

No. 19-0694

In the Supreme Court of Texas

IN RE C.J.C.,

Relator.

On Petition for Writ of Mandamus from the
Second Court of Appeals, Fort Worth, Texas
No. 02-15-00328-CV

**BRIEF OF AMICUS CURIAE TEXAS VALUES
IN SUPPORT OF RELATOR**

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ISSUE PRESENTED

Texas Values adopts the “Issue Presented” set forth in the Relator’s Brief on the Merits.

INTEREST OF AMICI CURIAE

Amicus Curiae Texas Values seeks to preserve and advance a culture where families prosper and every human life is valued. Texas Values promotes its core values of faith, family, and freedom through policy research, public education, and grassroots mobilization. Amicus believes that strong families are founded on the ideal of a lifelong marriage of one man and one woman, and is committed to connecting children to their mothers and fathers, for the good of children and society as a whole.

SOURCE OF FEE

Texas Values is paying all fees incurred in preparing this brief.

STATEMENT OF FACTS

Relator C.J.C. is the legal and biological father of a five-year-old daughter. He fathered this child with a woman named D.A.W. Although C.J.C. and D.A.W. never married, they lived together from 2011 through 2016. Their daughter was born in 2014, two years before they separated.

On September 1, 2016, C.J.C. filed a suit affecting the parent-child relationship. The suit announced that C.J.C. and the child's mother were separating, and C.J.C. sought conservatorship and possession as the child's biological father. The court entered an agreed order appointing C.J.C. and the child's mother as joint managing conservators, with the child's mother having the exclusive right to designate the child's primary residence. Under the terms of

this order, C.J.C. had possession of his daughter almost 50 percent of the time.¹ C.J.C. also agreed to pay monthly child support.

In August or September of 2017, the child’s mother moved in with a man named J.D. In April 2018, the child’s mother became engaged to J.D., and they planned to marry in October 2018. On July 11, 2018, however, the child’s mother died in a car accident. Ever since her mother’s death, the child has been living exclusively with C.J.C.—her legal and biological father.

On August 29, 2018, J.D. filed a petition in intervention and demanded to be named a joint managing conservator of C.J.C.’s daughter—even though J.D. is not in any way related to this child by blood or by marriage. *See* RPI App. 5. J.D., however, claimed that section 102.003(a)(9) of the Texas Family Code gave him standing to intervene because he had lived with the child’s mother for more than six months—and that was enough (in J.D.’s view) to establish that he had “actual care, control, and possession” of C.J.C.’s daughter for at least six months. *See* Tex. Family Code § 102.003(a)(9) (allowing non-parents to file a suit affecting the parent-child relationship if they have had “actual care, control, and possession of the child for at least six months.”); *In Interest of H.S.*, 550 S.W.3d 151 (Tex. 2018). C.J.C. moved to strike J.D.’s petition for

1. The order provided that C.J.C. would have possession every second and fourth Thursday evening through Friday evening; every first, third, and fifth weekend; fourteen days in the summer; and alternate holidays. When his daughter turned three in 2017, C.J.C.’s time of possession increased slightly to include every second and fourth Wednesday evening through Friday.

intervention for lack of standing, but the trial court denied the motion, and C.J.C.'s efforts to obtain mandamus relief were unsuccessful. *See In re Clay*, No. 02-18-00404-CV, 2019 WL 545722. On June 27, 2019, the district court issued a temporary order appointing C.J.C. as the temporary sole managing conservator and J.D. as a temporary possessory conservator. R's App. 6.

SUMMARY OF ARGUMENT

The district court abused its discretion by awarding J.D. possessory rights. J.D. has no familial relation to this child by blood, by marriage, or by law—and he never made any commitment or undertook any legal obligation to support the child or her mother. Although J.D. chose to live with the child's mother and with the child herself while she was not spending time with her actual father, J.D. also chose to preserve his exit option—and he retained the unfettered prerogative to abandon the child and her mother at any moment without owing any form of alimony or child support. J.D.'s relationship with the child and her mother was therefore a social relationship and not a familial one. And it was an abuse of discretion for the district court to award possessory rights to a man who had nothing more than a social relationship with the child over the objections of the child's legal and biological father.

