# *Miller-Jenkins v. Miller-Jenkins*: Expanding Parental Rights for Lesbian Couples



## I. INTRODUCTION

Lisa Miller-Jenkins challenged the Vermont family court decision that her ex-partner, Janet Miller-Jenkins, is a legal parent of the child she decided together with Janet to conceive via artificial insemination.[1] Lisa contended her ex-partner is not a legal parent, the Vermont family court should have given full faith and credit to a Virginia court order precluding Janet's visitation rights, and that Lisa was not in contempt for failing to abide by the temporary visitation order.[2] The Supreme Court of Vermont found no merit in Lisa's claim for sole custody over her child.[3]

Lisa and Janet had been living together in Virginia for several years when they traveled to Vermont to enter into a civil union.[4] After entering into the civil union, the couple decided to have a child by artificially inseminating Lisa.[5] When the child, IMJ, was four months old, the family moved to Vermont.[6] Over a year later, the couple decided to separate, and Lisa moved back to Virginia with IMJ.[7] After moving back to Virginia, Lisa filed a petition to dissolve her civil union with Janet in the Vermont family court.[8] She sought custody over IMJ and parent-child contact for Janet.[9] The family court granted Lisa a temporary order on

1. Miller-Jenkins v. Miller-Jenkins, 912 A.2d 951, 955 (Vt. 2006).
2. *Id.* at 955-56.
3. *Id.* at 956. The court had granted interlocutory appeal to address the three issues raised by Lisa. The Supreme Court affirmed the family court's decision that Janet was a legal parent of their child, that Janet had a right to a visitation order, and that the order of contempt against Lisa was properly made. *Id.*
4. *Id.*
5. *Id.* Lisa received sperm donations from an anonymous donor. *Id.*
6. *Id.*
7. *Id.*
8. *Id.*
9. *See id.*

parental rights.[10] After the first weekend that Janet was allowed to have contact with IMJ, Lisa did not allow Janet to see or talk to the child again.[11] Lisa petitioned the Virginia Circuit Court to determine IMJ's parentage.[12] The Virginia Circuit Court and the Vermont court contacted one another concerning the matter of IMJ's parentage, but each court came to its own conclusion.[13] The Virginia court found that it had jurisdiction over the case and decided that Lisa was the sole parent of IMJ.[14] On the other hand, the Vermont court found Lisa to be in contempt for refusing Janet her visitation rights with IMJ and concluded that both Janet and Lisa had parentage rights.[15] The Vermont Court refused to give full faith and credit to the Virginia parentage decision, and Lisa appealed.[16] The Supreme Court of Vermont *held* that the Vermont family court had exclusive jurisdiction to determine IMJ's parentage, both women were parents of IMJ, and Lisa was in contempt for not allowing Janet to visit or contact IMJ. *Miller-Jenkins v. Miller-Jenkins*, 912 A.2d 951, 974 (Vt. 2006).

## II. BACKGROUND

### *A. Interstate Jurisdiction and Full Faith and Credit*

When conflicting custody issues arise between two different state courts, courts turn to the Parental Kidnapping Prevention Act (PKPA or Act) to resolve the issue.[17] The PKPA requires a state to enforce a child custody determination made by another state if the decision is consistent with the Act.[18] The provisions of the PKPA require that the state have jurisdiction under its own local law and meet one of the five conditions

10. *See id.* The court awarded Lisa temporary legal and physical responsibility for IMJ and awarded Janet parent-child contact for two weekends the first month, one weekend in the next month, and one full week in each month after that. Janet was also awarded phone contact with IMJ. *See id.*

11. *See id.*

12. *See id.*

13. *See id.* at 957.

14. *See id.* After Lisa petitioned the Virginia court, the Vermont court reaffirmed its own jurisdiction. The Virginia court then concluded that it had jurisdiction based on the finding that the Vermont civil union laws were void under Virginia Law. Currently, the Virginia court's decision that Lisa is the sole parent of IMJ is on appeal. *See id.* at 956-57.

15. *See id.* at 957.

16. *See id.*

17. *See* Medveskas v. Karparis, 640 A.2d 543, 544 (Vt. 1994) (citing 28 U.S.C. § 1738A (2000)).

