

No. 124863

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**IN THE SUPREME COURT OF ILLINOIS**


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MATT SHARPE,	) On Appeal from the
	) Appellate Court of Illinois,
Petitioner,	) Fifth Judicial District, No.
	) 5-17-0321
v.	)
	)
CRYSTAL WESTMORELAND,	)
	)
Respondent-Appellee.	) There Heard on Appeal
	) from the Circuit Court of
	) the Third Judicial Circuit,
GREGG SHARPE,	) Madison County, Illinois,
	) No. 11-D-1210
Intervenor,	)
	)
and	)
	)
KRIS FULKERSON,	) The Honorable
	) MARTIN MENGARELLI,
Intervenor-Petitioner-Appellant.	) Judge Presiding.

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**BRIEF OF INTERVENOR-PETITIONER-APPELLANT KRIS  
FULKERSON**

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## NATURE OF THE CASE

This appeal presents a question of statutory interpretation. Petitioner-Appellant Kris Fulkerson petitioned the circuit court to intervene in the underlying proceeding to present her petitions as a step-parent requesting allocation of parental responsibilities for, and visitation with, A.S., the child of her deceased partner. Respondent-Appellee Crystal Westmoreland, A.S.'s mother, objected and argued that Fulkerson was not A.S.'s step-parent because Fulkerson and A.S.'s father, Matt Sharpe, had entered into a civil union rather than a marriage. The appellate court accepted two certified questions from the circuit court addressing whether the definition of "step-parent" in the Illinois Marriage and Dissolution of Marriage Act ("Marriage Act") applies to parties to a civil union entered into pursuant to the Illinois Religious Freedom Protection and Civil Union Act ("Civil Union Act"). The appellate court answered both questions in the negative, holding that parties must be (or have been) married to qualify as step-parents. *Sharpe v. Westmoreland*, 2019 IL App (5th) 170321, ¶¶ 10-11. This Court granted review of that decision. The questions raised are on the pleadings.

### ISSUES PRESENTED FOR REVIEW

The appellate court answered two questions certified pursuant to Supreme Court Rule 308. Those questions frame the issues on this appeal:

1. Whether a party to a civil union as defined by 750 ILCS 75/10 has standing to request visitation with his or her deceased partner's child as a step-parent under 750 ILCS 5/602.9(a)(3).

2. Whether a party to a civil union as defined by 750 ILCS 75/10 has standing to request parental responsibilities of his or her deceased partner's child as a step-parent under 750 ILCS 5/601.2(b)(4).

### STATUTES INVOLVED

The Civil Union Act, 750 ILCS 75/1 *et seq.* (2018), and relevant provisions of the Marriage Act, 750 ILCS 5/600 (2018), 750 ILCS 5/601.2 (2018), and 750 ILCS 5/602.9 (2018), are attached in the Appendix bound with this brief.

## STATEMENT OF FACTS

Crystal Westmoreland and Matt Sharpe were married until their divorce in 2013. A1.<sup>1</sup> They had one child, a daughter named A.S. *Id.* Later in 2013, Sharpe entered into a civil union with Kris Fulkerson, A3, and pursuant to the terms of the Westmoreland/Sharpe divorce, Sharpe and Fulkerson, on the one hand, and Westmoreland, on the other, shared parenting responsibilities for A.S. A5. Sharpe died in 2017, A3, and this case involves Fulkerson's effort to continue spending time with A.S. and to share in the responsibilities of parenting her.

### Circuit court proceedings

Specifically, in February 2017, Fulkerson filed a petition for leave to intervene in the underlying divorce case between Westmoreland and Sharpe. A1. Fulkerson explained that she is Sharpe's widow and the step-parent of A.S. *Id.* Fulkerson sought leave to intervene to advance her petitions seeking allocation of parental responsibilities and parenting time for A.S. and for visitation rights. *Id.*

Filed that same day, Fulkerson's petition for allocation of parental responsibilities and parenting time stated that Fulkerson and Sharpe were

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<sup>1</sup> The electronic record provided to this Court by the appellate court consists of the appendix to Westmoreland's petition to the appellate court for leave to appeal pursuant to Supreme Court Rule 308. Citation to that record is in the form: A\_. Fulkerson's Petition for Leave to Appeal to this Court also included an appendix containing the report of proceedings of the relevant circuit court hearing and certain additional documents. Citation to that appendix is in the form: PLA A\_.



joined in a civil union on November 11, 2013. A3. Fulkerson alleged that Sharpe “was exercising a majority of the parenting time with” A.S., but he died on January 2, 2017. *Id.* Fulkerson stated that she was A.S.’s step-parent and had “provided for the care, control and welfare” of A.S. *Id.* She further alleged that A.S. expressed a desire to live with Fulkerson and Fulkerson’s three children. *Id.*

Fulkerson also filed her petition for step-parent and sibling visitation that day. A5. As that petition explained, A.S. was born on September 7, 2006. *Id.* On January 31, 2013, as part of Sharpe and Westmoreland’s divorce, the court awarded Sharpe and Westmoreland joint custody of A.S., with Sharpe serving as “the primary residential custodian and the parties shar[ing] equal parenting time.” *Id.* Fulkerson further stated that A.S. spent more than half of her time with Sharpe, Fulkerson, and Fulkerson’s three children. *Id.* Even though Fulkerson and her children had had regular contact with A.S. since November 2012, since Sharpe’s death in 2017 Westmoreland “has unreasonably denied” Fulkerson and her children visitation with A.S. A6.

Westmoreland objected to the intervention petition on the ground that Fulkerson and Sharpe were never legally married. A7. She also objected to the petitions for allocation of parental responsibility and visitation because, among other things, Fulkerson purportedly was not A.S.’s step-parent and therefore lacked standing to petition the court. A11-12, 15-16.

The circuit court held a hearing on the intervention petition and found that “a civil union would equate to a marriage in this . . . situation.” PLA A18. Accordingly, the court granted Fulkerson leave to intervene. *Id.*; A19. Before the court reached the merits of the underlying petitions for allocation of parental responsibility and visitation, however, Westmoreland moved under Rule 308 to certify the questions of whether a party to a civil union could be a step-parent for purposes of seeking allocation of parenting time and visitation under the Marriage Act. A20-23. The circuit court granted the motion and certified the questions. A28.

### **Appellate court decision**

The appellate court granted Westmoreland’s request for leave to appeal under Rule 308. PLA A5. The court then reversed the circuit court’s determination, answering the certified questions in the negative and holding that a person must be *married* to be a “step-parent” eligible for visitation and parenting rights under the Marriage Act. *Sharpe*, 2019 IL App (5th) 170321, ¶¶ 10-11. The court acknowledged that the Civil Union Act “reflects the intent that partners joined in a civil union and married spouses generally shall share the same benefits and rights in relation to their respective mates.” *Id.* at ¶ 4. But the court theorized that this “equation of partners’ rights and obligations in relation to each other does not necessarily equate civil union partners to married spouses *in relation to children*.” *Id.* (emphasis added).

The appellate court continued that the Marriage Act recognizes “the superior right of a natural parent to make decisions for his or her child.” *Id.* at ¶ 5. For that reason, the Act “carves out specific exceptions delineating which nonparent individuals have standing to seek to establish rights to spend time or make decisions with or for a minor child not their own.” *Id.* The court relied on the fact that the Marriage Act defines “step-parent” as a person “married to” a parent and that “[n]either of these sections mentions or includes partners to a civil union.” *Id.* at ¶ 6 (citing 750 ILCS 5/600(l); 750 ILCS 5/602.9(a)(3)).

The court further noted that Fulkerson seeks relief under the Marriage Act but that she and Sharpe “made a conscious choice to enter into a civil union as opposed to a marriage.” *Id.* at ¶ 7. The court also observed that provisions of the Marriage Act had been amended since the Civil Union Act was enacted in 2011, but the Marriage Act remained “devoid of any reference to partners joined in civil unions when defining parties that qualify as step-parents for purposes of determining nonparent standing.” *Id.* at ¶ 8. According to the court, this “reflects a legislative intent not to include civil union partners in the category of nonparents who have standing to seek visitation.” *Id.*

This Court subsequently granted Fulkerson’s petition for leave to appeal from the appellate court’s order.

## ARGUMENT

### I. Introduction

This Court should reverse the appellate court’s decision and answer the certified questions in the affirmative. When the General Assembly passed the Civil Union Act, it did so with the express intention of providing parties to a civil union with all of the same rights, responsibilities, and status afforded to married couples under the full breadth of Illinois law. The legislature even went so far as to spell out in three different places in the Civil Union Act that the statute provides civil union partners with all *the same* rights that married spouses enjoy.

Step-parentage under the Marriage Act is defined to include those “married to” the child’s parent. Because parties to a civil union have the same rights as married people, being in a civil union with the parent of a child is the legal equivalent of being married to that parent. Accordingly, a party to a civil union with a child’s parent is that child’s step-parent. Under this unambiguous statutory structure, Fulkerson is A.S.’s step-parent and therefore has standing to intervene in the underlying proceedings and seek allocation of parenting responsibilities and visitation.

### II. The standard of review is *de novo*.

This is an appeal from the appellate court’s answers to two questions certified pursuant to Supreme Court Rule 308. “By definition, certified questions are questions of law subject to *de novo* review.” *Roszavolgyi v. City of Aurora*, 2017 IL 121048, ¶ 21. Additionally, the questions raised by this

appeal involve matters of statutory construction, and such legal matters are reviewed *de novo*. See *Corbett v. Cty. of Lake*, 2017 IL 121536, ¶ 18.

**III. The Civil Union Act guarantees parties to a civil union the same rights enjoyed by spouses under the Marriage Act.**

The General Assembly passed the Civil Union Act in 2011. 2011 Ill. Legis. Serv. P.A. 96-1513 (eff. June 1, 2011). A “civil union” is “a legal relationship between 2 persons, of either the same or opposite sex, established pursuant to this Act.” 750 ILCS 75/10 (2018). The statute creates a process for the issuance of civil union licenses as an alternative to solemnizing a relationship under the Marriage Act. 750 ILCS 75/30-75/40 (2018). Likewise, the provisions of the Marriage Act governing dissolution or invalidation of a marriage are incorporated and made applicable to civil unions. 750 ILCS 75/45 (2018); *see also* 750 ILCS 75/50 (2018) (providing that provisions of Civil Practice Law apply to proceedings under Civil Union Act).

A civil union is a type of legal relationship intended to have the same legal effect as a marriage. The General Assembly requires that the Civil Union Act “be liberally construed and applied to promote its underlying purposes,” which include “provid[ing] persons entering into a civil union with the obligations, responsibilities, protections, and benefits afforded or recognized by the law of Illinois to spouses.” 750 ILCS 75/5 (2018). To achieve this aim, rather than amending every Illinois statute relating to spousal and family relationships, the Civil Union Act broadly declares that “[p]arty to a civil union’ means, and shall be included in, any definition or use of the terms

‘spouse’, ‘family’, ‘immediate family’, ‘dependent’, ‘next of kin’, and other terms that denote the spousal relationship, as those terms are used throughout the law.” 750 ILCS 75/10 (2018). Section 20 of the Act repeats the point in no uncertain terms: “A party to a civil union is entitled to *the same* legal obligations, responsibilities, protections, and benefits as are afforded or recognized by the law of Illinois to spouses, whether they derive from statute, administrative rule, policy, common law, or any other source of civil or criminal law.” 750 ILCS 75/20 (2018) (emphasis added).

