

Marriage Law Digest

Vol. 5, No. 12, December 2008

DECEMBER 2008 CASE SUMMARIES

William C. Duncan, Editor

CONTENTS

- 1) VAN KIPNIS V. VAN KIPNIS, No. 213, New York Court of Appeals, December 18, 20-08.
- 2) J.L.M. V. S.A.K., 2008 WL 5265051, Court of Civil Appeals of Alabama, December 19, 2008.
- 3) ADAR V. SMITH, Civil Action No. 07-6541, U.S. District Court, Eastern District of Louisiana, December 23, 2008.
- 4) Recent Law Review Articles.

VAN KIPNIS V. VAN KIPNIS

No. 213

New York Court of Appeals

December 18, 2008

<http://www.courts.state.ny.us/ctapps/decisions/dec08/213opn08.pdf>

A couple married in France after entering into a prenuptial contract specifying that their assets and debts would be kept separate. At divorce, the wife said the contract should be disregarded and property distributed equitably.

The court said New York law allows an agreement whereby parties can opt out of equitable distribution. Since this is what the parties' contract specified, it is valid in New York.

J.L.M. V. S.A.K.

2008 WL 5265051

Court of Civil Appeals of Alabama

December 19, 2008

A former husband sought to terminate his alimony obligations because his ex-wife was living in a same-sex partnership. The trial court did not terminate the obligation.

The appellate court held that Alabama's statute only provides for termination if cohabitation is with a person of the opposite sex. The court rejected the argument of the husband "that he is being forced to abet the former wife's criminal conduct and to subsidize her relationship" holding instead that the alimony award was based on the ex-wife's financial need rather than being "income earmarked to facilitate her homosexual lifestyle."

ADAR V. SMITH
Civil Action No. 07-6541
U.S. District Court, Eastern District of
Louisiana
December 23, 2008

A California same-sex couple adopted a Louisiana child in New York then sought to have the child's birth certificate modified to list both of them as parents. The Louisiana Office of Public Health refused to issue a birth certificate with both men's names, relying on a state attorney general opinion and Louisiana public policy.

The district court said that the U.S. Constitution's Full Faith and Credit Clause requires recognition of a foreign adoption judgment and that there was no "public policy exception to this obligation." The court further held that there was nothing in Louisiana law prevents issuance of an amended birth certificate.

RECENT LAW REVIEW ARTICLES

Jennifer M. Collins, Ethan J. Leib, and Dan Markel, *Punishing Family Status* 88 BOSTON UNIVERSITY LAW REVIEW 1327 (2008). Argues that in public policy, state actions affecting family status should be made only to advance important governmental interests and be narrowly tailored to advance those interests while decisions that create criminal sanctions affecting family status should be subject to strict scrutiny.

Colleen Theresa Rutledge, *Caught in the Crossfire: How Catholic Charities of Boston was Victim to the Clash Between Gay Rights and Religious Freedom* 15 DUKE JOURNAL OF GENDER LAW & POLICY 297 (2008). Describes how Massachusetts law created a quandary for Catholic Charities in adoption placement by making it choose between violating its religious doctrine by placing with same-sex couples or ignoring its vocation to help children with adoptive placements.

Lawrence Rosenthal, *The Chapman Dialogues: Same-Sex Marriage—Response to Professor Eskridge* __ CHAPMAN LAW REVIEW __ (forthcoming) at <http://ssrn.com/abstract=1313317>. While the author does not oppose a redefinition of marriage, he argues that a judicial redefinition in the face of strong social opposition risks a counterproductive backlash.

Alison M. Schmieder, *Best Interests and Parental Presumptions: Bringing Same-Sex Custody Agreements Beyond Preclusion by the Federal Defense of Marriage Act* 17 WILLIAM & MARY BILL OF RIGHTS JOURNAL 293 (2008). Argues that Defense of Marriage Acts should not preclude joint parenting by same-sex couples and that even if the Federal DOMA precludes interstate recognition of another state's decision to grant joint parenting, courts should recognize the parenting arrangement using contract theories.

Suzanne B. Goldberg, Sarah Hinger, Keren Zwick, *Equality Opportunity: Marriage Litigation and Iowa's Equal Protection Law* 12 JOURNAL OF GENDER, RACE & JUSTICE 114 (2008). This is a reproduction of an amicus brief filed with the Iowa Supreme Court on behalf of a group of law professors in that state's same-sex marriage case.

The Marriage Law Digest
is jointly published by the

Marriage Law Foundation
(801) 367-4570

www.marriagelawfoundation.org

and the

Institute for Marriage and Public Policy
P.O. Box 1231, Manassas, VA 20108
(202) 216-9430, www.marriagedebate.com.