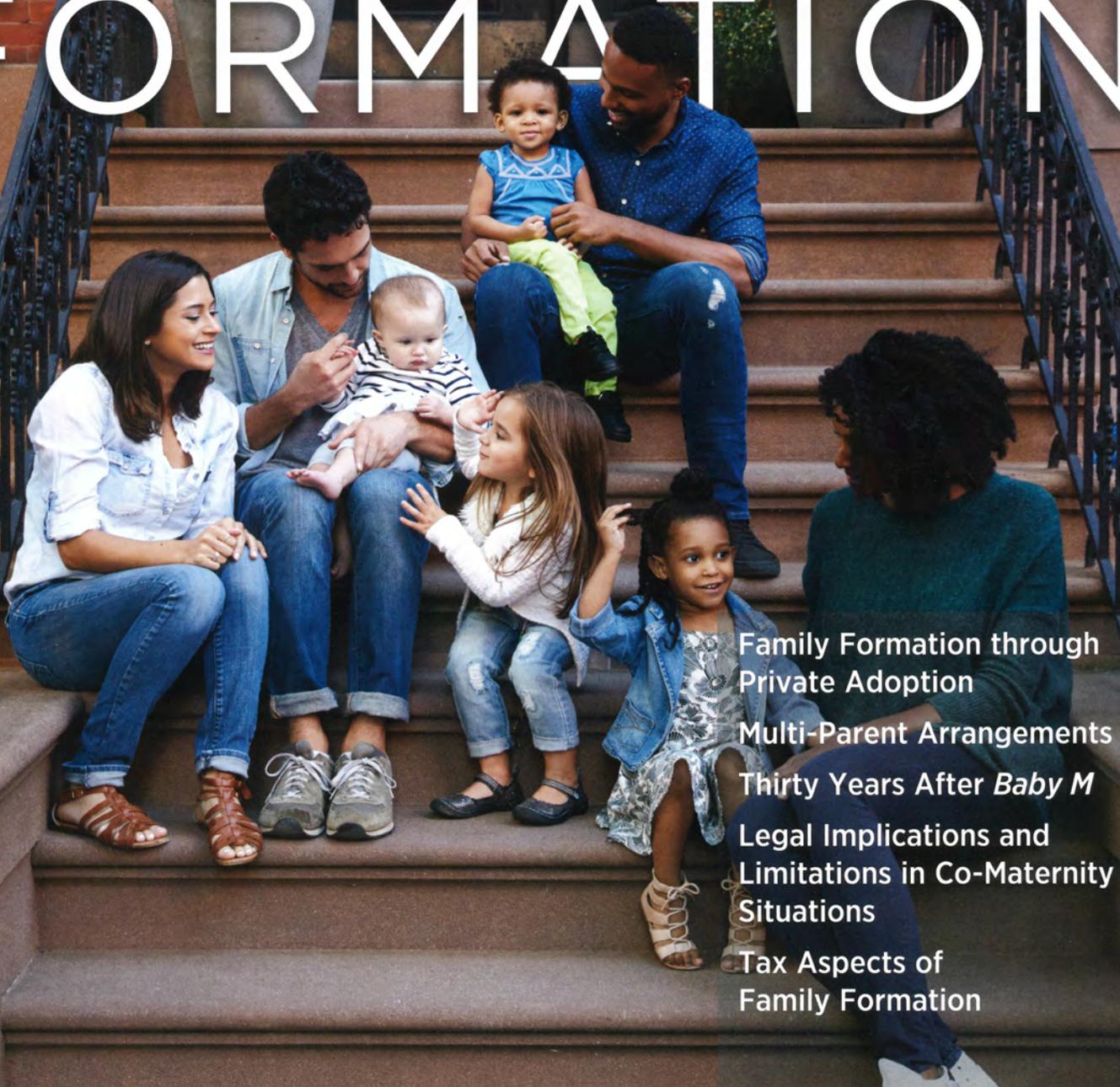


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FAMILY FORMATION



Family Formation through
Private Adoption
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THE EVER-CHANGING CONSTRUCT

by Eric B. Hannum

If one were to look the word ‘family’ up in the dictionary or on the internet, there exists no one definition. With single-parent households on the rise, fewer children being born, and a return to multiple generations residing in one residence, the ever-changing family makeup has led to a modern family that defies classification. Flux, adaptation and reconstruction are some of the only words that are truly consistent when one tries to define families throughout America’s history, and this article will explore three of these familial constructs, along with some of the complications and benefits associated with them.



