

# CLEMENTLAW

THE LAW OFFICES OF DANIEL E. CLEMENT

## New York Divorce and Family Law Blog

### [Child Custody and Same Sex Relationships](#)

Posted on May 5, 2010 by [Daniel Clement](#)

[New York's highest court](#), the Court of Appeals, granted a non-adoptive or biological parent visitation with her former same sex partners' child. In a very narrow ruling, the Court in the case [Debra H. v. Janice R.](#), held that only biological or adoptive parents can seek visitation or custody of children.

The parties, Debra H. and Janice R., entered into a Vermont civil union in 2003. A month later, Janice R., who was artificially inseminated, gave birth to M.R. Janice denied Debra's requests to adopt M.R. and their relationship soured. When Janice refused Debra's efforts to have visitation with M.R., Debra commenced an action seeking visitation.

Applying New York law established in the case [Alison D. v. Virginia M.](#), the Court declined to extend parental rights to persons who are not the biological or adoptive parents of the children.

In doing so, the court expressly declined to establish criteria for parenthood in relationships in which one partner or spouse is not the biological parent, saying a more flexible standard could invite claims of parental rights by people who have no business raising them.

Parents could not possibly know when another adult's level of involvement in family life might reach the tipping point and jeopardize their right to bring up their children without the unwanted participation of a third party. . .

In sum, Alison D., in conjunction with second-parent adoption, creates a bright-line rule that promotes certainty in the wake of domestic breakups otherwise fraught with the risk of "disruptive . . . battle[s]" (Jacob, 86 NY2d at 659) over parentage as a prelude to further potential combat over custody and visitation.

Though neither the biological or adoptive parent, Debra H. was granted parental rights because the parties had entered into a civil union. The Vermont civil union law requires that “all the same benefits, protections and responsibilities under law” of marriages be accorded in civil unions.

This decision, in effect, established two sets of standards for children of same-sex couples: one set for those born to couples with a legally recognized relationship, and another for those born to couples without legal recognition. In the absence of a legally cognizable relationship, the party must be either the adoptive or biological parent to acquire parental rights. A non biological or adoptive parent in a civil union or, perhaps, marriage, may acquire rights by virtue of the relationship.