

A woman with short dark hair, wearing a black top and blue jeans, is sitting on a light-colored wooden floor. She is looking down at a photo album she is holding. The album is open, showing several photographs of children. In the background, there is a window with white trim and a bed with a light-colored blanket. The overall scene is a domestic, intimate setting.

GOOD for the CHILDREN

America's courts are increasingly being asked to uphold parent-child bonds — even when there is no biological tie.

BY GREG NEVINS, SENIOR STAFF ATTORNEY
PHOTO: © REBECCA DROBIS

When Janet Jenkins met Lisa Miller, she never imagined the details of their falling in love, having a child and eventually splitting apart would someday find their way to the U.S. Supreme Court. But earlier this spring, the justices of the highest court in the land were asked to consider an appeal and refused to weigh in on this parenting case — one of the most closely watched in the LGBT community. Lambda Legal represents Jenkins, who is trying to make sure she remains in her daughter Isabella's life. After the women broke up, Miller moved from Vermont to Virginia with Isabella. She asked a Vermont court to dissolve the couple's civil union and sort out custody of the child. When the Vermont court ordered visitation for Jenkins, Miller filed a new lawsuit in Virginia, using that state's antigay marriage law to have herself declared the child's sole legal parent.

We prevailed at the Virginia Court of Appeals (the Vermont case is being handled by GLAD), which ordered that Jenkins's parental rights must be respected, and the higher courts have so far rejected Miller's appeals. But as she persists in this case, it has come to highlight the pitfalls of state-based family law, as well as the need for strong protections for LGBT parents — whether they are the biological parent or not.

Family law in the United States is governed largely by the laws of individual states, and these vary widely from place to place. Alabama is not Vermont. California is not Ohio. Over the years, Lambda Legal has developed expertise specific to each state so that, wherever LGBT families live, we can give them the best chance of security now and in the future. As it stands, the states that allow for marriage, civil unions or statewide domestic partnership provide the best protection for children. After that, the range of protections for the roughly 250,000 children in the United States being raised by same-sex couples differs profoundly. Still, the majority of states at this point will not consider a parent's sexual orientation in a custody dispute, without an adverse effect on the child.



Lambda Legal plaintiff Janet Jenkins with her daughter Isabella. Jenkins has been fighting to keep her relationship with Isabella for three years.

But what happens when two states with very different interpretations of parenting laws come up against each other, as they do in the *Miller-Jenkins* case? The federal Parental Kidnapping Prevention Act makes it clear that court orders regarding custody and visitation enacted in one state must be enforced in other states as well. The Virginia Court of Appeals recognized this when it ruled that Miller could not shop around for a state that would give her a better deal, in this case sole custody.

The message in *Miller-Jenkins* is clear: lesbian and gay parents must be treated like other couples when courts evaluate the best interest of the child in custody cases.

That holds true for biological or nonbiological parents, although the law regarding a nonbiological parent's relationship to the child can get murky. Some states allow for second-parent adoptions, some recognize co-parenting agreements and others recognize psychological parents based on their longstanding role as a parent to the child.

Lambda Legal has long been active in the fight to preserve the bonds between nonbiological parents and their children. Last November, we won an important victory in

Pennsylvania that cemented the rights of nonbiological parents. The courts awarded Patricia Jones (a lesbian mother) custody because they determined that she would provide a better home for her children than her ex-partner (the children's biological mother) would. While a lower court had initially awarded custody to her ex-partner, it later changed that determination in favor of Jones, and the superior court agreed, finding "convincing reasons" that it was in the best interest of the children to remain with Jones. In other words: biological ties cannot trump the best interest of a child.

On the heels of our success in *Jones* comes a case in Missouri where we are fighting to seal the bonds of both the biological and nonbiological parents with their two children. Our client and her ex-partner had each conceived a child using the same anonymous sperm donor to start their family. When they broke up, the ex-partner cut off our client from their daughter (the ex's biological child) and simply walked away from her other child, her nonbiological son. Our case seeks to reunite our client with her child and make sure that both children are able to maintain ties with their sibling and have financial support from both their parents as well.

The Missouri case, like *Miller-Jenkins*, shows just how convoluted a parenting case can become when one parent attempts to defy the very laws they had relied on in the first place to create a family. In Georgia one woman went so far as trying to invalidate her ex-partner's adoption, when she herself had years earlier urged a court to allow her ex-partner to adopt their child. Lambda Legal fought to preserve the adoption, and successfully convinced the Georgia Court of Appeals and the Georgia Supreme Court to reject this insidious attempt to keep a mother from her child and disparage the law.

That couples break up is nothing new. Neither is the sad fact that children are often forced into the crosshairs. The added twist for same-sex couples is the inconsistency of protections available when this happens. Until more states enact comprehensive protections for same-sex couples, we're likely to see more and more nasty custody disputes. And Lambda Legal will be in court to make sure anti-LGBT prejudice does not defeat the best interests of the child. **L**