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Child Custody and Support for Same-Sex Parents

When a same-sex couple with children decides to dissolve their relationship, it can be complicated to sort out the resulting issues of custody and child support. The state laws that apply to same-sex couples and their families are dynamic and changing, which makes it difficult to predict a certain outcome. **Same sex marriage** and family relationships continue to evolve, making it important to consult a local family law attorney.

Married Couples

After *Obergefell v. Hodges*, all states must recognize a same-sex couple's right to marry. If a same-sex couple has chosen to marry and has children after marriage, state courts will view each parent as having visitation and custody rights to any children born during the marriage. When divorcing couples are unable to come to an agreement about custody, visitation and child support, judges will review both parties' arguments and evidence to develop an order that establishes a suitable custody, visitation and support arrangement for the family.

Key Fact

Because of *Obergefell*, states view **child custody** involving married same-sex couples and soon-to-be ex-spouses in the same light as child custody involving married opposite-sex couples and soon-to-be ex-spouses.

Most state courts put the best interests of a child first when determining these arrangements, and recognize that children generally benefit from a relationship with both parents. In most cases, parents that are not awarded physical custody of a child must pay child support to a parent who has custody. Issues of domestic violence or abuse may affect the outcome of child custody and support proceedings.

However, the situation can be more complicated if one parent has a biological relationship to the child and the other parent married the biological parent after the child was born. In that case, the non-biological parent must have taken steps to adopt the child or obtain a parentage judgment in order to have custody or visitation rights. A court is unlikely to order a non-biological parent who has not adopted the child or obtained a parentage judgment to pay child support.

Unmarried Couples

Issues of child custody and support for unmarried same-sex couples are unaffected by the ruling in *Obergefell v. Hodges*. When a relationship between unmarried couples ends, the outcome of custody and child support will depend on the legal parental status of the involved parties.

A biological parent in the context of an unmarried same-sex couple has presumptive custody rights. Most courts will find a second parent (or non-biological parent) has no legal rights to raise or make important decisions about a child if he or she has not adopted a child and has not obtained a parentage judgment. In some cases, the court may not even give the second parent standing to sue for visitation or custody, regarding the second parent as a “third party.”

Did You Know?

The best way to protect a non-biological parent's rights is for them to **adopt the child** or obtain a parentage judgment.

Other courts may permit a second parent to have visitation if that parent has played an essential role in raising the child. However, a second parent that has adopted a child or obtained a parentage judgment is on equal footing with a biological parent and can be given custody rights and support rights, depending on the best interests of the child and other factors, which can include actions that show the parents' intent to co-parent, the length of the relationship between the same-sex couple, and a parenting agreement where one exists.

Parenting Agreements

Unmarried same-sex couples may be able to protect themselves and their children by retaining an attorney to draft a parenting agreement. This is an agreement that states that even though only one of the partners might be the legal parent of the child or children, both partners consider themselves to be the parents. In the agreement, the parents should acknowledge their rights and responsibilities, and include a statement of intent to continue co-parenting even after a relationship ends. It can also be helpful for the agreement to address financial issues, such as child support, and costs of raising a child. A legal parent should express intention to allow the second parent visitation rights in case the relationship ends. Even with a written parenting agreement, there is no guarantee of a particular custody outcome.

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