

Fifth Circuit Court of Appeal
State of Louisiana

No. 26-CA-116 C/W 26-CA-117

JESSICA CREEL

versus

DESTINY GIORDANO

C/W

IN RE: AUDRIANNA JEAN GIORDANO

ON APPEAL THE FORTIETH JUDICIAL DISTRICT COURT
PARISH OF ST. JOHN THE BAPTIST, STATE OF LOUISIANA
NO. 78,076 C/W 83,389, DIVISION "A"
HONORABLE VERCELL FIFFIE, JUDGE PRESIDING

July 22, 2026

FREDERICKA HOMBERG WICKER

JUDGE

Panel composed of Judges Fredericka Homberg Wicker,
Stephen J. Windhorst, and Scott U. Schlegel

REVERSED, EXCEPTIONS OVERRULED, REMANDED

FHW
SJW
SUS



COUNSEL FOR INTERVENOR/APPELLANT,
SARA HESTER

Kim N. Nguyen

Michael J. DuBose

WICKER, J.

Appellant Sara Hester appeals the trial court’s October 17, 2025 judgment¹ sustaining Appellees Jessica Creel and Christopher Haydel’s exceptions of no right of action and no cause of action and dismissing her Petition for Intervention and Sole Custody and Petition to Intervene and Vacate/Annul Judgment. For the reasons that follow, we reverse the portion of the judgment sustaining those exceptions and dismissing the petitions. On *de novo* review, we conclude that Appellant has stated both a right of action and a cause of action. We therefore enter judgment overruling the exceptions and remand the matter for further proceedings consistent with this opinion.

PROCEDURAL HISTORY AND FACTUAL BACKGROUND

This is a consolidated matter involving a dispute over the custody, tutorship, and name change of the minor child, A.G. (D.O.B. 5/19/2022), between three non-parents: Jessica Creel, the child’s maternal grandmother; Christopher Haydel, Ms. Creel’s husband; and Sara Hester, the custodian and adoptive parent of the child’s three older siblings.

A.G. was born on May 19, 2022, to Destiny Giordano. The child’s father is unknown, and paternal filiation has never been established. On June 14, 2022—within a month of A.G.’s birth—Ms. Giordano and Ms. Creel² jointly filed a Petition to Establish Non-Parent Custody in the 40th Judicial District Court for the Parish of St. John the Baptist, docket number 78,076, seeking to have sole custody of A.G. awarded to Ms. Creel (the “First Case”). On October 13, 2022, the trial court entered a consent judgment awarding sole custody of A.G. to Ms. Creel and supervised

¹ Appellant refers to the judgment being appealed from as the October 3, 2025 judgment; however, that date only reflects the trial court’s oral ruling in open court. The written judgment was rendered on October 17, 2025, which is the operative judgment date. Accordingly, we refer to it as the October 17, 2025 judgment.

² Ms. Creel was not married to Mr. Haydel at that time.

visitation rights to Ms. Giordano.³ Shortly thereafter, Ms. Giordano died, and Ms. Creel maintained custody of A.G. Meanwhile, Ms. Hester had secured legal custody of, and had eventually adopted, A.G.'s three older siblings.

On December 6, 2024, Ms. Creel married Mr. Haydel. Three months later, on March 20, 2025, Ms. Creel and Mr. Haydel initiated a separate proceeding in the 40th Judicial District Court for the Parish of St. John the Baptist, docket number 83,389, by filing a Petition to Establish Custody/Guardianship, Tutorship, and for Minor Name Change (the "Second Case"). On March 25, 2025, the trial court entered judgment awarding Ms. Creel and Mr. Haydel joint legal custody of A.G., and designating Ms. Creel as domiciliary custodian. The trial court also appointed Ms. Creel tutor and Mr. Haydel undertutor of the child, approved the change of her surname to Haydel, and authorized them to administer her property until she reaches majority. On May 8, 2025, the trial court entered a supplemental judgment granting the same relief awarded in the March 25, 2025 judgment.⁴

On April 9, 2025, Ms. Hester filed a Petition for Intervention and Sole Custody in the First Case. In her petition, Ms. Hester set forth detailed allegations of a history of A.G. living in an unsafe, insecure, and dangerous environment in Ms. Creel's care, alleging that she was seeking sole custody of A.G. to reunite her with her biological siblings in a stable environment. She alleged that in 2021, A.G.'s siblings had been removed from the care of Ms. Giordano and Ms. Creel by the Mississippi Department of Child Protection Services, which ultimately led to Ms.

³ Ms. Hester has alleged that Ms. Creel informed her that the First Case was filed, and the consent custody judgment entered into, in order to forestall action by the Louisiana Department of Children & Family Services to remove A.G. from Ms. Giordano, who suffered from drug addiction.

⁴ The March 25, 2025 judgment appears to have been rendered in contravention of La. R.S. 13:4751, *et seq.*, which requires a petition for a name change to be adjudicated as an ordinary proceeding against the parish district attorney. The district attorney for St. John the Baptist Parish filed an answer to Appellees' petition on April 25, 2025, indicating that she had no objection to the petition seeking the name change. Thereafter, the trial court issued its supplemental judgment on May 8, 2025.

Hester obtaining custody of and adopting them. Ms. Hester further alleged that she first became aware of A.G.'s existence in September 2023 when Ms. Creel contacted her for childcare assistance. Thereafter, according to Ms. Hester, Ms. Creel periodically placed A.G. in Ms. Hester's care for extended periods, during which Ms. Hester claimed to have observed deficiencies in Ms. Creel's care of the child, as detailed in her petition.

Additionally, Ms. Hester asserted in her petition that on November 20, 2024, she had initiated legal proceedings in Mississippi seeking emergency and permanent sole custody of A.G..⁵ As stated in her petition, she alleged a history of substance abuse, neglect, and an inability to provide adequate care on the part of Ms. Creel, as well as Ms. Creel's voluntary relinquishment of the child to her for extended periods. Ms. Hester alleged that the Mississippi court issued a temporary order awarding her and Ms. Creel joint custody of A.G. on November 27, 2024. Pursuant to that order, Ms. Hester returned A.G. to Ms. Creel on November 30, 2024, for her court-ordered visitation period with Ms. Creel. Ms. Hester alleged that Ms. Creel thereafter terminated all contact between her and A.G. (and between A.G. and her siblings) in violation of the temporary joint custody order. On January 17, 2025, the Mississippi court determined that it lacked jurisdiction over the custody matter and that jurisdiction properly rested in Louisiana. According to Ms. Hester, the Mississippi court extended its temporary custody order to give her time to seek relief in Louisiana, but it made no determination regarding permanent custody.⁶

After filing her April 9, 2025 petition, Ms. Hester learned that Ms. Creel and Mr. Haydel had initiated the Second Case. In response, Ms. Hester filed a Petition

⁵ Ms. Creel and Ms. Giordano lived in Mississippi for some period of time. It is not clear from the record when they moved to Louisiana, but it appears that they were living in St. John the Baptist Parish in June 2022.

