. 2143, 2150, 147 L.Ed.2d 164 (2000).

Certainly, the provision of guidance in this substantive area of the law is within the primary prerogative of the General Assembly, subject only to constitutional limitations. Notably, the Legislature, at least in the past, has actively considered the possibility for comprehensive treatment. *See generally* Jacinta M. Testa, *Finishing Off Forced Fatherhood: Does it Really Matter if Blood or DNA Evidence Can Rebut the Presumption of Paternity?*, 108 PENN. ST. L.REV. 1295, 1297 n. 11, 1311–13 & nn. 152–167 (2004) (collecting references to proposed legislation on the subject). It is also worth noting the various sources of model legislation which provide a platform for discussion, at the very least. *See, e.g.*, NAT'L CONFERENCE ON UNIFORM STATE LAWS, UNIFORM PARENTAGE ACT (2002); ALI, PRINCIPLES OF THE LAW OF FAMILY DISSOLUTION: ANALYSIS AND RECOMMENDATIONS (2002).

more limited role, by narrowing its application to situations in which the underlying policies will be advanced (centrally, where there is an intact marriage to be protected). *See Fish*, 559 Pa. at 528, 741 A.2d at 723. *See generally Godin v. Godin*, 168 Vt. 514, 725 A.2d 904, 909 (1998) ("Protecting innocent children from the social burdens of illegitimacy, ensuring their financial and emotional security, and ultimately preserving the stability of the family unit all contributed to the origins of the parental presumption, and all help to explain its enduring power today."). As Appellee also observes, this does increase the relative importance of paternity by estoppel in the support arena.

Second, the positions of Justices and judges favoring an enhanced role for genetic testing may have more limited relevance in the paternity by estoppel setting (as contrasted with the presumption of paternity). In the estoppel cases, a legal determination is being made that it is in the best interests of the child to continue to recognize the husband as the father. *Cf.* June Carbone & Naomi Cahn, *Marriage, Parentage, and Child Support*, 45 FAM. L.Q. 219, 229–30 (2011) ("[T]he estoppel cases more directly address the circumstances in which a functional parent may be treated as the legal father without a biological tie."). In this case for instance, at least the common pleas court certainly believed the evidence established that Appellee was G.L.M.'s biological father (without the necessity of a confirmatory genetic test), but it deemed the estoppel theory controlling nonetheless. *See K.E.M.*, No. 01174SA2010, *slip op.* at 6 (referring to Appellee as "the biological father").[5]

[3, 4] Third, we believe there remains a role for paternity by estoppel in the Pennsylvania common law, in the absence of definitive legislative involvement.[6] We recognize the intransigent difficulties in this area of the law involving social, moral, and very personal interests. *See, e.g.*, David D. Meyer, *Parenthood in a Time of Transition: Tensions Between Legal, Biological, and Social Conceptions of Parenthood*, 54 AM. J. COMP. L. 125, 137 (2006) ("The law is clearly not of one mind when it comes to weighing the respective claims of blood, marriage, caregiving, and voluntary assumption of parental duty in defining the basis of parenthood."). Nevertheless, on the topic, subject to modest qualification, we join the sentiment expressed in an opinion authored by the late, Honorable William F. Cercone, as follows:

> Absent any overriding equities in favor of the putative father, such as fraud, the law cannot permit a party to renounce even an assumed duty of parentage when by doing so, the innocent child would be victimized. Relying upon the representation of the parental relationship, a child naturally and nor-

5. This is not to say that a definitive, scientifically-based identification of the biological father is necessarily irrelevant. Presently, we merely note that much of the discussion in the dissenting expressions of Justices in past decisions was directed more to the presumption of paternity than to paternity by estoppel.

6. Notably, the American Law Institute's Principles of Family Dissolution endorses the application of paternity by estoppel to a person who has "lived with the child since the child's birth, holding out and accepting full and permanent responsibilities as parent, as part of a prior co-parenting arrangement with the child's legal parent . . . to raise a child together each with full parental rights and responsibilities, when the court finds that recognition of the individual as a parent is in the child's best interests . . . ." ALI, Principles of the Law of Family Dissolution: Analysis and Recommendations § 2.03(1)(b)(iii) (2002).

> mally extends his love and affection to the putative parent. The representation of parentage inevitably obscures the identity and whereabouts of the natural father, so that the child will be denied the love, affection and support of the natural father. As time wears on, the fiction of parentage reduces the likelihood that the child will ever have the opportunity of knowing or receiving the love of his natural father. While the law cannot prohibit the putative father from informing the child of their true relationship, it can prohibit him from employing the sanctions of the law to avoid the obligations which their assumed relationship would otherwise impose.

Commonwealth ex rel. Gonzalez v. Andreas, 245 Pa.Super. 307, 312, 369 A.2d 416, 419 (1976).[7] The operative language of this passage centers on the best interests of the child, and we are of the firm belief—in terms of common law decision making—that this remains the proper, overarching litmus, at least in the wider range of cases.

Undeniably, while perhaps children of broken homes have been freed from some of the stigma of previous social environments, they still face significant challenges. From the perspective of one pair of commentators:

> Marriage once served as a system designed to channel childrearing into two-parent families and keep it there. Within this system, the marital presumption discouraged efforts to inquire too closely into the circumstances that might rebut a husband's paternity and the stigma against nonmarital births.... Today, the messy facts of biology are only too plain to see. Forty-one percent of American births are nonmarital and may give rise to fights over parentage and support. Americans lead the world in family instability, cohabiting, splitting, marrying, and divorcing, and, as a consequence, involve a host of unmarried parents, stepparents, and others in children's lives to a greater degree than in most of the rest of the developed world. And almost every parent who chooses to do so can discover the truth of biological parenthood, whether or not a court choses to admit the evidence.

June Carbone & Naomi Cahn, *Marriage, Parentage, and Child Support,* 45 FAM. L.Q. at 219 (footnotes omitted).

Even in the landscape of modern science, Pennsylvania courts have remained reluctant to abandon wholesale the common law presumptions and dictates, as they reflect ideals, aspirations, and man-

> While some individuals are innocent victims of deceptive partners, adults are aware of the high incidence of infidelity and only they, not the children, are able to act to ensure that the biological ties they may deem essential are present.... The law should discourage adults from treating children they have parented as expendable when their adult relationships fall apart. It is the adults who can and should absorb the pain of betrayal rather than inflict additional betrayal on the involved children.

Theresa Glennon, *Expendable Children: Defining Belonging in a Broken World,* 8 DUKE J. GENDER L. & POL'Y 269, 281–82 (2001).

7. In terms of the qualification, a typical fraud scenario (in which a husband is deluded into believing that a child is his own issue) is not before us, since H.M.M. was advised of the contrary possibility at or before G.L.M.'s birth. Thus, the strongest case for "overriding equities" is not present (albeit there may be some relevance to Appellant's and Appellee's continuance of the extramarital relationship into the ensuing years). We therefore reserve decision concerning the fraud scenario. In this respect, we note only that, even in such circumstances, there are arguments to be made that the best interests of a child should remain the predominate consideration, as reflected in the following perspective of a commentator:

dates in furtherance of the best-interests objective. *Accord Dye v. Geiger,* 554 N.W.2d 538, 541 (Iowa 1996) ("We hope that [the husband's] heart will follow his money."); *Godin,* 725 A.2d at 911 (aiming not to deprive the child of, at least, "the legal and financial benefits of a parental relationship"); Niccol Kording, *Nature v. Nurture: Children Left Fatherless and Family–Less When Nature Prevails in Paternity Actions,* 65 U. PITT. L.REV. 811, 851 (2004). Experience shows, nonetheless, that, even subject to every compulsion of the law, some legal parents simply will not fulfill their nurturing and/or financial support obligations, whether on account of obstinacy, inability, or some other factor or factors. The legal determination of parentage is a hollow one where the accoutrements do not inure to a child's benefit.

[5] In light of the above, it is our considered view that the determination of paternity by estoppel should be better informed according to the actual best interests of the child, rather than by rote pronouncements grounded merely on the longevity of abstractly portrayed (and perhaps largely ostensible) parental relationships. We realize the common pleas court's decision-making process was informed by an evolving set of appellate court decisions which, in many respects, are difficult to reconcile. Nevertheless, while in the past, the balancing of competing public policy and human concerns has been accomplished on generalized terms, the modernization of our common law (again, in the absence of specific legislative guidance) requires a more specific focus than was accorded here.

Significantly, whereas the common pleas court suggested that the present record is extensive, in fact, it is very sparse in terms of G.L.M.'s best interests. The record offers very little feel for the closeness of G.L.M.'s relationship with H.M.M. Correspondingly, we have no sense for the harm that would befall G.L.M. if H.M.M.'s parental status were to be disestablished, either fully or, as some intermediate court decisions are now suggesting is permissible, partially (*i.e.,* for purposes of support). *But see Michael H. v. Gerald D.,* 491 U.S. 110, 118, 109 S.Ct. 2333, 2339, 105 L.Ed.2d 91 (1989) (plurality) (indicating that the law of one state "like nature itself, makes no provision for dual fatherhood").

[6, 7] Implementation of a common law scheme encompassing paternity by estoppel vindicating the best interests of children in paternity disputes on an individualized basis will obviously require development through multiple cases as different fact patterns arise. *See supra* note 4. In terms of guidance, however, absent undue hardship or impossibility, we do not believe a court should dismiss a support claim against a purported biological father based on an estoppel theory vesting legal parenthood in another man without the latter being brought before the court at least as a witness. Moreover, certainly, the common pleas court has the authority to appoint a guardian *ad litem* to advocate the child's best interests in concrete terms. *Cf. Michael K.T. v. Tina L.T.,* 182 W.Va. 399, 387 S.E.2d 866, 873 (1989) (requiring the appointment of such a guardian in paternity disputes).

[8, 9] The legal fictions perpetuated through the years (including the proposition that genetic testing is irrelevant in certain paternity-related matters) retain their greatest force where there is truly an intact family attempting to defend itself against third-party intervention. *See, e.g., Strauser,* 556 Pa. at 83, 726 A.2d at 1052. In cases involving separation and divorce, we direct that the Uniform Act on Blood Tests to Determine Paternity is now to be applied on its terms insofar as it author-

izes testing.[8] At the very least, the identification of G.L.M.'s biological father is a relevant fact for purposes of determining who should pay for the services of a guardian *ad litem* to vindicate G.L.M.'s best interests.[9] A biological father can do at least this much.

Additionally, recognizing the common pleas court's good intentions in attempting to incentivize reconciliation between Appellant and H.M.M., the parties were separated as of the time of the support, and with apparent good reason. The abstract possibility that the marital unit might be saved, in these circumstances, is not, in our view, a strong reason supporting the dismissal of the claim for support from Appellee.

[10] Finally, in the wide range of instances with which our common pleas courts are presented, we realize that there will be children of broken marriages who may never enjoy the supportive relationship with either "psychological" or biological fathers.[10] All things being equal in this regard, we conclude that the responsibility for fatherhood should lie with the biological father.[11] To the degree the equities come into play (after consideration of the child's best interests), continuing deception potentially relevant to a husband's continuance in a marriage may be a relevant factor, even where the fraud is short of the typical scenario discussed infra, *see supra* note 7. *Cf. J.C. v. J.S.,* 826 A.2d 1, 4 (Pa.Super.2003) (permitting the presumed father to "preclude the application of paternity by estoppel" where there is evidence of fraud or misrepresentation on behalf of the person attempting to invoke the doctrine).[12]

[11] In summary, paternity by estoppel continues to pertain in Pennsylvania, but it will apply only where it can be shown, on a developed record, that it is in the best interests of the involved child. The dismissal of the support claim in this case will not be sustained in the absence of a closer assessment.

8. In terms of the presumption of paternity, this is already the effect of existing decisions explaining that the presumption no longer applies in the context of non-intact marriages. *See, e.g., Fish,* 559 Pa. at 528, 741 A.2d at 723.

9. While at this time we do not hold that a guardian *ad litem* is necessarily required in all cases, at this juncture in the present case, we believe an appointment is advisable.

10. We certainly know that children benefit psychologically, socially, and educationally from predictable parental relationships. *See, e.g., In re Paternity of Cheryl,* 434 Mass. 23, 746 N.E.2d 488, 495 n. 15 (2001) (collecting sources). However, as much as courts may wish to incentivize noble behavior, we appreciate that there are other factors in play. *See, e.g., id.* at 498 ("We harbor no illusion that our decision will protect [the child] from the consequences of her father's decision to seek genetic testing and the challenge his paternity[;] ... [n]o judgment can force him to continue to nurture his relationship with [her]...."); *accord* Brief for Appellee at 20 ("This counsel is continuously amazed by what some parents will say or do to their own children in the heat of a divorce.").

11. Some of the discomfort with common law decision making in this arena is that there may be federal or state constitutional interests at stake. Notably, we are not presented here with such concerns in the parties' arguments, other than on the most general terms within Appellee's equal-protection overlay.

12. While our decision here reflects increased flexibility in the application of the paternity by estoppel doctrine, we note that courts have been most firm in sustaining prior adjudications (or formal acknowledgments) of paternity based on the need for continuity, financial support, and potential psychological security arising out of an established parent-child relationship. *See, e.g., Godin,* 725 A.2d at 910; *Paternity of Cheryl,* 746 N.E.2d at 495–97.

The order of the Superior Court is reversed, and the matter is remanded for further proceedings consistent with this opinion.

Jurisdiction is relinquished.

Chief Justice CASTILLE, Justices EAKIN, TODD and ORIE MELVIN join the opinion.

Justice ORIE MELVIN files a concurring opinion.

Justice BAER files a dissenting opinion in which Justice McCAFFERY joins.

Justice ORIE MELVIN, concurring.

I join in the Majority's decision promoting the continuing viability of the estoppel doctrine in Pennsylvania common law where the record reveals that it is in a child's best interest. It has been my observation that the focus in paternity cases should be on the child, not the adults, who obviously are making choices irrespective of anyone else's best interests, least of all the child conceived as a result of an extramarital affair. I write to comment on two matters. First, while the Majority acknowledges the absence of "definitive legislative involvement," Majority Opinion, at 807; *see also id.* at 808–09, I believe the General Assembly should consider creation of relevant legislation. Second, I wish to emphasize my motivation to remand this case, rather than affirm it, due in large part to my reluctance to develop decisional law based upon the sparse, incomplete, and utterly unacceptable record certified to this Court on appeal.

The Majority has referenced that during Mother's pregnancy with G.L.M. ("Child"), born on July 30, 2006, Mother informed her husband, H.M.M., that he might not be the father of Child and that P.C.S., Appellee, with whom she had an extramarital affair that began sometime in 2004, might be the biological father. Despite this revelation, Mother and H.M.M. continued to reside together.

H.M.M. was present at Child's birth, but he refused to sign the birth certificate. DNA testing that occurred soon after Child's birth confirmed that H.M.M. was not Child's biological father. Mother and H.M.M. remained together for almost four years after Child's birth, ultimately separating in late June 2010. During this four-year period, H.M.M. participated in raising Child, provided emotional and financial support, and engaged in other fatherly behavior. Child, who was given H.M.M.'s surname, referred to H.M.M. as "daddy."

Also during this four-year period, Mother and Appellee surreptitiously continued their affair. At times, Child was present with Mother and Appellee. Although Mother and Appellee attempted to end their relationship periodically between July 2006 and May 2010, after periods of no contact for three or four months, they invariably resumed the affair. In late May 2010, however, Appellee finally ended the relationship with Mother. Mother filed a support action against him, while continuing to reside with H.M.M. Mother and H.M.M. ceased living together on June 26, 2010.

In his motion to dismiss the support action, Appellee denied paternity and contended, in part, that Mother was estopped from seeking support from him. Following a hearing on August 5, 2010, the trial court issued an order on August 25, 2010, granting Appellee's motion. The court reasoned that Mother was precluded from seeking child support from Appellee due to the applicability of both the presumption of paternity and the doctrine of paternity by estoppel. The Superior Court affirmed in an unpublished memorandum. *K.E.M. v. P.C.S.,* No. 1566 MDA 2010 (Pa.Super., filed Apr. 21, 2011). Although it concluded

that the trial court erred in applying the presumption of paternity, it deemed the error harmless because the trial court also determined that Mother was estopped from pursuing a support action against Appellee. With respect to estoppel, the Superior Court noted that since H.M.M. held Child out to be his own and provided support, Mother was estopped from suing a third party for support based on the third party's biological status. *K.E.M.*, unpublished memorandum at 5 (citing *J.C. v. J.S.*, 826 A.2d 1, 3–4 (Pa.Super.2003)). Based on this principle, the Superior Court concluded that the evidence presented at the hearing established that Mother and H.M.M. accepted H.M.M. as Child's father. It pointed out, *inter alia*, that until the time Mother and H.M.M. separated, Mother told no one except H.M.M. and Appellee that H.M.M. was not Child's biological father.[1] The court thus determined that Mother was estopped from seeking support from Appellee.

President Judge Emeritus McEwen filed a dissenting statement, in which he found support for reversal of the trial court on the estoppel issue based upon *Vargo v. Schwartz*, 940 A.2d 459 (Pa.Super.2007), a decision authored by now-Justice McCaffery when he was on the Superior Court. Judge McEwen stated:

> The "best interests" of the child in this case are not, in my view, met by a holding which will find a child left without the source of support to which he would otherwise be entitled. A caring and just society should not be seen to condone or even permit the fathering of a child without the presumptive responsibility to contribute to the care of that child, and where the application of the doctrine of paternity by estoppel interferes with that responsibility, it would wisely be abrogated.

K.E.M., unpublished memorandum (McEwen, P.J.E., dissenting, at 813–14). Judge McEwen called upon this Court to re-examine this area of law to determine whether advances and changes in modern science and society should inspire a different result. We granted Mother's petition for allowance of appeal.

Both the Majority and Dissent point out that the estoppel doctrine creates forced, sometimes fictional, parenthood and is predictably unfair where a spouse is deceived concerning the rightful parentage of a child. In 2012, in light of the accuracy of genetic testing, it is especially difficult to accept this legal fiction. Protection of the best interests of the child, however, is the ultimate goal, and the Majority clearly emphasizes this fact. It is not difficult to envision the various scenarios where application of the doctrine seemingly protects children; indeed, our case law is replete with such vignettes. In reality, though, at times, the child ultimately has no father legally required to support him. *See, e.g.*, *Barr v. Bartolo*, 927 A.2d 635 (Pa.Super.2007) (legal father evaded support obligation by proving he was not the child's biological father, and biological father was permitted to avoid support obligation by successfully arguing the legal father was estopped from denying paternity). It is infrequent, if not rare, that a child born into such a scenario claims protection from the emotional impact of learning that the man he "knew" as his father actually is a "legal" stranger. Relatives, neighbors, and parents tell the child the truth about his parentage, the very truth that the doctrine claims to protect. The doctrine is a fiction in the law that has been in place for

1. Actually, Mother testified she told her two grown daughters that H.M.M. was not Child's father. N.T., 8/5/10, at 25, 32.

decades, with a sound purpose, for all of the reasons asserted by the Majority. Indeed, the Dissent's suggestion that application of the doctrine in the instant case leads to an inequitable result by "punishing the husband for the laudable conduct of affording emotional and financial support to the child of his wife, even after he discovered that the child was not his issue," Dissenting Opinion, (J. Baer), at 814, ignores the very purpose behind paternity by estoppel. It is that very conduct by H.M.M. that the estoppel doctrine acknowledges, supports, and upholds for the sake of the child. It is that very conduct by H.M.M. that the doctrine prevents H.M.M. from avoiding since he assumed it for four years knowing that the child was not his issue. Protection of the child is paramount, and I lend my voice to those calling for the Legislature to specify factors to consider in making paternity determinations. "Such legislation ... would foster transparency and public confidence and would make trial court adjudication more flexible and more disciplined at the same time." David N. Wecht & Jennifer H. Forbes, *A Multi–Factor Test Would Aid Paternity Decisions,* 82 PA.B.A.Q. 3, 118 (2011).

Next, while the Majority advises that the estoppel doctrine can apply "only where it can be shown, on a developed record," that it is the child's best interests, Majority Opinion at 810, the sparseness of the record before us demonstrates, in my view, why the matter must be remanded. The August 5, 2010 hearing was brief, consuming only forty pages of notes of testimony. Mother and her minister were the only two witnesses; neither H.M.M. nor Appellee testified. Appellee argues in his brief that his relationship with Child was minimal, he was alone with Child only once, and he discouraged Mother's efforts to have Child call him "daddy." Thus, he contends that any relationship with Child existed only in Mother's imagination. The meager testimony Mother presented regarding Child's relationship with H.M.M. suggests that she and H.M.M. publicly held H.M.M. out as Child's father despite both knowing that it was untrue. Conversely, while there indeed was some contact between Appellee and Child, it was not public acknowledgment, but private, secretive interaction.

This child is young; he was born in 2006. The Majority acknowledges that Mother averred in her brief that Child knows H.M.M. is not his father. Majority Opinion at 803. There is no such testimony at the 2010 hearing. In fact, there is virtually no testimony regarding H.M.M.'s role with Child subsequent to Mother's and H.M.M.'s separation, **if** that is indeed relevant to the doctrine's applicability. Nearly all of the testimony related to the parties' interactions before Appellee broke off the affair and H.M.M. separated from Mother. Moreover, since neither H.M.M. nor Appellee testified, the only testimony in the record came from Mother.

As noted by the Majority, the record is "very sparse in terms of [Child's] best interests." Majority Opinion, at 809. I wholeheartedly support the Majority's predilection that a court should not "dismiss a support claim against a purported biological father based on an estoppel theory vesting legal parenthood in another man without the latter being brought before the court at least as a witness." *Id.* at 809. Accordingly, I concur.

Justice BAER, dissenting.

I applaud the Majority for recognizing the need for a more case-specific approach to paternity by estoppel determinations—a development in the law that I view as long overdue. The Majority engages in an astute analysis, and takes an important step

in the right direction by limiting the application of paternity by estoppel to cases where it serves the best interests of the child. Nevertheless, I am compelled to dissent because, left to my own devices, I would abrogate the doctrine in its entirety, with the limited exception of where its invocation would preserve the status of a husband who chooses to parent a non-biological child born into an existing marriage. Absent the scenario where mother's husband willingly undertakes parental responsibility of his wife's child and desires to maintain it, I see no reason to perpetuate the legal fiction that the individual who cared for the child is the parent.

I find that in today's world, the justifications supporting the doctrine exist only when the mother's husband wishes to continue parenting his non-biological child. These justifications are utterly unconvincing when applying the doctrine to the circumstances presented herein, where the biological father is attempting to avoid the imposition of a support obligation. I find also that application of paternity by estoppel in the instant case leads to inequitable results as it permits the biological father [1] to evade his parental obligations, while punishing the husband for the laudable conduct of affording emotional and financial support to the child of his wife, even after he discovered that the child was not his issue.

A recurring theme justifying the historical application of paternity by estoppel is that children should be secure in knowing who their parents are, and should not be traumatized by the discovery that the father they have known is not, in fact, their father. *See* Majority Opinion at 801–02 (citing *Fish v. Behers*, 559 Pa. 523, 741 A.2d 721, 724 (1999)). Similarly, the Majority cites to the proposition that "the law cannot permit a party to renounce even an assumed duty of parentage when, by doing so, the innocent child would be victimized." Majority Opinion at 807 (quoting *Commonwealth ex rel. Gonzalez v. Andreas*, 245 Pa.Super. 307, 369 A.2d 416, 419 (1976)).

