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THE APPROVAL OF THE COMMITTEE ON OPINIONS

SUPERIOR COURT OF NEW JERSEY
SUSSEX COUNTY
CHANCERY DIVISION, FAMILY PART
DOCKET NO. FA-000010-20

IN THE MATTER OF THE ADOPTION OF A MINOR CHILD BY J.B.

APPROVED FOR PUBLICATION

November 17, 2021

COMMITTEE ON OPINIONS

Decided: March 11, 2020

Rebecca Jaffe, for petitioner (Cipriano Law Offices, PC, attorneys).

Lauri Steinberg, Guardian Ad Litem for B.K.B. (Pine & Steinberg, LLC).

GAUS, J.S.C.

The Issue

The adoption petition submitted presents the following question: now that Garden State Equality v. Dow[1] and Obergefell v. Hodges[2] have declared same-sex marriage legal in the State of New Jersey and nationwide, must an adoption petitioner be legally married to the child's natural parent in order to abide by the strict language of N.J.S.A. 9:3-50(c) to avoid terminating the parental rights of the natural parent? Such adoptions have commonly been

[1] Garden State Equal. v. Dow, 434 N.J. Super. 163 (Law Div. 2013), motion for stay denied, 216 N.J. 314 (2013).

[2] Obergefell v. Hodges, 576 U.S. 644 (2015).

called step-parent adoptions if the parties are married and second-parent adoptions if they are unmarried. A strict reading of New Jersey's Judgment of Adoption statute would answer the question in the affirmative.[3] Notwithstanding this language, twenty-five years ago—long before same-sex marriage was legalized—our Appellate Division held in H.N.R.[4] that the best interests of the child and a liberal construction of the adoption statutes allowed for an adoption without satisfying the marriage criterion or terminating the parental rights of the natural parent.

N.J.S.A. 9:3-50(c) provides that "[t]he entry of a judgment of adoption shall . . . terminate all parental rights . . . except for a parent who is the spouse of the petitioner," i.e., a step-parent to the child to be adopted. N.J.S.A. 9:3-50(c) (emphasis added). Conversely, H.N.R. held in 1995 that the best interests of the child are paramount, and per N.J.S.A. 9:3-37's insistence on a liberal construction, when such interests will be served, an adoption can proceed without terminating parental rights of the natural parent though they remain unmarried to the petitioner.

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[3] N.J.S.A. 9:3-50 ("The entry of a judgment of adoption shall . . . terminate all parental rights and responsibilities of the parent towards the adoptive child except for a parent who is the spouse of the petitioner . . . .) (emphasis added).

[4] In re Adoption of Two Child. by H.N.R., 285 N.J. Super. 1 (App. Div. 1995).

Of course, at that time the prospect that any such couple could have satisfied the statutory requirement of marriage in the State of New Jersey was not within the realm of legal possibility.[5] However, since then, Dow and Obergefell have legalized same-sex marriage in this state and throughout the United States, respectively. This societal sea change in the recognized family structure raises the legal quandary presented in the current matter. In the absence of any sexual orientation prohibition on marriage, must a couple—whether same-sex or not—enter into the bonds of matrimony to satisfy a strict reading of N.J.S.A. 9:3-50 that all parental rights of unmarried parents must be terminated upon granting a judgment of adoption, or did the scope of the stepparent exception created by H.N.R. and related jurisprudence establish, once and for all, that the best interests of the child shall take precedence normatively? In other words, was H.N.R. merely a convenient work-around to an archaic and restrictive statute with no other plausible relief, or did the court intend to create a new basis for granting adoption judgments notwithstanding the statutory requirement of a spousal relationship? If H.N.R. did merely intend to create a narrow statutory work-around, does that exception still apply

[5] While the State of Hawaii recognized in 1993 that there was a constitutional issue impacting the prohibition on same-sex marriage, it was not until 2004—almost ten years after H.N.R.—when Massachusetts became the first state to legalize same-sex marriage. Baehr v. Miike, 910 P.2d 112 (Haw. 1996); Goodridge v. Dep't of Pub. Health, 798 N.E.2d 941 (Mass. 2003).

today now that couples can legally satisfy the marriage requirement regardless of sexual orientation, and should that exception apply in such circumstances? Petitions such as the one currently before the court are most often uncontested, but these answers are nonetheless critical to the court's determination.

Introduction

On September 19, 2019, petitioner, J.B.,[6] filed a complaint for adoption of a child named B.K.B. The complaint sought to establish the same relationship between the child and J.B., the adopting parent, as if such child had been born to such adopting parent in lawful wedlock including the right of inheritance. J.B. and her partner, the child's natural mother, R.L., have been in a committed relationship for five and a half years, and have lived together for nearly five years. More than four years ago, J.B. and R.L. made a decision as a couple to have a family together. At first, the couple tried to have a biological child through artificial insemination, but following years of failed attempts, they enrolled with the Reproductive Medicine Associates of New Jersey (RMANJ) Embryo Program around January 2018. R.L. became pregnant with B.K.B. in November 2018 via artificial insemination through the implantation of an embryo resulting from anonymous egg and sperm donors.

[6] Pursuant to Rule 1:38-3(d)(16) and N.J.S.A. 9:3-52, initials are used to protect the privacy interests of the family members involved in this matter.

B.K.B. was then born on August 19, 2019 in Morris County, New Jersey. Since then, the child has been under the continuous care of J.B. and R.L., with J.B. in every way acting as a co-equal parent to the couple's child. Shortly after B.K.B.'s birth, J.B. sought to formalize her relationship to their child by way of this petition for adoption. The verified complaint and proposed judgment seek, inter alia, the following relief:

> Pursuant to N.J.S.A. 9:3-50(c), the Judgment of Adoption shall in no way affect any rights, duties and obligations founded upon the relationship between the child and his mother, and as to him shall in no way affect any related rights of inheritance that may exist under the laws of this State. All such rights, duties and obligations between the child and his mother are specifically deemed to survive the entry of the Judgment of Adoption.

As will be discussed, a question remains as to whether the statutory language of N.J.S.A. 9:3-50, entitled "Entry of Judgment of Adoption," permits an adoption wherein an unmarried partner seeks to establish parental rights to a child while also preserving the natural parent's rights. This fundamental question has seen both significant court attention and a corresponding absence of legislative reaction regarding recent legal developments. N.J.S.A. 9:3-50(c) states, in full:

> The entry of a judgment of adoption shall:
>
> > (1) terminate all parental rights and responsibilities of the parent towards the

> adoptive child except for a parent who is the spouse of the petitioner and except those rights that have vested prior to entry of the judgment of adoption;
>
> (2) terminate all rights of inheritance under intestacy from or through the parent unless that parent is the spouse of the petitioner or that parent or other relative had died prior to the judgment of adoption; and
>
> (3) terminate all rights of inheritance under intestacy from or through the child which existed prior to the adoption.

The adoption statute has not been amended since 1994[7]—a time when the nation's landscape of family units and dynamics looked vastly different than today; the types of couples who were legally able to enjoy the title of "spouse" at that time form a limited list compared to the present. In the absence of legislative guidance, New Jersey's courts have issued decisions ensuring that the law neither deprives beneficial family units from recognition, nor fails to protect the best interests of each child. Nevertheless, amidst a new era ushered in by V.C. v. M.L.B. (recognizing the concept of the psychological parent),[8] Lewis v. Harris (recognizing domestic partnerships),[9] Garden State Equality v.

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[7] N.J.S.A. 9:3-50 (L. 1977, c. 367, § 14; amended L. 1993, c. 345, § 13 (eff. April 24, 1994)).

[8] V.C. v. M.J.B., 163 N.J. 200 (2000).

[9] Lewis v. Harris, 188 N.J. 415 (2006).

Dow, and Obergefell v. Hodges, such precedents require reconciliation with the statute's plain language and strict interpretation in consideration of petitions from families for whom the act of marriage was only recently made available.

The evaluation of J.B.'s petition to adopt B.K.B. presents an opportunity to examine the case law and present statutory landscape, and to then discern whether adoption applications submitted by unmarried couples who have the ability to marry, yet opt for alternative recognition, still fit within the exceptions and interpretations previously identified by New Jersey's courts. Previous judicial analysis of recent legal developments regarding parental rights, marital rights, and adoptions has permitted marriage by same-sex couples, recognized modern family compositions, and brought to bear a new perspective on the Judgment of Adoption statute's language; so, too, have exceptions emphasizing a liberal statutory construction and the children's best interests. New Jersey cases that clarify what constitutes a "familial" relationship in the context of similar statutes prove informative—particularly regarding statutes requiring a finding of a marital, bonded, or intimate relationship. Beck v. Beck, 86 N.J. 480 (1981) (construing the child custody statute and the concept of joint legal custody in N.J.S.A. 9:2-4); V.C. v. M.J.B., 163 N.J. 200 (2000) and Watkins v. Nelson, 163 N.J. 235 (2000)

(rights of third party non-biological parents in custody matters); Bisbing v. Bisbing, 230 N.J. 309 (2017) (analyzing best interest of child in connection with the child removal statute, N.J.S.A. 9:2-2); H.N.R., 285 N.J. Super. 1 (the adoption statute N.J.S.A. 9:3-37 to 56); In re Adoption of Child by Nathan S., 396 N.J. Super. 378 (Ch. Div. 2006) (holding it would be extending the adoption statute too far by allowing a biological mother and the maternal grandfather to both be legal parents of the same child); Moriarty v. Brandt, 177 N.J. 84 (2003) (enforcing grandparent rights under N.J.S.A. 9:2-7.1); K.D. v. A.S., 462 N.J. Super. 619 (App. Div.), certif. den., 244 N.J. 169 (2020) (holding it would violate public policy for a biological mother to invoke sibling visitation rights under N.J.S.A. 9:2-7.1 after surrendering her parental rights where her children were then adopted by her biological parents); Dow, 434 N.J. Super. 163 (analyzing the marriage statute N.J.S.A. 37:1-33). By undertaking this process, this court hopes to clarify whether an unmarried petitioner seeking a judgment of adoption may attain such without severing the parental rights of a natural parent by way of unintended legal effect.

At a preliminary hearing held on December 11, 2019, and upon request by petitioner and the natural mother, the court entered an interim order granting joint legal and physical custody between petitioner and her partner that extended until the matter could return before the court for a final adoption

hearing. The mother's consent to joint physical and legal custody was confirmed on the record, as was the statutory authority permitting the court to enter interim "order[s] concerning the custody and guardianship of the child as may be deemed proper in the circumstances" pending the conclusion of the proceeding. N.J.S.A. 9:3-48. That court order took the additional step of appointing Lauri R. Steinberg, Esq., of Pine & Steinberg, LLC, to serve as Guardian Ad Litem to represent the best interests of the child, B.K.B., and to serve as an independent fact finder, investigator, and evaluator on the child's behalf. Steinberg submitted a Guardian Ad Litem Report dated February 4, 2020. The court found her report to be of significant assistance.

