

# Marriage Law Digest

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Marriage Law Foundation

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**DOE V. A.B.**

**06-1226**

**Louisiana Court of Appeal, Third Circuit**

**January 31, 2007**

<http://www.la3circuit.org/opinions/2007/01/013107/06-1226opi.pdf>

A mother relinquished her child for adoption, but the father objected and a trial court said that adoption could not go forward without the father's consent. The prospective adoptive parents appealed.

The appeals court held that the law requires an unwed father to "prove a substantial commitment to his parental responsibilities and that he is a fit parent of his child" by demonstrating (1) support, (2) visitation, and (3) ability to care for the child. Based on the evidence, this court concluded the trial court was "clearly wrong" to conclude that the father had proved himself a fit parent.

The court based its finding that the father did not meet his burden of proving substantial commitment to parental responsibilities, on evidence that (1) he made no attempt to visit or support the child even though he knew of the pregnancy, (2) he had no work history or significant opportunities for future employment and lives at home totally dependent on his mother, and (3) his home situation is far less than ideal. Thus, the father's consent to the adoption is not required for it to go forward.

**NATIONAL PRIDE AT WORK V.**

**GOVERNOR**

**No. 265870**

**Michigan Court of Appeals**

**February 1, 2007**

[http://courtofappeals.mjud.net/documents/OPINIONS/FINAL/COA/20070201\\_C265870\\_104\\_265870.OPN.PDF](http://courtofappeals.mjud.net/documents/OPINIONS/FINAL/COA/20070201_C265870_104_265870.OPN.PDF)

After passage of the Michigan marriage amendment, a group of public employees sought a declaratory judgement that public employers could offer health care benefits to unmarried partners of their employees. The trial court agreed saying that health care benefits are benefits of employment not benefits of marriage, so extending the benefits to same-sex couples would not conflict with the marriage amendment's policy.

The Michigan Court of Appeals reversed. The court said that the amendment prevents public employers from offering benefits to employees "if the benefits are conditioned on or provided because of an agreement recognized as a marriage or similar union." The court said the domestic partnership policies here "recognized" a same-sex union by "require[ing] proof of the existence of a formal domestic partnership agreement to establish eligibility." To the court, because the domestic partnership is a "public proclamation" of the couple's relationship, it creates a "union." The union is similar to marriage because both (1) have requirements related to the sex of the parties, (2) require an agreement between the parties, (3) prohibit blood relations from contracting, (4) prohibit married persons from entering, (5) include an age requirement and (6) create legal obligations for third parties (here, the employment

benefits).

Plaintiffs had also argued that if the amendment were interpreted to preclude benefits, it would conflict with the Equal Protection guarantee in the state constitution. The court rejected this argument saying that the people of Michigan “could rationally conclude that the welfare and morals of society benefit from protecting and strengthening traditional marriages, and this act of the people constitutes a legitimate government interest.” Finally, the court said that the amendment does not “selectively target[] same-sex couples” because it applies to any unmarried relationship. The court concluded that the amendment “does not preclude the extension of employment benefits to unmarried partners on a basis unrelated to recognition of their agreed-upon relationship.”

**PARKER V. PARKER**

**No. SC05-2436**

**Supreme Court of Florida**

**February 1, 2007**

<http://www.floridasupremecourt.org/decisions/2007/sc05-2346.pdf>

Ex-husband sought to have a child support order ended after he learned that he was not the biological father of his wife’s child.. The court did not overturn the order because he had not raised the issue within one year of the original order. The court also said that policy considerations supported making the betrayed adult, rather than the child (by ending child support) bear the risk of infidelity.

**STATE V. CARNES**

**2007-Ohio-604**

**Ohio Court of Appeals, Seventh District**

**February 8, 2007**

<http://www.sconet.state.oh.us/rod/newpdf/7>

/2007/2007-ohio-604.pdf

In a prosecution for domestic violence, a trial court held that the domestic violence statute conflicted with the state marriage amendment.