18. Thompson v. Thompson, 484 U.S. 174, 175-76 (1988).

listed in the Act.[19] The Supreme Court summarized that state courts are authorized to enter a custody decree under three sets of circumstances:[20]

> Briefly put, these conditions authorize the state court to enter a custody decree if the child's home is or recently has been in the State, if the child has no home State and it would be in the child's best interest for the State to assume jurisdiction, or if the child is present in the state and has been abandoned or abused.[21]

If the state has a custody proceeding and maintains jurisdiction established under the PKPA, another state court can neither exercise jurisdiction during the pendency of that proceeding nor can it modify the resulting custody determination.[22]

In *Thompson v. Thompson*, the Supreme Court of the United States affirmed the United States Court of Appeals for the Ninth Circuit's decision that the PKPA did not create a federal cause of action to determine which of two conflicting custody decrees was actually valid.[23] The Supreme Court found that Congress had extended full faith and credit requirements to child custody orders.[24] The PKPA imposes a federal duty on states to give full faith and credit to custody determinations of other states.[25] The purpose of the statute is to promote the child's best interest by discouraging abduction and other removals of the child from one state to another in order to obtain a favorable custody determination.[26] In *Michalik v. Michalik*, the Supreme Court of Wisconsin affirmed a lower court's decision that a Wisconsin court could not modify child custody determinations made by an Indiana court nor could the Wisconsin court interfere with the Indiana court's ongoing exercise of jurisdiction.[27]

The Supreme Court of Vermont reasserted Vermont's continuing jurisdiction over a child custody determination when it applied the PKPA in *Matthews v. Riley*.[28] A divorce decree established between Mary Ellen Matthews and James Riley in Vermont determined the custody of their son.[29] When the mother moved to Rhode Island, the father filed in a

---

19. *See id.* at 176-77.
20. *See id.* at 177.
21. *Id.* (citing 28 U.S.C. § 1738A(c)(2)).
22. *See* 28 U.S.C. § 1738A(g).
23. *See* 484 U.S. at 178-79, 187.
24. *See id.* at 187.
25. *See id.* at 182.
26. Michalik v. Michalik, 494 N.W.2d 391, 398 (Wis. 1993).
27. *See id.* at 391-92.
28. 649 A.2d 231, 240 (Vt. 1994).
29. *See id.* at 234.

Vermont family court to modify his visitation rights.[30] The mother requested relief in a Rhode Island family court.[31] The Rhode Island court assumed jurisdiction over the matter, which the Vermont family court found to be inappropriate.[32] The Vermont family court found that it had fulfilled two requirements of the PKPA. First, Vermont had jurisdiction under state law; and, second, the child lived in Vermont at least six months prior to the modification order.[33] The Vermont family court also concluded that "because the father[] resided in Vermont and the Vermont family court had jurisdiction under state law, Vermont had continuing jurisdiction under the PKPA."[34]

### *B. The Parentage Determination*

A court considers what is in the best interest of a child when determining custody rights of an adult who is not a biological parent of the child but previously acted in the capacity of a parent towards the child. In *Paquette v. Paquette*, the Supreme Court of Vermont reversed the lower court, finding that a stepparent may be awarded custody over a stepchild.[35] The plaintiff in *Paquette* petitioned for custody over his stepson, but the trial court denied the petition claiming that it did not have jurisdiction to award custody of a child to a stepparent.[36] The Supreme Court of Vermont observed that "[w]here one stands in loco parentis to another, the rights and liabilities arising out of that relation are . . . exactly the same as between parent and child."[37] The court held that a stepparent who stands in loco parentis to a child may be granted custody. To prevail, the stepparent must show by clear and convincing evidence that extraordinary circumstances exist, the natural parent is unfit, or that it is in the child's best interest for the stepparent to be awarded custody.[38]

The Supreme Court of Vermont has recognized that the parental rights of the nonbiological parent in a same-sex relationship are more substantial than those of a stepparent. In *In re B.L.V.B.*, the court faced the issue of whether Vermont law requires the termination of a natural

---

30. *See id.*
31. *See id.*
32. *See id.*
33. *See id.* at 235-36.
34. *Id.* at 239.
35. 499 A.2d 23, 25, 30 (Vt. 1985).
36. *See id.* at 25.
37. *Id.* at 27. The Supreme Court of Vermont defined "in loco parentis" as "[i]n the place of a parent: . . . charged, factitiously with a parent's rights, duties, and responsibilities." *Id.* (quoting *In re* Fowler, 288 A.2d 463, 465 (Vt. 1972) (citations omitted)).
38. *Id.* at 30.