The General Assembly further illustrated the co-extensive nature of rights under the Civil Union Act and spousal rights under the Marriage Act (and other Illinois laws) by amending the Civil Union Act to allow conversion of a civil union into a marriage. In 2014, as part of the bill amending the Marriage Act to permit same-sex marriage, the Civil Union Act was also amended to allow parties to an existing civil union to apply for and receive a marriage license, and a one-year grace period was established to permit parties to a civil union to convert their civil union license to a marriage without a fee. 750 ILCS 75/65 (2018). If the parties’ rights and obligations under Illinois law were different under the Civil Union Act and the Marriage Act, this seamless conversion would have had a significant substantive effect. But there is no indication the General Assembly intended any such change in state law rights, responsibilities, or status. To the contrary, during the legislative debates on the 2014 bill, Representative Harris reiterated that civil unions were intended

to “offer all the protections and obligations of the marriage which the state can give.” H. Transcripts of Debate, 98th Gen. Assem. (Nov. 15, 2013) at 7 (Rep. Harris).

**IV. A party to a civil union is a “step-parent” for purposes of rights granted by the Marriage Act.**

This Court should answer the certified questions in the affirmative and hold that Fulkerson has standing to seek allocation of parental responsibilities and visitation as A.S.’s step-parent.

**A. The plain statutory language establishes that a party to a civil union may be a step-parent under the Marriage Act.**

As a party to a civil union, Fulkerson is a step-parent to A.S. and therefore could petition for parental responsibilities and non-parent visitation. The certified questions involve the construction of intertwined provisions of the Civil Union Act and the Marriage Act. The court’s aim in construing these statutes is to “ascertain and give effect to the intent of the legislature.” *In re Marriage of Zamudio & Ochoa*, 2019 IL 124676, ¶ 15. And “[t]he best indicator of that intent is the plain language of the statute, given its ordinary meaning.” *Raab v. Frank*, 2019 IL 124641, ¶ 18. The court “may not depart from the plain statutory language by reading into a statute exceptions, limitations, or conditions not expressed by the legislature.” *Marriage of Zamudio*, 2019 IL 124676, ¶ 15. Nor may the court “add provisions not found in the law.” *Rosenbach v. Six Flags Entm’t Corp.*, 2019 IL 123186, ¶ 24. Further, the court “presumes that the legislature intended that two or more statutes which relate

to the same subject are to be read harmoniously so that no provisions are rendered inoperative.” *Knolls Condo. Ass’n v. Harms*, 202 Ill. 2d 450, 458-59 (2002).

Again, the plain language of the Civil Union Act is unambiguous—it provides that parties to a civil union are treated as if they are married for all purposes. A party to a civil union is thus a “spouse” and has the same “spousal relationship” as a person married under the Marriage Act. 750 ILCS 75/10 (2018). And that party is “entitled to the *same* legal obligations, responsibilities, protections, and benefits *as are afforded or recognized by the law of Illinois to spouses*.” 750 ILCS 75/20 (2018) (emphasis added). There are no exceptions, conditions, or limitations placed on the scope of these spousal rights. *See Marriage of Zamudio*, 2019 IL 124676, ¶ 15 (court may not read restrictions or conditions into statute).

Several years after establishing that a party to a civil union has the same spousal rights as a party to a marriage, the General Assembly in 2016 comprehensively amended the Marriage Act to modernize that statute. 2015 Ill. Legis. Serv. P.A. 99-90 (eff. Jan. 1, 2016); *see* S. Transcripts of Debate, 99th Gen. Assem. (Apr. 23, 2015) at 33 (Sen. Mulroe). As before the amendment, the Marriage Act grants circuit courts jurisdiction over proceedings for the allocation of parental responsibilities initiated, among other ways, by petition from a step-parent. 750 ILCS 5/601.2(b)(4) (2018). And the Marriage Act provides a procedure by which non-parents can seek visitation. 750 ILCS



5/602.9 (2018). Specifically, Section 602.9 of the Marriage Act allows “step-parents” and certain other parties to file a petition for visitation and electronic communication with a child when “there is an unreasonable denial of visitation by a parent that causes undue mental, physical, or emotional harm to the child.” 750 ILCS 5/602.9(c) (2018).

The Marriage Act as amended goes on to define “step-parent” to include “a person married to the child’s parent immediately prior to the parent’s death.” 750 ILCS 5/600(*l*) (2018); *see* 750 ILCS 5/602.9(a)(3) (2018) (same). In other words, whether a person is a “step-parent” under the Marriage Act depends on the existence of a spousal relationship. That is, the reference to being “married to the child’s parent” in the step-parent definition is a “term[] that denote[s] the spousal relationship” under section 10 of the Civil Union Act. *See* 750 ILCS 75/10 (2018). And because the Civil Union Act provides that a party to a civil union is a “spouse” and has a “spousal relationship,” *id.*, including all of the legal rights, responsibilities, and obligations of a person married under the Marriage Act, 750 ILCS 75/20 (2018), a party to a civil union is thus considered “a person married to the child’s parent.” In short, under the plain language of these two statutes, a party to a civil union shall be considered a step-parent under the Marriage Act for purposes of the allocation of parental responsibilities and visitation provisions.

Even if the statutory language left any lingering doubt, that doubt is erased by the General Assembly’s command in section 5 of the Civil Union Act

that the statute “shall be liberally construed and applied to promote its underlying purposes.” 750 ILCS 75/5 (2018). As relevant here, those purposes include “provid[ing] persons entering into a civil union with the obligations, responsibilities, protections, and benefits afforded or recognized by the law of Illinois to spouses.” *Id.* And under this legislative mandate, if there is any question whether a party to a civil union is to be considered the same as a married person, the answer is to be resolved in the affirmative. Therefore, the appellate court’s decision would be incorrect even if the meaning of the Civil Union Act were not as clear as it is.

This conclusion also follows from the interpretative canon that statutes related to the same subject matter should be construed *in pari materia*. See *People v. McCarty*, 223 Ill. 2d 109, 133 (2006). Indeed, courts “presume that statutes which relate to one subject are governed by one spirit and a single policy.” *Williams v. Ill. State Scholarship Comm’n*, 139 Ill. 2d 24, 52 (1990). Including parties to a civil union within the definition of step-parent in the Marriage Act gives meaning to language in the Civil Union Act categorically granting “the same” rights as married spouses to civil union partners. This reading is also consistent with the legislature’s desire to limit parties who may seek parental responsibilities or visitation to those with a legally recognized relationship to the child. This construction reads the provisions “harmoniously so that no provisions are rendered inoperative.” *Knolls Condo. Ass’n*, 202 Ill. 2d at 458-59.

At the same time, Westmoreland's contrary reading would be inequitable. The Court has "an obligation to construe statutes in a manner that will avoid absurd, unreasonable, or unjust results that the legislature could not have intended." *Palm v. Holocker*, 2018 IL 123152, ¶ 21. The Civil Union Act grants "the same" rights to parties in a civil union that married spouses enjoy. 750 ILCS 75/20 (2018). For the court to construe the law to provide unequal rights would be unjust to those who entered into civil unions in reliance on the Civil Union Act's declaration of equality. Indeed, that reliance interest is especially strong for those who entered into civil unions before Illinois legalized same-sex marriage and chose not to convert their civil unions into marriages under the conversion provision of the Civil Union Act, 750 ILCS 75/65 (2018). These and other parties to a civil union have for years organized the most important aspects of their lives based on the legislature's promise that they will receive the same rights as married spouses. It would be inequitable to interpret the step-parent definition in a way that breaks that promise.

If more were needed, the appellate court's interpretation also runs afoul of the canon of statutory construction that a statute should be interpreted "to affirm its constitutionality if reasonably possible." *In re Jonathon C.B.*, 2013 IL 107750, ¶ 79. Both the state and federal Equal Protection Clauses require that similarly situated individuals be treated in the same manner, unless there is an appropriate reason to treat them differently. *Id.* at ¶ 116.

And there is no non-arbitrary reason to treat civil union spouses as different from married spouses. As explained above, the Marriage Act provides that step-parents may have a sufficiently close relationship to a child to have standing to petition for parental responsibilities or visitation rights. 750 ILCS 5/601.2(b)(4), 5/602.9(c) (2018). Whether the parties were married or in a civil union is irrelevant in measuring the connection between the step-parent and the child. In both cases, the biological or adoptive parent and the step-parent are in a legal relationship carrying the same rights, responsibilities, and obligations. In both cases, the step-parent has the same legal relationship to the child. Whether the biological or adoptive parent and the step-parent chose to marry or enter a civil union has no substantive relevance. And in both cases, whether the step-parent would be entitled to an allocation of responsibilities or visitation would be governed by the same determination, which takes into account the best interests of the child. It would therefore be arbitrary to declare that the distinction between a civil union and a marriage matters for the purpose of defining who is a step-parent.

In sum, the definition of step-parent in Sections 600(*l*) and 602.9(a)(3) of the Marriage Act must be construed to include parties to a civil union. The plain language of the Civil Union Act provides that parties to a civil union have the same rights, responsibilities, and status as married spouses under all provisions of Illinois law. The step-parent definition accords a specific status to married spouses, and therefore that status is afforded to parties to a civil

union. This construction is supported by the legislative mandate that the Civil Union Act be liberally construed to provide equal treatment to civil unions and marriages. It is also supported by the canon that statutes related to the same subject matter be interpreted harmoniously so as not to render any provision inoperative. And the construction is consistent with the canon requiring the court to construe statutes to avoid constitutional entanglements, for there is no rational basis to distinguish between parties to a civil union and married persons in this context. For these reasons, the two certified questions should be answered in the affirmative.

**B. The legislative history supports Fulkerson’s understanding of the statutory regime.**

If this Court were to find that the relevant statutes are ambiguous, the legislative debates also support Fulkerson’s reading. Resort to extrinsic interpretative aids is proper only if the statutory language is unclear. *Wingert by Wingert v. Hradisky*, 2019 IL 123201, ¶ 43. But when such aids are appropriate, legislative debates are a form of extrinsic evidence that “frequently shed[s] light on the [disputed] provision.” *Waste Mgmt. of Ill., Inc. v. Ill. Pollution Control Bd.*, 145 Ill. 2d 345, 350 (1991). During the debates, Senator Noland explained that the Civil Union Act “extend[s], regardless of gender, *the same* legal obligations, responsibilities, protections, and benefits *as are afforded spouses* under the Marriage and Dissolution of Marriage Act in Illinois.” S. Transcripts of Debate, 96th Gen. Assem. (Dec. 1, 2010) at 86 (Sen. Noland) (emphasis added). The purpose of the statute was to provide those “in

committed family relationships” with “equal” treatment. *Id.* Senator Steans stated that the Civil Union Act was meant to provide “equal access to nearly six hundred and fifty rights” and would preserve “family relationships” and “loving household[s].” *Id.* at 84 (Sen. Steans).

In the House, Representative Osterman remarked that recognizing civil unions would allow families to ensure that their children will be taken care of if one of the parents falls ill. H. Transcripts of Debate, 96th Gen. Assem. (Nov. 30, 2010) at 175 (Rep. Osterman). Representative Jakobsson stated that civil union recognition is important for couples, many of whom were raising children. *Id.* at 189 (Rep. Jakobsson). Representative Lang explained that the legislature intended to “encourag[e] love . . . commitment, [and] family togetherness.” *Id.* at 188 (Rep. Lang). And Representative Harris, one of the bill’s sponsors, stated that “[w]e’re trying to hold couples in civil union to no higher nor no lower standard than you would have when you and your wife decided to become married.” *Id.* at 192 (Rep. Harris).