While these views were perhaps forceful before genetic testing could identify a biological father with pragmatic certainty, and when being born out of wedlock carried an onerous stigma, they are of little consequence today, considering that paternity can now be established readily and conclusively, and commentators estimate that forty-one percent of American births are non-marital. Majority Opinion at 808–09 (citing June Carbone & Naomi Cahn, *Marriage, Parentage, and Child Support*, 45 FAM. L.Q. 219 (2011)). Moreover, it is naïve to believe that adults will not tell their child his true parentage, assuming the child is old enough to understand the issue. Thus, realistically speaking, the idea that the child will not discover the identity of his father seems absurd. Equally unavailing is the idea that the child will be more victimized by calling upon his biological father to support him, than he would be by forcing his mother's husband to carry out such obligations. In my view, the only time these realities will not occur is when the mother's husband desires to maintain and develop the parental relationship. Thus, I would adhere to the retention of paternity by estoppel in that lone circumstance.

Moreover, as mentioned at the outset, permitting invocation of paternity by estoppel as a defense by the biological father in a child support action leads to inequita-

1. I acknowledge that genetic testing has not confirmed that P.C.S. is the biological father of the child; however, the parties appear to agree that such is the case. Thus, I refer to him, for purposes of argument, as the biological father.

ble results. The mother's husband, attempting to save his marriage and perhaps his family, welcomes the child into the family home, and treats the child as his own. He calls the child by endearments, and the child calls him "Daddy." He supports the child financially and emotionally. Nevertheless, the marriage cannot be saved. For his efforts, the doctrine of paternity by estoppel imposes upon mother's husband the obligation to support the child until he reaches adulthood. The message that is being sent to the husband who finds himself in such a predicament is clear—do not allow the child to call you "Daddy," do not lavish any affection on the child, do not spend money on the child, and tell everyone you know that the child is not yours. How does such conduct help the child, or, for that matter, assist the husband and mother in attempting to save a troubled marriage? How does it benefit their additional children who barely understand what the controversy is about, and know only that another sibling has been added to their home?

I would favor an approach that would bring about the opposite result. I would encourage mother's husband to bring the child into their home, and to provide emotional and financial stability for the child. I would encourage mother and her husband to attempt to save their marriage and to maintain their family. If, in the end, such efforts prove futile, absent the scenario where the husband wants to maintain the parental relationship notwithstanding the lack of biological parentage, I would require mother to turn to the biological father for child support.

A similar observation was made by Justice McCaffery in an opinion he authored while serving on Superior Court. In *Vargo v. Schwartz,* 940 A.2d 459 (Pa.Super.2007), the mother was having an affair while married to her husband, which resulted in the birth of two daughters. Admittedly unlike the instant case, the mother perpetrated fraud on her husband by misrepresenting that the girls were her husband's biological children. When the husband ultimately discovered the true parentage of the children, the couple separated, and the husband disavowed his parentage by telling "everyone" that he was not the children's biological father. *Id.* at 469. Admirably, however, the husband continued to support the mother and children economically and to provide care and nurturing to the children.

The mother in *Vargo* subsequently filed for support against the biological father (*i.e.,* the man with whom she had an affair). As in the instant case, the biological father asserted the doctrine of paternity by estoppel in defense, and attempted to use the husband's kindness in caring for the children against him. The biological father alleged that he had no obligation to pay support because, *inter alia,* the husband, after learning that he was not the children's biological father, had continued to nurture the young girls and maintain them on his health insurance policy to ensure that they would receive medical care. The trial court rejected the biological father's contention, concluding that the mother was not estopped from seeking support from him.

Finding no abuse of discretion in the trial court's ruling, Justice, then-Judge, McCaffery recognized cogently the "serious issues of fairness" that would arise where application of paternity by estoppel would "punish the party that sought to do the right thing and reward the party that perpetrated a fraud." *Vargo,* 940 A.2d at 469. He stated, "[w]e do not read our law to require acts that place children at risk or in need of life's basic necessities in order to reinforce the legal point that one

is not financially responsible for those children." *Id.* at 470.

Justice McCaffery's thoughtful sentiments ring true here, notwithstanding that the mother revealed the true parentage of the child to her husband. Otherwise, as noted, the message we are sending to husbands is to abandon promptly all care, financial or otherwise, of a child born to a marriage once he discovers that he is not the biological father, or risk having to pay support for such child until he reaches majority. This in no way furthers a policy that is in the best interests of the child. This Court should encourage, rather than sanction, supportive conduct on the part of husbands who find themselves in the precarious situation as set forth herein.

In conclusion, in most cases, applying the doctrine of paternity by estoppel simply does not protect the child. Adults in today's world will discover who the biological father is. When that happens, the child will generally be told as soon as he is old enough to understand. Thus, the law should encourage the mother's husband to try to maintain the intact marriage and amalgamate the child by a different father into the family home. If this fails, the mother's husband's efforts should be recognized, and paternity by estoppel should be invoked if he desires to maintain the parental relationship. Otherwise, mother's husband should not be punished for "doing the right thing." In such circumstances, the mother should be required to turn to the biological father, who, being able to father the child, should also be required to support him.

Accordingly, I dissent from the Majority's remand for further proceedings to determine whether the doctrine of paternity by estoppel applies, and would hold, as a matter of law, that Appellee may not invoke the doctrine as a defense to Appellant's support action.

Justice McCAFFERY joins this Dissenting Opinion.

COMMONWEALTH of Pennsylvania, Appellant

v.

Nolan ANTOSZYK, Appellee.

Supreme Court of Pennsylvania.

Argued Oct. 18, 2011.
Decided Feb. 21, 2012.

No. 3 WAP 2011, Appeal from the Order of the Superior Court entered December 2, 2009 at No. 689 WDA 2008, affirming the Order of the Court of Common Pleas of Allegheny County entered April 11, 2008 at No. CP–02–CR–0009936–2005.

ORDER

Michael Wayne Streily, Nicole Thomas Wetherton, Allegheny County District Attorney's Office, Pittsburgh, for Appellant.

Paul David Boas, Pittsburgh, for Appellee.

PER CURIAM.

AND NOW, this 21st day of February, 2012, the Court being evenly divided, the Order of the Superior Court is **AFFIRMED.**

Justice ORIE MELVIN did not participate in the consideration or decision of this case.

Justices SAYLOR, BAER, and TODD would affirm the Order of the Superior Court.

PRINTER'S NO. 313

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 350 Session of 2023

INTRODUCED BY D. MILLER, SANCHEZ, MADDEN, PROBST, CEPEDA-FREYTIZ, DELLOSO, HANBIDGE, GUENST, KINKEAD AND HOWARD, MARCH 13, 2023

REFERRED TO COMMITTEE ON CHILDREN AND YOUTH, MARCH 13, 2023

AN ACT

Amending Title 23 (Domestic Relations) of the Pennsylvania Consolidated Statutes, adding provisions relating to establishment of parent-child relationship for certain individuals; providing for voluntary acknowledgment of parentage, for registry of paternity, for genetic testing, for proceeding to adjudicate parentage, for assisted reproduction, for surrogacy agreements and for information about donors.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. Title 23 of the Pennsylvania Consolidated Statutes is amended by adding a part to read:

PART IX-A

UNIFORM PARENTAGE ACT

Chapter

91. General Provisions

92. Parent-child Relationship

93. Voluntary Acknowledgment of Parentage

94. Registry of Paternity

95. Genetic Testing

CHAPTER 91

GENERAL PROVISIONS

Sec.

§ 9101. Short title of part.

This part shall be known as the Uniform Parentage Act.

§ 9102. Definitions.

Subject to additional definitions contained in subsequent provisions of this part which are applicable to specific provisions of this part, the following words and phrases when used in this part shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"Acknowledged parent." An individual who has established a parent-child relationship under Chapter 93 (relating to voluntary acknowledgment of parentage).

"Adjudicated parent." An individual who has been adjudicated to be a parent of a child by a court with jurisdiction.

"Alleged genetic parent." An individual who is alleged to be, or alleges that the individual is, a genetic parent or

possible genetic parent of a child whose parentage has not been adjudicated. The term includes an alleged genetic father and alleged genetic mother. The term does not include:

(1) a presumed parent;

(2) an individual whose parental rights have been terminated or declared not to exist; or

(3) a donor.

"Assisted reproduction." A method of causing pregnancy other than sexual intercourse. The term includes:

(1) intrauterine or intracervical insemination;

(2) donation of gametes;

(3) donation of embryos;

(4) in-vitro fertilization and transfer of embryos; and

(5) intracytoplasmic sperm injection.

"Birth." Includes stillbirth.

"Child." An individual of any age whose parentage may be determined under this part.

"Child-support agency." A government entity, public official or private agency authorized to provide parentage-establishment services under Part D of Title IV of the Social Security Act (49 Stat. 620, 42 U.S.C. § 651 et seq.).

"Determination of parentage." Establishment of a parent-child relationship by a judicial or administrative proceeding or signing of a valid acknowledgment of parentage under Chapter 93.

"Donor." An individual who provides gametes intended for use in assisted reproduction, whether or not for consideration. The term does not include:

(1) a woman who gives birth to a child conceived by assisted reproduction, except as otherwise provided in Chapter 98 (relating to surrogacy agreement); or

(2) a parent under Chapter 97 (relating to assisted reproduction) or an intended parent under Chapter 98.

"Gamete." A sperm, an egg or any part of a sperm or an egg.

"Genetic testing." An analysis of genetic markers to identify or exclude a genetic relationship.

"Individual." A natural person of any age.

"Intended parent." An individual, married or unmarried, who manifests an intent to be legally bound as a parent of a child conceived by assisted reproduction.

"Man." A male individual of any age.

"Parent." An individual who has established a parent-child relationship under section 9201 (relating to establishment of parent-child relationship).

"Parentage" or "parent-child relationship." The legal relationship between a child and a parent of the child.

"Presumed parent." An individual who, under section 9204 (relating to presumption of parentage), is presumed to be a parent of a child, unless the presumption is overcome in a judicial proceeding, a valid denial of parentage is made under Chapter 93 or a court adjudicates the individual to be a parent.

"Record." Information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

"Sign." With present intent to authenticate or adopt a record:

(1) to execute or adopt a tangible symbol; or

(2) to attach to or logically associate with the record an electronic symbol, sound or process.

"Signatory." An individual who signs a record.

"State." A state of the United States, the District of

Columbia, Puerto Rico, the United States Virgin Islands or any territory or insular possession under the jurisdiction of the United States. The term includes a federally recognized Indian tribe.

"Transfer." A procedure for assisted reproduction by which an embryo or sperm is placed in the body of a woman who will give birth to a child.

"Witnessed." At least one individual who is authorized to sign has signed a record to verify that the individual personally observed a signatory sign the record.

"Woman." A female individual of any age.

§ 9103. Scope of part.

(a) General rule.--This part applies to an adjudication or determination of parentage.

(b) Construction.--This part does not create, affect, enlarge or diminish parental rights or duties under the law of this State other than this part.

§ 9104. Authorized court.

The court may adjudicate parentage under this part.

§ 9105. Applicable law.

The court shall apply the law of this State to adjudicate parentage. The applicable law does not depend on:

(1) the place of birth of the child; or

(2) the past or present residence of the child.

§ 9106. Data privacy.

A proceeding under this part is subject to the law of this State other than this part which governs the health, safety, privacy and liberty of a child or other individual who could be affected by disclosure of information that could identify the child or other individual, including address, telephone number,

digital contact information, place of employment, Social Security number and the child's day-care facility or school.

§ 9107. Establishment of maternity and paternity.

To the extent practicable, a provision of this part applicable to a father-child relationship applies to a mother-child relationship and a provision of this part applicable to a mother-child relationship applies to a father-child relationship.

CHAPTER 92

PARENT-CHILD RELATIONSHIP

Sec.

§ 9201. Establishment of parent-child relationship.

A parent-child relationship is established between an individual and a child if:

(1) the individual gives birth to the child, except as otherwise provided in Chapter 98 (relating to surrogacy agreement);

(2) there is a presumption under section 9204 (relating to presumption of parentage) of the individual's parentage of the child, unless the presumption is overcome in a judicial proceeding or a valid denial of parentage is made under Chapter 93 (relating to voluntary acknowledgment of parentage);

(3) the individual is adjudicated a parent of the child under Chapter 96 (relating to proceeding to adjudicate parentage);

(4) the individual adopts the child;

(5) the individual acknowledges parentage of the child under Chapter 93, unless the acknowledgment is rescinded under section 9308 (relating to procedure for rescission) or successfully challenged under Chapter 93 or 96;

(6) the individual's parentage of the child is established under Chapter 97 (relating to assisted reproduction); or

(7) the individual's parentage of the child is established under Chapter 98.

§ 9202. No discrimination based on marital status of parent.

A parent-child relationship extends equally to every child and parent, regardless of the marital status of the parent.

§ 9203. Consequences of establishing parentage.

Unless parental rights are terminated, a parent-child relationship established under this part applies for all purposes, except as otherwise provided by the law of this State other than this part.

§ 9204. Presumption of parentage.

(a) General rule.--An individual is presumed to be a parent of a child if:

(1) except as otherwise provided under Chapter 98 (relating to surrogacy agreement) or the law of this State other than this part:

(i) the individual and the woman who gave birth to the child are married to each other and the child is born during the marriage, whether the marriage is or could be declared invalid;

(ii) the individual and the woman who gave birth to the child were married to each other and the child is

born not later than 300 days after the marriage is terminated by death, divorce, dissolution or annulment, whether the marriage is or could be declared invalid; or

(iii) the individual and the woman who gave birth to the child married each other after the birth of the child, whether the marriage is or could be declared invalid, the individual at any time asserted parentage of the child and:

(A) the assertion is in a record filed with the Bureau of Vital Statistics; or

(B) the individual agreed to be and is named as a parent of the child on the birth certificate of the child; or

(2) the individual resided in the same household with the child for the first two years of the life of the child, including any period of temporary absence, and openly held out the child as the individual's child.

(b) Effect of presumption of parentage.--A presumption of parentage under this section may be overcome and competing claims to parentage may be resolved only by an adjudication under Chapter 96 (relating to proceeding to adjudicate parentage) or a valid denial of parentage under Chapter 93 (relating to voluntary acknowledgment of parentage).

CHAPTER 93

VOLUNTARY ACKNOWLEDGMENT OF PARENTAGE

Sec.

9305. Effect of acknowledgment or denial of parentage.
9306. No filing fee.
9307. Ratification barred.
9308. Procedure for rescission.
9309. Challenge after expiration of period for rescission.
9310. Procedure for challenge by signatory.
9311. Full faith and credit.
9312. Forms for acknowledgment and denial of parentage.
9313. Release of information.
9314. Adoption of rules.

§ 9301. Acknowledgment of parentage.

A woman who gave birth to a child and an alleged genetic father of the child, intended parent under Chapter 97 (relating to assisted reproduction) or presumed parent may sign an acknowledgment of parentage to establish the parentage of the child.

§ 9302. Execution of acknowledgment of parentage.

(a) General rule.--An acknowledgment of parentage under section 9301 (relating to acknowledgment of parentage) must:

(1) be in a record signed by the woman who gave birth to the child and by the individual seeking to establish a parent-child relationship, and the signatures must be attested by a notarial officer or witnessed;

(2) state that the child whose parentage is being acknowledged:

(i) does not have a presumed parent other than the individual seeking to establish the parent-child relationship or has a presumed parent whose full name is stated; and

(ii) does not have another acknowledged parent,

adjudicated parent or individual who is a parent of the child under Chapter 97 (relating to assisted reproduction) or 98 (relating to surrogacy agreement) other than the woman who gave birth to the child; and

(3) state that the signatories understand that the acknowledgment is the equivalent of an adjudication of parentage of the child and that a challenge to the acknowledgment is permitted only under limited circumstances and is barred two years after the effective date of the acknowledgment.

(b) Void acknowledgment of parentage.--An acknowledgment of parentage is void if, at the time of signing:

(1) an individual other than the individual seeking to establish parentage is a presumed parent, unless a denial of parentage by the presumed parent in a signed record is filed with the Bureau of Vital Statistics; or

(2) an individual, other than the woman who gave birth to the child or the individual seeking to establish parentage, is an acknowledged or adjudicated parent or a parent under Chapter 97 or 98.

§ 9303. Denial of parentage.

A presumed parent or alleged genetic parent may sign a denial of parentage in a record. The denial of parentage is valid only if:

(1) an acknowledgment of parentage by another individual is filed under section 9305 (relating to effect of acknowledgment or denial of parentage);

(2) the signature of the presumed parent or alleged genetic parent is attested by a notarial officer or witnessed; and

(3) the presumed parent or alleged genetic parent has not previously:

(i) completed a valid acknowledgment of parentage, unless the previous acknowledgment was rescinded under section 9308 (relating to procedure for rescission) or challenged successfully under section 9309 (relating to challenge after expiration of period for rescission); or

(ii) been adjudicated to be a parent of the child.

§ 9304. Rules for acknowledgment or denial or parentage.

(a) General rule.--An acknowledgment of parentage and a denial of parentage may be contained in a single document or may be in counterparts and may be filed with the Bureau of Vital Statistics separately or simultaneously. If filing of the acknowledgment and denial both are required under this part, neither is effective until both are filed.

(b) Time period for signing.--An acknowledgment of parentage or denial of parentage may be signed before or after the birth of the child.

(c) Effective date.--Subject to subsection (a), an acknowledgment of parentage or denial of parentage takes effect on the birth of the child or filing of the document with the Bureau of Vital Statistics, whichever occurs later.

(d) Validity.--An acknowledgment of parentage or denial of parentage signed by a minor is valid if the acknowledgment complies with this part.

§ 9305. Effect of acknowledgment or denial of parentage.

(a) Acknowledgment of parentage.--Except as otherwise provided in sections 9308 (relating to procedure for rescission) and 9309 (relating to challenge after expiration of period for rescission), an acknowledgment of parentage that complies with

this chapter and is filed with the Bureau of Vital Statistics is equivalent to an adjudication of parentage of the child and confers on the acknowledged parent all rights and duties of a parent.

(b) Denial of parentage.--Except as otherwise provided in sections 9308 and 9309, a denial of parentage by a presumed parent or alleged genetic parent which complies with this chapter and is filed with the Bureau of Vital Statistics with an acknowledgment of parentage that complies with this chapter is equivalent to an adjudication of the nonparentage of the presumed parent or alleged genetic parent and discharges the presumed parent or alleged genetic parent from all rights and duties of a parent.

§ 9306. No filing fee.

The Bureau of Vital Statistics may not charge a fee for filing an acknowledgment of parentage or denial of parentage.

§ 9307. Ratification barred.

A court conducting a judicial proceeding or an administrative agency conducting an administrative proceeding is not required or permitted to ratify an unchallenged acknowledgment of parentage.

§ 9308. Procedure for rescission.

(a) General rule.--A signatory may rescind an acknowledgment of parentage or denial of parentage by filing with the Bureau of Vital Statistics a rescission in a signed record which is attested by a notarial officer or witnessed before the earlier of:

(1) sixty days after the effective date under section 9304 (relating to rules for acknowledgment or denial of parentage) of the acknowledgment or denial; or

(2) the date of the first hearing before a court in a proceeding, to which the signatory is a party, to adjudicate an issue relating to the child, including a proceeding that establishes support.

(b) Associated denial of parentage.--If an acknowledgment of parentage is rescinded under subsection (a), an associated denial of parentage is invalid, and the Bureau of Vital Statistics shall notify the woman who gave birth to the child and the individual who signed a denial of parentage of the child that the acknowledgment has been rescinded. Failure to give the notice required by this subsection does not affect the validity of the rescission.

§ 9309. Challenge after expiration of period for rescission.

(a) Signatories.--After the period for rescission under section 9308 (relating to procedure for rescission) expires, but not later than two years after the effective date under section 9304 (relating to rules for acknowledgment or denial of parentage) of an acknowledgment of parentage or denial of parentage, a signatory of the acknowledgment or denial may commence a proceeding to challenge the acknowledgment or denial, including a challenge brought under section 9614 (relating to precluding establishment of parentage by perpetrator of sexual assault), only on the basis of fraud, duress or material mistake of fact.

(b) Nonsignatories.--A challenge to an acknowledgment of parentage or denial of parentage by an individual who was not a signatory to the acknowledgment or denial is governed by section 9310 (relating to procedure for challenge by signatory).

§ 9310. Procedure for challenge by signatory.

(a) Parties.--Every signatory to an acknowledgment of

parentage and any related denial of parentage must be made a party to a proceeding to challenge the acknowledgment or denial.

(b) Personal jurisdiction.--By signing an acknowledgment of parentage or denial of parentage, a signatory submits to personal jurisdiction in this State in a proceeding to challenge the acknowledgment or denial, effective on the filing of the acknowledgment or denial with the Bureau of Vital Statistics.

(c) Suspension of legal responsibilities.--The court may not suspend the legal responsibilities arising from an acknowledgment of parentage, including the duty to pay child support, during the pendency of a proceeding to challenge the acknowledgment or a related denial of parentage, unless the party challenging the acknowledgment or denial shows good cause.

(d) Burden of proof.--A party challenging an acknowledgment of parentage or denial of parentage has the burden of proof.

(e) Order to amend birth record.--If the court determines that a party has satisfied the burden of proof under subsection (d), the court shall order the Bureau of Vital Statistics to amend the birth record of the child to reflect the legal parentage of the child.

(f) Conduct of proceedings.--A proceeding to challenge an acknowledgment of parentage or denial of parentage must be conducted under Chapter 96 (relating to proceeding to adjudicate parentage).

§ 9311. Full faith and credit.

The court shall give full faith and credit to an acknowledgment of parentage or denial of parentage effective in another state if the acknowledgment or denial is in a signed record and otherwise complies with the law of the other state.

§ 9312. Forms for acknowledgment and denial of parentage.

(a) Duty to prescribe forms.--The Bureau of Vital Statistics shall prescribe forms for an acknowledgment of parentage and denial of parentage.

(b) Effect of later modification.--A valid acknowledgment of parentage or denial of parentage is not affected by a later modification of the form under subsection (a).

§ 9313. Release of information.

The Bureau of Vital Statistics may release information relating to an acknowledgment of parentage or denial of parentage to a signatory of the acknowledgment or denial, court, Federal agency and child-support agency of this or another state.

§ 9314. Adoption of rules.

The Bureau of Vital Statistics may adopt rules to implement this chapter.

CHAPTER 94

REGISTRY OF PATERNITY

Subchapter

A. General Provisions

B. Operation of Registry

C. Search of Registry

SUBCHAPTER A

GENERAL PROVISIONS

Sec.

of age.

§ 9401. Establishment of registry.

A registry of paternity is established in the Department of Health.

§ 9402. Registration for notification.

(a) General rule.--Except as otherwise provided in subsection (b) or section 9405 (relating to termination of parental rights: child at least one year of age), a man who desires to be notified of a proceeding for adoption of or termination of parental rights regarding his genetic child must register in the registry of paternity established by section 9401 (relating to establishment of registry) before the birth of the child or not later than 30 days after the birth.

(b) Exemption from registry.--A man is not required to register under subsection (a) if:

(1) a parent-child relationship between the man and the child has been established under this part or the law of this State other than this part; or

(2) the man commences a proceeding to adjudicate his parentage before a court has terminated his parental rights.

(c) Duty to notify registry of changes.--A man who registers under subsection (a) shall notify the registry promptly in a record of any change in the information registered. The Department of Health shall incorporate new information received into its records but need not seek to obtain current information for incorporation in the registry.

