

**TRI-PARENTING ON THE RISE: PAVING THE WAY FOR
TRI-PARENTING FAMILIES TO RECEIVE LEGAL
RECOGNITION THROUGH PRECONCEPTION AGREEMENTS**

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ABSTRACT

In 2015, New Jersey became one of the few states to recognize that a child could have more than two parents. Using the psychological parent doctrine, the New Jersey court formally recognized a tri-parenting family, finding the third parent stood in legal parity with the biological parents in regard to family issues, such as custody and visitation. This Note will criticize New Jersey's family law, specifically the psychological parent doctrine, and argue why it does not provide enough protection for tri-parenting families. Then, this Note will turn to the solutions New Jersey could pursue, proposing the adoption of an additional parent amendment that allows three parent recognition through the use of narrowly tailored preconception agreements.

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“The family has always been the cornerstone of American society. Our families nurture, preserve, and pass on to each succeeding generation the values we share and cherish, values that are the foundation of our freedoms.”

-President Ronald Reagan

I. INTRODUCTION

“The family is the nucleus of civilization and the basic social unit of society.”¹ It defines how we live, interact, and identify ourselves. It also provides us with the necessary emotional and economic support to thrive in a healthy environment. But what defines a family? The concept is extremely complex and is constantly changing. What once was a traditional two parent family structure, has now changed with technological advances and the acceptance of same-sex marriage. Our government is struggling to adapt to these changes and as such, our current family definitions are out of touch with reality.

Part I of this article describes the concept and structure of “family” and how it has changed over time. This part also introduces a new family structure called tri-parenting, which is the main topic of this Note. Part II discusses multiple parentage in general and outlines how different states and jurisdictions have dealt with this issue. Part IV follows by outlining the main criticisms and concerns that could arise with the recognition of multiple parentage.

Part V delves directly into New Jersey’s family law and the recent steps its courts have taken towards recognizing tri-parenting families. Specifically, this section discusses the case of *D.G. v. K.S.*, in which the

1. William Bennett, *Stronger Families, Stronger Societies*, N.Y. TIMES (Apr. 24, 2012, 6:43 PM), <https://www.nytimes.com/roomfordebate/2012/04/24/are-family-values-outdated/stronger-families-stronger-societies>.

New Jersey Superior Court formally recognized a tri-parenting family through the psychological parent doctrine.² The decision in *D.G. v. K.S.* was a giant step toward the legal recognition of three parents, however, as this Note will reveal, the psychological parent doctrine falls short of providing the necessary legal protection tri-parenting families need to be afforded.

Part VI argues why New Jersey needs to recognize tri-parenting families, and the possible detriments that could follow if this family structure fails to be recognized. Part VII analyzes two ways New Jersey could allow three parent recognition. First, New Jersey could add an amendment identical to California Family Code Section 7612(c), which allows a child to have more than two parents when the court determines that “recognizing only two parents would be detrimental to the child.”³ However, as this Note will discuss, California’s law has several significant flaws. Therefore, this Note proposes an alternative solution that New Jersey should add an “additional parent” amendment that allows tri-parenting families to gain three parent legal recognition through the use of narrowly tailored pre-conception agreements.

II. THE EVOLUTION OF FAMILY

The concept and design of “family” is constantly changing, forcing courts to grapple with the definition of a family and the legal implications that arise from it. In the past, three traditional qualities have been used to define a family: (1) blood; (2) heterosexual marriage; and (3) adoption.⁴ More recently, courts have employed a totality of the circumstances approach to determine the composition of families by evaluating multiple factors, such as emotional and financial commitments, cohabitation, childrearing, and the division of daily family services.⁵

2. 133 A.3d 703, 709 (N.J. Super. Ct. Ch. Div. 2015).

3. CAL. FAM. CODE § 7612(c) (West 2019).

4. See *Braschi v. Stahl Assocs. Co.*, 543 N.E.2d 49, 58 (N.Y. 1989) (Simons, J., dissenting); *Family*, ENCYCLOPÆDIA BRITANNICA, <https://www.britannica.com/topic/family-kinship> (last visited Apr. 13, 2019); Charles B. Nam, *The Concept of The Family: Demographic and Genealogical Perspectives*, 2 SOCIATION TODAY (2004), <http://www.ncsociology.org/sociationtoday/v22/family.htm>.

5. See *Moore v. City of E. Cleveland*, 431 U.S. 494, 506 (1977) (“[T]he Constitution prevents East Cleveland from standardizing its children and its adults by forcing all to live in certain narrowly defined family patterns.”); *Braschi*, 543 N.E.2d at 54–55 (finding plaintiffs were a family using a totality of the circumstances approach, as they were exclusive, had been in a relationship for ten years, shared financial obligations, lived together, and held themselves out to the world as a couple). This approach to defining “family” is also referred to as the “functional equivalent approach.” See Thomas F. Coleman,

Traditionally, the law viewed families through a two-parent paradigm—one mother and one father—who were married, and usually of the opposite sex.⁶ Under this two-parent paradigm, often referred to as the exclusive or nuclear family, adults were either viewed as “full legal parents or as strangers” to the child.⁷ In *Michael H. v. Gerald D.*, Carole was to married Gerald, but had an affair and child with Michael.⁸ After discovering Carole planned to stay with Gerald, Michael moved for visitation of their child.⁹ The court found a marital presumption exists where a child born into a marriage is the child of the wife and the husband, unless the husband is impotent or sterile.¹⁰ Here, Michael was the biological father, however, the child was born into the marriage of Carole and Gerald.¹¹ Under this presumption, Michael had no standing as a parent in regard to the rights of the child.¹² The court reasoned that “Michael’s interest as a biological father . . . did not rise to the level of a fundamental liberty interest and was not sufficient to warrant the interruption of the unitary (nuclear) family.”¹³

The concept of a nuclear family drastically changed after the U.S. Supreme Court’s 2015 decision in *Obergefell v. Hodges*, which guaranteed same-sex couples the right to marry and have their marriages recognized by the states.¹⁴ “As of June 2017, nearly 1.1 million LGBT people in the

Cities Have Opposing Views on Definition of ‘Family.’ UNMARRIED AM. (May 22, 2006), <http://www.unmarriedamerica.org/column-one/5-22-06-opposing-views-on-family.htm>.

6. See Melanie B. Jacobs, *Why Just Two? Disaggregating Traditional Parental Rights and Responsibilities to Recognize Multiple Parents*, 9 J.L. & FAM. STUD. 309, 318 (2007) [hereinafter Jacobs, *Why Just Two?*]; Katharine T. Bartlett, *Rethinking Parenthood as an Exclusive Status: The Need for Legal Alternatives When the Premise of the Nuclear Family Has Failed*, 70 VA. L. REV. 879, 879–80 (1984).

7. Matthew M. Kavanagh, *Rewriting the Legal Family: Beyond Exclusivity to a Care-Based Standard*, 16 YALE J.L. & FEMINISM 83, 88–89 (2004); see *Michael H. v. Gerald D.*, 491 U.S. 110, 113 (1989).

8. 491 U.S. at 113–14.

9. *Id.* at 115.

10. *Id.* at 117; see Jacobs, *Why Just Two?*, *supra* note 6, at 318. If a child is born out of wedlock, biological fathers may seek to establish legal parentage. See *Stanley v. Ill.*, 405 U.S. 645, 658–59 (1972) (finding fathers have significant interests in retaining custody of their children, regardless of marital status, and therefore fathers of children born out of wedlock have a fundamental right to their children). Currently, under the 2017 Uniform Parentage Act, “a parent-child relationship extends equally to every child and parent, regardless of the marital status of the parent.” UNIF. PARENTAGE ACT § 202 (UNIF. LAW COMM’N 2017).

11. *Michael H.*, 491 U.S. at 113–14.

12. *Id.*

13. Kavanagh, *supra* note 7, at 102 (discussing *Michael H.*, 491 U.S. at 124).

14. 135 S. Ct. 2584, 2598 (2015) (finding the right to marry is protected by the Constitution because “marriage is ‘one of the vital personal rights essential to the orderly pursuit of happiness by free men.’” (quoting *Zablocki v. Redhail*, 434 U.S. 374, 384 (1978))).

United States are married to someone of the same-sex, implying that more than 547,000 same-sex couples are married nationwide.¹⁵ With the legal recognition and growing acceptance of same-sex couples, a number of same-sex couples are forming families through the use of Assisted Reproductive Technology (“ART”).¹⁶

According to the Center of Disease Control, ART includes fertility treatments in which both eggs and sperm are handled.¹⁷ Methods of ART include assisted insemination, gestational carriers, and most commonly, in vitro fertilization.¹⁸ In vitro fertilization procedures involve “extracting a woman’s eggs, fertilizing the eggs in the laboratory, and then transferring the resulting embryos into the woman’s uterus through the cervix.”¹⁹ Although ART is the most common way same-sex couples can have children, other at-home conception methods are used.²⁰

A. *Tri-Parenting*

As methods of assisted reproduction²¹ among same-sex families have become more common,²² some same-sex couples have opted to “intentionally [form] three-parent families with a person of the opposite sex[,]” a new family structure referred to as “tri-parenting.”²³ These three

15. Adam P. Romero, *1.1 Million LGBT Adults Are Married to Someone of the Same Sex at the Two-Year Anniversary of Obergefell v. Hodges*, WILLIAMS INST. (June 23, 2017), <https://williamsinstitute.law.ucla.edu/wp-content/uploads/Obergefell-2-Year-Marriages.pdf>.

