



The Capital District WOMEN'S BAR ASSOCIATION

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NEW CATEGORIES OF INDIVIDUALS ELIGIBLE TO ADOPT (A POSSIBLE SOLUTION FOR VICTIMS OF DOMESTIC VIOLENCE)

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Since the Court of Appeals decided Matter of Jacob, 86 N.Y.2d 651 (1995), which approved adoptions by unmarried second-parents, the categories of individuals eligible to adopt has been steadily broadening, both by statutory amendment and by case law interpretation.

Matter of Jacob involved two adoptions: one by the opposite-sex un-married partner of the biological mother of the child and one by the same-sex partner of the biological mother of the child. The Court noted that while the adoption statute must be strictly construed, that includes not just the legislative language, but also the legislative purpose "that adoption is a means of securing the best possible home for a child." The Court also noted the many tangible and intangible benefits a child receives as a result of adoption, including security in knowing the other parent will have presumptive custody in the event of the other's death, social security benefits, life insurance benefits, the right to sue for wrongful death of a parent, the right to inherit under rules of intestacy, eligibility for coverage under health insurance policies available to both parents, the ability of both

parents to make medical decisions for the child in an emergency situation and the legal obligation of both parents to support the child.

Since Matter of Jacob, the Court has further expanded the categories of person who can adopt by fairly broadly interpreting the relevant statutes. For example, in Matter of Adoption of G., 2013 N.Y. Slip Op. 23454 (Surr. Ct. N.Y. County, Dec. 27, 2013), the Court permitted an adoption by two friends who were not married to each other, did not live together and were not in a romantic relationship to adopt together. Also, in In re Chan, 37 Misc.3d 358 (Surr. Ct. N.Y. County, 2012), the Court allowed two individuals who were not married to each other, did not live together and were not currently in a romantic relationship to adopt together and in In re A, 27 Misc.3d 304 (Sup. Ct. Queens County, 2010), the Court allowed the paternal grandmother and aunt of the subject children to adopt together.

These recent developments allowing unmarried individuals who do not live together and who are not in romantic relationships to adopt may be of particular help to survivors of domestic violence. Perpetrators of domestic violence who have a child in common with their victim often use the court system as a way to continue to harass their victim even after the relationship has ended. Since virtually endless petitions can be filed in Family Court without an attorney and without paying any filing fees, domestic violence survivors

are often without a good remedy to stop this abuse. One creative domestic violence survivor sought to adopt her own child to cut off the rights of the birth father but the Court rejected this proposed adoption because it would have removed one parent without replacement. Matter of Zoe D.K., 26 A.D.3d 22 (4th Dep't 2005). However, an adoption with a non-intimate partner could provide the needed remedy and address the concerns raised by the Court in Matter of Zoe D.K.

If the birth parent of a child has not visited/been in contact with the custodial birth parent or child and had not paid child support for a period of six months, the birth parent's consent to the adoption may not be necessary. See DRL § 111. The custodial birth parent can then file a joint adoption petition with a close friend or family member. The custodial birth parent retains all parental rights to the child and the close friend or family member gains parental rights and obligations with respect to the child. Multiple of these types of adoptions have been finalized in the Courts in the Capital Region in recent years.

This arrangement provides the child with access to insurance and other benefits through the adoptive parent while maintaining eligibility for benefits through the custodial birth parent. However, it is important for the adopting parent to be mindful of their estate plan and any changes that might be necessary as a result of the adoption.

One potential problem arises when the proposed adoptive parent is married. DRL § 110, provides that an adult married couple can adopt together. Presumably, when this provision was drafted it contemplated a married couple adopting a child from birth parents who would relinquish their rights as part of the adoption. However, at least one Court in the Capital Region has read this provision as allowing a married couple to adopt with the custodial birth parent also retaining parental rights, the result being a child with three parents - complete with a birth certificate listing three parents!

Notably, if the custodial parent later has an intimate relationship with another person and wants to legally recognize the new family unit, the child can be adopted again by that intimate partner. That adoption proceeding would require the consent of the friend or family member that previously adopted but not the birth parent whose rights were already terminated in the initial adoption proceeding.

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