When Is a Child Not a Child?



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Fans of the folk group Peter, Paul & Mary may remember the sentiment that home is where the heart is, regardless of what home happens to look like. Mary Travers's voice may have aged over the years, but she continued to sing about equality with undiminished gusto.

Home *is* where the heart is, especially for those of us in the LGBTQ+ community, whose families don't always fit neatly within traditional legal definitions. The most important people in our lives may be bound to us as much by love, commitment, and shared experience as by biology or paperwork.

Unfortunately, the law has a particular fondness for paperwork.

Bonds of affection may make a family strong and cohesive, but affection alone does not necessarily create a legal relationship. This hard truth can be particularly important when children are involved. Adoption, remarriage, assisted reproduction, and blended families can all create situations in which someone is unquestionably a parent in everyday life but may not be a parent in the eyes of the law.

A married couple raising a child together may consider the child unequivocally theirs, loved and cared for by both parents equally. But the legal reality might be starkly different.

Suppose a child is from one spouse's prior relationship. The new spouse may attend soccer games, help with homework, make school lunches, sit up all night with a sick child, and otherwise perform every conceivable parental duty. Marriage to the child's parent, however, does not by itself make that stepparent a legal parent. In Maryland, legal parental rights generally remain with the child's biological parents unless something occurs to change that relationship, such as an adoption.

The distinction becomes important at precisely the moments when a family least wants to discover it. Questions can arise concerning medical care, education, custody, travel, and other important decisions affecting the child.

Estate planning presents another example. A stepchild generally does not have the same automatic inheritance rights from a stepparent as a biological or adopted child has. Without appropriate planning, a stepparent can spend decades treating a child as his or her own, only for the state's intestacy laws to see the relationship quite differently at death.

One possible solution is adoption. A stepparent adoption formally establishes the parent-child relationship and gives the stepparent the legal rights and responsibilities of a parent. It also gives the adopted child inheritance rights through the adoptive parent under Maryland law.

For some families, adoption is relatively straightforward. For others, it can be much more complicated. The rights of another legal parent cannot simply be wished away, even if that parent plays little role in the child's everyday life. Depending on the circumstances, that parent's consent may be required, although Maryland law provides circumstances in which an adoption may proceed without it.

This is particularly important in blended families. A child may have a devoted stepparent while also having another parent with whom the child has a genuine relationship. Adoption may therefore be legally difficult, emotionally draining, or simply not the right answer for that family.

Fortunately, adoption is not the only way to provide protection.

A thoughtful estate plan can make sure a stepchild is not inadvertently left out. A will or revocable trust can provide an inheritance for the child even when the intestacy laws would not. And rather than giving substantial assets to a young beneficiary outright, the estate plan can place them in a trust, with a trustee managing the property until the child reaches an appropriate age.

The trust can also be tailored to the particular child. It might authorize distributions for education, health care, and other needs while the child is young, with the remaining assets distributed later, perhaps in installments, at certain milestone ages. After all, there is no rule requiring an estate plan to celebrate a child's eighteenth birthday by handing over a large check and simply hoping for the best.

For LGBTQ+ parents, there is another lesson here as well. Our families have gained extraordinary legal recognition over the past several decades, but it is still unwise to assume that love, marriage, or day-to-day parenting automatically answers every question about legal parentage. The safest plan is the one that makes the legal connection match the family relationship as closely as possible.

Mary Travers once said that she was raised to believe that everybody has a responsibility to their community. We have a responsibility to ourselves and our families, too. When it comes to our children, a little legal planning can help ensure that the law recognizes what everyone around the dinner table already knows—home is where the heart is.