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# Commonwealth of Kentucky

# Court of Appeals

NO. 2014-CA-001240-ME

W.R.L. AND A.H.A. APPELLANTS

v.

APPEAL FROM KENTON FAMILY COURT
HONORABLE LISA O. BUSHELMAN, JUDGE
ACTION NO. 14-AD-00080

A.H., INTERVENING PARTY; M.L.;
L.M.H., A MINOR CHILD APPELLEES

OPINION
REVERSING AND REMANDING

** ** ** ** **

BEFORE: ACREE, CHIEF JUDGE; D. LAMBERT AND MAZE, JUDGES.

ACREE, CHIEF JUDGE: This is an appeal from an order of the Kenton Family Court granting the motion to intervene of A.H., a non-custodian, non-parent, in a step-parent adoption action initiated by W.R.L., and further dismissing W.R.L.'s adoption petition. For the following reasons, we reverse the family court's order

granting intervention and dismissing, and remand this matter with instructions to reinstate the adoption petition.

**Factual and Procedural Background**

Beginning in 2005, A.H. and M.L. were in a committed relationship with one another. Early on, they decided to have a child together. Because A.H. could not impregnate M.L., the couple resorted to artificial insemination. M.L. drafted a document which stated:

> I [sperm donor] Donated Sperm to [M.L.] and [A.H.] on January 1, 2006, with the intent for them to create a child and raise the child as their own. I will not try to interfere with the raising of the child. I would like to see the child and be a part of its life, but only as a family friend or an uncle or something in that nature, but not as a parent. [A.H.] is the other parent to the unborn baby and I will not contest that in court if in fact I ever find out that the child is mine. I understand that there is a chance that the baby could also not be mine. I sign this document of my own free will and I am of sound mind and body. By signing this document I understand that I will be relinquishing my right as the potential father to the unborn child.

A.H. and the sperm donor (a friend of M.L.'s sister) signed the document.[1]

M.L. became pregnant by artificial insemination. M.L. and A.H. were together during the pregnancy, and A.H. was present for the child's birth on

[1] A.H. contends this agreement is evidence of the parties' intent to raise the child together. This document has no legal relevance to and little bearing upon our analysis other than as descriptive of the facts of the case and, furthermore, it is unenforceable. It was prepared by M.L., a non-lawyer, presumptively intended to affect the rights of two other persons and, therefore, constitutes the unauthorized practice of law. "[P]racticing law . . . includes giving advice and preparing wills, contracts, deeds, mortgages, and other instruments of a legal nature." *Howton v. Morrow*, 269 Ky. 1, 106 S.W.2d 81, 82, (1937). Only licensed attorneys may practice law in Kentucky. Rule of the Supreme Court (SCR) 3.020.

September 29, 2006. The child was given A.H.'s maternal grandmother's maiden name and A.H.'s middle name and surname. A.H. took several weeks off work after the child was born. A.H. was involved in all aspects of the child's life, shared child-rearing responsibilities, and provided financial support. A.H. is listed as the second parent on medical, childcare, and school forms, and provides health insurance by identifying the child as a dependent. The child was a dependent on A.H.'s 2010 tax return. The child knows A.H. as a parent, and has familial bonds with A.H.'s extended family.

M.L., A.H., and the child lived together as a family unit in Cincinnati, Ohio, until A.H. and M.L. separated in February 2011, and M.L. and her child moved to Kentucky. Despite the separation, M.L. permitted A.H. to continue to spend time with the child. A.H. and M.L. contest the nature of the arrangement after their separation.

M.L. married appellant, W.R.L., in May 2012. M.L. allowed A.H. to see the child until she denied A.H. that privilege in February 2014 and thereafter. A.H. made repeated attempts to see the child until M.L. threatened to press criminal charges.

In March 2014, A.H. engaged legal counsel to pursue joint custody of the child. M.L. refused to respond to A.H. or to the inquiries of legal counsel. On April 15, 2014, W.R.L., as M.L.'s husband, filed a petition for step-parent adoption of the child in Kenton Family Court. A.H. was not named as a party but moved to intervene in the adoption action and to have the adoption petition dismissed.