⁶ Ms. Hester attached copies of both Mississippi court judgments to her opposition to the exceptions of *res judicata*, no right of action and no cause of action.

to Intervene and Vacate/Annul Judgment in the Second Case seeking an *ex parte* order vacating the trial court's March 25, 2025 judgment and May 8, 2025 supplemental judgment on the grounds that they are absolute nullities due to Ms. Creel's and Mr. Haydel's failure to comply with the mandated procedural requirements to be named as tutors of A.G.⁷ She also filed a Motion for Consolidation and Interim Custody in the First Case in order to consolidate the two matters. Ms. Hester did not file her own petition to be appointed as A.G.'s tutor.

On September 15, 2025, Ms. Creel and Mr. Haydel filed exceptions of *res judicata*, no right of action, and no cause of action to Ms. Hester's Petition for Intervention and Sole Custody, Petition to Intervene and Vacate/Annul Judgment, and Motion for Consolidation and Interim Custody. On September 18, 2025, the trial court entered a consent judgment consolidating the Second Case into the First Case and setting the outstanding issues for hearing on October 3, 2025.⁸

At the October 3, 2025 hearing, oral arguments focused almost exclusively on the exception of *res judicata*. No witnesses testified, and no evidence was introduced. Following arguments of counsel, the trial court rendered judgment from the bench, overruling the exception of *res judicata* but sustaining the exceptions of no right of action and no cause of action. In its oral reasons, the trial court stated:

While counsel has indicated that Louisiana Code of Procedure 133 [sic] makes it afforded to anyone, we have to look at the drafting of it and the legislative intent.^[9] Additionally, we have to look

⁷ Alternatively, Ms. Hester asserted that the March 25 and May 8, 2025 judgments were relatively null under La. C.C.P. art. 2004, as having allegedly been obtained through fraud and ill practices. This issue was not briefed by the parties in the district court, was not argued at the hearing on the exceptions, was not referenced in the district court's judgment, has not been raised in this Court, and will not be addressed herein.

⁸ The First and Second Cases may be referred to jointly herein as the "Consolidated Cases."

⁹ While La. C.C. art. 133 contemplates the situation in which non-parents may be awarded custody, that article does not apply in this case. By its plain language, Article 133 applies only "[i]f an award of joint custody or of sole custody to either parent would result in substantial harm to the child. . . ." Here, there are no parents to be awarded joint or sole custody of A.G.; the dispute is between non-parents competing for custody. Nevertheless, as discussed *infra*, the custody provisions of La. C.C. arts. 131 – 134 are to be given consideration in tutorship/custody proceedings. It is inappropriate, however, to consider the legislative history of a statute where the language of the statute is clear and leads to no absurd consequences. *Duckworth v. Louisiana*

at -- and I'm going to go with some of the facts that were argued today when making my determination, and one of the things that I am looking at -- because counsel argued a material change in circumstances at some point being applicable . . . Additionally, in regards to one of the facts that were brought is that -- and that was also in the written motion or within the file is that the intervenor was not aware that the child was born. The Court also heard argument that at no point has DCFS been involved in this matter.^[10]

* * *

In regards to the right of action, the Court is going to sustain and/or grant the no right of action being that the question is whether plaintiff has the capacity or legal interest in judicially enforcing the right asserted, and this is with the Court looking at the justiciable rights, the connexity between the parties, and the matter at hand. Whether it is permissive for an intervention is present if the intervenor's claim is so related or connected to the facts or object of the main action that a judgment on the main action will have a direct impact on the intervenor's right. That's Civil Code Article 1091 [sic], definition of connexity.

The Court, even while stretching to meet the requirements, based upon what was presented today **including the Court allowing some of the facts of the case to come in to make a determination whether there is a justiciable interest in the matter, and that's why I let y'all get into some of the facts today, to have a whole picture on the connections.**

In regards to the cause of action, the Court is also going to maintain the no cause of action . . . Also, even though a lot of the facts were not placed on the record today, the Court did read everything that was filed, **so I know some additional facts that were not placed on the record today**, being that that was not where we were in this particular instance, but with that being said, the Court understands that all of the parties just want what's best for the minor children, and I would like for everyone to continue to have that understanding.

(Emphasis added).

Farm Bureau Mut. Ins. Co., 11-2835 (La. 11/2/12), 125 So.3d 1057, 1064 (“When a law is clear and unambiguous and its application does not lead to absurd consequences, the law must be applied as written, and no further interpretation may be made in search of the legislative intent.”) While the trial court indicated that the provision in Article 133 that permits custody to be awarded to “any other person able to provide an adequate and stable environment,” renders the article ambiguous, we do not find that this language makes the law unclear or ambiguous or that its application as written leads to absurd consequences.

¹⁰ Neither party argued that the Louisiana DCFS had “at no point been involved in this matter.” Ms. Hester has alleged that Mississippi Department of Child Protection Services removed A.G.’s siblings from the custody of Ms. Giordano and Ms. Creel and turned them over to her.

On October 17, 2025, the trial court signed a written judgment overruling the exception of *res judicata*, sustaining the exceptions of no right of action and no cause of action, and dismissing all claims asserted by Ms. Hester in the Consolidated Cases. This timely appeal followed. Ms. Creel and Mr. Haydel have not filed a brief in opposition to this appeal.

LAW AND ANALYSIS

Ms. Creel and Mr. Haydel (jointly, “Creel”) filed exceptions of no right of action and no cause of action, which the trial court sustained.¹¹ We review exceptions of no right of action and no cause of action *de novo*, as they raise questions of law. *O’Dwyer v. Metairie Towers Condo. Assoc. Bd. President*, 24-277 (La. App. 5 Cir. 1/29/25), 404 So.3d 1059, 1065, *writ denied*, 25-282 (La. 5/20/25), 409 So.3d 216.

Exception of No Right of Action

Creel asserted in the district court that Ms. Hester lacks a right of action to intervene in the consolidated matters because she has no justiciable interest in the principal action regarding the custody, tutorship, surname change, and property administration of A.G.

A third person having an interest in a pending action may intervene to enforce a right related to or connected with the object of the pending action. La. C.C.P. art. 1091. Consequently, an intervenor must possess “a justiciable interest in, and a connexity to, the principal action.” *Villarrubia v. Villarrubia*, 18-320 (La. App. 5 Cir. 12/27/18), 264 So.3d 554, 559 (citing *Atchley v. Atchley*, 97-474 (La. App. 5 Cir. 1/14/98), 707 So.2d 458, 459). This requires the intervenor to have a cause of action against one or more of the parties to the original action that is directly related

¹¹ As stated above, Creel also filed an exception of *res judicata*, which the trial court overruled and is not at issue here.

to or connected with the facts or the object of the original action. *Atchley*, 707 So.2d at 459.

