

What We Know

ARTICLES & INSIGHTS

ABOUT THE AUTHOR

Supreme Court Decision Illustrates That Issues Remain for LGBT Equality

March 23, 2016 | by

Following the United States Supreme Court's decision to recognize the right of same-sex couples to marry, it was only a matter of time before the Court would need to address other issues that could arise between same-sex couples, such as child custody, separation, or divorce. In a recent case, the Supreme Court did just that.

In *V.L. v. E.L., et al.*, 577 U.S. ___ (2016), the Supreme Court recognized the right of a non-biological parent in a same-sex relationship to adopt the biological children of their partner. This case centered around a same-sex couple and their three children. Over the course of time, after deciding to have a family, one of the partners in the same-sex relationship gave birth to three children. After several years of raising the children together, the biological parent of the children decided that the non-biological parent would adopt them. During the formal adoption process, the couple resided in Georgia. In the adoption proceeding, the biological parent consented to allow the non-biological parent to adopt the children while retaining full parental rights as the children's biological parent. The Georgia court granted the adoption and recognized both the biological and non-biological parent as the children's legal parents. The family later moved to Alabama.

After the couple separated in 2011, the biological parent stopped allowing the non-biological parent to see the children. In response, the non-biological parent filed a lawsuit asking the court to recognize the Georgia adoption so she could see her children. Though she won at the trial level, she lost on appeal as the Alabama Supreme Court held that the Georgia court lacked subject matter jurisdiction to enter the original adoption order. Therefore, the state of Alabama did not have to recognize the adoption order, and could deny the non-biological parent visitation rights with the children for whom she had helped raise. Many thought this was a politically-inspired attempt by a historically conservative court to limit the rights of same-sex couples.

The United States Supreme Court granted certiorari and issued an opinion without the aid of oral argument. In a unanimous decision, the United States Supreme Court reversed the Alabama Supreme Court. Under the *Full Faith and Credit Clause of the Constitution*, states must give judgments from other states' courts "full faith and credit"

even if the court disagrees with the outcome or reasoning underlying it. States, however, do not have to do so if the other court did not have the jurisdiction to hear the case. The Alabama Supreme Court relied on this jurisdictional argument in finding the adoption void. The United States Supreme Court, however, found that the Georgia court did have jurisdiction to enter the adoption order, and Alabama must recognize the adoption.

Currently, several states still do not expressly recognize the right of an individual in a same-sex relationship to adopt their partner's children. The Supreme Court's decision, in this case, will likely force those states to recognize legal adoptions by same-sex couples completed in other states. It's a safe bet that we will see more appellate decisions involving same-sex couples as the need for equality under the law is advanced.

CONTACT US

919.250.2000
mail@smithdebnamlaw.com

RALEIGH OFFICE

The Landmark Center
4601 Six Forks Road, Suite 400
Raleigh, NC 27609

Phone: 919.250.2000
Fax: 919.250.2100

CHARLESTON OFFICE

171 Church Street
Suite 120C
Charleston, SC 29401

Phone: 843.714.2530
Fax: 843.714.2541