The appeals court reversed, relying on previous decisions in the appellate district that “[i]f a legal status is created for cohabiting couples under the domestic violence status, that status does not approximate the many-faceted legal status that accompanies the marital state. As such, the criminal statute does not conflict with the constitutional provision.” The court notes that eight of the twelve appellate districts have agreed with this holding, with two holding the opposite.

**STATE V. MICKINNEY**

**2007-Ohio-587**

**Ohio Court of Appeals, Third District**

**February 12, 2007**

<http://www.sconet.state.oh.us/rod/newpdf/3/2007/2007-ohio-587.pdf>

Defendant had been convicted of domestic violence in an incident involving cohabitants. On appeal, the court held that other decisions in the same appellate district had already held that the domestic violence statute’s coverage of cohabiting couples conflicted with the state marriage amendment.

**WILLIAMS V. MORGAN**

**No. 06-11892**

**U.S. Court of Appeals, Eleventh Circuit**

**February 14, 2007**

<http://www.ca11.uscourts.gov/opinions/ops/200611892.pdf>

This is the third court of appeals decision in ongoing litigation over the constitutionality of an Alabama law banning the sale of

“sexual aids.” Most recently, the trial court had held that even after *Lawrence v. Texas*, public morality provided a valid justification for the statute.

On appeal, the court distinguished the Alabama law from the Texas law invalidated in *Lawrence* because the conduct prohibited in Alabama was public and commercial. The court pointed to U.S. Supreme Court precedents “that laws can be based on moral judgments.” Thus, the court concludes that here, “the preservation of public morality remains a rational basis for the challenged statute.”

**IN THE MATTER OF E.S.**

**No. 7**

**New York Court of Appeals**

**February 15, 2007**

<http://www.courts.state.ny.us/ctapps/decisions/feb07/7opn07.pdf>

A child’s maternal grandmother lived in the child’s home and cared for the child before and after the mother’s death. Subsequently, the child’s father asked the grandmother to leave and she sought visitation. The trial court ordered visitation and the appeals court agreed.

The state’s highest court noted that the “presumption that a fit parent’s decisions are in the child’s best interests is a strong one.” In this case, however, the evidence suggested the visitation was in the child’s best interest even though the father was “a competent parent” and the trial court had been “properly ‘mindful’ in the first instance of his right to rear the children as he saw fit.” The court distinguished the New York law from the Washington statute invalidated in *Troxel v. Granville* because, here, the statute has been interpreted to require “deference” to the parental determination and the trial court “was ‘mindful’ of father’s

parental prerogatives.”

**JONES V. BARLOW**

**2007 UT 20**

**Supreme Court of Utah**

**February 16, 2007**

<http://www.utcourts.gov/opinions/supopin/Jones5021607.pdf>

A same-sex couple raised the child of one of the partners (conceived through artificial insemination) together for two years. The trial court granted standing based on the in loco parentis doctrine and ordered visitation.

On appeal, the supreme court reversed. The court noted that at common law “the termination of the in loco parentis relationship also terminates the corresponding parent like rights and responsibilities.” Here, the mother ended the in loco parentis relationship by moving and ending contact between the child and her former partner. In fact the court said that “the assignment of permanent rights is repugnant to one of the defining features of the in loco parentis—its temporary status.” Thus, the partner had no standing to seek visitation in this case.

The court also refused to judicially create de facto or psychological parent statuses because to do so (1) would not create clear rules of standing (because determining de facto parenthood would require a full-blown examination of facts) and (2) would constitute a policy decision. The court said “in this case we are asked to create law from whole cloth where it currently does not exist . . . by asking us to recognize a new class of parents, Jones invites this court to overstep its bounds and invade the purview of the legislature.” The court further said: “If we miscalculate in legislating social policy, the harm may not be corrected until an

appropriate case wends its way through they system and arrives before us once again—a process that may take years or even decades. Moreover, our attempt to correct a prior misstep could then damage the legal system’s reliance upon the principle of stare decisis.” The court rejected the dissent’s argument that a recognition of de facto parenthood is an appropriate development of the common law because the majority believed common law development should be incremental. Plus, “the common law nevertheless evidences a strong presumption that parental rights shall not be disturbed absent a determination that the legal parents are unfit.”

