
Cahill Represents Amicus Sanctuary for Families in Groundbreaking Appeal Expanding the Definition of Parent

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On August 30, 2016, the New York State Court of Appeals ruled in *Brooke S.B. v. Elizabeth A. C.C.*, that a partner who shows by clear and convincing evidence that she and her partner “agreed to conceive a child and raise the child together” has standing to seek visitation and custody under New York’s Domestic Relations Law, even if she is not the child’s biological or adoptive parent. The decision was a groundbreaking departure from 25 years of precedent under which partners in same-sex couples who were not the biological or adoptive parent of a child lacked standing to seek custody or visitation after the couple’s relationship ended.

Cahill represented Sanctuary for Families as amicus curiae in the appeal. Sanctuary, together with a number of other organizations who joined the amicus brief, urged the Court to recognize as a parent a partner who “can show by clear and convincing evidence that she and her partner jointly planned and explicitly agreed to the conception of a child with the intention of raising the child as co-parents.” Sanctuary also cautioned against the adoption of a broad “functional” parentage test advocated by others. Drawing on its experience as a leading advocate for survivors of domestic violence, Sanctuary argued that an overly broad definition of parent would open the door for those with subsequent, temporary relationships with a child – including perpetrators of domestic violence—to assert parental rights over the objection of a child’s legal parents and could put vulnerable parents at risk of unknowingly waiving their exclusive parental rights.

In holding that a partner who “proves by clear and convincing evidence that he or she has agreed with the biological parent of a child to conceive and raise the child as co-parents” has standing as a parent under New York’s Domestic Relations Law, the Court applied the standard urged by Sanctuary and its co-*amici* to “ensure equality for same-sex parents.” The Court also recognized the importance of “protect[ing] the substantial and fundamental right of biological or adoptive parents to control the upbringing of their children,” which “mandates caution in expanding the definition” of parent and “makes the element of consent critical.” The Court thus did not adopt the broader “functional” or “de-facto parent” standard that had been urged by others in the appeal.