mother's parental rights if her children are adopted by someone to whom she is not married.[39] The appellants, Jane and Deborah, are a lesbian couple who decided together to have children by artificially inseminating Jane.[40] They sought to have legal recognition of their status as coparents over their children through legal adoption by Deborah without infringement on Jane's parental rights.[41] The Vermont probate court denied the adoption, finding that a couple must be married to adopt together, otherwise the natural parent will lose the right to control the child.[42] The Supreme Court of Vermont overturned the lower court's decision that it was not in the child's best interest to have two mothers.[43] Applying the rational basis test to determine whether it is in the best interest of the child to have two parents, the court observed that

> [w]hen social mores change, governing statutes must be interpreted to allow for those changes in a manner that does not frustrate the purposes behind their enactment. To deny the children of same-sex partners, as a class, the security of a legally recognized relationship with their second parent serves no legitimate state interest.[44]

The court held that when it is in the best interests of children to be adopted by their natural mothers' partners, then terminating the natural mothers' rights is unreasonable and unnecessary, and second-parent adoption should be allowed.[45]

The court also looks at other factors to determine the parental status of same-sex partners over their child, such as the intent of the partners when making decisions about having children.[46] *In re B.L.V.B.* raised the difficult issue of families resulting from reproductive technologies such as artificial insemination.[47] Case law indicates that policy guides courts to consider the intent of the parties in cases of parental determination of children born from consensual artificial insemination.[48] Among heterosexual couples, the California Court of Appeals found in *In re Buzzanca* that a husband is a parent of a child based on his consent to

---

39. 628 A.2d 1271, 1272 (Vt. 1993).
40. *See id.*
41. *See id.*
42. *See id.*
43. *See id.* at 1275.
44. *Id.*
45. *See id.* at 1272.
46. *See id.* at 1274.
47. *See id.* at 1276.
48. *See, e.g.*, Brooks v. Fair, 532 N.E.2d 208, 212-13 (Ohio Ct. App. 1988). The court in *Brooks* held that public policy prevents a wife from denying her husband's paternity if they had consensually decided to have a child by means of artificial insemination. *See id.*

artificial insemination.[49] Other jurisdictions have also held that fathers who consent to artificial insemination with their wives are legal parents of the resulting children.[50]

Equating heterosexual relationships with homosexual relationships in the context of parental rights, an increasing number of jurisdictions are recognizing parental rights of a same-sex partner over a child conceived through artificial insemination. The California Supreme Court presumed that a same-sex partner is the mother of twins conceived by her partner through artificial insemination and therefore required her to make child support payments at the termination of the relationship.[51] The Pennsylvania Supreme Court found that a court may grant partial custody or visitation to a same-sex partner who stands in loco parentis, as long as the biologically connected partner consents.[52] Courts will consider the intent of both lesbian partners at the time of artificial insemination when determining whether a lesbian partner, whose former partner conceived through artificial insemination, has parental rights over the child.[53]

## III. COURT'S DECISION

In the noted case, the Supreme Court of Vermont determined that the Vermont family court had correctly exerted jurisdiction over the custody determination of IMJ under the PKPA. Furthermore, the court concluded that a civil union between Janet and Lisa had existed, and that Janet had a valid claim to parentage rights over IMJ.[54] First, because the Vermont family court met the requirements of the PKPA, it was not required to extend full faith and credit to a Virginia court's decision concerning parental custody of IMJ.[55] Second, the Supreme Court of Vermont also held that the civil union between Janet and Lisa was not void.[56] Third, because the two women were in a civil union and consensually decided to artificially inseminate Lisa to conceive a child, Janet has parental rights over IMJ.[57]

---

49. 72 Cal. Rptr.2d 280, 286-87 (Ct. App. 1998).

50. *See, e.g.*, Levin v. Levin, 645 N.E.2d 601, 604-05 (Ind. 1994); *In re* Baby Doe, 353 S.E.2d 877, 878 (S.C. 1987).

51. Elisa B. v. Super. Ct., 117 P.3d 660, 670 (Cal. 2005).

52. *See* T.B. v. L.R.M., 786 A.2d 913, 920 (Pa. 2001).

53. *See Elisa B.*, 117 P.3d at 670.

54. Miller-Jenkins v. Miller-Jenkins, 912 A.2d 951, 965, 972-73 (Vt. 2006).

55. *See id.* at 959.

56. *See id.* at 965.

57. *See id.* at 970.

