Debra H. v. Janice R.: Proving that Love, Not Biology, Makes You a Parent

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I. INTRODUCTION

Nothing is more painful in life than the loss of a child. This loss is not limited to death, but can be felt when a child is taken from you and can no longer be in your life. Debra H. felt this pain when the child she helped raise for six years was abruptly removed from her life.[1] Debra met her future partner, Janice, in 2002. The two entered into a civil union in Vermont in 2003.[2] Shortly thereafter, Janice gave birth to their son, who was conceived through artificial insemination during the course of their relationship.[3] Debra played an instrumental role in the life of the child, assisting with labor, cutting the umbilical cord, providing nurture and care, and even including her last name on his birth certificate.[4] Throughout the years, Debra attempted to legally adopt the child, but these efforts were always rebuffed by Janice.[5] When the couple split in 2006, Debra was permitted supervised contact with the child, but these visitations ceased in 2008.[6]

Debra filed suit against Janice seeking joint custody and restoration of parental access to the child.[7] The Supreme Court of New York County reinstated visitation as long as the child was accompanied by his nanny when he visited Debra.[8] Eventually, the court ruled in favor of Debra, noting that it was in the child's best interest to continue its strong relationship with Debra.[9] Janice quickly appealed the decision, asserting that Debra did not have standing to seek custody because she was not the

1. Debra H. v. Janice R., 930 N.E.2d 184, 186 (N.Y. 2010).
2. *Id.*
3. *Id.*
4. Debra H. v. Janice R., No. 106569-08, 2008 WL 7675822, at *2 (N.Y. Sup. Oct. 2, 2008).
5. *Debra H.*, 930 N.E.2d at 186.
6. *Id.*
7. *Id.*
8. *Id.* at 186-87.
9. *Id.* at 186-88.

biological or adoptive parent of the child and therefore could not invoke the doctrine of equitable estoppel.[10] The Appellate Division reversed the decision, holding that Debra never legally adopted the child and therefore had no legal rights to him and could not invoke equitable estoppel.[11] Debra appealed the Appellate Division decision and asked that her visitation rights be extended until the matter was completely resolved.[12] The New York Court of Appeals *held* that under Vermont law a partner was considered a "parent" to a child and that said partner also had standing to seek custody and visitation of a child under New York law. *Debra H. v. Janice R.*, 930 N.E.2d 184, 197 (N.Y. 2010).

II. BACKGROUND

The definition of a parent is unique to each state because no federal standard exists.[13] With the emergence of civil unions, some states have modified the definition of a parent to include married homosexual partners.[14] The civil union statute in Vermont provides that each party who enters into a civil union is granted the same rights and protections under the law as married spouses and that when a child is born during said union, each party enjoys the same rights.[15] The Domestic Relations Law of New York has specific sections that speak to this issue.[16] This law establishes that only parents, siblings, and grandparents are permitted to seek visitation that is in the best interest of the child.[17] While the law does not give any specific party a right to custody, it does allow such suits to be brought.[18] Whether New York chooses to enforce the policies of Vermont is a question of comity, a doctrine which holds that a state is not compelled to abide by the laws of another and the decision to defer is purely voluntary.[19]

The Supreme Court of Vermont first employed the civil union statute to convey rights to a nonparent in *Miller-Jenkins v. Miller-Jenkins*.[20] In that case, a biological mother sought full custodial rights of a child that was born during her civil union with a same-sex partner.[21]

10. *Id.* at 188.
11. *Id.*
12. *Id.*
13. *Id.* at 193.
14. *Id.*
15. VT. STAT. ANN. tit. 15, § 1204(a), (f) (West 2011).
16. N.Y. DOM. REL. LAW § 70(a) (McKinney 2011).
17. *Id.* §§ 70(a), 71-72.
18. *Id.* § 70(a).
19. Ehrlich-Bober & Co. v. Univ. of Hous., 404 N.E.2d 726, 730 (N.Y. 1980).
20. 912 A.2d 951, 970-71 (Vt. 2006).
21. *Id.* at 956.

The court refused to limit custodial rights over the child to the biological mother, holding that because the child was born by artificial insemination during the course of a civil union, each partner under the statute had equal rights to the child.[22] The court reasoned that in a marriage and under similar circumstances, the child would be considered that of the husband, such that he would have the same rights as the biological mother.[23] The court simply extended that reasoning to same-sex partners in civil unions.[24]

The N.Y. Court of Appeals first addressed the domestic relations law in deciding whether a woman could obtain visitation rights, despite not being biologically related to the child, in *Alison D. v. Virginia M.*[25] In this case, a woman sought to obtain rights to a child that she and her former partner planned for and took care of for several years.[26] The court refused to allow her petition, holding that because she was not the biological mother or legal parent of the child, she could not be considered a "parent" under section 70 of the Domestic Relations Law—and therefore could not seek visitation.[27] The court further noted that although the woman and child had a substantial relationship for several years and that continuing the relationship could be beneficial to the child, the legislature did not give nonparents an opportunity to continue their relationship with the child absent the parent's consent.[28]

