

Same-Sex Adoption After Artificial Insemination

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§ 1. Scope

This article synthesizes three cases where Massachusetts' court systems addresses same-sex adoption after artificial insemination. It breaks down factors considered by the Courts to grant parental rights by adoption to same-sex individuals such as sexuality, marital status, and biological relationship. This annotation compiled cases centered on couples who attempted to adopt to gain parental rights. Moreover, it reveals how state statutes that discuss same-sex adoption after artificial insemination such as: [G.L. c. 210, § 1](#), [M.G.L.A. c. 46, § 4B](#) and [G.L. c. 209C, § 6 \(a\) \(4\)](#) are applied in similar scenarios in said cases.

Only a few pertinent statutes will be examined in this article to the extent of how they're applied in the selected cases of this annotation. For newly developed enactments, readers should consult those intricate details and assess them appropriately.

§ 2. General Provisions

The right to adopt in Massachusetts is granted to any person in section 1 of the “Nature of Adoption; district or juvenile court” as long as there is a limited biological relation between the child and adopter but the adoptee must be younger than the adopter (*see law below*).

§ 1. Nature of adoption; district or juvenile court: “A person of full age may petition the probate court in the county where he resides for leave to adopt as his child another person younger than himself, unless such other person is his or her wife or husband, or brother, sister, uncle or aunt, of the whole or half-blood” (See [G.L. c. 210, § 1](#))

If two people are married and the woman is impregnated by artificial insemination with the consent of the his/her spouse the law provides parental rights to both individuals (*see law below*).

§ 4B. *Artificial insemination*: “Any child born to a married woman as a result of artificial insemination with the consent of her husband, shall be considered the legitimate child of the mother and such husband” (See [M.G.L.A. c. 46, § 4B](#)).

However, the law grants parental rights to individuals who substantially provide for a child with necessities such as housing and other vital care in tandem with the birth mother (see law below).

§ 6. *Presumption of paternity; mandatory joinder*: “A man is presumed to be the father of a child ... [if] ... while the child is under the age of majority, he, jointly with the mother, received the child into their home and openly held out the child as their child” (See [G.L. c. 209C, § 6 \(a\) \(4\)](#)).

This article will assess how these Massachusetts rules were applied in similar scenarios by the Courts and develop two overarching rules for same-sex adoption after artificial insemination.

§ 3. Sexuality

In 1993, the Supreme Judicial Court of Massachusetts clarified the state’s adoption law’s applicability to same-sex couples. In the case “Adoption of Tammy” the justices listened to an argument from a unmarried same-sex couple looking to adopt a child. One question assessed in this case dealt with the couple’s sexuality. The question posed to Court asked whether the sexuality (same-sex) of two women cohabitants could prevent them from jointly-adopting a child in Massachusetts under the state’s adoption statute ([G.L. c. 210, § 1](#))? The Court acknowledged that the legislators may have not predicted that same-sex couples would adopt but pointed out how the language used in the first sentence attempts to encompass and define all “possible categories of people.” In part, the Court used the canon of construction: defined, common, technical meanings to justify its assessment that same-sex couples are eligible to adopt; this canon says word choice should be understood in its everyday sense when a definition is not present in the statute. The plain meaning of the statute allows “a person full of age” and doesn’t specify the type of individual – therefore the two women in this case qualify. This is an example of deductive reasoning since the court matched the elements of the rule to the clients facts.

The Court also used case-comparison by invoking “[Adoption of Thomas](#)” and “[Merrill v. Berlin](#)” (two cases from the State Supreme Court) to show how adoption rights were granted to a variety of petitioners in Massachusetts such as unmarried individuals which indicated that the Legislature intended to provide adoption rights to “non-standard” families. In this case, two unmarried women qualify as “non-standard.” This is an example of reasoning by example since the Court based its reasoning on more than one decided case.

Moreover, the Court pointed out how the restrictions to adopt pop up later in the statute and are free of any barriers for same-sex couples. The justices used the canon of construction: *expressio unius*; it says whenever the legislature creates a specific list and fails to include an item, then unmentioned items can't be included in the list. Since the legislature drafted a list of disqualifications for adopters but didn't include same-sex couples, they can't be tacked onto the list.