On judge dissented, arguing that the partner “has been literally and for all intents and purposes, a member of the child’s immediate family since her birth.” She recognized that no statute applied but argued that recognizing the partner as a parent “would further the legislative policy of protecting children who have formed such [parent-like] bonds.” She agreed with the majority regarding the in loco parentis law but would grant standing based on de facto parent doctrine defined as a permanent status for a person “just like the child’s legal parent.” She thinks the common law is changing and should be changed further by enacting de facto parent status. Her proposed test for determining that status requires showing that: “(1) the legal parent intended to create a permanent parent-child relationship between the third party and the child and (2) an actual parent-child relationship was formed.” The second portion would require that the third-party “lived with and cared for the child” and developed a “parent-child bond” with the child. In this case, she believed the test was satisfied. She believed these stringent requirements would prevent a conflict with the decision in *Troxel v. Granville*.

**HAMILTON V. HAMILTON**  
**Docket No. FM07-2632-06N**  
**Superior Court of New Jersey, Essex**  
**County**

**February 23, 2007**

<http://www.judiciary.state.nj.us/decisions/hamilton070223.pdf>

In a divorce proceeding, a mother sought to continue home schooling her seven children who live with her, despite the father’s objections. The court ordered testing for the children to determine whether they have received an education equivalent to what the public school would provide. The court then opined at some length about the inappropriateness of “unsupervised” home schooling. The court suggested that home schooled parents should be required (1) to register with the local school district, (2) file curriculum with the district and be involved in training “(a four hour video would suffice)”, and (3) undergo testing to ensure equivalent (to the local public school) instruction. The court suggests the father take the children’s test scores to the local Board of Education so the district can sue the mother for the children’s nonattendance. If the father is not satisfied, the court suggests filing a complaint for “educational neglect” with the state Division of Youth and Family Services. The court concludes that until these steps are taken, the court will not rule on the home schooling issue.

**PARKER V. HURLEY**  
**C.A. No. 06-10751-MLW**  
**U.S. District Court, District of**  
**Massachusetts**  
**February 23, 2007**

[http://www.massresistance.org/docs/parker\\_lawsuit/order\\_%20motion\\_to\\_dismiss\\_022307.pdf](http://www.massresistance.org/docs/parker_lawsuit/order_%20motion_to_dismiss_022307.pdf)

When their children (a kindergartner and first-grader) brought home books about

same-sex couples, two sets of parents asked the school to notify them before classroom discussions or distribution of materials about homosexuality. The school refused and the parents sued seeking damages and an injunction. They alleged a deprivation of their rights of privacy, free exercise and right to direct the upbringing of their children.

The trial court dismissed the case. Following *Brown v. Hot, Sexy & Safer Productions*, the court said that “parents do not have a constitutionally protected liberty interest that permits them to prescribe what the state may teach their children.” The court believed the school had rational bases for its policy: (1) “preparing students to respect differences in their personal interactions with others and in their future participation in the political process” to prepare “them for citizenship and (2) “fostering an educational environment in which gays, lesbians, and the children of same-sex parents will be able to learn well.”

**CONNECTICUT V. MCKENZIE-ADAMS  
SC 17451**

**Supreme Court of Connecticut  
February 27, 1007**

[http://www.jud.state.ct.us/external/supapp/  
Cases/AROCr/CR281/281CR39.pdf](http://www.jud.state.ct.us/external/supapp/Cases/AROCr/CR281/281CR39.pdf)

Defendant, a teacher, was convicted of sexual assault based on sexual relationships with two students. He appealed, arguing that the constitutional right of privacy protected the relationships as they were consensual and involved young women over the age of consent.

The supreme court held the right of privacy does not include a right of a teacher to have sexual relations with a student. The court distinguished *Lawrence v. Texas* because here “both victims were situated in an inherently

coercive relationship with the defendant [because he was a teacher] wherein consent might not easily be refused.” The court further held the law was justified by a “legitimate interest in providing a safe and healthy educational environment for elementary and secondary school students.”