Kenton Family Court heard oral arguments on A.H.'s motions and, relying on *Mullins v. Picklesimer*, 317 S.W.3d 569 (Ky. 2010), held that A.H. "presented a colorable claim to seek custodial rights to the child[.]" (Order, Kenton Family Court, dated July 2, 2014, Record (R.) 59). A.H.'s *Mullins* claim, said the family court, justified granting the motion to intervene because it represented a "present substantial interest in the subject matter of the [adoption] lawsuit rather than an expectancy or contingent interest." (*Id.* (citing *Baker v.* Webb, 127 S.W.3d 622, 624 (Ky. 2004) and *Gaynor v. Packaging Serv. Corp. of Ky.*, 636 S.W.2d 658, 659 (Ky. App. 1982)). Because A.H.'s "legal status to the child" remained unresolved, the family court entered the order dismissing the adoption petition. (*Id.*). W.R.L. appeals that order.

**Standard of Review**

We review the trial court's order relating to intervention for clear error. *Carter v. Smith*, 170 S.W.3d 402, 409 (Ky. App. 2004). "Under this standard, this Court will only set aside the findings of fact of the trial court if those findings are clearly erroneous." *Cardiovascular Specialists, PSC v. Xenopoulos*, 328 S.W.3d 215, 217 (Ky. App. 2010); *see also* CR 52.01. "The dispositive question is whether the findings are supported by substantial evidence." *Id.* All questions of law and application of the law to the facts are reviewed *de novo*. *Grange Mut. Ins. Co. v. Trude*, 151 S.W.3d 803, 810 (Ky. 2004).

**Analysis**

*Intervention:*

The parties conflate the legal concepts of intervention and standing. They are not entirely the same.[2] The distinction has revealed itself implicitly in our cases. For example, in *Heltsley v. Frogge*, this Court affirmed a family court's ruling that "Grandparents were permitted to intervene" in an action to determine custody between biological parents, but "that they . . . lacked standing to pursue custody." 350 S.W.3d 807, 808 (Ky. App. 2011).

We will not engage in more analysis of the family court's ruling on intervention than necessary. We simply note that if A.H. lacked standing in this case, then the family court's grant of intervention as a matter of right under CR 24.01 constitutes error as a matter of law. On the other hand, as we discuss below, without regard to whether granting permissive intervention would be an abuse of discretion, it would be clear error to grant relief to a party who lacks standing, *i.e.*, the "legally cognizable ability to bring a particular suit[,]" *Harrison v. Leach*, 323 S.W.3d 702, 706 (Ky. 2010), with regard to "the subject matter of the suit" we are reviewing – adoption. *Bailey v. Preserve Rural Roads of Madison County, Inc*.,

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[2] The confusion is common and for good reason:

> Although the concepts of intervention of right and standing have different origins and purposes, they have similar requirements. An applicant for intervention of right must demonstrate a protectable interest that may be affected by the outcome of the lawsuit. To establish standing, a plaintiff must allege an "invasion of a legally protected interest" that might be redressed by the litigation. The similarity between these two standards has led some federal courts to conflate the tests.

Stephanie D. Matheny, *Who Can Defend a Federal Regulation?* 78 Wash. L. Rev. 1067, 1078 (November 2003) (footnotes omitted).

394 S.W.3d 350, 362 (Ky. 2011) (quoting *HealthAmerica Corp. of Kentucky v. Humana Health Plan, Inc*., 697 S.W.2d 946, 947 (Ky. 1985)).

Therefore, we move on to W.R.L.'s challenge to A.H.'s claim of standing.