A 2016 Massachusetts Supreme Judicial Court decision had a similar conclusion. In “Karen Partanen v. Julie Gallagher”, one of the questions the Court assessed was whether a biological relationship between a child born by artificial insemination and the adopter was mandatory to obtain parent rights over said child under Massachusetts's adoption statute ([G.L. c. 209C, § 6\(a\)\(4\)](#)). Moreover, language in the statute suggests that only heterosexual couples can obtain parental rights since the statute only lists “man” and “woman” in the rule. The Court assessed that the statute must be read in “gender-neutral” terms and justified their conclusion by invoking another statute, G.L. c. 209C, § 1, that says “anyone” may bring action to prove the existence of a mother and child relationship. Furthermore, the Court said since the latter statute was enacted after the adoption statute, it's precedent must be followed. This is an example of the canon of construction: later prevails over earlier; it states that the most recent laws must be followed. Moreover, the Court's reasoning lead them to the conclusion that same-sex couples are able to adopt to gain parental rights and their sexuality doesn't restrict those rights. Moreover, the Court stated that the sexuality of Partanen and Gallagher don't prevent them from adopting.

In 2012, the Appeals Court of Massachusetts determined whether the state's artificial insemination law granted a homosexual individual parental rights to a child, their former spouse conceived by artificial insemination, if the couple was not married at the time the child was fertilized but during its birth. In the case “Gabriella Della Corte v. Angelica Ramirez” the judges welcomed an argument from a woman who sought to restrict her former partner's parental rights to a child she birthed by artificial insemination. The Court assessed whether Ramirez's sexuality (same-sex) would prevent her from obtaining parental rights over said child. Moreover, the Court determined that the language in the statute fails to limit those rights for same-sex couples. The Court invoked “Goodridge v. Department of Pub. Health” and reasoned that “husband” doesn't exclude same-sex couples similarly to how it didn't in the court ruling (“statutory provisions concerning consanguinity or polygamous marriages shall be construed in a gender neutral manner”). This is an example of the Court using case-comparison in their reasoning to justify their conclusion. Moreover, they concluded that a person's sexuality does not pose a barrier for adoption, and it didn't stop Ramirez from adopting a child.

In conclusion, after assessing all three Court cases, a person's sexuality has not prevented them from adopting a child in Massachusetts. Moreover, same-sex individuals need not to fret about

their sexual orientation because it has not prevented them from adopting a child to gain parental rights in the past cases.

§ 4. Marital Status

In “Adoption of Tammy”, the Massachusetts Judicial Supreme Court also determined whether the marital status of an unmarried same-sex couple stopped them from adopting under Massachusetts’s adoption statute ([G.L. c. 210, § 1](#)). The Court concluded that “nothing on the face” of this statute prevents unmarried couples from adopting to gain parental rights. This is an example of the Court using the canon of construction: defined, common, technical meanings. Furthermore, the Court’s plain reading of the statute concludes that “a person of full age” may adopt and the only restrictions for adopting are not related to the adopter’s marital status. This is an example of the Court using the canon of construction: expression unius. Moreover, the Court concluded that under adoption statute ([G.L. c. 210, § 1](#)) a person’s marital status doesn’t prevent them from adopting.

In “Karen Partanen v. Julie Gallagher”, the Court also assessed whether a biological relationship between a child and the adopter was mandatory to obtain parent rights over said child under Massachusetts’s adoption statute ([G.L. c. 209C, § 6 \(a\) \(4\)](#)). In “Karen Partanen v. Julie Gallagher” the Court listened to an argument from a same-sex couple who were in a committed relationship but not married. One of the issues the Court needed to resolve centered on the idea of the fact that the two women in this case weren’t married. Since the two women in this case weren’t married, the Court assessed whether that posed a barrier to adopt to gain parental-rights. The justices relied on statutory language and referenced how they did the same thing in the case “Associated Subcontractors of Mass., Inc. v. University of Mass.” This is an example of the Court using case-comparison in their reasoning to justify their conclusion. Moreover, the Court interpreted the statute using the canon of construction: defined, common, technical meanings to justify its assessment; it says a word should be understood in its everyday sense when a definition is not present. Since a definition was not present, a plain reading of the statute was used. A plain reading of the statute creates a pathway for “children born to parents who are not married to each other to obtain an adjudication of their [parentage] ([G.L. c. 209C, § 6 \(a\) \(4\)](#)).” Therefore, the statute’s plain meaning was interpreted. The Court concluded that the statute says two people do not need to be married in order for both of them to obtain parental rights by adoption.

In “Gabriella Della Corte v. Angelica Ramirez” the Court also assessed whether the state’s artificial insemination law ([M.G.L.A. c. 46, § 4B](#)) granted a homosexual individual parental rights to a child, their former spouse conceived by artificial insemination, if the couple was not married at the time the child was fertilized but during its birth. Since the couple was not married,

the Court determined whether that prevented them from adopting to gain parental rights. The argument from Della-Corte asserted that Ramirez shouldn't have parental rights over said child because she failed to jointly-adopt the kid even though the couple was married at the time. The Court invoked "Goodridge v. Department of Pub. Health" to rebut her argument and said the case shows how marriage between two individuals automatically grants both of them full parental-rights over a child born by either one of them through artificial insemination. Moreover, the Court found that if two people are married at the time they have a child born, then both parents are granted full-parental rights and a petition to joint-adopt is not needed.

