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A Complex Case Tests New York State's Expanded Definition of Parenthood

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The two women avoided each other's gaze in the compact courtroom last week, separated by their lawyers, file boxes and three-inch binders filled with old emails and documents. Somewhere in all the paper was the answer to a question that is being tested as never before in New York State: Were both women the parents of the energetic 6-year-old boy they loved? Or just one of them?

Deciding who is a parent in New York used to be a relatively simple matter. A parent was either biologically related to the child or had legally adopted the child. But in State Supreme Court in Manhattan, the first custody case is underway to test [a newly expanded definition of parentage](#), as handed down by the state's highest court in August.

The new definition is aimed at accounting for the complexity of nontraditional families, including same-sex couples. Now, to determine if someone is a parent, judges can consider whether a couple intended to have and raise a child together, among other factors. So in the courtroom in Manhattan, Circe Hamilton, 44, and her former partner Kelly Gunn, 52, are battling over whether Ms. Gunn should be recognized as a parent to the boy, Abush, whom Ms. Hamilton adopted from Ethiopia in 2011.

In a city filled with complicated relationships, this one stands out. In the original adoption paperwork, completed in early 2009, the British-born Ms. Hamilton appears as a single woman with a boyfriend, and Ms. Gunn is described as a roommate. But that was because Ethiopia does not allow gay couples to adopt, both women acknowledge. In reality, the two women, who began dating in 2004, had planned to raise the child together, and their application reflected some joint assets. Ms. Gunn said her intent was to eventually co-adopt the child in a second-parent adoption proceeding.

They broke up in December 2009, and Ms. Hamilton decided to move forward with the adoption alone, she testified. Despite the breakup, the women remained close. When Ms. Hamilton went to Ethiopia to get Abush, Ms. Gunn met her and the boy in London to fly together to Manhattan. When Ms. Hamilton, a freelance photographer, returned to her tiny apartment in the West Village, she said she was overwhelmed by the challenges of parenting. Ms. Gunn, who ran a successful design company, stepped in, babysitting regularly and attending Abush's doctors' appointments, and briefly employing Ms. Hamilton at her firm, according to court testimony.

The women continued to occasionally stay together in a house they had once jointly owned on Fire Island. Abush had a crib there, and to Ms. Hamilton, these gestures represented the generosity of a trusted friend, she said recently. "She was someone I had loved, whom I respected," she said of Ms. Gunn. "I had no reason not to trust a friend offering help."

But to Ms. Gunn, the relationship with Abush was much more. She now describes her situation as analogous to that of a couple who had broken up during a biological pregnancy. It was as if the adoption agreement was a conception, conferring upon the child both her and Ms. Hamilton's DNA. "He wouldn't have come into our lives without me," Ms. Gunn said. "He is a product of our mutual intention, our mutual efforts."

The minutia of their daily lives in recent years — who took Abush to his play dates, his school appointments, his sports classes — are now pieces of a puzzle in a trial that has already had 15 days of testimony, with at least a week to go. The judge must decide whether Ms. Gunn's involvement in Abush's life amounts to her being a parent, and if it gives her standing to sue in a second hearing for custody and visitation.

Justice Frank P. Nervo, who is presiding over the case, has come up with questions to guide the lawyers. How formalized was the relationship between Ms. Gunn and Abush? What did he think Ms. Gunn's role was? Did Ms. Gunn assume the duties of a parent? What would be the impact on Abush if their relationship ended?

Almost all states now legally recognize de facto parenthood to account for the realities of modern families. In expanding its parenthood definition, the New York State Court of Appeals said in its Aug. 30 ruling that it was seeking a definition that provided "equality for same-sex parents and provides the opportunity for their children to have the love and support of two committed parents."

Parents without adoptive or biological ties can now sue for the right to see children after couples break up, hopefully protecting them from the trauma of forced separation from a parent. "Now the legal parent cannot unilaterally cut the other person out of their life," said Nancy D. Polikoff, a professor at the American University Washington College of Law.



Ms. Hamilton said she had made it clear that she intended to continue with the adoption alone, and that Ms. Gunn is trying to rewrite history. *CreditÁngel Franco/The New York Times*

Yet Abush’s case is a tough first test of the state’s new rule because its facts are unusually complicated and disputed by the involved parties, Ms. Polikoff said.

Ms. Hamilton said she made clear that she intended to continue with the adoption alone, and that Ms. Gunn “told every single person in her life that she didn’t want to be a mother.”

Ms. Gunn disputes that. She said she thought of the breakup as a separation and that she also raised Abush, including regular overnight stays at her home each week. “We are still some kind of family,” she said she remembered thinking after Ms. Hamilton moved out. “We are just going to look different than we thought.”

Ms. Gunn said she agreed in 2012 to take the title of godmother to honor her role in Abush’s life. “Despite my own sadness and regret over not being one of Abush’s adoptive parents, I long ago made peace with my role as a godmother,” she wrote to Ms. Hamilton in a 2015 email. “I have never inferred or articulated to Abush, or to anyone, that I am his mother.”

Ms. Gunn now says that those statements were influenced by her fear of losing access to Abush, who calls her Kee. Ms. Gunn's lawyers argue it is not the title, but the actual role she played that should be considered.

This summer, Ms. Hamilton announced that she wanted to move back to her native London with Abush. Ms. Gunn responded by saying she would move, too. "I need you not to follow us there. This is mine and Abush's journey," Ms. Hamilton said she told her, adding that she did not want Ms. Gunn to visit London for six months to give them time to settle in. She said they would be back to New York in October to visit.

But Ms. Gunn could not fathom the thought of losing access to Abush. In late August, Ms. Gunn took him to Fire Island for a goodbye trip. A photograph from the ferry there shows him hugging her and clinging to her chest. Two days later, Ms. Gunn surprised Ms. Hamilton with the lawsuit.

A judge ordered Ms. Hamilton to appear in court on Sept. 1 with 90 minutes' notice, not enough time to get a lawyer. "I am the sole parent; I have the sole custody for my child," she told the judge, according to a transcript. But Nancy Chemtob, Ms. Gunn's lawyer, argued that Ms. Hamilton was improperly trying to leave the country with a child both women parented.

The judge ordered Abush's passport confiscated until the matter is resolved. Ms. Gunn was granted time with the boy twice a week until the court rules.

Ms. Hamilton said she is in shock, and feels Ms. Gunn is trying to rewrite history. "It's the most terrifying place to be," she said.

"You can't wish or will yourself to be a parent against the objections of the legal parent," Bonnie Rabin, one of Ms. Hamilton's lawyers, said of Ms. Gunn. "She is trying to will herself into this intact family."

But Ms. Gunn said she could do nothing else; she had promised a little boy she loves to be involved in his life, and does not understand why this parenting situation has to be either-or.

"I realized I could never look Abush in the eyes again if I don't fight for him," Ms. Gunn said. "He should be able to have the two people who raised him and loved him be with him, without having to fear losing one of us."