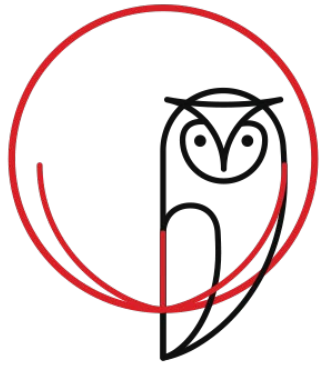
TOP 10 LGBT FAMILY LAW CASES THAT EVERYONE SHOULD KNOW ABOUT



O'NEIL WYSOCKI

FAMILY LAW

The Wise Choice

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LIST OF CASES

U.S. Supreme Court

- Loving v. Virginia
- Lawrence v. Texas
- US v. Windsor
- Obergefell v. Hodges
- Pavan v. Smith
- Bostock v. Clayton County

Texas Cases

- Pidgeon v. Turner
- Treto v. Treto
- In re P.S.
- In re T.E.R.
- In re McReynolds/In re Rocher
- H.S.
- C.J.C.

HISTORICAL CASES

LOVING V. VIRGINIA, 87 S.CT. 1817 (1967)

https://www.oyez.org/cases/1966/395

- Statutes that prohibited marriage between persons solely on the bases of racial classification violate equal protection and due process clauses of the 14th Amendment.
- "Marriage is one of the 'basic civil rights of man,' fundamental to our very existence and survival. To deny this fundamental freedom on so unsupportable a basis as the racial classifications embodied in these statutes, classifications so directly subversive of the principle of equality at the heart of the Fourteenth Amendment, is surely to deprive all the State's citizens of liberty without due process of law. The Fourteenth Amendment requires that the freedom of choice to marry not be restricted by invidious racial discriminations. Under our Constitution, the freedom to marry or not marry, a person of another race resides with the individual and cannot be infringed by the State."

LAWRENCE V. TEXAS, 123 S.CT. 2472 (2003)

https://www.oyez.org/cases/2002/02-102

- Defendants were convicted of engaging in homosexual conduct.
- SCOTUS held that Texas statute making homosexual conduct a crime was unconstitutional as applied to consenting adults in the privacy of their own home.

US SUPREME COURT CASES

U.S. V. WINDSOR, 133 S.CT. 2675 (2013)

https://www.oyez.org/cases/2012/12-307

- Edith Windsor sued the United States after she was forced to pay estate tax following the death of her same-sex spouse. The federal government didn't recognize her marriage.
- DOMA defined marriage as between a man and woman for federal purposes instead of accepting the definition of marriage by each state.

WINDSOR

- SCOTUS found DOMA unconstitutional and struck down section 3 which prevented the federal government from recognizing same-sex marriages for the purposes of federal laws or programs if the couple is married according to the laws of their home state.
- DOMA violated equal protection.

OBERGEFELL V. HODGES, 135 S.CT. 2584 (2015)

https://www.oyez.org/cases/2014/14-556

- Consolidation of six lower-court cases, originally representing sixteen same-sex couples, seven of their children, a widower, an adoption agency, and a funeral director. Those cases came from Michigan, Ohio, Kentucky, and Tennessee. All six federal district court rulings found for the same-sex couples and other claimants.
- Holding: The Fourteenth Amendment requires a state to license a marriage between two people of the same sex and to recognize a marriage between two people of the same sex when their marriage was lawfully licensed and performed out-of-state.

OBERGEFELL

- Right to marry is protected by the Constitution. Cites to Loving v. Virginia, 388 U.S. 1 (1967) which invalidated bans on interracial marriages.
- Extended right to marry protection to same-sex couples.
- Supreme Court of the United States ruled that the fundamental right to marry is guaranteed to same-sex couples by both the Due Process Clause and the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution.

