

Custody and Stepparents: What Modern Families Need to Know

By Ross T. Ewing

“Court Upholds Lesbians’ Joint Custody Agreement.” This was the headline in the Lexington Herald-Leader (from the Associated Press) on January 22, 2010. The case is Mullins v. Picklesimer. The headline is essentially true, but as is so often the case, there’s more to the legal holding than a headline can capture.

The case involved two women who were in a long-term relationship. During that relationship, one of the women gave birth to a child, and both women parented the child together for several years. Later, their relationship deteriorated, and a court battle ensued over the custody of the child.

The Kentucky Supreme Court’s holding only gave the non-biological parent a seat at the table. Their ruling does not require lower courts to grant any rights to non-biological parents, but it does give the lower courts permission to do so if the judge believes it would be in the child’s best interests.

Under prior Kentucky law, the only people other than biological parents who could ever be considered for custody rights were people (usually grandparents) with whom the biological parents had left their children for over a year! The following is an example of how one Kentucky court had to rule before this new Supreme Court opinion.

I represented a husband in a very messy divorce. He had been a consistent father figure to his two stepsons for several years. He provided their food and shelter. He taught them to read, how to play basketball, and he even potty trained the younger son. The boys’ biological father was alive and paid child support, but rarely saw them. After my client’s wife filed for divorce, under the old law, she could and did prevent my client from seeing the boys. He had been the only father in their lives for years, and they were immediately cut off from him. My client had no legal right to see the boys or even call them on the phone.

We brought a motion in court, but the judge’s hands were tied. He could not grant my client any rights to see the boys. However, the judge lectured their mother on the importance of having a consistent father figure. Fortunately, the lecture helped and their mom allowed my client to see the boys.

With this latest ruling a judge can now consider whether the best interests of the child are served by allowing the non-biological parent--child relationship to continue through custody or visitation orders.

This decision is great news for the well being of many children across Kentucky being raised and nurtured by a non-biological parent.