

APPELLATE DIVISION OF THE SUPREME COURT OF THE STATE OF NEW YORK, FIRST DEPARTMENT

Debra H. v. Janice R.

61 A.D.3d 460, 877 N.Y.S.2d 259 (1st Dep't 2009) · Decided April 9, 2009

SUMMARY

The New York Supreme Court, Appellate Division, First Department held that a nonbiological, nonadoptive former partner lacked standing to seek custody or visitation of the respondent’s biological child. The court concluded that equitable estoppel could not be invoked to overcome the lack of standing, reversed the order granting a hearing, denied the petition, and dismissed the proceeding.

CASE DETAILS

|                       |                                                                                                                                                                                                                                                                                                               |
|-----------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| COURT                 | Appellate Division of the Supreme Court of the State of New York, First Department                                                                                                                                                                                                                            |
| WRITING FOR THE COURT | Per Curiam; Gonzalez, E.J.; Tom, J.; Sweeny, J.; Catterson, J.; Renwick, J.                                                                                                                                                                                                                                   |
| JURISDICTION          | New York                                                                                                                                                                                                                                                                                                      |
| DECIDED               | April 9, 2009                                                                                                                                                                                                                                                                                                 |
| DISPOSITION           | reversed                                                                                                                                                                                                                                                                                                      |
| PROCEDURAL POSTURE    | Petitioner appealed from an order of Supreme Court, New York County, that granted a hearing on whether petitioner stood in loco parentis to respondent's biological child, whether respondent was equitably estopped from denying that parental relationship, and whether a law guardian should be appointed. |
| STANDARD OF REVIEW    | Review of the order was on the law; the court also reviewed Supreme Court's discretionary appointment of a law guardian, which became academic after the standing determination.                                                                                                                              |
| PRECEDENTIAL VALUE    | Published intermediate appellate decision; binding precedent within the First Department unless overruled or otherwise displaced.                                                                                                                                                                             |
| PARTIES               | Debra H. v. Janice R.                                                                                                                                                                                                                                                                                         |

TOPICS

- child custody
- visitation
- standing
- family law
- civil procedure

## PRACTICE AREAS

family law

civil procedure

## QUESTIONS PRESENTED

1. Whether a person who is neither the biological nor adoptive parent of a child has standing under Domestic Relations Law § 70 to seek custody or visitation based on a loving and longstanding parental relationship.
2. Whether equitable estoppel may be invoked to establish or preserve a custody or visitation claim when the claimant lacks standing as a biological or adoptive parent.
3. Whether the appointment of a law guardian was improvident, given the disposition of the petition for lack of standing.

## HOLDINGS

1. A party who is neither the biological nor adoptive parent of a child lacks standing to seek custody or visitation rights under Domestic Relations Law § 70, even when the party has developed a longstanding, loving, and nurturing relationship with the child and participated in a prior relationship with the biological parent.
2. Equitable estoppel may not be invoked where the party lacks standing to assert at least a right to visitation.
3. The challenge to the appointment of a law guardian was academic because petitioner's lack of standing required denial of the petition and dismissal of the proceeding.

## KEY QUOTATIONS

*“This matter is governed by the Court of Appeals decision in Matter of Alison D. v Virginia M. (77 NY2d 651 [1991]), which provides that a party who is neither the biological nor the adoptive parent of a child lacks standing to seek custody or visitation rights under Domestic Relations Law § 70, even though that party may have developed a longstanding, loving and nurturing relationship with the child and was involved in a prior relationship with the biological parent.” (61 A.D.3d at 460-61)*

*“the doctrine of equitable estoppel may not be invoked where a party lacks standing to assert at least a right to visitation” (61 A.D.3d at 461)*

## FACTUAL BACKGROUND

Petitioner and respondent entered a civil union in Vermont and registered as domestic partners in New York City before respondent gave birth to the child. Petitioner acted as a loving and caring parental figure during the child's first approximately two and one-half years but never legally adopted the child. Petitioner sought joint legal and physical custody despite lacking biological or adoptive-parent status.

## PROCEDURAL HISTORY

Petitioner sought joint legal and physical custody of respondent's biological child. Supreme Court granted a hearing on petitioner's alleged in loco parentis status and equitable-estoppel theory and appointed a law guardian. The Appellate Division unanimously reversed, vacated the order, denied the petition, and dismissed the proceeding.

## DISPOSITION

reversed

## CASES CITED

- Matter of Alison D. v. Virginia M., 77 N.Y.2d 651 (1991)
- Matter of Shondel J. v. Mark D., 7 N.Y.3d 320 (2006)
- Jean Maby H. v. Joseph H., 246 A.D.2d 282, 285 (1st Dep't 1998)
- Anonymous v. Anonymous, 20 A.D.3d 333 (1st Dep't 2005)
- Matter of Multari v. Sorrell, 287 A.D.2d 764 (3d Dep't 2001)

## OPINION

### PER CURIAM.

Order, Supreme Court, New York County (Harold B. Beeler, J.), entered October 9, 2008, which granted a hearing on whether petitioner stands in loco parentis to respondent's biological child and whether respondent should be equitably estopped from denying that parental relationship, and appointed a law guardian to represent the child's best interest, unanimously reversed, on the law, without costs, the order vacated, the petition denied and this proceeding dismissed.

Petitioner seeks joint legal and physical custody of respondent's biological child, born approximately one month after the parties entered into a civil union in the State of Vermont, and more than two months after they registered as domestic partners in New York City.

Although the record indicates that petitioner served as a loving and caring parental figure during the first 2½ years of the child's life, she never legally adopted the child. This matter is governed by the Court of Appeals decision in *Matter of Alison D. v. Virginia M.* (77 NY2d 651 [1991]), which provides that a party who is neither the biological nor the adoptive parent of a child lacks standing to seek custody or visitation rights under Domestic Relations Law § 70, even though that party may have developed a longstanding, loving and nurturing relationship with the child and was involved in a prior relationship with the biological parent.

Supreme Court concluded that denial of petitioner's right to invoke equitable estoppel herein would be inconsistent with the application of that doctrine in similar proceedings (see e.g. *Matter of Shondel J. v. Mark D.*, 7 NY3d 320 [2006]; *Jean Maby H. v. Joseph H.*, 246 AD2d 282, 285 [1998]).

However, to the extent such inconsistencies exist, our reading of precedent is such that the doctrine of equitable estoppel may not be invoked where a party lacks standing to assert at least a right to visitation (see *Anonymous v Anonymous*, 20 AD3d 333 [2005]; *Matter of Multari v Sorrell*, 287 AD2d 764 [2001]). Our conclusion that petitioner lacks standing renders academic respondent's claim that Supreme Court improvidently exercised its discretion by appointing a law guardian in this matter.

Motion seeking leave to strike brief denied. Concur— Gonzalez, EJ., Tom, Sweeny, Catterson and Renwick, JJ.