*Standing:*

"In order to have standing in a case, a party must show that it has 'a judicially recognizable interest in the subject matter of the suit.'" *Bailey v. Preserve Rural Roads of Madison County, Inc*., 394 S.W.3d 350, 362 (Ky. 2011) (quoting *HealthAmerica Corp. of Kentucky v. Humana Health Plan, Inc*., 697 S.W.2d 946, 947 (Ky. 1985)). The subject matter of this case is adoption. A.H. argued before the family court, and convinced it, that *Mullins v. Picklesimer*, 317 S.W.3d 569 (Ky. 2010), articulates the judicially recognized interest that would give her standing in an adoption proceeding. A.H. repeats that argument before this Court.

W.R.L. argues that *Mullins* is distinguishable. We agree.

In *Mullins*, the Supreme Court determined that Picklesimer's former partner had standing to pursue *custody* of Picklesimer's biological child. Although Mullins was not a biological parent, Picklesimer and Mullins agreed to raise a child together and secured an agreed order identifying Mullins as a *de facto* custodian.[3] *Mullins*, 317 S.W.3d at 573-77.

In *Mullins*, both issues of standing to seek custody and the right to obtain it were directly answered by resort to a single source: the Uniform Child Custody

[3] Both Picklesimer and Mullins had misrepresented facts to the family court that Mullins met the statutory requirements as the child's *de facto* custodian. *Mullins*, 317 S.W.3d at 572-73.

Jurisdiction and Enforcement Act (UCCJEA). Notwithstanding that the UCCJEA "was originally adopted to address issues regarding *interstate* custody disputes, [the Supreme] Court held in *Mullins* . . . that it also applied to *intrastate* matters." *Coffey v. Wethington*, 421 S.W.3d 394, 397 (Ky. 2014) (emphasis in original); *but see* Richard A. Revell, Diana L. Skaggs, Kentucky Divorce § 9.2 ("If jurisdiction is not an issue, the UCCJEA is not applicable, and the trial court is in error by applying it." (citing *N.B. v. C.H.*, 351 S.W.3d 214, 221 (Ky. App. 2011)). Rejecting the limitations of KRS 403.240 and .270[4] in favor of the more recently enacted UCCJEA, the Supreme Court said "KRS 403.822 would seem to permit standing in a shared custody co-parenting situation[.]" *Id*. at 575. This was the "judicially recognizable interest" upon which Mullins based standing in "the subject matter" of that litigation – the *custody* of Picklesimer's child.

As noted, the subject matter of this case is not custody, but adoption. Custody determinations do not create or terminate parental rights of the type described in *Troxel v. Granville;*[5] adoption proceedings do. These are decisive

[4] The UCCJEA replaced the Uniform Child Custody Jurisdiction Act (UCCJA) in 2004. *Mullins*, 317 S.W.3d at 574. *Mullins* erroneously calls "KRS 403.270 *et seq.*, the Uniform Child Custody Jurisdiction Act" when, in fact, the UCCJA was comprised of KRS 403.400 *et seq. B.F. v. T.D.*, 194 S.W.3d 310, 311 fn1 (Ky. 2006); *Wood v. Graham*, 633 S.W.2d 404, 405 (Ky. 1982) ("The Uniform Child Custody Jurisdiction Act was adopted, in its present form, in 1980. KRS 403.400 *et seq*.").

[5] *Troxel v. Granville,* 530 U.S. 57, 65, 120 S.Ct. 2054, 147 L.Ed.2d 49 (2000) ("The liberty interest . . . of parents in the care, custody, and control of their children – is perhaps the oldest of the fundamental liberty interests recognized by this Court").

distinctions.[6] And so, if we turn to the UCCJEA, as did the Supreme Court in *Mullins*, we do get a direct answer, but it is a very different answer.

The UCCJEA explicitly states that "KRS 403.800 to 403.880 [including KRS 403.822] shall not govern *an adoption proceeding* . . . ." KRS 403.802 (emphasis added). While the Supreme Court could look to the UCCJEA for direct grounds for standing in a *custody* case, the Act itself directly prohibits the same answer in *adoption* cases.