§ 9403. Notice of proceeding.

An individual who seeks to adopt a child or terminate parental rights to the child shall give notice of the proceeding to a man who has registered timely under section 9402(a)

(relating to registration for notification) regarding the child. Notice must be given in a manner prescribed for service of process in a civil proceeding in this State.

§ 9404. Termination of parental rights: child under one year of age.

An individual who seeks to adopt or terminate parental rights to a child is not required to give notice of the proceeding to a man who may be the genetic father of the child if:

(1) the child is under one year of age at the time of the termination of parental rights;

(2) the man did not register timely under section 9402(a) (relating to registration for notification); and

(3) the man is not exempt from registration under section 9402(b).

§ 9405. Termination of parental rights: child at least one year of age.

If a child is at least one year of age, an individual seeking to adopt or terminate parental rights to the child shall give notice of the proceeding to each alleged genetic father of the child, whether or not he has registered under section 9402(a) (relating to registration for notification), unless his parental rights have already been terminated. Notice must be given in a manner prescribed for service of process in a civil proceeding in this State.

SUBCHAPTER B

OPERATION OF REGISTRY

Sec.

9406. Required form.

9407. Furnishing information; confidentiality.

9408. Penalty for releasing information.

9409. Rescission of registration.

9410. Untimely registration.

9411. Fees for registry.

§ 9406. Required form.

(a) Contents.--The Department of Health shall prescribe a form for registering under section 9402(a) (relating to registration for notification). The form must state that:

(1) the man who registers signs the form under penalty of perjury;

(2) timely registration entitles the man who registers to notice of a proceeding for adoption of the child or termination of the parental rights of the man;

(3) timely registration does not commence a proceeding to establish parentage;

(4) the information disclosed on the form may be used against the man who registers to establish parentage;

(5) services to assist in establishing parentage are available to the man who registers through a domestic relations section of a court or the Department of Health;

(6) the man who registers also may register in a registry of paternity in another state if conception or birth of the child occurred in the other state;

(7) information on registries of paternity of other states is available from the Department of Health; and

(8) procedures exist to rescind the registration.

(b) Penalty.--A man who registers under section 9402(a) shall sign the form described in subsection (a) under penalty of perjury.

§ 9407. Furnishing information; confidentiality.

(a) Duty of Department of Health.--The Department of Health

is not required to seek to locate the woman who gave birth to the child who is the subject of a registration under section 9402(a) (relating to registration for notification), but the Department of Health shall give notice of the registration to the woman if the Department of Health has her address.

(b) Access to confidential information.--Information contained in the registry of paternity established by section 9401 (relating to establishment of registry) is confidential and may be released on request only to:

(1) a court or individual designated by the court;

(2) the woman who gave birth to the child who is the subject of the registration;

(3) an agency authorized by Federal law, the law of this State other than this part or the law of another state to receive the information;

(4) a licensed child-placing agency;

(5) a child-support agency;

(6) a party or the party's attorney of record in a proceeding under this part or in a proceeding to adopt or terminate parental rights to the child who is the subject of the registration; and

(7) a registry of paternity in another state.

§ 9408. Penalty for releasing information.

An individual who intentionally releases information from the registry of paternity established by section 9401 (relating to establishment of registry) to an individual or agency not authorized under section 9407(b) (relating to furnishing information; confidentiality) to receive the information commits a misdemeanor of the third degree.

§ 9409. Rescission of registration.

A man who registers under section 9402(a) (relating to registration for notification) may rescind his registration at any time by filing with the registry of paternity established by section 9401 (relating to establishment of registry) a rescission in a signed record that is attested by a notarial officer or witnessed.

§ 9410. Untimely registration.

If a man registers under section 9402(a) (relating to registration for notification) more than 30 days after the birth of the child, the Department of Health shall notify the man who registers that, based on a review of the registration, the registration was not filed timely.

§ 9411. Fees for registry.

(a) Registration fee prohibited.--The Department of Health may not charge a fee for filing a registration under section 9402(a) (relating to registration for notification) or rescission of registration under section 9409 (relating to rescission of registration).

(b) Search and certification fees permitted.--Except as otherwise provided in subsection (c), the Department of Health may charge a reasonable fee to search the registry of paternity established by section 9401 (relating to establishment of registry) and for furnishing a certificate of search under section 9414 (relating to certificate of search of registry).

(c) Exemption.--The domestic relations section of a court is not required to pay a fee authorized by subsection (b).

SUBCHAPTER C

SEARCH OF REGISTRY

Sec.

9412. Child born through assisted reproduction: search of

registry inapplicable.

9413. Search of appropriate registry.

9414. Certificate of search of registry.

9415. Admissibility of registered information.

§ 9412. Child born through assisted reproduction: search of registry inapplicable.

This subchapter does not apply to a child born through assisted reproduction.

§ 9413. Search of appropriate registry.

If a parent-child relationship has not been established under this part between a child who is under one year of age and an individual other than the woman who gave birth to the child:

(1) an individual seeking to adopt or terminate parental rights to the child shall obtain a certificate of search under section 9414 (relating to certificate of search of registry) to determine if a registration has been filed in the registry of paternity established by section 9401 (relating to establishment of registry) regarding the child; and

(2) if the individual has reason to believe that conception or birth of the child may have occurred in another state, the individual shall obtain a certificate of search from the registry of paternity, if any, in that state.

§ 9414. Certificate of search of registry.

(a) Duty to furnish.--The Department of Health shall furnish a certificate of search of the registry of paternity established by section 9401 (relating to establishment of registry) on request to an individual, court or agency identified in section 9407(b) (relating to furnishing information; confidentiality) or an individual required under section 9413(1) (relating to search

of appropriate registry) to obtain a certificate.

(b) Contents of certificate.--A certificate furnished under subsection (a):

(1) must be signed on behalf of the Department of Health and state that:

(i) a search has been made of the registry; and

(ii) a registration under section 9402(a) (relating to registration for notification) containing the information required to identify the man who registers:

(A) has been found; or

(B) has not been found; and

(2) if paragraph (1)(ii)(A) applies, must have a copy of the registration attached.

(c) Individuals required to file certificate.--An individual seeking to adopt or terminate parental rights to a child must file with the court the certificate of search furnished under subsection (a) and section 9413(2) (relating to search of appropriate registry), if applicable, before a proceeding to adopt or terminate parental rights to the child may be concluded.

§ 9415. Admissibility of registered information.

A certificate of search of a registry of paternity in this State or another state is admissible in a proceeding for adoption or termination of parental rights to a child and, if relevant, in other legal proceedings.

CHAPTER 95

GENETIC TESTING

Sec.

9503. Authority to order or deny genetic testing.
9504. Requirements for genetic testing.
9505. Report of genetic testing.
9506. Genetic testing results; challenge to results.
9507. Cost of genetic testing.
9508. Additional genetic testing.
9509. Genetic testing when specimen not available.
9510. Deceased individual.
9511. Identical siblings.
9512. Confidentiality of genetic testing.

§ 9501. Definitions.

The following words and phrases when used in this chapter shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"Combined relationship index." The product of all tested relationship indices.

"Ethnic or racial group." For the purpose of genetic testing, a recognized group that an individual identifies as the individual's ancestry or part of the ancestry or that is identified by other information.

"Hypothesized genetic relationship." An asserted genetic relationship between an individual and a child.

"Probability of parentage." For the ethnic or racial group to which an individual alleged to be a parent belongs, the probability that a hypothesized genetic relationship is supported, compared to the probability that a genetic relationship is supported between the child and a random individual of the ethnic or racial group used in the hypothesized genetic relationship, expressed as a percentage incorporating the combined relationship index and a prior

probability.

"Relationship index." A likelihood ratio that compares the probability of a genetic marker given a hypothesized genetic relationship and the probability of the genetic marker given a genetic relationship between the child and a random individual of the ethnic or racial group used in the hypothesized genetic relationship.

§ 9502. Scope of chapter; limitation on use of genetic testing.

(a) General rule.--This chapter governs genetic testing of an individual in a proceeding to adjudicate parentage, whether the individual:

(1) voluntarily submits to testing; or

(2) is tested under an order of the court or a child-support agency.

(b) Prohibited uses.--Genetic testing may not be used:

(1) to challenge the parentage of an individual who is a parent under Chapter 97 (relating to assisted reproduction) or 98 (relating to surrogacy agreement); or

(2) to establish the parentage of an individual who is a donor.

§ 9503. Authority to order or deny genetic testing.

(a) General rule.--Except as otherwise provided in this chapter or Chapter 96 (relating to proceeding to adjudicate parentage), in a proceeding under this part to determine parentage, the court shall order the child and any other individual to submit to genetic testing if a request for testing is supported by the sworn statement of a party:

(1) alleging a reasonable possibility that the individual is the child's genetic parent; or

(2) denying genetic parentage of the child and stating

facts establishing a reasonable possibility that the individual is not a genetic parent.

(b) When permitted.--The domestic relations section of a court may order genetic testing only if there is no presumed, acknowledged or adjudicated parent of a child other than the woman who gave birth to the child.

(c) In utero genetic testing prohibited.--The court or child-support agency may not order in utero genetic testing.

(d) Multiple individuals.--If two or more individuals are subject to court-ordered genetic testing, the court may order that testing be completed concurrently or sequentially.

(e) Women subject to genetic testing.--Genetic testing of a woman who gave birth to a child is not a condition precedent to testing of the child and an individual whose genetic parentage of the child is being determined. If the woman is unavailable or declines to submit to genetic testing, the court may order genetic testing of the child and each individual whose genetic parentage of the child is being adjudicated.

(f) Discretion to deny motion.--In a proceeding to adjudicate the parentage of a child having a presumed parent or an individual who claims to be a parent under section 9609 (relating to adjudicating claim of de facto parentage of child), or to challenge an acknowledgment of parentage, the court may deny a motion for genetic testing of the child and any other individual after considering the factors in section 9613(a) and (b) (relating to adjudicating competing claims of parentage).

(g) Conditions requiring denial of motion.--If an individual requesting genetic testing is barred under Chapter 96 from establishing the individual's parentage, the court shall deny the request for genetic testing.

(h) Enforcement.--An order under this section for genetic testing is enforceable by contempt.

§ 9504. Requirements for genetic testing.

(a) Types authorized.--Genetic testing must be of a type reasonably relied on by experts in the field of genetic testing and performed in a testing laboratory accredited by:

(1) the AABB, formerly known as the American Association of Blood Banks, or a successor to its functions; or

(2) an accrediting body designated by the Secretary of the United States Department of Health and Human Services.

(b) Specimens.--A specimen used in genetic testing may consist of a sample or a combination of samples of blood, buccal cells, bone, hair or other body tissue or fluid. The specimen used in the testing need not be of the same kind for each individual undergoing genetic testing.

(c) Calculation of relationship index.--Based on the ethnic or racial group of an individual undergoing genetic testing, a testing laboratory shall determine the databases from which to select frequencies for use in calculating a relationship index. If an individual or a child-support agency objects to the laboratory's choice, the following rules apply:

(1) Not later than 30 days after receipt of the report of the test, the objecting individual or child-support agency may request the court to require the laboratory to recalculate the relationship index using an ethnic or racial group different from that used by the laboratory.

(2) The individual or the child-support agency objecting to the laboratory's choice under this subsection shall:

(i) if the requested frequencies are not available to the laboratory for the ethnic or racial group

requested, provide the requested frequencies compiled in a manner recognized by accrediting bodies; or

(ii) engage another laboratory to perform the calculations.

(3) The laboratory may use its own statistical estimate if there is a question of which ethnic or racial group is appropriate. The laboratory shall calculate the frequencies using statistics, if available, for any other ethnic or racial group requested.

(d) Discretion to require additional genetic testing.--If, after recalculation of the relationship index under subsection (c) using a different ethnic or racial group, genetic testing under section 9506 (relating to genetic testing results; challenge to results) does not identify an individual as a genetic parent of a child, the court may require an individual who has been tested to submit to additional genetic testing to identify a genetic parent.

§ 9505. Report of genetic testing.

(a) Requirements.--A report of genetic testing must be in a record and signed under penalty of perjury by a designee of the testing laboratory. A report complying with the requirements of this chapter is self-authenticating.

(b) Admissibility of documentation.--Documentation from a testing laboratory of the following information is sufficient to establish a reliable chain of custody and allow the results of genetic testing to be admissible without testimony:

(1) the name and photograph of each individual whose specimen has been taken;

(2) the name of the individual who collected each specimen;

(3) the place and date each specimen was collected;

(4) the name of the individual who received each specimen in the testing laboratory; and

(5) the date each specimen was received.

§ 9506. Genetic testing results; challenge to results.

(a) General rule.--Subject to a challenge under subsection (b), an individual is identified under this part as a genetic parent of a child if genetic testing complies with this chapter and the results of the testing disclose:

(1) that the individual has at least a 99% probability of parentage, using a prior probability of 0.50, as calculated by using the combined relationship index obtained in the testing; and

(2) a combined relationship index of at least 100 to 1.

(b) When challenge permitted.--An individual identified under subsection (a) as a genetic parent of the child may challenge the genetic testing results only by other genetic testing satisfying the requirements of this chapter which:

(1) excludes the individual as a genetic parent of the child; or

(2) identifies another individual as a possible genetic parent of the child other than:

(i) the woman who gave birth to the child; or

(ii) the individual identified under subsection (a).

(c) Discretion to require further genetic testing.--Except as otherwise provided in section 9511 (relating to identical siblings), if more than one individual other than the woman who gave birth is identified by genetic testing as a possible genetic parent of the child, the court shall order each individual to submit to further genetic testing to identify a

genetic parent.

§ 9507. Cost of genetic testing.

(a) General rule.--Subject to assessment of fees under Chapter 96 (relating to proceeding to adjudicate parentage), payment of the cost of initial genetic testing must be made in advance:

(1) by a child-support agency in a proceeding in which the domestic relations section of a court provides services;

(2) by the individual who made the request for genetic testing;

(3) as agreed by the parties; or

(4) as ordered by the court.

(b) Reimbursement authorized.--If the cost of genetic testing is paid by the domestic relations section of a court, the domestic relations section may seek reimbursement from the genetic parent whose parent-child relationship is established.

§ 9508. Additional genetic testing.

The court or domestic relations section of a court shall order additional genetic testing on request of an individual who contests the result of the initial testing under section 9506 (relating to genetic testing results; challenge to results). If initial genetic testing under section 9506 identifies an individual as a genetic parent of the child, the court or agency may not order additional testing unless the contesting individual pays for the testing in advance.

§ 9509. Genetic testing when specimen not available.

(a) Individuals subject to.--Subject to subsection (b), if a genetic testing specimen is not available from an alleged genetic parent of a child, an individual seeking genetic testing demonstrates good cause and the court finds that the

circumstances are just, the court may order any of the following individuals to submit specimens for genetic testing:

(1) a parent of the alleged genetic parent;

(2) a sibling of the alleged genetic parent;

(3) another child of the alleged genetic parent and the woman who gave birth to the other child; and

(4) another relative of the alleged genetic parent necessary to complete genetic testing.

(b) Balancing test.--To issue an order under this section, the court must find that a need for genetic testing outweighs the legitimate interests of the individual sought to be tested.

§ 9510. Deceased individual.

If an individual seeking genetic testing demonstrates good cause, the court may order genetic testing of a deceased individual.

§ 9511. Identical siblings.

(a) General rule.--If the court finds there is reason to believe that an alleged genetic parent has an identical sibling and evidence that the sibling may be a genetic parent of the child, the court may order genetic testing of the sibling.

(b) Nongenetic evidence.--If more than one sibling is identified under section 9506 (relating to genetic testing results; challenge to results) as a genetic parent of the child, the court may rely on nongenetic evidence to adjudicate which sibling is a genetic parent of the child.

§ 9512. Confidentiality of genetic testing.

(a) General rule.--Release of a report of genetic testing for parentage is controlled by the law of this State other than this part.

(b) Penalty.--An individual who intentionally releases an

identifiable specimen of another individual collected for genetic testing under this chapter for a purpose not relevant to a proceeding regarding parentage, without a court order or written permission of the individual who furnished the specimen, commits a misdemeanor of the third degree.

CHAPTER 96

PROCEEDING TO ADJUDICATE PARENTAGE

Subchapter

SUBCHAPTER A

NATURE OF PROCEEDING

Sec.

§ 9601. Proceeding authorized.

(a) General rule.--A proceeding may be commenced to adjudicate the parentage of a child. Except as otherwise provided in this part, the proceeding is governed by the Pennsylvania Rules of Civil Procedure.

(b) Exception.--A proceeding to adjudicate the parentage of a child born under a surrogacy agreement is governed by Chapter 98 (relating to surrogacy agreement).

§ 9602. Standing to maintain proceeding.

Except as otherwise provided in Chapter 93 (relating to voluntary acknowledgment of parentage) and sections 9608

(relating to adjudicating parentage of child with presumed parent), 9609 (relating to adjudicating claim of de facto parentage of child), 9610 (relating to adjudicating parentage of child with acknowledged parent) and 9611 (relating to adjudicating parentage of child with adjudicated parent), a proceeding to adjudicate parentage may be maintained by:

(1) the child;

(2) the woman who gave birth to the child, unless a court has adjudicated that she is not a parent;

(3) an individual who is a parent under this part;

(4) an individual whose parentage of the child is to be adjudicated;

(5) the domestic relations section of a court;

(6) an adoption agency authorized by the law of this State other than this part or a licensed child-placement agency; or

(7) a representative authorized by the law of this State other than this part to act for an individual who otherwise would be entitled to maintain a proceeding but is deceased, incapacitated or a minor.

§ 9603. Notice of proceeding.

(a) Individuals entitled to notice.--The petitioner shall give notice of a proceeding to adjudicate parentage to the following individuals:

(1) the woman who gave birth to the child, unless a court has adjudicated that she is not a parent;

(2) an individual who is a parent of the child under this part;

(3) a presumed, acknowledged or adjudicated parent of the child; and

(4) an individual whose parentage of the child will be adjudicated.

(b) Right to intervene.--An individual entitled to notice under subsection (a) has a right to intervene in the proceeding.

(c) Effect of lack of notice.--Lack of notice required by subsection (a) does not render a judgment void. Lack of notice does not preclude an individual entitled to notice under subsection (a) from bringing a proceeding under section 9611(b) (relating to adjudicating parentage of child with adjudicated parent).

§ 9604. Personal jurisdiction.

(a) General rule.--The court may adjudicate an individual's parentage of a child only if the court has personal jurisdiction over the individual.

(b) Nonresidents, guardians and conservators.--A court of this State with jurisdiction to adjudicate parentage may exercise personal jurisdiction over a nonresident individual, or the guardian or conservator of the individual, if the conditions prescribed in section 7201 (relating to bases for jurisdiction over nonresident) are satisfied.

(c) Multiple individuals.--Lack of jurisdiction over one individual does not preclude the court from making an adjudication of parentage binding on another individual.

§ 9605. Venue.

Venue for a proceeding to adjudicate parentage is in the county of this State in which:

(1) the child resides or is located;

(2) if the child does not reside in this State, the respondent resides or is located; or

(3) a proceeding has been commenced for administration

of the estate of an individual who is or may be a parent under this part.

SUBCHAPTER B

SPECIAL RULES FOR PROCEEDING TO ADJUDICATE PARENTAGE

Sec.

§ 9606. Admissibility of results of genetic testing.

(a) General rule.--Except as otherwise provided in section 9502(b) (relating to scope of chapter; limitation on use of genetic testing), the court shall admit a report of genetic testing ordered by the court under section 9503 (relating to authority to order or deny genetic testing) as evidence of the truth of the facts asserted in the report.

(b) Objection.--A party may object to the admission of a report described in subsection (a) not later than 14 days after the party receives the report. The party shall cite specific grounds for exclusion.

(c) Expert testimony.--A party that objects to the results of genetic testing may call a genetic testing expert to testify in person or by another method approved by the court. Unless the

court orders otherwise, the party offering the testimony bears the expense for the expert testifying.

(d) Factors not affecting admissibility.--Admissibility of a report of genetic testing is not affected by whether the testing was performed:

(1) voluntarily or under an order of the court or the domestic relations section of a court; or

(2) before, on or after commencement of the proceeding.

§ 9607. Adjudicating parentage of child with alleged genetic parent.

(a) General rule.--A proceeding to determine whether an alleged genetic parent who is not a presumed parent is a parent of a child may be commenced:

(1) before the child becomes an adult; or

(2) after the child becomes an adult, but only if the child initiates the proceeding.

(b) Woman who gave birth with sole claim.--Except as otherwise provided in section 9614 (relating to precluding establishment of parentage by perpetrator of sexual assault), this subsection applies in a proceeding described in subsection (a) if the woman who gave birth to the child is the only other individual with a claim to parentage of the child. The court shall adjudicate an alleged genetic parent to be a parent of the child if the alleged genetic parent:

(1) is identified under section 9506 (relating to genetic testing results; challenge to results) as a genetic parent of the child and the identification is not successfully challenged under section 9506;

(2) admits parentage in a pleading, when making an appearance or during a hearing, the court accepts the

admission, and the court determines the alleged genetic parent to be a parent of the child;

(3) declines to submit to genetic testing ordered by the court or a child-support agency, in which case the court may adjudicate the alleged genetic parent to be a parent of the child even if the alleged genetic parent denies a genetic relationship with the child;

(4) is in default after service of process and the court determines the alleged genetic parent to be a parent of the child; or

(5) is neither identified nor excluded as a genetic parent by genetic testing and, based on other evidence, the court determines the alleged genetic parent to be a parent of the child.

(c) Multiple individuals with claims.--Except as otherwise provided in section 9614 and subject to other limitations in this chapter, if in a proceeding involving an alleged genetic parent at least one other individual in addition to the woman who gave birth to the child has a claim to parentage of the child, the court shall adjudicate parentage under section 9613 (relating to adjudicating competing claims of parentage).

§ 9608. Adjudicating parentage of child with presumed parent.

(a) Time period for commencing.--A proceeding to determine whether a presumed parent is a parent of a child may be commenced:

(1) before the child becomes an adult; or

(2) after the child becomes an adult, but only if the child initiates the proceeding.

(b) Effect of presumption of parentage.--A presumption of parentage under section 9204 (relating to presumption of

parentage) cannot be overcome after the child attains two years of age unless the court determines:

(1) that the presumed parent is not a genetic parent, never resided with the child and never held out the child as the presumed parent's child; or

(2) the child has more than one presumed parent.

(c) Woman who gave birth with sole claim.--Except as otherwise provided in section 9614 (relating to precluding establishment of parentage by perpetrator of sexual assault), the following rules apply in a proceeding to adjudicate a presumed parent's parentage of a child if the woman who gave birth to the child is the only other individual with a claim to parentage of the child:

(1) If no party to the proceeding challenges the presumed parent's parentage of the child, the court shall adjudicate the presumed parent to be a parent of the child.

(2) If the presumed parent is identified under section 9506 (relating to genetic testing results; challenge to results) as a genetic parent of the child and that identification is not successfully challenged under section 9506, the court shall adjudicate the presumed parent to be a parent of the child.

(3) If the presumed parent is not identified under section 9506 as a genetic parent of the child and the presumed parent or the woman who gave birth to the child challenges the presumed parent's parentage of the child, the court shall adjudicate the parentage of the child in the best interest of the child based on the factors under section 9613(a) and (b) (relating to adjudicating competing claims of parentage).

