
CUSTODY RIGHTS IN SAME SEX MARRIAGE

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In 1991, the New York State Court of Appeals defined the term “parent” by excluding non-biological parties. The Court held that “a biological stranger to a child who is properly in the custody of his biological mother has no standing to seek visitation with the child under Domestic Relations Law §70,” *Alison D. v. Virginia M.*, 77 N.Y.2d 651, 655 (1991). This case clearly excluded parent like figures that lacked biological or adoptive ties to the child from seeking any custodial rights. The ruling excluded non-biological, non-married, non-adoptive parents from seeking custody and treated them as legal strangers to the children they were raising.

When the New York State Legislature passed the Marriage Equality Act stating that a marriage that is otherwise valid shall be valid regardless of whether the parties to the marriage are of the same or different sex, it stated its intention that no government treatment, right, benefit or responsibility relating to marriage shall differ based on the parties of the marriage being of the same sex rather than a different sex. This creates the persistent question as to what are the parental rights upon divorce to a child born of a same sex marriage where one party is the biological parent and the other is not.

In a landmark decision, the Court of Appeals has drastically altered the rule of law in *Alison D.* In *Brooke S.B. v. Elizabeth A.C.C.*, 28 N.Y.3d 1, 61N.E. 3d 488, 39 N.Y.S.3d 89 (2016), decided on August 30, 2016, the court overruled *Alison D* stating that “where a petitioner proves by clear and convincing evidence that he or she has agreed with the biological parent of the child to conceive a child and raise the child as co-parents, the petitioner will have presented sufficient evidence to achieve standing to seek custody and visitation of the child.”

This decision has brought true equality in the law as far as protecting the bonded relationships between children and non-biological, non-adoptive parents. If you have any questions or would like to discuss further, please do not hesitate to contact me or the attorney in our office with whom you typically work.