We note, however, that the family court did not base its ruling directly on KRS 403.822. Rather, in the words of the family court, A.H. "presented a colorable claim to seek custodial rights to the child under *Mullins* . . . which, should this Court [in a separate proceeding under the "one family – one court" approach] find the proof persuasive could elevate [A.H.] to the legal status of joint custodian." (R. 59). Therefore, although direct application of KRS 403.822 cannot be the basis for standing in this adoption case, we must still ask whether *Mullins* provides A.H. a legal way "to make an end-run around the requirements of the adoption statute." *Cabinet for Health and Family Services v. L.J.P.*, 316 S.W.3d 871, 875 (Ky. 2010) (paternal grandparents lacked standing to adopt and

[6] The "subject matter" of a proceeding is key in determining standing. Custody proceedings differ from adoptions; both differ from proceedings for involuntary termination of parental rights. Our Supreme Court has recognized the need to compartmentalize these proceedings when it comes to determining the right to intervene and standing. In *Cabinet for Health and Family Services v. L.J.P.*, 316 S.W.3d 871 (Ky. 2010), all three types of proceedings were involved. Applying the analysis in that case here, we paraphrase *L.J.P.* to say that, to the extent A.H.'s "interest is in receiving *custody* [in a different proceeding], it would not be a 'present substantial interest' but merely 'an expectancy or contingent interest,' [citation omitted] and thus insufficient to warrant . . . intervention as a matter of right." *L.J.P.*, 316 S.W.3d at 876 (paternal grandparents, pursuing consent adoption, denied intervention in parental rights termination proceeding).

whether they had "the right to intervene in the voluntary termination of parental rights proceeding must be determined based on their statutory rights toward [child], or the parents, if any"). We conclude that, even indirectly, *Mullins* cannot support standing in this case. There are two reasons.

First, even a colorable claim to a *right to seek* custody in a separate proceeding will not confer the right to intervene in the separate adoption proceeding because, paraphrasing *L.J.P.*, to the extent A.H.'s "interest is in receiving custody [in a different proceeding], it would not be a 'present substantial interest' but merely 'an expectancy or contingent interest,' [citation omitted] and thus insufficient to warrant . . . intervention as a matter of right." *L.J.P.*, 316 S.W.3d at 876 (paternal grandparents, pursuing consent adoption, denied intervention in parental rights termination proceeding). That is, a party's mere expectation of a custody award in one proceeding will not confer standing to intervene in another party's pursuit of adoption in a different proceeding brought pursuant to a separate statutory scheme.

Second, we also conclude, based on the record before us, that A.H. would not have standing to pursue custody of the child.[7]

[7] To be clear, our conclusion that A.H. does not have standing to bring a custody claim under *Mullins v. Picklesimer* is based on the record in *this* appeal. Such a preliminary determination is necessary to assess whether she has standing in the adoption proceeding since that was the basis of her intervention and of the family court's ruling. In *this* action, she neither alleged nor presented proof of facts necessary to convince us that she could obtain or even seek custody under *Mullins v. Picklesimer*. Whether she can allege and prove those facts in a different proceeding – a custody proceeding – is not now before this Court.

*Mullins* held that under KRS 403.822, a "person acting as a parent" has standing to pursue custody of a child. *Mullins*, 317 S.W.3d at 574-75. The phrase "person acting as a parent" is defined at KRS 403.800(13) and requires two things, the first of which is that the person "[h]as physical custody of the child or has had physical custody for a period of six (6) consecutive months, including any temporary absence, within one (1) year immediately before the commencement of a child custody proceeding[.]"[8] KRS 403.800(13)(a); *see also Coffey*, 421 S.W.3d at 398 ("to be considered 'a person acting as a parent' one must either have physical custody of the child or have had physical custody for a period of six consecutive months within one year of the commencement of the child custody proceeding").