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One of the more contemporary familial constructs today is created when an individual, who is not necessarily a blood relative, forms an extremely close relationship with a child and essentially assumes the role of parent. This type of family formation, otherwise known as a psychological parent relationship, occurs when an individual provides necessary support to a child while ensuring that their best interests are met. While the New Jersey Supreme Court has long held that there exists a presumption in favor of a “natural parent over a third party seeking custody of a child,”¹ the courts have also recognized that a parent’s rights to his or her child are not absolute rights; there exists the right of the state, under its *parens patriae* authority, to protect a child’s wellbeing.²

Thus, while a parent is presumed to come before all others when exploring issues concerning the care and custody of a child, there are certain circumstances where a

parent's rights can be limited and/or nullified and a family court can be called upon to "decide issues of custody, visitation, child support and myriad other aspects of domestic relations."³

While a parent's showing of unfitness, abandonment, or gross misconduct would obviously meet the criteria for the state to employ its *parens patriae* authority, a fourth basis, 'exceptional circumstances,' does not even require a showing that a legal parent is unfit. The exceptional circumstances standard is established on the possibility of harm to the child. Even if a legal parent is deemed by a court to be a 'fit parent,' a showing of exceptional circumstances can rebut the above-noted presumption in a custody dispute with a third party, and the potential for serious psychological harm to the child, not the parent's unfitness, could deprive a legal parent of custody.

Within the category of exceptional circumstance is the legal construct known as psychological parent. When there exists a "custody dispute between two fit parents, the best interest of the child standard controls because both parents are presumed to be equally entitled to custody. The child's best interest rebuts the presumption in favor of one of the fit parents."⁴ Conversely, if a third party is seeking custody of a minor child, as is the case in a psychological parent dispute, the same legal standards do not apply.

In a custody dispute between a fit parent and a third party, a two-step analysis is the controlling legal standard. "The first step requires application of the parental termination standard or a finding of 'exceptional circumstances.'"⁵ The parental termination standard mandates a showing, by clear and convincing evidence, of "gross misconduct, abandonment, unfitness, or the existence of 'exceptional circumstances,' but never by a simple application of the best interests test."⁶ The

courts have also explicitly acknowledged "that even if parental rights cannot be terminated on statutory grounds, 'exceptional circumstances' based on the probability of serious psychological harm to the child may deprive a parent of custody."⁷

The courts have held that the following four prongs must be fulfilled to determine if there exists a psychological parent relationship between a third party and a child:

1. The biological or adoptive parent consented to, and fostered, the petitioner's formation and establishment of a parent-like relationship with the child; and
2. The petitioner and the child lived together in the same household; and
3. The petitioner assumed obligations of parenthood by taking significant responsibility for the child's care, education and development, including contributing towards the child's support, without expectation of financial compensation (a petitioner's contribution to a child's support need not be monetary); and
4. The petitioner has been in a parental role for a length of time sufficient to have established with the child a bonded, dependent relationship parental in nature.

Only after all of the four prongs have been satisfied under the exceptional circumstances test can/will the best interests standard be applied as step two, in an effort to determine what is in the best interests of the child and what role the psychological parent will play in the child's life.

According to the 2010 U.S. Census, New Jersey had approximately 160,000 multigenerational households, in which three or more generations of a family share a home. That number, which accounts for five percent of all households in New Jersey, rose about 10.5 per-

cent from the 2000 U.S. Census.⁸ Given this statistic, possible psychological parent relationships are becoming easier to create when compared with prior generations.

While at first blush the idea of sharing custody with a third party may seem like a 'fit' parent's worst nightmare, as this could possibly create severe infighting between two fit legal custodial parents while also creating confusion for the child as to who is in the primary parental role and how to establish boundaries, in certain situations the presence of a third-party psychological parent can be a favorable arrangement for both the biological parent and the children.

