

Marriage Law Digest

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JANUARY 2010 CASE SUMMARIES

William C. Duncan, Editor

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A.G.R. V. D.R.H. & S.H.

Docket #FD-09-001838-07

Superior Court New Jersey, Hudson County

December 23, 2009

http://graphics8.nytimes.com/packages/pdf/national/20091231_SURROGATE.pdf

Same-sex partners contracted with the sister of one of the partners to have her carry an embryo from donor eggs and sperm of her brother's partner. Twin girls were born and the surrogate continued to have substantial time with the twins. She sought to be declared a legal parent of the girls even though she had signed a contract relinquishing parental rights.

The court noted New Jersey precedent invalidating a surrogacy contract where the surrogate was also the provider of the fertilized egg. That precedent said such agreements violated public policy and raised concerns with baby-selling and the traditional requirement of proof before terminating parental rights. The court held these concerns were also present in this case even though the surrogate had no genetic link to the twins. Thus, the surrogate "possesses parental rights under New Jersey law" and the "gestational carrier agreement . . . is void and serves as no basis for the termination of parental rights."

HOLLINGSWORTH V. PERRY

No. A9A648

Supreme Court of the United States

January 13, 2010

<http://www.supremecourtus.gov/opinions/09pdf/09A648.pdf>

The federal District Court hearing a constitutional challenge to California's

marriage amendment determined to allow the televising of the trial which necessitated changing a local court rule which the court did after allowing a comment period that lasted only five business days. The attorneys defending the amendment filed an emergency appeal to the U.S. Supreme Court to prevent the case being televised.

The Court said that the “balance of equities” favored the defenders because they “have demonstrated the threat of harm they face if the trial is broadcast” (the possibility of harassment and persecution of witnesses) while the plaintiffs “have not alleged any harm if the trial is not broadcast.” The Court concluded the trial court “attempted to change its rules at the eleventh hour to treat this case differently than other trials in the district. Not only did it ignore the federal statute that establishes the procedures by which it rules may be amended, its express purpose was to broadcast a high-profile trial that would include witness testimony about a contentious issue.” Thus, the Court granted the application to prevent the broadcast.

**JACKSON V. D.C. BOARD OF
ELECTIONS & ETHICS**
Civil Action No. 2009 CA 008613 B
District of Columbia Superior Court
January 14, 2010

<http://www.dccourts.gov/dccourts/docs/2009CA008613B.pdf>

After the District of Columbia Council passed a law redefining marriage in the District, a group of citizens sought to hold a

referendum on the law. The District’s Board of Elections and Ethics said the proposed referendum was invalid because it would authorize discrimination prohibited by the District’s Human Rights Act. The District’s Charter provides that a proposed referendum must not authorize discrimination prohibited by that Act. The Board’s decision was appealed to a D.C. Superior Court.

The court said the proposed initiative “would deprive only same-sex individuals [sic] of the legal status, rights, and privileges they enjoy as married persons.” This, the court believed, would be an authorization of sexual orientation discrimination prohibited by the Human Rights Act. The court dismissed an earlier D.C. Court of Appeals decision that had said defining marriage as a union of a man and a woman did not conflict with the Human Rights Act. The court said the earlier decision had relied on the fact that the law at the time defined marriage as the union of a man and a woman. For the court, since the law of marriage is changed that earlier decision “is no longer controlling.”

RECENT LAW REVIEW ARTICLES AND BOOKS

Courtney G. Joslin, *The Evolution of the American Family* 36 HUMAN RIGHTS 2 (Summer 2009). Discusses changes in family structure and attendant legal changes.

Jackie Gardina, *The Tipping Point: Legal Epidemics, Constitutional Doctrine, and the Defense of Marriage Act* 34 VERMONT LAW REVIEW 1 (2009). Argues that the “tipping point” for same-sex marriage has not yet arrived because a majority of states still define marriage as the union of a man and woman.

Erin N. East, *I Object: The RLUIPA as a Model for Protecting the Conscience Rights of Religious Objectors to Same-Sex Relationships* 59 EMORY LAW JOURNAL 259 (2009). Advocates a federal statute to protect the religious liberty of those who object to same-sex unions.

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Rena M. Lindevaldsen, *Same-Sex Relationships and the Full Faith and Credit Clause: Reducing American to the Lowest Common Denominator* 16 WILLIAM & MARY JOURNAL OF WOMEN AND THE LAW 29 (2009). Proposes a solution to the tension between the need for states to give full faith and credit to the judgments of other states and the ability of states to set their own domestic policy.

NEWS STORIES

Allie Martin, *Children Best Served By Mom's Lesbian Relationship?* ONE NEWS NOW, January 8, 2010 at <http://www.onenewsnow.com/Legal/Default.aspx?id=843690>. Describing an Illinois trial court decision allowing a child to be relocated away from the father in order for the mother to live with her same-sex partner in another state.

Robert Sole, *Divorce en blanc*, LE MONDE, January 18, 2010 at http://www.lemonde.fr/opinions/article/2010/01/18/divorce-en-blanc-par-robert-sole_1293218_3232.html. Describing a German agency whose service consists of notifying spouses when the other spouse wants a divorce.

RECENT LEGISLATION

NEW JERSEY SENATE, NO. 2091, approved by Senate 21-14, approved by Assembly 51-19 (http://www.njleg.state.nj.us/2008/Bills/S2500/2091_11.PDF). The bill "provides that a promise by one party to a non-marital personal relationship to provide support for the other party, either during the course of such relationship or after its termination, is not binding unless it is in writing and signed."