In both *Mullins* and *Coffey*, the party seeking the custody order had physical custody of the child for at least six months during the twelve-month period preceding the petition for custody. In *Coffey*, standing was the only issue; clearing this first prong was critical in finding standing. *Coffey*, 421 S.W.3d at 398-99. In *Mullins*, the child lived with the petitioner up to and until the petition for custody was filed and that fact, coupled with an agreed order entered by the court wherein the birth mother partially waived her superior right to custody, gave her standing as a person acting as a parent to further pursue legal custody in the courts when

[8] We need not consider the second prong which is that the party seeking custody have "been awarded legal custody by a court or claims a right to legal custody under Kentucky law." *Mullins*, 317 S.W.3d at 575; *see also* KRS 403.800(13)(b).

challenged by the birth mother. *Id.* at 572; *see also*, *Truman v. Lillard*, 404 S.W.3d 863, 865-66 (Ky. App. 2012).[9]

As we consider the record before us now, we see that A.H. has not alleged, much less presented any evidence to support this necessary element.

We begin by noting that, as the child's natural parent, M.L. currently has legal custody to the child.[10] KRS 405.020 ("father and mother shall have the joint custody . . . of their children who are under the age of eighteen (18)"). Without redefining the terms "father and mother," which we will not do, we cannot say that A.H. currently has legal custody of the child.

Even if we consider the date A.H. filed a custody petition in Ohio – April 24, 2014 – there is no allegation or proof that A.H. "had physical custody for a period of six (6) consecutive months" during the preceding twelve months. KRS 403.800(13)(a). A.H., M.L., and the child had not lived together since February 2011. M.L. and W.R.L. married on May 6, 2012, and, according to the verified

[9] There was no issue of standing in *Truman v. Lillard* because Truman (who was seeking custody) had lived with Lillard and the child continuously from the date Lillard adopted the child in 2008 until February of 2010; Truman filed the petition in May 2010, thereby satisfying the first prong of the test set out in KRS 403.800(13)(a). *Truman*, 404 S.W.3d 865-66 (Ky. App. 2012).

[10] A.H. has strong suspicions as to who the biological father may be. However, that person signed a document stating "I understand that there is a chance that the baby could also not be mine." In any event, paternity has never been established, leaving M.L. as the only person with legal custody and the only person necessary to consent to the adoption. Louise Everett Graham and James E. Keller, 16 Ky. Prac. Domestic Relations L. § 26:7 Adoption—Consent (December 2014) (citing KRS 199.500) ("Subject to certain exceptions, adoptions may not be granted without the consent of the living parent or parents of a child born in lawful wedlock, or the mother of a child born out-of wedlock, or the father of a child born out-of-wedlock *if paternity is established*" (emphasis added)).

adoption petition, "the minor child . . . has continuously resided in the home of [W.R.L. and M.L.] since that date." (R. 2).

While the record does include A.H.'s allegation that "[A.H.] and [M.L.] continued to co-parent" the child (R. 13), this allegation does not speak to the fact of continuous physical custody for six months. On the contrary, in the motion to intervene and in the verified memorandum A.H. filed in the Ohio proceeding, A.H. refers to time with the child as "scheduled visitation." (RR. 13, 23).

When we take the facts of this case in a light most favorable to A.H., we conclude that A.H. cannot not satisfy KRS 403.800(13)(a) and, therefore, is not a "person acting as a parent" who would have standing to pursue custody. To the extent the family court's ruling was based on an erroneous conclusion to the contrary, we cannot affirm it. Therefore, if we are to affirm, we must find some other basis to support a finding of standing to intervene in this adoption proceeding. *Dick's Sporting Goods, Inc. v. Webb*, 413 S.W.3d 891 (Ky. 2013) (appellate court may affirm on any ground supported by the record; citation omitted).

As the Supreme Court recently said, "standing focuses more narrowly on whether a particular party has the legally cognizable ability to bring a particular suit." *Harrison v. Leach*, 323 S.W.3d 702, 706 (Ky. 2010). Standing to intervene in an adoption proceeding, therefore, is tantamount to standing to sue for adoption. Consequently, A.H. would have a right to intervene in this adoption proceeding if the adoption statutes authorized people in A.H.'s shoes to petition to adopt a child

situated similarly to that of M.L.'s child. When we analyze these circumstances, it is clear they do not.