Generally, an action can only be brought by a person having a real and actual interest in the right being asserted. La. C.C.P. art. 681; *Succession of Griffin*, 17-637 (La. App. 5 Cir. 5/30/18), 249 So.3d 1048, 1053, *writ denied*, 18-1081 (La. 10/15/18), 253 So.3d 1303. The peremptory exception of no right of action tests whether the plaintiff has such an interest. La. C.C.P. art. 927(A)(6); *Succession of Griffin*, 249 So.3d at 1053. Its function is to determine whether the plaintiff belongs to the class of persons to whom the law grants a cause of action asserted in the suit. *Badeaux v. Sw. Comput. Bureau, Inc.*, 05-612 (La. 3/17/06), 929 So.2d 1211, 1216–17. The exception assumes that the petition states a valid cause of action for some person and questions whether the plaintiff in the particular case is a member of the class with a legal interest in the subject matter of the litigation. *Howard v. Adm’rs of the Tulane Educ. Fund*, 07-2224 (La. 7/1/08), 986 So.2d 47, 60.

The party raising a peremptory exception bears the burden of proof. *Succession of Griffin*, 249 So.3d at 1054. On the trial of an exception of no right of action, evidence is admissible to support or controvert the objection when the grounds do not appear on the face of the petition. La. C.C.P. art. 931. In this case, neither party presented evidence at the hearing on the exception. Accordingly, this Court must decide, based solely on the allegations of Ms. Hester’s pleadings, whether she belongs to the class of persons to whom the law grants the asserted cause of action. *See Succession of Griffin*, 249 So.3d at 1054.

Exception of No Cause of Action

Creel also asserted an exception of no cause of action. To determine whether a petition for intervention states a cause of action, we consider whether the law extends a remedy to anyone under the factual allegations of the petition. *Badeaux*, 929 So.2d at 1217. No evidence may be introduced to support or controvert the

objection that the petition fails to state a cause of action. La. C.C.P. art. 931. Therefore, an exception of no cause of action is triable solely on the face of the petition, and all well-pleaded allegations of fact are accepted as true. *Succession of Griffin*, 249 So.3d at 1055 (citing *Wood v. Omni Bancshares, Inc.*, 10-216 (La. App. 5 Cir. 4/26/11), 69 So.3d 475, 479). The issue at the trial of the exception of no cause of action is whether, on the face of the petition, the plaintiff is legally entitled to the relief sought. *Id.* Whether the plaintiff can ultimately prove the allegations set forth in the petition is not determinative, and the trial court may not go beyond the petition to the merits of the case. *Id.* (citing *Chulee v. St. Pierre*, 13-881 (La. App. 5 Cir. 5/14/14), 142 So.3d 83, 86).

The burden of establishing that a petition fails to state a cause of action is borne by the mover. An exception of no cause of action should be granted only when it appears beyond doubt that the plaintiff can prove no set of facts in support of any claim which would entitle him to relief. *Badeaux*, 929 So.2d at 1217. Every reasonable interpretation must be accorded to the language used in the petition in favor of maintaining its sufficiency and affording the plaintiff the opportunity of presenting evidence at trial. *Id.* Because the exception raises a question of law and the trial court's decision is based solely on the sufficiency of the petition, our review of the ruling is *de novo*. *Maw Enterprises, LLC v. City of Marksville*, 14-90 (La. 9/3/14), 149 So.3d 210, 215.

Nullity of Judgments

Louisiana jurisprudence recognizes that an action to annul a final judgment as an absolute nullity under La. C.C.P. art. 2002 may be asserted by any person with an interest in the matter. In *Adair Asset Mgmt., LLC/US Bank v. Honey Bear Lodge, Inc.*, the First Circuit held that an action under Article 2002(B) to annul a judgment for a vice of form may be brought by any interested person at any time, before any court, and through a collateral proceeding such as a contradictory motion or rule.

12-1690 (La. App. 1 Cir. 2/13/14), 138 So.3d 6, 11.¹² This Court reaffirmed this principle in *Shelley v. Zurich Am. Ins. Co.* and held that the absolute nullity of a judgment may be asserted without resort to a formal action in nullity. 24-433 (La. App. 5 Cir. 6/4/25), 418 So.3d 367, 380. This broad rule of standing permits a person with a cognizable legal interest in a minor's welfare or legal status to challenge absolutely null judgments that affect that interest, such as those concerning tutorship or the administration of the minor's property.

Custody/Tutorship

Custody of a child born out of wedlock whose mother is dead and whose father is unknown should be determined in accordance with the provisions of the Civil Code and the Code of Civil Procedure on tutorship. Tutorship of a minor carries with it the right and responsibility of custody and care of the minor. *Odom v. Culverhouse*, 505 So.2d 837, 839 (La. App. 2nd Cir), *writ denied*, 508 So.2d 824 (La. 1987), citing La. C.C.P. art. 4261.¹³

In *Odom*, a man claiming to be the biological father of a child, whose mother had passed away, filed suit against the child's maternal grandmother, Ms. Culverhouse, seeking custody of the child. Mr. Odom alleged that he and the child's mother had been romantically involved when the child was conceived and that once

¹² La. C.C.P. art. 2002(A) provides the exclusive grounds to declare a judgment an absolute nullity:

- A. A final judgment shall be annulled if it is rendered:
 - (1) Against an incompetent person not represented as required by law.
 - (2) Against a defendant who has not been served with process as required by law and who has not waived objection to jurisdiction, or against whom a valid default judgment has not been taken.
 - (3) By a court which does not have jurisdiction over the subject matter of the suit.

See *Succession of Cotaya*, 24-228 (La. App. 5 Cir. 12/26/24), 410 So.3d 910, 918.

¹³ Custody and tutorship are not the same thing and, although the appointment of a custodian and tutor are related, the two proceedings are independent of each other. *Jones v. Willis*, 43,608 (La. App. 2 Cir. 9/17/08), 996 So.2d 364, 369 (citing *In re Custody of Booty*, 95-828 (La. App. 1 Cir. 11/9/95), 665 So.2d 444; *Knisely v. Knisely*, 05-1015 (La. App. 3 Cir. 3/1/06), 924 So.2d 423).

the child was born, he had formed a relationship with her and had a continuing relationship with the child's mother.¹⁴ Ms. Culverhouse answered the petition and requested custody of the child. The child's maternal aunt, Ms. Wilson, and her husband intervened to be awarded custody in the event that the court decided against awarding custody to the grandmother. 505 So.2d at 838. Mr. Odom then amended his petition to allege that custody should be awarded in accordance with La. C.C. art. 146 (now La. C.C. arts. 131-134), and that he should be appointed tutor of the child under La. C.C. arts. 257 and 261. The Wilsons filed an exception of no right or cause of action, based on their contention that Mr. Odom was not the child's biological father and that he was, in any event, unfit. *Id.*

A hearing was conducted to determine whether Mr. Odom was the biological father of the child. Scientific testing proved that he was not. The district court then ruled that Mr. Odom was not the biological father of the child and granted the Wilsons' exceptions of no cause or right of action. In reversing the portion of the judgment sustaining the exceptions, the court stated:

In this case where the mother of the illegitimate child has died, and the father is unknown and had not acknowledged the child prior to the mother's death, either the parents or siblings of the mother of the child are entitled to be appointed as tutor and consequently granted custody of the child according to the best interests of the child unless those persons are excluded, disqualified, or excused legally. LSA-C.C. Art. 256; LSA-C.C. Art. 270.