Factual Background

Petitioner, J.B., and the natural mother, R.L., have been in a committed relationship since 2013, when they met through mutual business contacts. The couple felt an instant connection. The parties moved in together in 2014, but never married. Based upon the evidence presented, the parties' bond grew inseparably close, and though they articulated a desire for children, the parties felt that marriage unto itself, was not the gauge of a successful relationship. The parties began to plan for a family, desiring to have R.L. carry the pregnancy, and to use J.B.'s eggs. When no pregnancy occurred, they opted to use R.L.'s eggs, who underwent two unsuccessful rounds of IUI [Intrauterine

Insemination] treatment.

It was not until the couples' acceptance into an embryo donation program at the Reproductive Medicine Associates of New Jersey that the couple finally achieved a successful pregnancy. Based upon the evidence presented, the birth of B.K.B. in August 2019 marked a four-year interval from the time J.B. and R.L. decided to start a family. The couple bought a home in 2017 in Sussex County, New Jersey, where they and B.K.B. now all reside. They run a successful business in Morris County. J.B. and R.L. both confirmed this information through their testimony.

Though the couple's journey to start a family took years longer than the parties anticipated, this amplified their gratitude and thrill when they received the donated embryo. As shown through the evidence, J.B. was present for every doctor's appointment, every class on baby care and birthing with R.L. Accordingly, R.L. described J.B.'s involvement during the pregnancy as incredible, that she took on things she normally doesn't and that she was incredibly supportive. Even prior to the pregnancy, the couple's commitment to each other and welcoming a child was on display—the parties both signed a Consent to Receive Donated Embryos form in each section, including those relating to nonpayment penalties, legal considerations and counsel, consent to accept anonymous embryos, and a liability form regarding the possible death

of intended parents. J.B. and R.L. described their motivation to have a child as indicative of their complete dedication to each other and their family unit. Based upon the evidence presented, B.K.B. was born in good condition and released from the hospital in good health. A congenital heart defect was later corrected without difficulty.

Since B.K.B.'s birth, either J.B. or R.L. has always been in the company of the child. The Guardian Ad Litem described the child to be extraordinarily alert and aware. Based upon the evidence, B.K.B. continues to be in good health and is developing normally. Additionally, B.K.B. has followed up with routine pediatric care at Sparta Pediatrics. Furthermore, the evidence showed, that B.K.B. is able to sleep 4-5 hours at night before waking to be fed and his two-month wellness check took place in October 2019. Moreover, B.K.B.'s regular immunizations have begun, and he has rarely fussed unless hungry or in need of a diaper change. The Guardian Ad Litem observed that the joy apparent in J.B.'s body language and facial expressions and handling of B.K.B. were natural. As the evidence reflects, J.B.'s mother and R.L.'s mother have assisted with caring for B.K.B., and their families have provided a system of support both locally and from throughout the region. Accordingly, the evidence showed that the child's emotional and physical needs are being met by the plaintiff and birth mother and there are no indications of

mistreatment, abuse, or neglect.

J.B. is a graduate of Seton Hall University's undergraduate program and Business School. She desires to provide an opportunity for B.K.B. to choose his own path, while also providing for all of his emotional, physical and financial needs. J.B. testified and the Guardian Ad Litem confidently asserts, that J.B. is able to support the child financially and emotionally, and that she is already preparing for B.K.B.'s future and security. Moreover, R.L. explained that J.B. soothes and appeases B.K.B. faster than anyone and that J.B. champions her desire to be a great role model. Additionally, R.L. explained that motherhood re-prioritizes your life, to what matters most. Based upon the evidence presented, the petitioner and birth mother plan to eventually provide B.K.B. with knowledge of his adoptive status and background and will share information with the child at age-appropriate times, while answering his questions with honesty and sensitivity. Further, during Steinberg's meeting with the family she described that B.K.B. smiles constantly, at both R.L. and J.B., and that for more than an hour and a half, B.K.B. was content to look around, and play with the infant-grip toys that J.B. and R.L. brought with them while not crying once.

Additional evidence presented confirmed petitioner, J.B., has never been arrested or convicted of a crime. Moreover, J.B. has maintained good general

health, has no history of serious illness, chronic conditions or disabilities, and has no history of mental illness, drug/alcohol abuse, child abuse, or domestic violence. Based upon the testimony and evidence, the finalization of the adoption was recommended and the Guardian Ad Litem, representing the child's best interest, reported:

> It was clear to me through my interviews with [J.B.] and [R.L.], and my observations of them with BKB, that they are already a family in fact, if not yet by virtue of a Judgment of Adoption. [J.B.] is loving, and as devoted to BKB as any parent can be. [J.B.] and [R.L.], the birth mother, planned for this child together over the course of many years. This was a journey to parenthood undertaken as a partnership. BKB was happy, calm and alert during my time with him. He appears to be thriving under [J.B.]'s care.

Finally, the Guardian Ad Litem concluded that it was her recommendation that the best interest of B.K.B. will be served by approving J.B.'s Petition and finalizing the adoption as soon as possible.

Legal Background and Analysis

New Jersey's statutory adoption framework is found at N.J.S.A. 9:3-37 to 56. These statutes are to be liberally construed, with the children's best interests and safety demanding foremost consideration. N.J.S.A. 9:3-37. In adoption matters where the child has not been received from an approved agency, such as this one, the court shall enter a judgment of adoption when satisfied the best interests of the child will be promoted by the adoption.

N.J.S.A. 9:3-48(f).

However, N.J.S.A. 9:3-50(c), states, in full, that:

> The entry of a judgment of adoption shall:
>
> > (1) terminate all parental rights and responsibilities of the parent towards the adoptive child except for a parent who is the spouse of the petitioner and except those rights that have vested prior to entry of the judgment of adoption;
> >
> > (2) terminate all rights of inheritance under intestacy from or through the parent unless that parent is the spouse of the petitioner or that parent or other relative had died prior to the judgment of adoption; and
> >
> > (3) terminate all rights of inheritance under intestacy from or through the child which existed prior to the adoption.[10]

The current adoption matter turns on the effect of the statute's use of "spouse," and whether all parental rights of other parents must terminate apart from the "spouse" of a petitioner upon the granting of an adoption judgment. A strict reading would suggest an unmarried biological parent's rights would not be preserved. This interpretation invokes serious and unintended consequences

[10] At the time when H.N.R. was appealed the statute used the phrase "stepfather or stepmother" instead of "spouse." The amendment to use "spouse" became effective on April 24, 1994. The court found the change to be semantic and for gender neutralization purposes and did not effect any substantive change. H.N.R., 285 N.J. Super. at 15, n.2.

for petitioning couples who have chosen not to enter into the bonds of matrimony.

The plain language reading of the statute was identified shortly after its revision in the dissenting opinion to H.N.R. Judge Wefing observed that, strictly interpreted, N.J.S.A. 9:3-50 "provid[ed] for the termination of [the biological parent's] parental rights over [their biological children] . . . if they are adopted by one other than a stepparent." H.N.R., 285 N.J. Super. at 12. Any unmarried petitioner partnered with the child's biological parent risked inviting "a judgment of adoption [that] absolutely terminates the parental rights of the natural parents," as the plain language demanded that the petitioner be married to the natural parent for the latter's rights to be preserved. Id. at 12-13. Judge Wefing took "[t]he term stepparent . . . to imply a marital relationship." Id. at 13 (citing Zaragoza v. Capriola, 201 N.J. Super. 55, 61 (Ch. Div. 1985)).

The dissent interpreted the statute to reflect "the intent of our Legislature . . . through use of the terms 'stepfather or stepmother' [to] create[] a very narrow exception to the principle that a judgment of adoption terminates any legal relationship between the adopted child and the birth parents." Id. at 14. The dissent urged that "[t]he chosen language" signaled a "legislative intent . . . that if one partner seeks to adopt the child of the other partner, they should

be married to one another. The Legislature is free to change that articulation of public policy if it desires, but we should not revise it through judicial construction." Ibid. While this reading arose in a dissent, H.N.R.'s majority opinion utilized nuanced and narrowly authored precedent—raising the specter that a strict reading, at times, could terminate a biological parent's rights.

The majority opinion in H.N.R., authored by then Judge Pressler, reasoned:

> [W]here the mother's same-sex partner has, with the mother's consent, participation, and cooperation, assumed a full parental role in the life of the mother's child, and where the child is consequently bonded to the partner in a loving, functional prenatal relationship, the stepparent provision of N.J.S.A. 9:3-50 should not be narrowly interpreted so as to defeat an adoption that is clearly in the child's best interests.
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> [Id. at 8.]

H.N.R.'s "fundamental question" asked whether New Jersey's Judgment of Adoption statute "permit[ted] the adoption of children by the same-sex cohabiting partner of their natural mother without affecting the mother's parental rights." Id. at 3. The petitioner and biological mother "ha[d] been living together for fourteen years," and "both regard[ed] their relationship as permanent." Ibid. Further, "[f]rom the outset of their relationship, the women discussed the prospect of having children, a[s] that was their intention." Id. at 4. The petitioner initially "attempted to conceive by anonymous-donor

artificial insemination but was unsuccessful. [The biological mother] then attempted to conceive in the same fashion and was successful . . . [with] twins being delivered in August 1992." Ibid. This circumstance revealed the arbitrariness of only deeming one party a parent while refusing to preserve the other's parental rights; further, it showed the deliberate decision and commitment of the couple to start a family. The foundations of the familial relationship in H.N.R. are aptly akin to the relationship between J.B. and R.L.

Judge Pressler observed that "the children, now three years old, appear equally bonded to both women," as "[d]ecisions respecting the twins' upbringing" were being "made jointly by the two women." Ibid. Neither the biological mother nor the petitioner believed that a formal "judgment of adoption w[ould] effect any fundamental change in the way the family lives," but "both [were] desirous of creating the legal relationship . . . in order to confer dependency benefits on the twins . . . [and] assure the continuity of the custodial and financial rights and responsibilities characterizing the parental relationship." Id. at 5. The trial court had "denied the adoption on the ground that same-sex partner adoptions are not permitted under the New Jersey adoption statute," but the Appellate Division viewed that "reading of the statute []as erroneously over-restrictive." Id. at 6. As Judge Pressler summarized:

> As we understand the trial judge's reasoning . . . the plaintiff was not the legal spouse of the natural mother, [so] she could not qualify as a stepparent and . . . her adoption petition could not be granted since it would have the inevitable and unintended effect of terminating the biological mother's parental rights.
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> [Id. at 7.]