16. See Bari Weinberger, *Tri-Parenting: Three’s Company or Three’s a Crowd?*, LAW J. NEWSLETTERS (Oct. 2017), <http://www.lawjournalnewsletters.com/sites/lawjournalnewsletters/2017/10/01/tri-parenting-threes-company-or-threes-a-crowd/>. ART plays important roles for “lesbian, gay, bisexual, and transgender individuals . . . who seek to procreate in familial units that do not have the potential for coital reproduction.” Seema Mohapatra, *Assisted Reproduction Inequality and Marriage Equality*, 92 CHI.-KENT L. REV. 87, 89 (2017) (citing Kimberly M. Mutcherson, *Procreative Pluralism*, 30 BERKELEY J. GENDER L. & JUST. 22, 41 (2015)).

17. *Assisted Reproductive Technology (ART)*, CENTERS FOR DISEASE CONTROL & PREVENTION, <https://www.cdc.gov/art/artdata/index.html> (last reviewed Apr. 9, 2019) [hereinafter *Assisted Reproductive Technology (ART)*].

18. *Id.*; Kristine S. Knaplund, *Assisted Reproductive Technology: The Legal Issues*, 28 PROB. & PROP. 48, 49 (Mar./Apr. 2014).

19. *Assisted Reproductive Technology (ART)*, *supra* note 17.

20. For example, in *D.G. v. K.S.*, the parties used an at home conception method known as the “Baster Method,” using the man’s sperm and an ovulation kit. 133 A.3d 703, 708 (N.J. Super. Ct. Ch. Div. 2015).

21. Assisted reproduction is defined as “a method of conceiving a child other than by sexual intercourse.” Family Law Act, S.B.C. 2011, c 25 P. 3, div. 1 § 20 (Can.).

22. See *Assisted Reproductive Technology (ART)*, *supra* note 17 (finding that in 2016, the use of ART doubled over the past decade).

23. Weinberger, *supra* note 16; see Deborah L. Forman, *Exploring the Boundaries of Families Created with Known Sperm Providers: Who’s In and Who’s out?*, 19 U. PA. J.L. &

parent families generally form through a mutual agreement among the parents prior to the child's conception.²⁴ Once the child is born, the three parents function together as a family, delegating tasks between each other for the benefit of the child.²⁵

As the child is actively parented by more than two adults, he/she likely views all three parties as parents,²⁶ however, our current legal regime makes it almost impossible to afford more than two parents full legal recognition.²⁷ Legal status provides parents with unique rights and responsibilities concerning their child. They have the authority to influence the child's emotional, religious, moral, social and educational development.²⁸ Legal parents are also financially obligated to provide for

SOC. CHANGE 41, 76 (2016); Christine Schuster, *Finding the Balance in Tri-parenting Agreements: Understanding the Legal Status of Non-biological and Non-adoptive Parents in Multi-parenting Families*, SUPER LAW., <https://www.superlawyers.com/united-states/article/finding-the-balance-in-triparenting-agreements/598c793b-c053-406f-afe5-c77c37e4b2ef.html> (last visited Feb. 20, 2018). Although tri-parenting between same-sex couples and a person of the opposite sex is new, the idea of tri-parenting, "meaning a family situation in which a child might have more than two parents, is not entirely new." Weinberger, *supra* note 16. Other people besides parents, such as grandparents or step-parents, have tried to gain legal recognition in a child's life. *Id.*

24. See Stephanie Reid, *What is "Tri-Parenting," and Should We Do More of It?*, AVVO STORIES: FAMILY/KIDS, NEWS, RELATIONSHIPS (Aug. 18, 2016), <http://stories.avvo.com/relationships/family-kids/what-is-tri-parenting-and-should-we-do-more-of-it.html>. For example, in *D.G. v. K.S.*, three parties decided to have a child together, who would be conceived through the sperm of a man in a same-sex marriage and a woman who was a longtime friend of both spouses. 133 A.3d at 707–08. In *Dawn M. v. Michael M.*, a triadic romantic couple, composed of a married couple and a friend, decided to conceive and raise a child together. 47 N.Y.S.3d 898, 900 (N.Y. Sup. Ct. 2017). The Bonner-Bianchi family created a tri-parenting family arrangement, with a lesbian couple and their male friend. Jennifer Peltz, *Modern Family: More Courts Allowing 3 Parents of 1 Child*, ASSOCIATED PRESS NEWS (June 18, 2017) [hereinafter Peltz, *Modern Family: More Courts Allowing 3 Parents of 1 Child*], <https://www.apnews.com/e000774bb14445ab991ce6ea2f94f85a>.

25. See *D.G.*, 133 A.3d at 708 (finding that D.G. was the scheduler, S.H. the career educator, and K.S. the outdoor activity parent).

26. For example, Madison Boner-Bianchi, a child of a tri-parenting family, stated "her relationship with her parents resembles anyone else's—I just happen to have three of them." Peltz, *Modern Family: More Courts Allowing 3 Parents of 1 Child*, *supra* note 24.

27. See *Michael H. v. Gerald D.*, 491 U.S. 110, 131–32 (1989) (rejecting a claim for the constitutional recognition of three parents); Jacobs, *Why Just Two?*, *supra* note 6, at 325. However, Justice Brennan's dissent in *Michael H. v. Gerald D.* embraced a pluralistic view of family criticizing the majority's "pinched conception of 'the family'" as it is adverse to "our many cases preventing the States from denying important interests or statuses to those whose situations do not fit the government's narrow view of the family." Michael H., 491 U.S. at 145 (Brennan, J., dissenting); Nancy D. Polikoff, *This Child Does Have Two Mothers: Redefining Parenthood to Meet the Needs of Children in Lesbian-Mother and Other Nontraditional Families*, 78 Geo. L.J. 459, 480 (1990) (discussing the same case).

28. See Jacobs, *Why Just Two?*, *supra* note 6, at 311; Kristina Otterstrom, *The Legal Rights and Responsibilities of a Parent*, LAWYERS.COM, <https://www.lawyers.com/legal->

the child.²⁹ They have access to information about the child and have the authority to exclude others from it.³⁰ In addition, legal parents are protected from most governmental and third-party interference regarding their rights to their children.³¹ Thus, in a tri-parenting scenario, the third parent may engage in the responsibilities of legal parentage, but he/she is not legally entitled to the prominent protections.

III. MULTIPLE LEGAL PARENTAGE

As the structures of families are changing, there has been a shift in jurisdictions across the country allowing more than two parents the rights to a child.³² A major reason for this shift is that courts are “recognizing the importance of the relationship of persons to a child.”³³ Currently in the United States, only twelve states recognize that a child can have more than two parents.³⁴ Although each state differs in the details of what that means, all states incorporate a judicially determined best interests of the child standard when making decisions that affect a child.³⁵ Traditionally, the best interests of the child standard only

info/family-law/children/the-legal-rights-and-responsibilities-of-a-parent.html (last visited Mar. 30, 2019).

29. Cf. Bartlett, *supra* note 6, at 885; June Carbone & Naomi Cahn, *Parents, Babies, and More Parents*, 92 CHI.-KENT L. REV. 9, 10 (2017); Jacobs, *Why Just Two?*, *supra* note 6, at 325 (including such things as “provid[ing] support, shelter, [and] medical care” for the child).

30. Bartlett, *supra* note 6, at 884.

31. See *Troxel v. Granville*, 530 U.S. 57, 72–73 (2000) (holding that the Due Process Clause of the United States Constitution “does not permit a State to infringe on the fundamental right of parents to make child rearing decisions,” including whether or not to grant visitation rights to a third person, even if in the child’s best interest); Bartlett, *supra* note 6, at 884. The Court in *Troxel* found the lower court’s award of visitation rights to the grandparents “was an unconstitutional infringement on Granville’s fundamental right to make decisions concerning the care, custody, and control of her two daughters.” *Id.* at 72. However, the state may interfere with parents’ rights for things such as severe injury to the child, forcing the child to work in violation of child labor laws, or refusal of medical treatment that can result in death based on religious beliefs. Bartlett, *supra* note 6, at 885.

32. See Jennifer Peltz, *Courts and “Tri-parenting”: A State-by-State Look*, ASSOCIATED PRESS (June 18, 2017) [hereinafter Peltz, *Courts and “Tri-Parenting”: A State-by-State Look*], <https://apnews.com/4d1e571553a34cfbb22b72249a791a44>.

33. See Jodi A. Argentino, *Families by Design*, NAT’L LGBT B. ASS’N, <http://lgbtbar.org/annual/wp-content/uploads/sites/7/2015/05/Families-by-DesignLAVLAW.pdf> (last visited Aug. 14, 2019).

34. New York, Alaska, California, Delaware, Florida, Louisiana, Maine, New Jersey, North Dakota, Oregon, Pennsylvania, and Washington State. Peltz, *Courts and “Tri-Parenting”: A State-by-State Look*, *supra* note 32.