For example, many psychological parent cases stem from the loss of one of the child's biological parents (natural death, overdose, abandonment, etc.). While the initial shock of the loss of a biological parent could be problematic for the child, the presence of a third party and the bond they have with the child could mean the difference between recovery from the loss of the biological parent and the complete breakdown of the family. It is during these times that third parties can offer their financial support (*i.e.*, moving the impacted family in with them or moving in with the impacted family, providing daycare for the children to help defray the exorbitant cost borne by the biological parent, etc.). Moreover, not only can these third parties provide financial support, they can also furnish a level of emotional support through the grieving process and in connection with unforeseen family complications that may arise as a result of the modification of the familial relationship.

While the 'traditional' family model may be one of the easiest to recall for some, studies show that "only 22 percent of households in the Garden State are married couples with children under 18 years of age."⁹ Statistics also show

that many of the nation's families have shifted away from the biologically bonded family, and it may be surprising to some to learn that approximately 1,300 new step families are forming every day.¹⁰ While this form of blended family includes children of a previous marriage, it is interesting to note that Americans get married, get divorced, and choose to cohabit more than any other Western society, which accounts for the above staggering numbers.¹¹

The most recognizable benefit when comparing the 'traditional family' to a blended one via a stepparent formation would be a possible superior financial stability in both the custodial parent and non-custodial parent's households. As many family law practitioners know, after a divorce and/or separation, the initial financial burden of trying to maintain the *status quo* of one household, while trying to support a second household on the same income is next to impossible. However, once a stepparent is added into the equation, the income of the new third party can transform a struggling custodial parent, who is finding it difficult to keep the roof over their child's head, into an individual who now has the means to meet their child's needs.

Moreover, once a stepparent has been added into the equation, the non-custodial parent who is struggling to keep up with support payments, while also trying to support themselves, could experience a significant reduction in stress (financial and/or emotional) when the new spouse's income is being utilized to cover household expenses. While the above benefits may not apply to all families developed through stepparent formation, the idea of the supplemental income of a stepparent greatly increasing the quality of life for all involved can be transformative.

Although the idea of a blended family may sound like a dream come true for some single-family households, a new

stepparent, especially one with no biological ties to the children, could possibly create a multitude of expected and/or unanticipated problems within the original family unit. One of the most common, both before and after the formation of the new stepparent family, could be the sense of animosity towards the stepparent from the child's biological non-custodial parent.

Although the animosity of a non-custodial parent towards a stepparent can be a considerable barrier to a healthy familial relationship, animosity is not always unwarranted. For example, many times the negative feelings one parent has towards a stepparent is not out of jealousy stemming from the new and prospering stepparent child relationship, but from the child's stepparent overstepping their particular family role.

Often, a family law practitioner will hear a client say: "He/She is not their parent...I AM THEIR PARENT!" while dealing with a contested custody or parenting time matter. These statements are further amplified by the non-custodial parent when they start to see the stepparent, whom they vehemently loath, begin to take on the responsibilities they think they should be handling (*i.e.*, taking the child for a sick visit when the primary parent is at work, attending parent/teacher conferences, or assisting in recreational sports the child may be involved in). When situations like these arise, it may be wise to tell clients that their child could benefit from having another parental figure in their lives, especially one who wishes to take part in his or her daily activities.

Often, however, when situations like these arise, the issues are much less tangential than the typical claim that "it's my responsibility to go to the parent teacher conferences," and begin to morph into "my child was suspended from school and only my ex and their spouse knew" or "my child misbehaved and their stepparent spanked them

without my consent." When issues such as these arise, it can often be difficult to redraw the boundaries of the blended family. When confronted with issues such as these it may be wise to initially exclude any third parties from the negotiation and begin with only the two parents, so the biological caregivers can independently re-structure the boundaries needed for their significant others. Once this step has been completed, both parties can inform their spouse/spouses of what they have decided as far as boundaries are concerned, and usually include some form of consequential language (typically under Rule 5:3-7), which would hinder such actions from occurring again. While this particular solution is not always successful, it is one of many that practitioners have needed to contrive in order to help mend the fractured relationships sometimes caused by the overstepping of a non-biological parent.