The Appellate Division was "persuaded that that statutory provision, read in context and construed in light of both the liberal-construction mandate and the best-interests test, does not support the trial judge's denial of the petition [for adoption]." Ibid. (emphasis added). H.N.R. determined that the statute should not be wielded literally so as to prevent a new family—one in the child's best interests—from forming. The petitioner-partner played a pivotal role and simply desired to be legally recognized as a full-fledged member of their family unit. Rather than a superficial measure, this was necessary to undertake a multitude of parenting responsibilities and decisions.

In re Adoption of a Child by A.R., 152 N.J. Super. 541 (Ch. Div. 1977), was the first case to deal with rigid interpretations of N.J.S.A. 9:3-50 (or its predecessor), and it catalyzed the progeny of stepparent exception cases to follow. The trial court in that matter cautioned that "if th[e] adoption [were] granted, the rights of the mother w[ould] not be preserved under N.J.S.A. 9:3-

30(A),[11] since plaintiff's not a 'stepfather or stepmother [adopting with the] approval of the mother or father.'" Id. at 545. The adoption petitioner in A.R. was the biological father of the child—though engaged to the biological mother at the time of conception, he could not legally marry the natural mother due to her "[being ruled] an incompetent." Id. at 542. Therefore, adopting his own biological child formed the only pathway to establishing parental rights. The court recognized that the controlling statutes and court rules "must be read against the peculiar factual setting of this case, and with an application of common sense." Ibid. As such, N.J.S.A. 9:3-17[12] clearly instructed: "the act is to be given 'a liberal construction to give effect to the public policy in [the statute],' namely, the protection of the children and the adoptive and natural parents . . . ." Ibid.

The court declared that the "child should not be adversely affected by th[e legislative] state of affairs," and therefore a natural father should be "interpret[ed within] the term 'stepfather' . . . [to] preserve the rights and relationship between the child and his mother." Ibid. Though confined to a

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[11] N.J.S.A. 9:3-30(A) was repealed by L. 1977, c. 367, § 20, while L. 1977, c. 367, § 14 established N.J.S.A. 9:3-50.

[12] N.J.S.A. 9:3-17 was repealed by L. 1977, c. 367, § 20, while L. 1977, c. 367, § 1 established N.J.S.A. 9:3-37. Interestingly, N.J.S.A. 9:3-37 was amended via L. 1999, c. 53, § 1 (eff. Mar. 31, 1999), while N.J.S.A. 9:3-50 was last amended in 1993 (eff. April 24, 1994).

narrow context, A.R. provided a roadmap for future courts to utilize the stepparent exception to ensure equitable results in the best interests of children, thereby establishing a framework to look beyond the strict language of the Judgment of Adoption statute. A "liberal construction" ensured "the protection of the children and the adoptive and natural parents," while the literal reading yielded an absurd result. Ibid. (citing N.J.S.A. 9:3-17). As such, A.R. offered an early reflection of the legislation's unintended consequences—to infer that a natural father could not adopt nor gain parental rights to his own child exposed the statute's shortcomings.

In the same vein, a "case of first impression" came before another trial court in 1993 to form a close precursor to H.N.R.[13] In In re Adoption of a Child by J.M.G., 267 N.J. Super. 622, 623 (Ch. Div. 1993), an unmarried same-sex couple submitted an adoption petition attempting to weather the harsh language of N.J.S.A. 9:3-50. To better understand the novel nature of the matter, the court retained Barbara Coles Bolella, Esq., Professor at Seton Hall University School of Law, as a "guardian [to] investigate and report on the best interests of the child and, further, take a position as to whether New Jersey statutes or public policy would prohibit this proposed adoption." Id. at

[13] The New Jersey Legislature codified the current iteration of N.J.S.A. 9:3-50 later that year.

624. Reports filed by Professor Bolella and another investigative organization "recommended quite emphatically that granting this petition for adoption is in the best interest of the child." Ibid.

The trial court's decision recounted that "[e]arly in the [partner's] relationship, J.M.G. [the petitioner] and E.O. [the biological mother] planned to have a child. They agreed that E.O. would give birth and that they would both raise the child as co-equal parents with mutual responsibilities as care-givers." Ibid. The trial court knew that "New Jersey courts have historically been liberal in their construction and interpretation of the law governing custody and adoptions. Indeed, the statute itself mandates that the law be so construed to promote and protect the child's best interests." Id. at 631 (citing N.J.S.A. 9:3-37). Though the applicants' relationship was not formally recognized under State law, the court wisely foretold that "while the families of the past may have seemed simple formations repeated with uniformity (the so called 'traditional family') families have always been complex, multifaceted, and often idealized." Ibid. The court was unable to "continue to pretend that there is one formula, one correct pattern that should constitute a family in order to achieve the supportive, loving environment we believe children should inhabit." Ibid.

J.M.G. stressed that courts "must consider the psychological importance

of th[e adopting parent's] relationship to the child." Id. at 626. The petitioner was "both physically and financially capable of supporting and nurturing the child," and though the "adoption w[ould] cause no change to the child's daily life," it would "provide critical legal rights and protections for her safety as well as her physical and emotional well-being." Id. at 625. As such, "the emotional benefit of formal recognition of the relationship between J.M.G. and the child must not be underestimated." Id. at 626. The court recognized that the "adoption will also protect the continuity of the child's relationship with plaintiff if either some accident or injury befalls the biological parent (E.O.), or if J.M.G. and E.O. separate." Id. at 625. In this manner, the court did "not foreclose the possibility that the term 'stepparent' could be applied to a person who lives with, but is not married to, the natural or adoptive parent of a child." Id. at 627 n.3.

The trial court found further support within a Vermont case decided that same year, wherein that state's Supreme Court had "considered the identical issue of whether a Vermont adoption statute required the termination of the birth mother's rights in the adoption of her child by the mother's lesbian partner." Id. at 627-28 (citing Adoptions of B.L.V.B. & E.L.V.B., 628 A.2d 1271, 1273-74 (Vt. 1993). The Vermont statute "was substantially similar to N.J.S.A. 9:3-50(a), containing, as well, a 'stepparent-exception' provision, as

so characterized by that court." Ibid. The Vermont Supreme Court found that same-sex adoptions "f[e]ll within the 'stepparent-exception' of its statute," since "when the family unit is comprised of the natural mother and her partner, and the adoption is in the best interests of the children, terminating the natural mother's rights is unreasonable and unnecessary." Id. at 628 (quoting B.L.V.B., 628 A.2d at 1272).

A.R., J.M.G., and H.N.R. demonstrate that N.J.S.A. 9:3-37's liberal-construction mandate and best-interests test, taken together, form a compass to guide navigation of adoption petitions from unique family units. When compositions of petitioning couples fall outside the strict definition of "spouse" under N.J.S.A. 9:3-50, "the stepparent exception to the natural parent's termination of rights should not be read literally and restrictively where to do so would defeat the best interests of the children and would produce a wholly absurd and untenable result." H.N.R., 285 N.J. Super. at 7-8. These cases demonstrate that the best interests of the child are most protected by simultaneously preserving their relationship with the biological parent and granting a second-parent adoption—without terminating any parental rights. H.N.R. had recalled A.R.'s approach, "allow[ing] the adoption while preserving the natural mother's status despite the plaintiff's failure to meet the literal definition of a stepparent." Id. at 8 (citing A.R., 152 N.J. Super. at 545).

H.N.R. "allow[ed] a same-sex cohabitant to adopt her partner's natural child as the child's second parent." Ibid. (citing J.M.G., 267 N.J. Super. at 632). Thus, a second parent was as fundamentally important to a child's life and family support system as any stepparent would be.

Despite this body of sound precedent, legal developments since concerning marriage and familial relations raise the critical question set forth above: J.M.G. and H.N.R. seemingly began to construct an independent cause of action, whereby liberal statutory construction and the best interests of the child were to reign over the Judgment of Adoption statute's strict language, regardless of the petitioners' marital status or ability to wed. J.M.G. found it sensible to craft a result "in conjunction with the [ordered] independent reports," therefore encouraging that "th[e] adoption" should proceed "in the best interests of th[e] child." J.M.G., 267 N.J. Super. at 625.

That court also warned of a "need to protect the child from the emotional trauma which may be caused by terminating such psychological relationships." Id. at 626-27. The court was "convinced" that the petitioner "should be treated as a stepparent as a matter of common sense, and in order to protect the child's interests." Id. at 628. Citations to psychological parent cases emphasized that the children should not be deprived of such relationships if in their best interests, regardless of biological, marital, or adoptive status. What mattered

was not the marital status between parents, nor whether they were able to get married—it was the relationship between parent and child, so long as they were in a committed relationship. For the court to truly prioritize the best interests of children, its focus could not shift away to statutory technicalities.

Though same-sex marriage was barred at the time, H.N.R. rebuked the "reading of the statute []as erroneously over-restrictive" regarding its focus on whether "same-sex partner adoptions [we]re permitted under" New Jersey's adoption statutes. H.N.R. 285 N.J. Super. at 6. In this vein, "where the mother's same-sex partner has, with the mother's consent, participation and cooperation, assumed a full parental role in the life of the mother's child . . . . N.J.S.A. 9:3-50 should not be narrowly interpreted so as to defeat an adoption that is clearly in the child's best interests." Id. at 8. H.N.R. cited B.L.V.B. to support granting the adoption without terminating parental rights. Judge Pressler echoed the refrain that "[w]hen the statute is read as a whole, we see that its general purpose is to clarify and protect the legal rights of the adopted person at the time the adoption is complete, not to proscribe adoptions by certain combinations of individuals." Id. at 9 (quoting B.L.V.B., 628 A.2d at 1274). The language of the statute "anticipat[ed] that the adoption of children w[ould] remove the [child] from the home of the biological parents," which meant the biological parents were "compelled to terminate their legal

obligations to the child." Ibid. Thus, it "would be against common sense to terminate the biological parent's rights when that parent will continue to raise and be responsible for the child, albeit in a family unit with a partner who is biologically unrelated to the child." Ibid. (quoting B.L.V.B., 628 A.2d at 1274).