35. See, e.g., *In re Parentage of L.B.*, 122 P.3d 161, 172–73 (Wash. 2005); *In re Interest of E.L.M.C.*, 100 P.3d 546, 558–59 (Colo. App. 2004); see also June Carbone, *Legal Applications of the “Best Interest of the Child” Standard: Judicial Rationalization or a*

governed custody and visitation; however, in practice, courts either “explicit[ly] or implicit[ly], [use] this standard [to govern] the decision making process in [all] family law cases across the country.”³⁶ While ultimately decided by the discretion of the court, Section 402 of the Uniform Marriage and Divorce Act lists several factors that serve as a guide to determine the child’s best interests: (1) the wishes of the child and parents, (2) the relationship between siblings, child and parents, (3) the child’s adjustment to his surroundings, and (4) the mental and physical health of all parties involved.³⁷

A. *Change in Legislature*

California and Maine are the only states that have changed their laws to recognize more than two legal parents.³⁸ California’s legislature created a bill to abrogate the case of *In re M.C.*, which restricted the number of a parents a child could have to two.³⁹ *In re M.C.* involved a child who was conceived by a man and woman, during the woman’s break in a same-sex partnership.⁴⁰ All three parties acted as parents and contributed to the upbringing of the child, although not consistently, until the birth mother was arrested, resulting in the child being placed in foster care.⁴¹ The juvenile court held that the child had (1) a birth

Measure of Institutional Competence?, 134 PEDIATRICS S111 (Oct. 2014), http://pediatrics.aappublications.org/content/134/Supplement_2/S111; Jennifer Wolf, *Understanding the Child’s Best Interest Standard*, VERYWELL FAMILY, <https://www.verywellfamily.com/best-interests-of-the-child-standard-overview-2997765> (last updated Jan. 8, 2019).

36. Emily B. Gelmann, *What About Susan? Three’s Company, Not a Crowd: The Importance of Allowing Third Parent Adoptions When Both Legal Parents Consent*, 30 WIS. J.L. GENDER & SOC’Y 57, 62 (2015). This is due to the fact that issues concerning children are “personal in nature” and thus require “emotional or value judgements rather than the pragmatic approach of the judiciary.” *Id.* at 61.

37. UNIF. MARRIAGE & DIVORCE ACT § 402 (UNIF. LAW COMM’N 1973).

38. CAL. FAM. CODE § 7612(c) (West 2019); ME. REV. STAT. ANN. tit. 19-A, § 1853 (West 2017). In 2015, Maine amended the Maine Parentage Act to allow a court to “determine that a child could have more than 2 parents,” in which the third parent is labeled a “de facto parent.” *Id.*; ME. REV. STAT. ANN. tit. 19-A, § 1891(1) (West 2017). “The court shall adjudicate a person to be a de facto parent if the court finds by clear and convincing evidence that the person has fully and completely undertaken a permanent, unequivocal, committed and responsible parental role in the child’s life.” ME. REV. STAT. ANN. tit. 19-A, § 1891(3). Once the third party is determined to be a de facto parent, he/she is given the same rights as the biological parent(s) through a court order. *Id.*

39. S.B. 274, 2013–2014 Reg. Sess. (Cal. 2013); *In re M.C.*, 123 Cal. Rptr. 3d 856 (Cal. Ct. App. 2011).

40. *In re M.C.*, 123 Cal. Rptr. 3d at 861–62.

41. *Id.* When the child was born, the two women took care of the child while the father remained absent. *Id.* at 862. After a fallout between the two women, the father began to financially assist the birth mother until she was arrested. *Id.*

mother, (2) presumed mother⁴² (partner of the birth mother), and (3) a presumed father⁴³ (the man) entitling all three persons to the rights and obligations of parenthood.⁴⁴ However, the California Court of Appeals held that “where there are more than two people who have a claim to parentage under the Uniform Parentage Act, courts are prohibited from recognizing more than two of these people as the parents of a child, regardless of the circumstances.”⁴⁵ The case was remanded to see whether the presumed mother or the presumed father had a stronger presumption of parenthood.⁴⁶

In response to the decision in *In re M.C.*, in 2013, California passed Senate Bill No. 274 that codified the idea that “most children have two parents, but in rare cases, children have more than two people who are that child’s parent in every way.”⁴⁷ Senate Bill No. 274 amended section 7612(c) of the California Family Code, which set forth claims to parentage.⁴⁸ As amended under section 7612(c), “a court may find that more than two persons with a claim to parentage under this division are parents if the court finds that recognizing only two parents would be detrimental to the child.”⁴⁹ In determining what is “detrimental to the child,” the court will employ a test akin to the best interests of the child

42. The partner was a “presumed mother because she and the child’s biological mother were married when the child was born.” *Id.* at 861; *see also* Joanna L. Grossman, *California Allows Children to Have More Than Two Legal Parents*, JUSTIA: VERDICT (Oct. 15, 2013), <https://verdict.justia.com/2013/10/15/california-allows-children-two-legal-parents>.

43. The man was a “presumed father because he was the biological father and he had attempted to establish a relationship with the child.” Grossman, *supra* note 42.

44. *Id.*

45. S.B. 274, 2013–2014 Reg. Sess. §1(b) (Cal. 2013) (citing *In re M.C.*, 123 Cal. Rptr. 3d at 869).

46. *In re M.C.*, 123 Cal. Rptr. 3d at 861.

47. Cal. S.B. 274 § 1(a). S.B. 274 “protects children from harm by preserving the bonds between children and their parents.” *Family Law: Parentage: Hearing on S.B. 274 Before the Assemb. Comm. on Judiciary*, 2013–2014 Reg. Sess. 1–2 (Cal. 2013) (statement of Bob Wieckowski, Chair). “The bill would not apply to a boyfriend or girlfriend of a parent who has been in the child’s life for a short time, or to a relative caregiver who provides periodic care.” *Id.* at 7.

48. CAL. FAM. CODE § 7612(c) (West 2019). In 2016, California legally recognized Madison Bonner-Bianchi’s tri-parenting family through section 7612(c) of the California Family Code. Peltz, *Modern Family: More Courts Allowing 3 Parents of 1 Child*, *supra* note 24. The arrangement was by design, between Victoria and Kimberli, a same sex couple, and their friend Mark. *Id.* The child, Madison, was born in 2000, which was a time when California only allowed two legal parents; the biological parents, Kimberli and Mark. Dennis Leap, *Courts Say More Than Two Parents OK*, THE TRUMPET (July 11, 2017), <https://www.thetrumpet.com/16039-courts-say-more-than-two-parents-ok>. However, all three parents raised Madison from birth, whom she referred to as Dad, Mom, and Mama. Peltz, *Modern Family: More Courts Allowing 3 Parents of 1 Child*, *supra* note 24. Sixteen years later, Victoria was finally legally declared Madison’s third parent. *Id.*

49. CAL. FAM. CODE § 7612(c).

standard by considering the totality of circumstances, including “the harm of removing the child from a stable placement with a parent who has fulfilled the child’s physical needs and the child’s psychological needs for care and affection, and who has assumed that role for a substantial period of time.”⁵⁰

In re Alexander P. was California’s first decision that recognized two legal parents.⁵¹ The child, Alexander, became the subject of a dependency proceeding, after his stepfather, Donald, assaulted his mother.⁵² Donald, Alexander’s biological father, Joel, and Michael, who was in a relationship with the mother when Alexander was born, all sought to be declared the child’s presumed parents.⁵³ Michael helped the mother prepare for birth, was present during birth, and intended to raise Alexander as his own, since Joel was not ready to be a father, until Michael was arrested a year later for domestic violence.⁵⁴ Joel was absent for the first year of the child’s life, but thereafter continued to be present, having “weekly visits with the minor, during which they have spent time together reading, talking, exploring, and playing in the park.”⁵⁵ When Alexander was two years old, his mother married Donald, who “assumed ‘the day-to-day physical and emotional responsibilities’ of a father since he began living with Mother and [Alexander].”⁵⁶ The juvenile court found Donald, Michael, and Joel to be presumed parents because it would be detrimental to Alexander to limit parentage.⁵⁷ The California Court of Appeals affirmed Donald and Joel’s presumed father status, but remanded Michael’s determination of parentage based on subject matter jurisdiction issues.⁵⁸

B. Psychological Parent Doctrine & De Facto Parents

Some state courts have recognized third parties as either “psychological parents” or “de facto parents.”⁵⁹ A de facto parent is “one

50. *Id.*

51. *In re Alexander P.*, 209 Cal. Rptr. 3d 130, 134–35 (2016).

52. *Id.* at 135.

53. *Id.* A “presumed father” is an individual whom the law recognizes as a legal father. *Paternity (or Parentage)*, ADVOKIDS, <https://www.advokids.org/legal-tools/paternity-parentage/> (last visited Feb. 28, 2018). He has the “rights and responsibilities of a father, even if not a biological father.” *Id.*

54. *In re Alexander P.*, 209 Cal. Rptr. 3d at 135–36.

55. *Id.*

56. *Id.* at 136.

57. *Id.* at 138.

58. *Id.* at 135.

59. The terms “de facto parent” and “psychological parent” mean essentially the same thing and are often used interchangeably. See Caroline L. Kinsey, *Revisiting the Role of the Psychological Parent in the Dissolution of the Homosexual Relationship*, 19 BUFF. J.

who is not a child's legal parent, but has been found by a court to have assumed, on a daily basis, the role of parent, fulfilling both the child's physical and psychological needs for care and affection, and has assumed that role for a substantial period of time."⁶⁰ Courts focus on the bond formed between the child and the third party and whether it would be in the child's best interest to have that bond "suddenly severed."⁶¹

The court in *In Re Custody H.S.H.-K.*⁶² created a test to determine de facto parenthood, which became the common definition of a de facto parent.⁶³ Two unmarried women had a child through ART and raised the child together for five years until their relationship fell apart.⁶⁴ The woman who was not the birth mother, nor married to the birth mother, sought visitation rights to the child.⁶⁵ The court held a party must meet four elements to be considered a de facto parent:

- (1) that the biological or adoptive parent consented to, and fostered, the petitioner's formation and establishment of a parent-like relationship with the child;
- (2) that the petitioner and the child lived together in the same household;
- (3) that the petitioner assumed obligations of parenthood by taking significant responsibility for the child's care, education and development, including contributing towards the child's support, without expectation of financial compensation; and
- (4) that the petitioner has been in a parental role for a length of time sufficient to have established with the child a bonded, dependent relationship parental in nature.⁶⁶

The court reasoned that "[w]hile biological and adoptive parents have a constitutional right to rear their children free of unnecessary state

GENDER L. & SOC. POL'Y 75, 81–82 (2011); Katie Sieber, *Custody Involving a Non-Parent: The Rights of Step-Parents Under the De Facto and Psychological Parent Doctrines*, DIGITAL COMMONS MICH. ST. U. C.L. 1, 11 (2016). There are some minor differences between the two doctrines, but they are not worth noting for the purpose of this Note. Notably, "[t]he Supreme Court has never addressed" the psychological parent doctrine or de facto parentage. See Christina Spiezia, *In the Courts: State Views on the Psychological-Parent and De Facto-Parent Doctrines*, 33 CHILD. LEGAL RTS. J. 402, 402 (2013).