Two things are evident from the foregoing. First, the legislature intended that parties to a civil union receive the same treatment as married couples under state law. There was no discussion of limitations or restrictions on that equality. Second, the legislature was concerned not only with the parties entering into the civil union, but also with the couples’ families, including the couples’ ability to raise their children. These two themes support

the conclusion that parties to a civil union whose partner brings a child into the union are to be considered step-parents under the Marriage Act.

There is no legislative history behind the relevant Marriage Act provisions that would counter this. During the debates on the 2016 statutory overhaul that became Public Act 99-90, *see supra* p. 12, there was no discussion of parties to a civil union or any indication that legislators intended to exclude these parties from any element of the Act. Instead, the focus was on the legislature's intent to "moderniz[e] statutory rights and procedures of divorce cases and child custody disputes." S. Transcripts of Debate, 99th Gen. Assem. (Apr. 23, 2015) at 33 (Sen. Mulroe); *see id.* at 35-36 (Sen. Barrickman) (discussing new no-fault divorce procedures and provisions relating to noncustodial parents). There is nothing to suggest that limiting the rights of civil-union spouses was part of the legislative purpose behind Sections 600(l) and 602.9 of the Marriage Act.

**C. The appellate court's decision is impossible to square with the statutory structure or legislative intent.**

The appellate court hypothesized an exception to the equal treatment required by the Civil Union Law, reasoning that "[t]he equation of partners' rights and obligations in relation to each other does not necessarily equate civil union partners to married spouses in relation to children, however." *Sharpe*, 2019 IL App (5th) 170321, ¶ 4. Of course, we know from the legislative history that lawmakers had the children of civil unions very much in mind in drafting and passing that Act. *See supra* Section IV.B. But even aside from that, there

is no textual support in any of the relevant statutory provisions for the appellate court's conclusion.

First, the Civil Union Act provides that parties to such a union have the “same” rights and obligations “as are afforded or recognized by the law of Illinois to spouses.” 750 ILCS 75/20 (2018). There is no restriction or limitation of these rights to those “in relation to each other,” regardless of any children. To the contrary, the term “party to a civil union” is defined to mean the same as “‘spouse’, ‘family’, ‘immediate family’, ‘dependent’, ‘next of kin’, and other terms that denote the spousal relationship, as those terms are used throughout the law.” 750 ILCS 75/10 (2018). This definition incorporates rights not solely in connection with the other spouse, but also as part of a “family.” Familial relationships thus are included in the plain meaning of the term.

Second, the appellate court's reading ignores the fact that the Marriage Act's definition of a step-parent turns on the existence of a spousal relationship. An individual cannot be considered a step-parent unless he or she was “married” to the child's parent. 750 ILCS 5/600(*l*) (2018). It makes no sense to say that a spousal relationship is outside the scope of the Civil Union Act because it affects a child. Indeed, such a holding would provide fewer rights to those who chose to enter into a civil union rather than a marriage, in direct violation of both the statutory language and statements by legislators explaining the very purpose of the Civil Union Act. Further, such an interpretation would impermissibly read an exception into Sections 10 and 20



of the Civil Union Act, where none was expressed. *See Marriage of Zamudio*, 2019 IL 124676, ¶ 15.

Moreover, the only authority the appellate court cited for its child-related exception to the Civil Union Act's equality principle was 750 ILCS 5/505(a) (2018), *Sharpe*, 2019 IL App (5th) 170321, ¶ 4, but that provision of the Marriage Act has no relevance to this case. Section 505(a) governs the calculation of child support and states that a court may order one or both parents to provide support to a "child of the marriage or civil union" as part of certain proceedings, including those "for dissolution of marriage, legal separation, declaration of invalidity of marriage, or dissolution of a civil union." 750 ILCS 5/505(a) (2018). The language referencing "civil unions" was added by the General Assembly in 2017 as part of Public Act 99-764, which comprehensively changed the manner of calculating support. In the legislature's discussion of that bill, however, there is not one indication that the addition of this language was intended to *expand* the support obligation to include a previously uncovered class of individuals.

In any event, including a reference to civil unions in the 2017 amendment to the child support provision cannot inform the construction of statutes passed in 2011 and 2016. These earlier provisions make plain that civil-union partners enjoy the same spousal rights as married persons and that the definition of a step-parent rests on a spousal relationship.

To hold otherwise would mean that the General Assembly silently intended to restrict the Civil Union Act’s broad grant of rights—the nearly 650 rights and obligations Senator Steans discussed during the legislative debate—through *later* statutory language making clear that child support rights and obligations *apply* to parties in a civil union.

Nor is the 2017 amendment to the Marriage Act’s support provision evidence that spousal and familial rights apply to partners only vis-à-vis each other, but not in relation to any other family members. In 2018, Public Act 100-923 amended the spousal maintenance provision to reference civil unions explicitly, incorporating the same “civil union” language that appears in Section 505(a) of the support provision. *See* 750 ILCS 5/504(a) (eff. Jan. 1, 2019). Under the appellate court’s reasoning, however, the addition of this language was unnecessary because spousal rights *between partners* (here, spousal maintenance) was already established in the Civil Union Act. Thus, even the appellate court’s theory must assume that the General Assembly intended no substantive change when it added the civil union language to Section 504(a). And indeed the summary included with Senate Bill 2289, which became Public Act 100-923, confirms that understanding, stating that the bill amends the Marriage Act, among others, merely “by correcting cross references to Sections that have been repealed and by changing a county population threshold.” 100th Ill. Gen. Assem. Senate Bill 2289, 2018 Sess. In short, the legislation made technical amendments. The inclusion of explicit references to

civil unions in the maintenance provision was not intended to expand the substantive reach of Section 504(a), but to acknowledge that its applicability had changed due to the Civil Union Act.

But this proves Fulkerson’s point—the fact that the General Assembly at times added express statutory references to civil unions does not detract from the fact that the Civil Union Act gave civil union spouses the same rights as married spouses *throughout the Illinois Code*: “A party to a civil union is entitled to the same legal obligations, responsibilities, protections, and benefits as are afforded or recognized by the law of Illinois to spouses, whether they derive from statute, administrative rule, policy, common law, or any other source of civil or criminal law.” 750 ILCS 75/20 (2018).

Accordingly, the appellate court’s reliance on the reference to civil unions in Section 505(a) is misplaced. Public Act 99-764, which added that phrase, certainly made a substantive change to the way child support is calculated. But, as with the change to Section 504(a) of the support act, there is no suggestion that the legislature intended to expand the statute to apply to individuals not previously covered—the change was to the support formula, not to the range of parties who may owe support under that provision. As such, and again like Section 504(a), the inclusion of the references to civil unions reflects a *technical* amendment expressly recognizing the already-existing rights and obligations of parties to a civil union.

Next, the appellate court also found relevance in the fact that subsequent amendments to the Marriage Act fail to make express reference to civil unions in the definition of step-parent. *Sharpe*, 2019 IL App (5th) 170321, ¶ 8. But the Public Acts dealing with the maintenance and support provisions in Sections 504 and 505 of the Marriage Act had no occasion to change the definition of step-parent in Sections 600 and 602.9. Further, the appellate court overlooked the fact that the General Assembly does not need to add explicit reference to civil unions for statutory rights and obligations to apply to parties to a civil union. Again, the Civil Union Act already provides for that. 750 ILCS 75/10, 75/20 (2018).

The appellate court also relied on the fact that the Marriage Act is “designed to safeguard the superior right of a natural parent to make decisions for his or her child.” *Id.* at ¶ 5; *see id.* at ¶ 9. But a step-parent is by definition not a biological or adoptive parent *regardless* of whether he/she was married to or in a civil union with the biological or adoptive parent. Nor does recognizing that the definition of a step-parent includes parties to a civil union somehow jeopardize the biological or adoptive parent’s superior right.

Status as a step-parent only entitles a person to file a petition for allocation of parental responsibilities or for non-parent visitation in certain narrowly defined circumstances. *See* 750 ILCS 5/601.2(b)(4), 5/602.9(c) (2018). Even if those circumstances are present, the court still must apply the statutory and constitutional criteria to determine whether allocation of

parental responsibilities or visitation is proper, and this takes into account a biological or adoptive parent's superior rights. For instance, there is a statutory "presumption that a fit parent's actions and decisions" regarding step-parent visitation "are not harmful to the child's mental, physical, or emotional health." 750 ILCS 5/602.9(b)(4) (2018). And a court must accord a fit parent's determinations regarding allocation of parental responsibilities "special weight." *Wickham v. Byrne*, 199 Ill. 2d 309, 320 (2002) (quoting *Troxel v. Granville*, 530 U.S. 57, 70 (2000)). Accordingly, recognizing that a party to a civil union may be a step-parent in no way undermines these presumptions in favor of a biological or adoptive parent's decisions.

In addition to these presumptions favoring a parent's choices, the court will take into consideration the best interests of the child. *See, e.g.*, 750 ILCS 5/602.5(a) (2018) ("The court shall allocate decision-making responsibilities according to the child's best interests."); 750 ILCS 5/602.5(c) (2018) (enumerating non-exhaustive list of 15 factors the court should consider in determining the child's best interests); 750 ILCS 5/602.7(a) (2018) ("The court shall allocate parenting time according to the child's best interests."); 750 ILCS 5/602.7(b) (2018) (non-exhaustive list of 17 factors to consider in allocating parenting time); 750 ILCS 5/602.9(b)(5) (2018) (enumerating 9 factors to consider in determining whether step-parent visitation is in child's best interests). If allocating parental responsibilities or granting visitation to a step-parent is not in the child's best interests, the court will deny the petitions.

This discussion makes clear that simply granting standing to individuals such as Fulkerson to file petitions has no effect on Westmoreland's rights. The law still regards those rights as superior, and no petition will be granted unless Fulkerson can overcome the presumptions in favor of Westmoreland's decisions and establish that the best interests of the child require the court to grant relief.

Given the statutory structure, the authority the appellate court cited is inapposite. *See Sharpe*, 2019 IL App (5th) 170231, ¶ 9. In *In re Parentage of Scarlett Z-D.*, 2015 IL 117904, this Court examined a claim by a nonparent seeking custody of a child. The Court explained that, under the prior version of the Marriage Act, the petitioner did not have statutory standing to seek custody. *Id.* at ¶ 37. But whether the nonparent met the statutory standard for standing in that case is irrelevant here, where—unlike in *Scarlett Z-D*—the issue is the interpretation of the term “step-parent.” Even if the Court were to announce a rule that statutory standing to petition for allocation of parenting responsibilities should be narrowly construed, moreover, that does not overcome the plain meaning of the relevant, intertwined provisions of the Civil Union and Marriage Acts.

Nor does *In re Visitation of J.T.H.*, 2015 IL App (1st) 142384, support the appellate court's conclusion. There, the former partner of a natural parent petitioned for visitation rights. *Id.* at ¶¶ 3-8. The petitioner did not assert that she was a step-parent within the meaning of the Marriage Act, but rather

pursued an equitable adoption theory. *Id.* at ¶ 19. The court rejected her argument. *Id.* at ¶ 24. *Visitation of J.T.H.* thus concerned the viability of a legal theory not relevant here, and the case says nothing about the meaning of the term “step-parent,” for the petitioner did not claim that term applied to her.