(d) Multiple individuals with claims.--Except as otherwise provided in section 9614 and subject to other limitations in this chapter, if in a proceeding to adjudicate a presumed parent's parentage of a child another individual in addition to the woman who gave birth to the child asserts a claim to parentage of the child, the court shall adjudicate parentage under section 9613.

§ 9609. Adjudicating claim of de facto parentage of child.

(a) Individuals entitled to commence proceeding.--A proceeding to establish parentage of a child under this section may be commenced only by an individual who:

(1) is alive when the proceeding is commenced; and

(2) claims to be a de facto parent of the child.

(b) Time period for commencing.--An individual who claims to be a de facto parent of a child must commence a proceeding to establish parentage of a child under this section:

(1) before the child attains 18 years of age; and

(2) while the child is alive.

(c) Standing.--The following rules govern standing of an individual who claims to be a de facto parent of a child to maintain a proceeding under this section:

(1) The individual must file an initial verified pleading alleging specific facts that support the claim to parentage of the child asserted under this section. The verified pleading must be served on all parents and legal guardians of the child and any other party to the proceeding.

(2) An adverse party, parent or legal guardian may file a pleading in response to the pleading filed under paragraph (1). A responsive pleading must be verified and must be served on parties to the proceeding.

(3) Unless the court finds a hearing is necessary to determine disputed facts material to the issue of standing, the court shall determine, based on the pleadings under paragraphs (1) and (2), whether the individual has alleged facts sufficient to satisfy by a preponderance of the evidence the requirements of subsection (d). If the court holds a hearing under this subsection, the hearing must be held on an expedited basis.

(d) Individual with sole claim.--In a proceeding to adjudicate parentage of an individual who claims to be a de facto parent of the child, if there is only one other individual who is a parent or has a claim to parentage of the child, the court shall adjudicate the individual who claims to be a de facto parent to be a parent of the child if the individual demonstrates by clear and convincing evidence that:

(1) the individual resided with the child as a regular member of the child's household for a significant period;

(2) the individual engaged in consistent caretaking of the child;

(3) the individual undertook full and permanent responsibilities of a parent of the child without expectation of financial compensation;

(4) the individual held out the child as the individual's child;

(5) the individual established a bonded and dependent relationship with the child which is parental in nature;

(6) another parent of the child fostered or supported the bonded and dependent relationship required under paragraph (5); and

(7) continuing the relationship between the individual

and the child is in the best interest of the child.

(e) Multiple individuals with claims.--Subject to other limitations in this chapter, if in a proceeding to adjudicate parentage of an individual who claims to be a de facto parent of the child there is more than one other individual who is a parent or has a claim to parentage of the child and the court determines that the requirements of subsection (d) are satisfied, the court shall adjudicate parentage under section 9613 (relating to adjudicating competing claims of parentage).

§ 9610. Adjudicating parentage of child with acknowledged parent.

(a) General rule.--If a child has an acknowledged parent, a proceeding to challenge the acknowledgment of parentage or a denial of parentage brought by a signatory to the acknowledgment or denial is governed by sections 9309 (relating to challenge after expiration of period for rescission) and 9310 (relating to procedure for challenge by signatory).

(b) Procedure.--If a child has an acknowledged parent, the following rules apply in a proceeding to challenge the acknowledgment of parentage or a denial of parentage brought by an individual, other than the child, who has standing under section 9602 (relating to standing to maintain proceeding) and was not a signatory to the acknowledgment or denial:

(1) The individual must commence the proceeding not later than two years after the effective date of the acknowledgment.

(2) The court may permit the proceeding only if the court finds that permitting the proceeding is in the best interest of the child.

(3) If the court permits the proceeding, the court shall

adjudicate parentage under section 9613 (relating to adjudicating competing claims of parentage).

§ 9611. Adjudicating parentage of child with adjudicated parent.

(a) General rule.--If a child has an adjudicated parent, a proceeding to challenge the adjudication, brought by an individual who was a party to the adjudication or received notice under section 9603 (relating to notice of proceeding), is governed by the rules governing a collateral attack on a judgment.

(b) Procedure.--If a child has an adjudicated parent, the following rules apply to a proceeding to challenge the adjudication of parentage brought by an individual other than the child who has standing under section 9602 (relating to standing to maintain proceeding) and was not a party to the adjudication and did not receive notice under section 9603:

(1) The individual must commence the proceeding not later than two years after the effective date of the adjudication.

(2) The court may permit the proceeding only if the court finds that permitting the proceeding is in the best interest of the child.

(3) If the court permits the proceeding, the court shall adjudicate parentage under section 9613 (relating to adjudicating competing claims of parentage).

§ 9612. Adjudicating parentage of child of assisted reproduction.

(a) General rule.--An individual who is a parent under Chapter 97 (relating to assisted reproduction) or the woman who gave birth to the child may bring a proceeding to adjudicate

parentage. If the court determines that the individual is a parent under Chapter 97, the court shall adjudicate the individual to be a parent of the child.

(b) Multiple individuals with claims.--In a proceeding to adjudicate an individual's parentage of a child, if another individual other than the woman who gave birth to the child is a parent under Chapter 97, the court shall adjudicate the individual's parentage of the child under section 9613 (relating to adjudicating competing claims of parentage).

§ 9613. Adjudicating competing claims of parentage.

(a) General rule.--Except as otherwise provided in section 9614 (relating to precluding establishment of parentage by perpetrator of sexual assault), in a proceeding to adjudicate competing claims of, or challenges under sections 9608(c) (relating to adjudicating parentage of child with presumed parent), 9610 (relating to adjudicating parentage of child with acknowledged parent) or 9611 (relating to adjudicating parentage of child with adjudicated parent) to parentage of a child by two or more individuals, the court shall adjudicate parentage in the best interest of the child, based on:

(1) the age of the child;

(2) the length of time during which each individual assumed the role of parent of the child;

(3) the nature of the relationship between the child and each individual;

(4) the harm to the child if the relationship between the child and each individual is not recognized;

(5) the basis for each individual's claim to parentage of the child; and

(6) other equitable factors arising from the disruption

of the relationship between the child and each individual or the likelihood of other harm to the child.

(b) Factors to be considered.--If an individual challenges parentage based on the results of genetic testing, in addition to the factors listed in subsection (a), the court shall consider:

(1) the facts surrounding the discovery that the individual might not be a genetic parent of the child; and

(2) the length of time between the time that the individual was placed on notice that the individual might not be a genetic parent and the commencement of the proceeding.

(c) Adjudication of more than two parents.--The court may adjudicate a child to have more than two parents under this part if the court finds that failure to recognize more than two parents would be detrimental to the child. A finding of detriment to the child does not require a finding of unfitness of any parent or individual seeking an adjudication of parentage. In determining detriment to the child, the court shall consider all relevant factors, including the harm if the child is removed from a stable placement with an individual who has fulfilled the child's physical needs and psychological needs for care and affection and has assumed the role for a substantial period.

§ 9614. Precluding establishment of parentage by perpetrator of sexual assault.

(a) Definition.--In this section, "sexual assault" means the offense under 18 Pa.C.S. § 3124.1 (relating to sexual assault).

(b) General rule.--In a proceeding in which a woman alleges that a man committed a sexual assault that resulted in the woman giving birth to a child, the woman may seek to preclude the man

from establishing that he is a parent of the child.

(c) Nonapplicability.--This section does not apply if:

(1) the man described in subsection (b) has previously been adjudicated to be a parent of the child; or

(2) after the birth of the child, the man established a bonded and dependent relationship with the child which is parental in nature.

(d) Limitation.--Unless section 9309 (relating to challenge after expiration of period for rescission) or 9607 (relating to adjudicating parentage of child with alleged genetic parent) applies, a woman must file a pleading making an allegation under subsection (b) not later than two years after the birth of the child. The woman may file the pleading only in a proceeding to establish parentage under this part.

(e) Evidentiary standard.--An allegation under subsection (b) may be proved by:

(1) evidence that the man was convicted of a sexual assault, or a comparable crime in another jurisdiction, against the woman and the child was born not later than 300 days after the sexual assault; or

(2) clear and convincing evidence that the man committed sexual assault against the woman, and the child was born not later than 300 days after the sexual assault.

(f) Duty of court.--Subject to subsections (a), (b), (c) and (d), if the court determines that an allegation has been proven under subsection (e), the court shall:

(1) adjudicate that the man described in subsection (b) is not a parent of the child;

(2) require the Bureau of Vital Statistics to amend the birth certificate if requested by the woman and the court

determines that the amendment is in the best interest of the child; and

(3) require the man pay to child support, birth-related costs or both, unless the woman requests otherwise and the court determines that granting the request is in the best interest of the child.

SUBCHAPTER C

HEARING AND ADJUDICATION

Sec.

§ 9615. Temporary order.

(a) General rule.--In a proceeding under this chapter, the court may issue a temporary order for child support if the order is consistent with the law of this State other than this part and the individual ordered to pay support is:

(1) a presumed parent of the child;

(2) petitioning to be adjudicated a parent;

(3) identified as a genetic parent through genetic testing under section 9506 (relating to genetic testing results; challenge to results);

(4) an alleged genetic parent who has declined to submit to genetic testing;

(5) shown by clear and convincing evidence to be a parent of the child; or

(6) a parent under this part.

(b) Custody and visitation provisions.--A temporary order may include a provision for custody and visitation under the law of this State other than this part.

§ 9616. Combining proceedings.

(a) General rule.--Except as otherwise provided in subsection (b), the court may combine a proceeding to adjudicate parentage under this part with a proceeding for adoption, termination of parental rights, child custody or visitation, child support, divorce, dissolution or annulment administration of an estate or another appropriate proceeding.

(b) Prohibition.--A respondent may not combine a proceeding described in subsection (a) with a proceeding to adjudicate parentage brought under Part VIII (relating to uniform interstate family support).

§ 9617. Proceeding before birth.

Except as otherwise provided in Chapter 98 (relating to surrogacy agreement), a proceeding to adjudicate parentage may be commenced before the birth of the child and an order or judgment may be entered before birth, but enforcement of the order or judgment must be stayed until the birth of the child.

§ 9618. Child as party; representation.

(a) Minor child as party.--A minor child is a proper party but not a necessary party to a proceeding under this chapter.

(b) Representation of child.--The court shall appoint an attorney, guardian ad litem or similar person to represent a child in a proceeding under this chapter if the court finds that the interests of the child are not adequately represented.

§ 9619. Court to adjudicate parentage.

The court shall adjudicate parentage of a child without a jury.

§ 9620. Hearing; inspection of records.

(a) Closure of proceeding.--On request of a party and for good cause, the court may close a proceeding under this chapter to the public.

(b) Final order and other documents.--A final order in a proceeding under this chapter is available for public inspection. Other papers and records are available for public inspection only with the consent of the parties or by court order.

§ 9621. Dismissal for want of prosecution.

The court may dismiss a proceeding under this part for want of prosecution only without prejudice. An order of dismissal for want of prosecution purportedly with prejudice is void and has only the effect of a dismissal without prejudice.

§ 9622. Order adjudicating parentage.

(a) Identification of child.--An order adjudicating parentage must identify the child in a manner provided by the law of this State other than this part.

(b) Fees, costs and expenses.--Except as otherwise provided in subsection (c), the court may assess filing fees, reasonable attorney fees, fees for genetic testing, other costs and necessary travel and other reasonable expenses incurred in a proceeding under this chapter. Attorney fees awarded under this subsection may be paid directly to the attorney and the attorney may enforce the order in the attorney's own name.

(c) Domestic relations sections.--The court may not assess fees, costs or expenses in a proceeding under this chapter

against the domestic relations section of a court of this State or another state, except as provided by the law of this State other than this part.

(d) Admissibility of genetic testing and health care bills.--In a proceeding under this chapter, a copy of a bill for genetic testing or prenatal or postnatal health care for the woman who gave birth to the child and the child provided to the adverse party not later than 10 days before a hearing is admissible to establish:

(1) the amount of the charge billed; and

(2) that the charge is reasonable and necessary.

(e) Child name changes.--On request of a party and for good cause, the court in a proceeding under this chapter may order the name of the child changed. If the court order changing the name varies from the name on the birth certificate of the child, the court shall order the Bureau of Vital Statistics to issue an amended birth certificate.

§ 9623. Binding effect of determination of parentage.

(a) General rule.--Except as otherwise provided in subsection (b):

(1) a signatory to an acknowledgment of parentage or denial of parentage is bound by the acknowledgment and denial as provided in Chapter 93 (relating to voluntary acknowledgment of parentage); and

(2) a party to an adjudication of parentage by a court acting under circumstances that satisfy the jurisdiction requirements of section 7201 (relating to bases for jurisdiction over nonresident) and any individual who received notice of the proceeding are bound by the adjudication.

(b) Children.--A child is not bound by a determination of parentage under this part unless:

(1) the determination was based on an unrescinded acknowledgment of parentage and the acknowledgment is consistent with the results of genetic testing;

(2) the determination was based on a finding consistent with the results of genetic testing and the consistency is declared in the determination or otherwise shown;

(3) the determination of parentage was made under Chapters 97 (relating to assisted reproduction) or 98 (relating to surrogacy agreement); or

(4) the child was a party or was represented by an attorney, guardian ad litem or similar person in the proceeding.

(c) Other proceedings.--In a proceeding for divorce, dissolution or annulment, the court is deemed to have made an adjudication of parentage of a child if the court acts under circumstances that satisfy the jurisdiction requirements of section 7201 and the final order:

(1) expressly identifies the child as a "child of the marriage" or "issue of the marriage" or includes similar words indicating that both spouses are parents of the child; or

(2) provides for support of the child by a spouse unless that spouse's parentage is disclaimed specifically in the order.

(d) Defense available to nonparties.--Except as otherwise provided in subsection (b) or section 9611 (relating to adjudicating parentage of child with adjudicated parent), a determination of parentage may be asserted as a defense in a

subsequent proceeding seeking to adjudicate parentage of an individual who was not a party to the earlier proceeding.

(e) Challenges to adjudication by parties.--A party to an adjudication of parentage may challenge the adjudication only under the law of this State other than this part relating to appeal, vacation of judgment or other judicial review.

CHAPTER 97

ASSISTED REPRODUCTION

Sec.

§ 9701. Scope of chapter.

This chapter does not apply to the birth of a child conceived by sexual intercourse or assisted reproduction under a surrogacy agreement under Chapter 98 (relating to surrogacy agreement).

§ 9702. Parental status of donor.

A donor is not a parent of a child conceived by assisted reproduction.

§ 9703. Parentage of child of assisted reproduction.

An individual who consents under section 9704 (relating to consent to assisted reproduction) to assisted reproduction by a woman with the intent to be a parent of a child conceived by the assisted reproduction is a parent of the child.

§ 9704. Consent to assisted reproduction.

(a) Record required.--Except as otherwise provided in subsection (b), the consent described in section 9703 (relating to parentage of child of assisted reproduction) must be in a record signed by a woman giving birth to a child conceived by assisted reproduction and an individual who intends to be a parent of the child.

(b) Exception.--Failure to consent in a record as required by subsection (a) before, on or after birth of the child does not preclude the court from finding consent to parentage if:

(1) the woman or the individual proves by clear and convincing evidence the existence of an express agreement entered into before conception that the individual and the woman intended they both would be parents of the child; or

(2) the woman and the individual for the first two years of the child's life, including any period of temporary absence, resided together in the same household with the child and both openly held out the child as the individual's child, unless the individual dies or becomes incapacitated before the child attains two years of age or the child dies before the child attains two years of age, in which case the court may find consent under this subsection to parentage if a party proves by clear and convincing evidence that the woman and the individual intended to reside together in the same household with the child and both intended the individual would openly hold out the child as the individual's child, but the individual was prevented from carrying out that intent by death or incapacity.

§ 9705. Limitation on spouse's dispute of parentage.

(a) General rule.--Except as otherwise provided in subsection (b), an individual who at the time of a child's birth

is the spouse of the woman who gave birth to the child by assisted reproduction, may not challenge the individual's parentage of the child unless:

(1) not later than two years after the birth of the child, the individual commences a proceeding to adjudicate the individual's parentage of the child; and

(2) the court finds the individual did not consent to the assisted reproduction before, on or after birth of the child or withdrew consent under section 9707 (relating to withdrawal of consent).

(b) Time period to commence proceeding.--A proceeding to adjudicate a spouse's parentage of a child born by assisted reproduction may be commenced at any time if the court determines:

(1) the spouse neither provided a gamete for, nor consented to, the assisted reproduction;

(2) the spouse and the woman who gave birth to the child have not cohabited since the probable time of assisted reproduction; and

(3) the spouse never openly held out the child as the spouse's child.

(c) Applicability.--This section applies to a spouse's dispute of parentage even if the spouse's marriage is declared invalid after assisted reproduction occurs.

§ 9706. Effect of certain legal proceedings regarding marriage.

If a marriage of a woman who gives birth to a child conceived by assisted reproduction is terminated through divorce or dissolution, or annulled before transfer of gametes or embryos to the woman, a former spouse of the woman is not a parent of the child unless the former spouse consented in a record that

the former spouse would be a parent of the child if assisted reproduction were to occur after a divorce, dissolution or annulment and the former spouse did not withdraw consent under section 9707 (relating to withdrawal of consent).

§ 9707. Withdrawal of consent.

(a) General rule.--An individual who consents under section 9704 (relating to consent to assisted reproduction) to assisted reproduction may withdraw consent any time before a transfer that results in a pregnancy by giving notice in a record of the withdrawal of consent to the woman who agreed to give birth to a child conceived by assisted reproduction and to any clinic or health care provider facilitating the assisted reproduction. Failure to give notice to the clinic or health care provider does not affect a determination of parentage under this part.

(b) Effect of withdrawal.--An individual who withdraws consent under subsection (a) is not a parent of the child under this chapter.

§ 9708. Parental status of deceased individual.

(a) Death after gamete or embryo transfer.--If an individual who intends to be a parent of a child conceived by assisted reproduction dies during the period between the transfer of a gamete or embryo and the birth of the child, the individual's death does not preclude the establishment of the individual's parentage of the child if the individual otherwise would be a parent of the child under this part.

(b) Death before gamete or embryo transfer.--If an individual who consented in a record to assisted reproduction by a woman who agreed to give birth to a child dies before a transfer of gametes or embryos, the deceased individual is a parent of a child conceived by the assisted reproduction only

if:

(1) either:

(i) the individual consented in a record that if assisted reproduction were to occur after the death of the individual, the individual would be a parent of the child; or

(ii) the individual's intent to be a parent of a child conceived by assisted reproduction after the individual's death is established by clear and convincing evidence; and

(2) either:

(i) the embryo is in utero not later than 36 months after the individual's death; or

(ii) the child is born not later than 45 months after the individual's death.

CHAPTER 98

SURROGACY AGREEMENT

Subchapter

SUBCHAPTER A

GENERAL REQUIREMENTS

Sec.

agreements: content.

9805. Surrogacy agreement: effect of subsequent change of marital status.

9806. Inspection of documents.

9807. Exclusive, continuing jurisdiction.

§ 9801. Definitions.

The following words and phrases when used in this chapter shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"Genetic surrogate." A woman who is not an intended parent and who agrees to become pregnant through assisted reproduction using her own gamete, under a genetic surrogacy agreement as provided in this chapter.

"Gestational surrogate." A woman who is not an intended parent and who agrees to become pregnant through assisted reproduction using gametes that are not her own, under a gestational surrogacy agreement as provided in this chapter.

"Surrogacy agreement." An agreement between one or more intended parents and a woman who is not an intended parent in which the woman agrees to become pregnant through assisted reproduction and which provides that each intended parent is a parent of a child conceived under the agreement. Unless otherwise specified, the term refers to both a gestational surrogacy agreement and a genetic surrogacy agreement.

§ 9802. Eligibility to enter gestational or genetic surrogacy agreement.

(a) Requirements for surrogates.--To execute an agreement to act as a gestational or genetic surrogate, a woman must:

(1) have attained 21 years of age;

(2) previously have given birth to at least one child;

(3) complete a medical evaluation related to the surrogacy arrangement by a licensed medical doctor;

(4) complete a mental health consultation by a licensed mental health professional; and

(5) have independent legal representation of her choice throughout the surrogacy arrangement regarding the terms of the surrogacy agreement and the potential legal consequences of the agreement.

(b) Requirements for intended parents.--To execute a surrogacy agreement, each intended parent, whether or not genetically related to the child, must:

(1) have attained 21 years of age;

(2) complete a medical evaluation related to the surrogacy arrangement by a licensed medical doctor;

(3) complete a mental health consultation by a licensed mental health professional; and

(4) have independent legal representation of the intended parent's choice throughout the surrogacy arrangement regarding the terms of the surrogacy agreement and the potential legal consequences of the agreement.

§ 9803. Requirements of gestational or genetic surrogacy agreement: process.

A surrogacy agreement must be executed in compliance with the following rules:

(1) At least one party must be a resident of this State or, if no party is a resident of this State, at least one medical evaluation or procedure or mental health consultation under the agreement must occur in this State.

(2) A surrogate and each intended parent must meet the requirements of section 9802 (relating to eligibility to

enter gestational or genetic surrogacy agreement).

(3) Each intended parent, the surrogate and the surrogate's spouse, if any, must be parties to the agreement.

(4) The agreement must be in a record signed by each party listed in paragraph (3).

(5) The surrogate and each intended parent must acknowledge in a record receipt of a copy of the agreement.

(6) The signature of each party to the agreement must be attested by a notarial officer or witnessed.

(7) The surrogate and the intended parent or parents must have independent legal representation throughout the surrogacy arrangement regarding the terms of the surrogacy agreement and the potential legal consequences of the agreement, and each counsel must be identified in the surrogacy agreement.

(8) The intended parent or parents must pay for independent legal representation for the surrogate.

(9) The agreement must be executed before a medical procedure occurs related to the surrogacy agreement, other than the medical evaluation and mental health consultation required by section 9802.

§ 9804. Requirements of gestational or genetic surrogacy agreements: content.

(a) General rule.--A surrogacy agreement must comply with the following requirements:

(1) A surrogate agrees to attempt to become pregnant by means of assisted reproduction.

(2) Except as otherwise provided in sections 9811 (relating to gestational surrogacy agreement: order of parentage), 9814 (relating to termination of genetic

surrogacy agreement) and 9815 (relating to parentage under validated genetic surrogacy agreement), the surrogate and the surrogate's spouse or former spouse, if any, have no claim to parentage of a child conceived by assisted reproduction under the agreement.

(3) The surrogate's spouse, if any, must acknowledge and agree to comply with the obligations imposed on the surrogate by the agreement.

(4) Except as otherwise provided in sections 9811, 9814 and 9815, the intended parent or, if there are two intended parents, each one jointly and severally, immediately on birth will be the exclusive parent or parents of the child, regardless of number of children born or gender or mental or physical condition of each child.

(5) Except as otherwise provided in sections 9811, 9814 and 9815, the intended parent or, if there are two intended parents, each parent jointly and severally, immediately on birth will assume responsibility for the financial support of the child, regardless of number of children born or gender or mental or physical condition of each child.

(6) The agreement must include information disclosing how each intended parent will cover the surrogacy-related expenses of the surrogate and the medical expenses of the child. If health care coverage is used to cover the medical expenses, the disclosure must include a summary of the health care policy provisions related to coverage for surrogate pregnancy, including any possible liability of the surrogate, third-party liability liens, other insurance coverage and any notice requirement that could affect coverage or liability of the surrogate. Unless the agreement expressly provides

otherwise, the review and disclosure do not constitute legal advice. If the extent of coverage is uncertain, a statement of that fact is sufficient to comply with this paragraph.

