

# TEXAS LAWYER

COMMENTARY

## Court of Appeals Clarifies Parental Status

Elisa Reiter and Daniel Pollack | November 13, 2024



The issue of parentage is not often disputed – but sometimes it is. A legal parent is someone who is recognized by law as the mother or father of a child. This may include a biological parent, an adoptive parent, a court-appointed guardian, or a parent of a child conceived through assisted reproduction. These definitions grow complicated and the subject of debate, particularly in legal contexts where definitions impact custody and child welfare decisions. The Court of Appeals’ holding in the recent case of [In Re N.A., No. 03-24-00145-CV](#) highlights the

complexities surrounding parental identity and rights. Should the definition of who a parent is evolve based on legal precedents, psychological perspectives, and sociocultural influence? How should courts navigate these intricate dynamics?

### *The Legal Definition of Parenthood*

Traditionally, parenthood has been understood through a biological lens – one who begets offspring. However, legal definitions have expanded to encompass various forms of caregiving relationships in certain jurisdictions. In *In Re N.A.*, the court notes that “the term ‘parent’ encompasses not only biological connections but also those formed through emotional and caregiving bonds.” This broader interpretation acknowledges that many individuals fulfill parental roles without a biological connection, such as stepparents, adoptive parents, and guardians.

### *Biological vs. social parenthood*

The distinction between biological and social parenthood is crucial in family law. Biological parents have inherent legal rights regarding their children. Social or psychological parents – those who serve as anchors or who provide care and emotional support – may be able to assert parental rights in certain circumstances. From this perspective, the “anchor” does not weigh the child down, but instead, serves as a nurturing caregiver who the child relies on for nurturing and support. As *In Re N.A.* notes: “the best interests of the child should guide determinations of parental status,” which may lay the groundwork toward prioritizing the child’s welfare over strict biological definitions.

The problem in the instant case: a failure to take legal action to protect one's rights. N.A. and J.K. were involved in a romantic relationship. While they never married, they maintained a joint household, which included J.K.'s two children from an earlier union. N.A. and J.K.'s relationship lasted from 2020 through 2023, and was blessed by an addition to the family in December, 2021, when N.A. gave birth to a child, who was conceived using the same sperm donor that was used for the two other children in the household. The child born in 2021 was given a hyphenated last name using the surnames of both N.A. and J.K. Unfortunately, J.K. neglected to formally adopt the child prior to terminating her relationship with N.A. Instead, J.K. filed suit alleging that she had standing based on having had actual care, control, and custody of the child for at least six months prior to filing her petition. J.K. subsequently amended her pleading alleging that she was the child's "other mother" and "parent figure," referring to her own parents as the child's "grandparents." J.K.'s supporting affidavit also asserted that she and her former partner chose to have a child together, and that the child made the subject of her suit was that child. N.A. filed special exceptions to that pleading, questioning whether J.K. was indeed a parent or a non-parent.

### *Holding*

The appellate court, in a memorandum opinion, holds that the trial court abused its discretion in finding that J.K. was a parent. Justice Lori Massey Brissette writes:

It is worth noting, for clarity, that our holding here does not turn on J.K.'s gender or the fact that the parties were involved in a same-sex relationship.

We would arrive at the same decision if J.K. were N.A.'s former boyfriend. The simple fact that someone agrees to help parent a child, without taking any steps to legitimize their status in terms of rights and responsibilities to that child, does not make them a parent.

J.K. was unable to assert standing as a parent, nor did she request a determination of parentage. In an empathetic concurring opinion, recognizing that the current law does little to protect the rights of those in gay and lesbian relationships, Justice Irene Rios writes:

...to encourage the legislature to further promote the best interests of children in this state by incorporating equitable principles into the presumptive parentage statute. Section 160.204 of the Texas Family Code codified the common-law presumption that a child born to a married woman during marriage was a child of the marriage.

