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New York Divorce and Family Law Blog

[Same Sex Issues in the News: Marriage and Child Custody](#)

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It was been an interesting week in family law practice, which I thought I note before taking a few days off with my family .

In the same week [Governor Paterson](#) announced that he was introducing legislation to recognize same sex marriage, a couple decisions involving the custody rights of same sex marriages were announced.

In the first, [Debra H. v. Janice R.](#), the Appellate Division, First Department, held that the same sex partner of a woman who gave birth did not have standing to assert parental rights after the parties broke up. The Court ruled that although Debra H., the non biological parent,

[S]erved as a loving and caring parental figure during the 2 ½ years of the child's life, she never legally adopted the child.

Based upon this reasoning, the court held that a party who is neither the biological nor the adoptive parent of a child lacks standing to seek custody or visitation rights under [Domestic Relations Law §70.](#)

In another case, a woman whose donated egg was implanted in her same-sex partner was permitted to adopt the resulting child. The parties were lawfully wed in Holland.

This case presented the novel issue whether a party, who was not legally married to the child's mother at the time of conception, but who is genetically the mother can legally adopt the child.

In [Matter of Sebastian](#), the Surrogate granted the petition, even though alternatives to adoption may have been available. Two viable alternatives were obtaining an order of filiation or being listed as a parent on the child's birth certificate.

The parties sought an adoption because they felt only an order of adoption would ensure that all the states and the federal government would recognize the adoptive mother as the child's parent.

The Court specifically noted that

Although it is true that an adoption should be unnecessary because Sebastian was born to parents whose marriage was legally recognized in this state, the best interests of this child require a judgment that will ensure recognition of both Ingrid and Mona as his legal parents throughout the United States.

These cases further highlight complex child custody issues faced by same sex couples in the absence of legally recognized marriage.