PAVAN V. SMITH, 137 S.CT. 2075 (2017)

https://www.oyez.org/cases/2016/16-992

- Leigh and Jana Jacobs, and Terrah and Marisa Pavan—both same-sex couples—were married in Iowa in 2010, and in New Hampshire in 2011, respectively. Leigh and Terrah each gave birth to a child in Arkansas in 2015, and each couple completed the requisite paperwork for birth certificates for the newborns listing both spouses as parents—Leigh and Jana in one case, and Terrah and Marisa in the other.
- The Jacobses and Pavans filed a lawsuit in Arkansas state court against the director of the Arkansas Department of Health seeking a declaration that the State's birth-certificate law violates the constitution. The trial court agreed with the couples, holding that the state statute is inconsistent with the Supreme Court's decision in Obergefell v. Hodges. The Arkansas Supreme Court reversed the trial court.

PAVAN

- Question: Is it unconstitutional for a state to preclude a same-sex couple from being listed as the two parents on their child's birth certificate?
- Conclusion (Per Curiam, no author but 3 joined in dissent limiting Obergefell to marriage): A state law that precludes same-sex couples from having both spouses' names on a birth certificate violates the Due Process Clause and the Equal Protection Clause under Obergefell v. Hodges.

PAVAN

- A state rule that requires a child's birth certificate to list the non-biological father if he is married to the biological mother but that does not allow both same-sex spouses to be listed as parents is unconstitutional discrimination that violates Obergefell v. Hodges.
- The rule functionally deprives married same-sex couples the same rights to be listed on their children's birth certificates as married opposite-sex couples have. Not being listed on a child's birth certificate can significantly affect a parent's ability to participate in transactions that require showing proof of parentage. Therefore, this rule unconstitutionally discriminates against married same-sex couples by denying them access to the same rights, responsibilities, and benefits that married opposite-sex couples have.

BOSTOCK V. CLAYTON COUNTY, 140 S.CT. 1731 (2020)

https://www.oyez.org/cases/2019/17-1618

- Combines three cases where employee was terminated from employment based on gender stereotypes.
- Elevates the rights of LGBTQ people to *protected status* under Title VII of the Civil Rights Act of 1964.
- The grouping of cases before the Court sought the Court's determination as to whether a person can be fired simply based on their sexual orientation, gender identity, or gender expression. The 6-3 decision, authored by Justice Neil Gorsuch, resoundingly responds with a "no."
- Title VII of the Civil Rights Act of 1964 prohibits discrimination "*because of sex*", and the Court found that the word "sex" includes sexual orientation, gender identification, and gender expression.
- "When an employer fires an employee for being homosexual or transgender, it necessarily and intentionally discriminates against that individual in part because of sex. And that is all Title VII has ever demanded to establish liability."

BOSTOCK

- Gorsuch wrote: “An employer who fires an individual for being homosexual or transgender fires that person for traits or actions it would not have questioned in members of a different sex…It is impossible to discriminate against a person for being homosexual or transgender without discriminating against that individual based on sex.”
- Applies to family law – a judge cannot deny or discriminate against a parent in questions regarding the parent-child relationship based on sex as that term is now defined in Bostock.
- This is the first major case on transgender rights. Prior to this decision, many states (including Texas) could legally discriminate against a person for being gay, bisexual, or transgender. Now, workplace protections extend to millions of people across the nation.

TEXAS SUPREME COURT CASES

PIDGEON V. TURNER, 538 S.W.3D 73

- Lawsuit over providing employment benefits to same-sex spouses who were legally married outside of Texas.
- "The (United States) Supreme Court held in Obergefell that the Constitution requires states to license and recognize same-sex marriages to the same extent that they license and recognize opposite-sex marriages, but it did not hold that states must provide the same publicly funded benefits to all married persons and--unlike the Fifth Circuit in De Leon -- it did not hold that the Texas DOMAs are unconstitutional."
- "And since Obergefell is not retroactive, the Texas DOMAs remained fully in effect, at least until June 26, 2015."
- In the context of rights available to married couples, the Texas Supreme Court stated that Obergefell is not retroactive. In the context of marriage itself, the Court declined to rule either way on retroactivity, and offered no guidance whatsoever as to what Obergefell means in relation to Texas law.

