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THE APPROVAL OF THE COMMITTEE ON OPINIONS

SUPERIOR COURT OF NEW JERSEY
ATLANTIC COUNTY
CHANCERY DIVISION, FAMILY PART
DOCKET NO. FA-01-0020-21

IN THE MATTER OF AN
ADOPTION OF A CHILD
BY G.A.S.,

and

M.A.S.,

Petitioners.

APPROVED FOR PUBLICATION

February 18, 2022

COMMITTEE ON OPINIONS

Decided: January 21, 2021

Debra E. Guston, for petitioners (Guston & Guston, LLP, attorneys).

MENDEZ, A.J.S.C.

This matter comes before the court by way of a petition filed by G.A.S. and M.A.S., a same-sex couple, seeking a Judgment of Adoption pursuant to the streamlined requirements set forth in L. 2019, c. 323, codified as N.J.S.A. 9:17-69 to -71 (the Legal Parentage Act or LPA), effective April 1, 2020. The petition also requests the Atlantic County Surrogate's Court to process their adoption petition without requiring background checks and a home study. In considering this petition, the court will examine the procedures established by these recent amendments to the statutes governing the adoption of children that

set forth requirements for obtaining a judgment of adoption by a same-sex couple. The court is also guided by an Order entered by the New Jersey Supreme Court on May 26, 2020, and a Notice to the Bar issued by the Administrative Office of the Court, entitled "Changes to Judgment of Adoption Procedures to Conform to L. 2019, c. 323 – Co-Parent Adoptions," dated June 24, 2020, outlining required procedures under the new statutory provisions.

Same-sex couples have often faced barriers when expanding their families and have had to fight to obtain equal adoption rights. This opinion examines groundbreaking changes in the New Jersey adoption process for same-sex couples. This new statutory enactment reflects the extraordinary steps our State is taking to make New Jersey a welcoming and accepting place for same-sex couples. The new law also reflects societal support and acceptance for same-sex marriages and adoptions. The LPA streamlines the adoption process for same-sex couples and facilitates a less cumbersome procedure for establishing the legal parentage of non-biological parents. Simply put, the new statute promotes strong family structures and, at the same time, promotes inclusive policies, allowing same-sex couples to bypass certain lengthy and expensive requirements of the adoption process.

On July 8, 2015, petitioners G.A.S. and M.A.S. entered into a same-sex marriage in Denver, Colorado. Petitioners are now living in Atlantic County,

New Jersey. Following their marriage, petitioners sought to expand their new family and conceived a child by artificial insemination, performed without the assistance of a physician, using an anonymous donor sperm. Petitioner M.A.S. carried the child and gave birth on November 30, 2016, in Colorado. At the time of the child's birth, petitioners had been married for over a year and the non-biological parent, G.A.S., was named a parent, along with M.A.S., on the child's birth certificate. The child has been under the continuous care of petitioners since the date of the child's birth.

Before the court is a petition seeking that the child sought to be adopted be declared a ward of the court for the purposes of this action; that petitioners have custody of the child; and that, pursuant to the LPA, the court dispense with the agency investigation and report and background checks required by N.J.S.A. 9:3-48(a)(2), as well as the criminal and child abuse clearances required by N.J.S.A. 9:3-54.2. Petitioners are further requesting the court to enter a Judgment of Adoption in lieu of filing a Confirmatory, Co-parent Adoption.

Initially, counsel for petitioners was informed by the Surrogate's Office there was a requirement that "fingerprints" be submitted. However, this court concludes that no home study, background, or criminal checks shall be required to issue a Judgment of Adoption in this matter.

The overarching backdrop of this case is the ability of a same-sex couple to be treated as a family equally under the law, and how societal and legal progression has made that possible through court decisions and legislation, such as the LPA. This recent enactment by the New Jersey Legislature to the co-parent adoption process cannot be considered in a vacuum. Rather, the enactment of the LPA is one area of reform that falls among widespread legal changes happening across our country, reflecting society's evolving attitude and growing acceptance towards same-sex couples.

The court recognizes the long, winding road to equality that same-sex couples have traveled. It was not until 1970 that the first known adoption case involving a same-sex couple took place.¹ It wasn't until 1986 in California that the first same-sex female couple adopted.² New Jersey has a history of promoting acceptance and expansion of the rights of same-sex couples through legislation and case law. The court also acknowledges how court decisions, as well as legislation such as the LPA, not only permit same-sex couples to continue traveling down this road, but also propel society forward to create a more diverse and accepting nation.

¹ Dana Rudolph, [A Very Brief History of LGBTQ Parenting](https://mombian.com/2017/10/10/brief-history-lgbtq-parenting/), Mombian (October 10, 2017), <https://mombian.com/2017/10/10/brief-history-lgbtq-parenting/> (last visited February 8, 2021).

² Ibid.

The court is guided by the New Jersey Superior Court's decision in Garden State Equality v. Dow, 434 N.J. Super. 163 (Law Div. 2013), which held that New Jersey's marriage laws violated the rights of same-sex couples to equal protection under the New Jersey State Constitution. The court concluded that "same-sex couples must be allowed to marry in order to obtain equal protection of the law under the New Jersey Constitution." Id. at 219. The Superior Court, Appellate Division and the New Jersey Supreme Court denied the State's request for a stay of the trial court's order. The Superior Court's ruling took effect on October 21, 2013, and same-sex marriage was finally legalized in New Jersey.

Two years later, the U.S. Supreme Court struck down all state bans on same-sex marriage, holding that same-sex couples have a fundamental right to marry in all fifty states under the Fourteenth Amendment in Obergefell v. Hodges, 576 U.S. 644, 681 (2015). While the Supreme Court's decision in Obergefell was a win for same-sex couples seeking to marry, it also held special significance to those hoping to adopt children as many same-sex couples could not adopt jointly due to marriage requirements in their state. Part of the Supreme Court's decision was based on the principle that marriage safeguards children and families by affording "the permanency and stability important to children's best interest." Id. at 668.