The Supreme Court of Vermont struck down Lisa's first argument that the PKPA is inapplicable to the Virginia court's parentage determination, and the Vermont family court should have accorded full faith and credit to the Virginia court's decision.[58] The Vermont court found that because it established original jurisdiction and met the requirements of the PKPA, Virginia had no jurisdiction to make a decision concerning custody.[59] IMJ had lived in Vermont within six months of the beginning of the proceedings, and was not currently living there because Lisa had removed her while Janet continued to live in Vermont.[60] Therefore, the proceedings satisfied one of the conditions of PKPA.[61] This condition also established jurisdiction under Vermont law.[62] The PKPA "specified that the [Virginia] court could not exercise jurisdiction over a proceeding to determine the custody of, or visitation with, IMJ while the Vermont proceeding was pending."[63] The PKPA prohibits the Virginia court from modifying the temporary custody determination because Vermont had continued to exercise jurisdiction over the matter.[64] Vermont continued to have jurisdiction because Janet remained in the state.[65] Therefore, the Vermont court did not need to grant full faith and credit to the Virginia custody order that violated the PKPA.[66]

Lisa tried to rebut this holding by suggesting that the Defense of Marriage Act (DOMA) supersedes the PKPA and requires the Vermont court to grant full faith and credit to the Virginia court's decision.[67] The Supreme Court of Vermont found that the PKPA and DOMA should not be held consistent with one another.[68] The issue in the noted case is whether the Vermont court should extend full faith and credit to the

---

58. *See id.* at 960-61.
59. *See id.* at 959.
60. *See id.* at 958.
61. *See id.*
62. *See id.*
63. *Id.*
64. *See id.* at 959.
65. *See id.*
66. *Id.*
67. *See id.* at 961. DOMA states:

> No State, territory, or possession of the United States, or Indian tribe, shall be required to give effect to any public act, record, or judicial proceeding of any other State, territory, possession, or tribe respecting a relationship between persons of the same sex that is treated as a marriage under the laws of such other State, territory, possession, or tribe, or a right or claim arising from such relationship.

*Id.* (quoting 28 U.S.C. § 1738C (2000)).
68. *Id.* at 962.

Virginia court's decision about custody.[69] The Vermont Supreme Court had previously held that it would not accord more faith and credit to a judgment from another state that conflicts with a valid Vermont judgment than it would accord to the Vermont judgment.[70] Furthermore, DOMA does not demand the extension of full faith and credit by one state court to the decision of another state court.[71] Thus, the court rejected the argument that DOMA should govern the full faith and credit issue as to the Virginia custody determination.

Lisa next argued that Virginia does not have to recognize her civil union with Janet since they were residents of Virginia when they entered into the union.[72] She relied on title 15 of the Vermont Statutes Annotated (V.S.A.), section 6 for the proposition that her civil union with Janet would have been void if she entered into the union in Virginia and, therefore, a custody determination based on her civil union is void.[73] The Supreme Court of Vermont held that it was not within the legislative intent to prohibit nonresidents from entering into civil unions within the state.[74] Therefore, because her civil union with Janet was valid, the court rejected Lisa's argument that the temporary visitation order is void because the civil union is void.[75]

Lisa's final argument relied on the Parentage Proceedings Act, title 15, V.S.A. sections 301-308, and suggested that Janet could not be IMJ's parent because Janet is not biologically attached to IMJ.[76] Lisa argued that the use of the word "natural" in section 308(4) evidenced legislative intent that the presumption of parentage apply only to biologically connected individuals.[77] Lisa contended that if Janet is not a parent, then the family court erred in awarding Janet visitation rights.[78] The Supreme Court of Vermont provided two separate reasons why Lisa's argument was invalid.[79] The court found Janet to have at least the status of a stepparent by virtue of title 15, V.S.A. sections 1204(d) and (f) and then

---

69. *See id.*
70. *See id.*
71. *See id.*
72. *See id.*
73. *See id.* "A marriage shall not be contracted in this state by a person residing and intending to continue to reside in another state or jurisdiction, if such marriage would be void if contracted in such other state or jurisdiction." 15 V.S.A. § 6 (2002).
74. *Miller-Jenkins*, 912 A.2d at 965.
75. *See id.*
76. *See id.* at 965-66.
77. *Id.* at 966.
78. *See id.*
79. *See id.*

applied the finding in *Paquette*.[80] During the civil union, Janet acted in loco parentis with respect to IMJ and extraordinary circumstances existed in this case.[81] "Thus, [the] short answer to Lisa's argument is that the visitation order is supported by *Paquette* even if Janet is not considered IMJ's parent under § 308(4)."[82]