When a child forms a bonded relationship with parents who protect and further their best interests, the State forms a parallel interest in protecting that family unit from external interference or intervention. The language of the statute enables a child's adopted family to securely and assuredly make such decisions. Yet, as H.N.R. points out, the Judgment of Adoption statute, as written, could serve no viable purpose if it terminated the parental rights of a biological parent still fully involved and included in that family unit. The Appellate Division concurred that statutes like Vermont's § 448 and New Jersey's N.J.S.A. 9:3-50 codified "[t]he intent of the Legislature . . . to protect the security of family units by defining the legal rights and responsibilities of children who find themselves in circumstances that do not include two biological parents." Ibid. (quoting B.L.V.B., 628 A.2d at 1274).

The Appellate Division similarly analyzed N.J.S.A. 9:3-50's language and intent, finding that "[d]espite the narrow wording of the step-parent exception," it could not "conclude that the legislature ever meant to terminate

the parental rights of a biological parent who intended to continue raising a child with the help of a partner." Ibid. (quoting B.L.V.B., 628 A.2d at 1274). More important was that the petitioner and natural parent "function[ed] together as a family." Id. at 12. The court knew "[w]hether the adoption is granted or not, the day-to-day lives of these two adults and the[ir] . . . children will not be materially different." Ibid. The adopted children were already the "children of both [parents], and no court order granting or denying the adoption w[ould] change that." Ibid.

H.N.R.'s words on legislative intent, and the prudence of construing statutes with common sense, rang in harmony with other controlling law on interpreting statutory intent. In State ex rel. S.S., the Appellate Division stated that "[s]tatutes are to be read sensibly rather than literally and the controlling legislative intent is to be presumed as 'consonant to reason and good discretion.'" State ex rel. S.S., 367 N.J. Super. 400, 406 (App. Div. 2004), aff'd, 183 N.J. 20 (2005) (citing Schierstead v. City of Brigantine, 29 N.J. 220, 230 (1959)); Morris Canal & Banking Co. v. Cent. R.R. Co., 16 N.J. Eq. 419, 428 (Ch. 1863)); see Lloyd v. Vermeulen, 22 N.J. 200, 205 (1956) (quoting Judge Learned Hand in Guiseppi v. Walling, 144 F.2d 608, 624 (2d Cir. 1944)) ("There is no surer way to misread any document than to read it literally."). S.S., calling upon the "express instruction" of our Supreme Court, eloquently

described the relationship between the judiciary and the Legislature, particularly in regard to exercises of statutory review where plain language can obscure a commonsense approach:

> It is the proper function, indeed the obligation, of the judiciary to give effect to the obvious purpose of the Legislature, and to that end words used may be expanded or limited according to the manifest reason and obvious purpose of the law. The spirit of the legislative direction prevails over the literal sense of the terms.
>
> [Id. at 406 (quoting New Cap. Bar & Grill Corp. v. Div. of Emp. Sec., 25 N.J. 155, 160 (1957)).]

The established role of the judiciary, to interpret legislation in light of the "manifest reason and obvious purpose of the law," reinforces H.N.R.'s approach and casts serious doubt upon the notion that "the Legislature ever meant to terminate the parental rights of a biological parent who intended to continue raising a child with the help of a partner." H.N.R., 285 N.J. Super. at 9 (quoting B.L.V.B., 628 A.2d at 1274). Further, as H.N.R. plainly stated:

> When social mores change, governing statutes must be interpreted to allow for those changes in a manner that does not frustrate the purposes behind their enactment. To deny the children of same-sex partners, as a class, the security of a legally recognized relationship with their second parent serves no legitimate state interest.
>
> [Id. at 10 (quoting B.L.V.B., 628 A.2d at 1275).]

The issue presented by the present adoption petition impacts any couple,

composed of a natural parent and a non-natural parent, who wishes to formalize their family unit. Thus, it is not merely a matter of changing social mores, but of the manner in which strict statutory construction can deprive a child of their forever family—a family that simply seeks to carry out their best interests. While some argue, as Judge Wefing did in H.N.R., that the Legislature's intent was to restrict adoptions to married couples, this cannot be: unmarried couples without a biological parent remain utterly unaffected by the Judgment of Adoption statute's plain language. The only parents to have their rights terminated per the statute are biological parents—those whom the state has traditionally protected most. If the Legislature's true intent was to prevent unmarried couples from adopting as a matter of public policy, the statute could have expressly obstructed unmarried adoptions from being carried out, rather than indirectly discouraging their enactment by solely cutting the parental rights and ties between biological parents and their child.

New Jersey's Judgment of Adoption statute has not been amended since 1994; amidst the void of legislative response, the judiciary had little need to offer these clarifications until it became legally possible for same-sex couples to satisfy the statute's requirement of "spouse." Yet, the courts have long been clear on how it interprets such legislative silence. The New Jersey Supreme Court pronounced in 2012 that, "as a principle of statutory construction, the

legislative branch is presumed to be aware of judicial constructions of statutory provisions." State v. Singleton, 211 N.J. 157, 180 (2012). Therefore, "[s]tatutory-based decisions are less likely to be subject to reconsideration because the legislative branch can correct a mistaken judicial interpretation of a legislative enactment." Ibid. In Singleton, the Supreme Court of New Jersey quoted White v. Township of North Bergen to declare: "[t]here is ample precedent in New Jersey to support the proposition that, where a statute has been judicially construed, the failure of the Legislature to subsequently act thereon evidences legislative acquiescence in the construction given the statute." Id. at 180-81 (quoting White v. Twp. of N. Bergen, 77 N.J. 538, 556 (1978)).[14] The Court then declared that "legislative acquiescence to an interpretation of a statute renders the judicial decision an unlikely candidate for abandoning stare decisis. That is precisely the circumstance here." Id. at 181.

Just two years ago, in State v. Fuqua, the Supreme Court pointed to White once again: "[i]t is eminently fair . . . that 'where a statute has been

[14] The New Jersey Supreme Court in Singleton also cited to the seminal Sutherland Statutes and Statutory Construction Seventh Edition, in which it stated: "A number of decisions have held that legislative inaction following a contemporaneous and practical interpretation is evidence that the Legislature intends to adopt such an interpretation." Singleton, 211 N.J. at 181 (quoting 2B Norman J. Singer & J.D. Shambie Singer, Sutherland Statutory Construction § 49:10 at 137 (7th ed. 2008)).

judicially construed, the failure of the Legislature to subsequently act thereon evidences legislative acquiescence in the construction given the statute.'" State v. Fuqua, 234 N.J. 583, 594 (2018) (quoting White, 77 N.J. at 556). The Supreme Court accordingly observed the Legislature "was free to amend [the] statute, as it [ha]d in other aspects . . . in the nearly three decades since" a prior court decision interpreted that statute's meaning. Fuqua, 234 N.J. at 594. Instead, while the Legislature opted to amend other aspects within the statutory regime, "it conspicuously did not amend the statute" in question—it failed to respond to the prior decision's interpretation. Id. at 594-595.

Yet, in the absence of statutory response or amendment, N.J.S.A. 9:3-37 supplies an explicit directive in the adoption context: "[t]his act shall be liberally construed to the end that the best interests of the children be promoted and that the safety of children be of paramount concern. Due regard shall be given to the rights of all persons affected by an adoption." N.J.S.A. 9:3-37. The Legislature wisely opted to enshrine its meaning and purpose—when faced with uncertainty, the statutory regime demands that adoption statutes be "liberally construed" so "that the best interests of the child be promoted." N.J.S.A. 9:3-17 – 9:3-36 were repealed in 1977, elevating N.J.S.A. 9:3-37 to its placement at the gateway of the State's adoption statutes. Its principles appear even prior to the anthology of relevant definitions at

N.J.S.A. 9:3-38. N.J.S.A. 9:3-37 is not merely preamble, but an introductory doctrine canonized to guide courts with instilled statutory reference points: when in doubt, construe adoption statutes liberally so that the best interests of the child may be served, and their safety protected. The Legislature's statutory inaction in the twenty-five years since H.N.R. permits unmarried same-sex petitioners the ability to adopt children without terminating the parental rights of the natural parent; as such, the Legislature acquiesced to the court's interpretation of the Judgment of Adoption statute.

The New Jersey Judiciary is no stranger to accounting for changed social mores, particularly when doing so promotes the best interests of a child above archaic notions of family status and structure. V.C., 163 N.J. at 200 and Watkins, 163 N.J. at 237; In re Parentage of Robinson, 383 N.J. Super. 165 (Ch. Div. 2005); D.G. v. K.S., 444 N.J. Super. 423 (Ch. Div. 2015); Bisbing, 230 N.J. at 309 (which eliminated the Baures test for child custody removals when the Court found it was not working and not in the best interest of the child). H.N.R.'s emphasis on discerning an expanded pathway to realize a statute's obvious purpose mirrors several family law contexts relevant to adoption, yet independent of the Judgment of Adoption statute. Following H.N.R., three opinions—a New Jersey Supreme Court decision, an Appellate Division decision, and a trial court decision—form valuable comparisons in

the contexts of parental visitation, child name changes, and artificial insemination.

In V.C., the biological mother, M.J.B., contemplated pregnancy via artificial insemination for a decade prior to her relationship with V.C.; she "made the final decision to become pregnant" as the two began seeing each other. V.C., 163 N.J. at 206. V.C. maintained that "the two discussed having children." Ibid. M.J.B. learned she was pregnant two months after the parties moved in together. Id. at 206-07. V.C.'s involvement with prenatal decision-making and "the children's names" was disputed—yet, upon M.J.B.'s birth of twins, "the nurses and staff treated V.C. as . . . a mother," and M.J.B. "referred to V.C. as a 'mother' of the" twins." Ibid. For "the twenty-three months . . . the parties and the children functioned as a family unit." Ibid. V.C. was listed as a "mother" on the children's medical and school forms and was given "power of attorney over the children." Id. at 208. The parties "held a commitment ceremony" with "the twins [where they] were blessed as a 'family.'" Id. at 209. They discussed hyphenating "the twins' surname to . . . the [two] women's names," or that "V.C. adopt[] the children." Ibid. They consulted with an adoption attorney, but never followed through. Ibid. Soon, M.J.B. ended the relationship. V.C. moved out but visited the twins and contributed to their expenses. Id. at 210. She housed them while M.J.B. was

out of town, but soon M.J.B. declined V.C.'s visitation and financial support. Ibid.

After V.C.'s request for custodial rights was denied, she appealed, asserting "that she qualifie[d] as a parent under N.J.S.A. 9:2-13(f); that she [wa]s a psychological parent of the twins . . . [and] that in such circumstances the best interests test applies." Id. at 214. The Supreme Court examined N.J.S.A. 9:2-13(f)'s "word[ing of] 'parent,'" in that context, and found it "mean[t] a natural parent or parent by previous adoptions." Id. at 216 (quoting N.J.S.A. 9:2-13(f)). The New Jersey Supreme Court honed in on the statute's phrase, "when not otherwise described by the context," which it found "evince[d] a legislative intent to leave open the possibility that individuals other than natural or adoptive parents may qualify as 'parents,' depending on the circumstances." Ibid. The Court reminded that "statutory 'language must not, if reasonably avoidable, be found to be inoperative, superfluous or meaningless.'" Id. at 217 (quoting In re Sussex Cnty. Mun. Utils. Auth., 198 N.J. Super. 214, 217 (App. Div. 1985)).