60. Gelmann, *supra* note 36, at 59 (citing CAL. R. CT. 5.502(10)).

61. See Richard Roane, *Family Law in Michigan Post Windsor and Obergefell: Recent Caselaw and Procedures Affecting Same-Sex Relationships*, 96 MICH. B. J. 22, 25 (2017).

62. 533 N.W.2d 419 (Wis. 1995).

63. Lindsay J. Rohlf, *The Psychological-Parent and De Facto-Parent Doctrines: How Should the Uniform Parentage Act Define "Parent"?*, 94 IOWA L. REV. 691, 698 (2009).

64. *In re Custody of H.S.H.-K.*, 533 N.W.2d at 421–22.

65. *Id.* at 422.

66. *Id.* at 421.

intervention, there are cases where the best interest of the child overrides a parent's right."⁶⁷ Ultimately, the court remanded the case to give the ex-partner an opportunity to show she satisfied the four-factor test.⁶⁸

Once a third party is found to be a de facto parent, they stand in legal parity with the child's legal parents in regard to family issues such as, the determination of "visitation, custody, and standing to seek parental rights in court."⁶⁹ However, the psychological parent is not afforded government benefits, intestacy rights, or entitlement for the child to be identified as next of kin.⁷⁰

In the case of *K.A.F. v. D.L.M.*, K.A.F. and F.D., a same-sex couple, decided to conceive a child through a sperm donor.⁷¹ K.A.F. gave birth to the child and the couple jointly raised the child.⁷² F.D. formally adopted the child with the consent of K.A.F.⁷³ F.D. and K.A.F.'s relationship ended and then K.A.F. became romantically involved with D.M. who, despite F.D.'s objections, "equally shared parental responsibility" for the child when he was in her home.⁷⁴ Over time, D.M. and K.A.F.'s relationship also failed.⁷⁵ D.M. then filed a complaint seeking joint custody of the child and reasonable visitation.⁷⁶

Both K.A.F. and F.D. argued that D.M. was not a psychological parent because there was not unanimous consent to D.M.'s relationship with the child.⁷⁷ The court rejected this argument, finding that it was sufficient "if only one of the legal custodial parents has consented," and that such consent "need not be explicit," but may be gleaned from the circumstances.⁷⁸ The court then remanded the case for a plenary hearing, but concluded "D.M. averred sufficient facts that, if credited at a plenary hearing, would establish her standing to pursue" her claim of psychological parenthood.⁷⁹ She had full consent from K.A.F. to parent the child, lived in a family setting with the child for over six years,

67. Spiezia, *supra* note 59, at 405–06 (analyzing *In re Custody of H.S.H.-K.*, 533 N.W.2d 419 (Wis. 1995)).

68. *In re Custody of H.S.H.-K.*, 533 N.W.2d at 437.

69. Spiezia, *supra* note 59, at 402; *see also* V.C. v. M.J.B., 748 A.2d 539, 550–51 (N.J. 2000); D.G. v. K.S., 133 A.3d 703, 710 (N.J. Super. Ct. Ch. Div. 2015); *In re Parentage of L.B.*, 122 P.3d 161, 174–77 (Wash. 2005).

70. *See* Schuster, *supra* note 23.

71. *K.A.F. v. D.L.M.*, 96 A.3d 975, 977 (N.J. Super. Ct. App. Div. 2014).

72. *Id.*

73. *Id.*

74. *Id.* at 978.

75. *Id.*

76. *Id.*

77. *Id.* at 978–79.

78. *Id.* at 983, 985.

79. *Id.* at 984.

performed parental duties, and presumably established a bond with the child.⁸⁰

C. Misc. Three Parent Rulings

Other courts have recognized multiple parents without creating new law or adopting the psychological parent doctrine.⁸¹ For example, some states have recognized third parent adoption.⁸² In Oregon, Sean Kane sought adoption of the children from his wife's first marriage.⁸³ The children still had a relationship with their biological father, so Kane did not want the court to sever the biological father's parental rights.⁸⁴ Therefore, he sought and was granted third-parent adoption, giving him legal status over the children.⁸⁵ The third parent adoption created "a situation where everyone [was] happy and part of the family."⁸⁶

Other courts have recognized multiple parents on a case by case basis. In 2007, the Pennsylvania Superior Court in *Jacob v. Shultz-Jacob* found that a child may have three parents.⁸⁷ Jodilynn and Jennifer were in a same-sex partnership and shared custody of Jodilynn's two adopted nephews and her two biological children whom she had with a friend.⁸⁸ When the couple decided to end their relationship, Jennifer filed suit to seek legal and physical custody of the children.⁸⁹ The Court recognized the three parties as parents, but created a parental hierarchy; Jodilynn

80. See *id.* The case does not explicitly state that a bond was formed between the child and D.M.; however, it can be inferred from the facts that a bond was formed as D.M. assumed parental duties for the child for six years and participated in all major decisions concerning the child.

81. See Peltz, *Courts and "Tri-Parenting": A State-by-State Look*, *supra* note 32.

82. See *e.g.*, Argentino, *supra* note 33 (citing *In re Adoption of Anisha Oksoktaruk Lumiansky*, No. 1JU-85-25 P/AS (Alaska Super. Ct.1985)).

83. Ian Lovett, *Measure Opens Door to Three Parents, or Four*, N.Y. TIMES (July 13, 2012), <http://www.nytimes.com/2012/07/14/us/a-california-bill-would-legalize-third-and-fourth-parent-adoptions.html>. This was not the first time Oregon has recognized third parent adoption. See Argentino, *supra* note 33 (citing *In re Adoption of A.L. and E.L.*, No. 9207-65717 (Or. Cir. Ct. 1992)). In 1992, in *In re Adoption of A.L. and E.L.*, a married couple had two children, and upon divorce the wife was given custody. *Id.* She then started a relationship with another woman who helped co-parent the children. *Id.* The wife petitioned the court to recognize her new partner as a legal parent, without relinquishing the father's parental rights. *Id.* The Court held all three parties as legal parents. *Id.*

84. Lovett, *supra* note 83.

85. *Id.* The third parent adoption eliminated some of Kane's concerns that led to his decision to seek legal status, such as being able to pick up the children from school, giving the children access to his health insurance and tax deductions, and making sure the children were provided for if he were to die. *Id.*

86. *Id.*

87. See *Jacob v. Shultz-Jacob*, 923 A.2d 473, 480 (Pa. Super. Ct. 2007).

88. *Id.* at 476.

89. *Id.*

and the father at the top as biological parents and Jennifer below them who received *in loco parentis* standing to seek custody.⁹⁰ Based largely on the hierarchy, as well as the best interests of the children, the court granted primary custody to Jodilynn and partial custody to Jennifer and the father.⁹¹

Across the border in Canada, the Court of Appeal in Ontario in *A.A. v. B.B.*, determined a child had three legal parents.⁹² A.A. and same-sex parent partner C.C. conceived a child with B.B., all of whom decided to become a family and raise the child together.⁹³ B.B. and C.C. were the biological parents, which resulted in A.A.'s petition to the court to be recognized as the child's second mother.⁹⁴ Through its *parens patriae* jurisdiction, the Court found that it was in the child's best interest for A.A. to be legally recognized.⁹⁵ Legal recognition allowed A.A., among other things, to fully participate in the child's life, determine her lineage and ensure the child's intestacy rights.⁹⁶

D. Preconception Agreements Allowing Multiple Parents

Currently in the United States, parents have the power to privately agree about family issues involving children, and if uncontested can stick to these agreements, but the agreements are unenforceable unless approved by the court.⁹⁷ However, other countries have proposed or implemented statutes that allow families to create preconception agreements regarding parentage, specifically for children born through

90. *Id.* at 477. Scholar Gupta-Kagan argued this approach suggests a "less-than-equal legal respect for same-sex couples and their parenting decisions." Josh Gupta-Kagan, *Non-Exclusive Adoption and Child Welfare*, 66 ALA. L. REV. 715, 747 (2015) [hereinafter Gupta-Kagan, *Non-Exclusive Adoption and Child Welfare*].

91. *Jacob*, 923 A.2d at 482.

92. *A.A. v. B.B.*, [2007] O.R. 3d 561, 563–64 (Can. Ont. C.A.).

93. *Id.* at 2.

94. *Id.*

95. *Id.* at 13. Canada's *parens patriae* jurisdiction gives their courts inherent and overriding power to take actions necessary to protect children. See Jeremy D. Morley, *Child Custody Jurisdiction in Canada*, LAW OFF. JEREMY D. MORLEY, http://www.international-divorce.com/child_custody_jurisdiction_canada (last visited Mar. 31, 2019).

96. *A.A. v. B.B.*, [2007] O.R. 3d at 566–67.