Most notably, M.L. has not consented to A.H.'s adoption of her child[11] and without M.L.'s consent, "the child is not available for adoption [because M.L.'s] parental rights have not been terminated." *Cabinet for Human Resources, Com. of Ky. v. McKeehan*, 672 S.W.2d 934, 936 (Ky. App. 1984). On the other hand, if M.L. were deemed an unfit parent, her consent would not be needed because she would be unqualified to give it. *Boatwright v. Walker*, 715 S.W.2d 237, 239 (Ky. App. 1986) (consent to adoption unnecessary where illegitimate child's mother was found unfit). But there is no allegation of unfitness. Under these circumstances, A.H. has no standing to file a separate petition to adopt M.L.'s child. Consequently, A.H. has no standing, based on this approach and analysis, to intervene in the step-parent adoption under review.

Still in search of an alternative basis upon which to affirm the family court, we consider A.H.'s take on the consent issue.

A.H. maintains that KRS 199.490(1)(h) confers standing in an adoption proceeding to anyone "whose consent to the adoption is required." Therefore, we must answer the question: Whose consent is required and is A.H. one of those people?

[11] If M.L. consented to adoption of her child to anyone other than her spouse, her own parental rights would be terminated. *S.J.L.S. v. T.L.S.*, 265 S.W.3d 804, 828 (Ky. App. 2008) ("KRS 199.520(2) makes a biological parent's retention of parental rights on the one hand, and his or her consent to the adoption of his or her child by a non-spouse on the other, mutually exclusive options under the law").

When answering these questions, we keep in mind that Kentucky courts "have a duty to accord to words of a statute their literal meaning unless to do so would lead to an absurd or wholly unreasonable conclusion." *McElroy v. Taylor*, 977 S.W.2d 929, 931 (Ky. 1998). Furthermore, "[i]t is a primary rule of statutory construction that the enumeration of particular things excludes the idea of something else not mentioned." *Smith v. Wedding*, 303 S.W.2d 322, 323 (Ky. 1957).

We cannot and do not question that

> adoption only exists as a right bestowed by statute and, furthermore, . . . there must be strict compliance with the adoption statutes. The law of adoption is in derogation of the common law. Nothing can be assumed, presumed, or inferred and what is not found in the statute is a matter for the legislature to supply and not the courts.

*Day v. Day*, 937 S.W.2d 717, 719 (Ky. 1997) (citing *Wright v. Howard*, 711 S.W.2d 492 (Ky. App. 1986), and *Coonradt v. Sailors*, 186 Tenn. 294, 209 S.W.2d 859 (1948)).

Returning to the questions – whose consent to adoption is needed and is A.H. such a person? – we note that consent to adoption is required from a limited number of people, in a finite number of circumstances. If "[a] child [is] received by the proposed adopting parent or parents from an agency without this state[,]" the court must have "the written consent of the secretary[,]" KRS 199.470(4)(b), *i.e.*, "the secretary of health and family services[.]" KRS 199.011(1). A.H. is not

the secretary of health and family services, and this child was not received from an agency without the state.

More commonly, consent of the biological parents is required. As stated by Professor Graham and Justice Jim Keller:

> Subject to certain exceptions, adoptions may not be granted without the consent of the living parent or parents of a child born in lawful wedlock, or the mother of a child born out-of wedlock, or the father of a child born out-of-wedlock if paternity is established.

Louise Everett Graham and James E. Keller, 16 Ky. Prac. Domestic Relations L. § 26:7 Adoption—Consent (December 2014) (citing KRS 199.500). The child in question was born out-of-wedlock and paternity has not been established; therefore, only the consent of the biological mother, M.L., is required and she has given it to her husband.

A.H. is not a person whose consent to the adoption is required; this is not an alternate basis for finding that A.H. had standing to intervene in the adoption proceeding nor, therefore, is it a basis for affirming the family court's order dismissing the adoption proceeding.