Several years later, in *Matter of Jacob*, the N.Y. Court of Appeals used the holding in *Alison D.* to create a rule regarding parentage and domestic breakups.[29] In this case, several unmarried partners, in both heterosexual and homosexual relationships, sought to adopt the children of their respective, biological mothers.[30] The court granted the petitions for adoption, holding that the adoption statutes permit second-parent adoption by the unmarried partner, whether homosexual or heterosexual, of a biological parent.[31] The court further noted that to allow such second-parent adoptions would give permanency to a child, as opposed to the disruptive result allowed in *Alison D.*[32]

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22. *Id.* at 970.
23. *Id.*
24. *Id.*
25. 572 N.E.2d 27, 28 (N.Y. 1991).
26. *Id.*
27. *Id.* at 29.
28. *Id.*
29. 660 N.E.2d 397, 399 (N.Y. 1995).
30. *Id.* at 398.
31. *Id.*
32. *Id.* at 399.

Generally, the doctrine of equitable estoppel is used to prevent enforcement of rights against a person who relied upon and was misled into believing that said enforcement would not be sought.[33] This doctrine, when applied to cases involving children, custody, or paternity, is centrally focused around the best interest of the child.[34]

The New York Supreme Court Appellate Division first allowed this doctrine to be used by a nonparent in *Jean Maby H. v. Joseph H.*[35] In this case, a stepfather sought visitation and custody of the biological child of his former wife.[36] The court found that the stepfather had standing to seek custody, holding that the doctrine of equitable estoppel can be invoked by a party who is not the biological parent to a child as long as the application of the doctrine would be in the child's best interest.[37] The court also emphasized the role that the stepfather had played in the child's life, that he was named as the father on the child's birth certificate, supported the child financially, was the only father figure for the child, and had developed a strong relationship with the child over seven years.[38]

The New York Court of Appeals then applied this doctrine to matters of paternity in *Matter of Shondel J. v. Mark D.*[39] In this case, a man, who believed that he was the father of a child and embraced this relationship for several years, sought to be dissolved of support obligations once a DNA test determined that he was not the child's biological father.[40] The court gave considerable weight to the effect that termination of this relationship would have on the child, holding that the father was estopped from denying paternity.[41] This holding is consistent with *Alison D.* in its assertion that in New York, parentage can be derived from either biology or adoption.[42]

III. COURT'S DECISION

In the noted case, the New York Court of Appeals, like the courts in *Jean Maby* and *Shondel J.* scrutinized the application of the doctrine of equitable estoppel as well as the definition of "parent" under both the Domestic Relations Law and Vermont law (like the courts in *Alison D.*

33. Jean Maby H. v. Joseph H., 676 N.Y.S.2d 677, 679 (App. Div. 1998).
34. *Id.*
35. *Id.* at 682.
36. *Id.* at 678.
37. *Id.* at 682.
38. *Id.*
39. 853 N.E.2d 610, 613 (N.Y. 2006).
40. *Id.* at 611-12.
41. *Id.* at 614-15.
42. *Id.* at 615-16.

and *Matter of Jacob*).[43] First, the court held that the doctrine of equitable estoppel could not be used in order to bar a child's biological mother from preventing a relationship between the nonparent and the child.[44] Next, the court determined that the issue of expanding the category of people who have standing to seek custody or visitation of a child was an issue for the legislature.[45] Then, the court held that a partner was considered a parent of a child under Vermont law.[46] Finally, the court held that, according to the doctrine of comity, a partner was also deemed a parent in terms of having standing to seek visitation and custody under New York law.[47]

The court began its decision by addressing the equitable estoppel doctrine and determining whether a nonparent could use it against a biological parent seeking to terminate the relationship between the child and nonparent.[48] While section 70 of the Domestic Relations Law does allow either parent to seek custody or visitation of a child, the court observed that *Alison D.* further narrows that law by refusing standing to biological strangers as long as the biological parent is fit.[49] This determination, as to whether a parent is fit, is made by the court when it determines what is in the best interest of the child.[50] Although both *Shondel J.* and *Jean Maby* imply that the doctrine of equitable estoppel can be used by nonparents against biological parents, the court makes clear that neither case directly overruled the holding of *Alison D.*[51] The holding of *Alison D.*, coupled with that of *Jacob*, creates a clear rule that, in the court's opinion, benefits children and adults alike because of the predictability of the identity of parents.[52] Because the court recognized a fundamental right to rear one's child, the doctrine of equitable estoppel cannot be used against a biological parent.[53] This fundamental right extends to biological and adoptive parents barring nonparents from second-parent adoptions.[54] Therefore, the court held that the plaintiff

