

THE PATHS TO LEGAL PARENTAGE, OLD AND NEW

Who does the law consider to be a parent? Clearly a person with biological children, right? The answer may surprise you. Last year, in *B.C. v. C.P.*, 310 A.3d 721 (Pa. 2024) the Pennsylvania Supreme Court ruled that when the husband and wife are still married, the law presumes the husband is the father, and the married couple can assert that presumption to prevent outsiders from seeking a paternity test. Even if the husband is not the biological parent, the law still recognizes him as such. The Supreme Court's decision reaffirmed a centuries' old legal doctrine.

This doctrine used to be called the "presumption of legitimacy" because it was intended to shield children from the stigma of "illegitimacy," which subjected them to significant legal and social discrimination. When the legal distinction between "legitimate" and "illegitimate" children was abolished in 1971, the doctrine became known as the "presumption of paternity." More recently, the doctrine has been called the "marital presumption," as it applies equally to both same-sex and opposite-sex marriages.

Before *B.C.*, the Court had not ruled on the issue for a quarter century. One could be forgiven for thinking the presumption was an outdated concept. After all, paternity tests are sold in pharmacies, and trading family ancestry is a common hobby. Yet the Court ruled the doctrine still had a place in family law, even as society's definition of "family" changes.

In March, the Supreme Court waded into these waters once again in *Glover v. Junior*, 2025 WL 864451 (Pa. 2025).

Glover involved a same-sex married couple who conceived via Assistive Reproductive Technology (or "ART"), which included in vitro fertilization and sperm/egg donation. One spouse was the biological parent — she used her egg and carried the child to term. But during the pregnancy, the couple broke up and eventually divorced. The question pending before the Court is whether the other, former spouse is a legal parent, despite having no biological connection to the child.

In addition to "marital presumption," Pennsylvania recognizes other avenues to legal patronage. Biology and adoption, of course. But then there is patronage by estoppel, which is when a person, who has assumed the duty of parentage, is treated as a legal parent despite having no biological connection. The is also parentage-by-contract - i.e., when a child is born with assistance from a sperm donor or surrogate, who agrees to relinquish any parental claim such that a non-biologically related person can assume legal parentage.

In *Glover*, the Pennsylvania Supreme Court declared there is a new path: Intent-based parentage.

The Court held that parentage may be established by "proof of intent shared by two parties to use ART to conceive and co-parent a child together, even without meeting all the formalities of contract law."

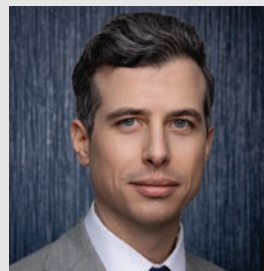
In *Glover*, overwhelming evidence demonstrated the couple intended for the non-biological spouse to be the child's other parent. Both signed an agreement with the sperm

bank, which listed the non-biological spouse as the “Co-Intended Parent.” Both retained legal representation to “confirm adoption” after the birth, and both hired a doula. Both signed affidavits, declaring their intent to have equal parental rights. They planned a baby shower together. They picked out a name for the baby, Both, the Court declared, are legal parents.

Family law is ancient — a stone tablet containing Babylonian divorce law dates back to 1755 B.C.E. Like all law, it is routinely outpaced by changes in both society and technology. Same-sex marriage has been legal nationwide for nearly a decade; the first child born after IVF treatment was in 1978. Left in the dark, families and family law practitioners have long searched for guidance. We received *Glover v. Junior*. “Intent,” the Supreme Court said, “serves as a beacon.”

About the Author:

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Joining the firm’s Family & Collaborative Law Group in November 2024, Tony brings a unique perspective of family law to his role.

Prior to joining GRB Law, he spent over 10 years clerking for judges at both the Allegheny County Court of Common Pleas Family Division and at the Superior Court of Pennsylvania. During his tenure at the judiciary, he assisted in hundreds of family law appeals, including precedent-setting decisions affecting millions of Pennsylvanians. His deep understanding of the judicial decision-making process enables him to provide invaluable guidance as he establishes his practice at GRB.

Tony will be counseling clients with matters such as alimony, child support and custody, divorce, equitable distribution, adoptions, protections from abuse and beyond.