

# Marriage Law Digest

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Marriage Law Foundation

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## EX PARTE DAVE

No. 2-06-092-CR

Texas Court of Appeals, Second District

February 22, 2007

<http://www.2ndcoa.courts.state.tx.us/opinions/HTMLOpinion.asp?OpinionID=18368>

Defendant, who was charged with selling obscene videotapes to undercover police officers, sought a writ of habeas corpus alleging the obscenity statute violated her right to privacy.

The court of appeals noted that since obscene material is not protected by the First Amendment, "the constitutionally-protected right to possess obscene material in the privacy of one's home does not give rise to a correlative right to sell or give it to others." The court held the state's regulation of obscene commerce was justified by its interests in protecting "the public quality of life, the community environment, and the social interest in order and morality" and that "the sale of obscene material is not protected by the Due Process Clause of the Fourteenth Amendment." The court also distinguished *Lawrence v. Texas* because that case did not apply to commerce or public conduct.

## STROUD V. STROUD

Record No. 3185-05-4

Court of Appeals of Virginia

February 27, 2007

<http://www.courts.state.va.us/opinions/opncavwp/3158054.pdf>

A divorce decree provided for spousal support until the wife cohabited with

another person "in a situation analogous to marriage." The husband argued this provision was triggered by the wife's cohabitation with another woman

After deciding the evidence established cohabitation, the court of appeals held that a relationship "analogous to marriage" is not a marriage. Rather, it is a factual relationship that does not grant legal status to the relationship. So, for purposes of the divorce decree, the wife cannot cohabit with another woman without losing spousal support.

## A.O.V. V. J.R.V.

Record No. 0219-06-4

Court of Appeals of Virginia

February 27, 2007

<http://www.courts.state.va.us/opinions/opncavwp/0219064.pdf>

In a divorce decree, the court prohibited a father from having male partners spend the night while the father's children were visiting and from "engaging in public displays of affection in the children's presence." The mother argued that, because of the father's homosexuality, she should have sole custody.

On appeal, the court held that homosexuality, in itself does not make a parent unfit. The court that the invalidation of the sodomy statute in *Lawrence v. Texas*, might weaken some precedent unfavorable to homosexual parents. The court's concern, the decision says, should be actual harm to the children, not same-sex relationship. Since the court found the father's

relationship had no adverse impact on the children, so the court was right to impose joint custody. The court also held that the trial judge had not abused his discretion by imposing the restrictions on the father's visitation.

**STATE V. LOWE**  
**112 Ohio St.3d 507**  
**Ohio Supreme Court**  
**February 28, 2007**

<http://www.sconet.state.oh.us/rod/newpdf/0/2007/2007-Ohio-606.pdf>

A man convicted of incest for a consensual sexual relationship with his adult stepdaughter claimed on appeal that the law was unconstitutional as applied to relationships between consenting adults.

The state supreme court ruled that the statute was not limited to conduct involving minors. Then, it distinguished *Lawrence v. Texas* which, this court noted "did not announce a 'fundamental' right to all consensual adult sexual activity, let alone consensual sex with one's adult children or stepchildren." The court held the law "serves the legitimate state interest of protecting the family unit and family relationships" because "[a] sexual relationship between a parent and child or a stepparent and stepchild is especially destructive to the family unit."

One judge dissented, arguing that the state was meant to protect only children and that "[t]he consent of the alleged victim should remain a valid defense in cases involving adults."

**GODFREY V. SPANO**  
**Index No. 16894**  
**Supreme Court of New York, Westchester**  
**County**  
**March 12, 2007**

<http://data.lambdalegal.org/pdf/legal/godfrey/godfreyvspano-decision.pdf>

In June 2006 the County Executive of Westchester County, New York issued an executive order requiring all county departments to recognize same-sex marriages contracted outside of New York. A group of taxpayers challenged the decision as illegal and beyond the power of the executive.

The trial court's decision notes that New York typically recognizes marriages contracted out-of-state even if they would have been invalid if contracted in state. The court concluded that nothing in New York law makes same-sex marriages void (as opposed to merely invalid), so they could be recognized by New York governmental entities. (The decision notes two decisions to the contrary in other state trial courts.) The court also held the executive order not to be a law, but rather an "policy implementation device in accordance with the current and evolving state of law on recognition of same-sex marriages out-of-state" so its issuance did not exceed the authority of a local government.

**IN RE UNION PACIFIC RAILROAD**  
**EMPLOYMENT PRACTICES**  
**LITIGATION**

**No. 06-1706**

**U.S. Court of Appeals, Eighth Circuit**  
**March 5, 2007**

<http://www.ca8.uscourts.gov/opndir/07/03/061706P.pdf>

Union Pacific employees filed a class action lawsuit against their employer, alleging sex discrimination and violation of the Pregnancy Discrimination Act because the company policy covers only medically necessary contraceptives. The trial court held Union Pacific's policy constituted

unlawful discrimination.

The appeals court rejected the Pregnancy Discrimination Act claim because contraception is not related to pregnancy (since it would “prevent pregnancy from ever occurring”). The court found an Equal Employment Opportunity Commission opinion that came to the opposite conclusion unpersuasive.

The court also rejected the sex discrimination claim because the company’s contraceptive policy applies equally to me and women (it doesn’t cover either).

A dissent argued that the policy was unequal because women uniquely bear the burdens of unplanned pregnancy.

**IN RE DERZAPF**

**No. 06-0669**

**Supreme Court of Texas**

**March 23, 2007**

<http://www.supreme.courts.state.tx.us/historical/2007/mar/060669.pdf>

After mother’s death, maternal grandmother and step-grandfather cared for children along with father. Grandparents subsequently sought court order of visitation which was granted and the father appealed.

The supreme court relied on the grandparent visitation to deny the step-grandfather standing to seek visitation (the statute specified biological and adoptive grandparents). The court also held that the evidence did not suggest the children would be harmed if they did not have contact with their grandmother, so the trial court had abused its discretion by ordering that visitation.