(7) The agreement must permit the surrogate to make all health and welfare decisions regarding herself and her pregnancy. This part does not enlarge or diminish the surrogate's right to terminate her pregnancy.

(8) The agreement must include information about each party's right under this chapter to terminate the surrogacy agreement.

(b) Additional provisions.--A surrogacy agreement may provide for:

(1) payment of consideration and reasonable expenses; and

(2) reimbursement of specific expenses if the agreement is terminated under this chapter.

(c) Assignment prohibited.--A right created under a surrogacy agreement is not assignable, and there is no third-party beneficiary of the agreement other than the child.

§ 9805. Surrogacy agreement: effect of subsequent change of marital status.

(a) Surrogates.--Unless a surrogacy agreement expressly provides otherwise:

(1) the marriage of a surrogate after the agreement is signed by all parties does not affect the validity of the agreement, her spouse's consent to the agreement is not required and her spouse is not a presumed parent of a child conceived by assisted reproduction under the agreement; and

(2) the divorce, dissolution or annulment of the surrogate after the agreement is signed by all parties does

not affect the validity of the agreement.

(b) Intended parents.--Unless a surrogacy agreement expressly provides otherwise:

(1) the marriage of an intended parent after the agreement is signed by all parties does not affect the validity of a surrogacy agreement, the consent of the spouse of the intended parent is not required and the spouse of the intended parent is not, based on the agreement, a parent of a child conceived by assisted reproduction under the agreement; and

(2) the divorce, dissolution or annulment of an intended parent after the agreement is signed by all parties does not affect the validity of the agreement, and, except as otherwise provided in section 9814 (relating to termination of genetic surrogacy agreement), the intended parents are the parents of the child.

§ 9806. Inspection of documents.

Unless the court orders otherwise, a petition and any other document related to a surrogacy agreement filed with the court under this subchapter are not open to inspection by any individual other than the parties to the proceeding, a child conceived by assisted reproduction under the agreement, their attorneys and the Department of Health. A court may not authorize an individual to inspect a document related to the agreement unless required by exigent circumstances. The individual seeking to inspect the document may be required to pay the expense of preparing a copy of the document to be inspected.

§ 9807. Exclusive, continuing jurisdiction.

During the period after the execution of a surrogacy

agreement until 90 days after the birth of a child conceived by assisted reproduction under the agreement, a court of this State conducting a proceeding under this part has exclusive, continuing jurisdiction over all matters arising out of the agreement. This section does not give the court jurisdiction over a child custody proceeding or child support proceeding if jurisdiction is not otherwise authorized by the law of this State other than this part.

SUBCHAPTER B

SPECIAL RULES FOR GESTATIONAL SURROGACY AGREEMENT

Sec.

§ 9808. Termination of gestational surrogacy agreement.

(a) General rule.--A party to a gestational surrogacy agreement may terminate the agreement at any time before an embryo transfer by giving notice of termination in a record to all other parties. If an embryo transfer does not result in a pregnancy, a party may terminate the agreement at any time before a subsequent embryo transfer.

(b) Limited release.--Unless a gestational surrogacy agreement provides otherwise, on termination of the agreement under subsection (a), the parties are released from the agreement, except that each intended parent remains responsible for expenses that are reimbursable under the agreement and incurred by the gestational surrogate through the date of

termination.

(c) Penalties and liquidated damages prohibited.--Except in a case involving fraud, neither a gestational surrogate nor the surrogate's spouse or former spouse, if any, is liable to the intended parent or parents for a penalty or liquidated damages for terminating a gestational surrogacy agreement under this section.

§ 9809. Parentage under gestational surrogacy agreement.

(a) Intended parents.--Except as otherwise provided in subsection (c) or section 9810(b) (relating to gestational surrogacy agreement: parentage of deceased intended parent) or 9812 (relating to effect of gestational surrogacy agreement), on the birth of a child conceived by assisted reproduction under a gestational surrogacy agreement, each intended parent is, by operation of law, a parent of the child.

(b) Surrogates.--Except as otherwise provided in subsection (c) or section 9812, neither a gestational surrogate nor the surrogate's spouse or former spouse, if any, is a parent of the child.

(c) When genetic testing required.--If a child is alleged to be a genetic child of the woman who agreed to be a gestational surrogate, the court shall order genetic testing of the child. If the child is a genetic child of the woman who agreed to be a gestational surrogate, parentage must be determined based on Chapters 91 (relating to general provisions), 92 (relating to parent-child relationship), 93 (relating to voluntary acknowledgment of parentage), 94 (relating to registry of paternity), 95 (relating to genetic testing) and 96 (relating to proceeding to adjudicate parentage).

(d) Clinical and laboratory errors.--Except as otherwise

provided in subsection (c) or section 9810(b) or 9812, if, due to a clinical or laboratory error, a child conceived by assisted reproduction under a gestational surrogacy agreement is not genetically related to an intended parent or a donor who donated to the intended parent or parents, each intended parent, and not the gestational surrogate and the surrogate's spouse or former spouse, if any, is a parent of the child, subject to any other claim of parentage.

§ 9810. Gestational surrogacy agreement: parentage of deceased intended parent.

(a) Death after gamete or embryo transfer.--Section 9809 (relating to parentage under gestational surrogacy agreement) applies to an intended parent even if the intended parent died during the period between the transfer of a gamete or embryo and the birth of the child.

(b) Death before gamete or embryo transfer.--Except as otherwise provided in section 9812 (relating to effect of gestational surrogacy agreement), an intended parent is not a parent of a child conceived by assisted reproduction under a gestational surrogacy agreement if the intended parent dies before the transfer of a gamete or embryo unless:

(1) the agreement provides otherwise; and

(2) the transfer of a gamete or embryo occurs not later than 36 months after the death of the intended parent or birth of the child occurs not later than 45 months after the death of the intended parent.

§ 9811. Gestational surrogacy agreement: order of parentage.

(a) Permissible relief.--Except as otherwise provided in sections 9809(c) (relating to parentage under gestational surrogacy agreement) or 9812 (relating to effect of gestational

surrogacy agreement), before, on or after the birth of a child conceived by assisted reproduction under a gestational surrogacy agreement, a party to the agreement may commence a proceeding in court for an order or judgment:

(1) declaring that each intended parent is a parent of the child and ordering that parental rights and duties vest immediately on the birth of the child exclusively in each intended parent;

(2) declaring that the gestational surrogate and the surrogate's spouse or former spouse, if any, are not the parents of the child;

(3) designating the content of the birth record in accordance with law and directing the Bureau of Vital Statistics to designate each intended parent as a parent of the child;

(4) to protect the privacy of the child and the parties, declaring that the court record is not open to inspection, except as authorized under section 9806 (relating to inspection of documents);

(5) if necessary, that the child be surrendered to the intended parent or parents; and

(6) for other relief the court determines necessary and proper.

(b) Order of judgment before birth.--The court may issue an order or judgment under subsection (a) before the birth of the child. The court shall stay enforcement of the order or judgment until the birth of the child.

(c) State not necessary party.--Neither this State nor the Bureau of Vital Statistics is a necessary party to a proceeding under subsection (a).

§ 9812. Effect of gestational surrogacy agreement.

(a) General rule.--A gestational surrogacy agreement that complies with sections 9802 (relating to eligibility to enter gestational or genetic surrogacy agreement), 9803 (relating to requirements of gestational or genetic surrogacy agreement: process) and 9804 (relating to requirements of gestational or genetic surrogacy agreement: content) is enforceable.

(b) Noncomplying gestational surrogacy agreements.--If a child was conceived by assisted reproduction under a gestational surrogacy agreement that does not comply with sections 9802, 9803 and 9804, the court shall determine the rights and duties of the parties to the agreement consistent with the intent of the parties at the time of execution of the agreement. Each party to the agreement and any individual who at the time of the execution of the agreement was a spouse of a party to the agreement has standing to maintain a proceeding to adjudicate an issue related to the enforcement of the agreement.

(c) Remedies for breach.--Except as expressly provided in a gestational surrogacy agreement or subsection (d) or (e), if the agreement is breached by the gestational surrogate or one or more intended parents, the nonbreaching party is entitled to the remedies available at law or in equity.

(d) When specific performance prohibited.--Specific performance is not a remedy available for breach by a gestational surrogate of a provision in the agreement that the gestational surrogate be impregnated, terminate or not terminate a pregnancy or submit to medical procedures.

(e) When specific performance permitted.--Except as otherwise provided in subsection (d), if an intended parent is determined to be a parent of the child, specific performance is

a remedy available for:

(1) breach of the agreement by a gestational surrogate which prevents the intended parent from exercising immediately on birth of the child the full rights of parentage; or

(2) breach by the intended parent which prevents the intended parent's acceptance, immediately on birth of the child conceived by assisted reproduction under the agreement, of the duties of parentage.

SUBCHAPTER C

SPECIAL RULES FOR GENETIC SURROGACY AGREEMENT

Sec.

§ 9813. Requirements to validate genetic surrogacy agreement.

(a) Prior court approval.--Except as otherwise provided in section 9816 (relating to effect of nonvalidated genetic surrogacy agreement), to be enforceable, a genetic surrogacy agreement must be validated by the court. A proceeding to validate the agreement must be commenced before assisted reproduction related to the surrogacy agreement.

(b) Conditions.--The court shall issue an order validating a genetic surrogacy agreement if the court finds that:

(1) sections 9802 (relating to eligibility to enter gestational or genetic surrogacy agreement), 9803 (relating

to requirements of gestational or genetic surrogacy agreement: process) and 9804 (relating to requirements of gestational or genetic surrogacy agreement: content) are satisfied; and

(2) all parties entered into the agreement voluntarily and understand its terms.

(c) Notice of termination.--An individual who terminates under section 9814 (relating to termination of genetic surrogacy agreement) a genetic surrogacy agreement shall file notice of the termination with the court. On receipt of the notice, the court shall vacate any order issued under subsection (b). An individual who does not notify the court of the termination of the agreement is subject to sanctions.

§ 9814. Termination of genetic surrogacy agreement.

(a) General rule.--A party to a genetic surrogacy agreement may terminate the agreement as follows:

(1) An intended parent who is a party to the agreement may terminate the agreement at any time before a gamete or embryo transfer by giving notice of termination in a record to all other parties. If a gamete or embryo transfer does not result in a pregnancy, a party may terminate the agreement at any time before a subsequent gamete or embryo transfer. The notice of termination must be attested by a notarial officer or witnessed.

(2) A genetic surrogate who is a party to the agreement may withdraw consent to the agreement any time before 72 hours after the birth of a child conceived by assisted reproduction under the agreement. To withdraw consent, the genetic surrogate must execute a notice of termination in a record stating the surrogate's intent to terminate the

agreement. The notice of termination must be attested by a notarial officer or be witnessed and be delivered to each intended parent at any time before 72 hours after the birth of the child.

(b) Limited release.--On termination of the genetic surrogacy agreement under subsection (a), the parties are released from all obligations under the agreement, except that each intended parent remains responsible for all expenses incurred by the surrogate through the date of termination, which are reimbursable under the agreement. Unless the agreement provides otherwise, the surrogate is not entitled to any nonexpense-related compensation paid for serving as a surrogate.

(c) Penalties and liquidated damages prohibited.--Except in a case involving fraud, neither a genetic surrogate nor the surrogate's spouse or former spouse, if any, is liable to the intended parent or parents for a penalty or liquidated damages for terminating a genetic surrogacy agreement under this section.

§ 9815. Parentage under validated genetic surrogacy agreement.

(a) Intended parents.--Unless a genetic surrogate exercises the right under section 9814 (relating to termination of genetic surrogacy agreement) to terminate a genetic surrogacy agreement, each intended parent is a parent of a child conceived by assisted reproduction under an agreement validated under section 9813 (relating to requirements to validate genetic surrogacy agreement).

(b) Court order.--Unless a genetic surrogate exercises the right under section 9814 to terminate the genetic surrogacy agreement, on proof of a court order issued under section 9813 validating the agreement, the court shall make an order:

(1) declaring that each intended parent is a parent of a child conceived by assisted reproduction under the agreement and ordering that parental rights and duties vest exclusively in each intended parent;

(2) declaring that the gestational surrogate and the surrogate's spouse or former spouse, if any, are not parents of the child;

(3) designating the contents of the birth certificate in accordance with the law of this State other than this part and directing the Bureau of Vital Statistics to designate each intended parent as a parent of the child;

(4) to protect the privacy of the child and the parties, declaring that the court record is not open to inspection, except as authorized under section 9806 (relating to inspection of documents);

(5) if necessary, that the child be surrendered to the intended parent or parents; and

(6) for other relief the court determines necessary and proper.

(c) Termination.--If a genetic surrogate terminates under section 9814(a)(2) a genetic surrogacy agreement, parentage of the child conceived by assisted reproduction under the agreement must be determined under Chapters 91 (relating to general provisions), 92 (relating to parent-child relationship), 93 (relating to voluntary acknowledgment of parentage), 94 (relating to registry of paternity), 95 (relating to genetic testing) and 96 (relating to proceeding to adjudicate parentage).

(d) When genetic testing required.--If a child born to a genetic surrogate is alleged not to have been conceived by

assisted reproduction, the court shall order genetic testing to determine the genetic parentage of the child. If the child was not conceived by assisted reproduction, parentage must be determined under Chapters 91, 92, 93, 94, 95 and 96. Unless the genetic surrogacy agreement provides otherwise, if the child was not conceived by assisted reproduction, the surrogate is not entitled to any nonexpense-related compensation paid for serving as a surrogate.

(e) Court order of intended parent.--Unless a genetic surrogate exercises the right under section 9814 (relating to termination of genetic surrogacy agreement) to terminate the genetic surrogacy agreement, if an intended parent fails to file notice required under section 9814(a), the genetic surrogate or the Department of Health may file with the court, not later than 60 days after the birth of a child conceived by assisted reproduction under the agreement, notice that the child has been born to the genetic surrogate. Unless the genetic surrogate has properly exercised the right under section 9814 to withdraw consent to the agreement, on proof of a court order issued under section 9813 (relating to requirements to validate genetic surrogacy agreement) validating the agreement, the court shall order that each intended parent is a parent of the child.

§ 9816. Effect of nonvalidated genetic surrogacy agreement.

(a) Enforceable.--A genetic surrogacy agreement, whether or not in a record, that is not validated under section 9813 (relating to requirements to validate genetic surrogacy agreement) is enforceable only to the extent provided in this section and section 9818 (relating to breach of genetic surrogacy agreement).

(b) Court validation with agreement of parties.--If all

parties agree, a court may validate a genetic surrogacy agreement after assisted reproduction has occurred but before the birth of a child conceived by assisted reproduction under the agreement.

(c) Timely withdrawal of consent.--If a child conceived by assisted reproduction under a genetic surrogacy agreement that is not validated under section 9813 is born and the genetic surrogate, consistent with section 9814(a)(2) (relating to termination of genetic surrogacy agreement), withdraws her consent to the agreement before 72 hours after the birth of the child, the court shall adjudicate the parentage of the child under Chapters 91 (relating to general provisions), 92 (relating to parent-child relationship), 93 (relating to voluntary acknowledgment of parentage), 94 (relating to registry of paternity), 95 (relating to genetic testing) and 96 (relating to proceeding to adjudicate parentage).

(d) No timely withdrawal of consent.--If a child conceived by assisted reproduction under a genetic surrogacy agreement that is not validated under section 9813 is born and a genetic surrogate does not withdraw her consent to the agreement, consistent with section 9814(a)(2), before 72 hours after the birth of the child, the genetic surrogate is not automatically a parent and the court shall adjudicate parentage of the child based on the best interest of the child, taking into account the factors in section 9613(a) (relating to adjudicating competing claims of parentage) and the intent of the parties at the time of the execution of the agreement.

(e) Standing.--The parties to a genetic surrogacy agreement have standing to maintain a proceeding to adjudicate parentage under this section.

§ 9817. Genetic surrogacy agreement: parentage of deceased intended parent.

(a) Death after gamete or embryo transfer.--Except as otherwise provided in section 9815 (relating to parentage under validated genetic surrogacy agreement) or 9816 (relating to effect of nonvalidated genetic surrogacy agreement), on birth of a child conceived by assisted reproduction under a genetic surrogacy agreement, each intended parent is, by operation of law, a parent of the child, notwithstanding the death of an intended parent during the period between the transfer of a gamete or embryo and the birth of the child.

(b) Death before gamete or embryo transfer.--Except as otherwise provided in section 9815 or 9816, an intended parent is not a parent of a child conceived by assisted reproduction under a genetic surrogacy agreement if the intended parent dies before the transfer of a gamete or embryo unless:

(1) the agreement provides otherwise; and

(2) the transfer of the gamete or embryo occurs not later than 36 months after the death of the intended parent or birth of the child occurs not later than 45 months after the death of the intended parent.

§ 9818. Breach of genetic surrogacy agreement.

(a) Remedies for breach.--Subject to section 9814(b) (relating to termination of genetic surrogacy agreement), if a genetic surrogacy agreement is breached by a genetic surrogate or one or more intended parents, the nonbreaching party is entitled to the remedies available at law or in equity.

(b) When specific performance prohibited.--Specific performance is not a remedy available for breach by a genetic surrogate of a requirement of a validated or nonvalidated

genetic surrogacy agreement that the surrogate be impregnated, terminate or not terminate a pregnancy or submit to medical procedures.

(c) When specific performance permitted.--Except as otherwise provided in subsection (b), specific performance is a remedy available for:

(1) breach of a validated genetic surrogacy agreement by a genetic surrogate of a requirement which prevents an intended parent from exercising the full rights of parentage 72 hours after the birth of the child; or

(2) breach by an intended parent which prevents the intended parent's acceptance of duties of parentage 72 hours after the birth of the child.

CHAPTER 99

INFORMATION ABOUT DONOR

Sec.

§ 9901. Definitions.

The following words and phrases when used in this chapter shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"Identifying information." All of the following:

(1) the full name of a donor;

(2) the date of birth of the donor; and

(3) the permanent and, if different, current address of the donor at the time of the donation.

"Medical history." Information regarding any:

(1) present illness of a donor;

(2) past illness of the donor; and

(3) social, genetic and family history pertaining to the health of the donor.

§ 9902. Applicability.

This chapter applies only to gametes collected on or after the effective date of this section.

§ 9903. Collection of information.

A gamete bank or fertility clinic authorized by law to operate in this State shall collect from a donor the donor's identifying information and medical history at the time of the donation. If the gamete bank or fertility clinic sends the gametes of a donor to another gamete bank or fertility clinic, the sending gamete bank or fertility clinic shall forward any identifying information and medical history of the donor, including the donor's signed declaration under section 9904 (relating to declaration regarding identity disclosure) regarding identity disclosure, to the receiving gamete bank or fertility clinic. A receiving gamete bank or fertility clinic authorized by law to operate in this State shall collect and retain the information about the donor and each sending gamete bank or fertility clinic.

§ 9904. Declaration regarding identity disclosure.

(a) Duties.--A gamete bank or fertility clinic authorized by law to operate in this State which collects gametes from a donor shall:

(1) provide the donor with information in a record about

the donor's choice regarding identity disclosure; and

(2) obtain a declaration from the donor regarding identity disclosure.

(b) Options for donors.--A gamete bank or fertility clinic authorized by law to operate in this State shall give a donor the choice to sign a declaration, attested by a notarial officer or witnessed, that either:

(1) states that the donor agrees to disclose the donor's identity to a child conceived by assisted reproduction with the donor's gametes on request once the child attains 18 years of age; or

(2) states that the donor does not agree presently to disclose the donor's identity to the child.

(c) Withdrawal of declarations.--A gamete bank or fertility clinic authorized by law to operate in this State shall permit a donor who has signed a declaration under subsection (b)(2) to withdraw the declaration at any time by signing a declaration under subsection (b)(1).

§ 9905. Disclosure of identifying information and medical history.

(a) Duty to provide identifying information.--On request of a child conceived by assisted reproduction who attains 18 years of age, a gamete bank or fertility clinic authorized by law to operate in this State which collected, stored or released for use the gametes used in the assisted reproduction shall make a good faith effort to provide the child with identifying information of the donor who provided the gametes, unless the donor signed and did not withdraw a declaration under section 9904(b)(2) (relating to declaration regarding identity disclosure). If the donor signed and did not withdraw the

declaration, the gamete bank or fertility clinic shall make a good faith effort to notify the donor, who may elect under section 9904(c) to withdraw the donor's declaration.

(b) Duty to provide nonidentifying medical history of donor.--Regardless of whether a donor signed a declaration under section 9904(b)(2), on request by a child conceived by assisted reproduction who attains 18 years of age, or, if the child is a minor, by a parent or guardian of the child, a gamete bank or fertility clinic authorized by law to operate in this State shall make a good faith effort to provide the child or, if the child is a minor, the parent or guardian of the child, access to nonidentifying medical history of the donor.

§ 9906. Recordkeeping.

A gamete bank or fertility clinic authorized by law to operate in this State which collects, stores or releases gametes for use in assisted reproduction shall collect and maintain identifying information and medical history about each gamete donor. The gamete bank or fertility clinic shall collect and maintain records of gamete screening and testing and comply with reporting requirements, in accordance with Federal law and applicable law of this State other than this part.

CHAPTER 99A

MISCELLANEOUS PROVISIONS

Sec.

§ 99A01. Uniformity of application and construction.

In applying and construing this uniform act, consideration

must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

§ 99A02. Relation to Electronic Signatures in Global and National Commerce Act.

This part modifies, limits or supersedes the Electronic Signatures in Global and National Commerce Act (Public Law 106-229, 15 U.S.C. § 7001 et seq.), but does not modify, limit or supersede section 101(c) of that act or authorize electronic delivery of any of the notices described in section 103(b) of that act.

§ 99A03. Transitional provision.

This part applies to a pending proceeding to adjudicate parentage commenced before the effective date of this section for an issue on which a judgment has not been entered.

Section 2. This act shall take effect in 60 days.

Peters v. Costello

Supreme Court of Pennsylvania

July 27, 2004, Submitted ; December 30, 2005, Decided

No. 8 EAP 2004

Reporter
586 Pa. 102 *; 891 A.2d 705 **; 2005 Pa. LEXIS 3199 ***

TEDDY PETERS, Appellant v. DANIEL COSTELLO AND MARYANN COSTELLO, Appellees

Prior History: [***1] Appeal from the Order of the Superior Court entered August 11, 2003, at 3850 EDA 2002, affirming the Order of the Court of Common Pleas of Philadelphia County entered November 15, 2002, at D.R. No. 0C9900866.

Peters v. Costello, 833 A.2d 1156, 2003 Pa. Super. LEXIS 3986 (Pa. Super. Ct., 2003)

Case Summary

Procedural Posture

Appellant father sought review of the order of the Pennsylvania Superior Court affirming the order finding that appellee applicants had standing to seek partial custody or visitation under the Pennsylvania Grandparent Visitation Act, *23 Pa. Cons. Stat. § 5311 et seq.*

Overview

During her childhood, the mother resided almost continuously with the applicants, who were not her biological parents. While residing with the applicants, the mother, who was not married to the father, had a baby. During the first four years of the child's life, the mother and child resided with the applicants. After the father obtained primary physical custody of the child, the father denied the applicants access to the child. The trial court did not err in finding that the applicants had standing to seek partial custody or visitation under *23 Pa. Cons. Stat. § 5313(a)*, which gave grandparents the right to seek partial custody, visitation rights, or both where the child had resided with them for a period of 12 months or more and was subsequently removed by a parent. The applicants stood in loco parentis to the mother, as they raised her. *Section 5313(a)* did not define grandparent. The common usage of parent, consulted under *1 Pa. Cons. Stat. § 1903(a)*, included reference to a person standing in loco parentis to the child. The applicants, who stood in loco parentis to the mother of the child, retained the same rights as other grandparents.