The court went further to explain "that Janet has status as a parent, even beyond her stepparent status under *Paquette*."[83] Because the legislature had not addressed the issue of parents of children conceived by reproductive technology, the court looked to many factors that supported the conclusion that Janet is a parent.[84] The factors included that Janet and Lisa were in a valid civil union at the time of IMJ's birth, they intended and expected both of them to be IMJ's parents, they consensually decided that Lisa would be artificially inseminated, they both actively participated in prenatal care and birth, and both women treated Janet as a parent when they lived together.[85] The court also considered that if Janet was found not to be a parent, it would leave IMJ with only one parent, whereas had Janet been Lisa's husband, the case law would dictate that Janet is a legal parent.[86] The court noted "that a growing number of courts have recognized parental rights in a same-gender partner of a person who adopts a child or conceives through artificial insemination."[87] The court considered the intent of the women in concluding that Janet is a parent of IMJ.[88]

The Supreme Court of Vermont did not need to grant the Virginia court's custody determination full faith and credit. Because it violated the PKPA by denying Janet custody, the Supreme Court of Vermont therefore upheld the Vermont lower court's decision in favor of Janet. The court considered the intent and actions of Janet and Lisa concerning IMJ, the civil union between the two women, and IMJ's best interest in concluding that Jane is IMJ's parent and therefore is entitled to parental rights.

---

80. *See id.* at 967.
81. *See id.*
82. *Id.*
83. *Id.*
84. *See id.* at 967-70.
85. *See id.* at 970.
86. *See id.*
87. *Id.* at 972.
88. *See id.* at 970.

## IV. ANALYSIS

In the noted case, the court correctly recognized parental rights of both same-sex partners who consensually conceive a child through artificial insemination, as other courts have presumed.[89] Prior to the noted case, courts had willingly recognized that in a homosexual relationship, the nonbiological parent had limited legal rights over a child.[90] The noted case indicates a trend to recognize both partners equally as legal parents, but the trend is limited to a number of states. Inevitably states' custody determinations will clash.

The Supreme Court of Vermont considered several cases where heterosexual fathers were presumed to be a parent of a child who is conceived by consensual artificial insemination.[91] "[M]ost states have enacted statutes holding husbands who consent to artificial insemination by donor liable for support because they are considered the legal fathers of any children born."[92] Generally courts automatically treat both partners in a heterosexual couple as legal parents of a child conceived by artificial insemination.[93] Even when the heterosexual couple is not married, the court may consider the intent and conduct of the couple to determine if the nonbiologically connected party is liable for support.[94] A person who consents to conception by artificial insemination cannot disclaim his relation with the child at will, but instead must support the child whose birth he is responsible for.[95]

Some courts have relied on the same policy supporting the recognition of legal rights and obligations of nonbiological fathers in

---

89. *See, e.g.*, Elisa B. v. Super. Ct., 117 P.3d 660, 670 (Cal. 2005) (holding that the former same-sex partner of the biological mother of twins should be a presumed mother of the children because they were conceived with the understanding that she and her partner would raise the children together as their own); T.B. v. L.R.M., 789 A.2d 913, 920 (Pa. 2001) (holding that the former same-sex partner of the biological mother stood *in loco parentis* to the child because she acted as a parent with the consent of the biological mother).

90. *See, e.g.*, T.B. v. L.R.M, 785 A.2d 913, 915 (Pa. 2001); *Elisa B.*, 117 P.3d at 670.

91. *See Miller-Jenkins*, 912 A.2d at 970 (citing Brown v. Brown, 125 S.W.3d 840, 844 (Ark. Ct. App. 2003); People v. Sorensen, 437 P.2d 495, 498-500 (Cal. 1969); *In re* Buzzanca, 72 Cal. Rptr.2d 280, 286-87 (Cal. App. 1998); *In re* M.J., 787 N.E.2d 144, 152 (Ill. 2003); Levin v. Levin, 645 N.E.2d 601, 604-05 (Ind. 1994); R.S. v. R.S., 670 P.2d 923, 928 (Kan. 1983); State *ex rel.* H. v. P., 457 N.Y.S.2d 488, 492 (N.Y. 1982); Brooks v. Fair, 532 N.E.2d 208, 212-13 (Ohio App. 1988); *In re* Baby Doe, 353 S.E.2d 877, 878 (S.C. 1987)).

