

NEW YORK COURT OF APPEALS

Matter of Brooke S.B. v. Elizabeth A.C.C.; Matter of Estrellita A. v. Jennifer L.D.

28 N.Y.3d 1, 61 N.E.3d 488 (2016) · Decided August 30, 2016

SUMMARY

The New York Court of Appeals overruled *Matter of Alison D. v. Virginia M.* and held that a non-biological, non-adoptive partner may have standing to seek custody or visitation under Domestic Relations Law § 70. Standing exists when the partner proves by clear and convincing evidence that the parties agreed to conceive and raise the child together. The decision consolidated *Matter of Brooke S.B. v. Elizabeth A.C.C.* and *Matter of Estrellita A. v. Jennifer L.D.*

CASE DETAILS

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| COURT                 | New York Court of Appeals                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
| WRITING FOR THE COURT | Abdus-Salaam, J.; DiFiore, C.J.; Pigott, J.; Rivera, J.; Stein, J.; Fahey, J.; Garcia, J.                                                                                                                                                                                                                                                                                                                                                                                                                                     |
| JURISDICTION          | New York                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
| DECIDED               | August 30, 2016                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
| PROCEDURAL POSTURE    | Consolidated appeals from Family Court custody and visitation proceedings involving standing under Domestic Relations Law § 70(a). In <i>Brooke S.B.</i> , Family Court dismissed the petition for lack of standing and the Appellate Division, Fourth Department, affirmed. In <i>Estrellita A.</i> , Family Court recognized standing based on judicial estoppel and granted visitation after a hearing; the Appellate Division, Second Department, affirmed. The Court of Appeals granted leave to appeal in both matters. |
| STANDARD OF REVIEW    | Review of legal standing questions under Domestic Relations Law § 70(a); the Court considered the sufficiency of the alleged facts and the legal effect of prior proceedings. Ultimate custody or visitation determinations remain subject to the child's best interests.                                                                                                                                                                                                                                                     |
| PARTIES               | Attorney for the Child, in <i>Matter of Brooke S.B. v. Elizabeth A.C.C.</i> , Respondent, in <i>Matter of Estrellita A. v. Jennifer L.D. v. Elizabeth A.C.C., Jennifer L.D.</i>                                                                                                                                                                                                                                                                                                                                               |

QUESTIONS PRESENTED

1. Whether a nonbiological, nonadoptive former partner who agreed with the biological parent before conception to conceive and raise a child together may establish standing as a parent to seek custody or visitation under Domestic Relations Law § 70(a).
2. Whether Matter of Alison D. v. Virginia M. should be overruled.
3. Whether judicial estoppel barred the biological parent in Estrellita A. from denying that the petitioner was a parent after obtaining a child-support order based on the contrary position.

## **HOLDINGS**

1. Matter of Alison D. v. Virginia M. is overruled because its restrictive biological-or-adoptive-parent rule has become unworkable, inconsistent with later legal developments, and inequitable in its treatment of nontraditional families.
2. A person who is not a biological or adoptive parent may establish standing to seek custody or visitation under Domestic Relations Law § 70(a) by proving, by clear and convincing evidence, that the person and the biological parent agreed before conception to conceive and raise the child as co-parents.

## **FACTUAL BACKGROUND**

In Brooke S.B., the parties agreed before conception that respondent would bear a child and that they would raise the child together. The nonbiological petitioner participated throughout the pregnancy and birth, lived with the child and respondent, shared parental responsibilities, and served as the child's primary caregiver for a period before the relationship ended and contact was terminated. In Estrellita A., the parties similarly agreed to conceive and raise a child together, shared parental responsibilities for several years, and continued contact after separation. The biological parent later obtained child support from the petitioner by asserting in a prior proceeding that the petitioner was a parent, then denied that status in the visitation proceeding.

## **PROCEDURAL HISTORY**

In Brooke S.B., the nonbiological former partner petitioned for joint custody and visitation after the biological parent terminated contact. The lower courts held that Matter of Alison D. foreclosed standing because the petitioner was neither biological nor adoptive parent. In Estrellita A., the biological parent had previously obtained a child-support order by asserting that the petitioner was a parent; the lower courts held that the biological parent was judicially estopped from denying that status in the visitation proceeding. The Court of Appeals reversed in Brooke S.B. and remanded for a factual determination under the newly announced test, while affirming in Estrellita A.