Taking these prior decisions and principles into account, the Court surmised:

> By including the words "when not otherwise described by the context" in the statute, the Legislature obviously envisioned a case where the specific relationship between a child and a person not

> specifically denominated by the statute would qualify as "parental" . . . it is hard to imagine what it could have had in mind in adding the "context" language other than a situation such as this, in which a person not related to a child by blood or adoption has stood in a parental role vis-a-vis the child.
>
> [Id. at 217.]

What broadly became known as the "'exceptional circumstances' category" was "recognized as an alternative basis for a third party to seek custody and visitation of another person's child," calling upon the court's "parens patriae power." Id. at 219.[15] The "exceptional circumstances" category houses "the subset known as the psychological parent cases," by which "a third party" can "assume the role of the legal parent who has been unable or unwilling to undertake the obligations of parenthood." Ibid. Yet, "the heart of . . . psychological parent cases [lies in] a recognition that children have a strong interest in maintaining the ties that connect them to adults who love and provide for them." Id. at 221. That interest arose "in the emotional bonds that

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[15] Translated literally as "parent of the nation," the parens patriae power has been described both as an inherent right and equitable authority of the sovereign to protect those persons within the state who cannot protect themselves. In re Grady, 85 N.J. 235, 259 (1981). This duty and obligation has been further described "[a]s it relates specifically to children's issues and the rights of children, parens patriae is the philosophical source of state law, of public policy governing their general welfare, best interests, right of protection, right to be free from harm and abuse." Hoefers v. Jones, 288 N.J. Super. 590, 607 (Ch. Div. 1994), aff'd o.b., 288 N.J. Super. 478 (App. Div. 1996).

develop between family members as a result of shared daily life." Ibid.

The Court fashioned a four prong test to "defin[e] de facto parenthood" from a Wisconsin Supreme Court case:

> [1] the legal parent must consent to and foster the relationship between the third party and the child; [2] the third party must have lived with the child; [3] the third party must perform parental functions for the child to a significant degree; and most important, [4] a parent-child bond must be forged.
>
> [Id. at 223 (citing Custody of H.S.H.-K., 533 N.W.2d 419, 421 (Wis. 1995)).]

The "test provide[d] a good framework for determining psychological parenthood in cases where the third party has lived for a substantial period with the legal parent and her child." Ibid. Yet, "[]though joint participation in the family's decision to have a child is probative evidence of the legally recognized parent's intentions, not having participated in the decision d[id] not preclude a finding of the third party's psychological parenthood." Id. at 225. Similarly, "finding . . . a third party assumed the obligations of parenthood . . . [was] not contingent on financial contributions made by the third party." Id. at 226. Rather, "[f]inancial contribution may be considered but should not be given inordinate weight." Ibid. Parenthood was "determined by the nature, quality, and extent of the functions undertaken by the third party and the response of the child to that nurturance." Ibid.

A psychological parent had to "show that they 'ha[d] functioned as a parent for a long enough time that such a bond ha[d] developed.'" Ibid. The biological parent had to "creat[e] a family with the third party and the child . . . invit[ing] the third party into the . . . realm of family privacy . . . ." Ibid. Such caution was necessary, as "[o]nce a third party ha[d] been determined to be a psychological parent to a child," then "he or she st[ood] in parity with the legal parent" with "[c]ustody and visitation issues between them [being] determined on a best interests standard," as if two "legal parents were in a conflict over custody and visitation." Id. at 227-28.

The Court concluded M.J.B. "fostered and cultivated, in every way, the development of a parent-child bond between V.C. and the twins," with V.C. taking on "many of the day-to-day obligations of parenthood." Id. at 229. The Supreme Court affirmed V.C.'s visitation with the twins, but declined to grant her joint legal custody as she "ha[d] not been involved in the decision-making for the twins for nearly four years;" the Supreme Court feared now ordering the opposite might risk "disrupti[on] for all involved." Id. at 229-30. Though V.C. had proven her commitment and contribution to the children, their best interests still formed the determining factor for each question, whether to the advantage or disadvantage of the petitioner.

Though V.C. took place "in the context of a lesbian couple," the

decision "appli[ed] to all persons who have willingly, and with the approval of the legal parent, undertaken the duties of a parent to a child not related by blood or adoption." Id. at 205-06. V.C. further demonstrated the Court's inclination to award parental rights to non-biological parents who "perform[ed] parental functions for [a] child to a significant degree." Id. at 223. If a natural parent's partner "lived in familial circumstances" with a child and "assumed the day-to-day obligations of parenthood" with the parent's consent, the court could view the dispute and apply a best interests standard as "if two legal parents were in a conflict." Id. at 227-30. Notably, the parties' marriage was not recognized and the partner neither adopted the children, nor was she a part of the ultimate decision to become pregnant; yet, the Court still found the best interests of the children required visitation with a mother's former partner who had been actively involved in caring for the children, regardless of marital status, adoptive status, or relationship status. Id. at 230. In so doing, V.C. weighed the case facts upon the scale of best interests.

Second, in In re Application for a Change of Name by Jill Iris Bacharach, the Appellate Division overturned a superior court's "deni[al of a] name change based on [the] perception of the law and public policy of the State against recognition of same-sex marriage." In re Application for Change of Name by Bacharach, 344 N.J. Super. 126, 129 (App. Div. 2001). The trial

court did not want to "give even the slightest imprimatur of any legitimacy to this type of arrangement" of same-sex "life term partners," which in the trial court's view, was "against public policy to . . . even allow a perception, appearance o[f] a recognizable union." Id. at 130. The Appellate Division instead ruled that the petitioner "and her partner can exchange rings, proclaim devotion in a public or private ceremony, call their relationship a marriage, use the same surname, adopt and rear children. All these actions may be taken in full public view. None are offensive to the laws or stated policies of this state." Id. at 135. The petitioner articulated her desire to "be legally married to her partner, [but] understood that this was not possible under New Jersey law." Ibid. In sum, "denial of her [name change] request was a misapplication of judicial discretion," and the court emphasized the petitioner's words on what the application meant to the petitioner:

> [I]t will give me a more satisfying feeling that I have cultivated family . . . I am simply saying that I am committed to somebody in my life, that I want to express that commitment through adding a name to my name so that I can have a more solid . . . solid feeling of, this is my family. The two of us are family.
>
> [Id. at 136.]

The third case of In re Parentage of the Child of Kimberly Robinson continued to expand upon how familial dynamics could be established. A mother gave birth to a daughter via artificial insemination and petitioned the

court to have her same-gender partner recognized as a parent of the child under the Artificial Insemination statute, N.J.S.A. 9:17-44. In re Parentage of Robinson, 383 N.J. Super. 165, 167 (Ch. Div. 2005). The court noted that "the new [uniform] act exclaim[s] 'the parent and child relationship extends equally to every child and every parent regardless of the marital status of the parent.'" Ibid. In light of modern implications, the court proffered:

> As the scientific boundaries of conception and fertilization have expanded, so has the definition of parent as recognized by the [Uniform Law Commission (ULC)] when it issued revisions in 2000 and 2002.
>
> . . . .
>
> The ULC may not have contemplated same-gender parents in its expanded definition of family, but it did understand that dynamic times dictated law sensitive to the advances of science and to evolving family structures.
>
> [Id. at 171.]

The court delved further: "[i]n the normal course, children do not appear and advocate for themselves during court proceedings focusing upon custody, parenting time, visitation. Hence, the Legislature, by establishing the 'best interest of children' policy, compels the courts to do so." Id. at 172. The court's explanation offers several vital insights: first, the courts should recognize the "best interests of the children" principle as a legislative act to be

read, interpreted, and considered alongside the adoption statutes as a unified policy regime.

Second, the use of "compel" emboldens the Legislature's call to the courts to ensure that, once invoked, the adoption statues will not relegate the best interests of the children to an afterthought of strict construction; instead, the test provides a reprieve from absurd results of the statute. Third, the "best interests" test protects children whenever there is not sufficient, up-to-date statutory language to address each and every scenario or unique family unit. Without this principle, the courts could prove ineffective when the family dynamic presented does not fall cleanly into a category or definition explicitly spoken to by statute, or where the plain language, alone, would yield unintended consequences. Simply put, N.J.S.A. 9:3-50's lack of amendment failed to acknowledge updated social mores and court interpretations. Without the test, families seeking clarification would find no quarter. As such, the test's very existence argues for its use; any disparity between a child's best interest and the plain language signals a statutory oversight.

Robinson found that parentage should "extend[] equally to every child and every parent regardless of the marital status of the parent," reaffirming prior interpretations that avoided restricting parental rights to married couples. Robinson, 383 N.J. Super. at 170. Robinson also recognized the evolving

definition of a parent "in light of the expanded "boundaries of conception and fertilization." Id., at 171. As science progresses, so too must the law defining upon whom parentage may be conferred; when science and the law both allow a couple to procreate, the availability of parenthood should not lie beyond their reach. The ULC revised its definition of "parent" in 2000 and 2002, while N.J.S.A. 9:3-50 remained stagnant. Robinson found that despite the statute's reference to "paternity," the petitioner's "voluntary effort to be recognized as a parent . . . with its attendant obligations and responsibilities" pursuant to "her desire, intention and commitment to be a parent," promoted the best interests of the child, and should be preserved. Id. at 170, 174.

Thirteen years after Robinson, and five years after same-sex marriage became legal in the State, the Legislature responded by passing "An Act concerning gestational carrier agreements," which modified N.J.S.A. 9:17-44 (L. 1983, c. 17, § 7; amended L. 2018, c. 18, § 13, S. 482 (2018) (eff. May 30, 2018). Among other updates, the legislation removed all references to "paternity" in N.J.S.A. 9:17-44, and in its place, codified the following language:

> If . . . with the consent of her spouse or partner in a civil union, a woman is inseminated artificially . . . the spouse or partner is treated in law as if the spouse or partner were the legal parent of a child thereby conceived. The consent of the spouse or partner shall be in writing and signed by both parties to the

marriage or civil union.

[N.J.S.A. 9:17-44(a).]