97. See *Braun v. Headley*, 750 A.2d 624, 636 (Md. Ct. Spec. App. 2000) (citing *Montgomery Cty. v. Sanders*, 381 A.2d 1154 (Md. Ct. Spec. App. 1977) (finding that the existence of private agreements between parents is one of several factors to be considered when determining custody of a child)); *Glauber v. Glauber*, 600 N.Y.S.2d 740, 743 (App. Div. 1993) (holding that agreements to determine child custody through private arbitration are unenforceable). When the contract at issue relates specifically to children, courts will decide whether to enforce the whole contract or some of its terms using the best interests of the child standard. See Pamela Gatos, *Third-Parent Adoption in Lesbian and Gay Families*, 26 VT. L. REV. 195, 209–11 (2001).

reproductive technology.⁹⁸ For example, in 2005, the New Zealand Law Reform Commission attempted to enact legislation that would permit a sperm donor to become a third legal parent through the use of a preconception agreement.⁹⁹ The proposal was ultimately rejected,¹⁰⁰ but almost a decade later, Section 41 of New Zealand's 2014 *Care of Children Act* was implemented, which enables a donor to opt into the donee's family with the assistance of a preconception agreement.¹⁰¹ However, unlike the original proposal, Section 41 does not make the donor a legal parent.¹⁰²

Canada's Uniform Child Status Act has an "additional parent," which creates the possibility for a child born through assisted reproduction to have more than two parents.¹⁰³ Section 9 provides that there must be an agreement prior to the conception of the child that sets out the intention of the donor, birth mother, and their spouses/partners to parent the child together.¹⁰⁴ Parentage is restricted to people who consent to be a parent prior to the child's birth resulting from assisted reproduction and either provided reproductive material or was married/partnered with a person who provided reproductive material.¹⁰⁵ The legislative purpose of Section 9 is to provide clarity and certainty to both the child and the parents regarding their roles and legal responsibilities, while ensuring stability in estate planning, benefits, and child support.¹⁰⁶

British Columbia's Family Law Act also has an amendment which allows a child born through assisted reproduction to have three legal parents from birth.¹⁰⁷ Similar to section 9 of the Uniform Child Status Act, Section 30 provides that prior to the child being born, there must be a written agreement that sets out the intent of the parties to parent the child together.¹⁰⁸ The amendment is limited to "instances of assisted reproduction, . . . [where] the couple . . . [is] married or in a marriage-

98. See, e.g., Family Law Act, S.B.C. 2011, c 25 P. 3, div. 1 § 20 (Can.); UNIF. CHILD STATUS ACT § 9 (UNIF. LAW CONFERENCE OF CAN. 2010).

99. Fiona Kelly, *Multiple-Parent Families Under British Columbia's New Family Law Act: A Challenge to the Supremacy of the Nuclear Family or a Method by Which to Preserve Biological Ties and Opposite-sex Parenting?*, 47 U.B.C. L. REV. 565, 573 (2014) (citing N.Z. LAW COMM'N, NEW ISSUES ON LEGAL PARENTHOOD: REPORT 88, 70–74 (2005)).

100. *Id.* at 567 n.7.

101. Care of Children Act 2004, s 41 (N.Z.).

102. *Id.* Although the donor does not have legal status, the preconception agreement can create an active role for the donor in the child's life, which is to be respected by courts. See *id.*; Kelly, *supra* note 99, at 573–74.

103. UNIF. CHILD STATUS ACT § 9 (UNIF. LAW CONFERENCE OF CAN. 2010).

104. *Id.*

105. *Id.*

106. *Id.* § 9 cmt.

107. Family Law Act, S.B.C., 2011 c 25 P. 3 div. 2 § 27 (Can.).

108. *Id.* at § 30; UNIF. CHILD STATUS ACT § 9 (UNIF. LAW CONFERENCE OF CAN. 2010).

like relationship, [and] is only available to additional parents who share a biological or genetic link to the child.”¹⁰⁹ The goal of Section 30 is “to provide a scheme for determining legal parentage, including where assisted conception is used, in a way that protects the child’s best interests and promotes stable family relationships.”¹¹⁰

IV. CRITICISIM OF MULTIPLE PARENTS

Although little authority exists either supporting or criticizing the structure of tri-parenting families, there are general concerns regarding multiple parent families. One of the biggest concerns is that multiple parents can create a situation akin to having “too many cooks in the kitchen,” leading to increased conflicts in the home.¹¹¹ As three or more parties would have to agree on child rearing decisions, such as the child’s education, religious affiliations, and moral values, there is a greater chance of disagreement among the parents. Disagreement can lead to challenged and second-guessed decisions, which could result in parents not being able to care for their children to the best of their ability.¹¹²

Another concern is that multiple parents “will often include two of the parents living together and the third living separately, [causing] ‘the child [to] get shuffled between homes.’”¹¹³ The child would have to make sense of different values and styles of living between homes, a situation analogized to a “good divorce” where the child can be negatively impacted.¹¹⁴

109. Kelly, *supra* note 99, at 567–68. The agreement must be made between (1) an intended parent or the intended parents and a potential birth mother or (2) the potential birth mother, a person who is married to or in a marriage-like relationship with the potential birth mother, and a donor. *Id.* at 579.

110. *Id.* at 577 (quoting B.C. MINISTRY OF ATTORNEY GEN. JUSTICE SERVS., BRANCH CIVIL POLICY AND LEGISLATION OFFICE, WHITE PAPER ON FAMILY RELATIONS ACT REFORM: PROPOSALS FOR A NEW FAMILY LAW ACT 29 (2010)).

111. See Jacobs, *Why Just Two?*, *supra* note 6, at 326; Carbone & Cahn, *supra* note 29; Kelly, *supra* note 98, at 574–76.

112. Scholar Pfenson refers to this concept as “stunted parenting.” Elizabeth A. Pfenson, *Too Many Cooks in the Kitchen: The Potential Concerns of Finding More Parents and Fewer Legal Strangers in California’s Recently-Proposed Multiple-Parents Bill*, 88 NOTRE DAME L. REV. 2023, 2059 (2013). The same line of reasoning applies to the “historic justification” of courts who generally refuse to meddle with parenting decisions. *Id.*

113. Ann E. Kinsey, *A Modern King Solomon’s Dilemma: Why State Legislatures Should Give Courts the Discretion to Find that a Child Has More than Two Legal Parents*, 51 SAN DIEGO L. REV. 295, 329 n.172 (2014) [hereinafter Kinsey, *A Modern King Solomon’s Dilemma*] (citing Elizabeth Marquardt, *When 3 Really Is a Crowd*, N.Y. TIMES (July 16, 2007), <http://www.nytimes.com/2007/07/16/opinion/16marquardt.html>); see also Rohlf, *supra* note 63, at 723.

114. Elizabeth Marquardt, *When 3 Really Is a Crowd*, N.Y. TIMES (July 16, 2007), <http://www.nytimes.com/2007/07/16/opinion/16marquardt.html>.

Even if multiple parent families reside in the same household, critics argue it is still detrimental to the child because it can lead to confusion and a lost sense of belonging.¹¹⁵ Multiple parents open the door “to a wide variety of adults wanting to have their family situations reassessed . . . [and] numerous applications from various adults wanting to have their ‘parenthood’ recognized.”¹¹⁶ The more parents claim parental rights, “The less a child belongs to any one parent or set of parents, [and] the less that child may feel like he belongs to someone or something.”¹¹⁷

Critics also argue multiple parents magnifies the effect of state intervention,¹¹⁸ “the consequences of which are notoriously bad for children.”¹¹⁹ State invention can also “irreparably compromise family privacy.”¹²⁰ It is argued that the recognition of two parents, as opposed to a single parent, “with comparable authority in the child’s life increase[s] the need for judicial intervention to manage disputes.”¹²¹ There could also be an increase in litigation caused by persons seeking parental rights.¹²²

V. NEW JERSEY PARENTAGE

New Jersey follows a two-parent rule, where legal parentage can only be established by genetic contribution, adoption, or gestational

115. Katharine K. Baker, *Bionormativity and the Construction of Parenthood*, 42 GA. L. REV. 649, 682–83 (2008).

116. Gelmann, note 37, at 67 n.82 (quoting *Three Parents Case*, EVANGELICAL FELLOWSHIP OF CANADA, [https://www.evangelicalfellowship.ca/Resources/Court-Cases/Three-Parents-Case%2%A0\(AA-v-BB\)-2007](https://www.evangelicalfellowship.ca/Resources/Court-Cases/Three-Parents-Case%2%A0(AA-v-BB)-2007) (last visited Apr. 3, 2019); see also Rohlf, *supra* note 63, at 718–19; Deborah H. Wald, *The Parentage Puzzle: The Interplay Between Genetics, Procreative Intent, and Parental Conduct in Determining Legal Parentage*, 15 AM. U. J. GENDER SOC. POLY & L. 379, 396 (2007). It is argued that multiple parent opportunities will be “used primarily by heterosexual adults, mainly stepparents and grandparents.” *Family Law: Parentage: Hearing Before the Assembly Committee on Judiciary*, 2013–2014 Reg. Sess. (Cal. 2013) (statement of Bob Wiecekowsky, Chair).

117. Baker, *supra* note 115, at 682.

118. See Bartlett, *supra* note 6, at 945. *But see* Kinsey, *supra* note 113, at 333 (arguing the limit of legal parentage to two adults does not eliminate the possibility for disputes among non-traditional families and the need for judicial intervention to resolve such conflicts).