TEXAS COURTS OF APPEALS CASES

TRETO V. TRETO, 2020 WL 373063 (CC 2020)

- Child born during marriage. Mother of child initiated divorce proceedings against same-sex spouse. Trial court entered divorce decree finding that spouse was parent of child and ordering child support. Court of Appeals upheld ruling.
- Cited to TFC 160.106 applying presumption of paternity to determination of maternity.
- "By interpreting § 160.106 and § 160.204(a)(1) together, we interpret the statute as written by the legislature, giving effect to all of the portions of the statute, and avoiding an interpretation that violates the equal protection guarantees of the Texas and federal constitutions. Accordingly, it follows that under Pavan, we are to give effect to the ancillary benefits of a same–sex marriage, including the determination of maternity for the non–gestational spouse of a child born to the marriage. See 137 S.Ct. at 2078."

IN RE P.S., 505 S.W.3D 106 (FORT WORTH 2020)

- A woman asked her friend to be a sperm donor so that she could have a child. Both the woman and her friend orally agreed that he would be the donor but not the father of the child if a child was conceived. The friend willingly provided his sperm and a pregnancy resulted. The child was born in August 2014. Upon the birth of the child, both the birth mother and biological father signed an Acknowledgment of Paternity form so that the biological fathers name would appear on the child's birth certificate. The birth mother attempted to rescind this Acknowledgment of Paternity soon after.

- Later, the birth mother married a woman and sought to have her spouse adopt the child. She claimed that the man was only a sperm donor and had no parental rights to contest the second parent adoption. Based on the Acknowledgment of Paternity document, the court disagreed and found the man to be the legal father of the child and denied the request for the adoption by the birth mother's spouse. The court further granted the father visitation rights with the child and set his child support obligations.

IN RE P.S.

- The court rested its decision on two statutory provisions found in the Texas Family Code. First, the court considered Section 160.702 which states that a "donor" is not a parent of a child conceived by means of assisted reproduction. Furthermore, the court examined the definition of a "donor" in section 160.102(6) which defines a "donor" as an individual who provides sperm to a licensed physician to be used for assisted reproduction.
- The insemination was done informally at the home of the birth mother. The father did not provide his sperm to a licensed physician but rather directly to birth mother. Because of these two factors, the father was not considered a "donor" under state law. If the parties had the artificial insemination done through a physician's office, the father would have been a donor under the law and would not have been entitled to parental rights.

IN RE T.E.R., 603 S.W.3D 137 (TEXARKANA 2020)

- The parties were married in 2009 and decided to adopt a child. M1 adopted the child in 2014. In 2017 M2 sought divorce. The trial court granted divorce, found M1 (only) to be the parent of the child and appointed the parties JMC with M1 primary. In 2018, M2 petitioned for adoption of the child. M1 challenged M2's standing, which the trial court denied. Then at final bench trial, the judge granted the adoption by M2 over M1's objection.
- COA found ex-wife has "substantial past contact" with child, so had standing to petition to adopt.
- Decision to grant or deny petition to adopt is within the discretion of the trial court. Primary consideration is best interest of the child.

IN RE MCREYNOLDS, 502 S.W.3D 884 (DALLAS 2016) IN RE ROCHER, 2016 WL 4131626 (HOU 14TH 2016)

- Trial court doesn't have the authority to issue sex change orders.

BONUS CASES

IN RE H.S.

- Texas Family Code Section 102.003(a)(9) does not require that a non-parent have exclusive control of the child in order to establish standing. Rather, the Court held that if the non-parent (1) shares a principal residence with the child, (2) provides for the child's daily physical and psychological needs, and (3) exercises guidance, governance, and direction similar to that typically exercised on a day-to-day basis by parents with their children, that individual has standing to bring a lawsuit.
- The Court specified that a non-parent may have standing regardless of whether the nonparent to has ultimate legal authority to control the child nor does it require the parents to have wholly ceded or relinquished their own parental rights and responsibilities.

IN RE C.J.C.

- Once a non-bio parent has standing, does the fit-parent presumption apply to best interest of child standard such that the non-bio parent has to meet an elevated burden to rebut the presumption that a fit parent acts in the child's best interests?
- Constitutional fit parent presumption applies when a non-bio parent intervenes in proceeding regarding custody. It is presumptively in the best interest of the child to be raised by his or her parents. Presumption is served by awarding custody to a parent.
- "Significant impairment" is probably the standard to rebut the fit parent presumption.

FOR MORE INFORMATION AND OTHER TOPICS:

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