Robinson protected the best interests of the child by interpreting the statute with common sense and in harmony with surrounding statutes. The Legislature eventually addressed those social mores by mirroring the analysis enunciated by the New Jersey courts decades earlier. The word "paternity" was no longer placed in the statute. The judiciary undertook the task of analyzing a law conferring parenthood via artificial insemination, and through careful examination, charted a course to protect the child's best interests and preserve a committed family unit. The court looked to the underlying model legislation's intent, to public policy, and to the best interests of a child to ensure it had two loving mothers. Robinson, 383 N.J. Super. at 174.

In the year after Robinson, the Supreme Court of New Jersey unanimously decided Lewis v. Harris and demanded "the Legislature either amend the marriage statutes to include same-sex couples or create a parallel statutory structure" to assure the same "rights and benefits enjoyed and burdens and obligations borne by married couples." Lewis v. Harris, 188 N.J. 415, 423 (2006). The State "concede[d]" that "law and policy do not support the argument that limiting marriage to heterosexual couples is necessary for either procreative purposes or providing the optimal environment for raising

children." Id. at 432. It also "recognize[d] the right of gay and lesbian parents to raise their own children," as the State's own agencies customarily placed foster children in "same-sex parent homes through the Division of Youth and Family Services." Ibid.

At the heart of the legal challenge in Lewis was the Domestic Partnership Act, N.J.S.A. 26:8A-1 to -13, which "provide[d] no comparable presumption of dual parentage to the non-biological parent of a child born to a domestic partner;" instead, domestic partners had to "rely on costly and time-consuming second-parent adoption procedures." Id. at 450 (citing N.J.S.A. 9:17-43, -44). The State acknowledged that even prior to the institution of civil unions, same-sex couples and other non-traditional family units had held a right to rear and raise children that could not be deprived. State agencies now played a role facilitating that right.

The Court extricated that "[t]he State does not argue that limiting marriage to the union of a man and a woman is needed to encourage procreation or to create the optimal living environment for children." Id. at 452. Therefore, the statute's deficiencies could offer "no rational basis for visiting on those children a flawed and unfair scheme directed at their parents." Ibid. The Court further decried that "[t]o the extent that families are strengthened by encouraging monogamous relationships, whether heterosexual

or homosexual, we cannot discern any public need that would justify the legal disabilities that now afflict same-sex domestic partnerships." Ibid. The children's best interests, therefore, were allowed to triumph once again over a "flawed and unfair scheme" inconsistent with the State's own policies and administrative actions.

Lewis continued a pattern promoting equal treatment of unmarried and same-sex couples in committed relationships over uncompromising legal standards. In re Adoption of a Child by Nathan S. provided an immediately preceding—but clearly distinguishable—data point. While the policies of liberal statutory construction and the child's best interests were still carefully analyzed, Judge Koblitz, differentiated H.N.R. from the unique facts before her court—instead, she ruled that the Legislature "did not intend for two persons outside of marriage or partnership to adopt children together." In re Adoption of Child by Nathan S., 396 N.J. Super. 378, 384 (Ch. Div. 2006) (emphasis added). Months before Lewis was decided, Judge Koblitz interpreted N.J.S.A. 9:3-50 to affirm that a partnership formed a sufficient formality of relationship to instill co-equal parenting rights without risking either parent's severance of such rights. The case also revealed a family dynamic the court concluded would not serve a child's best interests: a grandfather petitioning to adopt and co-parent the child of his daughter. Id. at

380. While N.J.S.A. 9:3-50 "allow[ed] a stepparent or a partner in a same-sex relationship to adopt when it is in the child's best interest," the family unit presented did not promote a beneficial adoption. Ibid. (citing N.J.S.A. 9:3-50(c)(1)) (emphasis added); e.g., H.N.R., 285 N.J. Super. at 3.

More generally, Judge Koblitz reiterated H.N.R.'s impact on similar cases, noting that "when the adoption statute has not specifically addressed the family structure the prospective adoptive parent proposes, a court must look beyond the specifics of the statute to the child's best interests." Nathan S., 396 N.J. Super. at 386 (citing H.N.R., 285 N.J. Super. at 6-7). Yet, this broad perspective still did not support the adoption in Nathan S., as the confusing and ambiguous concept of a grandfather becoming a legal co-parent to his daughter's child, such that they would become the child's legal mother and father, did not represent a legitimate family unit, nor one that would ultimately serve the child's best interests.

Nathan S. demonstrates how H.N.R. has been applied in contexts beyond straightforward statutory prohibitions on marriage; such interpretations have enabled the courts to parse through petitions about which the State's adoption statutes remain silent. In this manner, its principles help to identify absurd results from possible applications of N.J.S.A. 9:3-50, which have compelled the incarnation of a new cause of action, arising from the aforementioned

precedent and accounting for such gaps. Critically, Nathan S. establishes that not all adoptions are supported by the cause of action, even when applying a liberal statutory construction. Simply put, a child's best interests are not always served by granting a Judgment of Adoption. Yet, when those interests are served, they should be promoted above an archaic focus on the marital status of the parties, particularly in the void of clear statutory language. N.J.S.A. 9:3-37 inscribes a legislative mandate for precisely such occasions of uncertainty. This decree embodies and preserves the Legislature's clear intent; a subsequent failure to enact overdue amendments to N.J.S.A. 9:3-50's unworkable language should not be construed as an intent to obstruct the manifest reason and obvious purpose for the Act's opening edict. Rather, particularly after consistent court interpretation to the contrary, the Legislature's silence signals wise presumptive assent to those court interpretations of the cause of action that stems therefrom.

Five years after Lewis, the Court Rule covering Contents of Complaints for Adoptions was amended by the New Jersey Judiciary. Updates to Rule 5:10-3 were passed on July 21, 2011, and made effective September 1, 2011. Under the modernized Rule 5:10-3, couples did not need to be legally married to adopt a child; instead, the court requested the "name, age and citizenship of the spouse, civil union partner or domestic partner of the plaintiff (if such

person is not also a plaintiff)," as well as confirmation that the "spouse, civil union partner or domestic partner of a plaintiff has consented to the proposed adoption." R. 5:10-3(a)(2), (14). Similarly, Rule 5:10-3(c)(3), also adopted on July 21, 2011, mandated that complaints for "a second-parent adoption or co-parent adoption" were to be treated the "same as that of a stepparent adoption." R. 5:10-3(c)(3). These rules omitted a need for the adopting couple to become "spouses" or "civil union partners," leaving the door open for valid adoptions by "second parents" or "domestic partners."

The Legislature ultimately responded to Lewis by passing the Civil Union Act in December 2006, which "established 'civil unions' for couples of the same sex." N.J.S.A. 37:1-27 to -36. The Civil Union Act ushered in a new legally recognized form of partnership, which purported to provide enhanced protection and an extension of benefits to comport with Lewis. The new marital status did not specifically impact the adoption complaint process for couples who declined the new designation. Yet, if the intent of N.J.S.A. 9:3-50 had been to statutorily narrow the pool of permissible adoptive parent candidates to those whose relationships subscribed to the highest form of legal recognition available at a given time, each invention of a new relationship designation would have meant a new goal post for couples to reach regarding the relationship's label in order to be able to adopt. Further, Nathan S. would

not have acknowledged the permissibility of a couple carrying less than the most formal recognition to adopt; at least not without likely legislative rebuke or response. Instead, the judiciary's consistent interpretation of N.J.S.A. 9:3-50 has gone without answer, suggesting that much like N.J.S.A. 9:17-44 at the time of Robinson, the statute simply fails to account for current social mores, modern family units, and the Division of Child Protection & Permanency practice of consenting to and endorsing adoptions by unmarried same-sex couples when all parental rights have been terminated. No other logical explanation suffices to account for the statute's inadvertent and sole termination of the parental rights of unmarried biological parents.

Whereas the plain language of N.J.S.A. 9:3-50 severs the parental rights of any biological parent if they are not the "spouse" of a petitioner, the statute's plain language in no way threatens unmarried partners submitting petitions wherein neither party is a biological parent. This discrepancy cannot denote the "obvious purpose of the law." S.S., 367 N.J. Super. at 406 (quoting New Cap. Bar & Grill Corp., 25 N.J. at 160)). Such an inconsistency only serves to "frustrate the purposes behind the [statute's] enactment." H.N.R., 285 N.J. Super. at 10 (quoting B.L.V.B., 628 A.2d at 1275). To suggest that the Legislature intended to either sever the rights of a natural parent, or prevent the natural parent from forming a new family unit all while permitting

those without any biological connection to do exactly that, creates an illogical and incomprehensible result—luckily, the Supreme Court's sage words on statutory interpretation provide refuge. In order to "give effect to the obvious purpose of the Legislature," it is necessary to "expand" or "limit" the understanding of terms contained in the law. S.S., 367 N.J. Super. at 406 (quoting New Cap. Bar & Grill Corp., 25 N.J. at 160). Only by this exercise may the "spirit of the legislative direction prevail[] over the literal sense of the terms." Ibid.

In light of N.J.S.A. 9:3-37's clear instruction as an attendant statute within the legislative scheme, "[w]hen the statute is read as a whole, we see that its general purpose is to clarify and protect the legal rights of the adopted person at the time the adoption is complete, not to proscribe adoptions by certain combinations of individuals." H.N.R., 285 N.J. Super. at 9 (quoting B.L.V.B., 628 A.2d at 1274). Just as in 1995, "we cannot conclude that the Legislature ever meant to terminate the parental rights of a biological parent who intended to continue raising a child with the help of a partner." Ibid. (quoting B.L.V.B., 628 A.2d at 1274).

In Garden State Equality v. Dow, "six same-sex couples and their children," along with the LGBT rights organization Garden State Equality, petitioned the Mercer County Superior Court "to enter summary judgment . . .

holding that the guarantees of equal protection contained in both the New Jersey and United States Constitutions require that civil marriage be extended to same-sex couples." Dow, 434 N.J. Super. at 169-70. Lewis had prescribed that "every statutory right and benefit conferred to heterosexual couples through civil marriage must be available to same-sex couples," and deferred to the New Jersey Legislature on whether to amend the marriage statute to include same-sex couples or to create a separate statutory structure. Lewis, 188 N.J. at 462 (citing N.J.S.A. 37:1-33). New Jersey's Legislature passed the Civil Union Act in response, which stated that "in any law, rule, regulation, judicial or administrative proceeding or otherwise, [where] reference is made to" a "word which in a specific context denotes a marital or spousal relationship, the same shall include a civil union." N.J.S.A. 37:1-33.

