

# NEW YORK'S HIGHEST COURT RULED THAT A NON-BIOLOGICAL CARETAKER OF CHILD HAS STANDING TO SEEK CUSTODY

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Up until last year, the non-biological person in a same sex couple/family was unable to seek custody in Family Court. In August of 2016, the Court of Appeals sent a seismic wave through not only the legal community, but the LGBTQ community as well, when it redefined the legal definition of "parent." In the *Matter of Brook S.B.*, the state's highest court held that a non-biological caretaker of a child has standing to seek custody of a child they have been raising, a right not previously acknowledged by the New York State court system. While this may come to a surprise for some, from a legal perspective it makes sense.

For 25 years, a non-biological parent was unable to seek custody of a child if they had not legally adopted the child and their former partner was denying them visitation. In 1991, the Court of Appeals in *Alison D* established that a "biological stranger to a child who is properly in the custody of his biological mother" has no "standing to seek visitation with the child under Domestic Relations Law § 70." In *Brooke S.B.*, the Court of Appeals overturned *Alison D* and expanded the definition of being a parent. While only one partner in a same sex relationship can be biologically related to their child, that is no longer a complete barrier to custody and parenting time with the child should they end their relationship. *Brooke S.B.* gives a non-biological, non-adoptive person the standing to seek custody and visitation. This pertains to standing and the standard of what is in the best interest of the child will remain the test for the ultimate decision on custody and visitation.

"We will no longer engage in the 'deft-legal maneuvering' necessary to read fairness into an overly-restrictive definition of "parent" that's sets too high a bar for reaching the child's best interest and does not take into account equitable principles. Accordingly, we overturn *Alison D.*" It is with those words that members of the same-sex community were finally afforded the same parental rights as heterosexual couples.

If you have any questions or would like to discuss this further, please do not hesitate to contact me or the attorney in our office with whom you typically work.