Finally, the appellate court noted that Fulkerson “is asking for relief under the [Marriage Act], yet [she] and her former civil union partner . . . made a conscious choice to enter into a civil union as opposed to a marriage under the [Marriage Act].” *Sharpe*, 2019 IL App (5th) 170231, ¶ 7. The court continued, “[a]t all times, they had the opportunity to avail themselves of the benefits the [Marriage Act] affords,” but they “specifically chose not to do so.” *Id.* In short, the appellate court found fault with Fulkerson for exercising the very choice the Civil Union Act offered her—to enter into a civil union instead of a marriage and thereby obtain “*the same*” benefits, rights, and obligations “*afforded*” to spouses under Illinois law. 750 ILCS 75/20 (2018) (emphasis added). The appellate court’s comments cannot be reconciled with the first principles underlying the Civil Union Act. Couples chose (and choose) to enter civil unions based on their understanding that a civil union gives them the same rights and obligations of a marriage, not because they believed they would be afforded something less.

## CONCLUSION

For these reasons, this Court should reverse the appellate court's decision, answer the certified questions in the affirmative, and remand the matter to the circuit court for further proceedings.

Dated: December 4, 2019

Respectfully submitted,

s/ Michael A. Scodro

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**Supreme Court Rule 341(c) Certificate of Compliance**

I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages or words contained in the Rule 341(d) cover, the Rule 341(h)(1) statement of points and authorities, the Rule 341(c) certificate of compliance, and those matters appended to the brief under Rule 342(a) is 27 pages.

s/Michael Scodro  
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**Sharpe v. Westmoreland, 2019 IL App (5th) 170321 (2019)**

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Appcal Allowed by Sharpe v. Westmoreland, Ill., September 25, 2019

2019 IL App (5th) 170321

Appellate Court of Illinois, Fifth District.

Matt SHARPE, Petitioner,

v.

Crystal WESTMORELAND, Respondent-Appellant

(Gregg Sharpe, Intervenor; Kris

Fulkerson, Intervenor-Appellee).

NO. 5-17-0321

Rule 23 order filed March 29, 2019.

Motion to publish granted April 11, 2019.

Opinion Filed April 11, 2019

**Synopsis**

**Background:** After death of biological father, who had entered into civil union with his female partner, partner filed a petition, seeking visitation rights and allocation of parental responsibilities with respect to father's child. The Circuit Court, Madison County, No. 11-D-1210, Martin J. Mengarelli, J., determined that partner had standing as a stepparent under the Marriage and Dissolution of Marriage Act to seek visitation and to seek parental responsibilities. Biological mother filed a motion to certify questions of law for interlocutory appeal.

**Holdings:** The Appellate Court, Cates, J., held that:

[1] equation of partners' rights and obligations in relation to each other under Civil Union Act does not necessarily equate civil union partners to married spouses;

[2] stepparentage, for purposes of having standing to seek visitation and allocation of parental responsibility, requires a legal marriage, as opposed to a civil union; and

[3] as matter of apparent first impression, partner did not have standing as a stepparent, under Dissolution of Marriage Act, to seek visitation and parental responsibilities.

Reversed and remanded.

West Headnotes (12)

**[1] Appeal and Error**

De novo review

**Appeal and Error**

Statutory or legislative law

Questions of law, such as the proper interpretation of statutes, are to be reviewed de novo.

**[2] Child Custody**

Particular Status or Relationship

In the custody context, equation of partners' rights and obligations in relation to each other under Civil Union Act does not necessarily equate civil union partners to married spouses in relation to children. 750 Ill. Comp. Stat. Ann. 5/505(a), 75/5.

**[3] Child Custody**

Right of biological parent as to third persons in general

**Child Custody**

Right of biological parent as to third persons in general

**Child Custody**

Parties; intervention

Requirements of nonparent standing to seek visitation and parental allocation of responsibilities are designed to safeguard the superior right of a natural parent to make decisions for his or her child.

**[4] Child Custody**

Presumption in favor of parent

Law presumes the natural parent's right to physical custody of his or her child is superior to that of a nonparent and that it is in the best interest of the child to be raised by natural parents.

**[5] Child Custody**

⇒ Right of biological parent as to third persons in general

**Child Custody**

⇒ Right of biological parent as to third persons in general

**Child Custody**

⇒ Parties; intervention

Marriage and Dissolution of Marriage Act carves out specific exceptions delineating which nonparent individuals have standing to seek to establish rights to spend time or make decisions with or for a minor child not their own. 750 Ill. Comp. Stat. Ann. 5/101 et seq.

**[6] Child Custody**

⇒ Stepparents

**Child Custody**

⇒ Parties; intervention

Stepparentage, for purposes of having standing to seek visitation and an allocation of parental responsibility, requires a legal marriage, as opposed to a civil union.

**[7] Child Custody**

⇒ Stepparents

**Child Custody**

⇒ Parties; intervention

Marriage and Dissolution of Marriage Act is devoid of any reference to partners joined in civil unions when defining parties that qualify as stepparents for purposes of determining nonparent standing under the Act; omission of any reference to partners joined by civil unions in the definition of stepparents reflects legislative intent not to include civil union partners in the category of nonparents who have standing to seek visitation. 750 Ill. Comp. Stat. Ann. 5/600(1), 602.9(a)(3).

**[8] Parent and Child**

⇒ Care, Custody, and Control of Child; Child Raising

Parents have a fundamental constitutionally protected interest to make decisions concerning the care, custody, and control of their children.

**[9] Child Custody**

⇒ Right of biological parent as to third persons in general

**Child Custody**

⇒ Parties; intervention

Strictly construing and applying the restrictive language of the Marriage and Dissolution of Marriage Act regarding nonparent standing is required by the constitutionally mandated deference given to parents to determine who shall associate with and exercise control over their children. 750 Ill. Comp. Stat. Ann. 5/101 et seq.

**[10] Child Custody**

⇒ Particular Status or Relationship

**Child Custody**

⇒ Parties; intervention

Party to a civil union lacks statutory standing to bring a claim for visitation or parental responsibilities.

**[11] Child Custody**

⇒ Stepparents

**Child Custody**

⇒ Parties; intervention

Only a person who was married to a child's parent immediately prior to his or her death may be granted stepparent standing to petition for visitation and parental allocation of responsibilities under Marriage and Dissolution of Marriage Act. 750 Ill. Comp. Stat. Ann. 5/600(1), 602.9(a)(3).

**[12] Child Custody**

⇒ Stepparents

**Child Custody**

⇒ Parties; intervention

Civil union partner of child's biological father, who was deceased, did not have standing as a stepparent, under the Marriage and Dissolution of Marriage Act, to seek visitation and parental responsibilities with respect to father's child; only a person who was married to child's father immediately prior to his death could be granted stepparent standing. 750 Ill. Comp. Stat. Ann. 5/600(l), 602.9(a)(3).

**\*691** Appeal from the Circuit Court of Madison County. No. 11-D-1210, Honorable Martin J. Mengarelli, Judge, presiding.

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#### OPINION

JUSTICE CATES delivered the judgment of the court, with opinion.

**\*\*603 ¶ 1** This interlocutory appeal arises from an order of the circuit court of Madison County issued on April 3, 2017, granting the petition for leave to intervene filed by Kris Fulkerson (hereinafter Kris), intervenor-appellee. In granting the petition, the court determined that Kris had standing as a stepparent under the Illinois Marriage and Dissolution of Marriage Act (Marriage Act) (750 ILCS 5/101 *et seq.* (West 2016) ) to seek visitation with and to seek parental responsibilities of her deceased partner's child, A.S. Crystal Westmoreland (hereinafter Mother), respondent-appellant, the natural mother and surviving parent of the minor child, A.S., argued that Kris did not **\*604 \*692** have standing because she is not a stepparent of A.S., given that she was never legally married to A.S.'s father as required by the definition of stepparent under sections 600(l) ) and 602.9(a)(3) of the Marriage Act (750 ILCS 5/600(l) , 602.9(a)(3) (West 2016) ). On April 20, 2017, Mother filed a motion

to certify questions of law for interlocutory appeal and for stay of the trial court proceedings, citing the conflict between the language of the Marriage Act and the Illinois Religious Freedom Protection and Civil Union Act (Civil Union Act) (750 ILCS 75/1 *et seq.* (West 2016) ) as to whether or not, by law, a person who was joined in a civil union with a child's parent can be classified as the child's stepparent under the Marriage Act. On July 18, 2017, the circuit court entered an order staying the pending proceedings and granting Mother's motion to certify questions of law for interlocutory appeal. On August 17, 2017, Mother filed with this court an application for leave to appeal pursuant to Illinois Supreme Court Rule 308 (eff. July 1, 2017), which we granted on September 27, 2017.

**¶ 2** The marriage of Mother and Matt Sharpe (hereinafter Father) was dissolved in January of 2013. As part of the dissolution, Mother and Father agreed to a joint parenting agreement with respect to their child A.S., who was then seven years old. While the parties shared equal parenting time, A.S.'s legal residence was with Father. In November of 2013, Father entered into a civil union with Kris. A.S. continued to reside with Father and now Kris and her three children. Unfortunately, Father died on January 2, 2017. After Father's death, Mother began to deny Kris visitation with A.S. even though A.S. expressed a desire to live with Kris and her children. As a result, Kris filed a petition seeking visitation rights and an allocation of parental responsibilities with respect to A.S.

**[1] ¶ 3** The issues before us, as certified for interlocutory appeal, are whether a partner to a civil union as defined by the Civil Union Act has standing to request visitation with and parental responsibilities of his or her deceased partner's child as a stepparent under the Marriage Act. Questions of law, such as the proper interpretation of statutes, are to be reviewed *de novo*. *AT & T Teleholdings, Inc. v. Department of Revenue*, 2012 IL App (1st) 113053, ¶ 28, 368 Ill.Dec. 110, 983 N.E.2d 523.

**[2] ¶ 4** The Civil Union Act provides persons entering into civil unions with the same obligations, responsibilities, protections, and benefits afforded or recognized by the law of Illinois to those persons entering into marriages. 750 ILCS 75/5 (West 2016). The Act's passage was in part a response to the need to afford protection to same sex couples prior to the legalization of same sex marriages in Illinois, and the legislative history reflects the intent that partners joined in a civil union and married spouses generally shall share

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the same benefits and rights in relation to their respective mates. The equation of partners' rights and obligations in relation to each other does not necessarily equate civil union partners to married spouses in relation to children, however. *Cf.* 750 ILCS 5/505(a) (West 2018) (child support following dissolution of marriage or, as specifically included, civil union).

[3] [4] [5] ¶ 5 The Marriage Act specifically addresses in part the allocation of parental responsibilities, including establishing visitation with a minor child by an individual who is a nonparent of such child. Requirements of nonparent standing to seek visitation and parental allocation of responsibilities are designed to safeguard the superior right of a natural parent to make decisions for his or her child. See **\*\*605 \*693** *In re Custody of M.C.C.*, 383 Ill. App. 3d 913, 917, 323 Ill.Dec. 100, 892 N.E.2d 1092 (2008) (Illinois law clearly recognizes the superior rights of a natural parent to the care, custody, and control of his or her child). The law presumes the natural parent's right to physical custody of his or her child is superior to that of a nonparent and that it is in the best interest of the child to be raised by natural parents. *In re Custody of M.C.C.*, 383 Ill. App. 3d at 917, 323 Ill.Dec. 100, 892 N.E.2d 1092. This is the reason why the Marriage Act carves out specific exceptions delineating which nonparent individuals have standing to seek to establish rights to spend time or make decisions with or for a minor child not their own.