Dow's "plaintiffs claim[ed] that their status as civil union couples . . . deprive[d] them of all the rights and benefits of marriage guaranteed to them under the New Jersey Constitution as interpreted by the New Jersey Supreme Court in Lewis." Dow, 434 N.J. Super. at 170. They sought a determination that the Civil Union Act did not create equality of relationships for same-sex couples compared to opposite sex marriages. Judge Jacobson was tasked with deciding "whether the label of marriage" could still be "withheld from same-sex couples—a label that has taken on new significance in light of the Windsor

decision." Id. at 171. United States v. Windsor had invalidated Section 3 of the Federal Defense of Marriage Act ("DOMA"), which "limited the definition of . . . 'spouse' in federal statutes to mean 'a person of the opposite sex who is a husband or wife.'" Dow, 434 N.J. Super. at 177 (citing U.S. v. Windsor, 570 U.S. 744, 752 (2013); 1 U.S.C. § 7). The Dow plaintiffs' "complaint specifically allege[d] that, 'relegating same-sex couples to civil unions hinders their ability to seek marriage-based benefits when Section 3 of [DOMA] . . . is no longer operative.'" Dow, 434 N.J. Super. at 176. Therefore, they sought a summary judgment ruling "as a matter of constitutional law." Id. at 170.

Following Windsor, many federal agencies issued directives, such as the Office of Government Ethics (OGE), which "specifically noted that, '[t]he terms 'marriage,' 'spouse,' and 'relative' as used in the federal ethics provisions will continue to be interpreted not to include a federal employee in a civil union, domestic partnership, or other legally recognized relationship other than marriage." Id. at 183. The trial court characterized its core inquiry as "whether a state statutory scheme [wa]s unconstitutional because of the manner in which it [wa]s applied and incorporated by the federal government." Id. at 202. It found that the plaintiffs had standing, their summary judgment claim was justiciable and ripe, and the parties had alleged sufficient state action to challenge the Act's constitutionality. Id. at 194-95, 197-98, 204-06.

Judge Jacobson recounted how Lewis "examined the evolving expansion of rights for LGBT individuals in New Jersey," as well as the State's record of "prohibit[ing] discrimination on the basis of sexual orientation, and . . . recognizing parental rights of same-sex parents." Id. at 210 (citing Lewis, 188 N.J. at 444). The Dow plaintiffs feared "that because federal statutes and regulations use the terms 'marriage' and 'spouse,' the federal benefits that would be available to them if they were lawfully married are not available to them as partners in a civil union." Id. at 211-12. No such recognition was afforded to same-sex couples. Yet, "in order for same-sex couples to access all of the rights and benefits of marriage," the court found, "New Jersey must allow them to legally define their relationships as marriage." Id. at 212.

The State argued that the Legislature could still remedy the issue by way of "proposed legislation that would extend federal marital benefits to civil union couples," and thus asked that the summary judgment motion "be denied . . . because that proposed legislation is proof that the law is 'in flux.'" Id. at 194. Judge Jacobson found "the State's argument would render every constitutional challenge to any law untenable; the defendants would simply deflect any challenges by asserting that the challenged law may be remedied through legislation at some point in the future." Ibid. Due to the plaintiff's allegation of the Act's unconstitutionality, the statute posed "an 'immediate

and significant' hardship affecting their constitutional rights," which required judicial action. Ibid. The court sympathized that "every day the plaintiffs' claims evade judicial review, continuing harm is caused to them" as they "will remain uncertain as to whether their status renders them ineligible for certain federal benefits." Id. at 195.

Judge Jacobson reiterated the "Lewis Court['s] . . . mandate that 'our State Constitution guarantee . . . every statutory right and benefit conferred to heterosexual couples through civil marriage must be made available to committed same-sex couples.'" Id. at 196 (quoting Lewis, 188 N.J. at 462). She surmised that "Windsor['s] decision to extend federal benefits to same-sex married couples transformed what was, legally, a legitimate legislative choice under Lewis into impermissible state action under the Lewis mandate." Id. at 201-02. Judge Jacobson highlighted that, rather, "it is that state structure that plaintiffs challenge in this motion. That structure may not have been illegal at the time it was created—indeed, the parallel marriage/civil union statutory scheme was specifically sanctioned in advance by Lewis—but it was certainly an 'action' of the state." Id. at 203.

This observation carries an understated impact. While the Legislature endeavored to repair the statutory scheme with the Civil Union Act, its initial measure, though perceived viable at the time, inevitably violated the New

Jersey Constitution due to subsequent state and federal court rulings. Though the dictates of the case that catalyzed legislative action explicitly allowed for the action taken, the passage of time and subsequent opinions laid bare the unconstitutional faults of those actions. The court recalled how Lewis "[a]ddress[ed] a similar circumstance under the Domestic Partnership Act," as the Supreme Court highlighted, among other burdens placed upon domestic partnerships, "the 'costly and time consuming' processes for adoption required of same-sex partners that was not required of opposite-sex married couples." Id. at 215.

Here, Judge Jacobson ruled that "the current inequality visited upon same-sex civil union couples offends the New Jersey Constitution, creates an incomplete set of rights that Lewis sought to prevent, and is not compatible with 'a reasonable conception of basic human dignity.'" Id. at 217 (quoting Lewis, 188 N.J. at 452). Same-sex couples still could not "access many federal marital benefits as partners in civil unions," and so the court "h[e]ld[] that New Jersey's denial of marriage to same-sex couples . . . violate[d] Article 1, Paragraph 1 of the New Jersey Constitution as interpreted by the New Jersey Supreme Court in Lewis." Ibid. As the court summarized, "these couples are now denied benefits solely as a result of the label placed upon them by the State," which she ordered to "extend civil marriage to same-sex couples to

satisfy the equal protection guarantees of the New Jersey Constitution." Id. at 219.

Afterwards, the Supreme Court of New Jersey denied the State's motion for a stay to appeal the grant of summary judgment. Thus, Judge Jacobson's decision became the law of the land. In its denial, the Supreme Court noted that "if a civil union partner passes away while a stay is in place, his or her surviving partner and any children will forever be denied federal marital protections." Dow, 216 N.J. at 329. The Supreme Court also recognized that, "Judge Jacobson did not strike down a statute. The Civil Union Act, while it may not see much use in the coming months, remains available for people who choose to use it." Id. at 326. Though the Civil Union Act alone was insufficient to protect the constitutional rights of same-sex couples, Dow sought to widen—not narrow—the array of options available to same-sex couples to access rights and define their relationships. Rather than use a limiting principle, Dow was careful to leave in place pre-existing statutes and structures, such that related rules and interpretations persisted. The Supreme Court summarized its decision to deny the State's motion thus:

> When courts face questions that have far reaching social implications, there is a benefit to letting the political process and public discussion proceed first. . . . But when a party presents a clear case of ongoing unequal treatment, and asks the court to vindicate constitutionally protected rights, a court may not

> sidestep its obligation to rule for an indefinite amount of time. Under those circumstances, courts do not have the option to defer.
>
> [Id. at 330 (citation omitted).]

Following the New Jersey Supreme Court's denial of the stay request, the State withdrew its opposition and the trial court decision became the controlling law of the land.

Then, in 2015, the United States Supreme Court put forth the final word on same-sex marriage throughout the country; in Obergefell v. Hodges, Justice Kennedy wrote: "[t]he right to personal choice regarding marriage is inherent in the concept of individual autonomy." Obergefell, 576 U.S. at 665. Further, marriage "is a fundamental right inherent in the liberty of the person, and under the Due Process and Equal Protection Clauses of the Fourteenth Amendment couples of the same-sex may not be deprived of that right and liberty. Id. at 675. As such, "[s]ame-sex couples may exercise the fundamental right to marry. No longer may this liberty be denied to them." Ibid. In so doing, the United States Supreme Court affirmed for the nation what New Jersey had established for two years; same-sex couples must be permitted the right to marry to ensure that fundamental rights are equally protected.

Much as Judge Jacobson "f[ou]nd no public interest in depriving a group

of New Jersey residents of their constitutional right to equal protection," neither does this court interpret either her decision or the Supreme Court's denial in Dow to overwrite decades of jurisprudence plainly interpreting the stepparent exception to apply to unmarried adoption petitioners. Dow, 216 N.J. at 329. The question now before the court is whether, in the wake of Dow, the court must construe N.J.S.A. 9:3-50 strictly such that the second-parent exception to the "spouse" requirement no longer applies to unmarried adopting couples. Though Dow altered much of the marital law landscape in New Jersey, it did not narrow the second-parent exception's scope under N.J.S.A. 9:3-50. If courts were suddenly deprived of the natural outcomes of the best interests test and liberal construction mandate, it would reverse consistent interpretation and application spanning nearly three decades. Nothing in the ruling ever suggested this outcome was intended or even possible.

Further, Lewis had identified the hardships endured by couples who had to invest time and resources to pursue second-parent adoptions. Until 2013, marriage was a right and recognition for which same-sex couples were repeatedly told they were not eligible. In light of this discriminatory barrier, some couples chose to define their relationships in other ways—as life partners, domestic partners, or civil union partners. Lewis stated, and Dow

reiterated, that "every statutory right and benefit… must be made available to committed same sex couples." Lewis, 188 N.J. at 462. In neither case did the Court or Judge Jacobson intimate that rights previously interpreted or granted amidst the inability to marry would dissipate. These decisions never claimed that only domestic partners or civil union partners could utilize second parent adoptions. Civil unions were not available to same-sex couples until February 2007, and some couples chose not to immediately ascribe to a status that the State had begrudgingly granted them as a concession. After Dow, some same-sex couples debated whether to access the right to marriage after the State had deprived them of it for so long, and after the State had to be compelled to convey it to them. The decision to forgo such labels was not one to be deprived of other rights.

While the Civil Union Act in no way reserved second parent adoptions solely for civil union partners, at no point during this era of legal progress were adoptive parental rights in jeopardy for unmarried couples with no biological parent. To now narrow the scope of second parent adoptions after decades when the cause of action provided refuge to unmarried couples as they weathered the headwinds of tumultuous statutory ambiguity would arbitrarily and unfairly prejudice those whom previously could not marry. The courts have routinely employed this exception to appropriate circumstances, and even

codified the process via court rule in the absence of intervening legislative action or discouragement. To further suggest that this paradigm shift was suddenly catalyzed by a judicial decision that sought to preserve "the same statutory right[s] and benefit[s] conferred to heterosexual couples through civil marriage" as "committed same-sex couples" would further undermine the very principles it sought to protect.