Despite the potential for pitfalls, overall the stepparent blended family structure seems to do a lot more good than harm for both a child and their biological parents. While there may be some animosity towards the stepparent as a result of a positive role they may play in their stepchild's life, more often than not this animosity fades over time, as the parent who feels neglected eventually develops a deeper relationship through parenting time and discussions with their child(ren). In addition, a stepparent who has overstepped his or her bounds will eventually begin to conform to the biological parent's wishes and begin to operate as part of a more cohesive family. In the event that this conformity does not happen, in this author's experience, the blended step family will more likely than not fail.

While the first two family structures seem appealing to many due to the supplemental support given to the biological parents, there is one type of family that many people generally dismiss/

overlook when they think of ways in which a family can be constructed. The single-parent household, one which is created subsequent to a divorce or death of a biological parent, while wrought with many potential complications and obvious disadvantages since “children living with two married adults (biological or adoptive parents) have, in general, better health, greater access to health care, and fewer emotional or behavioral problems than children living in other types of families,”¹² there are several positive aspects of this familial construct that could be of great benefit to the children and their primary parental unit.

For example, many people tend to overlook in their analysis of the single-parent family construct the close bond forged between the parent and child(ren), as well as the freedom of the single parent to raise their child(ren) in the manner that they see fit, without any other parental intrusions. More importantly, in single-family households where the other parent has minimal involvement or is deceased, since the primary parent is the singular role model for their child(ren), the manner in which the parent acts and conducts themselves on a daily basis is more likely than not going to influence how that child conducts themselves and whose behavior they emulate as they progress through life. For example, when a parent begins to inculcate their child with their beliefs, traditions and morals, and that child has no other adult counterpart to provide the converse perspective, the child will more than likely emulate the behavior their main role model is displaying.

For example, in many nuclear families one of the disputes that arise between two fit parents would be that of converse religious beliefs. This difference in theological views can undoubtedly cause confusion between the children, and in some cases dissuade children from truly practicing a religion

at all. However, in single-family households the individual caregiver is more often than not the one who would be dictating what religion will be practiced on a daily basis. Given this role, it can stand to reason that a parent who has the ability to independently inculcate their child(ren) with their theological views, would be in a much better position to convey their belief onto their children.

While the ability to immerse one’s child with their core parenting beliefs could be a benefit to the single-family construct, this construct could also have some obvious pitfalls. The first of these drawbacks would be the financial strain that a single-parent family household usually faces just to provide for the necessities for everyone living under that roof. Many times, on top of the stress of trying to cover a home’s carrying costs, a single parent can find him or herself consistently being slighted by the non-custodial parent regarding support payments. Moreover, without the assistance of either a stepparent/live-in partner or an extended family member such as the above-noted psychological parent to help lift the burden, many single parents constantly find themselves filing enforcement applications just to get the mandated support to meet their family’s needs. Furthermore, especially when there is a support issue in play, when a single parent finds him or herself stuck between going to work or watching their child, many parents find themselves in a quandary. While the above financial burdens may not be present in all single-parent households, the above-noted pitfalls are a major reason for individuals not being able to escape the economic constraints associated with this familial construct.

Future family formation boundaries and their yet-to-be-revealed composition is presently unknown and ever changing. The current innumerable modern family arrangements were never

imagined 50 years ago. With science progressing at breakneck speeds, and the rate of marriage and births on the decline, the possibilities for future family scenarios are limitless. ❧

Endnotes

1. *Watkins v. Nelson*, 748 A.2d 558, 559 (2000).
2. *Hand v. Hand*, 391 N.J. Super. 102, 104 (2007).
3. *In re Adoption of Child by W.P.*, 748 A.2d 515, 536 (2000)(citations omitted).
4. *Watkins v. Nelson*, 748 A.2d 558, 568 (2000).
5. *Id.*
6. *Id.* at 559.
7. *Watkins v. Nelson*, 748 A.2d 558, 564 (2000) (citations omitted).
8. Star-Ledger Staff, Multigenerational households are on rise in N.J. NJ.com (2011), https://www.nj.com/news/index.ssf/2011/08/multigenerational_family_house.html.
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11. *Id.*
12. Blackwell, D. L. (2010). Family structure and children’s health in the United States: Findings from the National Health Interview Survey, 2001–2007. National Center for Health Statistics. Vital Health Statistics, 10(246).