

# Marriage Law Digest

Vol. 6, No. 9, September 2009

## SEPTEMBER 2009 CASE SUMMARIES

William C. Duncan, Editor

### CONTENTS

- 1) DOE V. REED, Case No. C09-5456BHS, U.S. District Court, Western District of Washington, September 10, 2009 (public disclosure of supporters of marriage referendum).
- 2) BARKER V. CHANDLER, No. w2008-02255-COA-R3-CV, Court of Appeals of Tennessee at Jackson, September 18, 2009 (cohabitation restriction in divorce settlement).
- 3) IN THE INTEREST OF M.K.S.-V., No. 05-08-00568-CV, Court of Appeals Fifth District of Texas, August 11, 2009 (same-sex couple adoption).
- 4) SMELT V. UNITED STATES, Case 8:09-cv-00286-DOC-MLG, U.S. District Court, Central District of California, August 24, 2009 (standing to challenge DOMA).
- 5) ESTATE OF FEINBERG, Docket No. 106982, Supreme Court of Illinois, September 24, 2009 (will provision disinheriting grandchildren who marry outside the Jewish faith).
- 6) Recent Law Review Articles (topics: divorce in Ireland, beyond marriage).

### DOE V. REED

Case No. C09-5456BHS

U.S. District Court, Western District of  
Washington  
September 10, 2009

<http://seattletimes.nwsources.com/ABPub/2009/09/10/2009842734.pdf>

Supporters of a referendum to repeal a new legal status for same-sex couples sought an order to prevent their names and personal information from being publicly disclosed due to fear of threats.

The district court held that “supporting the referral of a referendum is likely protected political speech . . . which includes the component of the right to speak anonymously.” Since this right would be harmed if the personal information was disclosed, the court issued the order pending a full hearing of the argument.

### BARKER V. CHANDLER

Case No. 090901288

Court of Appeals of Tennessee at Jackson  
September 18, 2009

[http://www.aclu.org/pdfs/lgbt/chandler\\_appeals\\_judgment.pdf](http://www.aclu.org/pdfs/lgbt/chandler_appeals_judgment.pdf)

Local court rules mandated inclusion of a provision in all parenting plans prohibiting a non-spouse of a parent from spending the night while children are visiting. An ex-wife, living with a same-sex partner challenged the application of such a provision to her.

The court of appeals said that the rule cannot bind a trial court if a contrary custody or visitation arrangement is in the best interest of the child. Thus, the court ordered the trial

judge to determine whether custody and visitation with the mother with the partner present was in the children's best interest.

**IN THE INTEREST OF M.K.S.-V.  
No. 05-08-00568-CV  
Court of Appeals, Fifth District of Texas  
August 11, 2009**

[http://www.5thcoa.courts.state.tx.us/cgi-bin/as\\_web.exe?c05\\_09.ask+D+11775133](http://www.5thcoa.courts.state.tx.us/cgi-bin/as_web.exe?c05_09.ask+D+11775133)

The partner of a biological mother (through artificial insemination) sought "to be appointed joint managing conservator" of a child or to adopt the child when the couple broke up.

The court held the partner did not have adequate "possession" of the child in order to establish standing to sue for conservatorship. The court also rejected the petition for adoption because the mother had not consented to the adoption.

**SMELT V. UNITED STATES  
Case 8:09-cv-00286-DOC-MLG  
U.S. District Court, Central District of  
California  
August 24, 2009**

<http://www.telladf.org/UserDocs/SmeltDismissal.pdf>

A same-sex couple married in California challenged, in state court, the federal Defense of Marriage Act alleging violation of the full faith and credit clause, the right to privacy, the right to travel, the right to free speech, the Ninth Amendment, Due Process and Equal

Protection. The case was removed to federal court. The Department of Justice motioned to have the case dismissed.

The federal court said that since the state court from which the case was removed did not have jurisdiction to hear the case (because the U.S. can't be sued in state court), a federal court could not have jurisdiction through removal.

**ESTATE OF FEINBERG  
Docket No. 106982  
Supreme Court of Illinois  
September 24, 2009**

<http://www.state.il.us/court/Opinions/SupremeCourt/2009/September/106982.pdf>

A trust provision gave a large bequest to grandchildren of the deceased who married in the Jewish faith or whose non-Jewish spouses converted within a year of marriage. The grandchildren who married outside the faith were considered "deceased." Only one grandchild met the condition and another challenged the restriction. The trial court and court of appeals invalidated the provision on public policy grounds.

The supreme court said the state's public policy favors freedom of individuals to control the disposition of the estate and that a provision regarding an inheritors marriage is only invalid if it encourages divorce or tries to prevent a marriage. Here, "[t]he condition was either met or it was not met. There was nothing any of the grandchildren could have done" at the time of distribution to make themselves eligible or ineligible. Thus, the restriction was valid.

**RECENT LAW REVIEW ARTICLES  
AND BOOKS**

Jackson Nyamuya Maogoto, *Legalising Divorce in the Republic of Ireland: A Canonical Harness to the Legal Liberation of the Right to Marriage Among the Disenfranchised*, September 1, 2009 at <http://papers.ssrn.com/sol3/papers.cfm?abstract=>

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(202) 216-9430, [www.marriagedebate.com](http://www.marriagedebate.com).

[ct\\_id=1465343](#). Describes the Catholic background of marriage law in Ireland preceding the legalization of divorce in 1996.

Libby Adler, *The Gay Agenda*  
NORTHEASTERN SCHOOL OF LAW RESEARCH  
PAPER NO. 25-2008, September 3, 2008 at  
[http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1268303](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1268303). Argues that the focus on formal equality in the gay rights movement should be replaced by a broader focus on structuring law to facilitate individuals "choices about how to organize their erotic and domestic lives."