

Who's Your Mama?

Vermont Custody Case Tests Virginia's Anti-Gay Law

By CYNTHIA POTTS

“We'd met through mutual friends,” said Janet

Miller-Jenkins, of her former partner, Lisa. “We started dating. Fell in love.”

“Even at the beginning, we both had a great love for children. Lisa was working as a nanny, while I was an accountant. We talked about opening a preschool, something that had been a dream for both of us.”

A preschool wasn't the only dream the couple shared. “We both wanted children,” Janet asserted. “We had a five year plan.” Initially, the couple explored adoption. Living in Virginia made this difficult. “They wanted us to lie about our orientations,” Janet explained. “And Lisa wanted to go through the pregnancy experience.”

The couple moved to Vermont, and entered into a civil union. “It was a conscious decision that we were going to have a family, and that we were going to have our family in a committed relationship.”

After consultations with several doctors, it was decided that Lisa would be the birth mother of an artificially inseminated child. “She is five years younger than me, which was a major consideration.” Several expensive procedures later, Lisa

was pregnant. Baby Isabella was born in 2002.

“We'd had a very hard pregnancy. Lisa was on bed rest for a while, which was very difficult for her.”

Nevertheless, the couple desired another child, and went through another round of insemination. Lisa became pregnant upon the first try.

“We were elated!” Janet explained. “No one gets pregnant by artificial insemination quickly, and here we were on the first try.” Two weeks later, tragedy struck, and Lisa miscarried the baby.

Sorrows never travel alone. “She froze up after that,” Janet explained. “She wouldn't talk to me, nothing.” Janet suggested professional help, but Lisa had another idea. She took Isabella, and moved back to Virginia.

Prior to moving to Virginia, Lisa filed dissolution papers in Vermont, effectively ending the Civil Union. In these papers, Isabella is identified as the natural child of both women – as would be any child born into a Civil Union.

But now Lisa is filing for sole custody, asserting that Janet has no claim upon Isabella.

“She wanted me to have a DNA test done, which is ridiculous. Obviously Isabella doesn't have my DNA. But I am still her mother,” Janet said.

Vermont court granted a temporary order giving custody to Lisa, with Janet to be allowed visitation with Isabella. Lisa has steadfastly refused Janet any contact with her daughter. In response, Janet's counsel has filed an order requesting a transfer of custody, as Lisa is in contempt of the Vermont court order.

gone back to Virginia. One of the least gay-friendly states in the Union, Virginia is subject to recently passed legislation barring the state from recognizing any law that confers the benefits of marriage upon a same-sex couple. Janet and Lisa's custody struggle falls directly within this arena.

On August 13, a Virginia court was to decide who has jurisdiction over baby Isabella. However, any decision was postponed for at least another week while the judge reviews the case paperwork. How will he decide? No one knows. Legal experts in Vermont and Virginia have been cautious about sharing any opinions, at least until matters of jurisdiction have been settled.

Legal questions have become even cloudier, as Lisa has undergone several changes of

contempt of a custody order would almost certainly lose custody.

However, Janet and Lisa aren't a heterosexual couple. Forces aligning themselves on both sides of the gay marriage debate are lining up to throw support to either Janet (Lambda Legal, GLADD) or Lisa (Center for American Cultural Renewal). This has become a battle about equal rights and cultural values – and in the middle of it all is one tiny, confused two-year-old girl.

“She hasn't seen her MaMa in months,” Janet said, stifling tears. “One day we were all together, and the next, she was gone. I was there when she was born, helping to pull her out and cut the cord. I've been part of her life even before she was born. That love is never going to stop, certainly not now.”

Lisa Miller-Jenkins and

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Normally, the courts in one state honor any custody decisions rendered in another state. This is part of the full faith and credit clause – a legal tenet that our entire judiciary system is based upon.

But Lisa – who has ‘renounced’ lesbianism and sought shelter within a fundamentalist Baptist church – has

counsel. Some previous counsel are being brought back to the case to clarify whether Lisa did or did not acknowledge Janet's parental rights.

Clearly, if this were a case concerning a child born into a heterosexual relationship, there would be no controversy. The Vermont court's decision would stand, and a parent found to be in

her representatives refused to be interviewed for this story. We will be covering further developments as they arise. ▼

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