119. Baker, *supra* note 115, at 708; see Pfenson, *supra* note 112, at 2062 (recognizing “family units [could] be subject to questioning and even potential reorganization by courts.”).

120. Melissa Murray, *The Networked Family: Reframing the Legal Understanding of Caregiving and Caregivers*, 94 VA. L. REV. 385, 445 (2008).

121. Carbone & Cahn, *supra* note 29, at 40; see also Murray, *supra* note 120, at 445.

122. Bartlett, *supra* note 6, at 945.

primacy.¹²³ Specifically the “parent and child relationship” is described as “the legal relationship existing between a child and the child’s natural or adoptive parents . . . [where] the law confers or imposes rights, privileges, duties, and obligations.”¹²⁴ The law explicitly states that the parent relationship only “includes the mother and child relationship and the father and child relationship.”¹²⁵

However in 2000, New Jersey found that a third party could be recognized as a psychological parent in *V.C. v. M.J.B.*, finding that “children have a strong interest in maintaining the ties that connect them to adults who love and provide for them.”¹²⁶ The Supreme Court of New Jersey found that V.C. was a psychological parent of her lesbian partner’s two children, using the four-factor test set forth in *In re Custody of H.S.H.-K.*¹²⁷ M.J.B. fostered “in every way” the parent-child bond with the children: the partners and children lived together in the same house as a family, V.C. assumed the day-to-day and financial obligations of parenthood, and the relationship between V.C. and the children was parental in nature.¹²⁸

Until recently, third parents, in conjunction with the other two legal parents, had a very limited avenue to establish legal parenting rights. They could seek to adopt a child, but the parental rights of the birth parents had to first be terminated.¹²⁹ However, in 2016, the New Jersey Superior Court took strides towards the recognition of three parents in *D.G. v. K.S.*¹³⁰ D.G. and his husband, S.H., along with their friend K.S., decided to conceive and raise a child together.¹³¹ The parties agreed to use D.G.’s sperm and K.S.’s egg, and conceived through an “in-home conception method known as the ‘Baster Method.’”¹³² Once the child was born, all three parties effectively parented together and were able to do so for most of the child’s early life.¹³³ Controversy began when K.S. wanted to relocate with the child to California.¹³⁴ The parties could not

123. N.J. STAT. ANN. § 9:17-41 (West 2019); see also *In re T.J.S.*, 16 A.3d 386, 390 (N.J. Super. Ct. App. Div. 2011).

124. N.J. STAT. ANN. § 9:17-39 (West 2019).

125. *Id.*

126. *V.C. v. M.J.B.*, 748 A.2d 539, 550 (N.J. 2000).

127. *Id.* at 555; *In re Custody of H.S.H.-K.*, 533 N.W.2d 419, 421 (Wis. 1995).

128. *V.C.*, 748 A.2d at 555.

129. See *In re Baby M*, 537 A.2d 1227, 1251–52 (N.J. 1988) (holding parental rights can only be terminated where there has been a voluntary surrender of a child to an agency or when there has been a showing of parental abandonment or unfitness).

130. *D.G. v. K.S.*, 133 A.3d 703, 706 (N.J. Super. Ct. Ch. Div. 2015).

131. *Id.* at 707.

132. *Id.* at 708.

133. *Id.*

134. *Id.* at 709.

agree on a tri-parenting plan, so D.G. and S.H. filed a complaint seeking legal and physical custody of the child, parenting time, and the establishment that S.H., who did not have any biological ties to the child, was the child's legal and psychological parent.¹³⁵

The Court determined that it could not find S.H. a legal parent because he did not contribute genetically to or act as a gestational carrier of the child, nor had he moved for final adoption of the child.¹³⁶ However, relying on *V.C. v. M.J.B.*, the Court found S.H. a psychological parent using the four factor test:¹³⁷ (1) S.H. lived with the child for six years;¹³⁸ and (2) S.H. assumed extensive obligations for the child, inter alia, the child's care, education, and development.¹³⁹ He contributed financially, without the expectation of reimbursement, by providing food, clothing and other necessities, as well as costs for medical and education bills.¹⁴⁰ S.H. often prepared the child for school, including bathing, dressing, and brushing her teeth.¹⁴¹ (3) S.H. established a parental bond with the child, as evidenced by the child's reference to him as "Papa."¹⁴² (4) D.G. and K.S. consented to and fostered the tri-parenting relationship, as they were "enthusiastic about creating this new family concept" and wanted to share their story.¹⁴³ The child was also given S.H.'s surname.¹⁴⁴

After finding S.H. was a psychological parent, he stood in legal parity with D.G. and K.S.¹⁴⁵ Using the best interests of the child standard, the Court awarded custody to all three parents, effectively blocking K.S. from moving with the child.¹⁴⁶ However, because S.H. was not deemed a legal

135. *Id.* at 706, 709.

136. *Id.* at 726.

137. *Id.* at 709–10; *V.C. v. M.J.B.*, 748 A.2d 539, 551 (N.J. 2000) (citing *In re Custody of H.S.H.-K.*, 533 N.W.2d 419, 421 (Wis. 1995)).

138. *D.G. v. K.S.*, 133 A.3d 703, 711 (N.J. Super. Ct. Ch. Div. 2015).

139. *Id.* at 710.

140. *Id.* at 710–11.

141. *Id.* at 710.

142. *Id.* at 711.

143. *Id.* They solicited a variety of news outlets including Marie Claire Magazine and the Nate Berkus Show. *Id.* at 708–09.

144. *Id.* Notably, "even though S.H.'s surname is on the child's birth certificate as the child's own, this is not dispositive of legal parentage, as S.H. bears no biological relation to the child." *Id.* at 726.

145. *Id.* at 709. The custody and parenting time issues were then determined among the parties based on the best interests of the child standard. *Id.* at 710. The court based its decision on factors set forth in N.J. Stat. Ann. § 9:2-4, which included but were not limited to "the parents' ability to agree, communicate and cooperate in matters relating to the child; the parents' willingness to accept custody and any history of unwillingness to allow parenting time not based on substantiated abuse; [and] the interaction and relationship of the child with its parents and siblings." *Id.* at 713.

146. *Id.* at 723.

parent, the child is not entitled to S.H.'s estate benefits, medical benefits, social security, or identified as his next of kin.¹⁴⁷

A. *Why the Psychological Doctrine Falls Short*

Although the decision in *D.G. and K.S.* was a big victory toward the legal recognition of three parents, the psychological parent doctrine has several major flaws, leaving tri-parenting families vulnerable to significant disadvantages.¹⁴⁸ When parents decide to tri parent “by design,” they make the decision to raise a child together from conception.¹⁴⁹ Arguably in most instances, all three parties want equal parental rights from the start. Although the psychological parent doctrine provides an option for a third parent to gain parental rights, the current construction of the law makes it impossible for third parent rights to start at the child's birth.¹⁵⁰

As discussed above, to gain parental rights, the third parent must seek court intervention and fulfill specific criteria to gain legal parity with the child's biological parents.¹⁵¹ The third party has to be in a parental role for a *length of time* sufficient to establish a bond with the child.¹⁵² The third party also has to have *lived together* with the child.¹⁵³ The party must have assumed a *significant amount of responsibility* for the child.¹⁵⁴ Under these requirements, it is impossible for the third parent to gain rights from the start, as the only factor that can be met from birth is the requirement of consent to the relationship from the biological or adoptive parents.¹⁵⁵

Without immediate parental rights, the third parent is subject to significant disadvantages in making decisions and having a role in the child's early life.¹⁵⁶ A third parent cannot make any binding decisions about the visitation, custody, education or religious affiliations of the

147. See Schuster, *supra* note 23.

148. See *D.G. v. K.S.*, 133 A.3d 703, 703 (N.J. Super. Ct. Ch. Div. 2015).

149. See Weinberger, *supra* note 16.

150. See generally N.J. STAT. ANN. § 9:17-41 (West 2019); *V.C. v. M.J.B.*, 748 A.2d 539, 553 (N.J. 2000); *D.G.*, 133 A.3d at 726; *K.A.F. v. D.L.M.*, 96 A.3d 975, 985 (N.J. Super. Ct. App. Div. 2014).

151. See, e.g., *V.C.*, 748 A.2d at 549; *D.G.*, 133 A.3d at 709–15; *K.A.F.*, 96 A.3d at 981.

152. See *D.G.*, 133 A.3d at 710.

153. *Id.*

154. *Id.*

155. See, e.g., *id.*

156. See Pamela Laufer-Ukeles & Ayelet Blecher-Prigat, *Between Function and Form: Towards a Differentiated Model of Functional Parenthood*, 20 GEO. MASON L. REV. 419, 439 (2013) (finding “children need functional parents to have legal status so that caregivers can effectively provide caregiving.”).

child.¹⁵⁷ If medical complications were to arise shortly after the child's birth, the third parent would have no legal standing to decide course of medical treatment.¹⁵⁸ If parenting decisions cannot be made between the parties and court intervention is sought, the third parent would have the added burden of establishing that he or she is a psychological parent to gain legal parity with the other two parents.¹⁵⁹

The psychological parent doctrine is also flawed as it only gives a third parent legal parity in regards to "the family court construct," which include things like parenting time, custody, and visitation.¹⁶⁰ The doctrine fails to give the third party legal rights or obligations concerning, inter alia, social security benefits, tax benefits, medical benefits or rights to intestacy succession.¹⁶¹ Inevitably, the lack of rights create an unstable environment for both the parents and child.

B. Why New Jersey Needs to Recognize Tri-Parenting Families

The legal recognition of tri-parenting families would provide stability for families living in nontraditional settings. Although limited research has been conducted about tri-parenting families, there are presumably many benefits that could result from a child being raised by a legally recognized tri-parenting family.

