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### **In the Matter of Jacob**

**64 USLW 2294, 1995 WL 643833 (N.Y.)**

Unmarried couples, whether homosexual or heterosexual, are now able to become the joint legal parents of the biological child of one member of the couple through adoption according to the New York Court of Appeals in *Matter of Jacob*. The majority of the court, in reaching its conclusion, examined the narrow question of whether the unmarried partners of the biological parent had standing to adopt, rather than addressing the broader issue of whether such adoptions are in the best interests of the child. The court remanded consideration of this broader issue to the family court.

The majority based its decision on an analysis of both the legislative purpose and language of the New York Domestic Relations Law, Section 110, entitled "Who May Adopt," which provides that "an adult unmarried person or an adult husband and his adult wife together may adopt another person." The majority construed the purpose of the term "together" as ensuring mutual consent of married partners in adoption proceedings, rather than precluding adoption by unmarried partners. Thus, each adult, married or otherwise, must be aware of the adoption proceeding and must not object to the adoption taking place. The dissent, on the other hand, concluded that this statute supports adoption only for married couples and single adults who are not members of couples. The difference in the statutory interpretations of the court lies in their treatment of the adoption petition: the majority defined the petition as that of a single (unmarried) adult whereas the dissent looked beyond the single named applicant to the status of the unmarried couple. Thus the dissent found that the unmarried couple fell into neither statutory category, that of an "adult unmarried person," or that of a husband and wife.

The majority enumerated the possible practical benefits to children of unmarried couples in allowing adoptions, but left the decision on the particular facts to the family court. After examining the legislative history of adoption laws in New York, the majority concluded that the underlying goal of the adoption framework, to promote the welfare of the child, would be

advanced by their construction of Section 110. The majority pointed out that the partners of the biological parents were already undertaking the duties of a parent and were perceived by the child as a parent. Without the availability of legal adoption, the children would not be entitled to receive such benefits as: Social Security, health or life insurance benefits of the nonbiological parent; the right to sue for wrongful death of the nonbiological parent; the right to inherit from the estate of the nonbiological parent; and the right to claim economic support from the nonbiological parent despite a history of economic dependency. Additionally, the nonbiological parent would be unable to make medical decisions for the benefit of the child should the biological parent be unavailable to do so. Thus, the majority concluded that by permitting adoptions in such cases, “a measure of permanency with both parent figures [could be achieved] . . . and disruptive visitation battle[s]” could be avoided.

Ironically, in fashioning a practical remedy to the difficulties raised by unconventional family structures, the majority ignored the practical reality behind the adoption petition, that a couple, albeit unmarried, are petitioning “together” and redefined the couple as two single adults. In contrast, the dissent considered the reality surrounding the petition and ignored the real consequences to children of denying adoptions in the ever-increasing number of nontraditional families.

*- submitted by Martha Ehman and Wendy Irvine*