

# Family Law Seminar



## Adoption by Same-Sex Couples

4:30-5:00 p.m.

Presented by:

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## Same Sex Adoption

### Relevant Cases

Cases in which adoption was permitted:

Adoption of Susan, 619 N.E.2d 323 (1993)  
Supreme Judicial Court of Massachusetts  
Family court transferred case to higher court to determine if it had jurisdiction to consider joint adoption by biological mother and her lesbian partner. Massachusetts law required married persons to adopt jointly but did not expressly require or prohibit joinder by unmarried persons. Court held that family court had jurisdiction to consider a range of adoption petitions in an effort to determine the best interest of the child. Case remanded to family court.

Adoption of Tammy, 619 N.E.2d 315 (1993)  
Supreme Judicial Court of Massachusetts  
Biological mother was artificially inseminated with lesbian partner's cousin's sperm. Biological mother and lesbian partner sought to jointly adopt the child under Massachusetts law. Lower court entered an adoption decree and submitted the evidence and questions of law to an appeals court. The appeals court found the lower court had jurisdiction to enter the decree, and that the joint adoption was in the best interest of the child, a legislative goal. Biological mother's consent to allow the non-biological mother to adopt did not result in termination of biological mother's own parental rights. The fact that both adoptive parents were blood relatives of the child was important in satisfying state statutes. The court affirmed the decree of adoption by both petitioners.

In re B.L.V.D., 628 A.2d 1271 (1993)  
Supreme Court of Vermont  
Biological mother and same sex partner sought to adopt two children conceived by artificial insemination. The mother and her partner raised the children together and wanted to be recognized as co-parents. The lower court denied the adoption petition. Social workers and psychologists who evaluated the couple found that the adoption was in the best interest of the children. State supreme court reversed the lower court and held that the adoption fell within the stepparent adoption statutes. The termination of the biological mother's parental rights was not necessary for the partner to adopt.

In re Adoption of a Child by J.M.G., 632 A.2d 550 (1993)  
Superior Court of New Jersey, Chancery Division, Essex County  
Lesbian partner sought to adopt biological mother's child. Couple had been together for nearly ten years. Guardian ad

litem, independent investigative organization, and court all found the adoption was in the best interest of the child. Court held that there was no legal barrier to the adoption.

**Cases in which adoption was denied.**

Georgina G. V. Terry M. (In the Interest of Angel Lace M.), 516 N.W.2d 678 (1994)

Supreme Court of Wisconsin

Same sex partners sought review of lower court order denying petition to terminate biological father's parental rights and allow an adoption by biological mother's partner. Biological mother and biological father divorced and child lived with biological mother and her partner. Father had no contact with the child and consented to the termination of his parental rights. Despite a finding that the adoption was in the best interest of the child, the trial court held that the non-biological partner was not eligible to adopt and that the child was not eligible to be adopted. Petitioners appealed claiming application of the state statute violated their IV Amendment Due Process rights. State supreme court affirmed lower court and rejected petitioner's claims. Court held that the adoption required the termination of both parent's rights and that no liberty interests were violated.

Lofton v. Sec'y of the Dep't of Children & Family Servs., 358 F.3d 804 (2004)

United States Court of Appeals for the Eleventh Circuit

Florida statute specifically prohibits adoption by a homosexual person. Homosexual couple had been caring for special needs children as foster parents and guardians for many years. Couple sought to adopt children. Appeals court held the following: that the Florida statute did not violate Due Process or Equal Protection; that appellants' right-to-family-integrity argument failed to state a claim; that appellants' argument that long-term foster care arrangements were entitled to same constitutional protections as other families was without precedent; that the Lawrence decision did not extend to create a right to adopt for homosexuals.

Other noteworthy cases:

Sharon S. v. Superior Court, 73 P.3d 554 (2003)  
Supreme Court of California

IN THE HAWKEYE DISTRICT COURT FOR HAWKEYE COUNTY

|                      |   |                |
|----------------------|---|----------------|
| IN RE THE MATTER OF  | ) |                |
| THE ADOPTION OF      | ) |                |
| BABY GIRL            | ) | No. _____      |
| DOB: X-X-XX          | ) |                |
| UPON THE PETITION OF | ) | BENCH BRIEF    |
| JANE JONES and       | ) | IN SUPPORT OF  |
| ANN SMITH            | ) | JOINT ADOPTION |

Jane Jones and Ann Smith petition jointly to adopt Baby Girl. A court in China terminated the parental rights of the child's natural parents. Jane Jones then completed a Chinese adoption of Baby Girl. Baby Girl has resided with petitioners since date X, 19XX. The petitioners have been in a committed relationship for seven years, have made a certified Declaration of Domestic Partnership and reside together as a family in Hawkeye City, Hawkeye. In addition, they jointly own real estate and automobiles and have joint bank accounts. Each has been appointed power of attorney for the other.

Ann Smith is a consultant and is currently working out of the home and caring for Baby Girl during the day. Jane Jones works for the city of Hawkeye City. She shares parental responsibilities with Ann.