Appellant, as an interested person with a close relationship to the child and the child's deceased mother, has the right to petition to be appointed dative tutor of the minor upon allegations that the persons entitled to the natural or legal tutorship should be excluded or disqualified. LSA-C.C. Art. 270.

In this case, appellant has alleged the unfitness of the maternal grandmother, but has not alleged the unfitness of the maternal aunt. Although appellant's supplemental petition sought appointment as tutor, it does not comply with LSA-C.C.P. Art. 4065 and other provisions of the procedural articles governing tutorship. Neither the

¹⁴ Mr. Odom babysat the child, fed her, changed her diapers, disciplined her and had assisted her mother financially. He testified that he and the child's mother were planning to marry, but she died before their anticipated wedding date. 505 So.2d at 839.

maternal grandmother nor the maternal aunt has sought to be appointed tutor or complied with the procedural articles governing tutorship proceedings.

All parties to these proceedings should have the opportunity to assert their respective claims to tutorship of the minor child in appropriate tutorship proceedings conducted in accordance with law. In such proceedings, the maternal grandmother and maternal aunt are entitled to the tutorship, unless disqualified as incapable or unfit. . . The procedural posture of this case is such that none of these determinations have been presented to or made by the district court.

* * *

The tutorship articles establish an orderly procedure for determination of custody in a contest between non-parents and establish reasonable preferences for custody based on blood relationships. The articles also allow the granting of tutorship with the corresponding right of custody to persons other than preferred relatives upon a showing of disqualification by incapacity or unfitness. For consistency and to give effect to the clear legislative intent that the best interests of the child is paramount in all situations, the standards of LSA-C.C. Art. 146(3) and (4) and 146(B) should be applied in determining whether tutorship and custody should be awarded to a person other than preferred relatives.^[15] These standards are consistent with but may be somewhat broader than the incapacity and unfitness standards of the tutorship articles.

Id. at 840-41.

The Court remanded the matter to the district court and instructed that the case be converted to a tutorship proceeding, with tutorship to be determined in accordance with the applicable provisions of the Civil Code and Code of Civil Procedure after amendment of the pleadings of the respective parties to comply with the procedural articles relating to tutorship. *Id.*

The *Odom* court found that because the Civil Code's custody provisions permit custody to be awarded to non-parents or non-relatives in custody contests with parents under certain circumstances, the court should be able, in the best interests of the child, to award custody to a non-relative in a contest between non-parents, stating:

¹⁵ The provisions that were contained in Article 146 (and 157) in 1987 are now set forth in Articles 131-134.

Although [former] Article 146 strictly applies only to custody determinations after separation and divorce and to custody of acknowledged illegitimate children, the article evidences the clear legislative intent that in child custody matters the best interest of the child is paramount and the courts are vested with the authority to award custody to a non-parent or relative where custody in the preferred person would be detrimental to the child and where custody in the non-parent or relative is required to serve the best interests of the child.

Id.

Under La. C.C. art. 133, the successor to former Article 146, the class of persons with a right of action to seek non-parent custody falls into two categories: (1) a person with whom the child has been living in a wholesome and stable environment, or (2) any other person able to provide an adequate and stable environment. La. C.C. art. 133. A non-parent is a member of the class entitled to seek custody under Article 133. *See Walker v. Zacharias*, 18-596, 2018 WL 6713991, at *2, (La. App. 5 Cir. 12/20/18). Article 133 does not create a preferential order among non-parent claimants. *Knisely*, 924 So.2d at 427; rather, the best interest of the child dictates who will be granted custody. *See In Re Ben*, 16-453 (La. App. 5 Cir. 12/7/16), 206 So.3d 438, 442; *Cathey v. Ogea*, 12-563 (La. App. 3 Cir. 8/22/12), 98 So.3d 953, 957, *writ denied*, 12-2099 (La. 10/12/12), 98 So.3d 877.

We agree with the *Odom* court that these precepts are relevant to custody awarded pursuant to the tutorship provisions. As stated in *Odom*, the tutorship provisions establish reasonable *preferences* for custody, based on blood relationships, which are rebuttable upon a showing that the preferred relations are not qualified or unfit and that it is in the best interests of the child that custody be awarded to a non-relative.

Tutorship

During their marriage, the parents are co-tutors of their minor children. After the dissolution of the marriage by death or divorce, a minor who is not emancipated is placed under the authority of a tutor. La. C.C. art. 246. La. C.C. art. 247

establishes that there are four types of tutorships: tutorship by nature; tutorship by will; tutorship by the effect of the law; and tutorship by the appointment of the judge, *i.e.*, dative tutorship. A minor child's ***natural*** tutors are his/her parents. La. C.C. art. 250. La. C.C. art. 248 states that tutorship by nature takes place ***of right*** but the natural tutor must qualify for the office as provided by law. In every other kind of tutorship, the tutor must be confirmed or appointed by the court and must qualify for the office as provided by law.

Civil Code art. 250 provides for tutorship ***of right***, or ***natural*** tutorship, which occurs when a parent dies or the parents divorce. It states:

Upon the death of either parent, the tutorship of minor children belongs of right to the other. Upon divorce. . .of parents, the tutorship of each minor child belongs ***of right*** to the parent under whose care he or she has been placed or to whose care he or she has been entrusted; however, if the parents are awarded joint custody of a minor child, then the cotutorship of the minor child shall belong to both parents, with equal authority to act alone, on behalf of the child, and with equal privileges and responsibilities, unless modified by order of the court or by an agreement of the parents, approved by the court awarding joint custody. In the event of the death of a parent to whom joint custody had been awarded, the tutorship of the minor children of the deceased belongs ***of right*** to the surviving parent.

All those cases are called tutorship by nature.

(Emphasis added).

Tutorship ***by nature***, then, belongs ***of right*** to the parents of minor children. The right to establish tutorship by will or declaration belongs exclusively to the father or mother dying last. La. C.C. art. 257. The tutor so designated may be a "relation or a stranger." *Id.* Where a tutor has not been appointed to the minor by the last surviving parent, the court "shall appoint to the tutorship, from among the qualified ascendants in the direct line, collaterals by blood within the third degree and the surviving spouse of the minor's mother or father dying last, the person whose appointment is in the best interests of the minor." La. C.C. art. 263. This is known as tutorship by effect of law. La. C.C. art. 270 provides for a dative tutorship where

“a minor is an orphan, and has no tutor appointed by his father or mother, nor any relations who may claim the tutorship by effect of law, or when the tutor appointed in some of the modes above expressed is liable to be excluded or disqualified, or is excused legally,” in which case, the judge shall appoint a tutor to the minor.