92. Caroline P. Blair, *It's More Than a One-Night Stand: Why a Promise To Parent Should Obligate a Former Lesbian Partner To Pay Child Support in the Absence of a Statutory Requirement*, 39 SUFFOLK U. L. REV. 465, 473 (2006).

93. *See* Courtney G. Joslin, *The Legal Parentage of Children Born to Same-Sex Couples: Developments in the Law*, 39 FAM. L.Q. 683, 684 (2005).

94. *See* Blair, *supra* note 92, at 476.

95. Joslin, *supra* note 93, at 688 (quoting People v. Sorensen, 437 P.2d 495, 499 (Cal. 1968)).

heterosexual couples when finding that same-sex couples are parents and are therefore obligated to pay child support.[96] Husbands who consent to artificial insemination are presumed to be the legal fathers of the children born and are therefore liable for support.[97] "[T]he advent of civil unions and domestic partnerships in a minority of states has extended the presumption to same-sex partners."[98] By finding that a former same-sex partner is a legal parent, even though she had previously denied being a parent despite consenting to conception by means of artificial insemination, the court is serving the best interest of the child to provide financial and emotional support.[99] Some courts "are generally unwilling to impose a child support obligation when a former partner has not asserted herself as a parent or when there has been no actual parental relationship."[100] Even when a court does recognize a former partner as a parent, courts limit the recognition to "parent-like relationships" or quasi-parent status.[101] Quasi parents may not have the full rights and responsibilities of legal parents and can leave the child's legal relationship with that person unclear.[102]

The Supreme Court of Vermont considered this doctrinal trend by taking it a step further in recognizing Janet as a legal parent. "Recent advancements in reproductive science have created a growing need for clear standards determining parentage for same sex couples."[103] The court considered decisions upholding the presumption of nonbiological fathers as legal parents of children conceived by consensual artificial insemination with their spouses or girlfriends in addition to decisions finding same-sex partners to be legal parents in order to enforce child support obligations.[104] Considering past case law and the intent of the parties involved, the Supreme Court of Vermont provided a clearer standard for determining the legal parentage rights of same-sex partners who consensually conceive a child by artificial insemination.[105]

---

96. *See* Elisa B. v. Super. Ct., 117 P.3d 660, 670 (Cal. 2005).

97. Blair, *supra* note 92, at 473.

98. *Id.*

99. *See id.* at 478 (quoting L.S.K. v. H.A.N., 813 A.2d 872, 878 (Pa. Super. Ct. 2002).

100. *Id.* at 481.

101. *See* Joslin, *supra* note 93, at 696.

102. *See id.*

103. Micah Nilsson, *You Can't Force Her To Be a Second Mom:* K.M. v. E.G., 10 U.C. DAVIS J. JUV. L. & POL'Y 479, 483 (2006) (citing Melanie B. Jacobs, *Micah Has One Mommy and One Legal Stranger: Adjudicating Maternity for Nonbiological Lesbian Coparents*, 50 BUFF. L. REV. 341, 342 (2002)).

104. *See* Miller-Jenkins v. Miller-Jenkins, 912 A.2d 951, 970, 972 (Vt. 2006).

105. *See generally* E. Todd Bennet & James D. Milko, *The Dilemma of Patchwork Solutions: Same-Sex Issues*, MD. B.J. May-June 2005, at 18, 22 (2005) (raising question of how the courts will determine which state's custody order will control).

Movement towards a presumption of parental rights of both partners who conceive through artificial insemination by some states and not others will cause conflict. The noted case creates an interstate conflict, and it will be disputed later whether Vermont can impose its same-sex union policy on Virginia. "'The Vermont ruling . . . illustrates that . . . civil unions will inevitably clash with other states.'"[106] If the Virginia decision stands, even after the Supreme Court of Vermont's ruling, then "'[t]his case will have to be resolved at the United States Supreme Court.'"[107] The question remains whether or not the United States Supreme Court is willing to recognize civil unions in order to confirm the notion that laws designed to protect children in cases of dissolution also apply to children of same-sex couples.[108]

Bonnie E. Dye*

106. Adam Liptak, *Parental Rights Upheld for Lesbian Ex-Partner*, N.Y. TIMES, Aug. 5, 2006, at A1 (quoting Mathew D. Straver, founder and chairman of Liberty Counsel, a public interest law firm that represented Lisa Miller-Jenkins).

107. *Id.* (quoting Mr. Straver).

108. *See generally id.*

* J.D. candidate 2008, Tulane University School of Law; B.S. 2005, Louisiana State University. The author would like to thank her family and friends for their support.