Outcome

The order was affirmed.

Judges: MR. JUSTICE CASTILLE. CAPPY, C.J., CASTILLE, NIGRO, NEWMAN, SAYLOR, EAKIN, BAER, JJ. Mr. Chief Justice Cappy, Mr. Justice Nigro, Madame Justice Newman and Mr. Justice Saylor join the opinion. Mr. Justice Baer files a concurring opinion. Mr. Justice Eakin files a dissenting opinion.

Opinion by: CASTILLE

Opinion

[*104] [**706] **MR. JUSTICE CASTILLE**

This Court is called upon in this appeal to determine whether "non-biological grandparents" who stand *in loco parentis* to one of the parents of a child with respect to whom they seek grandparental visitation rights, and who otherwise qualify to seek partial custody/visitation, have standing to seek visitation under the Grandparent Visitation Act, *23 Pa.C.S. § 5311-13* (the "Act"). Both the trial court and the Superior Court held that appellees, the putative grandparents in this case, were entitled to pursue visitation under the Act as a result of their *in loco parentis* relationship to the mother of the child. For the reasons that follow, [***2] this Court agrees that appellees had standing, and therefore, we affirm.

The pertinent facts are undisputed: Francesca Szypula is the mother of Felicity Szypula, the child at issue. In 1979, shortly after Francesca was born, appellee Maryann Costello began babysitting her. When Francesca was eleven months old, her biological mother died and her biological father, Francis Szypula, left her in the custody of appellees. Appellees are not related by blood or by marriage to Francesca. Francesca lived with appellees continuously from eleven [*105] months of age until age thirteen when she lived with her father for a period of eight months. At the conclusion of that eight-month period, Francesca returned to appellees, and appellees and Francesca's father entered into the following custody agreement:

> WHEREAS, Plaintiff Francis J. Szypula ("Father") is the father of the minor child Francesca Marie Szypula born February 15, 1979;
>
> WHEREAS, the biological mother of the child, Felicia Kay Forbes, died on [**707] January 30, 1980 when the child was less than one year old;
>
> WHEREAS, Defendants Daniel and Maryann Costello (Mr. And Mrs. Costello) have cared for the child [since] shortly after [***3] she was born;
> WHEREAS, for a brief period the child lived with Father but has since returned to live with Daniel and Maryann Costello;
> WHEREAS, Father and Mr. and Mrs. Costello desire to set forth the terms of the agreement with respect to the custody and support of the child while the child is living with the Costellos;
> NOW THEREFORE, it is hereby stipulated and agreed by the above-captioned parties as follows:
> 1. Daniel and Maryann Costello shall have legal and physical custody of Francesca Marie Szypula and shall be responsible for protecting the child's best interests and welfare.
> 2. Father shall have the right to visit and communicate with the child on such occasions and with such frequency as he and the child may mutually agree.
> 3. Father shall assign to the Costellos the child's social security checks to be used for the support of the child, and shall continue to provide health insurance coverage for the child so long as it is available to him at a reasonable cost through his employment.
>
> 4. The Costellos shall be responsible for the child's health, education and welfare, and shall take such steps as are necessary to ensure that the child's [***4] physical and emotional [*106] needs are met and that she is properly supervised at all times.

Pursuant to this agreement, Francesca remained in the custody of appellees and continued to live with them well into adulthood, indeed at least through November of 2002, when the trial court rendered its decision in this case.

On November 8, 1997, while still residing with appellees and unmarried, Francesca gave birth to Felicity. Appellant Teddy Peters, who was twenty-three years of age at the time of Felicity's birth, is the child's biological father. Francesca and Felicity lived with appellees for the first four years of Felicity's life, while appellant lived elsewhere. In March of 1999, appellant petitioned for shared custody of Felicity, which the trial court granted. Then, in November of 2001, appellant petitioned for and was awarded primary physical custody, while Francesca had partial custody which was limited to weekly supervised visits. Appellant allowed appellees to see Felicity at Christmas in 2001, but denied them access to the child thereafter.

On March 13, 2002, as appellant and Francesca continued to dispute custody arrangements, appellees filed a petition for visitation [***5] with Felicity. That action was consolidated with the existing custody dispute. The trial court held a consolidated hearing on October 30, 2002, at which Francesca, Daniel Costello, Felicity's teachers, appellant, a clinical psychologist hired by appellant, and appellant's neighbor testified. Mr. Costello testified that, although Francesca is not his biological daughter, he and his wife raised her as their own since she was eleven months old, and he has had a lifelong father-daughter relationship with her. He further testified that Felicity lived with appellees for a period of four years from the time of her birth until November 2, 2001, when appellant was granted primary physical custody. Mr. Costello testified that Felicity called him "Poppy" and called Mrs. Costello "Mamom;" that appellees had always regarded Felicity as their own grandchild; and that they had had a continuous and close relationship with Felicity and spent much time [**708] with her, including birthdays and holidays. Further, during the years [*107] when Felicity lived with appellees, appellant neither questioned nor objected to their de facto grandparental relationship with the child. After primary physical custody was awarded [***6] to appellant, Mr. Costello attempted to see Felicity by calling appellant or stopping him on the street to ask for access, but appellant was unaccommodating.

Francesca testified that, since November of 2001, she

had been allowed only supervised visitation with Felicity on Sundays at the Family Court facility in Philadelphia. She stated that Felicity was very attached to appellees, whom Francesca referred to as her parents. When Francesca had custody of Felicity, she resided with appellees, and Mrs. Costello cared for the child while Francesca was at work. Francesca stated that Mrs. Costello and Felicity enjoyed a loving relationship, with Mrs. Costello willing to do whatever she could for Felicity.

Dr. Najma Davis, a clinical social worker hired by appellant to perform a custody evaluation, also testified. Dr. Davis noted that she had visited appellees' home; she described appellees' relationship to Felicity as that of grandparents; stated that she considered appellees to be Felicity's grandparents; and testified that, in her professional opinion, appellees should continue to maintain a grandparental relationship with Felicity.

Appellant testified that appellees are not Felicity's [***7] biological grandparents, but acknowledged that he had treated them as Felicity's grandparents since she was born. Appellant also stated his view that a grandparent should not have a right to be involved with a grandchild if it would be detrimental to the child and, in his view, the care issues existing in the Costello home, issues which in part led to his successful custody petition, were such a detriment.

On November 13, 2002, the trial court heard Felicity's testimony *in camera.* Though understandably not very forthcoming given her age, Felicity did tell the court that she would like to live with her father, but also would like to spend time with appellees, whom she called "Poppy" and "Grandmom."

[*108] The trial court issued an order on November 15, 2002, awarding shared legal custody of Felicity to Francesca and appellant, with appellant having primary physical custody and Francesca having partial physical custody limited to the first and third weekend of every month, from Friday evening to Sunday evening. The court also granted appellees partial custody/visitation on the fourth weekend of every month from Friday evening to Sunday evening. In addition, the court apportioned a designated [***8] list of holidays among appellant, Francesca and appellees, and awarded appellees seven days of vacation-related physical custody, occurring at the conclusion of school each June. Finally, the court ordered that appellees should have liberal, unmonitored telephone access to Felicity.

Appellant appealed to the Superior Court, but only as to the partial custody/visitation award to appellees. Appellant argued that the trial court erred in finding that appellees had standing under the Grandparent Visitation Act, where appellees were neither the biological nor the adoptive grandparents of Felicity. The trial court filed an opinion in which it noted that it had found that appellees stood *in loco parentis* to Francesca because they assumed parental status when they entered into the custody agreement with Francesca's biological father and actually discharged parental duties for nearly all of Francesca's life. The court further noted that the rights and duties [**709] springing from a relationship *in loco parentis* are the same as in a biological parent-child relationship. With respect to appellant's argument that appellees cannot be considered Felicity's grandparents because they are not her [***9] biological grandparents, the trial court noted that nothing in the Act, or in the common meaning of the term "grandparent," restricted grandparental status to those with a biological relationship to the child. Therefore, the court determined that, as a result of their *in loco parentis* relationship with Francesca, appellees were Felicity's maternal grandparents.

Having found that appellees qualified as grandparents under the Act, the court next held that appellees had standing to petition for partial custody and visitation in the circumstances of this case. *Section 5313 of the Act* addresses "when grandparents [*109] may petition" for custody and/or visitation. Subsection (a) provides that grandparents may petition for partial custody and visitation, and authorizes the court to grant such relief, in the following circumstances:

> **§ 5313. When grandparents may petition.**
>
> **(a) Partial custody and visitation.** -- If an unmarried child has resided with his grandparents or great-grandparents for a period of 12 months or more and is subsequently removed from the home by his parents, the grandparents or great-grandparents may petition the court for an order granting them [***10] reasonable partial custody or visitation rights, or both, to the child. The court shall grant the petition if it finds that visitation rights would be in the best interest of the child and would not interfere with the parent-child relationship.

23 Pa.C.S. § 5313(a). The court held that appellees had a right to petition because Felicity had lived with them for four years until removed from their home by appellant, thereby meeting the requirements of the act.

With respect to the merits of the petition, the court noted

that it had found that allowing appellees partial custody and visitation was in the child's best interest. The best interest finding was based upon the evidence revealing that Felicity had a close relationship with appellees; that the child herself expressed a desire to see appellees; and that appellant's own expert opined than this grandparental relationship should be maintained. Finally, the court noted that there was no evidence that the custody schedule it had ordered would interfere with either parent's relationship with the child.

The Superior Court affirmed in an unpublished opinion. The panel noted, as the trial court had, that [***11] *in loco parentis* status embodies an assumption of parental status as well as an actual discharge of parental duties, and gives rise to a relation which is "'exactly the same as between parent and child.'" Slip op. at 3 (citation omitted). The panel found that appellant had proffered no reason why, when someone assumes parental status with respect to a child, "that status and the standing it [*110] confers *vis a vis* a grandchild must be disregarded" especially where, as here, those seeking access to the child "are regarded by all those concerned as operative grandparents." Id. at 4. Finally, the panel rejected appellant's argument that the Act applies only to biological grandparents, agreeing with the trial court that the statute contains no such restriction. *Id.* at 5.

For purposes of this appeal, appellant does not dispute the trial court's findings that appellees stand *in loco parentis* to Francesca; that they served as *de facto* grandparents to Felicity; and that maintaining that relationship would be in the child's best interest. Instead, appellant [**710] confines himself to the preliminary and strictly legal question of appellees' standing to seek visitation and/or partial [***12] custody under the Grandparent Visitation Act. Appellant contends here, as he did below, that the Act does not confer standing upon putative grandparents who are neither the adoptive nor the biological grandparents of the child in question. The narrow issue presented is primarily a question of statutory interpretation, and as such, this Court's review is plenary. See *Commonwealth v. Gilmour Manufacturing Co., 573 Pa. 143, 822 A.2d 676, 679 (Pa. 2003)*; *C.B. ex rel. R.R.M. v. Commonwealth, Department of Public Welfare, 567 Pa. 141, 786 A.2d 176, 180 (Pa. 2001)*. See also *R.M. v. Baxter ex. rel. T.M., 565 Pa. 619, 777 A.2d 446 (Pa. 2001)* ("the issue of whether the statute confers standing upon a grandparent to seek custody and/or visitation is purely one of law, over which our review is plenary."). Although this Court's review is hampered to some extent by the fact that appellees have not filed a brief, we nevertheless have little difficulty in concluding that affirmance is required.

Since the basis for appellees' claim of grandparental visitation rights derives from their *in loco parentis* relationship with Francesca, we will begin [***13] by examining the common law *in loco parentis* doctrine. The term *in loco parentis* literally means "in the place of a parent." Black's Law Dictionary (7th Ed. 1991), 791.

> The phrase "*in loco parentis*" refers to a person who puts oneself [sic] in the situation of a lawful parent by assuming [*111] the obligations incident to the parental relationship without going through the formality of a legal adoption. The status of *in loco parentis* embodies two ideas; first, the assumption of a parental status, and, second, the discharge of parental duties. … The rights and liabilities arising out of an *in loco parentis* relationship are, as the words imply, exactly the same as between parent and child.

T.B. v. L.R.M., 567 Pa. 222, 786 A.2d 913, 916-17 (Pa. 2001) (citations omitted). [1] Accord *Commonwealth v. Gerstner, 540 Pa. 116, 656 A.2d 108, 112 (Pa. 1995)*. In T.B., a case which has not been cited by appellant or the courts below, this Court summarized the broad principles governing third party standing in custody/visitation cases, including common law *in loco parentis* standing, as follows:

> It is well-established [***14] that there is a stringent test for standing in third-party suits [fn6] for visitation or partial custody due to the respect for the traditionally strong right of parents to raise their children as they see fit. *R.M. v. Baxter ex. rel. T.M., 565 Pa. 619, 777 A.2d 446, 450 (2001)*. The courts generally find standing in third-party visitation and custody cases only where the legislature specifically authorizes the cause of action. Id. A third party has been permitted to maintain an action for custody, however, where that party stands *in loco parentis* to the child. *Gradwell v. Strausser, 610 A.2d at 1002*.

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[1] The T.B. Court further noted that, although the *in loco parentis* doctrine had roots in cases concerning entitlement to and compensation for children's services, life insurance, and workers' compensation, "in recent years, … the doctrine has been used almost exclusively in matters of child custody." *Id. at 916* (citations omitted).

FN6. Persons other than biological parents are "third parties" for purposes of custody disputes. *Gradwell v. Strausser, 416 Pa. Super. 118, 610 A.2d 999 (1992)*.

786 A.2d at 916.

[***15] The appellant in T.B. was the biological mother of the child at issue, who challenged the lower courts' finding that her lesbian former partner, with whom she [**711] was living when they decided to have the child together (through the agency of a sperm donor), stood *in loco parentis* to the child, and therefore, [*112] had standing to seek visitation. This Court rejected the mother's argument that the *in loco parentis* doctrine should be abandoned entirely in this instance noting, among other things, that the mother had forwarded no persuasive reason to reject a well-established common law doctrine and effect a change in the law "that could potentially affect the rights of stepparents, aunts, uncles or other family members who have raised children, but lack statutory protection of their interest in the child's visitation or custody." *Id. at 917*. In this regard, T.B. also quoted with approval the Superior Court, which described the importance of the doctrine in custody/visitation matters, as follows:

> "The *in loco parentis* basis for standing recognizes that the need to guard the family from intrusions by third parties and to protect the rights of the natural parent [***16] must be tempered by the paramount need to protect the child's best interest. Thus, while it is presumed that a child's best interest is served by maintaining the family's privacy and autonomy, that presumption must give way where the child has established strong psychological bonds with a person who, although not a biological parent, has lived with the child and provided care, nurture, and affection, assuming in the child's eye a stature like that of a parent. Where such a relationship is shown, our courts recognize that the child's best interest requires that the third party be granted standing so as to have the opportunity to litigate fully the issue of whether that relationship should be maintained even over a natural parent's objections."

Id. at 917, *quoting* *J.A.L. v. E.P.H., 453 Pa. Super. 78, 682 A.2d 1314, 1319-20 (Pa. Super. 1996)*.

The T.B. Court likewise rejected the mother's claim that the appellee lacked standing based on the assertion that the statutory custody scheme does not encompass former partners or paramours of biological parents. We noted that appellee's standing claim was premised upon the common law doctrine of *in loco* [***17] *parentis*, and "the mere fact that the statute does not reference the doctrine cannot act to repeal by implication what has been entrenched in our common law." *Id. at 917-18*. [*113] Finally, we concluded that the appellee indeed satisfied the requirements for *in loco parentis* status, and therefore, had standing to petition for partial custody for purposes of visitation. [2]

[***18] This case, of course, differs from *T.B.* in that it involves grandparental standing to petition for partial custody/visitation, and the General Assembly has specifically spoken to the circumstances under which a grandparent may so petition in the Grandparent Visitation Act. The common law doctrine of *in loco parentis* nevertheless is a central concern, since that is the basis [**712] for appellees' claim to grandparental status.

Appellant argues that the Act establishes a narrow and limited exception to the general rule that parents have a fundamental right to rear their children free from third party or governmental intrusion, and standing to seek to interfere with that right must be limited to those individuals specified by the statute. Appellant notes that the term "grandparent" is not defined in the Act, and therefore, it should be accorded its plain and ordinary meaning which, in appellant's view, would be narrowly limited to a child's biological or adoptive grandparents. Because appellees are not Felicity's biological or adoptive grandparents, appellant argues that they are third parties who lacked standing to petition for visitation under the Act. Moreover, appellant argues [***19] that recognizing standing in the situation of appellees here

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[2] Mr. Justice Saylor's dissent in T.B., which this author joined, disagreed with the T.B. Majority's dismissing the significance of the legislative scheme, as well as the conclusion that the appellee in fact stood *in loco parentis* to the child. With respect to the latter point, the dissent opined that the doctrine of *in loco parentis* encompasses more than practical or emotional parenthood, but also requires legal incidents of parenthood; since the appellee had no legally recognized familial relationship with the child, the dissent concluded that she lacked standing. *Id. at 922* (Saylor, J., joined by Castille, J., dissenting). It is worth noting that, since Francesca's biological father entered into a custody agreement with appellees conferring on them all legal and custodial rights vis-a-vis Francesca, appellees stood *in loco parentis* to Francesca under either test set forth in T.B.

will turn the narrow grandparent exception into a broad one whereby any person who stood *in loco parentis* to a parent during that parent's childhood could later seek visitation with that parent's children, which [*114] possibly could lead to disputes between "actual legitimate grandparents" and previous parental caretakers claiming to be "better" grandparents. In appellant's view, appellees here are third parties, pure and simple, and should have faced the hurdles that would face any third party seeking custody as against the child's parents, without being able to resort to the easier method of access afforded only to biological or adoptive grandparents via the Act.

The object of interpretation and construction of all statutes is to ascertain and effectuate the intention of the General Assembly. See *1 Pa.C.S. § 1921(a)*; *In re Canvass of Absentee Ballots of November 4, 2003 General Election, 577 Pa. 231, 843 A.2d 1223, 1230 (Pa. 2004)*. When the words of a statute are clear and free from all ambiguity, their plain language is generally the best indication of legislative intent. *Bowser v. Blom, 569 Pa. 609, 807 A.2d 830, 835 (Pa. 2002)*; [***20] *Pennsylvania Financial Responsibility Assigned Claims Plan v. English, 541 Pa. 424, 664 A.2d 84, 87 (Pa. 1995)*; *1 Pa. C.S. § 1921(b)* ("When the words of a statute are clear and free from all ambiguity, the letter of it is not to be disregarded under the pretext of pursuing its spirit."). In construing statutory language, "words and phrases shall be construed according to rules of grammar and according to their common and approved usage . . . ." *1 Pa. C.S. § 1903(a)*. It is only when "the words of the statute are not explicit" on the point at issue that resort to statutory construction is appropriate. *1 Pa.C.S. § 1921(c)*; see also *Comm. v. Packer, 568 Pa. 481, 798 A.2d 192, 196 (Pa. 2002)*.

Section 5301 of the Domestic Relations Act states a legislative policy respecting grandparental contact with grandchildren: "The General Assembly declares that it is the public policy of this Commonwealth, when in the best interest of the child, to assure a reasonable and continuing contact of the child with both parents after a separation or dissolution of the marriage and the sharing [***21] of the rights and responsibilities of child rearing by both parents and a continuing contact of the child or children with grandparents when a parent is deceased, divorced or separated." *23 Pa. C.S. § 5301*. *Section 5313(a)* [*115] addresses when grandparents may petition for visitation and/or partial custody of grandchildren. Mere grandparental status alone does not entitle a person to standing under the Section: instead, the child must have actually resided with the putative grandparent for 12 months or more and must have been removed from the home by his parent. Even if standing to petition is so established, an actual award of visitation rights [**713] to the grandparent would be proper only if it is determined that the award is in the child's best interests and does not interfere with the parent-child relationship.

On the specific point at issue, however, we note that the statute does not define the term "grandparent." Notably, the term is not qualified by speaking of biological grandparents, or of biological and adoptive grandparents, or of biological and adoptive grandparents to the exclusion of others who may claim grandparental status, such as those with an [***22] *in loco parentis* relationship with one of the parents of the child. Instead, it simply speaks of grandparents (and great-grandparents). In construing the term, this Court must look to the "common and approved usage" of the term "grandparent." *1 Pa.C.S. § 1903(a)*. Webster's Third New International Dictionary defines "grandparent" as "a parent's parent." Webster's Third New International Dictionary (2002), 988. The same dictionary defines "parent" as follows: "1a: one that begets or brings forth offspring: Father, Mother; b [law] (1): a lawful parent **(2): a person standing *in loco parentis* although not a natural parent….**" Id. at 1641 (emphasis supplied). See also The Merriam Webster Dictionary (1997), 535 (defining "parent" as "**1**: one that begets or brings forth offspring: FATHER, MOTHER[;] **2: one who brings up and cares for another**") (emphasis supplied). Applying these common definitions of the terms grandparent and parent, because appellees stand *in loco parentis* to Francesca, they are the parents of Felicity's mother, and therefore, Felicity's grandparents.

The common and approved usage of the term "grandparent" [***23] and the result it compels also comports with the common law. As appellant concedes in equating adoptive grandparental status with biological grandparental status, there are instances [*116] in the law where non-biological family status has the same legal effect as biological status. But, *in loco parentis* relationships, like adoptive relationships, have a settled place in the law as well, and generate equivalent parental rights and responsibilities. Consistently with the view of the Court Majority in T.B., we will not read the General Assembly's failure to address the various permutations of parentage in *Section 5313(a)* as reflecting an intention to eliminate grandparental relationships that have their roots in the common law doctrine. *786 A.2d at 918* (General Assembly's failure to

address common law *in loco parentis* doctrine in provisions respecting custody cannot "act to repeal by implication what has been entrenched in our common law.").

Turning to the effect of the doctrine in this case, it is undisputed that appellees stand *in loco parentis* to Francesca, because they assumed the status of Francesca's parents and discharged their parental duties to her, all [***24] within the context of a tangible legal relationship created by Francesca's biological father when he entered into a custody agreement with appellees. As we have noted above, it is settled that "the rights and liabilities arising out of an *in loco parentis* relationship are, as the words imply, **exactly the same as between parent and child.**" *Id. at 917* (emphasis supplied). One of the natural incidents of parenthood is that parents become the grandparents of their children's children. And, indeed, it is notable that appellees here in fact assumed the status of *de facto* grandparents when Francesca gave birth to Felicity while still living at home, and filled that role for a substantial portion of the child's life, since they housed Francesca and Felicity for four years and cared for the child when Francesca worked. In light of the settled legal effect of *in loco parentis* status, it [**714] seems unlikely in the extreme that the General Assembly intended that persons with a legal relationship "exactly the same" as that of a parent to a child would be deemed to have no legally cognizable relationship with the offspring of that child.