Here, the mother and father were never married. No father is listed on the child’s birth certificate, and no man has ever come forward to acknowledge the child. In such a case, La. C.C. art. 256 provides that, “[t]he mother is *of right* the tutrix of her child born outside of marriage not acknowledged by the father, or acknowledged by him without her concurrence.” La. C.C. art. 256(A). Article 256(B) provides that:

After the death of the mother, if the father had not acknowledged the child prior to the mother’s death, the court shall give *first consideration to appointment as tutor either of her parents or siblings who survive her and accept the appointment, and secondly, the father, always taking into consideration the best interests of the child.*

(Emphasis added).

This article establishes a preference for the maternal grandparents and siblings over the putative father. However, article 256(B) does not characterize the mother’s surviving parents or siblings as *tutors of right*, as suggested by the appellate court in *In the Matter of Johnston*, 99-980 (La. App. 3 Cir. 2/2/00), 757 So.2d 738, 740. In *Johnston*, the mother of the minor child died. No father had ever been identified. The maternal grandfather filed a petition for custody and tutorship. Subsequently, the child’s maternal uncle filed a petition to annul the judgment awarding tutorship and custody to the grandfather. The uncle’s petition was denied by the district court on the grounds that the allegations of the petition were unsubstantiated and the petition was unverified. The uncle appealed, asserting that the district court’s tutorship judgment was an absolute nullity because the grandfather had failed to comply with the mandatory procedural requirements of La. C.C.P. art. 4065, in that he had failed to file with his petition for tutorship an affidavit

identifying ascendants and collaterals, had failed to serve the petition for tutorship on those individuals, and had failed to publish notice.¹⁶ *Id.*

The Third Circuit denied the uncle's appeal, finding that the grandfather was the "natural tutor" of his grandson. The court stated:

La. Civ. Code art. 256 provides for the tutorship of illegitimate children such as Nicholas. The statute authorizes the court to give primary consideration for tutorship appointment to an illegitimate child's maternal grandparents, aunts, and uncles, if the child has not been acknowledged by his father prior to the mother's death. Such an appointment is characterized in the Civil Code as "tutorship by nature." Tutorship by nature is explained in La. Civ.Code art. 248 as a matter of right, 'but the natural tutor must qualify for the office as provided by law.' While there are specific notice requirements for the appointment of a legal or dative tutor, see La. Code Civ.P. arts. 4065-4067, the appointment and confirmation of a natural tutor does not require notice and a contradictory hearing with other eligible persons. *Tutorship of Watts*, 96-0073 (La. App. 1 Cir. 9/27/96); 681 So.2d 74.

Id.

A natural tutor is not required to comply with the provisions of La. C.C.P. art. 4065. Instead, she must comply with La. C.C.P. art. 4061, which requires the natural tutor to take an oath to faithfully exercise the duties of her office, cause an inventory to be taken or a detailed descriptive list to be prepared, and inscribe a legal mortgage in favor of the minor or furnish security, as required by law. Based on its finding that the grandfather was the "natural tutor" of the minor child, the court found that the *ex parte* judgment appointing the grandfather as the tutor of the minor child was not a nullity due to notice defects.

¹⁶ La. C.C.P. art. 4065 states:

When a petition for appointment as legal or dative tutor is filed, the applicant shall annex an affidavit listing to the best of his knowledge the minor's ascendants and collaterals by blood within the third degree and the surviving spouse of the minor's mother or father dying last who reside in the state. A copy of the petition for appointment shall be mailed by registered or certified mail to each person listed in the affidavit. Notice of the application shall be published once in the parish where the petition was filed, in the manner provided by law.

The provisions of Article 4065 are mandatory and may not be waived. *Continuing Tutorship of Harris*, 22-1013 (La. App. 1 Cir. 2/24/23), 361 So.3d 1068, 1071.

In our view, and with the utmost respect to our peers on the Louisiana Third Circuit Court of Appeal, the *Johnston* opinion does not persuade us that Article 256(B) grants tutorship “*of right*” to the maternal grandparents, aunts, and uncles exempting them from compliance with the provisions of Code of Civil Procedure article 4065. We observe that the *Johnston* court cites no authority for its bald statement that the grandfather was the child’s “natural tutor.” La. C.C. art. 256(B) mandates only that “*first consideration*” for tutorship appointment must be given to the maternal grandparents or siblings, of a child born outside of marriage, where the child has not been acknowledged by his father prior to the mother’s death.¹⁷

Tutorship by nature is defined in La. C.C. art. 250, which is quoted above. La. C.C. art. 248 provides that natural tutorship takes place of right, but tutorship of right belongs to the parents of the child. This is true even in the case of a child born out of wedlock, whose tutorship belongs of right to his mother if his father has not acknowledged him, and to the parent who serves the child’s best interest, if the father has acknowledged him; provided, however, that if the mother and the father who has acknowledged the child are awarded joint custody, they are cotutors of right, unless modified by the court or by an agreement of the parents, approved by the court that awarded joint custody. La. C.C. art. 256(C).

Further, we have found no Louisiana Supreme Court decision holding that maternal grandparents and/or siblings are tutors of right under Article 256(B). The Louisiana Supreme Court has ruled, however, that:

[T]he mere right of physical possession of the body of a minor does not convert the possessor thereof, a tutor. The citation of authorities in support of this proposition is needless.

The status of ‘tutor’ is a creation of law; this is true, even as regards natural tutorship, a privilege which has been granted only to surviving

¹⁷ We also do not interpret *Odom, supra*, to stand for the proposition that the preferred relatives identified in La. C.C. arts. 256(B) or 263 are tutors *of right* who are exempted from compliance with La. C.C.P. arts. 4065-4067 and we found no cases interpreting the decision for that premise.

parents—not as a right, but as a matter of governmental policy. It is true as to every form of tutorship.

In re Webster's Tutorship, 188 La. 623, 630, 177 So. 688, 690 (1937).

Additionally, the Louisiana Supreme Court, in *In re Brown*, 120 La. 50, 53-54, 44 So. 919, 920 (1907), was faced with a tutorship contest between the maternal grandmother and the paternal aunt, who was also the adoptive mother, of a child whose parents had died. It held that neither qualified as a *natural* tutrix, although the grandmother qualified as a *legal* tutor. There, the adoptive mother/paternal aunt claimed tutorship of the child “as natural tutrix as in the case of the mother.” *Id.* at 53, 44 So. at 919. The maternal grandmother filed a rule to annul and set aside the appointment of the adoptive mother/paternal aunt and to be herself named as the child’s natural tutrix. At the time, adoption did not confer the right of a mother or father over the child. Thus, the adoptive mother could not qualify as a natural tutor. *Id.* at 54, 44 So. at 920. On the other hand, the law provided that, in the case of the death of the mother, the maternal grandmother was entitled to be appointed to the tutorship of her daughter’s child. *Id.* While neither claimant could claim *natural* tutorship, the grandmother had the better right under the law. *Id.* at 53-54, 44 So. At 920. Although the adoption was upheld, the maternal grandmother was appointed as the child’s tutor by effect of the law. *Id.* at 52, 55, 44 So. at 920, 921.