[6] ¶ 6 A stepparent under the Marriage Act is expressly defined as someone who is or was married to the parent, immediately prior to his or her death, of the child in question. 750 ILCS 5/600(*l* ), 602.9(a)(3). Neither of these sections mentions or includes partners to a civil union. The question therefore becomes whether stepparentage for purposes of having standing to seek visitation and an allocation of parental responsibility requires a legal marriage as opposed to a civil union partnership. Given the interest the State has in protecting the rights of the natural parent and the stringent requirements for a party to seek nonparent visitation, we conclude that the legislature intended these provisions to be narrowly defined and applied. The answer therefore is yes, stepparentage requires a legal marriage as opposed to a civil union.

¶ 7 We initially note that Kris is asking for relief under the Marriage Act, yet Kris and her former civil union partner, Father, made a conscious choice to enter into a civil union as opposed to a marriage under the Marriage Act. At all times, they had the opportunity to avail themselves of the benefits

the Marriage Act affords, but Kris and Father specifically chose not to do so.

[7] ¶ 8 More importantly, the provisions of the Marriage Act at issue here were adopted in 2016, well after Illinois began recognizing civil unions in 2011. The Marriage Act, even after the most recent amendments in 2017 and 2018, is devoid of any reference to partners joined in civil unions when defining parties that qualify as stepparents for purposes of determining nonparent standing under the Marriage Act. We agree that the omission of any reference to partners joined by civil unions in the definition of stepparents reflects a legislative intent not to include civil union partners in the category of nonparents who have standing to seek visitation.

[8] [9] [10] ¶ 9 Again, parents have a fundamental constitutionally protected interest to make decisions concerning the care, custody, and control of their children. There is no case law that completely addresses the issue of whether or not a party to a civil union is to be considered a stepparent for standing to seek visitation or allocation of parental responsibilities. Looking for guidance from similar situations of people involved in a minor child's life who were not the child's legal or biological parent, and were not married to the child's legal or biological parent, but who sought visitation or allocation of parental responsibilities with respect to a minor child, we find that the nonparent, even though they may have had a close relationship with the child, could not seek visitation or allocation of parental responsibilities, because he or she lacked standing to do so. See *In re Parentage of Scarlett Z.-D.*, 2015 IL 117904, ¶ 68, 390 Ill.Dec. 123, 28 N.E.3d 776; *In re Visitation of J.T.H.*, 2015 IL App (1st) 142384, ¶ 28, 397 Ill.Dec. 518, 42 N.E.3d 433. The underlying principles guiding these decisions dictate that nonparent standing requirements be strictly construed. Accordingly, we conclude that strictly construing and applying the **\*\*606 \*694** restrictive language of the Marriage Act regarding nonparent standing is required by the constitutionally mandated deference given to parents to determine who shall associate with, and exercise control over, their children. *In re Parentage of Scarlett Z.-D.*, 2015 IL 117904, ¶ 35, 390 Ill.Dec. 123, 28 N.E.3d 776 (standing requirement that restricts nonparents who seek to assert custodial rights over children "safeguards the superior right of parents to the care and custody of their children"). If we do not, then the substantial deference that must be accorded to parents as to who will associate with, care for, and control their children would be undermined by expanding the narrow categories of nonparents entitled to

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seek visitation and parental responsibilities beyond the plain language of the statutory definition of stepparent set forth by the Marriage Act. To allow Kris standing to request visitation with A.S. under these circumstances essentially indicates that Kris's rights under the Civil Union Act trump Mother's constitutional rights to make decisions for her own child, contrary to the express language and protections of the Marriage Act. Unless, and until, the legislature amends the statutory definition of a stepparent or expands the categories of nonparents who have standing, a party to a civil union lacks statutory standing to bring a claim for visitation or parental responsibilities.

[11] [12] ¶ 10 In summary, the plain language of sections 600(l) and 602.9(a)(3) of the Marriage Act defines a stepparent only as a person married to the child's parent; consequently, only a person who was married to a child's parent immediately prior to his or her death may be granted stepparent standing to petition for visitation and parental allocation of responsibilities. The circuit court therefore

exceeded its authority in expanding the statutory definition that governs who may and may not petition for visitation and parental rights in relation to a child and erred in issuing the order that granted Kris's petition for leave to intervene in this instance.

¶ 11 For the aforementioned reasons, we answer both certified questions for interlocutory appeal in the negative. We reverse the ruling of the circuit court of Madison County and remand for further proceedings consistent with this disposition.

¶ 12 Reversed and remanded.

Justices Welch\* and Chapman concurred in the judgment and opinion.

**All Citations**

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**Footnotes**

\* Justice Goldenhersh was originally assigned to participate in this case. Justice Welch was substituted on the panel subsequent to Justice Goldenhersh's retirement and has read the briefs and listened to the recording of oral argument.

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IN THE CIRCUIT COURT  
THIRD JUDICIAL CIRCUIT  
MADISON COUNTY, ILLINOIS

**FILED**  
JUL 18 2017

CLERK OF CIRCUIT COURT #49  
THIRD JUDICIAL CIRCUIT  
MADISON COUNTY, ILLINOIS

MATT SHARPE,	)	
	)	
Petitioner,	)	
	)	
vs.	)	Case No. 11-D-1210
	)	
CRYSTAL WESTMORELAND,	)	
	)	
Respondent,	)	
	)	
GREGG SHARPE and	)	
KRIS FULKERSON,	)	
	)	
Intervenors.	)	

ORDER

Cause called on Respondent's Motion to Certify Question of Law for Interlocutory Appeal.

Parties appear by counsel. Court having heard arguments, hereby ORDERS AS FOLLOWS:

1. That Respondent filed a Motion to Certify Question of Law for Interlocutory Appeal and for Stay of Trial Court Proceedings on April 20, 2017.
2. That this matter involves a question of law as to which there is substantial ground for difference of opinion and that an immediate appeal from the order may materially advance the ultimate termination of the litigation.
3. That Respondent's Motion to Certify Question of Law for Interlocutory Appeal and for Stay of Trial Court Proceedings is granted.
4. That the following questions are certified for Interlocutory Appeal:
  - A. Whether a party to a civil union as defined by 750 ILCS 75/10 has standing to request visitation with his or her deceased partner's child as a step-parent under 750 ILCS 5/602.9(a)(3).



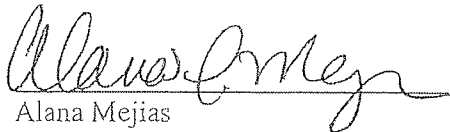
B. Whether a party to a civil union as defined by 750 ILCS 75/10 has standing to request parental responsibilities of his or her deceased partner's child as a step-parent under 750 ILCS 5/601.2(b)(4).

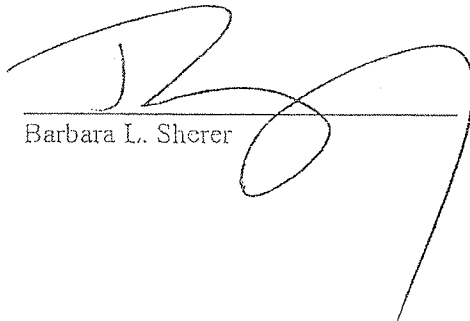
5. Proceedings stayed as to Kris Fulkerson.

6. Clerk to send copies.

ENTERED this 18<sup>th</sup> day of July, 2017.

  
Judge Mengarelli

  
Alana Mejias

  
Barbara L. Sherer

FILED

September 27, 2017

APPELLATE  
COURT CLERK

5-17-0321

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MATT SHARPE,  
Petitioner,

v.

CRYSTAL WESTMORELAND,  
Respondent-Appellant,

and,

KRIS FULKERSON,  
Intervenor-Appellee.

Madison County  
Trial Court/Agency No.: 11D1210

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ORDER

This cause coming on to be heard on respondent-appellant's application for leave to appeal pursuant to Supreme Court Rule 308, intervenor-appellee's answer thereto and the court being advised in the premises:

IT IS THEREFORE ORDERED that respondent-appellant's application for leave to appeal pursuant to Supreme Court Rule 308 is GRANTED;

IT IS FURTHER ORDERED that respondent-appellant's brief is due 35 days from the date of this order.

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**75/1. Short title, IL ST CH 750 § 75/1**

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West's Smith-Hurd Illinois Compiled Statutes Annotated Chapter 750. Families Act 75. Illinois Religious Freedom Protection and Civil Union Act
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750 ILCS 75/1

75/1. Short title

Effective: June 1, 2011

Currentness

§ 1. Short title. This Act may be cited as the Illinois Religious Freedom Protection and Civil Union Act.

**Credits**

P.A. 96-1513, § 1, eff. June 1, 2011.

750 I.L.C.S. 75/1, IL ST CH 750 § 75/1

Current through P.A. 101-591. Some statute sections may be more current, see credits for details.

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**End of Document**

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**75/5. Purposes; rules of construction, IL ST CH 750 § 75/5**

West's Smith-Hurd Illinois Compiled Statutes Annotated  
Chapter 750. Families  
Act 75. Illinois Religious Freedom Protection and Civil Union Act

750 ILCS 75/5

75/5. Purposes; rules of construction

Effective: June 1, 2011

Currentness

§ 5. Purposes; rules of construction. This Act shall be liberally construed and applied to promote its underlying purposes, which are to provide adequate procedures for the certification and registration of a civil union and provide persons entering into a civil union with the obligations, responsibilities, protections, and benefits afforded or recognized by the law of Illinois to spouses.

**Credits**

P.A. 96-1513, § 5, eff. June 1, 2011.

Notes of Decisions (2)

750 I.L.C.S. 75/5, IL ST CH 750 § 75/5

Current through P.A. 101-591. Some statute sections may be more current, see credits for details.

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West's Smith-Hurd Illinois Compiled Statutes Annotated  
 Chapter 750. Families  
 Act 75. Illinois Religious Freedom Protection and Civil Union Act

750 ILCS 75/10

75/10. Definitions

Effective: June 1, 2011

Currentness

§ 10. Definitions. As used in this Act:

“Certificate” means a document that certifies that the persons named on the certificate have established a civil union in this State in compliance with this Act.

“Civil union” means a legal relationship between 2 persons, of either the same or opposite sex, established pursuant to this Act.

“Department” means the Department of Public Health.

“Officiant” means the person authorized to certify a civil union in accordance with Section 40.

“Party to a civil union” means a person who has established a civil union pursuant to this Act. “Party to a civil union” means, and shall be included in, any definition or use of the terms “spouse”, “family”, “immediate family”, “dependent”, “next of kin”, and other terms that denote the spousal relationship, as those terms are used throughout the law.

#### Credits

P.A. 96-1513, § 10, eff. June 1, 2011.

Notes of Decisions (1)

750 I.L.C.S. 75/10, IL ST CH 750 § 75/10

Current through P.A. 101-591. Some statute sections may be more current, see credits for details.

