



Same Sex Parenting and Divorce

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With increasing frequency the configuration of the American family is no longer the 1950's sitcom idealization of a mother, father, two children and their pet. Some of these demographic changes are seen in the single parent family, the blended family and the stepfamily. More common than ever, with the accessibility of donor eggs, sperm and in vitro fertilization, are families with same sex parents, gay or lesbian. This article addresses whether there are substantive differences in the effect of divorce with children of same sex vs. heterosexual unions and whether these potential differences should become issues in parenting planning.

In a review article, *Pawelski et al* (2006) indicated that since the enactment of the federal Defense of Marriage Act (DOMA) in 1996, 42 states have enacted laws codifying the federal law into state statute that essentially replicates the federal law. These State laws, including Florida's, contain at least one of the following provisions:

1. Definition of marriage as a legal union between a man and a woman.
2. Prohibition of recognition of same-gender marriages that are granted in other states.
3. Declaration of same-gender marriage as a violation of public policy.

4. Definition of spouse as only a person of the opposite gender who is legally married as a wife or husband.

Florida adopted the federal DOMA definition of spouse as only a person of the opposite gender who is legally married as a wife or husband. Florida defines marriage as a legal union between a man and woman and prohibits recognition of same-gender marriages granted by other states. (James G. Pawelski, 2006).

Despite the legal prohibition against formal same sex relationships, it is clear that there are significant numbers of children living in households with same sex couples, and that many of them involve parenting children. The postmodern social concept of family is moving away from the importance of biological connectivity and more towards finding suitable parents (Appell, 2008). As part of this trend, data suggest that parenting by same sex couples is both an established and growing part of the complex web of American families. Data from the 2000 US census is instructive in this regard:

- Same-gender couples live in 99.3% of all US counties.
- Nearly one quarter of all same-gender couples are raising children.
- Nationwide 34.3% of lesbian couples are raising children, and 22.3% of gay male couples are raising children (compared with 45.6% of married heterosexual and 43.1% of unmarried heterosexual couples raising children).
- Regionally, the South has the highest percentage of same-gender couples who are parents. 36.1% of lesbian couples and 23.9% of gay couples in the South are raising children.
- Six percent of same-gender couples are raising children who have been adopted compared with 5.1% of heterosexual married couples and

2.6% of unmarried heterosexual couples.

- Of same-gender partners raising children, 41.1% have been together for 5 years or longer, whereas 19.9% of heterosexual unmarried couples have stayed together for that duration.
- Eight percent of same-gender parents are raising children with special health care needs, compared with 8.3% of heterosexual unmarried parents and 5.8% of heterosexual married parents.

It is clear then that there are significant numbers of children living in households with same sex couples and as with any couple, some of these unions dissolve. Regardless of the parent composition, there are implications for children's mental health in divorce.

In general, the prevailing literature indicates that homosexual parents are just as effective as heterosexual parents. There have been no studies that have identified developmental differences between children raised in homosexual households, when compared to those raised in heterosexual households (*Camilleri & Ryan, 2006*). Most studies have found that outcomes for children of gay and lesbian parents are no better and/or no worse than for other children, whether the measures involve peer group relationships, self-esteem, behavioral difficulties, academic achievement, or warmth and quality of family relationships (*Carpenter, 2007*). Research findings with lesbian couples where the child was conceived in vitro demonstrate that where the children grow up without a father from the outset, they do not differ from their peers in two parent, heterosexual families in terms of either emotional wellbeing or gender development. The only clear difference to emerge is that co-mothers in two parent lesbian families are more involved in parenting than are fathers from traditional two parent homes.



In response to the question as to whether children who are raised by homosexual parents would more likely be homosexual, Golombok and Tasker, 1996, found that although children raised in homosexual households were more likely to explore and be knowledgeable of same-sex relationships, they were still more likely to identify themselves as heterosexual. There were no substantive differences between traditional parenting unions and homosexual parenting unions in terms of the frequency of children who later identified themselves as homosexual.

Finally, in a survey of professionals working with parenting issues, a study conducted by Camilleri and Ryan (2006), found that when presented with vignettes, social workers had very liberal attitudes towards homosexual parenting, and rated lesbian and gay parents in the highest regards.

The issue appears to be so clear that a report of the American Academy of Pediatrics in February 2002 supported the introduction of legislation to allow the adoption by co-parents of children born to lesbian couples. The Academy took the view that children in this situation deserve the security of two legally recognized parents in order to promote psychological wellbeing and to enable the child's relationship with the co-mother to continue should the other mother die, become incapacitated, or the couple separate.

There is no doubt that there are social obstacles children will need to face having parents that are 'different', and that these will prove challenging. Some of these challenges may arise from religious views and cultural stereotypes. Regardless of the challenge, it is the resiliency of the family and the application of proper parenting techniques that determine the outcome. In sum, children raised by gay and lesbian households tend to have the same developmental and emotional outcomes as children raised in households where the parents are heterosexual.

For the family law attorney this brings up a number of questions, two of which are 1) the implications for the child of divorce (separation) of a same sex union and 2) the issue of what happens when a parent from

a heterosexual union divorces and enters into a homosexual union and has the intent to parent children from the first union.

As to the first issue, the research suggests that children of divorce are impacted, irrespective of the parental couple being comprised of a same sex or heterosexual union. Thus, the better question to ask is, "What are the factors in divorcing families that contribute to children having difficulties?" These factors have been suggested to include parental loss, economic decline, increased life stress, the effects of parental adjustment, lack of parental competence and exposure to conflict between parents. In the context of the current discussion, these factors are the same when considering either heterosexual or homosexual relationships.

As to the second question, there appears to be little to argue on a psychological basis that exposure to a homosexual relationship would cause psychological harm to the children. The potential for harm would be determined by the attitude of the parents rather than the circumstance of the relationship. Clearly, there are those situations where religious or moral values will determine a parent response to the ex-spouse's decision to live in a homosexual relationship. These factors are valid for discussion and inclusion in parenting plans. There just does not seem to be a psychological vector for their resolution.

In summary, despite the legal prohibition against formal same sex relationships these relationships do exist, and with increasing frequency many of these relationships, through developments in the fertility field or through adoption, produce and raise children. When these relationships come apart, whether or not there is

a formal and legal divorce process, decisions need to be made as to the best interests of the children for time sharing which transcend biological connections. The literature reviewed suggests that children raised by homosexual parents or children of heterosexual parents fare much the same on measures of peer group relationships, self-esteem, behavioral difficulties, academic achievement and the quality of family relationships. No differences in the ultimate sexual preference in the child appear to be attributable to parental sexual preference. Rather these children, as any children whose parents divorce, are vulnerable to the impact of divorce. Moreover, there is no basis for the attorney to argue there will be psychological harm done to the children of same sex parents on the basis of their sexual preference. Time sharing decisions, therefore, should be based on the usual best interest of the child factors as applied with heterosexual parents.

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continued, next page



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Same Sex Parenting & Divorce from preceding page

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