Also instructive is the Second Circuit Court of Appeal’s decision in *In re: Dative Tutorship of Moore*, 55,047 (La. App. 2 Cir. 3/1/23), 358 So.3d 203, writ denied, 23-467 (La. 5/23/23), 361 So.3d 975. In that case, the maternal great-aunt of a minor child, whose mother had died and whose father was unknown, petitioned to be appointed as dative tutor for the child. The maternal grandfather of the child answered the petition and asked that he be appointed as the child’s tutor. The district court granted the petition of the maternal great-aunt and the grandfather appealed. The Second Circuit affirmed the district court’s judgment, stating that Article 256(B)

“does not require that [the maternal grandfather] be named tutor, *just that he be considered first.*” *Id.* at 207. (Emphasis added).

Implicit in this decision is that the maternal grandfather was not considered to be a tutor of the child *of right* by virtue of Article 256(B). If he were, he would have had the *right* over the great-aunt to be appointed as the child’s tutor upon compliance with La. C.C.P. art. 4061. Instead, the court found he had the right only to be considered first, just as Article 256(B) plainly states. Ultimately, the court found that best interests of the child weighed in favor of granting tutorship/custody to her great-aunt, with liberal visitation afforded to the maternal grandfather.¹⁸

We have found no provision in the Civil Code or elsewhere that uses the term “*of right*” in reference to tutorship by any person other than a parent. Had Article 256(B) intended the mother’s parents or siblings to step into the shoes of the mother as a tutor *of right*, the article could have, and would have, expressly so stated. Instead, it provides for “*first consideration*” to be given to a person in the category of the mother’s parents or siblings who survive her to be appointed by the court as the tutor of the minor child; provided their appointment is in *the best interest of the child*. Article 256(B) is not ambiguous and does not lead to absurd consequences. Therefore, we are bound to apply the law as written. La. C.C. art. 9; *Kunath v. Gafford*, 20-1266 (La. 9/30/21), 330 So.3d 161, 164, citing *Milbert v. Answering Bureau, Inc.*, 13-22 (La. 6/28/13), 120 So.3d 678, 684.

¹⁸ See also *Succession of Haley*, 49 La. Ann. 709, 715, 22 So. 251, 253 (1897), wherein the court stated:

It is true that the natural mother, as a general rule, is declared in article 256 of the Revised Civil Code to be entitled, under the circumstances therein stated, to be ‘of right’ the tutrix of her child; but though she be entitled to that ‘of right,’ she is not necessarily to be appointed as ‘of course.’ Even the legitimate child is not necessarily to be placed under the tutorship of its father or its mother. The facts of a special case would make it sometimes improper that it should be so placed.

Given the plain language of La. C.C. art. 256(B) and the fact that, according to the Civil Code, tutorship “of right” belongs to the parents, we do not believe that the *Johnston* opinion is based on a correct interpretation of the plain language of Article 256(B), which merely affords ***first consideration*** to the mother’s surviving parents and siblings to be appointed by the court to the tutorship of the minor child, after considering the best interests of the child. The fact that a “best interests of the child” requirement is imposed in Article 256(B) is another indication that the maternal grandparents and/or siblings are not entitled to tutorship ***of right***. We observe that the trial court, in this case, made no finding that the appointment of Ms. Creel as tutor and Mr. Haydel as undertutor was in the best interests of the child, or that the court gave any consideration at all to the best interests of the child when it appointed them.

Because we find that Article 256(B) merely gives the maternal grandparents and siblings first consideration for tutorship of the minor child, and not to tutorship of right, La. C.C.P. art. 4063 applies in this case. That article provides that “[t]he court shall appoint a legal tutor under the circumstances and ***according to the rules for priority*** established by law, and in the manner provided in Articles 4065 through 4068.” (Emphasis added.)¹⁹ Accordingly, Ms. Creel was required to comply with the mandatory notice requirements of Article 4065.

Discussion of Exceptions

We are not called upon to determine the merits of Ms. Hester’s claims in the Consolidated Cases for custody and annulment of the judgments, appointing Ms. Creel as tutor and Mr. Haydel as undertutor and changing the child’s surname. We

¹⁹ This article further supports our position that where the tutorship law establishes a preference for categories of blood relations, a tutor entitled to appointment under the rule of preference is a legal, not natural, tutor.

opine only on whether the district court erred in sustaining Creel's exceptions of no right and no cause of action.

Custody

Upon *de novo* review, we find as a matter of law that the trial court erred in sustaining the exceptions of no right of action and no cause of action regarding Ms. Hester's claims in the Consolidated Cases.

Ms. Hester argues in this appeal that the district court erred by relying upon facts other than those contained in her pleadings in ruling on the exception of no cause of action. We agree. The transcript of the trial court's ruling expressly indicates that the court considered facts outside the four corners of Ms. Hester's pleadings in sustaining Creel's exceptions. In doing so, it committed reversible error; however, the error not only infects the court's ruling on Creel's exception of no cause of action, but also its ruling on their exception of no right of action. The trial court was required to evaluate *both* of Creel's exceptions solely based on the allegations of Ms. Hester's pleadings, since no evidence was introduced relative to the exception of no right of action. The trial court's failure to limit its consideration of the exceptions to the four corners of Ms. Hester's petitions requires the reversal of the portion of its judgment sustaining Creel's exceptions of no right and no cause of action and dismissing the Consolidated Cases as a result.

No Right of Action

As to the merits of Creel's exception of no right of action, we find that Ms. Hester – as the adoptive mother of A.G.'s three siblings and as someone who has cared for A.G. periodically throughout her life, and who was previously awarded joint temporary custody of her – belongs to the class of persons who may seek custody/tutorship of A.G. She, therefore, has a right of action to intervene in the Consolidated Cases. Because she has a justiciable interest sufficient to permit the

intervention in the Consolidated Cases, she also has a right of action to pursue custody of A.G.

No Cause of Action

Creel's exception of no cause of action was based on their contention that Ms. Hester's custody action was barred by *res judicata*. Neither their exception, nor their memorandum in support of their exception, sets forth any independent argument supporting the position that Ms. Hester has no cause of action to intervene in the Consolidated Cases because she is not legally entitled to the relief sought in her petitions regarding the custody, tutorship, surname change, and property administration of A.G. Nor did Creel argue this issue outside the context of their exception of *res judicata* at the hearing on their exceptions. Creel's exception of *res judicata* was denied; thus, their exception of no cause of action also fails.

Moreover, accepting Ms. Hester's well-pleaded factual allegations as true – specifically her historical care of A.G., her status as the adoptive parent of A.G.'s biological siblings, her capacity to provide a stable home, and the alleged unfitness of Ms. Creel – she has set forth a legally cognizable claim under the custody/tutorship provisions to obtain custody/tutorship of A.G. Presently, however, Ms. Hester has petitioned only for custody. She has not petitioned to be appointed as A.G.'s tutor, nor has she complied with the procedures set forth in La. C.C.P. art. 4065.