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**75/15. Religious freedom, IL ST CH 750 § 75/15**

West's Smith-Hurd Illinois Compiled Statutes Annotated  
Chapter 750. Families  
Act 75. Illinois Religious Freedom Protection and Civil Union Act

750 ILCS 75/15

75/15. Religious freedom

Effective: June 1, 2011

Currentness

§ 15. Religious freedom. Nothing in this Act shall interfere with or regulate the religious practice of any religious body. Any religious body, Indian Nation or Tribe or Native Group is free to choose whether or not to solemnize or officiate a civil union.

**Credits**

P.A. 96-1513, § 15, eff. June 1, 2011.

750 I.L.C.S. 75/15, IL ST CH 750 § 75/15

Current through P.A. 101-591. Some statute sections may be more current, see credits for details.

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**75/20. Protections, obligations, and responsibilities, IL ST CH 750 § 75/20**

West's Smith-Hurd Illinois Compiled Statutes Annotated  
Chapter 750. Families  
Act 75. Illinois Religious Freedom Protection and Civil Union Act

750 ILCS 75/20

**75/20. Protections, obligations, and responsibilities**

Effective: June 1, 2011

Currentness

§ 20. Protections, obligations, and responsibilities. A party to a civil union is entitled to the same legal obligations, responsibilities, protections, and benefits as are afforded or recognized by the law of Illinois to spouses, whether they derive from statute, administrative rule, policy, common law, or any other source of civil or criminal law.

**Credits**

P.A. 96-1513, § 20, eff. June 1, 2011.

**Notes of Decisions (1)**

750 I.L.C.S. 75/20, IL ST CH 750 § 75/20

Current through P.A. 101-591. Some statute sections may be more current, see credits for details.

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## 75/25. Prohibited civil unions, IL ST CH 750 § 75/25

West's Smith-Hurd Illinois Compiled Statutes Annotated  
Chapter 750. Families  
Act 75. Illinois Religious Freedom Protection and Civil Union Act

750 ILCS 75/25

75/25. Prohibited civil unions

Effective: July 16, 2014

Currentness

§ 25. Prohibited civil unions. The following civil unions are prohibited:

- (1) a civil union entered into prior to both parties attaining 18 years of age;
- (2) a civil union entered into prior to the dissolution of a marriage or civil union or substantially similar legal relationship of one of the parties;
- (3) a civil union between an ancestor and a descendant or between siblings whether the relationship is by the half or the whole blood or by adoption;
- (4) a civil union between an aunt or uncle and a niece or nephew, whether the relationship is by the half or the whole blood or by adoption; and
- (5) a civil union between first cousins.

**Credits**

P.A. 96-1513, § 25, eff. June 1, 2011. Amended by P.A. 98-756, § 755, eff. July 16, 2014.

750 I.L.C.S. 75/25, IL ST CH 750 § 75/25

Current through P.A. 101-591. Some statute sections may be more current, see credits for details.

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## 75/30. Application, license, and certification, IL ST CH 750 § 75/30

West's Smith-Hurd Illinois Compiled Statutes Annotated

Chapter 750. Families

Act 75. Illinois Religious Freedom Protection and Civil Union Act

750 ILCS 75/30

75/30. Application, license, and certification

Effective: June 1, 2011

Currentness

§ 30. Application, license, and certification.

(a) The Director of Public Health shall prescribe the form for an application, license, and certificate for a civil union.

(b) An application for a civil union shall include the following information:

(1) name, sex, occupation, address, social security number, date and place of birth of each party to the civil union;

(2) name and address of the parents or guardian of each party;

(3) whether the parties are related to each other and, if so, their relationship; and

(4) in the event either party was previously married or entered into a civil union or a substantially similar legal relationship, provide the name, date, place and the court in which the marriage or civil union or substantially similar legal relationship was dissolved or declared invalid or the date and place of death of the former spouse or of the party to the civil union or substantially similar legal relationship.

(c) When an application has been completed and signed by both parties, applicable fees have been paid, and both parties have appeared before the county clerk, the county clerk shall issue a license and a certificate of civil union upon being furnished satisfactory proof that the civil union is not prohibited.

(d) A license becomes effective in the county where it was issued one day after the date of issuance, and expires 60 days after it becomes effective.

(e) The certificate must be completed and returned to the county clerk that issued the license within 10 days of the civil union.

(f) A copy of the completed certificate from the county clerk or the return provided to the Department of Public Health by a county clerk shall be presumptive evidence of the civil union in all courts.

**75/30. Application, license, and certification, IL ST CH 750 § 75/30**

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**Credits**

P.A. 96-1513, § 30, eff. June 1, 2011.

750 I.L.C.S. 75/30, IL ST CH 750 § 75/30

Current through P.A. 101-591. Some statute sections may be more current, see credits for details.

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West's Smith-Hurd Illinois Compiled Statutes Annotated  
Chapter 750. Families  
Act 75. Illinois Religious Freedom Protection and Civil Union Act

## 750 ILCS 75/35

## 75/35. Duties of the county clerk

Effective: June 1, 2011  
Currentness

## § 35. Duties of the county clerk.

(a) Before issuing a civil union license to a person who resides and intends to continue to reside in another state, the county clerk shall satisfy himself or herself by requiring affidavits or otherwise that the person is not prohibited from entering into a civil union or substantially similar legal relationship by the laws of the jurisdiction where he or she resides.

(b) Upon receipt of the certificate, the county clerk shall notify the Department of Public Health within 45 days. The county clerk shall provide the Department of Public Health with a return on a form furnished by the Department of Public Health and shall substantially consist of the following items:

(1) a copy of the application signed and attested to by the applicants, except that in any county in which the information provided in a civil union application is entered into a computer, the county clerk may submit a computer copy of the information without the signatures and attestations of the applicants;

(2) the license number;

(3) a copy of the certificate; and

(4) the date and location of the civil union.

(c) Each month, the county clerk shall report to the Department of Public Health the total number of civil union applications, licenses, and certificates filed during the month.

(d) Any official issuing a license with knowledge that the parties are thus prohibited from entering into a civil union shall be guilty of a petty offense.

**Credits**

P.A. 96-1513, § 35, eff. June 1, 2011.

**75/35. Duties of the county clerk, IL ST CH 750 § 75/35**

750 I.L.C.S. 75/35, IL ST CH 750 § 75/35

Current through P.A. 101-591. Some statute sections may be more current, see credits for details.

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## 75/40. Certification, IL ST CH 750 § 75/40

West's Smith-Hurd Illinois Compiled Statutes Annotated  
 Chapter 750. Families  
 Act 75. Illinois Religious Freedom Protection and Civil Union Act

750 ILCS 75/40

75/40. Certification

Effective: June 1, 2011

Currentness

§ 40. Certification. A civil union may be certified: by a judge of a court of record; by a retired judge of a court of record, unless the retired judge was removed from office by the Judicial Inquiry Board, except that a retired judge shall not receive any compensation from the State, a county, or any unit of local government in return for the solemnization of a civil union and there shall be no effect upon any pension benefits conferred by the Judges Retirement System of Illinois; by a judge of the Court of Claims; by a county clerk in counties having 2,000,000 or more inhabitants; by a public official whose powers include solemnization of marriages; or in accordance with the prescriptions of any religious denomination, Indian Nation or Tribe or Native Group, provided that when such prescriptions require an officiant, the officiant be in good standing with his or her religious denomination, Indian Nation or Tribe or Native Group. The person performing a civil union shall complete the certificate and forward it to the county clerk within 10 days after a civil union.

**Credits**

P.A. 96-1513, § 40, eff. June 1, 2011.

750 I.L.C.S. 75/40, IL ST CH 750 § 75/40

Current through P.A. 101-591. Some statute sections may be more current, see credits for details.

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## 75/45. Dissolution; declaration of invalidity, IL ST CH 750 § 75/45

West's Smith-Hurd Illinois Compiled Statutes Annotated  
Chapter 750. Families  
Act 75. Illinois Religious Freedom Protection and Civil Union Act

750 ILCS 75/45

75/45. Dissolution; declaration of invalidity

Effective: June 1, 2011

Currentness

§ 45. Dissolution; declaration of invalidity. Any person who enters into a civil union in Illinois consents to the jurisdiction of the courts of Illinois for the purpose of any action relating to a civil union even if one or both parties cease to reside in this State. A court shall enter a judgment of dissolution of a civil union if at the time the action is commenced it meets the grounds for dissolution set forth in Section 401 of the Illinois Marriage and Dissolution of Marriage Act. The provisions of Sections 401 through 413 of the Illinois Marriage and Dissolution of Marriage Act shall apply to a dissolution of a civil union. The provisions of Sections 301 through 306 of the Illinois Marriage and Dissolution of Marriage Act shall apply to the declaration of invalidity of a civil union.

**Credits**

P.A. 96-1513, § 45, eff. June 1, 2011.

750 I.L.C.S. 75/45, IL ST CH 750 § 75/45

Current through P.A. 101-591. Some statute sections may be more current, see credits for details.

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**75/50. Application of the Civil Practice Law, IL ST CH 750 § 75/50**

West's Smith-Hurd Illinois Compiled Statutes Annotated  
 Chapter 750. Families  
 Act 75. Illinois Religious Freedom Protection and Civil Union Act

750 ILCS 75/50

**75/50. Application of the Civil Practice Law**

Effective: June 1, 2011

Currentness

§ 50. Application of the Civil Practice Law. The provisions of the Civil Practice Law shall apply to all proceedings under this Act, except as otherwise provided in this Act. A proceeding for dissolution of a civil union or declaration of invalidity of a civil union shall be entitled "In re the Civil Union of ... and ...". The initial pleading in all proceedings under this Act shall be denominated a petition. A responsive pleading shall be denominated a response. All other pleadings under this Act shall be denominated as provided in the Civil Practice Law.

**Credits**

P.A. 96-1513, § 50, eff. June 1, 2011.

750 I.L.C.S. 75/50, IL ST CH 750 § 75/50

Current through P.A. 101-591. Some statute sections may be more current, see credits for details.

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## 75/55. Venue, IL ST CH 750 § 75/55

West's Smith-Hurd Illinois Compiled Statutes Annotated  
Chapter 750. Families  
Act 75. Illinois Religious Freedom Protection and Civil Union Act

750 ILCS 75/55

75/55. Venue

Effective: June 1, 2011

Currentness

§ 55. Venue. The proceedings shall be had in the county where the petitioner or respondent resides or where the parties' certificate of civil union was issued, except as otherwise provided herein, but process may be directed to any county in the State. Objection to venue is barred if not made within such time as the respondent's response is due. In no event shall venue be deemed jurisdictional.

**Credits**

P.A. 96-1513, § 55, eff. June 1, 2011.

750 I.L.C.S. 75/55, IL ST CH 750 § 75/55

Current through P.A. 101-591. Some statute sections may be more current, see credits for details.

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## 75/60. Respect for marriages and civil unions entered into in..., IL ST CH 750 § 75/60

West's Smith-Hurd Illinois Compiled Statutes Annotated  
Chapter 750. Families  
Act 75. Illinois Religious Freedom Protection and Civil Union Act

## 750 ILCS 75/60

## 75/60. Respect for marriages and civil unions entered into in other jurisdictions

Effective: June 1, 2014

Currentness

§ 60. Respect for marriages and civil unions entered into in other jurisdictions. A civil union, or a substantially similar legal relationship other than common law marriage, legally entered into in another jurisdiction, shall be recognized in Illinois as a civil union. A marriage, whether of the same sex or different sexes and providing that it is not a common law marriage, legally entered into in another jurisdiction, shall be recognized in this State as a marriage in accordance with the provisions of the Illinois Marriage and Dissolution of Marriage Act, except that Section 216 of the Illinois Marriage and Dissolution of Marriage Act shall not apply to marriages of same-sex couples validly entered into in another jurisdiction.