43. Debra H. v. Janice R., 930 N.E.2d 184, 188-94 (N.Y. 2010).
44. *Id.* at 198.
45. *Id.* at 194.
46. *Id.* at 195-96.
47. *Id.* at 197.
48. *Id.* at 189.
49. *Id.* at 188-89.
50. *Id.* at 189.
51. *Id.* at 190-91.
52. *Id.* at 191-92.
53. *Id.* at 193.
54. *Id.*

could not use the doctrine to bar the defendant from discouraging a relationship between their child and a nonparent.[55]

Having established that the plaintiff could not use equitable estoppel to bar the defendant from discontinuing her relationship with the child, the court then considered whether they should change the definition of "parent" under current law.[56] The court looked to other states that have expanded standing in these situations to include those who are not legal parents or blood relatives.[57] While each of these states has different policies in relation to this law, they were all modified by the legislature.[58] Therefore, the court held that any change in the current law regarding the definition of parent and expanding whom has standing to seek custody or visitation was an issue for the legislature.[59]

Finally, the court addressed how "parent" is defined under Vermont law and whether New York should accord this definition comity.[60] Here, the court distinguished its reasoning from that of *Alison D.*, insofar as the plaintiff and defendant entered into a civil union and did not merely cohabitate.[61] The court maintained consistency between Vermont law and *Miller-Jenkins*, holding that the plaintiff was a parent under the civil union statute and had rights to the child.[62] Because that holding is not in conflict with the public policy of New York, New York will accord comity to the rights that the plaintiff has as a parent over the child in question.[63]

In his concurring opinion, Judge Graffeo gives further support for the reaffirmation of *Alison D.*[64] According to Judge Graffeo, the holding in *Alison D.* has provided predictability and certainty for nineteen years in that it created a brightline rule to be applied in instances where a third party seeks visitation or custody of a child who is not biologically related to that party.[65] Because *Shondel J.* did not overrule *Alison D.* and the Vermont law does not conflict with New York's interest in providing certainty to its parents and children, the doctrine of comity should be employed.[66]

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55. *Id.*
56. *Id.*
57. *Id.* at 193-94.
58. *Id.* at 194.
59. *Id.*
60. *Id.*
61. *Id.* at 195.
62. *Id.* at 195-96.
63. *Id.* at 196-97.
64. *Id.* at 197 (Graffeo, J., concurring).
65. *Id.* at 197-98.
66. *Id.* at 198-200.

In their concurring opinions, Judges Ciparick and Smith offered reasons why *Alison D.* should be overruled.[67] The ruling in *Alison D.* has unintended consequences in that it has ruined relationships and left families broken.[68] This decision unfairly disadvantages children of nontraditional relationships because it severs bonds that may be crucial to the child's development.[69] In taking into account the social changes that have occurred since the decision in *Alison D.*, both Judges Ciparick and Smith suggest that courts adopt a test that is not focused on a legal or biological relationship.[70]

IV. ANALYSIS

This decision is a considerable step forward for persons who are not biologically related to or legally responsible for a child to be recognized as parents. In the past, *Alison D.* served as precedent in such situations and treated functional parents as legal strangers to the children they helped raise. If the dynamics of families had not changed since this decision was made in 1991, there would be no need to change it. Since that time, however, the concept of family has drastically expanded to include stepparents, intimate family friends, and same-sex partners. To disallow these partners any further contact with a child because the relationship with the biological parent ends disadvantages both the child and society.

As large of a step as this may be for same-sex partners having rights to children, it does not benefit couples whom are merely in romantic relationships, as opposed to civil unions. Such people, who may be just as instrumental in the life of a child, would not be afforded any rights once their relationship terminates. In this aspect, the holding of *Alison D.* is affirmed because it reinforces that only biological or adoptive parents, within a marriage, can seek visitation and other rights to a child.

While overruling *Alison D.* would eliminate the barrier that currently exists for nonparents seeking visitation with or custody of a child, other steps need to be taken. The doctrine of comity and its discretionary policies do not mandate that a state honor the laws of another. Rather, it allows for the state to enforce those laws if they do not violate the state's public policies. This allows more conservative states to ignore the civil union statutes of other states, as well as their definitions of 'partners' and 'parents.' This case, the issue of same-sex marriage,

67. *Id.* at 201 (Ciparick, J., concurring); *id.* at 203-04 (Smith, J., concurring).
68. *Id.* at 201 (Ciparick, J., concurring).
69. *Id.*
70. *Id.* at 202-03 (Ciparick, J., concurring); *id.* at 204-05 (Smith, J., concurring).

and the impact it can have in several different areas of law are further proof that the federal legislature needs to address same-sex marriage. Without a national standard, this case would have several different outcomes in different states.

The decision in the noted case is in line with current societal norms and is in the best interest of children everywhere. It represents a considerable step towards conferring equal rights to same-sex parents and protecting children.

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 B.A. 2010, North Carolina State University; J.D. candidate 2013, Tulane University Law School. I would like to thank my entire family and all those who had a hand in raising me for their endless support and undying love. I am truly blessed.