# SECOND PARENT ADOPTION: A PERSONAL PERSPECTIVE

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I am a lesbian and the parent of two boys ages six and three. This year I will celebrate my eighth anniversary with my partner Jane Van Buren. The following describes why and how Jane and I ended up in the Supreme Court of Vermont to obtain a second parent adoption.[1] Many people have written about lesbian and gay adoptions from a legal perspective, but I want to explain what it was like to go through the legal process as a parent.

Early in our relationship, Jane and I discussed our desire to have a family that would include children. We decided that Jane would bear our children using alternative insemination with an anonymous donor. Both of our families supported our decision to have children, and they have always treated our children as their relatives. Knowing that our parents would not legally threaten our family autonomy, we initially were not concerned about obtaining legal protection.[2]

Our first child was born in Maryland on November 2, 1988. At that time, Jane and I discussed with a lawyer the possibility of my adopting him. Yet, to the best of our knowledge, there had never been a second parent adoption in Maryland, and we did not want to be the state's test case. Instead, we established all of the legal protection that we could, including a will, joint powers of attorney, guardianship agreements, and an agreement to jointly raise our son.

A few years later, we moved to Vermont, and Jane became pregnant with our second child. I found a new job and naturally added my son to my health coverage. I was aware that the law prohibited Jane from being covered under my policy, but had assumed that my son would be covered. A few months later, my boss informed me that my son could not be covered. Only *legal* children of an employee were eligible for coverage under the insurance policy.[3] Fortunately, Jane was employed, so she added our son

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1. This essay uses the term second parent adoption; however, the term co-parent adoption is also commonly used.

2. *See, e.g.*, White v. Thompson, 569 So. 2d 1181 (Miss. 1990) (finding lesbian mother unfit parent and awarding custody to paternal grandparents); Bottoms v. Bottoms, 444 S.E.2d 276 (Va. Ct. App. 1994) (granting custody to biological mother in dispute with maternal grandmother).

3. A legal relationship between parent and child can be established only by biological

to her coverage. During her seventh month of pregnancy, however, she was laid off. As a result, our son no longer had health insurance. The reality that my son was not legally related to me continued to emerge. We decided that we had to act or constantly face a reality that would deny my relationship to our children.

In August of 1991, before our second son was born, Jane and I met with our attorneys to discuss filing for a second parent adoption. It appeared that the process would be fairly routine. The probate judge in our district had permitted the lesbian partner of a woman with whom she had been raising a child to retain custody of the child after her partner's death, despite the attempts of the biological grandparents to take custody. Moreover, another second parent adoption was proceeding through the probate court in Addison County, Vermont, and we hoped it would result in a favorable decision and serve as a persuasive precedent for our case.[4] There was some discussion about an eventual appeal to the Vermont Supreme Court, but we did not believe that it would be necessary.

While we waited for our second son to be born, the probate judge in Addison County permitted a second parent adoption.[5] In that case, one of the women in the couple had adopted a child. The judge interpreted Vermont law to allow the partner of the legal parent to adopt, without terminating the legal parent's rights, so that both women became legal parents of their daughter.[6]

With a favorable judge and precedent, Jane and I decided, after our second son's birth, to file for an adoption for both of our children. The court quickly notified us that the judge had requested a home study. Home studies are almost never requested in step-parent adoptions, which, like our adoption, does not create a change in the child's home life.[7] Home studies are always ordered in so-called stranger adoptions. It seemed like one more hurdle to jump, but we proceeded, always wondering why we had to be "studied" as our sons had always been in our house and the court would not change that.

Although we were assigned a social worker who was sympathetic and supportive of the idea of lesbians adopting, we had to explain and defend

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ties or through legal adoption. Ms. Lashman's son, therefore, was not her legal child at this point because she was not the biological parent and had not legally adopted him. Marc E. Elovitz, *Adoption by Lesbian and Gay People: The Use and Mis-use of Social Science Research*, 2 DUKE J. GENDER L. & POL'Y 207 (No. 1 1995); Charlotte J. Patterson, *Adoption of Minor Children by Lesbian and Gay Adults: A Social Science Perspective*, 2 DUKE J. GENDER L. & POL'Y 191 (No. 1 1995).

4. *In re* Adoption of R.C., No. 9088, slip op. at 5-7 (Vt. P. Ct. Addison Dist. Dec. 9, 1991).

5. *Id.*

6. *See* VT. STAT. ANN. tit. 15, § 448 (1989) ("Notwithstanding the foregoing provisions of this section, when the adoption is made by a spouse of a natural parent, obligations of obedience to, and rights of inheritance by and through the natural parent who has intermarried with the adopting parent shall not be affected.").

7. *See* VT. STAT. ANN. tit. 15, § 437 (1989) (requiring no investigation into home conditions of family who proposed the adoption when petition for adoption filed by near relative with whom child already lives, unless court orders otherwise).

our decision to have children to this stranger in our home. We educated her about the effects of legal discrimination on lesbian families. For example, she was surprised that the copies of the tax returns we gave to her had been filed separately. She was unaware that lesbian and gay families are legally prohibited from filing joint returns.[8] This educational process continued at the court hearing when the judge asked Jane to explain why our children would not be eligible for my social security benefits unless he approved the adoption.

After the home study was successfully completed and turned in to the judge, he recused himself because of his acquaintance with Jane's parents. Now we would face a new judge, an unknown. Our lawyers proceeded as planned, filing an extensive brief with the court. By the time we appeared for our June court date, we had spent hours reviewing our testimony with them.