**Credits**

P.A. 96-1513, § 60, eff. June 1, 2011. Amended by P.A. 98-597, § 915, eff. June 1, 2014.

## Notes of Decisions (1)

750 I.L.C.S. 75/60, IL ST CH 750 § 75/60

Current through P.A. 101-591. Some statute sections may be more current, see credits for details.

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## 75/65. Voluntary conversion of civil union to marriage, IL ST CH 750 § 75/65

West's Smith-Hurd Illinois Compiled Statutes Annotated  
 Chapter 750. Families  
 Act 75. Illinois Religious Freedom Protection and Civil Union Act

750 ILCS 75/65

## 75/65. Voluntary conversion of civil union to marriage

Effective: June 1, 2014

Currentness

## § 65. Voluntary conversion of civil union to marriage.

(a) Parties to a civil union may apply for and receive a marriage license and have the marriage solemnized and registered under Section 209 of the Illinois Marriage and Dissolution of Marriage Act, provided the parties are otherwise eligible to marry and the parties to the marriage are the same as the parties to the civil union. The fee for application for a marriage license shall be waived in such circumstances.

(b) For a period of one year following the effective date of this amendatory Act of the 98th General Assembly, parties to a civil union may have their civil union legally designated and recorded as a marriage, deemed effective on the date of solemnization of the civil union, without payment of any fee, provided the parties' civil union has not been dissolved and there is no pending proceeding to dissolve the civil union. Upon application to a county clerk, the parties shall be issued a marriage certificate. The parties' signatures on the marriage certificate and return of the signed certificate for recording shall be sufficient to convert the civil union into a marriage. The county clerk shall notify the Department of Public Health within 45 days by furnishing a copy of the certificate to the Department of Public Health.

(c) When parties to a civil union have married, or when their civil union has been converted to a marriage under this Section, the parties, as of the date stated on the marriage certificate, shall no longer be considered in a civil union, but rather shall be in a legal marriage.

**Credits**

P.A. 96-1513, § 65, added by P.A. 98-597, § 915, eff. June 1, 2014.

750 I.L.C.S. 75/65, IL ST CH 750 § 75/65

Current through P.A. 101-591. Some statute sections may be more current, see credits for details.

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**75/90. Severability, IL ST CH 750 § 75/90**

West's Smith-Hurd Illinois Compiled Statutes Annotated  
Chapter 750. Families  
Act 75. Illinois Religious Freedom Protection and Civil Union Act

750 ILCS 75/90

75/90. Severability

Effective: June 1, 2011

Currentness

§ 90. Severability. If any part of this Act or its application to any person or circumstance is adjudged invalid, the adjudication or application shall not affect the validity of this Act as a whole or of any other part.

**Credits**

P.A. 96-1513, § 90, eff. June 1, 2011.

750 I.L.C.S. 75/90, IL ST CH 750 § 75/90

Current through P.A. 101-591. Some statute sections may be more current, see credits for details.

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KeyCite Yellow Flag - Negative Treatment  
Proposed Legislation

West's Smith-Hurd Illinois Compiled Statutes Annotated  
Chapter 750. Families  
Act 5. Illinois Marriage and Dissolution of Marriage Act (Refs & Annos)  
Part VI. Allocation of Parental Responsibilities (Refs & Annos)

750 ILCS 5/600

5/600. Definitions

Effective: January 1, 2017  
Currentness

§ 600. Definitions. For purposes of this Part VI:

(a) "Abuse" has the meaning ascribed to that term in Section 103 of the Illinois Domestic Violence Act of 1986.<sup>1</sup>

(b) "Allocation judgment" means a judgment allocating parental responsibilities.

(c) "Caretaking functions" means tasks that involve interaction with a child or that direct, arrange, and supervise the interaction with and care of a child provided by others, or for obtaining the resources allowing for the provision of these functions. The term includes, but is not limited to, the following:

(1) satisfying a child's nutritional needs; managing a child's bedtime and wake-up routines; caring for a child when the child is sick or injured; being attentive to a child's personal hygiene needs, including washing, grooming, and dressing; playing with a child and ensuring the child attends scheduled extracurricular activities; protecting a child's physical safety; and providing transportation for a child;

(2) directing a child's various developmental needs, including the acquisition of motor and language skills, toilet training, self-confidence, and maturation;

(3) providing discipline, giving instruction in manners, assigning and supervising chores, and performing other tasks that attend to a child's needs for behavioral control and self-restraint;

(4) ensuring the child attends school, including remedial and special services appropriate to the child's needs and interests, communicating with teachers and counselors, and supervising homework;

(5) helping a child develop and maintain appropriate interpersonal relationships with peers, siblings, and other family members;

- (6) ensuring the child attends medical appointments and is available for medical follow-up and meeting the medical needs of the child in the home;
- (7) providing moral and ethical guidance for a child; and
- (8) arranging alternative care for a child by a family member, babysitter, or other child care provider or facility, including investigating such alternatives, communicating with providers, and supervising such care.
- (d) "Parental responsibilities" means both parenting time and significant decision-making responsibilities with respect to a child.
- (e) "Parenting time" means the time during which a parent is responsible for exercising caretaking functions and non-significant decision-making responsibilities with respect to the child.
- (f) "Parenting plan" means a written agreement that allocates significant decision-making responsibilities, parenting time, or both.
- (g) "Relocation" means:
- (1) a change of residence from the child's current primary residence located in the county of Cook, DuPage, Kane, Lake, McHenry, or Will to a new residence within this State that is more than 25 miles from the child's current residence, as measured by an Internet mapping service;
  - (2) a change of residence from the child's current primary residence located in a county not listed in paragraph (1) to a new residence within this State that is more than 50 miles from the child's current primary residence, as measured by an Internet mapping service; or
  - (3) a change of residence from the child's current primary residence to a residence outside the borders of this State that is more than 25 miles from the current primary residence, as measured by an Internet mapping service.
- (h) "Religious upbringing" means the choice of religion or denomination of a religion, religious schooling, religious training, or participation in religious customs or practices.
- (i) "Restriction of parenting time" means any limitation or condition placed on parenting time, including supervision.
- (j) "Right of first refusal" has the meaning provided in subsection (b) of Section 602.3 of this Act.
- (k) "Significant decision-making" means deciding issues of long-term importance in the life of a child.

**5/600. Definitions, IL ST CH 750 § 5/600**

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(l) "Step-parent" means a person married to a child's parent, including a person married to the child's parent immediately prior to the parent's death.

(m) "Supervision" means the presence of a third party during a parent's exercise of parenting time.

**Credits**

P.A. 80-923, § 600, added by P.A. 99-90, § 5-15, eff. Jan. 1, 2016. Amended by P.A. 99-763, § 5, eff. Jan. 1, 2017.

**Notes of Decisions (3)****Footnotes**

1 750 ILCS 60/103.

750 I.L.C.S. 5/600, IL ST CH 750 § 5/600

Current through P.A. 101-591. Some statute sections may be more current, see credits for details.

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## 5/601.2. Jurisdiction; commencement of proceeding, IL ST CH 750 § 5/601.2

West's Smith-Hurd Illinois Compiled Statutes Annotated  
 Chapter 750. Families  
 Act 5. Illinois Marriage and Dissolution of Marriage Act (Refs & Annos)  
 Part VI. Allocation of Parental Responsibilities (Refs & Annos)

## 750 ILCS 5/601.2

## 5/601.2. Jurisdiction; commencement of proceeding

Effective: January 1, 2016  
 Currentness

§ 601.2. Jurisdiction; commencement of proceeding.

(a) A court of this State that is competent to allocate parental responsibilities has jurisdiction to make such an allocation in original or modification proceedings as provided in Section 201 of the Uniform Child-Custody Jurisdiction and Enforcement Act as adopted by this State.

(b) A proceeding for allocation of parental responsibilities with respect to a child is commenced in the court:

(1) by filing a petition for dissolution of marriage or legal separation or declaration of invalidity of marriage;

(2) by filing a petition for allocation of parental responsibilities with respect to the child in the county in which the child resides;

(3) by a person other than a parent, by filing a petition for allocation of parental responsibilities in the county in which the child is permanently resident or found, but only if he or she is not in the physical custody of one of his or her parents;

(4) by a step-parent, by filing a petition, if all of the following circumstances are met:

(A) the parent having the majority of parenting time is deceased or is disabled and cannot perform the duties of a parent to the child;

(B) the step-parent provided for the care, control, and welfare of the child prior to the initiation of proceedings for allocation of parental responsibilities;

(C) the child wishes to live with the step-parent; and

(D) it is alleged to be in the best interests and welfare of the child to live with the step-parent as provided in Section 602.5 of this Act; or



**5/601.2. Jurisdiction; commencement of proceeding, IL ST CH 750 § 5/601.2**

(5) when one of the parents is deceased, by a grandparent who is a parent or step-parent of a deceased parent, by filing a petition, if one or more of the following existed at the time of the parent's death:

(A) the surviving parent had been absent from the marital abode for more than one month without the spouse knowing his or her whereabouts;

(B) the surviving parent was in State or federal custody; or

(C) the surviving parent had: (i) received supervision for or been convicted of any violation of Section 11-1.20, 11-1.30, 11-1.40, 11-1.50, 11-1.60, 11-1.70, 12C-5, 12C-10, 12C-35, 12C-40, 12C-45, 18-6, 19-6, or Article 12 of the Criminal Code of 1961 or the Criminal Code of 2012<sup>1</sup> directed towards the deceased parent or the child; or (ii) received supervision or been convicted of violating an order of protection entered under Section 217, 218, or 219 of the Illinois Domestic Violence Act of 1986<sup>2</sup> for the protection of the deceased parent or the child.

(c) When a proceeding for allocation of parental responsibilities is commenced, the party commencing the action must, at least 30 days before any hearing on the petition, serve a written notice and a copy of the petition on the child's parent, guardian, person currently allocated parental responsibilities pursuant to subdivision (b)(4) or (b)(5) of Section 601.2, and any person with a pending motion for allocation of parental responsibilities with respect to the child. Nothing in this Section shall preclude a party in a proceeding for allocation of parental responsibilities from moving for a temporary order under Section 603.5.

**Credits**

P.A. 80-923, § 601.2, added by P.A. 99-90, § 5-15, eff. Jan. 1, 2016.

Notes of Decisions (360)

**Footnotes**

<sup>1</sup> 720 ILCS 5/12-0.1 et seq.

<sup>2</sup> 750 ILCS 60/217, 750 ILCS 60/218, 750 ILCS 60/219.

750 I.L.C.S. 5/601.2, IL ST CH 750 § 5/601.2

Current through P.A. 101-591. Some statute sections may be more current, see credits for details.

## 5/602.9. Visitation by certain non-parents, IL ST CH 750 § 5/602.9

KeyCite Yellow Flag - Negative Treatment  
Proposed Legislation

West's Smith-Hurd Illinois Compiled Statutes Annotated  
Chapter 750. Families  
Act 5. Illinois Marriage and Dissolution of Marriage Act (Refs & Annos)  
Part VI. Allocation of Parental Responsibilities (Refs & Annos)

750 ILCS 5/602.9

5/602.9. Visitation by certain non-parents

Effective: January 1, 2019  
Currentness

§ 602.9. Visitation by certain non-parents.