In summary, the Court established that if a couple is married by the time they conceive a child, then both parents have full-parental rights--a joint-adoption is not mandatory. Moreover, the Court also determined that even when a couple is not married and one of them conceives a child by artificial insemination, there are still other laws that could deem them as the parent of said child.

§ 5. Biological Relationship

In "Adoption of Tammy", the Court assessed whether two individuals (one a biological parent and the other not) could keep custody over a child after a petition to adopt is completed by the person with no biological relationship to them? The Court assessed that section six of the adoption statute ([G.L. c. 210, §6](#)) might terminate the natural parent's rights over a child once an adoption takes place. The statute says, "all rights, duties and other legal consequences of the natural relation of child and parent shall ... except as regards marriage, incest *216 or cohabitation, terminate between the child so adopted and his natural parents and kindred." However, the Court concluded that section two of that same statute allows a biological parent to be an adoptive parent and fails to include any exceptions to its termination. Moreover, the Court decided that since the legislature failed to list any specific terminations of the adoptive parent rule in section two, then the legislature must have not intended to remove parental rights between a biological parent and a person petitioning to adopt. Therefore, both parents are allowed to retain parental-rights over the same child when they both file for a joint-adoption.

In "Karen Partanen v. Julie Gallagher", the Court determined if it's possible for an individual to gain parental rights over a child whom they have no biological relationship to under the Massachusetts's adoption statute ([G.L. c. 209C, § 6 \(a\) \(4\)](#)). The Court determined that nothing in the statute's language says a biological relationship is needed to gain parental rights by adoption. It lists other requirements and doesn't explicitly state anything that completely restricts adopters who have no biological relationship to the adoptee. This is an example of the canon of construction: *expressio unius*. Moreover, the Court determined that even though Ramirez didn't have a biological connection to the child she sought to establish parental rights over, that alone doesn't stop her from adopting to gain parental rights.

In “Gabriella Della Corte v. Angelica Ramirez” the Appeals Court determined whether the state’s artificial insemination law ([M.G.L.A. c. 46, § 4B](#)) granted a homosexual individual parental rights to a child, their former spouse conceived by artificial insemination, if the couple was not married at the time the child was fertilized but during its birth. Since the couple wasn’t married at the time of the impregnation, Ramirez lacked a biological connection to the child; this was the argument of Della-Corte who wanted to restrict her former-spouse’s parental rights over a child they both raised. Moreover the Court pointed out how the statute doesn’t say anything about a biological connection being needed. The lack of language indicates that a biological relationship is irrelevant when determining the requirements of gaining parental rights by adoption. This argument was completely rejected and the Court relied on other evidence to assess the situation. The Court relied on the couple’s marriage and parenting roles to determine if parental rights should be established – not a biological relationship. In conclusion, a lack of a biological relationship between the adopter and adoptee under the state’s artificial insemination statute ([M.G.L.A. c. 46, § 4B](#)) doesn’t stop the adopter from establishing parental rights over the adoptee.

§ 6. Summary

This annotation depicted Massachusetts’ laws relating to same-sex adoption after artificial insemination. After looking at statutes: [G.L. c. 210, § 1](#), [M.G.L.A. c. 46, § 4B](#) and [G.L. c. 209C, § 6\(a\)\(4\)](#), a clearer understanding of how the law works is found. The Courts asserted that a person’s sexual orientation doesn’t prevent them from adopting a child. Moreover, no biological connection is needed between a child born by artificial insemination and the adopter to obtain full-parental rights. Lastly, the Court declared that when a homosexual individual is seeking parental rights to a child, that their former spouse conceived by artificial insemination, if the couple was not married at the time the child was fertilized but during its birth the individual is granted parental rights.

The fusion of all three statutes provides a better understanding of the standard for same-sex adoption after artificial insemination. After combining the three statutes two rules are established:

- 1.) If an adult, with no biological relation to a child, who jointly received the child into their home with the child’s biological parent, and the child’s biological parent and said adult openly hold the child out as their child, and the child is younger than the adult, then parental rights of the child are granted to the adult.
- 2.) If a woman, who uses artificial insemination to get pregnant and their spouse consents to the artificial insemination pregnancy, then parental rights of the child are granted to the spouse.

These two rules will help guide readers looking to understand Massachusetts law on same-sex adoption after artificial insemination.

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