The trial court erred in sustaining Creel's exceptions of no right of action and no cause of action in the Consolidated Cases as they relate to Ms. Hester's claims for custody, and the portions of the judgment sustaining the exceptions are, therefore, overruled.

Nullity Action

Ms. Creel and Mr. Haydel applied to be, and have been, appointed as tutor and undertutor, respectively, of A.G., and have been granted custody of her pursuant

to the March 25 and May 8, 2025 judgments. They have also been permitted to change the child's surname to Haydel, pursuant to the May 8, 2025 judgment.²⁰ Ms. Hester's intervention seeks to have those judgments declared absolute nullities for failure to comply with the mandatory, non-waivable provisions of La. C.C.P. art. 4065.

The trial court ruled that Ms. Hester has no right or cause of action to annul the judgment. The court's judgment does not distinguish between Ms. Hester's custody claims and her claims of nullity. It simply states that the exception of no right of action is sustained and the exception of no cause of action is sustained. As in the case of Ms. Hester's custody claims, the district court's judgment sustaining the exceptions of no right and no cause of action is attributable to reversible error in that the district court considered facts not contained in Ms. Hester's pleadings in rendering it.

As to the merits, based on our finding that Ms. Creel is not a tutor of right under Article 256(B), she was required, under La. C.C.P. art. 4065, to file the necessary affidavit, send a copy of her petition by registered or certified mail to each person named in the affidavit, and to publish notice. Pursuant to La. C.C.P. art. 4067, after waiting for ten days after the publication, if no opposition was filed, the court would have been bound to appoint the applicant, *“unless [she was] disqualified under Article 4231.”*²¹ Ms. Hester, as a party with a justiciable interest

²⁰ Creel's exceptions as they relate to the nullity action, do not contain any specific allegations as to the surname change; nor did they present any arguments on this issue at the hearing on their exceptions. They have filed no brief in this court addressing the issue and we do not opine on it.

²¹ An opposition to a petition to be appointed as tutor may be filed at any time prior to the appointment “and shall allege the grounds upon which it is claimed that the applicant is disqualified or that it would be in the best interest of the minor for the opponent to be appointed tutor instead of the applicant.” La. C.C.P. art. 4066. An opposition is to be tried in a summary manner. La. C.C.P. art. 4067. The record contains no evidence that the required affidavit was attached to the petition to be appointed as tutor/undertutor, no evidence that the petition was mailed by registered or certified mail to the relatives listed in Article 4065, and no evidence of any publication as required by law. The petition was filed on March 20, 2025, and an order appointing Ms. Creel as tutor and Mr. Haydel as undertutor was signed on March 25, 2025, five days later.

in the custody/tutorship of A.G. has a right of action to assert the nullity of the judgments and has stated a cause of action for nullity for noncompliance with the provisions of La. C.C.P. arts. 4065-4067.

Additionally, Ms. Hester's petition to annul the judgments appointing Ms. Creel as A.G.'s tutor alleges that Ms. Creel is disqualified from serving as tutor of the minor child. The grounds for disqualification to act as tutor are set forth in La. C.C.P. art. 4231, which provides that "No person may be appointed tutor who is:"

- (1) Under eighteen years of age;
- (2) Interdicted, or who, on contradictory hearing, is proved to be mentally incompetent;
- (3) A convicted felon, under the laws of the United States or of any state or territory thereof;
- (4) Indebted to the minor, unless he discharges the debt prior to the appointment;
- (5) An adverse party to a suit to which the minor is a party; or
- (6) A person who, on contradictory hearing, is proved to be incapable of performing the duties of the office, or to be otherwise unfit for appointment because of his physical or mental condition or bad moral character.

In her petition for intervention to annul the judgment appointing Ms. Creel as tutor and Mr. Haydel as undertutor, Ms. Hester alleged that A.G.'s three siblings were removed from Ms. Creel's custody by the Mississippi Department of Child Protection Services and placed into her care. She further alleged that she is the adoptive parent of the child's three siblings by virtue of which she has an interest in the proceedings. She has also alleged that Ms. Creel specifically is prohibited from serving, or is otherwise unfit to serve, as tutor.²² She has therefore stated a cause of action and has a right of action for Ms. Creel's disqualification and removal as tutor under La. C.C.P. art. 4231(3) and (6) even though she did not style her petition as such.

La. R.S. 43:203(1) requires that notice be published at least ten days prior to the expiration of the delay set forth in the notice for filing an opposition, answer, or appearance.

²² Appellant alleges that Ms. Creel is a convicted felon and that, as a result, she is prohibited from being appointed as a tutor to any minor child under La. C.C.P. art. 4231.

In *Reynolds v. Brown*, 11-525 (La. App. 5 Cir. 12/28/11), 84 So.3d 655, 658–

59, we stated:

Louisiana is a fact pleading state that values substance over form and does not require the use of magic titles or terminology as a threshold requirement for validly pleading an action. *Wheat v. Nievar*, 07–0680 (La.App. 1 Cir. 2/8/08), 984 So.2d 773. Courts should look through the caption of pleadings in order to ascertain their substance and to do substantial justice to the parties. *Smith v. Cajun Insulation*, 392 So.2d 398, 402 n. 2 (La.1980). The trial court has a duty to recognize the true nature of the pleadings. *Louisiana Livestock Sanitary Bd. v. Johnson*, 372 So.2d 585 (La.App. 3 Cir.1979), writ denied 373 So.2d 967 (La.1979). Because our civil procedure is based on fact pleading, LSA–C.C.P. arts. 854 and 891, the courts must look to the facts alleged to discover what, if any, relief is available to the parties. *Carter v. Benson Automotive Co., Inc.* 94–261 (La.App. 5 Cir. 9/27/94), 643 So.2d 1314.

The portion of the trial court’s judgment sustaining Creel’s exceptions of no right and no cause of action as it relates to Ms. Hester’s claim for nullity of the March 25 and May 8, 2025 judgments appointing Ms. Creel as tutor and Mr. Haydel as undertutor and awarding them custody of A.G. as a result, is reversed and the exceptions are overruled.

Like the *Odom* court, we find that the parties to these proceedings should have the opportunity to assert their respective claims to custody/tutorship of the minor child in appropriate proceedings conducted, in accordance with law, where the facts related to Ms. Creel’s fitness to serve as tutor and Mr. Haydel’s fitness to serve as undertutor, under La. C.C.P. art. 4231, may be developed at an evidentiary hearing after an opportunity for discovery. In that context, the trial court will also have the opportunity to determine the best interest of the child, by reference to the factors listed in La. C.C. art. 134. Ms. Hester has requested a mental health evaluation of Ms. Creel²³ and a custody evaluation by a licensed mental health professional.²⁴ It is within the discretion of the trial court to order these

²³ As authorized by La. R.S. 9:331.