Justice Rios opines that there is an underlying “proposition that a person’s status as a parent should not be litigated, regardless of biological status, when the party has acted as a parent to the child,” citing Hausman and Shockley. Justice Rios draws an analogy to subsection Texas Family Code Section 160.608(b) wherein the Texas legislature enacted a list of factors to be applied to determine “whether it is equitable to preserve the parent-child relationship by denying genetic testing.” Is it time for the Texas Legislature to step up and grapple with changing relationships, to assure that children are not uprooted from anchoring relationships with a psychological parent who has loved and cared for such children?

### *Case Implications*

The implications of this ruling are significant for family law practitioners and individuals involved in custody disputes. The holding underscores the role of courts in balancing current statutory guidelines against the quality of relationships rather than simply being bound by genetic ties. The Texas Supreme Court's holding in [In Re C.J.C.](#) is grounded in allowing third parties to be allowed to act as a parent only if that individual can properly assert standing and further, if that "outsider" can show that a parent is unfit. Is a parent a rational construct, or a fixed category, subject to Constitutional rights?

### *The Psychological Dimensions of Parenting*

Parenting is not simply defined by who best and quietly implores a toddler to use gentle hands. Nor is parenting solely defined by legal criteria. Parenting encompasses psychological and emotional dimensions that shape family relationships. Research indicates that effective parenting involves nurturing, guidance, and emotionally anchoring support – qualities that can present in a variety of caregiving relationships. By no means do we suggest that a babysitter should have standing to assert parental rights, but one might ask if it may be prudent for the Texas legislature to take a broader view by enacting new legislation to assure that all segments of the Texas Family Code are aligned to allow for the preservation of family and "family-like bonds." Why? So that Texas law recognizes nontraditional bonds, lest we impair the child's development by continuing to break apart modern and unique nuclear families.

### *Attachment Theory*

Attachment theory posits that bonds formed between caregivers and children are fundamental to healthy development. Secure attachments foster emotional well-being and resilience in children, regardless of whether those attachments are formed with biological or non-biological parents. The court's recognition of emotional bonds in *In Re N.A.* reflects such an understanding, acknowledging that "the child's emotional security is paramount."

### *Parenting Styles and Sociocultural Influences*

Different parenting styles – authoritative, authoritarian, permissive and uninvolved – also influence child outcomes. A nurturing environment characterized by warmth, structure, choices, and learning boundaries leads to better developmental outcomes for children. In cases where traditional parental roles are disrupted through divorce or separation, courts must assess which individuals provide these essential qualities to determine custody arrangements. Definitions of who qualifies as a parent are shaped by cultural norms and societal expectations. In many cultures, parenting extends beyond biological ties to include extended family members and community figures who play significant roles in child rearing.

### *Evolving Family Structures*

Modern family structures are increasingly diverse, encompassing single-parent families, blended families, and same-sex couples. Each configuration challenges traditional notions of parenthood. Flexibility is essential to ensure that all caregivers who contribute positively to a child's life are recognized, with due recognition of a parent's constitutional and fundamental right to act as a gatekeeper to protect children and who has the right to access to those children.

## *The Role of Technology*

Technological advancements have further complicated definitions of parenthood. With the rise of assisted reproductive technologies (ART), questions arise about the legal status of donors versus intended parents. Potential parents, happily looking to engage in IVF or some form of surrogacy, may not think of darker times – such as what happens to stored embryos in the event their relationship ends. Certainly, there are ethical and financial considerations that go along with these issues. One party may still be desperate to have a child, while the other seeks to avoid moral and economic responsibilities, let alone the day-to-day tasks of parenting.

## *Conclusion*

The question of “Who is a parent?” extends beyond biology into realms of emotion, culture, and law. The recent ruling in *In Re N.A.* questions the need for an evolving understanding that prioritizes children’s best interests over definitions based only on genetic ties. Should Texas embrace a more ‘holistic’ view of parenthood? That remains to be seen. Ultimately, redefining parenthood necessitates an ongoing dialogue between legal professionals, lobbyists, legislators, mental health professionals and citizens to ensure that all caregivers who contribute positively to children’s lives are recognized and supported in their roles – even if they have not taken the time during turbulent passages to formally adopt a non-biological child.

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