1. The Hawkeye adoption statute should be construed liberally

so as to permit an unmarried same-sex couple to petition jointly to adopt a child.

Hawkeye Code § 600.4(1) provides that an unmarried person may adopt a child. The statute does not mention joint petitions for adoption by unmarried persons. However, § 600.1 requires the statute to be construed liberally in order to further the best interests of the child to be adopted. Because the adoption statute neither explicitly authorizes nor prohibits adoptions by unmarried same-sex couples, the court should consider the statute in light of interpretive criteria.

The Hawkeye adoption statute is similar to the Illinois adoption statute in that it permits either an unmarried person or a married couple to adopt. An Illinois appellate court held that the provision of the statute permitting an unmarried person to adopt a child also applies to unmarried persons together. In re Petition of K.M. and D.M., 274 Ill.App.3d 189 (1995). The court stated that under Illinois law, proper construction of a statute requires language that is used in the singular to be extended to include the plural form. Id. at 196. In accordance with this interpretation of the statute, the court granted a same-sex unmarried couple's joint petition to adopt a child. Id. at 198. Other courts have also held that adoption statutes permitting an unmarried person to adopt a child should apply to unmarried same-sex couples. See Adoption of Tammy, 619 N.E.2d 315, 319 (Mass. 1993), In re M.M.D. & B.H.M., 662 A.2d 837, 842 (D.C.Ct.App.

1995).

The Hawkeye Code's provision dealing with statutory construction has a provision similar to that of Illinois that requires singular terms to include the plural and plural terms to include the singular. Hawkeye Code § 4.1(17). The words "unmarried person" in §600.4(1) therefore, should also include "unmarried persons". The Hawkeye adoption statute should be construed to permit an unmarried couple to jointly adopt a child.

Adoption statutes serve to promote the adoption of as many children as possible, regardless of sexual orientation or marital status of individuals seeking to adopt. In the Matter of Jacob, 636 N.Y.S.2d 716 (Ct. App. N.Y. 1995). A statute should be construed so that its manifested purpose or object can be accomplished. In re Petition of K.M. and D.M. to Adopt, 653 N.E.2d 888 (Ill. 1995). A liberal construction of the adoption statute that permits an unmarried couple to jointly petition to adopt a child furthers the statute's purpose. The court should interpret the statute to permit a joint petition for adoption.

**2. It is in the child's best interests that the joint petition to adopt be granted.**

The court's primary consideration should be whether a joint adoption by the couple is in the child's best interests. The primary goal of adoption statutes is to further the best interests of the child. Adoption of Tammy, 619 N.E.2d 315 (Mass. 1993). Hawkeye Code § 600.1 states that the best interests of

the child to be adopted shall be given paramount consideration when interpreting the statute. In order to further the goals of the Hawkeye adoption statute, the court should give substantial weight to the best interests of the child.

Homosexuality standing alone does not render a parent unfit as a matter of law. D.H. v. J.H., 418 N.E.2d 286, 293 (Ct. App. Ind. 1981). A parent's sexual orientation is not relevant to custody of a child unless there is proof that it adversely affects the child's welfare. Hodson v. Moore, 464 N.W.2d 699 (Iowa Ct.App.1990), In the Matter of the Adoption of Caitlin, 622 N.Y.S.2d 835 (Monroe cty. 1994), In the Matter of Adoption of a Child by J.M.G., 632 A.2d 550, 552 (N.J.Super. 1993). The petitioners' sexuality is not relevant to a consideration of the joint petition for adoption because there has been no finding that it will result in harm to the child.

A parent's homosexuality, in and of itself, has not been proven to adversely affect a child. Every study conducted on the subject of children raised by gay or lesbian parents has revealed that homosexuality among such children occurs as randomly and in the same proportion as that of children raised by heterosexuals. 16 Law & Psychol. Rev. 189, 191 (1992). Courts have found adoption by a homosexual couple to be in a child's best interests on several occasions. In the Matter of Adoption of Caitlin, 622 N.Y.S.2d 835 (Monroe Cty. 1994), Adoptions of B.L.V.B. and E.L.V.B., 628 A.2d 1271 (Vt. 1993), Adoption of Two Children by



H.N.R., 666 A.2d 535 (N.J.Super. 1995), Adoption of a Child by J.M.G., 632 A.2d 550 (N.J.Super. 1993), Adoption of Tammy, 619 N.E.2d 315 (Mass. 1993). Last year, a homosexual couple was voted to be "Foster Parents Of The Year" in Hawkeye. A homosexual couple's joint petition to adopt should be granted if it is in the child's best interests.

A joint adoption by Jane Jones and Ann Smith is in Baby Girl's best interests. Factors relevant to a determination of the child's best interests include the adoption petitioners' ability to provide for the child's basic needs, the petitioners' emotional maturity, finances, health and relationships with other people. Hawkeye Code § 600.8(1).

Jane and Ann are financially secure and are more than able to provide for Baby Girl's basic needs. Jane works outside the home full-time and has a yearly income of \$31,000. Ann has previously earned \$27,000 per year. Her income is currently reduced because she remains at home with Baby Girl full time. She expects that her income will rise again Baby Girl is older and Ann returns to work.