By having three parents, the child may have a greater financial support network.¹⁶² All three parents would be obligated to contribute to the child's financial needs, which will increase the likelihood that the child is adequately cared for.¹⁶³ The child would have access to all three parent's health insurance, social security benefits and inheritance rights.¹⁶⁴ The child would also be able to sue on behalf of either three

157. See *Troxel v. Granville*, 530 U.S. 57, 72–73 (2000) (reversing the lower court's decision to grant the grandparents more visitation than the mother of the children wanted and finding that a state statute allowing anyone to petition for visitation rights without a threshold showing of harm was unconstitutional as it infringed on the fundamental rights of the parent).

158. See Laufer-Ukeles & Blecher-Prigat, *supra* note 156, at 439.

159. See, e.g., *V.C. v. M.J.B.*, 748 A.2d 539, 553 (N.J. 2000); *D.G.*, 133 A.3d at 710.

160. See Annette Ruth Appell, *Virtual Mothers and the Meaning of Parenthood*, 34 U. MICH. J.L. REFORM 683, 722–24 (2001); Schuster, *supra* note 23.

161. See Cynthia R. Mabry, "Who is My Real Father?"—*The Delicate Task of Identifying a Father and Parenting Children Created from an In Vitro Mix-Up*, 18 NAT'L BLACK L.J. 1, 62 (2004).

162. See Melanie B. Jacobs, *More Parents, More Money: Reflections on the Financial Implications of Multiple Parentage*, 16 CARDOZO J.L. & GENDER 217, 226 (2011) [hereinafter Jacobs, *More Parents, More Money*].

163. See *id.*

164. See Kinsey, *A Modern King Solomon's Dilemma*, *supra* note 113, at 332; A.A. v. B.B., [2007] O.R. 3d 561, 566–68 (Can. Ont. C.A.); Jacobs, *More Parents, More Money*, *supra*

parents for work injuries or wrongful death.¹⁶⁵ Having a third financial support could benefit the state, as it would reduce the chance that the child will have to receive public assistance or state funding.¹⁶⁶

Tri-parenting could also provide the child with greater emotional benefits.¹⁶⁷ With three parents, compared to two, there is an overall larger emotional support network for the child.¹⁶⁸ Tri-parenting allows children to “pull the support needed for new and different challenges” and also “ensure that conflict or abuse in a single relationship will not leave [the] child[] without support.”¹⁶⁹ Further, each parent is likely to possess different attributes that facilitate emotional growth and support in different areas. For example, in *D.G. v. K.S.*, D.G. was the “businessman, ‘stylist, food expert, scheduler and organizer,” S.H. was the “education and religion ‘guru,” and K.S. was the “outdoors and whimsical one.”¹⁷⁰

Conversely, the exclusion of a third parent could have a negative emotional impact on the child. The sudden loss of separation from a third parent can “create[] significant psychological harm in children.”¹⁷¹ For young children, the severance of the relationship could cause a disruption in the formation of basic life functions, such as “speech [or] toilet training.”¹⁷² As children get older, the severance could lead to disappointment in adults causing “disruptive behavior in schools, including dissocial and delinquent behaviors.”¹⁷³

The exclusion of the third parent’s legal status could also have a negative impact on the family. The status of the parent-child relationship “matters because it communicates society’s view of the status of a relationship, and thus shapes the understanding of a relationship both among the adults and the children involved.”¹⁷⁴ Lack of status could cause the family to feel inferior based on “outsiders perceptions of his/her

note 162, at 234–35. Although children are not entitled to inherit from parents, if their parents die without a will, intestate laws provide provisions for children to inherit. See Jacobs, *More Parents, More Money*, *supra* note 162, at 234–35.

165. See Jacobs, *More Parents, More Money*, *supra* note 162, at 234–35.

166. See *id.*

167. See Forman, *supra* note 23, at 76.

168. Madison Bonner-Bianchi, a child raised in a tri-parenting family, expressed that she had “more people there to support [her] and be there for [her] and love [her] no matter what.” Peltz, *Modern Family: More Courts Allowing 3 Parents of 1 Child*, *supra* note 24.

169. Kavanagh, *supra* note 7, at 98.

170. *D.G. v. K.S.*, 133 A.3d 703, 716 (N.J. Super. Ct. Ch. Div. 2015).

171. Rebecca L. Scharf, *Psychological Parentage, Troxel, and the Best Interests of the Child*, 13 GEO. J. GENDER & L. 615, 634 (2012); see also Laufer-Ukeles & Blecher-Prigat, *supra* note 156, at 439.

172. Scharf, *supra* note 171, at 634.

173. *Id.* at 635.

174. Gupta-Kagan, *Non-Exclusive Adoption and Child Welfare*, *supra* note 90, at 725.

family not being legally recognized,” which could cause mental or physical distress.¹⁷⁵ Further, without legal status, the third parent could be seen a “mere third party” or “legal stranger” with no parental rights or responsibilities.¹⁷⁶ This could damage the parental bond between the parent and the child, possibly depriving them of a meaningful parental relationship.¹⁷⁷ It could also damage the parent’s ability to fully perform to the best of his/her ability by opening the door for other adults to challenge decisions made by the third parent.

Many objections to multiple parenting are arguably hypothetical and overgeneralized. For example, critics argue that if a multiple parent family resides in more than one home, it will negatively impact the child.¹⁷⁸ However, the exposure to multiple homes can be positive, as it creates the possibility for the child to experience different styles of living and cultural diversity.¹⁷⁹ Critics also argue that having multiple parents leads to more disagreement and a greater chance of litigation.¹⁸⁰ This overgeneralizes that all multiple parent families are dysfunctional.¹⁸¹ Some tri-parenting families are able to manage disputes effectively without damaging the family or resorting to court intervention. For example, the Bonner-Bianchi tri-parenting family successfully raised their daughter Madison, revealing that when there was issues “all three [parents] meet together . . . construct an approach, and talk with Madison together, so she knows the three of us are aligned.”¹⁸² However, even if tri-parenting families create more complicated decision making, “an issue that so far [is] not established empirically,” this alone “does not justify non-recognition of multiparents.”¹⁸³

175. Gelmann, *supra* note 36, at 71.

176. See Jacobs, *More Parents, More Money*, *supra* note 162, at 221. Legal status protects the financial and emotional support for the child. *Id.*

177. See Baker, *supra* note 115, at 684.

178. See *supra* Part IV. *But see* Wald, *supra* note 116, at 410 (arguing “[l]egal parentage does not guarantee custodial parentage” so there is a possibility that the child will not be shuffled between homes) (emphasis omitted)).

179. See Kinsey, *A Modern King Solomon’s Dilemma*, *supra* note 113, at 334. For example, Madison Bonner-Bianchi grew up living in more than one home and her father Mark stated that it was a “very organic” experience and “worked out well.” Lindsay Wolf, *This Teenager has 3 Legal Parents and Wouldn’t Have it Any Other Way*, *BABBLE*, <https://www.babble.com/parenting/madison-bonner-bianchi-three-legal-parents/> (last visited Apr. 3, 2019).

180. See *supra* Part IV.

181. See Haim Abraham, *A Family Is What You Make It? Legal Recognition and Regulation of Multiple Parents*, 25 *AM. U. J. GENDER SOC. POL’Y & L.* 405, 424 (2017).

182. Wolf, *supra* note 179.

183. See Abraham, *supra* note 181, at 421.

VI. PROPOSED SOLUTION – ADDING AN “ADDITIONAL PARENT AMENDMENT”

As medical technology has advanced drastically over the past few decades, it is important for New Jersey to revisit their parentage provisions to take new family structures into consideration. Specifically, tri-parenting families should be afforded legal recognition because they exist in New Jersey’s society.¹⁸⁴ The prevention of legal recognition puts these families at a severe disadvantage in being able to function in society.¹⁸⁵ As expressed above, New Jersey’s current regime is inadequate because the psychological parent doctrine does not afford third parent rights from the start and fails to give the third parent *all* of the legal rights that the other two parents are afforded.¹⁸⁶

New Jersey’s legislation could implement a new amendment identical to California’s Family Code Section 7612(c) that creates the possibility for a child to have three legal parents if severing the bond between the third party would be detrimental to the child.¹⁸⁷ Although an option, California’s law poses a few significant problems.

First, the amendment places no limit on the number of parents a child could have.¹⁸⁸ An array of different adults could attempt to assert parentage over a child, which could be confusing for the child and increase litigation.¹⁸⁹ Second, the determination of legal parentage is left to the judge’s discretion, based on whether “recognizing only two parents would be detrimental to the child.”¹⁹⁰ If a third parent in a tri-parenting family was seeking legal parent rights from the child’s birth, he/she would likely have an enormous burden of establishing that the lack of legal status would be detrimental to the child as there would be almost no evidence of the relationship with the child or how the child would be effected if that bond was severed. Third, every third parent seeking legal rights has to seek court intervention.¹⁹¹ This invites unnecessary

184. *See, e.g.*, D.G. v. K.S., 133 A.3d 703 (N.J. Super. Ct. Ch. Div. 2015).

185. *See supra* Part V.A.

186. *See id.*

187. *See* CAL. FAM. CODE § 7612(c) (West 2019).