This district court's order is especially pernicious because it undercuts C.J.C.'s role as the one and only father of his daughter, by requiring him to share possessory rights with another man who is not the child's father, stepfather, adoptive father, or any type of familial relative—and who had never undertaken *any* legal obligation to support the child or the child's mother. One

of the most important rights of fatherhood is the right to exclude other men from claiming that status over one's child—either in whole or in part. *See Michael H. v. Gerald D.*, 491 U.S. 110, 118 (1989) (plurality opinion) (“[N]ature itself . . . makes no provision for dual fatherhood.”). The order requiring C.J.C. to share possessory rights with another man also presents a risk that the child will grow to love her competitor father more than her actual father. *See* Matthew 6:24 (KJV) (“No man can serve two masters: for either he will hate the one, and love the other; or else he will hold to the one, and despise the other.”). The Court should hold that it is a *per se* abuse of discretion to require a child's father to share possessory rights with another man unless the child's father has been found to be an unfit parent, or unless the child's father consents to the arrangement.

ARGUMENT

I. J.D.'S RELATIONSHIP WITH C.J.C.'S DAUGHTER WAS A SOCIAL RELATIONSHIP, NOT A FAMILIAL ONE

In recent decades there has been concerted effort to redefine the concept of a family in response to increasing cohabitation, out-of-wedlock births, and the demands of the homosexual-rights movement. In the midst of this cultural upheaval, it is perhaps understandable that a trial court would lose sight of the distinction between a familial relationship and a merely social one, especially when a litigant in a child-custody dispute is attempting to erase or obscure the distinction between the two. But that makes it all the more imperative for this

Court to remind the lower courts and litigants of what a family is—and what a family is not.

In the trial court, J.D. asserted that his relationship with C.J.C.’s daughter was “very much a father/daughter relationship” and that he was her “conservator in reality for basically a couple of years.” RPI App. 5. J.D. feels warranted in making these claims because he says that he was “involved with all aspects” of the child’s life based on his decision to cohabit with the child’s mother. *See id.* But J.D. never adopted the child, never married the child’s mother, and never made any commitment or undertook any legal obligation to support the child or her mother. J.D. chose to live with the child and her mother, while fully preserving his option to leave at any moment without owing alimony or child support. He wanted the social benefits of those relationships without accepting any of the legal responsibilities that come with being a husband or a father.

J.D.’s filings in this Court falsely describe himself as the “stepfather” of C.J.C.’s daughter. A stepfather is a man who has *married* the child’s mother, and through that act of marriage has made a legally binding commitment to support the child’s mother (and indirectly the child), and who cannot leave the relationship without undergoing divorce proceedings and subjecting himself to alimony payments. *See* “stepfather.” *Merriam-Webster.com*. 2020. <https://www.merriam-webster.com/dictionary/stepfather> (March 26, 2020) (defining “stepfather” as “*the husband of one’s parent* when distinct from one’s

natural or legal father”) (emphasis added); “stepfather.” *dictionary.cambridge.org*. 2020. <https://dictionary.cambridge.org/us/dictionary/english/stepfather> (March 26, 2020) (defining “stepfather” as “the man *who is married to someone’s mother* but who is not their real father”) (emphasis added). J.D. seems to think he deserves the title of “stepfather” because he lived with the child’s mother for less than a year and became engaged to the child’s mother shortly before she died. But an engagement is not a marriage, and it can be terminated instantly by either party without any adverse legal consequences apart from the possible return of the engagement ring.² J.D. never undertook a legally binding commitment to support C.J.C.’s daughter or the child’s mother, and he cannot claim a title that is reserved for men who have made a legally binding commitment to support their wives.

Finally, J.D.’s brief falsely states that he resided with the child and her mother “as a family” since the time they moved in together in August of 2017. RPI’s Br. at 4. But a live-in boyfriend does not become part of a “family” through his act of cohabitation. A live-in has no legal duty to support his companion or her children, and he retains the right to pack up and leave on a moment’s notice whenever things turn bad. The law does not recognize these

2. *See, e.g., Curtis v. Anderson*, 106 S.W.3d 251, 255 (Tex. App. 2003, pet. denied) (“Texas courts have held that the rule operates to require that the ring be returned to the donor if the donee is at fault in terminating the engagement.”).

test-drive arrangements as a familial relationship,³ and J.D. may not claim that he lived with D.A.W. and her daughter “as a family” when he refused to undertake the legal responsibilities that attach to being a husband or a father.