Baby Girl has resided with Jane and Ann since date x 19xx. Since that time she has developed a strong emotional bond with each of them. She has adjusted well to her new environment, is in good health, and has made excellent mental progression. Jane and Ann are both in good health and physically able to care for Baby Girl. Each has a strong familial support network. Both of

their families have welcomed Baby Girl, have visited her extensively and developed relationships with her.

Jane and Ann have provided an excellent home environment for Baby Girl. They own a four bedroom home with ample living and family areas. The home is fully equipped, clean and in good condition. Jane and Ann have taken all safety precautions necessary for a child's presence in the home. Baby Girl has her own bedroom with plenty of toys and other necessities.

A joint adoption by Jane and Ann is in Baby Girl's best interests because it will secure her relationship with her new family. One purpose of child custody statutes is to discourage continuing controversies over a child's living situation and promote greater stability of the home environment. Hawkeye Code § 598A.1(4). A joint adoption will further these purposes and eliminate the need for further controversy. It is in the best interests of the child for the Court to grant the Joint Petition for Adoption filed by Jane Jones and Ann Smith.

Respectively submitted this \_\_\_\_ Day of Month, 19xx.

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LORI L. KLOCKAU #13186

STATE OF OKLAHOMA

2nd Session of the 49th Legislature (2004)

HOUSE BILL HB1821:

Winchester

AS INTRODUCED

An Act relating to children; amending 10 O.S. 2001, Section 7502-1.4, which relates to foreign adoptions; providing for registration of a foreign adoption decree, judgment, or order; allowing combined petitions; requiring certain orders; modifying application of adoption process for certain minors born outside the United States; providing an effective date; and declaring an emergency.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY 10 O.S. 2001, Section 7502-1.4,  
is amended to read as follows:

Section 7502-1.4 A. The courts of this state shall recognize a decree, judgment, or final order creating the relationship of parent and child by adoption, issued by a court or other governmental authority with appropriate jurisdiction in a foreign country or in another state or territory of the United States. The rights and obligations of the parties as to matters within the jurisdiction of this state shall be determined as though the decree, judgment, or final order were issued by a court of this state.

B. An adoptive parent of a minor adopted outside of the United States with a decree, judgment or final order issued by a court or other governmental authority with appropriate jurisdiction in a foreign country may register the decree, judgment, or final order in this state. A petition for registration of a foreign adoption may be combined with a petition for a name change. Upon issuing an order accepting the petition for registration the court shall order the State Registrar to register a certificate of such decree and prepare a supplementary certificate of birth for the child as provided for in Section 7505-6.6 of this title.

C. A minor born outside of the United States without a decree, judgment, or final adoption order issued by a court or other governmental authority with appropriate jurisdiction in a foreign country may be adopted in Oklahoma if one or both of the petitioners for adoption are citizens of Oklahoma and the minor is residing in Oklahoma at the time the petition for adoption is filed.

~~C. An adoptive parent of a minor adopted outside of the United States may petition to readopt the minor under Oklahoma law, if one or both of the petitioners are citizens of Oklahoma and the minor is residing in Oklahoma at the time the petition for adoption is filed.~~

D. A proceeding to adopt ~~or readopt~~ a minor born outside of the United States as provided for in subsection C of this section

shall proceed pursuant to the Oklahoma Adoption Code, with the following provisions:

1. The court may grant a decree of adoption without requiring notice to the biological parent and without requiring the consent of the biological parent, if the petitioner files with the petition for adoption a copy of the ~~decree of adoption~~ or termination of parental rights granted by a judicial, administrative, or executive body of the country of origin, or a document or documents from such a governmental body stating that the biological parent has consented to the adoption, or stating that the parental rights of the biological parent of the minor have been terminated, or stating that the minor to be adopted has been relinquished by the biological parent or stating that the minor has been abandoned. Any document in a foreign language shall be translated into English by the Department of State or by a translator who shall certify the accuracy of the translation, and a copy of the translation and certification shall be filed with the court along with a copy of the original documents;

2. If a minor born outside of the United States is in the legal custody of a child-placing agency at the time that the petition for adoption is filed, notice of the proceedings shall be given to the child-placing agency prior to the hearing on the petition, and the consent of the child-placing agency to the adoption shall be obtained pursuant to Section ~~9~~ 7503-2.1 of this ~~act~~ title prior to the granting of the decree of adoption; and

3. ~~In a proceeding to readopt a minor previously adopted by a petitioner in a foreign country, the~~ The court may waive the issuance of an interlocutory decree of adoption and the waiting period of six (6) months provided in Sections ~~33~~ 7505-6.1 and ~~35~~ 7505-6.3 of this ~~act~~ title, and grant a final decree of adoption, if:

- a. the minor has been in the home of petitioner for at least six (6) months prior to the filing of the petition for adoption, and
- b. a postplacement report has been submitted to the court.

SECTION 2. This act shall become effective July 1, 2004.

SECTION 3. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

49-2-7191            KB            11/04/03

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