(a) As used in this Section:

(1) "electronic communication" means time that a grandparent, great-grandparent, sibling, or step-parent spends with a child during which the child is not in the person's actual physical custody, but which is facilitated by the use of communication tools such as the telephone, electronic mail, instant messaging, video conferencing or other wired or wireless technologies via the Internet, or another medium of communication;

(2) "sibling" means a brother or sister either of the whole blood or the half blood, stepbrother, or stepsister of the minor child;

(3) "step-parent" means a person married to a child's parent, including a person married to the child's parent immediately prior to the parent's death; and

(4) "visitation" means in-person time spent between a child and the child's grandparent, great-grandparent, sibling, step-parent, or any person designated under subsection (d) of Section 602.7. In appropriate circumstances, visitation may include electronic communication under conditions and at times determined by the court.

(b) General provisions.

(1) An appropriate person, as identified in subsection (c) of this Section, may bring an action in circuit court by petition, or by filing a petition in a pending dissolution proceeding or any other proceeding that involves parental responsibilities or visitation issues regarding the child, requesting visitation with the child pursuant to this Section. If there is not a pending proceeding involving parental responsibilities or visitation with the child, the petition for visitation with the child must be filed in the county in which the child resides. Notice of the petition shall be given as provided in subsection (c) of Section 601.2 of this Act.

**5/602.9. Visitation by certain non-parents, IL ST CH 750 § 5/602.9**

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(2) This Section does not apply to a child:

(A) in whose interests a petition is pending under Section 2-13 of the Juvenile Court Act of 1987<sup>1</sup>; or

(B) in whose interests a petition to adopt by an unrelated person is pending under the Adoption Act; or

(C) who has been voluntarily surrendered by the parent or parents, except for a surrender to the Department of Children and Family Services or a foster care facility; or

(D) who has been previously adopted by an individual or individuals who are not related to the biological parents of the child or who is the subject of a pending adoption petition by an individual or individuals who are not related to the biological parents of the child; or

(E) who has been relinquished pursuant to the Abandoned Newborn Infant Protection Act.

(3) A petition for visitation may be filed under this Section only if there has been an unreasonable denial of visitation by a parent and the denial has caused the child undue mental, physical, or emotional harm.

(4) There is a rebuttable presumption that a fit parent's actions and decisions regarding grandparent, great-grandparent, sibling, or step-parent visitation are not harmful to the child's mental, physical, or emotional health. The burden is on the party filing a petition under this Section to prove that the parent's actions and decisions regarding visitation will cause undue harm to the child's mental, physical, or emotional health.

(5) In determining whether to grant visitation, the court shall consider the following:

(A) the wishes of the child, taking into account the child's maturity and ability to express reasoned and independent preferences as to visitation;

(B) the mental and physical health of the child;

(C) the mental and physical health of the grandparent, great-grandparent, sibling, or step-parent;

(D) the length and quality of the prior relationship between the child and the grandparent, great-grandparent, sibling, or step-parent;

(E) the good faith of the party in filing the petition;

(F) the good faith of the person denying visitation;

(G) the quantity of the visitation time requested and the potential adverse impact that visitation would have on the child's customary activities;

(H) any other fact that establishes that the loss of the relationship between the petitioner and the child is likely to unduly harm the child's mental, physical, or emotional health; and

(I) whether visitation can be structured in a way to minimize the child's exposure to conflicts between the adults.

(6) Any visitation rights granted under this Section before the filing of a petition for adoption of the child shall automatically terminate by operation of law upon the entry of an order terminating parental rights or granting the adoption of the child, whichever is earlier. If the person or persons who adopted the child are related to the child, as defined by Section 1 of the Adoption Act, any person who was related to the child as grandparent, great-grandparent, or sibling prior to the adoption shall have standing to bring an action under this Section requesting visitation with the child.

(7) The court may order visitation rights for the grandparent, great-grandparent, sibling, or step-parent that include reasonable access without requiring overnight or possessory visitation.

(c) Visitation by grandparents, great-grandparents, step-parents, and siblings.

(1) Grandparents, great-grandparents, step-parents, and siblings of a minor child who is one year old or older may bring a petition for visitation and electronic communication under this Section if there is an unreasonable denial of visitation by a parent that causes undue mental, physical, or emotional harm to the child and if at least one of the following conditions exists:

(A) the child's other parent is deceased or has been missing for at least 90 days. For the purposes of this subsection a parent is considered to be missing if the parent's location has not been determined and the parent has been reported as missing to a law enforcement agency; or

(B) a parent of the child is incompetent as a matter of law; or

(C) a parent has been incarcerated in jail or prison for a period in excess of 90 days immediately prior to the filing of the petition; or

(D) the child's parents have been granted a dissolution of marriage or have been legally separated from each other or there is pending a dissolution proceeding involving a parent of the child or another court proceeding involving parental responsibilities or visitation of the child (other than an adoption proceeding of an unrelated child, a proceeding under Article II of the Juvenile Court Act of 1987, or an action for an order of protection under the Illinois Domestic Violence Act of 1986 or Article 112A of the Code of Criminal Procedure of 1963) and at least one parent does not object to the grandparent, great-grandparent, step-parent, or sibling having visitation with the child. The visitation of the grandparent, great-grandparent, step-parent, or sibling must not diminish the parenting time of the parent who is not related to the grandparent, great-grandparent, step-parent, or sibling seeking visitation; or

(E)(i) the child is born to parents who are not married to each other; (ii) the parents are not living together; (iii) the petitioner is a grandparent, great-grandparent, step-parent, or sibling of the child; and (iv) the parent-child relationship has been legally established. For purposes of this subdivision (E), if the petitioner is a grandparent or great-grandparent, the parent-child relationship need be legally established only with respect to the parent who is related to the grandparent or great-grandparent. For purposes of this subdivision (E), if the petitioner is a step-parent, the parent-child relationship need be legally established only with respect to the parent who is married to the petitioner or was married to the petitioner immediately before the parent's death.

(2) In addition to the factors set forth in subdivision (b)(5) of this Section, the court should consider:

(A) whether the child resided with the petitioner for at least 6 consecutive months with or without a parent present;

(B) whether the child had frequent and regular contact or visitation with the petitioner for at least 12 consecutive months; and

(C) whether the grandparent, great-grandparent, sibling, or step-parent was a primary caretaker of the child for a period of not less than 6 consecutive months within the 24-month period immediately preceding the commencement of the proceeding.

(3) An order granting visitation privileges under this Section is subject to subsections (c) and (d) of Section 603.10.

(4) A petition for visitation privileges may not be filed pursuant to this subsection (c) by the parents or grandparents of a parent of the child if parentage between the child and the related parent has not been legally established.

(d) Modification of visitation orders.

(1) Unless by stipulation of the parties, no motion to modify a grandparent, great-grandparent, sibling, or step-parent visitation order may be made earlier than 2 years after the date the order was filed, unless the court permits it to be made on the basis of affidavits that there is reason to believe the child's present environment may endanger seriously the child's mental, physical, or emotional health.

(2) The court shall not modify an order that grants visitation to a grandparent, great-grandparent, sibling, or step-parent unless it finds by clear and convincing evidence, upon the basis of facts that have arisen since the prior visitation order or that were unknown to the court at the time of entry of the prior visitation order, that a change has occurred in the circumstances of the child or his or her parent, and that the modification is necessary to protect the mental, physical, or emotional health of the child. The court shall state in its decision specific findings of fact in support of its modification or termination of the grandparent, great-grandparent, sibling, or step-parent visitation. A child's parent may always petition to modify visitation upon changed circumstances when necessary to promote the child's best interests.

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(3) Notice of a motion requesting modification of a visitation order shall be provided as set forth in subsection (c) of Section 601.2 of this Act.

(4) Attorney's fees and costs shall be assessed against a party seeking modification of the visitation order if the court finds that the modification action is vexatious and constitutes harassment.

(e) No child's grandparent, great-grandparent, sibling, or step-parent, or any person to whom the court is considering granting visitation privileges pursuant to subsection (d) of Section 602.7, who was convicted of any offense involving an illegal sex act perpetrated upon a victim less than 18 years of age including, but not limited to, offenses for violations of Section 11-1.20, 11-1.30, 11-1.40, 11-1.50, 11-1.60, 11-1.70, or Article 12 of the Criminal Code of 1961 or the Criminal Code of 2012,<sup>2</sup> is entitled to visitation while incarcerated or while on parole, probation, conditional discharge, periodic imprisonment, or mandatory supervised release for that offense, and upon discharge from incarceration for a misdemeanor offense or upon discharge from parole, probation, conditional discharge, periodic imprisonment, or mandatory supervised release for a felony offense. Visitation shall be denied until the person successfully completes a treatment program approved by the court. Upon completion of treatment, the court may deny visitation based on the factors listed in subdivision (b)(5) of this Section.

(f) No child's grandparent, great-grandparent, sibling, or step-parent, or any person to whom the court is considering granting visitation privileges pursuant to subsection (d) of Section 602.7, may be granted visitation if he or she has been convicted of first degree murder of a parent, grandparent, great-grandparent, or sibling of the child who is the subject of the visitation request. Pursuant to a motion to modify visitation, the court shall revoke visitation rights previously granted to any person who would otherwise be entitled to petition for visitation rights under this Section or granted visitation under subsection (d) of Section 602.7, if the person has been convicted of first degree murder of a parent, grandparent, great-grandparent, or sibling of the child who is the subject of the visitation order. Until an order is entered pursuant to this subsection, no person may visit, with the child present, a person who has been convicted of first degree murder of the parent, grandparent, great-grandparent, or sibling of the child without the consent of the child's parent, other than a parent convicted of first degree murder as set forth herein, or legal guardian.

**Credits**

P.A. 80-923, § 602.9, added by P.A. 99-90, § 5-15, eff. Jan. 1, 2016. Amended by P.A. 99-763, § 5, eff. Jan. 1, 2017; P.A. 100-706, § 5, eff. Jan. 1, 2019.

Notes of Decisions (449)

**Footnotes**

<sup>1</sup> 705 ILCS 405/2-13.

<sup>2</sup> 720 ILCS 5/12-0.1 et seq.

750 I.L.C.S. 5/602.9, IL ST CH 750 § 5/602.9

Current through P.A. 101-591. Some statute sections may be more current, see credits for details.



in the above-captioned case with the Clerk of the Supreme Court of Illinois using OdysseyIL eFile. A copy is hereby served upon you.

Dated: December 4, 2019

Respectfully submitted,

/s/ Michael Scodro

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**CERTIFICATE OF FILING AND SERVICE**

I, Michael Scodro, an attorney, hereby certify that on December 4, 2019, I caused a **Notice of Filing** and the **Brief of Intervenor-Petitioner-Appellant Kris Fulkerson** to be electronically filed with the Clerk of the Supreme Court of Illinois by using the Odyssey eFileIL system. I further certify that I will cause one copy of the above-named filings to be served upon counsel listed below via electronic mail on December 4, 2019.

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Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct.

/s/ Michael Scodro

*Counsel for Intervenor-Petitioner-  
Appellant Kris Fulkerson*