The hearing itself was a draining process. An expert witness and the social worker who had done the home study also testified.[9] As I listened to a child psychologist testify why it was in our sons' best interest for the adoption to proceed, I felt anger that anyone could try to deny the relationship I had to my sons as well as conviction that I wanted the adoption not only for pragmatic reasons, but also for the added connection and legitimacy it would give me and our family.

Three hours later we walked out onto the steps of the courthouse knowing the judge would not grant the adoption. Although the decision would not appear until a month later,[10] we decided at that moment that we would appeal the case. We consulted with our lawyers and decided to bring in several organizations as *amici*.[11] Because of the issues our case raised, we were able to avoid going through superior court and appealed directly to

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8. The Internal Revenue Code provides that married couples may file joint tax returns. Since same sex couples may not legally marry, they may not file jointly under the Code. I.R.C. § 1 (1988).

9. Dr. Donald Hilman, the expert witness, is a clinical and school psychologist who has been in practice for fifteen years, specializing in family, child, and adolescent psychology.

10. *In re* Adoptions of B.L.V.B. & E.L.V.B., Nos. 92-5813 & 92-5814 (Vt. P. Ct. Chittenden Dist. June 18, 1992).

11. Brief *Amici Curiae* of Lambda Legal Defense and Education Fund, Inc., Gay and Lesbian Advocates and Defenders, and the National Center for Lesbian Rights, *In re* Adoptions of B.L.V.B. and E.L.V.B., 628 A.2d 1271 (Vt. 1993) (No. 92-321).

the Vermont Supreme Court.[12] In November, we filed the brief and were assigned an early court date in February 1993.

As the review hearing approached we became increasingly aware of how this adoption had outgrown us and our family. Our adoption had become a case that would serve as precedent for families in Vermont, in addition to possibly affecting families seeking second parent adoptions elsewhere. The result of our case might inspire or deter families to take similar steps throughout the United States. Our lawyer warned us the night before the hearing that there would probably be reporters and protesters at the courthouse. We discussed whether we should try to slip in and out of the court anonymously. In previous documents and press reports we had maintained our anonymity, primarily out of concern for the privacy of our families and our sons. The day of the hearing, however, Jane and I approached the front of the Supreme Court building, walked inside, and found our way to the courtroom. Two news crews were setting up in the courtroom and our first thought was to wonder who they were there for, not realizing that we were their news story.

Hearing the actual oral argument was an odd sensation. We did not really have a place in the courtroom. It was our lawyers and the five justices discussing something of great import to our lives, and the lives of a lot of other families, but there was no recognition of our presence. Although the court proceeded without us, the television crew filmed the entire hearing and occasionally panned the camera over to us.

When it was over we walked out of the courtroom into a glare of lights and television cameras. We faced the cameras with our attorneys and gave the first of many interviews. We debated the publicity aspect of the case, finally deciding that we had nothing to hide. We were proud of what we had accomplished, and for our case to be helpful to as many families in our situation as possible, people had to know about it. Despite our conscious decision, it was a shock to watch the television that night and see the teaser for the eleven o'clock news with Jane's picture and the caption: "Lesbian Mother: News at Eleven."[13]

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12. Vermont's Supreme Court has jurisdiction to consider questions of law on direct appeal from probate court. VT. STAT. ANN. tit. 12, § 2551 (Supp. 1994). The question of law at issue was whether denying legal protection of Deborah Lashman's relationship with her sons was in the best interests of the children, as expressed in Vermont's statutes affecting children. These statutes were illustrated by the court:

> See 15 V.S.A. §§ 431-454 (adoption); 15 V.S.A. §§ 291-296 (support of spouse and care of children); 15 V.S.A. § 301 (legal rights, privileges, duties and obligations of parents to be established for benefit of children, regardless of whether child is born during marriage or out of wedlock); 15 V.S.A. § 665 (custody to be awarded upon best interests of child), § 666(c) (parental agreements on custody not in best interest of children shall not be approved by court), § 668 (custody modifications must be in best interests of children), and § 669 (guardians ad litem must represent best interests of children); 33 V.S.A. § 5540 (best interests of child shall be considered in disposition hearing on custody of minor).

*In re* Adoptions of B.L.V.B. and E.L.V.B., 628 A.2d 1271, 1276 (Vt. 1993).

13. We had the advantage that our children were one and four years old at the time of the decision and would not have to deal with any consequences of publicity at school. If our children had been older, we would have felt differently about the publicity.

It was several months before we received the Supreme Court's decision.[14] A few weeks before the decision came down, we read a comment in the gay press about the harm the case would cause if the decision was negative. We had always considered the possibility and the impact of losing and what that would mean to us. The wait became more difficult when we considered that a decision denying our adoption would likely have a harmful effect on the lesbian and gay community.

Finally, on June 18, 1993, I received a phone call from our lawyer telling me that we had won. Television crews arrived on the front porch and our family was the first story on the six o'clock news, beating out the coverage of Hillary Clinton's visit to Vermont.

The actual adoption decrees and birth certificates for our sons arrived later. It has now been over a year since the decision, and in some ways nothing has changed. We are still the family we have always been, still dealing with many of the same issues faced by a family with two small children. What I did not expect was the emotional effect the adoption would have on me. A psychologist testified at the probate court hearing that the adoption was perhaps as important emotionally for me and for our sons as it was pragmatically. I did not think it would change my relationship to them; after all, I helped bring them into the world. Yet, the adoption has given me a different level of connection to them and has validated my role as their parent in the world.

14. *In re* Adoptions of B.L.V.B. & E.L.V.B., 628 A.2d 1271, 1271 (Vt. 1993).