We note that appellant's concerns with the [***25] potential effects of this conclusion, that is, opening the floodgates to petitions [*117] from potentially innumerable caretakers with no biological or adoptive relationship to the *in loco parentis* child, is vastly overstated. *Section 5313(a)* standing is specifically limited to those grandparents seeking visitation with a grandchild who "has resided with his grandparents or great-grandparents for a period of 12 months or more and is subsequently removed from the home by his parents." Thus, it does not encompass every grandparent, much less every person who may seek to forward a claim for "*in loco*" grandparent status. Therefore, appellant's concern that affirmance of the decision below would permit any non-biological caretakers of a child's parent to file a petition for partial custody or visitation is baseless. This provision is narrowly drawn and clearly applies only to those grandparents who have resided with their unmarried grandchildren for a period of a year or more. [3]

[***26] On the other hand, to deny appellees the right even to seek visitation under the Act, simply because they lack a biological or formal adoptive connection to Francesca and Felicity, would artificially minimize appellees' actual and substantial relationship to Francesca and Felicity and their actual contributions to their well-being where appellees have, for more than two decades, assumed the responsibilities attendant upon parenting Francesca and serving as *de facto* grandparents to Felicity. Appellees are not officious intermeddlers or mere "prior caretakers," as appellant would have it. As a result of their willingness to step in and actually perform the roles of parents and grandparents, they have distinguished themselves from all other persons lacking a biological or adoptive relationship with this child. In this regard, appellant's argument that the fact [*118] that Felicity has a living, biological maternal grandparent justifies denying appellees' standing to seek visitation misses the point. Francesca had and has a living, biological parent, too; but it was appellees who took on the responsibilities for raising Francesca, and thereby acquiring the attendant rights of parenthood. [***27] The universe of potential petitioners under the Act, while larger than the biological pool, nevertheless is rationally restricted only to those who have played an actual rearing role in the child's life. Accordingly, we hold that, for purposes of the Act, appellees are the equivalent of the child's maternal grandparents, and as such, appellees had standing to file a petition seeking visitation with their grandchild. [4]

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[3] We are aware that *R.M. v. Baxter ex. rel. T.M., 565 Pa. 619, 777 A.2d 446 (Pa. 2001)*, held that a grandparent has automatic standing, under subsection 5313(b), to petition for custody, while the language of subsection (a) specifically limits the ability of grandparents to petition for visitation to those circumstances in which "an unmarried child has resided with his grandparents or great-grandparents for a period of 12 months or more and is subsequently removed from the home by his parents." Baxter did not involve an *in loco parentis* issue. We neither address nor decide whether an individual who establishes *in loco parentis* status with regards to a parent of a child has automatic standing to seek grandparental custody under subsection (b); any such decision is better left to an appropriate case raising that specific claim.

[4] In a subsection of his brief entitled "Policy," appellant cites the United States Supreme Court's decision in *Troxel v. Granville, 530 U.S. 57, 120 S. Ct. 2054, 147 L. Ed. 2d 49 (2000)* (plurality opinion), as support for his argument that a non-abusive custodial parent has a right to determine what, if any, contact the child should have with grandparents.

[***28]

[**715] The decision of the Superior Court is affirmed.

Mr. Chief Justice Cappy, Mr. Justice Nigro, Madame Justice Newman and Mr. Justice Saylor join the opinion.

Mr. Justice Baer files a concurring opinion.

Mr. Justice Eakin files a dissenting opinion.

Concur by: BAER

Concur

MR. JUSTICE BAER

I join the majority opinion, but write to ensure that such joinder is not misconstrued in the future. Initially, I believe this ruling is fact specific and will not be of general application. With the exception of eight months around her thirteenth year, Francesca has lived her entire life with the [*119] Costellos. Francesca's mother is dead, and at the conclusion of the eight-month period during which Francesca lived with her father, her father signed a formal agreement entrusting the Costellos with responsibility for Francesca's health, education, welfare, and physical and emotional needs. The only thing missing in the agreement between Francesca's father and the Costellos that would have mooted this suit is formalized adoption. Moreover, Francesca's child Felicity, who is at the center of this dispute, lived her entire life with the Costellos until Appellant obtained primary [***29] custody of Felicity through a court action. This is simply not a case of the devoted nanny or next door neighbor from a parent's childhood seeking custody of the parent's child, but rather this holding applies only to those individuals who stand *in loco parentis* to the parent and have lived with the child for twelve months or more. Accordingly, while I join the majority opinion, I emphasize the compelling nature of the facts of this case which would have to be present in any case before this would be applicable as precedent.

Finally, the majority notes at footnote 3 the potential interaction of this opinion with our Court's decision in *R.M. v. Baxter ex. rel. T.M., 565 Pa. 619, 777 A.2d 446 (Pa. 2001)*, which provides grandparents with automatic standing to petition pursuant to *Section 5313(b)* for full custody without limitation. For similar reasons to those stated above in relation to *Section 5313(a)*, I am convinced that few will be able to satisfy the requirements for custody under *Section 5313(b)*. Moreover, I must note that I believe that Baxter was wrongly decided and notwithstanding my deep respect for stare decisis, will urge its reversal when the opportunity [***30] arises.

Dissent by: EAKIN

Dissent

MR. JUSTICE EAKIN

My colleagues confer upon a couple, acting in loco parentis to a woman who is now well past the age of minority, standing to pursue court-ordered visitation of the woman's daughter under the Grandparent Visitation Act. I respectfully dissent.

The question is whether appellees are entitled to the preferred status, conferred only by the statute, enjoyed by grandparents [*120] of children; as the majority notes, the [**716] narrow question before this Court is one of interpretation of that statute.

The Act does not define "grandparents," it is true, but that word is hardly in need of definition. The term "grandparent" is clear and unambiguous, and it has been for the entirety of Pennsylvania jurisprudence. The traditional, common, clear, and time-honored definition of "grandparent" is the parent of one's parent. Webster's Third New International Dictionary Unabridged 988 (3d ed. 1993). That is achieved one of two ways: biologically, or through adoption. A grandparent does not include someone who acts as a grandparent. Behaving like a grandparent, filling the role of a grandparent, and having others think of you as a grandparent may give rise [***31] to familial inclusion and affectionate wishes at holidays and birthdays, but it

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According to appellant, the recognized liberty interest of parents must inform the decision here. We note that appellant does not allege that this statute is unconstitutional under Troxel. Instead, his claim is confined to the proper interpretation of the statute for standing purposes, and Troxel is invoked as weighing in favor of his restrictive interpretation. In any event, Troxel is inapposite, as that case involved a Washington statute giving **any person** the right to petition for visitation at any time and granting authority to the courts to permit such visitation. The U.S. Supreme Court found the statute overbroad, but it was not a narrow grandparent visitation statute such as the statute at issue here, and moreover, no majority viewpoint emerged.

simply does not make it so for purposes of standing in child custody disputes. Serving as surrogate grandparent does not give one the statutory status of the real thing.

> As a general rule, the best indication of legislative intent is the plain language of a statute. Courts may resort to other considerations to divine legislative intent only when the words of the statute are not explicit. Thus, this Court has consistently held that other interpretive rules of statutory construction are to be utilized only where the statute at issue is ambiguous.

Pennsylvania School Boards Association v. Public School Employees' Retirement Board, 580 Pa. 610, 863 A.2d 432, 436 (Pa. 2004) (citations omitted). The Statutory Construction Act states, in relevant part, "words and phrases shall be construed according to rules of grammar and according to their common and approved usage …." *1 Pa.C.S. § 1903(a)* (emphasis added). "Only after the words of the statute are found to be unclear or ambiguous should a reviewing court further engage in an attempt to ascertain [***32] the intent of the Legislature through the use of the various tools provided in the Statutory Construction Act." *Zane v. Friends Hospital, 575 Pa. 236, 836 A.2d 25, 31 (Pa. 2003)*. "Grandparent" simply is not an ambiguous term. The lack of definition in the statute does not connote [*121] ambiguity--it connotes the opposite: there is no need for definition because of the obvious, simple, and unconfused meaning of the word. Where a term is instantly recognizable and clear, the failure to define it in expansive terms hardly signifies the intent to include the non-traditional meaning--if anything, the absence of expansive definitional language means that expansive meaning is not intended.

The majority, however, adopts an expansive meaning of the term "grandparent" under the guise of following its common and approved usage. The majority defines grandparent as "'a parent's parent.'" Majority Slip Op., at 12 (quoting Webster's Third New International Dictionary 988 (2002)). The majority adopts a definition of "parent" which includes: "'a person standing in loco parentis although not a natural parent ….'" Id. (quoting Webster's Third New International Dictionary 1641 (2002)) [***33] (emphasis added). Thus, the majority concludes appellees, acting in loco parentis to an adult woman, are grandparents of the woman's daughter. Id., at 12-13.

Pennsylvania courts recognize a person may "put[] himself in the situation of a lawful parent by assuming the obligations incident to the parental relationship without going through the formality of legal adoption. This status of 'in loco parentis', embodies two ideas; first, the assumption of a parental status, and second, the discharge of parental duties." *Commonwealth ex rel. Morgan v. Smith, 429 Pa. 561, 241 A.2d 531, 533 (Pa. 1968)* (emphasis [**717] added); see also Black's Law Dictionary 803 (8th ed. 2004) (in loco parentis is defined as "of, relating to, or acting as a temporary guardian or caretaker of a child, taking on all or some of the responsibilities of a parent.")

There is no evidence the genesis and evolution of the in loco parentis concept contemplated or intended granting a person who stands in loco parentis to an individual the corresponding status of "in loco grandparentis" over the individual's children. Consequently, the common and approved usage of the term "grandparent" [***34] does not include a person who stands in loco parentis to the natural parent of a child.

[*122] Further, the majority refers to a definition of "parent" which includes "'one who brings up and cares for another[.]'" Majority Slip Op., at 12 (quoting The Merriam Webster Dictionary 535 (1997)). The adoption of this expansive definition is more troubling for its potential consequences concerning parent-child relationships than grandparent-child relationships. Childcare by non-parental parties is not unusual. Where both parents must work outside the home, others commonly assist in the raising of children. Under the majority's definition of "parent," babysitters, day-care workers, nannies, and possibly some teachers and nurses (to name a few) could arguably be considered a child's "parent" (and consequently a grandparent of that child's children) since they help bring up and care for the child. Applying this definition of "parent" leads to an absurd and unreasonable result. See *1 Pa.C.S. § 1922(1)* (presumption General Assembly does not intend absurd or unreasonable result); *Commonwealth v. Burnsworth, 543 Pa. 18, 669 A.2d 883, 888 (Pa. 1995)* [***35] (citing *1 Pa.C.S. § 1922(1)*).

Next, the majority's expansive definition of "parent" and "grandparent" opens the door for Pennsylvania law to conflict with *Troxel v. Granville, 530 U.S. 57, 120 S. Ct. 2054, 147 L. Ed. 2d 49 (2000)*. In Troxel, the United States Supreme Court struck down a Washington grandparent visitation statute because it was too broad, allowing "any person" to have standing for visitation. The right to parent is a fundamental right that deserves the most protection afforded to individuals. *Id., at 65*.

Although Troxel is not specifically implicated in this matter because this Court is only deciding if appellees have standing under the Grandparent Visitation Act to seek court-ordered visitation, the majority opens the door to a future Troxel challenge if a third party can find a claim of either in loco grandparentis status with the right to intervene in a parent's fundamental right to make decisions on a child's behalf, or the majority's newly recognized "caregiver parent" status.

Numerous Pennsylvania statutes refer to grandparents; none find any need to define the term to include "persons who [*123] act like grandparents. [***36] " See Uniform Athlete Agents Act, 5 Pa.C.S. § 3101 et seq.; Pennsylvania Uniform Transfers to Minors Act, 20 Pa.C.S. § 5301 et seq.; Agriculture Education Loan Forgiveness Act, 24 P.S. § 5198.1 et seq.; Pennsylvania Adult and Family Literacy Education Act, id., § 6401 et seq.; Vital Statistics Law of 1953, 35 P.S. § 450.105; Older Adult Daily Living Centers Licensing Act, 62 P.S. § 1511.2; Pooled Trust Act, id., § 1965.2; Family Caregiver Support Act, id., § 3063; Family Support for Persons with Disabilities Act, id., § 3303; Tax Reform Code of 1971, Realty Transfer Tax, 72 P.S. § 8101-C. Are we to reinterpret the term "grandparent" in each of these statutes as well?

In addition to biological and adoptive grandparents, Pennsylvania case law acknowledges [**718] legal grandparents, In re McAllister, 31 Pa. D. & C. 4, 8, 51 York Leg. Rec. 119, 45 Lanc. L. Rev. 601, 85 Pitts. Leg. J. 844 (Lancaster Cty. 1937) (legal grandparent of illegitimate child liable for support), step-grandparents, Hill v. Divecchio, 425 Pa. Super. 355, 625 A.2d 642, 647-48 (Pa. Super. 1993) [***37] (biological grandmother has standing to sue for custody; step-grandfather does not), and foster grandparents. Wolf v. Workers' Compensation Appeal Board, 705 A.2d 483, 486 (Pa. Cmwlth. 1997) (foster grandparent providing volunteer services to special children not statutory employee of county). Pennsylvania has never, however, recognized the concept of de facto grandparents for purposes of custody and visitation.

Eleven states define "grandparent" as the biological or adoptive parent of a minor child's biological or adoptive parent; none includes "in loco grandparentis." See generally Del. Code Ann. tit. 10, § 901(9)(m)(n) (relationships include blood relationships and relationships by adoption); Haw. Rev. Stat. § 386-2 (grandparent is parent of parent by adoption, but not parent of stepparent, stepparent of parent, or stepparent of stepparent); 405 Ill. Comp. Stat. 80/2-3(h) (grandparent is relative created through relationship by blood, marriage, or adoption); see also id., 80/2-3(g) ("parent" means biological or adoptive parent of mentally disabled adult, or licensed [***38] as foster parent); Iowa Code § 239B.1(12)(2005) (grandparent is specified relative created through blood relationship, marriage, [*124] or adoption or spouse to one of relatives); Me. Rev. Stat. Ann. tit. 19-A, § 1802 (grandparent is biological or adoptive parent of child's biological or adoptive parent); Mich. Comp. Laws § 722.22(d) (grandparent is natural or adoptive parent of child's natural or adoptive parent); Neb. Rev. Stat. § 43-1801 (grandparent is biological or adoptive parent of minor child's biological or adoptive parent); N.M. Stat. Ann. § 40-9-1.1(A), (B) (grandparent is biological or adoptive parent of minor child's biological or adoptive parent); Ohio Rev. Code Ann. § 5101.85(A) (kinship caregiver includes grandparents related by blood or adoption to child); Utah Code Ann. § 30-5-1 (grandparent is person whose child, by blood, marriage, or adoption, is the parent of another); W.Va. Code § 48-10-203 (grandparent is biological relationship, person married or previously [***39] married to biological grandparent). Each of the other 38 states has a grandparent visitation statute [1] [***40] and related

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[1] Ala. Code § 30-3-4.1's rebuttable presumption in favor of grandparental visitation held unconstitutional, see R.S.C. v. J.B.C., 812 So. 2d 361, 371 (Ala. Civ. App. 2001); Alaska Stat. § 25.20.065; Ariz. Rev. Stat. Ann. § 25-409; Ark. Code Ann. § 9-13-103's prior version held unconstitutional, see Seagrave v. Price, 349 Ark. 433, 79 S.W.3d 339, 344-45 (Ark. 2002) (trial court constitutionally erred by shifting grandparent's burden to fit parent); Cal. Fam. Code § 3104; Colo. Rev. Stat. § 19-1-117; Conn. Gen. Stat. § 46b-59 held unconstitutional as applied, see Roth v. Weston, 259 Conn. 202, 789 A.2d 431, 449 (Conn. 2002) (heightened burden of proof to justify infringement on parent's fundamental right to parent not met); Fla. Stat. § 752.01 held per se unconstitutional, see Belair v. Drew, 776 So. 2d 1105, 1107 (Fla. App. 5 Dist. 2001) (Section 752.01 is facially unconstitutional as it impermissibly infringes on privacy rights under Florida Constitution); Ga. Code Ann. § 19-7-3's prior version held unconstitutional, see Ormond v. Ormond, 274 Ga. App. 869, 619 S.E.2d 370, 371 (Ga. App. 2005) (state may only impose grandparent visitation "over the parents' objections" on showing that failing to do so would be harmful to child); Idaho Code § 32-719; Ind. Code § 31-17-5-1; Kan. Stat. Ann. § 38-129 held unconstitutional as applied, see Dep't of Social and Rehabilitation Services v. Paillet, 270 Kan. 646, 16 P.3d 962, 970 (Kan. 2001) (trial court must presume fit parent will act in best interests of his or her child); Ky. Rev. Stat. Ann. § 405.021; La. Rev. Stat. Ann. § 9:344; La. Civ. Code Ann., art. 136; ***Md. Code Ann., Fam. Law § 9-102*** held unconstitutional as applied, see Brice v. Brice, 133 Md. App.

[*125] statutes. No state defines [**719] "grandparent" as a person standing in loco parentis to an individual who is a parent. An extensive review of case law from these states reveals, to my knowledge, no reported decision interpreting "grandparent" to include a person standing in loco parentis to a parent. [2] This apparently leaves the majority as the only court rendering a published decision interpreting "grandparent" to include a person standing in loco parentis to a parent.

The General Assembly is familiar with the concept of the in loco parentis relationship, and would have included it, had that been its intent. In explaining who qualifies for death benefits, for example, the Workers' Compensation Act states, "if [children are] members of decedent's household at the time of his death, the terms 'child' and 'children' shall include step-children, adopted children and children to whom he stood in loco parentis, and children of the deceased and shall include posthumous children." 77 P.S. § 562 (emphasis added). The General Assembly could have similarly included the in loco parentis relationship in the Grandparent Visitation Act but chose not to; we may not write it into the Act for it.

[*126] Appellees' relationship with mother is said to give them standing as de facto grandparents; [***41] this determination is flawed. That mother considers appellees to be her parents is a laudable testament to the role they have played in her life. But however mother views them, appellees stood in place of her parents--they are not her parents. There are limitations to the breadth of the in loco parentis relationship, and appellees cannot stand "in loco grandparentis" to the child since no such relationship exists.

Although our case law has not previously expressed that an in loco parentis relationship expires at age of majority, this appears to be the general rule unless the child is incapacitated. See Babb v. Matlock, 340 Ark. 263, 9 S.W.3d 508, 510 (Ark. 2000) (in loco parentis status extinguishes at age of majority unless child is incapacitated); Trievel v. Sabo, 1996 WL 944981, unpublished [**720] opinion at 6 (Del. Super. 1996) (child is emancipated from parent's control at age of majority; individual can no longer stand in loco parentis). This comports with the view that "when a child reaches the age of majority, a presumption arises that the duty to support the child ends …." Sutliff v. Sutliff, 339 Pa. Super. 523, 489 A.2d 764, 775 (Pa. Super. 1985) [***42] (citing Verna v. Verna, 288 Pa. Super. 511, 432 A.2d 630 (Pa. Super. 1981)). Here, when mother reached the age of majority, the need for an in loco parentis relationship ended.

The majority states "in loco parentis relationships, like adoptive relationships, have a settled place in the law as well, and generate equivalent parental rights and responsibilities." Majority Slip Op., at 13. This is not entirely so. Perhaps most basic, unlike biological or adoptive parent-child relationships, in loco parentis status can be terminated at any time, by either party. See 59 Am. Jur. 2d Parent and Child § 9 (citing U.S. v. Floyd, 81 F.3d 1517 (10th Cir. 1996) (applying Oklahoma law); Hamilton v. Foster, 260 Neb. 887, 620 N.W.2d 103 (Neb. 2000); Chestnut v. Chestnut, 247 S.C. 332, 147 S.E.2d 269 (S.C. 1966); Harmon v. Department of Social and Health Services, 134 Wn.2d 523, 951 P.2d 770 (Wash. 1998)).

[*127] Even if the rights incident to the exercise of in

302, 754 A.2d 1132, 1135 (Md. App. 2000) (fit parent is entitled to presumption that he acts in best interest of his or her child); Mass. Gen. Laws ch. 119, § 39D; Minn. Stat. § 257C.08; Miss. Code Ann. § 93-16-3; Mo. Rev. Stat. § 452.402; Mont. Code Ann. § 40-9-102; Nev. Rev. Stat. § 125C.050; N.H. Rev. Stat. Ann. § 458:17-d repealed; N.J. Stat. Ann. § 9:2-7.1 held unconstitutional as applied, see Wilde v. Wilde, 341 N.J. Super. 381, 775 A.2d 535, 545 (N.J. Super. A.D. 2001) (grandparent's statutory right to hale parent to court must be carefully circumscribed, especially where parent is fit); N.Y. Dom. Rel. Law § 72; N.C. Gen. Stat. §§ 50-13.2, 50-13.2A; N.D. Cent. Code § 14-09-05.1; Okla. Stat. tit. 10, § 5 held unconstitutional as applied, see Ingram v. Knippers, 2003 OK 58, 72 P.3d 17, 21 (Okla. 2003) (grant of grandparental visitation under Section Five is voidable); Or. Rev. Stat. § 109.332; R.I. Gen. Laws §§ 15-5-24 to 15-5-24.3; S.C. Code Ann. § 20-7-420(33) held unconstitutional as applied, see Camburn v. Smith, 355 S.C. 574, 586 S.E.2d 565, 567 (S.C. 2003) (court must allow presumption that fit parent's decision is in child's best interest); S.D. Codified Laws § 25-4-52's prior version held partially per se unconstitutional, see Currey v. Currey, 2002 SD 98, 650 N.W.2d 273, 277 (S.D. 2002) (presumption in favor of grandparents is unconstitutional); Tenn. Code Ann. §§ 36-6-306, 36-6-307; Tex. Fam. Code Ann. § 153.433; Utah Code Ann. § 30-5-2; Vt. Stat. Ann. tit. 15, §§ 1011-1013; Va. Code Ann. § 20-124.2; Wis. Stat. § 767.245 limited on constitutional grounds, see In re Paternity of Roger, 250 Wis. 2d 747, 641 N.W.2d 440, 445, 2002 WI App 35 (Wis. App. 2002) (courts must apply presumption that fit parent's decision regarding grandparental visitation is in best interest of child); Wis. Stat. § 880.155; Wyo. Stat. Ann. § 20-7-101.

[2] New York state courts interpret "grandparent" to mean the biological or adoptive parent of a parent. Gross v. Siegman, 226 A.D.2d 724, 642 N.Y.S.2d 44 (N.Y. App. Div. 1996); Hantman v. Heller, 213 A.D.2d 637, 624 N.Y.S.2d 64 (N.Y. App. Div. 1995).

loco parentis status were equivalent to those of parents as concerns the child, Pennsylvania case law [***43] limits the breadth of rights and responsibilities of those acting in loco parentis. There is no basis in any statute or in this Court's jurisprudence to support the majority's extension of the in loco parentis relationship beyond the parent-child relationship. Should appellees die intestate, neither mother nor child will be recognized as an heir entitled to a share of their estate. *20 Pa.C.S. § 2103(1)* (shares of intestate estate pass to, among others, issue of decedent; there is no provision for estate to pass to those with informal relationship). In *Bahl v. Lambert Farms, Inc., 572 Pa. 675, 819 A.2d 534 (Pa. 2003)*, this Court determined that a man born out of wedlock, raised by his grandparents but held out to the world as their natural child (thus creating an in loco parentis relationship), was not entitled to inherit a share of his "parents'" estate. We stated:

> It is apparent that the General Assembly intended, as a general rule, to limit "issue" to those in the decedent's blood line and did not intend to include as first degree "issue" individuals without the requisite consanguinity who had merely been treated [***44] like, or held out as, the decedent's children.