Nevertheless, such clarification is required in light of the statute's plain, unamended language and the expanded statutory and constitutional landscape that now extends to same-sex couples the right to marry. Dow and Lewis had acknowledged that the route of second parent adoption can constitute a burdensome process due to its expense and intense scrutiny. Dow, 434 N.J. Super. at 215. Yet, the court's mere recognition of these daunting hurdles was never meant to inspire the pathway's demise. Neither Lewis nor Dow portended that access to second parent adoptions—if couples chose that path—was in danger by their rulings. In fact, such a finding would be wholly inconsistent with Lewis and Dow's guarantee to provide "every statutory right and benefit" to same-sex couples that is extended to couples whom could always marry. Such an antithetical interpretation would foreclose a right previously extended liberally, and deprive committed couples of a longstanding pathway to start a family in the face of legislative inaction.

The very core of Lewis and Dow is an essence of choice, whereby the government must ensure that all people, regardless of with whom they choose to partner, have available to them the full breadth of rights and options to define their relationship. The intended legacies of A.R., J.M.G., H.N.R., V.C., and Robinson add that the best interests of children will not be cast aside either due to the state's limitations on marital status or its related statutory regime. Committed couples must be free to define their relationships and seek corresponding benefits, legal recognition, and equality in the eyes of the law—these rights should never be abruptly ripped away, especially inadvertently. Dow carefully articulated that couples had the right to seek legal recognition via the statutes already available. It did not overwrite the defined scope of the "second-parent exception" and "best interests of the children" test. The New Jersey Legislature created these principles, and the courts have implemented them in instances when "the adoption statute has not specifically addressed the family structure the prospective adoptive parent proposes." Nathan S., 396 N.J. Super. at 386 (citing H.N.R., 285 N.J. Super. at 6-7).

Instead, the priority of the courts, plainly stated, is "to protect the security of family units by defining the legal rights and responsibilities of children who find themselves in circumstances that do not include two biological parents." H.N.R., 285 N.J. Super. at 9. The intent of New Jersey's

Judgment of Adoption statute, unamended since 1994, was never to "terminate the parental rights of a biological parent who intended to continue raising a child with the help of a partner." Ibid. Two additional New Jersey cases recently helped to illustrate this point.

First, the trial court reviewed an innovative petition for joint custody in D.G. v. K.S., wherein two petitioners sought to enforce a "tri-parenting agreement." D.G., 444 N.J. Super. at 429. Two of the petitioners were in a same-sex marriage, one being the biological father, while the third party was the biological mother of the child. Ibid. The petition sought to recognize the biological father's husband as a psychological parent without impacting the mother's rights. Id. at 429-30. The trial court ultimately looked to V.C. for guidance and persuasive authority regarding the establishment, recognition, and enforcement of the rights of a psychological parent.

Issues first arose when the mother sought to relocate to California; yet, by the time of trial, the petitioner's claim of being a psychological parent was supported and stipulated to by the biological father and the biological mother. Id. at 434. The court analyzed and confirmed the petitioner as a psychological parent and reminded that, "[c]ustody and parenting-time issues between a parent and the psychological parent are to be determined on a best-interests-of-the-child standard." Id. at 435. The trial court focused on the child's best

interests, the intention of the parties prior to the child's conception, and the bonded, psychological parental relationship between the child and the non-biological party. Accordingly, the court found that via a liberal statutory construction of custodial rights, the best interests of the child would be most protected by remaining with all of those that had provided extensive support and care to it, regardless of the unorthodox composition of the resulting family unit. The tri-parenting unit was approved.

In Moreland v. Parks, the Appellate Division reviewed a tragic case wherein a "same-sex couple residing together" had "lost their daughter when a pickup truck collided with her." Moreland v. Parks, 456 N.J. Super. 71, 75 (App. Div. 2018). The petitioners' underlying claim was negligent infliction of emotional distress ("NIED"), one count of which had been filed by each of the biological mother and her partner who resided with her. Ibid. The trial court had ruled that the mother's partner "did not present sufficient evidence" of "an 'intimate, familial relationship' with [the] two-year-old [daughter] to satisfy the requirements" of a NIED claim. Ibid. After the appeals court denied a motion for leave to appeal, the New Jersey Supreme Court "remanded th[e] matter" to the Appellate Division "to determine 'whether [the mother's partner] may pursue her claims" for NIED. Id. at 76. At the time of the accident, the petitioner had only been living with the biological mother for a

year or less. Id. at 75-76.

Interpreting standards established in Portee v. Jaffee, 84 N.J. 88 (1980), the trial court referred to the parties as "lovers" and declared NIED claims were "reserved [for] those who are actually closer related . . . in an intimate family relationship," as "an intimate relationship alone would not suffice. There is a requirement that they have to be family." Moreland, 456 N.J. Super. at 79. The petitioner appealed, asserting the judge had "erroneously focused his analysis on the relationship between [the two partners] and the absence of evidence showing their relationship was formally sanctioned by the legal avenues available to them at the time, such as a civil union or domestic partnership." Id. at 80. The Appellate Division found "sufficient evidence that an 'intimate, familial relationship' existed between her and [the] two-year-old [child] at the time" of the child's passing. Id. at 83 (citing Portee, 84 N.J. at 101). Echoing H.N.R., the Appellate Division affirmed: "[w]hat constitutes a 'familial relationship' is perforce a fact-sensitive analysis, driven by evolving social and moral forces." Ibid.

Additionally, the Appellate Division acknowledged that "[n]o one can reasonably question that the social and legal concept of 'family' has significantly evolved since . . . 1980." Ibid. After appeal of the summary judgment granted to the defendants, the petitioners "presented sufficient

evidence from which a jury could find that she and two-year-old [child] had an intimate familial relationship at the time of the child's tragic death." Ibid. Whereas Robinson defined "the heart of [a] statute [a]s parentage [as] apply[ing] to [the partner]" under New Jersey's Artificial Insemination statute, N.J.S.A. 9:17-44, the Appellate Division found that an NIED claim's requirement to establish an "intimate, family relationship" applied to the natural mother's partner, despite the brief period of romantic involvement and lack of legal recognition. Robinson, 383 N.J. Super. at 167-68; Moreland, 456 N.J. Super. at 75-76. Ultimately, it was the familial relationship between adult and child that served as the Appellate Division's focal point—the martial status or relationship dynamic of the adults would not come between them.

At the conclusion of the preliminary hearing in the matter presently before the court, petitioner and her partner asked the court to enter an interim order granting joint legal and physical custody of their newborn baby, B.K.B. Their reasoning, aptly mirroring Moreland, articulated a worst-case fear shared by every parenting couple: that a tragic circumstance, medical emergency, or unexpected accident could rob the natural mother from her partner and child. Without legal protection, a non-biological and legally unrecognized parent would face many hurdles to care for, support, and protect that child all while the grief of their partner's loss lingered. It is a position that no spouse or

significant other could ever anticipate, envision, or prepare for—even a parent who "mutually agreed to embark on the journey of conceiving and raising a child together" with the biological parent. D.G., 444 N.J. Super. at 435. This gap in protection, in the event that chaos struck before legal recognition of parenthood occurred, reveals the very burden the second parent exception seeks to ease. The court must not abandon its protection of the "legal rights of families in circumstances outside the traditional mode of a heterosexual, married union and biological parenthood." Robinson, 383 N.J. Super. at 168-69.

Conclusion

J.B. has demonstrated—through her testimony, the testimony of R.L., through the GAL Report, and through the Better Living Services Report and Background Check—that not only is she is fit to be formally and legally recognized as a parent to B.K.B., but that she has already been ably performing these very functions. All that stands in the way of legally uniting the family unit of J.B., R.L., and B.K.B. is a determination of whether the statutory language of N.J.S.A. 9:3-50 would unintentionally sever R.L.'s parental rights as the biological mother upon the entry of a Judgment of Adoption declaring and establishing such rights for J.B. The very first published case interpreting N.J.S.A. 9:3-50 in the context of an unmarried,

same-sex couple prophetically stated that, "while the families of the past may have seemed simple formations repeated with uniformity (the so called 'traditional family') families have always been complex, multifaceted, and often idealized." J.M.G., 267 N.J. Super. at 631.

Since J.M.G. was decided in 1993, much has changed. The world has grown, a new millennium has dawned, and many New Jersey statutes, court rules, and opinions have issued. Yet, there is something timeless about the petitioners before the court in this matter: before us is a couple who made a decision to have a child and held themselves before the world as life partners—a family. "As with any life partners, they celebrated their union with family and friends, purchased a home jointly, carefully planned to have a child." Robinson, 383 N.J. Super. at 167. In this context, the responsibility of this court, as also rests with the Legislature, is "to protect the security of family units by defining the legal rights and responsibilities of children who find themselves in circumstances that do not include two biological parents." H.N.R., 285 N.J. Super. at 9. Put simply, J.B., R.L., and B.K.B. are a family, with J.B. "assum[ing] a full parental role in the life of" B.K.B. with R.L.'s "consent, participation and cooperation." Id. at 8.

Just as in H.N.R., "[w]hether the adoption is granted or not, the day-to-day lives of these two adults and the[ir]" son "will not be materially different."

Id. at 12. B.K.B. is already the "child[] of both [parents], and no court order granting or denying the adoption will change that." Ibid. With a mind towards the relevant precedent outlined herein, the legislative history of applicable statutes and court rules, and the modern social mores recognized and acknowledged under the law, this court confidently concludes that N.J.S.A. 9:3-50 should continue to be "liberally construed to the end that the best interests of children be promoted." H.N.R., 285 N.J. Super. at 13 (quoting N.J.S.A. 9:3-37). For the reasons discussed, this Judgment of Adoption is necessary to promote and preserve B.K.B.'s best interests, and the court shall hereby "establish the same relationships, rights, duties and obligations between the child and the adopting parent as if such child were born to such adopting parent in wedlock." A.R., 152 N.J. Super. at 544.

Following N.J.S.A. 9:3-50's last amendment, the courts found that "families have always been complex, multifaceted, and often idealized." J.M.G., 267 N.J. Super. at 631. There is no "one formula, one correct pattern that should constitute a family in order to achieve the supportive, loving environment we believe children should inhabit." Ibid. Based upon the testimony and evidence, J.B. is "both physically and financially capable of supporting and nurturing the child," and the "adoption will . . . provide critical legal rights and protections for [the child's] safety as well as [its] physical and

emotional well-being." Id. at 625. The GAL, petitioner's counsel, and Better Living Services, Inc. all wholeheartedly support this adoption, and so too does this court.

Therefore, it is hereby **ORDERED** that J.B.'s petition for a Judgment of Adoption be **GRANTED**, establishing parental rights between J.B. and B.K.B. under the law. Pursuant to the best interests of the child, N.J.S.A. 9:3-50 shall be construed liberally to preserve R.L.'s parental rights, so that they may set forth and continue their collective life as a family together.