Over the past three decades, biomedical reproductive technology has progressed rapidly and the Legislature's recent amendments to our laws governing the adoption of a child acknowledges those advancements and limits legal obstacles that might otherwise hinder the ability of a same-sex couple to start a family. L. 2019, c. 323 amended the law governing the adoption of children to permit civil union partners or legal parents of a child, when those persons are named as parents on the child's birth certificate, to obtain a judgment of adoption in lieu of pursuing a confirmatory co-parent adoption. For married heterosexual couples, there is a presumption of paternity for the husband under N.J.S.A. 9:17-43. The LPA seeks to place non-biological and legal parents on comparable footing to establish parentage and streamline the adoption process for same-sex couples.

The Order issued by the New Jersey Supreme Court on May 26, 2020, confirmed the provisions of LPA, and directed that the provisions of Rule 5:10 ("Action for Adoption of a Child") be supplemented and relaxed so as to conform with the provisions of the new law.³ The referenced Notice of the Bar issued by New Jersey Administrative Office of the Courts, dated June 24, 2020, stated in pertinent part:

³ On July 30, 2021, effective September 1, 2021, the Supreme Court adopted amendments to the provisions of Rule 5:10. "Action for the Adoption of a Child," incorporating the statutory amendments codified as the LPA.

Specifically, the law authorizes civil union partners or legal parents of a child, when those persons are named as parents on the child's birth certificate, to obtain a judgment of adoption in lieu of pursuing a confirmatory adoption. The law also provides that in order to seek a judgment of adoption from the court, both the individuals in the civil union or marriage must be listed on the child's birth certificate as parents. Pursuant to the new law, a natural or legal parent and the current or former spouse or partner in a civil union of the natural or legal parent must jointly file a complaint with the court in the county of residence of the spouses, civil union, or one of the parties to the action.

The May 26, 2020, Order of the Supreme Court, as well as N.J.S.A.

9:17-71(b), provides that to qualify for a same-sex adoption under the new statute, petitioners must attach the following to the adoption complaint:

- (1) proof of a valid civil union or marriage between the natural or legal parent and that person's partner in civil union or spouse, issued prior to the birth of the child;
- (2) an original birth certificate issued by the State Registrar of Vital Statistics on which both partners in civil union or spouses are listed as parents of the child; and
- (3) a written declaration signed by both parties to the action that describes in sufficient detail how the child was conceived and identifies any other involved parties so that the court may determine whether those individuals have parental rights to the child.

These amendments to our laws governing actions for the adoption of a child streamline the process for married or civil union couples seeking to obtain a judgment of adoption establishing the legal parentage of the non-

biological parent. Under this modified process, once the court finds that the petitioners have satisfied all of these three requirements, the Family Part must issue a Judgment of Adoption naming both petitioners as the legal parents of the adopted child. Moreover, no notice is required to any person who may be a donor. N.J.S.A. 9:17-44(b) provides that unless the donor and the natural mother enter into a contract establishing the donor as a parent of the child, the donor is not treated as a father and shall have no rights or duties stemming from the conception of the child.

Prior to the enactment of the LPA, Administrative Directive #17-06, issued by the Administrative Office of the Courts, required adoption background checks including: (1) Criminal History Record Information ("CHRI") fingerprint background checks; (2) Division of Child Protection and Permanency system name checks, now referred to as Child Abuse Records Information ("CARI") and (3) Domestic Violence Registry checks.⁴ As a result of the enactment of the LPA, courts are required to waive those background checks.

Applying the requirements set forth in N.J.S.A. 9:17-71(b) to this petition for adoption, the court finds that petitioners have established all

⁴ Directive #17-06 was superseded by Directive #17-17 on June 23, 2017, but those three requirements contained in Directive #17-06 were retained.

requirements for the entry of a Judgment of Adoption. Following their valid marriage in Colorado, M.A.S. gave birth to a baby boy on November 30, 2016, with her spouse and co-parent, G.A.S., by her side. A valid birth certificate was issued by the State of Colorado listing both M.A.S. and G.A.S as parents of the child. Thereafter, both petitioners immediately assumed the responsibilities of parenthood, and have submitted a signed, written declaration describing in sufficient detail how the child was conceived, and confirming that no other individuals have parental rights to the child to be adopted. The evidence presented demonstrates the child was procreated with sperm from an anonymous donor, and the donor did not enter into a contract with G.A.S. establishing that the donor was a parent of the child. Based on these undisputed facts, the court has determined that under N.J.S.A. 9:17-44(b), there are no individuals with parental rights entitled to notice, as the anonymous donor is not treated as a father and has no rights or duties stemming from the conception of said child.

Based on these findings, the court holds that petitioners have satisfied all the requirements set forth in the LPA by competent evidence, and hereby enters the Judgment of Adoption, establishing petitioner G.A.S. as a legal parent of the child. Additionally, the "polestar of an adoption is the best interests of the child." In re Adoption of Baby T, 311 N.J. Super. 408, 414

App. Div. 1998), rev'd on other grounds, 160 N.J. 332 (1999); see N.J.S.A. 9:3-48(f) (requiring a finding by the court that the best interests of the child would be promoted by the adoption). Here, the court finds that the best interests of this child are served by granting the adoption petition filed by G.A.S. Moreover, the procedural guidelines set forth in the LPA serve the best interest of children so that family units, such as that created here by petitioners, can be legally recognized without incurring unnecessary and costly obstacles. That goal has been accomplished in this adoption proceeding.