Id., at 538 (emphasis added). The Superior Court found a man was not responsible for support of his stepdaughter after the dissolution of the marriage, even though he stood in loco parentis before, during, and after the marriage to the girl's mother. *Commonwealth ex rel. McNutt v. McNutt, 344 Pa. Super. 321, 496 A.2d 816 (Pa. Super. 1985)*. Although a biological or adoptive parent would not be excused from financial responsibility, the Superior Court explained that requiring a stepfather who stands in loco parentis to pay child support "would be carrying the common law concept of in loco parentis further than we are willing to go." *Id., at 817* (emphasis added).

The status of "in loco grandparentis" simply does not exist. Whatever relationship appellees had with the child's mother, they are not the grandparents of this child, who is in the [*128] primary custody of the father. Appellees are not biological or adoptive parents of the child's parent--hence they are not grandparents within the meaning of the legislation of which they seek to take advantage.

Despite the majority's [**721] assertion to [***45] the contrary, allowing individuals to have standing as de facto grandparents will encourage litigation by third parties who assert standing for visitation and custody. As indicated, childcare by non-parental parties is not unusual, especially where both parents must work outside the home. Today, overseas military personnel must entrust care of their children to others during their service to our country. With this decision, we add to that burden by allowing such caregivers to seek custody simply by averring an appropriate de facto relationship, even though it was never the intent of the parents (much less the legislature) to create such a right. We open the door to a person who provides for a child, necessarily acting in loco parentis in this scenario, to have standing under an ill-defined de facto relationship.

"The courts generally find standing in third-party visitation and custody cases only where the legislature specifically authorizes the cause of action." *T.B. v. L.R.M., 567 Pa. 222, 786 A.2d 913, 916 (Pa. 2001)* (citing *R.M. v. Baxter, 565 Pa. 619, 777 A.2d 446, 450 (Pa. 2001))* (emphasis added). The majority states "*[§] [***46] 5313(a)* standing is specifically limited to those grandparents seeking visitation with a grandchild who 'has resided with his grandparents or great-grandparents for a period of 12 months or more and is subsequently removed from the home by his parents.'" Majority Slip Op., at 14 (emphasis added). This is true, but appellees are not grandparents; we should not strain common sense to define them as such simply because these people are good surrogate custodians. [3]

[*129] In *Larson v. Diveglia, 549 Pa. 118, 700 A.2d 931 (Pa. 1997)*, then Justice, now Chief Justice Cappy, writing for the majority, explained [***47] "the creation of a doctrine of 'de facto' standing to enable a person in possession of a minor child, in the absence of a formal custody order or agreement, to sue for support would only serve to further complicate this area of the law." *Id., at 933-34*. Similarly, standing to sue for visitation or custody, based on a non-adoptive, non-biological relationship deemed to be grandparental, is equally ill-advised.

Adopting the concept of in loco grandparentis status is a slippery slope, and one on which we need not and should not tread. If the legislature wishes to grant

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[3] Even in this case, the situation is not so severe as to require this stretching of the word "grandparent" to include others. The child has four real grandparents--she is not deprived of grandparental relationships. As the child's mother apparently still lives with appellees, they will see the child regularly when mother has custody; thus, they will not be deprived of a relationship with her.

standing to persons who act like grandparents, it may do so. It has chosen not to do so, and in my judgment, done so wisely. Thus, despite the appealing theory of my distinguished colleagues, I must dissent.

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folk's attorneys from pursuing an action to obtain payment on unpaid bills related to the Project. The Commonwealth Court's interpretation, however, would lead to precisely these results.

Pursuant to our review, the Settlement Agreement can be construed as nothing more than a mutual general release between UConn and Suffolk (as well as the other Defending Parties). At best, the language is ambiguous as to whether Suffolk released its own insurers, including Reliance, from providing insurance coverage for claims related to the Project. The ambiguity stems not from Suffolk's "subjective perception" of the terms of the Settlement Agreement, but from the terms of the agreement itself, as the language releasing claims for "insurance coverage" and "indemnification" does not have a single, clear meaning. *See Tallmadge*, 746 A.2d at 1288. As such, the Commonwealth Court and referee erred by failing to consider extrinsic evidence, outside of the terms of the Settlement Agreement, to discern the parties' intent.

As we conclude that the language of the Settlement Agreement is ambiguous, we need not decide whether Reliance was a third-party beneficiary to the Settlement Agreement, as this likewise involves a question of the parties' intent. *See Wilcox*, 982 A.2d at 1062. The Commonwealth Court is therefore also instructed to reconsider this question on remand in light of our decision.

For the reasons stated herein, we vacate the decision of the Commonwealth Court and remand the case for further proceedings consistent with this Opinion.

Chief Justice Saylor and Justices Todd, Dougherty, Wecht and Mundy join the opinion.

Justice Baer files a dissenting opinion.

JUSTICE BAER, Dissenting

I would affirm the Commonwealth Court's order by adopting the rationale employed by that court in its memorandum opinion, *Suffolk Construction Company v. Reliance Insurance Company (In Liquidation)*, 2 REL 2019 (Pa. Cmwlth. filed March 18, 2019) (unpublished), which held that, pursuant to the clear and unambiguous language of the relevant settlement agreement: (1) Appellant Suffolk Construction Company is precluded from seeking insurance coverage from Appellee Reliance Insurance Company ("Reliance"); and (2) Reliance, through its statutory liquidator, had the right as a third party beneficiary to enforce the settlement agreement.

S.M.C., Appellee

v.

C.A.W., Appellant

No. 1802 MDA 2018

Superior Court of Pennsylvania.

Submitted May 6, 2019

Filed October 22, 2019

Background: Mother filed action for child support against her former boyfriend who lived with mother and child for 12 years. Court of Common Pleas, Huntingdon County, Domestic Relations Division, No. 4115-2016, Stewart L. Kurtz, J., ordered boyfriend to pay support under the doctrine of paternity by estoppel. Boyfriend appealed.

Holdings: The Superior Court, No. 1802 MDA 2018, Stabile, J., held that evidence supported trial court's finding that it was

in child's best interests for boyfriend to be liable for child support based on the doctrine of paternity by estoppel.

Affirmed.

1. Child Support ⚿556(1)

The Superior Court reviews child support orders for abuse of discretion.

2. Child Support ⚿549

The Superior Court cannot reverse the trial court's child support determination unless it is unsustainable on any valid ground.

3. Child Support ⚿100

The principal goal in child support matters is to serve the best interests of the children through the provision of reasonable expenses.

4. Child Support ⚿214
Parent and Child ⚿120

The paternity by estoppel doctrine permits a trial court to determine a child's parentage for child support purposes based on the actions of the child's mother and/or putative father.

5. Parent and Child ⚿120

Estoppel in paternity actions is merely the legal determination that because of a person's conduct, that person, regardless of his true biological status, will not be permitted to deny parentage, nor will the child's mother who has participated in this conduct be permitted to sue a third party for child support, claiming that the third party is the true father.

6. Parent and Child ⚿120

Doctrine of paternity by estoppel rests on the public policy that children should be secure in knowing who their parents are; if a certain person has acted as the parent and bonded with the child, the child should not be required to suffer the potentially damaging trauma that may come from being told that the father he had known all his life is not in fact his father.

7. Parent and Child ⚿120

The paternity by estoppel doctrine may apply in circumstances where the child's mother was never married to the putative father.

8. Parent and Child ⚿120

The paternity by estoppel doctrine may apply even where the putative father's relationship with the mother began years after the child's birth and where it was undisputed that the putative father was not the biological father.

9. Parent and Child ⚿120

Evidence supported trial court's finding that it was in child's best interests for mother's former boyfriend to be liable for child support based on the doctrine of paternity by estoppel, in child support proceedings; boyfriend had a long-term in loco parentis relationship with child that began when child was an infant, child and boyfriend lived in boyfriend's home for virtually the first 12 years of child's life, during which time he held himself out as child's father, provided most of child's financial support, listed child as a dependent on seven years of tax returns, and formed a close emotional bond with child, and after mother and child left boyfriend's residence, child had a continued need for financial support and boyfriend's emotional support.

10. Parent and Child ⚿120

The fact a child may become aware that his putative father is not his biological father is not necessarily fatal to a finding of paternity by estoppel.

11. Parent and Child ⚿120

While the law cannot prohibit a putative father from informing a child of their true relationship, under the doctrine of paternity by estoppel, it can prohibit him from avoiding the obligations that their assumed relationship would otherwise impose.

Appeal from the Order Entered October 12, 2018, In the Court of Common Pleas of Huntingdon County, Domestic Relations at Nos: 4115-2016, Stewart L. Kurtz, J.

Gregory A. Jackson, Huntingdon, for appellant.

Joel D. Peppetti, Altoona, for appellee.

BEFORE: STABILE, J., MURRAY, J., and MUSMANNO, J.

OPINION BY STABILE, J.:

Appellant, C.A.W., an adult male, lived together with Appellee, S.M.C., an adult female, and Appellee's daughter ("Child") for almost twelve years. Appellant held himself out as Child's father, supported Child financially and claimed Child as a dependent on many of his tax returns. After Appellant and Appellee ended their relationship, Appellant refused to continue providing Child with financial support and cut off virtually all contact with Child. Appellee filed an action for child support, and the trial court ordered Appellant to pay support under the doctrine of paternity by estoppel. Based on the test for paternity by estoppel articulated in ***K.E.M. v. P.C.S.***, 614 Pa. 508, 38 A.3d 798 (2012), we conclude that the trial court acted within its discretion by requiring Appellant to pay support. Accordingly, we affirm.

Following evidentiary hearings that included testimony from, Appellant, and a child psychologist, Mark Peters, the court found the following facts. In 2002, Child was born to Appellee and H.N., the natural mother and father, respectively. Appellee and H.N. never married, H.N. had virtually no contact with Child, and H.N. never provided financial support or performed parental duties for Child. Appellee filed a child support action against H.N., but it was dismissed because he could not be located.

In January 2003, Appellee began an intimate relationship with Appellant. From April 2003 through January 2015, Appellee and Child lived together with Appellant in Appellant's home. Appellant held himself out to be Child's father and performed parental duties on Child's behalf, treating Child the same as his own biological daughters. Appellant referred to Child as his daughter when introducing her to third parties, and Child referred to Appellant as her father and/or her daddy. Appellant claimed the child dependency tax exemption on his federal income tax returns for Child in tax years 2003, 2004, 2005, 2006, 2007, 2011 and 2012. Appellee was employed outside the home from 2007 through 2010, but her income was insufficient to support Child.

In January 2015, the relationship between Appellee and Appellant ended. Appellee and Child left Appellant's house, and Appellant stopped all financial support to Child and all contact with Child, except for a few visits. Appellant also began a new relationship with another woman. Appellee obtained public assistance but has been unable to do anything financially for Child, such as celebrate Christmas.

After meeting with Child four times, child psychologist Peters opined that Child viewed Appellant as her *de facto* emotional parent and had a positive and stable relationship with him while they resided together. Child reported that their relationship changed after she left Appellant's house. During the first hearing in this case, Appellant walked by Child without

acknowledging her, leaving Child hurt and confused. Peters diagnosed Child as experiencing an adjustment disorder with mixed anxiety and depression.

Based on Peters' testimony, the court determined that Child suffered a serious adverse emotional impact. The court also concluded it was in Child's best interests to apply the paternity by estoppel doctrine against Appellant and require Appellant to pay support. The Huntingdon County Domestic Relations Section calculated Appellant's support obligation, and an interim support order was entered. Appellant filed a timely *de novo* objection to the interim order, which the trial court dismissed. This timely appeal followed. The sole question in this appeal is whether the trial court abused its discretion in concluding that Appellant owed a duty of support under the paternity by estoppel doctrine.

[1–3] We review support orders for abuse of discretion. ***V.E. v. W.M.***, 54 A.3d 368, 369 (Pa. Super. 2012). We cannot reverse the trial court's support determination unless it is unsustainable on any valid ground. ***Kimock v. Jones***, 47 A.3d 850, 853–54 (Pa. Super. 2012). "An abuse of discretion is not merely an error of judgment, but if in reaching a conclusion the law is overridden or misapplied, or the judgment exercised is manifestly unreasonable, or the result of partiality, prejudice, bias or ill-will, as shown by the evidence of record." ***V.E.***, 54 A.3d at 369 (internal quotation marks and brackets omitted). "The principal goal in child support matters is to serve the best interests of the children through the provision of reasonable expenses." ***Mencer v. Ruch***, 928 A.2d 294, 297 (Pa. Super. 2007).

[4–6] As our Supreme Court has explained, the paternity by estoppel doctrine permits a trial court to determine a child's parentage for support purposes based on the actions of the child's mother and/or putative father.

> Estoppel in paternity actions is merely the legal determination that because of a person's conduct (*e.g.*, holding out the child as his own, or supporting the child) that person, regardless of his true biological status, will not be permitted to deny parentage, nor will the child's mother who has participated in this conduct be permitted to sue a third party for support, claiming that the third party is the true father.... [T]he doctrine of estoppel in paternity actions is aimed at achieving fairness as between the parents by holding them, both mother and father, to their prior conduct regarding the paternity of the child.

Fish v. Behers, 559 Pa. 523, 741 A.2d 721, 723 (1999) (quoting ***Freedman v. McCandless***, 539 Pa. 584, 654 A.2d 529, 532-33 (1995)) (internal quotation marks omitted). Estoppel rests on the public policy that "children should be secure in knowing who their parents are. If a certain person has acted as the parent and bonded with the child, the child should not be required to suffer the potentially damaging trauma that may come from being told that the father he had known all his life is not in fact his father." ***T.E.B. v. C.A.B.***, 74 A.3d 170, 173 (Pa. Super. 2013).

[7, 8] The paternity by estoppel doctrine may apply in circumstances where the child's mother was never married to the putative father. ***See R.K.J. v. S.P.K.***, 77 A.3d 33 (Pa. Super. 2013), *appeal denied*, 84 A.3d 1064 (Pa. 2014) (affirming the finding of paternity by estoppel where the mother was married to another man at the time of the child's birth, and where the mother and the putative father resided together for six years but never married). Moreover, the paternity by estoppel doctrine may apply even where the putative father's relationship with the mother began years after the child's birth and where it was undisputed that the putative father was not the biological father. ***See Hamil-***

ton v. Hamilton, 795 A.2d 403 (Pa. Super. 2002) (affirming the finding of paternity by estoppel where the putative father did not begin a relationship with the child's mother until approximately three years after the child's birth and where it was undisputed that the child was not the putative father's biological child). In ***Hamilton***, this Court made clear that the undisputed lack of a biological relationship does not defeat the application of paternity by estoppel. We explained,

> [w]hile it is clear, and indeed was never in dispute, that [the putative father] is not [the child's] biological father, he has truly acted as the child's father and "the law cannot permit a party to renounce even an assumed duty of parentage when by doing so, the innocent child would be victimized."

Id. at 407 (quoting ***Commonwealth ex rel. Gonzalez v. Andreas***, 245 Pa.Super. 307, 369 A.2d 416, 419 (1976)).[1]

More recently, our Supreme Court held in ***K.E.M.*** that the paternity by estoppel doctrine continues to remain good law in Pennsylvania. There, the child's mother sought child support from the alleged biological father, P.C.S., with whom she had an extramarital affair. The trial court held that the mother's husband, H.M.M., had held himself out as the child's father and thus was the father for support purposes under paternity by estoppel principles. The majority decision, authored by then-Justice, and now-Chief Justice Saylor, held that "paternity by estoppel continues to pertain in Pennsylvania" at common law, but "only where it can be shown, on a developed record, that it is in the best interests of the involved child." ***Id.***, 38 A.3d at 810. The Court remanded for further proceedings to determine whether paternity by estoppel was in the child's best interests. In a footnote, the Court suggested that courts have been "most firm" in sustaining a finding of paternity based on the child's "need for continuity, financial support, and potential psychological security arising out of an established parent-child relationship." ***Id.*** at 810 n.12.

Following ***K.E.M.***, in a case with facts similar to the present case, we held that paternity by estoppel applied to the appellant, who held himself out as the child's father despite not being the biological parent. ***R.K.J. v. S.P.K.***, 77 A.3d 33 (Pa. Super. 2013). Unlike the child's biological father, who had no relationship with the child and who never met him, the appellant had held himself out as the child's father, lived with and interacted with the child for nearly six years, told the child he was his father, and supported the child financially. The evidence further demonstrated that it was in the child's best psychological interests for his relationship to continue with the appellant. Following ***K.E.M.***, we held that paternity by estoppel obligated the appellant to pay child support. ***Id.***, 77 A.3d at 38-40.

[9] As in the foregoing decisions, the evidence in the present case supports the trial court's ruling of paternity by estop-

1. The putative fathers in ***R.K.J.*** and ***Hamilton*** both signed acknowledgements of paternity despite knowing that they were not biological parents. ***R.K.J.***, 77 A.3d at 40; ***Hamilton***, 795 A.2d at 404. Neither opinion explored the legal relevance, if any, of those acknowledgments. Instead, the opinions focused on the fact that the putative fathers held out the children to be their own and acted as parents would act. ***See R.K.J.***, 77 A.3d at 40 ("[The putative father] held himself out as [the child's] father for almost six years, lived with [the child] and his mother in his home, told [the child] that he was his father, and provided all financial support for [the child.]"); ***Hamilton***, 795 A.2d at 406 (quoting Trial Court Opinion, 5/4/01, at 3) ("[The putative father] has acted as the [c]hild's father .... The [c]hild calls [the putative father] "Dad" .... [The putative father] refers to himself as the [c]hild's dad in the presence of the [c]hild, [the m]other[,] and third parties.").

pel. Appellant had a long-term *in loco parentis* relationship with Child that began when Child was an infant. Child and Appellee lived in Appellant's home for virtually the first twelve years of Child's life, during which time he held himself out as Child's father, provided most of Child's financial support, listed Child as a dependent on seven years of tax returns, and formed a close emotional bond with Child. After Appellee and Child left Appellant's residence, Child had a continued need for financial support, as Appellant stopped all financial support and Appellee had to obtain public assistance. Child also continued to need Appellant's emotional support, but Appellant stopped all contact with Child except for several isolated visits, causing Child to suffer an adjustment disorder with mixed anxiety and depression. Based on the fact that Appellant held out Child to be his own for well over a decade, together with Child's need for continued financial and psychological support, we conclude the court did not abuse its discretion in holding that it was in Child's best interests for Appellant to be liable for child support based upon paternity by estoppel.

Appellant argues that he is not required to pay support in view of our Supreme Court's decision in ***A.S. v. I.S.***, 634 Pa. 629, 130 A.3d 763, 769 (2015). We disagree, as ***A.S.*** is both factually and legally distinguishable from this case.

In ***A.S.***, Mother had twin sons with the children's biological father in 1998. In 2005, Mother married stepfather ("Stepfather"). Mother, Stepfather and the children relocated to Pennsylvania. Stepfather never held children out as his own, and the children clearly knew that Stepfather was not their biological father. In 2009, Mother and Stepfather separated, and Stepfather filed for divorce. When Mother announced her plan to relocate to California, Stepfather filed a custody complaint and an emergency petition to prevent Mother from relocating, asserting that he stood *in loco parentis* to the children. Mother filed a complaint seeking child support. The trial court granted shared custody, but without holding a hearing on the support issue, it held that Stepfather did not owe support. Mother appealed.

Despite its observation that "*in loco parentis* status alone and/or reasonable acts to maintain a post-separation relationship with stepchildren are insufficient to obligate a stepparent to pay child support for those children," ***id.***, 130 A.3d at 770, the Supreme Court held that Stepfather was required to pay child support. Critical to the Court's conclusion was the finding that Stepfather took "far greater" steps "than that of a stepparent desiring a continuing relationship with a former spouse's children." ***Id.*** He engaged in a "relentless pursuit" of parental duties by "[haling] a fit parent into court," "litigat[ing] and obtain[ing] full legal and physical custody rights," and "assert[ing] those parental rights to prevent a competent biological mother from relocating with her children." ***Id.*** Consequently, "Stepfather has taken sufficient affirmative steps legally to obtain parental rights and should share in parental obligations, such as paying child support. Equity prohibits Stepfather from disavowing his parental status to avoid a support obligation to the children he so vigorously sought to parent." ***Id.*** at 770-71. The majority was careful to emphasize

> that we are not creating a new class of stepparent obligors and our decision today comports with the line of cases that have held that *in loco parentis* standing alone is insufficient to hold a stepparent liable for support. The public policy behind encouraging stepparents to love and care for their stepchildren remains ... relevant and important today[.] However, when a stepparent does **substantially more** than offer gratuitous love and care for his stepchildren, when he instigates litigation to achieve all the

> rights of parenthood at the cost of interfering with the rights of a fit parent, **then the same public policy attendant to the doctrine of paternity by estoppel is implicated**: that it is in the best interests of children to have stability and continuity in their parent-child relationships. By holding a person such as Stepfather liable for child support, we increase the likelihood that only individuals who are truly dedicated and intend to be a stable fixture in a child's life will take the steps to litigate and obtain rights equal to those of the child's parent.

Id. at 771 (emphasis added).

[10, 11] As can be seen, ***A.S.*** is factually distinguishable from the present case in at least three important respects. First, unlike Stepfather in ***A.S.***, who never held children out as his own, Appellant here held Child out as his own and supported her financially for virtually her entire life, beginning when Child was an infant and continuing for almost the next twelve years. Second, unlike the children in ***A.S.***, who knew that Stepfather was not their natural parent,[2] Child and Appellant bonded in the same way a child bonds with her natural parent, and Child became both psychologically and financially dependent upon Appellant. Third, Stepfather in ***A.S.*** took affirmative action post-separation from Mother to assert parental rights to the children. Because of these factual differences, ***A.S.*** narrowly falls outside the contours of paternity by estoppel, a point recognized in the dissent authored in ***A.S.*** by now-Chief Justice Saylor. ***Id.*** at 772 ("the common law has recognized a presumption of paternity and the doctrine[ ] of paternity by estoppel . . . neither of which appears to be the basis for the majority's decision") (citation omitted). As a result, even though ***A.S.*** was not *per se* a paternity by estoppel case, the remedy applied in that case was **consistent with** paternity by estoppel because it advanced the same public policy, *i.e.*, ensuring stability and continuity in the parent-child relationship. The present case is distinguishable from ***A.S.*** because Appellant's duty to pay child support rests squarely upon paternity by estoppel.

Order affirmed.

2. The fact a child may become aware that his putative father is not his biological father, as here, is not necessarily fatal to a finding of paternity by estoppel. While the law cannot prohibit a putative father from informing a child of their true relationship, it can prohibit him from avoiding the obligations that their assumed relationship would otherwise impose. ***K.E.M.*** 38 A.3d at 808.

VALLEY NATIONAL BANK

v.

Philip M. & Sandra E. MARCHIANO, Appellants

Valley National Bank

v.

Brian Gabbett and Susan Gabbett, Appellants

Valley National Bank

v.

Mark A. Rivoli and Kendra G. Rivoli, Appellants

No. 2002 MDA 2018
No. 1985 MDA 2018
No. 2087 MDA 2018

Superior Court of Pennsylvania.

Argued June 25, 2019
Filed October 24, 2019

Background: Mortgagee brought foreclosure action against mortgagors five years