Having exhaustively considered the record and the law in this area, we see nothing in these circumstances that would authorize A.H.'s intervention and interference with W.R.L.'s adoption of the child. Nothing now before this court prohibits proceeding with W.R.L.'s adoption of his wife's child.

**Conclusion**

For these reasons, we reverse the Kenton Circuit Court's order permitting A.H.'s intervention and dismissing W.R.L.'s step-parent adoption petition and we remand this case with instructions to reinstate the adoption petition.

D. LAMBERT, JUDGE, CONCURS.

MAZE, JUDGE, CONCURS AND FILES SEPARATE OPINION IN WHICH ACREE, CHIEF JUDGE, JOINS.

MAZE, JUDGE: I fully concur in the reasoning and the result of the majority opinion, but I write separately to acknowledge the difficult truth underlying the outcome of this case; that this is a harsh result compelled by the law. The concepts of family are changing and, whether that is a good thing or a bad thing, it is a fact of our ever-evolving culture. The pace of cultural change, and the courts' attempts to accommodate it, has made it inevitable that family members, however defined, will turn earnestly for answers to the courts. We should not be surprised.

In 2000, Justice Anthony Kennedy prophetically said: "Cases are sure to arise—perhaps a substantial number of cases—in which a third party, by acting in a caregiving role over a significant period of time, has developed a relationship with a child which is not necessarily subject to absolute parental veto." *Troxel v. Granville*, 530 U.S. 57, 98, 120 S.Ct. 2054, 2077, 147 L.Ed.2d 49 (2000) (Kennedy, J., dissenting). It seems each such case is nuanced in a way that makes for an uneasy appellate review despite the guidance of precedent.

We may lessen that uneasiness, as we strive to adapt the law to a changing world, by keeping foremost in our conscience and consciousness that cases such as this are not simply bipolar contests between a parent and a non-parent, or the government and a parent as to what is in any child's best interest (in the most general sense). In every such case there is a third individual whose interests are implicated—the child.

Unfortunately, our courts have "not yet had occasion to elucidate the nature of a child's liberty interests in preserving established familial or family-like bonds[.]" *Id.* at 88, 120 S.Ct. at 2072. And so, in cases such as this, the adults pursue their rights, whether of ancient origin or newly minted, with an undeniable egocentricity. Our courts' veneration of these "adult" rights risks relegating a child's liberty interests in preserving her family ties in a way that treats "children as so much chattel." *Id.* at 89, 120 S.Ct. at 2072.

In the current case, A.H. and M.L. jointly parented the child for the first four and a half years of her life. The child was given A.H.'s surname. She was involved in all aspects of the child's life, shared child-rearing responsibilities, and provided financial support. She was listed as the parent on all medical, childcare and school forms, and provided health insurance for the child. The child was listed as a dependent on A.H.'s tax return. The child developed close bonds with both A.H. and her extended family. This arrangement continued for two years after their separation, when M.L. unilaterally cut off A.H. and then sought to have her current husband adopt the child.

As in *Mullins v. Picklesimer*, 317 S.W.3d 569 (Ky. 2010), A.H. and M.L. clearly intended to co-parent this child, and in fact, carried out this arrangement over an extended period of time. But as the majority opinion correctly points out, the circumstances of the present case do not fit within the factual or legal framework under which the *Mullins* Court permitted a non-parent to have standing to seek custody. Consequently, the law simply does not afford A.H. with the means to preserve her relationship with the child over the objections of M.L.

As required, we followed controlling authority to resolve this most recent variation of the non-traditional family problem. It is a legal solution to a legal question. But beyond that, courts are ill-equipped to solve these vexing problems with the clarity which parties seek and need. However, we wish to remind the parties of another, seemingly better, place to find the answer, first and last. Notwithstanding this opinion, or the opinion of any court, the greater power to do right by this child—and any child—resides in the hearts of the adults who love her.

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