²⁴ As authorized by La. R.S. 9:331.3.

evaluations.²⁵ See *Elliott v. Elliott*, 10-755 (La. App. 1 Cir. 9/10/10), 49 So.3d 407, writ denied, 10-2260 (La. 10/27/10), 48 So.3d 1088 .²⁶ The trial court may also be called upon to address the issue of separate counsel for the child.²⁷

²⁵ The trial court's authority to order a mental health evaluation is found in La. R.S. 9:331, which provides, in pertinent part that, "[t]he court may order a mental health evaluation of a party or the child in a custody or visitation proceeding for good cause shown." La. R.S. 9:331(A). The mental health evaluation must be made by a licensed mental health professional selected by the parties or by the court. *Id.* The court may order a party or the child to submit to and cooperate in the mental health evaluation, testing, or interview by the licensed mental health professional. La. R.S. 9:331(B). Following the mental health evaluation, the evaluator must provide a report to the parties and serve as a witness at any custody hearing, subject to cross-examination, and the evaluator's file is subject to pre-trial discovery. La. R.S. 9:331(B), (F)(4). The court may allocate costs between the parties in such a manner as the court deems equitable. La. R.S. 9:331(A).

In 2024, the state legislature enacted La. R.S. 9:331.3 to specifically provide for child custody evaluations. The statute states that "[t]he court may order a child custody evaluation in a custody or visitation proceeding for good cause shown." La. R.S. 9:331.3(A). The evaluation must be made by a licensed mental health professional, using the Association of Family and Conciliation Courts' Guidelines for Parenting Plan Evaluations in Family Law Cases. *Id.* As is the case when the court orders a mental health evaluation, the court may order the party to submit to the evaluation, a report must be provided to the parties, the custody evaluator is subject to being called as a witness and cross-examined, and her entire file will be discoverable in pre-trial discovery. La. R.S. 9:331.3(C), (F), (J)(4). There is no presumption in favor of the custody evaluator's findings. La. R.S. 9:331.3(G). Additionally, La. R.S. 9:331.3(E) permits the court to allocate costs between the parties in such a manner as the court considers equitable.

²⁶ In *Ferrand v. Ferrand*, a case involving a custody dispute between a parent and a non-biologically related non-parent, we stated:

As . . . emphasized by the Louisiana Supreme Court in *Tracie F. v. Francisco D.*, [15-1812 (La. 3/15/16), 188 So.3d 231, 238–39], the paramount goal and primary consideration in all custody determinations is the best interest of the child. Louisiana jurisprudence recognizes that custody determinations are complicated and that "these difficult decisions are always fact-intensive." *Ellis v. Ellis*, 50,378 (La. App. 2 Cir. 11/18/15), 184 So.3d 752. Under certain circumstances, trial courts appoint a mental health evaluator to conduct an evaluation of the children and parties to assist in such a complex analysis. La. R.S. 9:331 [and La. R.S. 9:331.3] provide[] that a trial court "may order an evaluation of a party or the child in a custody or visitation proceeding for good cause shown." Court-appointed evaluators have assisted in numerous custody contests between a parent and a non-parent. See *Duplessy v. Duplessy*, 12-69 (La. App. 5 Cir. 6/28/12), 102 So.3d 209; *Dalferes v. Dalferes*, 98–1233 c/w 1234 (La. App. 4 Cir. 11/18/98), 724 So.2d 805; *C.M.H. v. D.M.*, 13-1477 (La. App. 1 Cir. 12/27/13), 2013 WL 6858331, 2013 La. App. Unpub. LEXIS 815.

16-7 (La. App. 5 Cir. 8/31/16), 221 So.3d 909, 938, writ denied, 16-1903 (La. 12/16/16), 211 So.3d 1164. We found that the trial court abused its discretion in failing to order "a comprehensive custody evaluation by a court-appointed evaluator," in light of the complex issues presented in that case. *Id.* at 939.

²⁷ La. R.S. 9:345 permits the trial court to appoint an attorney to represent the minor child. The statute provides that in any child custody or visitation proceeding, the court, on its own motion or on the motion of a party "may appoint an attorney to represent the child if, after a contradictory hearing, the court determines such appointment would be in the best interest of the child," after consideration of the following factors:

DECREE

For the foregoing reasons, we reverse the portion of the trial court's October 17, 2025 judgment sustaining the exceptions of no right of action and no cause of action filed by Ms. Creel and Mr. Haydel and, on that basis, dismissing Ms. Hester's petitions in the Consolidated Cases. We therefore enter judgment overruling the exceptions and remand the matter for further proceedings consistent with this opinion.

**REVERSED, EXCEPTIONS
OVERRULED, REMANDED**

-
- (1) Whether the custody or visitation proceeding is exceptionally intense or protracted.
 - (2) Whether an attorney representing the child could provide the court with significant information not otherwise readily available or likely to be presented to the court.
 - (3) Whether there is a possibility that neither party is capable of providing an adequate and stable environment for the child.
 - (4) Whether the interests of the child and those of either parent, or of another party to the proceeding conflict.
 - (5) Any other factor relevant in determining the best interest of the child.

La. R.S. 9:345(B) further provides that the trial court must appoint an attorney to represent the child if, in the contradictory hearing, any party presents a prima facie case that the person caring for the child has sexually, physically, or emotionally abused the child or knew or should have known that the child was being abused. An attorney appointed for a child must interview the child, review all relevant records, and conduct discovery as deemed necessary to ascertain facts relevant to the child's custody or visitation. La. R.S. 9:345(D). The attorney may participate in the custody hearing to the same extent as the attorneys for the parents.

SUSAN M. CHEHARDY
CHIEF JUDGE

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JUDE G. GRAVOIS
MARC E. JOHNSON
STEPHEN J. WINDHORST
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NOTICE OF JUDGMENT AND CERTIFICATE OF DELIVERY

I CERTIFY THAT A COPY OF THE OPINION IN THE BELOW-NUMBERED MATTER HAS BEEN DELIVERED IN ACCORDANCE WITH **UNIFORM RULES - COURT OF APPEAL, RULE 2-16.4 AND 2-16.5** THIS DAY **JULY 22, 2026** TO THE TRIAL JUDGE, CLERK OF COURT, COUNSEL OF RECORD AND ALL PARTIES NOT REPRESENTED BY COUNSEL, AS LISTED BELOW:

CURTIS B. PURSELL
CLERK OF COURT

26-CA-116
C/W 26-CA-117

E-NOTIFIED

40TH DISTRICT COURT (CLERK)	
HONORABLE VERCELL FIFFIE (DISTRICT JUDGE)	
VERCELL FIFFIE (APPELLANT)	KIM N. NGUYEN (APPELLANT)
ROSALYN RUFFIN DULEY (APPELLEE)	VENESE M. MORGAN (APPELLEE)

MICHAEL J. DUBOSE (APPELLANT)

MAILED

NO ATTORNEYS WERE MAILED