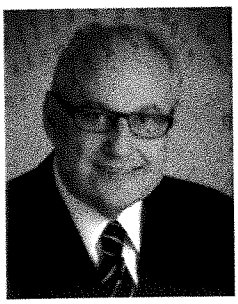
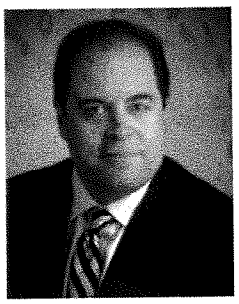

Professor Lex

By Harvey I. Hauer and Mark A. Snover
Hauer & Snover

Dear Professor Lex,

I have a friend who was in a same-sex relationship for several years. She and her partner recently married. My friend's partner, prior to their marriage, had adopted a child who is now 18 months old. The child was raised by both partners until my friend's partner moved out of their house and took the child with her. She does not permit my friend to have any contact with the child. My friend has recently been served with divorce papers that do not reference the child. Do you think my friend has rights related to the child, and if so, how do you think she should proceed?

Dear Practitioner,

Your friend should be advised of *Lake v Putnam*, ___ Mich App ___ ; ___ NW2d ___, Docket No. 330955, WL 3606081, July 5, 2016. Therein the parties had a long term romantic relationship. They never married.

> During their relationship, defendant was artificially inseminated and gave birth to the minor child at issue.... Shortly after the parties' relationship ended, defendant denied plaintiff's requests to spend time with the child. In light of this refusal, plaintiff filed this lawsuit, seeking parenting time with the child. Defendant filed a summary-disposition motion, arguing that plaintiff, as an unrelated third party, lacked standing to seek parenting time with the child. The circuit court denied defendant's motion... and... the circuit court awarded plaintiff supervised parenting time with the minor child. Defendant ... applied for leave to appeal the circuit court's... order, and we granted her application. *Id.*
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> On appeal, defendant argues that the circuit court erred in denying her summary-disposition motion because plaintiff lacks standing to pursue parenting time with the child. We agree.
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> Generally, a party has standing so long as he or she has some real interest in the cause of action or its subject matter. In *re Anjoski*, 283 Mich.App 41, 50; 770 NW2d 1 (2009). "However, this concept is not given such a broad application in the context of child custody disputes involving third parties, or any individual other parent[.]" *Id.* (citation and internal quotation marks omitted). This Court and our Supreme Court have specifically and unequivocally held that "a third party does not have standing by virtue of the fact that he or she resides with the child and has a 'personal stake' in the outcome of the litigation." *Id.* at 50–51, citing *Bowie v. Arder*, 441 Mich. 23, 42; 490 NW2d 568 (1992). Indeed, a party may not " 'create a custody dispute by simply filing a complaint in circuit court alleging that giving legal custody to the third party is in the [child's] best interests....' " *Id.* at 51, quoting *Heltzel*, 248 Mich.App at 28–29 (alteration by the Anjoski Court). "Rather, under the Child Custody Act the Legislature has limited standing for third parties to two circumstances"—under MCL 722.26b (involving third-party guardians or limited guardians) or MCL 722.26c(1)(b) (involving scenarios where the minor child's biological parents never married, where one of the child's parents has died or is missing and the other parent does not have legal custody, and where the third person is related to the child). *Id.*

The Plaintiff argued, in *Lake*, that even though she may be considered a third party, she, nonetheless, had standing to pursue custody and parenting time rights under Michigan's Equitable Parent Doctrine.

> Under the equitable-parent doctrine, a husband who is not the biological father of a child born or conceived during wedlock may, nevertheless, be considered that child's natural father if three requirements are satisfied: (1) the husband and the child must mutually acknowledge their father-child relationship, or the child's mother must have cooperated in the development of that father-child relationship prior to the time that the divorce proceedings commenced;

(2) the husband must express a desire to have parental rights to the child; and (3) the husband must be willing to accept the responsibility of paying child support. Van v. Zahorik, 460 Mich. 320, 330; 597 NW2d 15 (1999); Atkinson v. Atkinson, 160 Mich. App 601, 608–609; 408 NW2d 516 (1987). "Once it is determined that a party is an equitable parent, that party becomes endowed with both the rights and responsibilities of a parent." York v. Morofsky, 225 Mich.App 333, 337; 571 NW2d 524 (1997). *Id.*

The Plaintiff claimed that she satisfied the three requirements to be considered the child's *"equitable parent;"* as set forth in *Atkinson v Atkinson*, 160 Mich App 601; 408 NW2d 516 (1987). However, the Court of Appeals disagreed and held:

> While plaintiff claims that she satisfies all requirements under the equitable-parent doctrine, she ignores one crucial, and dispositive, requirement for the equitable-parent doctrine to apply—the child must be born in wedlock. *Van*, 460 Mich. at 330 (stating that the equitable-parent doctrine applies only "to a child born or conceived during the marriage."). The child at issue in this case was not born or conceived during a marriage. In fact, it is undisputed that the parties were never married. Thus, the equitable-parent doctrine does not apply. Had the parties married in another jurisdiction, for example, our conclusion may be different. See, e.g., *Stankevich v. Milliron* (On Remand), —— Mich.App ——, ——; —— NW2d —— (2015); slip op at 3–6. While we acknowledge that the issue presented in this case is complex, we simply do not believe it is within courts' discretion to retroactively transform an unmarried couples' past relationship into marriage for custody proceedings in light of the United States Supreme Court's decision in *Obergefell v. Hodges*, —— U.S. ——; 135 S Ct 2584; 192 L.Ed.2d 609 (2015), at the request of one party. Stated differently, it is, in our view, improper for a court to impose, several years later, a marriage upon a same-sex unmarried couple simply because one party desires that we do so.
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> In sum, while we acknowledge that the issues presented in child-custody disputes, including those involving same-sex couples, present challenges, we conclude that the equitable-parent doctrine does not extend to unmarried couples. *Van*, 460 Mich. at 331. This is true whether the couple involved is a heterosexual or a same-sex couple. Consequently, because the equitable-parent doctrine does not apply, plaintiff lacks standing to seek parenting time in this case. *Id.*

Unfortunately, it appears your friend does not have rights to the child in question as she would be deemed a third party in relation to the child and does not meet the criteria under the Equitable-Parent Doctrine.

The above response is not meant to serve as a solution to a case. That would require complete disclosure of all of the facts in the case, including client consultation. Rather, the intent is to provide informal guidance based upon the facts that have been presented. The inquiring lawyer bears full legal responsibility for determining the validity and use of the advice provided herein.

Please send questions for Professor Lex to Hhauer@hauer-snover.com. Include "Professor Lex" in the e-mail's subject line.

About the Authors

Harvey I. Hauer, *Hauer & Snover, PC, is a Fellow of the American Academy of Matrimonial Lawyers and the former president of the Michigan Chapter. He has also served as chairperson of the State Bar of Michigan Family Law Section, the Michigan Supreme Court Domestic Relations Court Rule Committee and the Oakland County Bar Association Family Law Committee. He has been named by his peers to Best Lawyers in America, Super Lawyers and Leading Lawyers. He is a co-author of Michigan Family Law.*

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