

# Marriage Law Digest

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## AUGUST 2009 CASE SUMMARIES

William C. Duncan, Editor

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- 1) BOSEMAN V. JARELL, No. COA08-957, North Carolina Court of Appeals, August 18, 2009 (second parent adoption).
- 2) Recent Law Review Articles (topics: religion and marriage, interjurisdictional recognition, marriage and procreation, California Supreme Court and marriage).

### BOSEMAN V. JARELL

No. COA08-957

North Carolina Court of Appeals

August 18, 2009

<http://www.aoc.state.nc.us/www/public/coa/opinions/2009/pdf/080957-1.pdf>

The partner of a child's biological mother (the child was conceived through artificial insemination) adopted the child and the court waived the statutory requirement that a biological parent's rights must be terminated before a child can be adopted. After the couple separated, the adoptive mother sought custody and the biological mother argued the adoption was invalid. The trial court said it did not have jurisdiction to invalidate an adoption entered by another district court.

The court said the trial court did have jurisdiction but that the adoption "even if erroneous or contrary to law, was not void." The court said that since "the minor's interests, both financial and emotional, are protected" with the adoption, and North Carolina law frowns on invalidating adoptions, this adoption should not be invalidated. The court said the result would be the same whether it involved a same or opposite-sex couple.

### RECENT LAW REVIEW ARTICLES AND BOOKS

Perry Dane, *A Holy Secular Institution* 58 EMORY LAW JOURNAL 1123 (2009). Describes the interplay of religious and legal marriage over time and argues that this justifies respect for the religious understandings of marriage.

Hillel Y. Levin, *Resolving Interstate Conflicts Over Marriage, Marriage-Like, and*

*Marriage-Lite Relationships* UGA LEGAL STUDIES RESEARCH PAPER No. 09-013 at [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1457082](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1457082). Argues that states should recognize same-sex marriages and quasi-marital unions from other states.

Kerry Abrams & Peter Brooks, *Marriage as a Message: Same-Sex Couples and the Rhetoric of Accidental Procreation* 21 YALE JOURNAL OF LAW AND THE HUMANITIES 1 (2009). Argues that since many people feel that marriage is just a means of personal fulfillment, the law should not endorse a more robust understanding of the social interest in marriage.

Thomas H. Burrell, *Judicial Regimes and Same-Sex Marriage: Enforcing Judicially Determined Personal Autonomy at the Expense of Majoritarian Democracy* 25 OHIO NORTHERN UNIVERSITY LAW REVIEW 619 (2009). Argues that the California Supreme Court exceeded its constitutional authority in its decision in 2008 that marriage must be defined as the union of any two people.

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