The sexual revolution has led to a proliferation of men who seek the social or sexual benefits of benefits of companionship without accepting the legal responsibilities that come from marriage or fatherhood. Men who enter relationships of that sort do not obtain the titles or legal privileges that are reserved for men who have undertaken a legally binding commitment to support their wives or their children. Although C.J.C. never married the mother of his daughter, he *did* undertake the legal obligations of fatherhood through the act of procreation, and he remained obligated to support his daughter financially regardless of what might happen to his relationship with the child’s mother. J.D. had never undertaken any of the legal obligations associated with marriage or fatherhood—even though he chose to live with C.J.C.’s mother for less than a year. His relationship with C.J.C.’s daughter was nothing more than a social relationship, and a relationship of this sort cannot be equated with a familial one.

3. Unmarried cohabitants are categorically ineligible for intestate inheritance or loss-of-consortium claims. See E. Gary Spitko, *Intestate Inheritance Rights for Unmarried Committed Partners: Lessons for U.S. Law Reform from the Scottish Experience*, 103 Iowa L. Rev. 2175, 2177 (2018) (“No U.S. state affords intestate inheritance rights to the unmarried and unregistered committed partner of a decedent.”); *Whittlesey v. Miller*, 572 S.W.2d 665 (Tex. 1978) (recognizing loss-of-consortium claims only for lawfully married spouses).

II. THE TRIAL COURT'S DECISION THREATENS THE INTEGRITY OF THE FAMILY UNIT AND VIOLATES C.J.C.'S RIGHTS AS THE ONE AND ONLY FATHER OF HIS DAUGHTER

The district court's decision to award possessory rights to J.D. threatens the integrity of the family unit and violates C.J.C.'s rights as the one and only father of his daughter. The status of fatherhood gives one the right to serve as the child's *exclusive* father, and the rights of fatherhood are diminished if men from outside the family are simultaneously claiming or competing for that role in the child's life. The district court's decision to require a father to share possessory rights with another man who is claiming a "father/daughter relationship" with his child sets a dangerous precedent, and the Court should make clear that Texas law strongly disfavors arrangements of this sort.

One of the most important functions of family law is to ensure that men will support their children and the women who bring those children into the world. The institution of marriage encourages men who produce children with their wives to continue providing for those children, as well as for the women who make immense sacrifices by enduring pregnancy and childbirth and by pausing or giving up careers to raise children. The institution of child support ensures that men who produce children out of wedlock remain financially obligated to support their children—regardless of what happens to their relationship with the child's mother. Yet some of the most important incentives that the law creates for men to support their children come from the legal privileges that attach to the status of fatherhood, including the possessory rights that

C.J.C. and J.D. are each seeking to obtain. Men *want* to become fathers and to fulfill the responsibilities of fatherhood in large part because of the rights and privileges that the law confers upon fathers, such as the right of physical possession,⁴ the right to direct the child’s moral and religious training,⁵ and the right to discipline the child.⁶ If courts begin requiring fathers to share these privileges with other men who have no familial relationship with the child, then the status of fatherhood becomes diminished—and so do the incentives of men to become fathers and to fulfill the legal responsibilities that attach to fatherhood.

The district court’s order also introduces a competitor father into the life of C.J.C.’s daughter, which threatens to diminish the bonds of affection with her actual father. *See Michael H. v. Gerald D.*, 491 U.S. 110, 118 (1989) (plurality opinion) (“[N]ature itself . . . makes no provision for dual fatherhood.”). There is no justification for an arrangement of this sort when there has been no finding that C.J.C. is an unfit parent or is any way incapable of fulfilling his responsibilities as the father of his child. The Court should hold that it is a *per se* abuse of discretion to require a child’s father to share possessory rights with another man unless the child’s father has been found to be an unfit parent, or unless the child’s father consents to the arrangement.

4. *See* Tex. Family Code § 151.001(1).

5. *See* Tex. Family Code § 151.001(1).

6. *See* Tex. Family Code § 151.001(2).

CONCLUSION

The petition for writ of mandamus should be granted.

Respectfully submitted.

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This brief contains 2,377 words, excluding the portions exempted by Tex.

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