



QUICK GUIDE TO SAME SEX PARTNERS ACCESS TO 50-B: *M.E. v. T.J.*

WHEN IS SAME SEX PARTNERS ACCESS TO A CHAPTER 50-B ACTION AN ISSUE UNDER THE COURT OF APPEALS RULING IN *M.E. v. T.J.*?

The [N.C. Court of Appeals](#) in [M.E. v. T.J.](#) held the former language of [N.C.G.S. § 50B-1\(b\)\(6\)](#), which excluded same sex couples in a dating relationship from receiving a Chapter 50B DVPO, is unconstitutional in violation of Due Process and the Equal Protection Clause. Plaintiff was denied a 50B DVPO solely based on the fact that plaintiff and defendant were both women and the language of N.C.G.S. § 50B-1(b)(6) specifically requires a couple that consists of opposite sex partners. The Court reasoned that in light of the U.S. Supreme Court's ruling in *Bostock v. Clayton County*, that sex discrimination includes discrimination based on sexual orientation or gender identity; and the state of N.C.'s interest to protect its constituents from domestic violence, regardless of their LGBTQ identity, that N.C.G.S. § 50B-1(b)(6) would not survive Plaintiffs rights. Therefore, the N.C. Court of Appeals ruled that N.C.G.S. § 50B-1(b)(6) shall now be applied to persons currently, or formerly, in a dating relationship regardless of the couple's LGBTQ status. This case has been appealed to the N.C. Supreme Court by Defendant and counsel. The N.C. Supreme Court ruled that same sex dating couples may now file a 50B DVPO action.

OUTCOMES AND IMPACTS OF THIS RULING

I. THE OPPOSITION AND THE NOA

The Defendant was not interested in participating during the Trial or Appeals Court's litigation and was appointed an Amicus, to argue against the Plaintiffs raised issues. The Court discusses the role of an Amicus and its limited scope to raise issues that were not brought by the parties.

In the Defendants Notice of Appeal, the Defendant plans to argue procedural and jurisdictional arguments raised in the dissent. These arguments could set aside the

judgment of the Court of Appeals; however, the Defendant's counsel does not challenge the Court of Appeals conclusion that denial of DVPO's to same sex couples contravenes both the U.S and N.C. constitutions.

While the NOA states that the Defendant does not challenge the constitutionality of the language in N.C.G.S. § 50B-1(b)(6), the effect of overturing the Court of Appeals ruling on the basis of a procedural or subject matter jurisdiction claim could vacated the Court of Appeals ruling all together.

II. FURTHER LITIGATION

The most obvious impact of this ruling will be the increase in litigation of a previously never litigated issue, a same sex partners action to attain a Chapter 50B DVPO. It also means that advocates and legal professionals should be briefed on the change to ensure petitioners access their right to protection against domestic violence.

The N.C. Court of Appeal's seemingly predictive opinion, that these issues may be brought to the N.C. Supreme Court or the U.S. Supreme Court to determine the constitutionality under both the N.C. State Constitution and the U.S. Constitution, has come to fruition.

In further litigation, the N.C. Supreme Court held that the district court did not err in determining that it has subject matter jurisdiction to allow the plaintiff to proceed with her 50B DVPO action. The Court held that the plaintiff's constitutional argument was properly preserved for appellate review. The defendant's Rule 19(d) necessary joinder argument was not properly preserved for appellate review. Finally, the Court noted that the merits of the Court of Appeals' ruling that N.C.G.S. 50-B(1)(b)(6)'s exclusion of complainants in same-sex dating relationships from DVPO protection is unconstitutional were not at issue before the Court. Therefore, it remains undisturbed and maintains normal procedural effect. The Court ultimately modified and affirmed the Court of Appeals' ruling reversing the trial court's denial of the plaintiff's 50B motion.

III. LEGISLATIVE

The legislative impact of this ruling is one of great importance. The N.C. Legislature enacted N.C.G.S. § 50B in 1979 and has been amended several times. The last amendment in 2017 was adopted after the U.S. Supreme Court's ruling in *Obergefell v. Hodges*, which extended the constitutional right of marriage to same sex couples. The N.C. Legislature, aware of the *Obergefell* ruling, chose not to amend the language in N.C.G.S. 50B-1(b)(6), a fact the Trial Court uses to argue against its own jurisdiction. The N.C. Court of Appeals dismissed this motion because of the limited scope of an *Amicus*, but the dissent lays out a specific

argument for subject matter jurisdiction and legislative intent which has become the basis of the Defendants appeal. The N.C. Supreme Court affirmation of the appeal officially changed the law to allow same sex couples to file for a 50B DVPO. The NC General Assembly has yet to update this law to match case law.

IV. ADMINISTRATIVE

The N.C. Court of Appeals specifically mentions the Plaintiffs filing their complaint, where the Plaintiff had to decide which personal relationship status resembled their own, and the Clerk office's staff gave Plaintiff the proper forms, those forms being ones to file a Chapter 50B DVPO. The N.C. Supreme Court has affirmed that same sex couples in a dating relationship may now file for a 50B DVPO. NCCADV educated, advocated, and worked with the NC Administrative Office of the Courts to update all court filing forms associated with 50b Domestic Violence Protective Order (DVPO) removing "opposite sex" language from dating relationships.

Updated forms include

[Complaint and Motion for Domestic Violence Protective Order AOC-CV-303](#)

[Domestic Violence Protective Order AOC-CV-306](#)

This information is provided for informational purposes only and does not constitute legal advice. Consult with an attorney, especially the attorney representing a survivor in a DVPO, for advice and answers to questions specific to a survivor's situation.