188. *See id.*

189. *See id.* Allowing a broad category of adults to seek standing for parentage can lead to meritless litigation and “impose a cost on parents and children who are forced to endure and respond to it.” Josh Gupta-Kagan, *Children, Kin, and Court: Designing Third Party Custody Policy to Protect Children, Third Parties, and Parents*, 12 N.Y.U. J. LEGIS. & PUB. POL’Y 43, 91 (2008) [hereinafter Gupta-Kagan, *Children, Kin, and Court*] (citing JOSEPH GOLDSTEIN, ANNA FREUD & ALBERT SOLNIT, *BEFORE THE BEST INTERESTS OF THE CHILD* 25 (1979)).

190. *See* CAL. FAM. CODE § 7612(c).

191. *Id.*

intrusion into the family's private life and could cause harm to children if "litigation questions the authority of their parents or their relationship with their parents."¹⁹²

Therefore, a proposed solution is for New Jersey to implement an "additional parent" amendment to the New Jersey Parentage Act, that would provide tri-parenting families legal recognition from the child's birth through the use of narrowly tailored preconception agreements.¹⁹³ Following the guidance of British Columbia's Family Law Act, the goals of the new amendment would be "promoting family stability, providing certainty of parental status as soon as possible, treating children fairly, regardless of the circumstances of their birth, protecting vulnerable persons and preferring out-of-court processes where possible."¹⁹⁴

The amendment would be created specifically for tri-parenting families conceiving through ART, however, it would not prohibit these families from conceiving through other methods.¹⁹⁵ The reality is that ART is very expensive and has the potential to cause a massive financial burden on families.¹⁹⁶ By limiting the amendment to conception through ART, would "unjustifiably create [a] 'middle class family law.'"¹⁹⁷ Importantly, legal parentage should not hinge on the wealth of families.

Next, the family arrangement would have to be between three people: a couple in a marriage, or common law marriage situation, and a third party who must share a biological link to the child. The number of legal

192. See Gupta-Kagan, *Children, Kin, and Court*, *supra* note 189, at 90–91 (citing JOSEPH GOLDSTEIN, ANNA FREUD & ALBERT SOLNIT, *BEFORE THE BEST INTERESTS OF THE CHILD* 25 (1979)); Rohlf, *supra* note 63, at 723 n.211 (quoting JOSEPH GOLDSTEIN, ANNA FREUD & ALBERT J. SOLNIT, *BEFORE THE BEST INTERESTS OF THE CHILD* 39–57 (1979) ("The [c]hild's physical and mental development . . . requires family privacy, free from outside control or coercive intervention by the state.")).

193. See, e.g., Family Law Act, S.B.C. 2011, c 25 P. 3, div. 1 § 20 (Can.); UNIF. CHILD STATUS ACT § 9 (UNIF. LAW CONFERENCE OF CAN.).

194. Family Law Act, S.B.C. 2011, c 25 P. 3, div. 1 § 20 (Can.); BRITISH COLUMBIA MINISTRY OF ATTORNEY GENERAL JUSTICE SERVICES BRANCH CIVIL POLICY AND LEGISLATION OFFICE, WHITE PAPER ON FAMILY RELATIONS ACT REFORM: PROPOSALS FOR A NEW FAMILY LAW ACT 31 (2010).

195. Although presumably not ideal, financial situations could cause tri-parenting families to conceive through sexual intercourse.

196. See *Artificial Insemination Cost: How Much Does Artificial Insemination Cost?*, COSTHELPER, <http://health.costhelper.com/artificial-insemination.html> (last visited April 4, 2019); Mohapatra, *supra* note 16, at 91 (quoting Marissa A. Mastroianni, *Bridging the Gap Between the "Have" and the "Have-Nots": The ACA Prohibits Insurance Coverage Discrimination Based Upon Infertility Status*, 79 ALB. L. REV. 151, 151 (2016) ("A dichotomy exists between the 'haves,' those with the financial means to undergo infertility treatment, and the 'have-nots,' those who lack such means.")).

197. Gupta-Kagan, *Non-Exclusive Adoption and Child Welfare*, *supra* note 90, at 742. Families should have the option to use ART if they can afford it, or use less expensive means such as ovulation kits or sexual intercourse if necessary.

parent's a child could have would be set to three to specifically support tri-parenting families. Canadian Scholar Kelly argues that the legal parentage number should be set to four because there are family structures where lesbian and gay couples co-parent together.¹⁹⁸ However, there is no support that this type of family structure exists in the United States.¹⁹⁹ Thus, at this time the number of parents should be restricted to three.

The type of parental relationship is also significant. The restriction forecloses the opportunity for unrelated or arbitrary parties to assert parentage over a child, which creates a stable environment for the family and reduces the chance of increased litigation.²⁰⁰ Also, it does not undermine the importance of biology.²⁰¹ A growing trend among children born through assisted reproduction eventually search for information about their birth mother or sperm donor.²⁰² This suggests that “genetic connection matters to children.”²⁰³ The development of a relationship between the child and his/her biological parents can also help play an important role in developing the child's identity.²⁰⁴

Next, the pre-conception agreement must be executed *before* the child is born and express the intent of all three parties to parent the child. A major reason why families fail is that they do not plan what will actually happen when a child is born or anticipate possible hurdles they might face as a family.²⁰⁵ This is a critical aspect for tri-parenting families because there are more decision makers than a usual family.²⁰⁶ The use of preconception agreements *before* the child is born will force parents to

198. Kelly, *supra* note 98, at 586–87.

199. In doing research for this Note, I was unable to find any authority finding that this type of familial structure exists and is growing in American society.

200. See *supra* Part IV.

201. This amendment would allow for the reinsertion of a biological parent, allowing the child to have either two mothers and a father, or two fathers and a mother, which ironically reconstructs a modified heteronormative biological family, a family in which the child has a biological parent of each sex. See Kelly, *supra* note 99, at 583–84; Appell, *supra* note 160, at 724 (finding the addition of a third parent does not interfere with the importance of biology, as it “simply adds parents based on past parental conduct and consent.”).

202. See Forman, *supra* note 23, at 73. Children often look for their biological parents, even if the child grows up in a healthy, loving family environment. Rohlf, *supra* note 63, at 722.

203. See Baker, *supra* note 114, at 688.

204. Gupta-Kagan, *Non-Exclusive Adoption and Child Welfare*, *supra* note 90, at 730; Appell, *supra* note 160, at 724.

205. See, e.g., D.G. v. K.S., 133 A.3d 703, 708–09 (N.J. Super. Ct. Ch. Div. 2015); see also Peltz, *Modern Family: More Courts Allowing 3 Parents of 1 Child*, *supra* note 24.

206. Madison Bonner-Bianchi, a child from a tri-parenting family, comments on the challenge of having three parents, noting the difficulty of “having to ask [for] all of their permission before I am able to do something.” Wolf, *supra* note 179.

sit down and plan out how their family will function, taking into consideration the best interests of the child. It will also force the parents to consider if they have compatible personalities and life styles that will provide the child with a stable home.²⁰⁷

The parties will also have the option to provide a basic contract of the roles, rights and responsibilities of each parent to help create an effective tri-parenting plan.²⁰⁸ Based on the parent's preferences the contract can be basic or detailed. For example, the parents will have the option to create a hierarchy of parents, designating which parent(s) have greater decision-making authority over the others, either in general or with reference to specific issues, which could deter future litigation.²⁰⁹ To decrease the chance of court intervention, the agreement could also force the parties to seek the help of a counselor or mediator to help settle disputes.²¹⁰ However, should conflicts arise, the court will not be required to enforce the roles or responsibilities portion of the preconception contract, unless it is in the best interests of the child.²¹¹

If intent is withdrawn by any of the three parties before the child is born, the preconception agreement will be invalid. If all three parent's consent and the child is born, the parties will have 90 days to apply for a declaratory order by submitting their preconception agreement to the court. Upon delivery and acceptance of the declaratory judgment, all three parties will be deemed legal parents to the child and receive the full rights and responsibilities of legal parentage including, inter alia, benefits and intestate succession rights.

VII. CONCLUSION

Adding a new amendment that allows three legal parent recognition through the use of narrowly tailored preconception agreements is the best way for New Jersey to provide stability and structure for tri-parenting families without destabilizing the traditional family structure. Whether the government agrees with the changing dynamics of families or not, it is inevitable that the structure of families will keep evolving

207. See Schuster, *supra* note 23.

208. See *id.*

209. Gupta-Kagan, *Non-Exclusive Adoption and Child Welfare*, *supra* note 90, at 754 (citing Susan Frelich Appleton, *Parents by the Numbers*, 37 HOFSTRA L. REV. 11, 59 (2008)).

210. See Schuster, *supra* note 23 (suggesting preconception agreements appoint a "parenting coordinator" to resolve disagreements regarding parenting decisions).

211. This is consistent with current law, where courts generally do not enforce private agreements regarding children, unless they are in the best interests of the child. See *Glauber v. Glauber*, 600 N.Y.S.2d 740 (App. Div. 1993); see also *Braun v. Headley*, 750 A.2d 624 (Md. App. 2000).

and changing. The number of Americans living in a nuclear family has and will likely continue to steadily decline as more non-traditional families are formed.²¹² Since the acceptance of same-sex marriage, the tri-parenting family structure has begun to spread and become a familiar concept nationwide. Refusing to recognize tri-parenting families will not stop them from forming. Therefore, families that decide to tri parent should be afforded legal recognition for all three parents to help provide a stable structure that is in the child's, as well as the family's, overall best interest.

212. In 2016, "The majority of America's 73.7 million children under age 18 (69 percent) live in families with two parents." *The Majority of Children Live With Two Parents*, U.S. CENSUS BUREAU (Nov. 17, 2016), <https://www.census.gov/newsroom/press-releases/2016/cb16-192.html>. "Between 1960 and 2016, the percentage of children living in families with two parents decreased from 88 to 69." *Id.*