

JBA CLE by the Sea 2023

Friday, 10:00 a.m.

Non-Parent Custody

Presented by: Justice Jay B. McCallum and Renee L. Swanson

Presentation Outline

I. Who is a Parent?

- A. Mother: Civ. Code art. 184;
- B. Legal Father: Civ. Code art. 185;
- C. Biological Father: Civ. Code art. 198;
- D. Everyone else is a non-parent.
 - 1. Same sex couples, Step-Parents, *In Loco Parentis*, De Facto Parents, Psychological Parents.

II. A Parent's Paramount Right to Custody

- A. U.S. Supreme Court jurisprudence:
 - 1. *Troxel v. Granville*, 530 U.S. 57, 120 S.Ct. 2054, 147 L.Ed.2d 49 (2000);
 - 2. *Santosky v. Kramer*, 455 U.S. 745, 758–59, 102 S.Ct. 1388, 1397, 71 L.Ed.2d 599 (1982);
 - 3. *Lassiter v. Department of Social Services*, 452 U.S. 18, 101 S.Ct. 2153, 68 L.Ed.2d 640 (1981);
- B. Louisiana Jurisprudence:
 - 1. *Tracie F. v. Francisco D.*, 201-1812 (La. 3/15/16), 188 So. 3d 231;
 - 2. *In re Adoption of B.G.S.*, 556 So.2d 545 (La. 1990).

III. How is Custody Awarded in Louisiana

- A. To Parents: Civ. Code art. 131, 132;
- B. To Non-Parents: Civ. Code art. 133;
- C. Best Interests of the Child: Civil Code art. 134.

IV. Jurisprudential History Re: Non-Parent Custody

- A. *Ferrand v. Ferrand*, 16-7 (La. App. 5 Cir. 8/31/16); 221 So. 3d 909;
- B. *In Re: C.A.C.*, 2017-0108 (La. App. 4 Cir. 11/2/17); 231 So. 3d 58;
- C. *Bernard v. Bernard*, 2018-1149 (La. App. 1 Cir. 2/12/19); 272 So. 3d 561;
- D. *Cook v. Sullivan*, 2020-01471 (La. 9/30/21); 330 So. 3d 152).

V. Non-Parent's Burden of Proof

- A. Clear and Convincing Evidence;
- B. Substantial Harm: What does that include;
 - 1. According to case law;
 - 2. Examples from cases Renee has handled;
- C. Wholesome and Stable Environment;
- D. Best Interests of the Child.